

Instructions To Opinion Of Borrower's Counsel

(To be used in HUD-Insured Multifamily Transactions)

U.S. Department of
Housing
and Urban Development
Office of Housing

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The purposes of the Opinion of Borrower's Counsel (form HUD-91725M) (**Opinion**) remains first, to protect the interests of HUD; second, achieve a uniform format which can be utilized in all jurisdictions; and third, be consistent with modern opinion practice, to the extent possible.

The format of the Opinion must be followed and is not open to negotiation. It is essential that the Opinion be followed in both style and substance in order to ensure a timely closing. Brackets continue to be used in the Opinion to indicate alternate language, insertions, documents, or instructions, depending on the applicable facts, and underlined "blanks" are used to indicate information that must be completed. **As appropriate, inapplicable documents or opinions shall be deleted and replaced with "[intentionally deleted]" or "[intentionally omitted]" in order to preserve the paragraph numbering.**

Certain limited changes may be authorized by HUD field counsel as required by local law or by the unique or programmatic nature of the transaction (e.g., refinancing transactions insured under the National Housing Act, as amended; cases where a supplemental opinion is required by MAP Guide Closing Chapter 19). An effort has been made in these revised instructions to specify examples where such changes may be authorized. Any deviations from the form must be specifically identified (redlined) and expressly discussed with HUD field counsel at that time so that the deviations can be resolved prior to the closing. Any material deviation not required by State or local law or otherwise authorized by these Instructions must be brought to the attention of the Assistant General Counsel, Multifamily Mortgage Division, by HUD field counsel; any request must include an explanation by Borrower's Counsel as to the necessity for the deviation. Revisions cannot be justified because of a particular Opinion having been approved by another HUD field office or in a different transaction. This exercise of discretion by one HUD field counsel in unique circumstances cannot become the basis for any modification to the Opinion. Any requested modification must be analyzed on its own merit and in a particular context.

Borrower's Counsel, and any other attorneys involved in the transaction, must be thoroughly familiar with Program Obligations pertaining to each mortgage insurance transaction in which they each participate. HUD takes seriously the preparation and completion of the various documents involved in the mortgage insurance process (most of which are HUD form documents). HUD regards the Borrower's Counsel as essential to the process of preparing and executing the legal and administrative documents necessary to achieve a closing in those multifamily rental mortgage insurance programs

where a Note is endorsed for mortgage insurance by HUD. Borrower's Counsel has significant obligations to its client (Borrower), Lender, and HUD. In part, these responsibilities entail the exercise of due diligence to help to ensure the accurate and timely preparation, completion and submission of the forms required by HUD in connection with the transaction. For the Opinion, Borrower's Counsel is expected to exercise the due diligence and professional judgement required to provide each opinion, in order to assist HUD in its diligence, and to resolve any issues inconsistent with those opinions in advance of submission of the closing documents. Borrower's Counsel is expected to complete a draft Opinion for submission to HUD field counsel along with the other closing documents early enough for HUD to complete its review prior to the date of the closing.

The definition of any capitalized term or word used herein can be found in these Instructions to Opinion of Borrower's Counsel, the Opinion of Borrower's Counsel, the Regulatory Agreement between Borrower and HUD, the Note, and/or the Security Instrument. The term "**Program Obligations**" means (1) all applicable statutes and any regulations issued by the Secretary pursuant thereto that apply to the Project, including all amendments to such statutes and regulations, as they become effective, except that changes subject to notice and comment rulemaking shall become effective only upon completion of the rulemaking process, and (2) all current requirements in HUD handbooks and guides, notices, and mortgagee letters that apply to the Project, and all future updates, changes and amendments thereto, as they become effective, except that changes subject to notice and comment rulemaking shall become effective only upon completion of the rulemaking process, and provided that such future updates, changes and amendments shall be applicable to the Project only to the extent that they interpret, clarify and implement terms in these Instructions to Opinion of Borrower's Counsel or the Opinion rather than add or delete provisions from such documents. Handbooks, guides, notices, and mortgagee letters are available on "HUDCLIPS," at www.hud.gov. "Mortgagor" is now referred to as "Borrower," and "Mortgagee" is now referred to as "Lender;" however, those new uses are defined to mean "Mortgagor" and "Mortgagee" as those terms are used in Program Obligations.

The Opinion can be utilized in connection with all types of insured closings: insured advances or insurance upon completion (for new construction or substantial rehabilitation); initial/final closings (for refinancings, etc.); mortgage increase or reduction. The Opinion form is used if the Opinion needs to be supplemented at final endorsement because of matters such as modification of the commitment or other closing documentation (e.g., increase or reduction in the amount of the Loan resulting in a modified Security Instrument). Furthermore, the Opinion format can be adapted and used in Transfers of Physical Assets (TPAs) and the various refinancing transactions under Section 223. It is important that the correct options be selected in instances where choices are provided and that appropriate deletions or modifications are made to accommodate unique circumstances or programs.

The Opinion format **is not intended to serve as a closing checklist**; therefore, HUD field counsel may update or modify existing closing checklists as necessary to meet Program Obligations. For example, many deletions from or additions to the list of documents are appropriate for various types of refinancings, operating loss loans, equity loans, supplemental loans, and certain complex refinancings.

The Opinion contains some instructions and definitions and is largely self-explanatory; however, these Instructions are intended to provide clarification and additional assistance to both private counsel and HUD field counsel. The numbers and letters used below relate to the paragraph numbers and letters in the Opinion, unless page numbers are specifically designated. Please note that certain capitalized words used in the Opinion and in these Instructions are defined terms in the Loan Documents.

BRACKETED AND ALTERNATIVE LANGUAGE

Brackets in the Opinion may indicate alternate language, insertions, documents, or instructions. If there are no brackets around a particular document, the document is one which is commonly used for initial endorsements in cases involving insured advances; however, it is not possible to list every document for every loan and no attempt has been made to list all documents utilized in all transaction types. Borrower's Counsel must add those loan documents related to the FHA closing that are not listed in the form. Conversely, some documents may not be utilized in a particular transaction and must be deleted from the list in the actual Opinion. Brackets around the name of the document indicate that the document may or may not be used for every loan. If bracketed documents are not used in a particular loan transaction, then documents must be struck out or deleted in the actual Opinion, but paragraph numbering/lettering should not change. **If a document is not applicable to the transaction, it shall be struck out or deleted and replaced with "[intentionally deleted]" or "[intentionally omitted]" in order to preserve the paragraph numbering. Notify HUD counsel of any deletions or changes.**

Underlining ("blanks") is used to indicate information (e.g., dates, parties) that must be completed.

PAGE 1 AND INTRODUCTION

- Letterhead and date: the Opinion must be on Borrower's Counsel's firm letterhead and dated the date of HUD's endorsement of the Note.
- Reference: data regarding the Project (name, HUD Project number, and location and the name or title of Borrower) must be accurate and inserted in the appropriate blanks.
- Addressees: the Opinion must be delivered to HUD as well as Lender to establish

the explicit right of each to rely on the Opinion. Lender's counsel may be relying on the Opinion for certain aspects of its opinion. If so, the Opinion must also be addressed to counsel to Lender. In cases where counsel to Lender elects not to rely upon the Opinion or Borrower's Counsel does not wish to permit reliance by counsel to Lender, the Opinion must not be addressed to and/or delivered to Lender's counsel. Furthermore, Lender and counsel to Lender **are not permitted** to rely upon the Opinion in making the certification in paragraph E.9 of the Lender's Certificate (HUD-92434M) or paragraph I.C.11 of the Request for Endorsement of Credit Instrument & Certificate of Lender, Borrower & General Contractor (HUD-92455M).

- Description of the Loan: the loan amount is the original principal amount of the Loan, unless a modification is necessitated in connection with the closing.

SECTION I: DOCUMENTS REVIEWED

Each document executed in connection with the Loan must be listed by its correct title, showing each party executing it and its date. If documents are dated "as of" a particular date, then such phrase must be included in the description in the text. The appropriate HUD or FHA form number, if applicable, must be indicated in parentheses after each document.

It is imperative that Borrower's Counsel take care that the initial draft Opinion submitted to HUD includes a list that accurately and completely reflects the transaction. After HUD review of the initial draft, the Opinion may have to be modified to satisfy HUD.

All documents executed in connection with the loan transaction must be listed regardless of whether the documents are required by HUD or whether Borrower is a party to the documents. **To the extent documents are later found in the closing docket file which do not comport with Program Obligations and which were not shown in the list of documents reviewed, HUD reserves the right to refuse to accept or recognize the documents unless the documents are brought into compliance with Program Obligations.** Borrower's Counsel is not assuming responsibility for the content of documents that Borrower's Counsel does not prepare and/or that Borrower does not execute. Borrower's Counsel's review of such documents is necessary to ensure consistency from document to document.

A. Organizational Documents: All of the documents relating to the organization, status, and authorization of Borrower (and the General Partner, Manager, and/or Managing Member) must be reviewed for compliance with Program Obligations. In order to provide the authorization opinion in paragraph 4, if there is another entity or entities authorizing the transaction on Borrower's behalf (e.g., Borrower's General Partner), Borrower's Counsel's review must include the organizational documents of

Borrower and any controlling entity within the Borrower's organizational hierarchy to the extent necessary to provide the required opinion. If there are multiple tiers of entities, the organizational documents of these entities must be included in this paragraph of the Opinion as is legally necessary to establish the authority of the signatory executing transaction documents on behalf of the Borrower. The Opinion must be modified accordingly to include these additional entities; if necessary, additional paragraphs may be added to ensure that all necessary entities and organizational documents are reflected. With regard the foreign qualification of entities within the organizational structure, include foreign qualification when Borrower has qualified the entity voluntarily or such qualification is required by state law or Program Obligations.

H. Building Loan Agreement: This document is a "bracketed document" that typically will be used only in cases involving new construction or substantial rehabilitation or where required by state law. The document is not required in equity loan transactions, most refinancing transactions, and many supplemental loan transactions.

I. Construction Contract. See instructions under H. above.

O. Certification of Borrower: Certification of Borrower is form HUD-91725M-CERT and must be attached as an Exhibit to the Opinion. The form represents the minimum amount of information that must be obtained from Borrower and must only include factual matters relied on by Borrower's Counsel. In certain transactions, it may be necessary and appropriate to include additional factual matters (not legal conclusions) in the certification, subject to review and approval of HUD field counsel. Capitalized terms in the certification have the same meaning as in the Opinion, these Instructions, the Note, and Security Agreement.

P. Owner-Architect Agreement: This "bracketed document" is used in cases involving new construction, substantial rehabilitation and certain refinances involving expanded post-closing work. If the transaction includes multiple Owner-Architect Agreements (e.g., civil engineer, landscape architect), then all of these agreements must be included and listed separately.

R. Request for Final Endorsement/Request for Endorsement of Credit Instrument/Lender's Certificate: All fees, escrowed accounts, etc. must be disclosed as required by the applicable HUD form. The Request for Endorsement of Credit Instrument and Lender's Certificate contain a certification that the closing documents conform to the HUD-approved format except for changes approved by HUD field counsel. In this regard, the document is crucial to HUD's endorsement of the Note for insurance. Borrower's Counsel is not responsible for the content of the document and only needs to review the document in its capacity as Borrower's Counsel to be certain that the document conforms to the transaction Borrower is

agreeing to and that the document accurately reflects the fees and escrows, etc. that are required of Borrower.

S. Assurance of Completion (surety bonds or agreement): These “bracketed documents” are only applicable in transactions involving some construction where the regulation pertaining to assurance of completion is applicable. This documentation would not be utilized in refinancings or equity loan transactions with no construction activity.

T. Assurance of Completion of Off-Site Facilities (surety bond or escrow agreement): This document must only be used in cases where off-site work is involved. As such, the document would not normally be used in pure equity loan transactions or in refinancing transactions involving no construction.

W. Contractor's Prevailing Wage Certificate: This item is no longer required in the HUD closing checklist; however, the item must be reviewed by Borrower's Counsel for the purpose of assuring consistency between the documents and performance under the Construction Contract to which Borrower is a party.

Y. Public Entity Agreement: The meaning of Public Entity Agreement (PEA) should be broadly interpreted and is intended to refer to all development and contractual agreements between Borrower or the Project and government or other public entities (excluding agreements with HUD), including public secondary financing (e.g., HOME loan), tax abatement, tax deferral, impact fees and restrictive covenants. but excluding any taxable/tax-exempt bonds and tax credits.

All documents must be included and listed. The documents include (but are not limited to) any loan agreement, surplus cash note/residual receipts note/promissory note, mortgage, restrictive covenant, land use agreement, subordination agreement, tax abatement and tax deferral agreement. Document references must include the document title, parties, date of the document, and any amendments thereto. When listing instruments of record, include the location of recording and the Book/Page or Instrument Number, or if an instrument is to-be-recorded, include the location where the instrument will be recorded. When there are multiple types of financing or voluminous documents, the documents may be listed in an exhibit incorporated by reference.

Z. Source Documents: This paragraph includes the principal documents required in connection with a taxable or tax-exempt bond financed transaction. Not all documents involved in the typical bond financing must be listed, but all documents executed by Borrower, or which establish or describe any obligations of Borrower, must be included and listed.

The documents include (but are not limited to) the prospectus, indenture, sample

bond, loan agreement, note, mortgage, subordination agreement, disbursement agreement, and bond land use restriction agreement/regulatory agreement. Document references must include the document title, parties, date of the document, and any amendments thereto. When listing instruments of record, include the location of recording and the Book/Page or Instrument Number, or if an instrument is to-be-recorded, include the location where the instrument will be recorded. When there are multiple types of financing or voluminous documents, the documents may be listed in an exhibit incorporated by reference.

AA. Tax Credit Documents: This paragraph includes the principal documents required in connection with a tax credit transaction. All documents dated as of the date of closing (date of the Opinion) must be listed; HUD recognizes that in some instances all documents associated with a tax credit transaction may not be available prior to the project being placed into service, such as an extended low-income housing agreement (ELIHA), however if provided in advance or recorded in connection with closing it should be listed. All documents executed by Borrower, or which establish or describe any obligations of Borrower, must be included and listed. If a LIHTC land use restriction agreement (LURA) cannot be recorded by Final (or Initial/Final) Endorsement, a draft LURA with the HUD Rider must be submitted with the closing package for HUD review and approval prior to Endorsement. Additionally, Borrower must certify to HUD that the approved draft will be recorded as soon as practicable. In such cases, Lender must include the certification and the approved draft LURA in the Closing Docket; the draft LURA must be listed in AA of the Opinion as well.

Documents include (but are not limited to) documentation confirming tax credit allocation or other appropriate verification of tax credits, agreements, land use restriction agreement, and, if applicable, equity bridge loan promissory note and pledge agreement. Document references must include the document title, parties, date of the document, and any amendments thereto. When listing instruments of record, include the location of recording and the Book/Page or Instrument Number, or if an instrument is to-be-recorded, include the location where the instrument will be recorded. When there are multiple types of financing or voluminous documents, the documents may be listed in an exhibit incorporated by reference.

BB. Private Secondary Financing Documents: This paragraph includes all agreements executed by Borrower, or which establish or describe any obligations of Borrower, in connection with secondary financing from a private source (e.g., mezzanine financing, seller-financed subordinate debt, not-for-profit lender).

All documents must be included and listed. Documents include (but are not limited to) any loan agreement, surplus cash note/residual receipts note/promissory note, mortgage, subordination agreement, and pledge agreement. Document references must include the document title, parties, date of the document, and any amendments

thereto. When listing instruments of record, include the location of recording and the Book/Page or Instrument Number, or if an instrument is to-be-recorded, include the location where the instrument will be recorded. When there are multiple types of financing or voluminous documents, the documents may be listed in an exhibit incorporated by reference.

CC. Title Insurance Policy: The Federal Housing Administration Multifamily Program Closing Guide (Closing Guide) must be followed regarding the appropriate Title Insurance Policy format and required Endorsements.

DD. Zoning Certificate: If a Zoning Endorsement to the Title Policy is available, this paragraph Y is not required. If a Zoning Endorsement is not available or it is cost prohibitive, then other evidence of zoning compliance must be provided. This evidence of zoning compliance (Zoning Certificate) must be attached as an exhibit to the Opinion. The evidence of zoning compliance will vary depending on the circumstances and specific facts, and as such a more recent letter may be required, but the date of the letter must be no earlier than 1 year prior to closing.

For new construction or substantial rehabilitation, the evidence must establish that the building, if constructed according to plans and specifications, shall comply with all zoning requirements. The evidence may be in the form of a recent letter or certificate from the appropriate local government official stating that, if the building is constructed according to the plans and specifications submitted for review, the building shall comply with all zoning requirements. If the locality has no zoning ordinance, a letter must be submitted from the chief executive officer of the locality stating such. In those circumstances, it may be necessary to obtain a letter from the local planning body of the county in which the project is located, stating that the proposed development is compatible with the county's comprehensive plan. If the zoning approval is based upon a variance or other special action, the closing may have to be delayed until the time for appeals has run.

In refinancing transactions where no construction is involved, the evidence may be in the form of a recent letter from a local government official certifying that the existing building(s) is (are) in compliance with current zoning requirements or, if not, the nonconforming use, variance, etc., is acceptable. HUD does not maintain data pertaining to zoning law, and data with respect to previously endorsed loans is outdated.

In extremely complex cases, an opinion may need to be obtained from legal counsel specializing in local zoning matters.

EE. Building Permit(s): This paragraph is only applicable if a building permit is required. Permits may be required under local law in connection with refinancing transactions which involve no hard costs of construction.

FF. Occupancy Permit(s): This paragraph is only applicable if an occupancy permit is required. Permits may be required under local law or in connection with a final closing.

GG. Permits and/or Licenses: In all cases, including refinancings, HUD requires that any permits required for the operation or are needed for the continued operation of the Project be in place. In existing Projects, HUD must be assured that no new requirements have been imposed which would prevent continued operation of the Project.

HH. Survey Plat/Survey **OR** Survey Affidavit of No Change: The Survey Plat must be signed and sealed. The field work or last inspection date must be no earlier than 180 days prior to closing for initial and initial/final closings, and 120 days for final closings.

The Survey Affidavit of No Change is only applicable in 223(a)(7) refinancing transactions where there has been no material change (*i.e.*, no new construction has taken place, no changes have been made to the land, buildings, or improvements, no new easements that can be plotted on a Survey) since the most recent HUD transaction in which a Survey Plat was required. Borrower must provide the Survey Affidavit of No Change and a legible copy of the attested survey from the most recent HUD transaction where a survey was required. If Borrower is aware of or becomes aware of any changes, these changes shall be expressly addressed in the Affidavit as an exception; If Borrower's Counsel is aware of or becomes aware of any changes, these changes must be disclosed in the Opinion. HUD may require a new Survey depending upon the circumstances.

II. Surveyor's Report: The Surveyor's Report must reflect dates consistent with the Survey Plat and be signed and sealed. The field work or last inspection date must be no earlier than 180 days prior to closing for initial and initial/final closings, and 120 days for final closings.

JJ. Assurance of Utility Services: Assurance of utility services is required for transactions with new construction or substantial rehabilitation, and, when additional (or changes to) utilities are needed to support the repairs required by the HUD Firm Commitment for refinances with Level 2 or 3 alterations. These assurances must be recent and in the form of letters from or agreements with the utility provider confirming that the utility provider has adequate capacity to provide and will provide utility services to the project as constructed. The form of assurances will vary depending on the circumstances and specific facts, and as such a more recent letter may be required, but the date of the letter or agreement or other approvals must be no earlier than 1 year prior to closing. If available in the jurisdiction, ALTA 17.2-06 (Utility Access) or an equivalent endorsement to the Title Policy is also required. .

KK. Docket Search: The Docket Search can be conducted by either the title insurance company, a reputable document search firm, the Borrower's Counsel or any other attorney licensed in the jurisdiction. If Borrower is created or located in a jurisdiction other than the location of the Project, then a record search in all applicable jurisdictions shall be necessary. In the case where a sole-asset borrower is being created within sixty (60) days before the date of the Opinion, a search of the public records in the jurisdiction where Borrower is located (assuming a different location from the others iterated) is unnecessary. The Opinion could be amended in those instances to indicate that particular state of facts; however, all of the other searches would have to be performed. This instruction should clarify that litigation docket searches are required in the Property jurisdiction (the location of the property) and the Owner's business location jurisdiction. The docket search must consist of a search of the local and federal courts for the jurisdiction for all civil litigation, as well as bankruptcy court records, and tax lien records.

MM. Additional Transaction Documents. Pursuant to these Instructions, all loan documents related to the FHA closing that will be delivered at closing that are not otherwise listed in the form Opinion must be included (e.g., certifications for special conditions), regardless of whether the documents are required by HUD or whether Borrower is a party to the documents.

Page 10: All documents reviewed are collectively referred to as Documents. Primary Loan Documents, and Loan Documents are defined as specific subsets of Documents for purposes of the Opinion.

SECTION III: OPINIONS

1. A Status Certificate issued by the applicable governmental authority must be dated no more than 30 days prior to the date of the Opinion of Borrower's Counsel. If Borrower is a foreign entity, the Opinion must recite the review of all government approvals required to do business in the Property Jurisdiction. If a Status Certificate cannot be obtained from the applicable governmental authority (e.g., for general partnerships) or if the jurisdiction does not provide Status Certificates, then Borrower's Counsel shall be required to do the due diligence necessary to give the opinion or may engage other counsel to render such opinion. In that case, this paragraph may be revised to rely on such due diligence of the opining attorney. If the Property Jurisdiction is not the state of formation for the Borrower entity, Borrower's Counsel must also opine that Borrower is qualified to transact business in the Property Jurisdiction. Such opinion may be made solely on the basis of a certificate from the applicable governmental authorities of the Property Jurisdiction, and if Borrower's Counsel is relying on such certificate(s), then the opinion must expressly identify those certificate(s) and they must be attached to the Opinion as an exhibit. The same opinion and requirements are required for the General Partner,

Manager, or Managing Member of the Borrower, and any other entities within the Borrower's organizational hierarchy, as is appropriate and legally necessary to provide the required opinions.

4. As there is no express language of limitation, the authorization opinion in this paragraph is not limited only to the Borrower entity. Borrower's counsel is expected to undertake the due diligence to confirm the necessary consents, approvals, and authorizations have been provided for all tiers within the Borrower's organizational structure as is legally necessary to establish the authority of the signatory executing transaction documents on behalf of the Borrower.

6. The zoning laws and regulations applicable to the Property must permit the construction and/or operation of multifamily rental housing of the type covered under the applicable section of the National Housing Act. If a Zoning Endorsement to the Title Policy is not available or is cost prohibitive (in HUD's determination), Borrower's Counsel shall opine as to the zoning classification and permitted use.

9. If Borrower is a trust (other than a land trust), then this paragraph must be included in the Opinion. The second sentence need only be included if the trust was formed in a jurisdiction other than the Property Jurisdiction.

10. Borrower's Counsel is responsible for reviewing the provisions of the Source Documents to ensure the documents are consistent with the required opinion concerning the supremacy of Primary Loan Documents. If Borrower's Counsel does not have the competence to give the opinion, reliance on the legal opinion of bond counsel may be required. Note, the bond counsel opinion may be a separate opinion that specifically addresses the required opinion in paragraph 10. Refer to the instructions below regarding acceptability of counsel and reliance on other opinions.

11. Borrower's Counsel is responsible for reviewing the provisions of the Tax Credit Documents to ensure the documents are consistent with the required opinion concerning the supremacy of the Primary Loan Documents. If Borrower's Counsel does not have the competence to give the opinion, reliance on the legal opinion of tax credit counsel may be required. Refer to the instructions below regarding acceptability of counsel and reliance on other opinions.

12. Borrower's Counsel is responsible for reviewing the provisions of the Public Entity Agreement (PEA) to ensure the documents are consistent with the required opinion concerning the supremacy of the Primary Loan Documents. Note, the definition of PEA for purposes of the Opinion also includes any public secondary financing documents.

13. Borrower's Counsel is responsible for reviewing the provisions of the Private Secondary Financing Documents to ensure the documents are consistent with the

required opinion concerning the supremacy of the Primary Loan Documents.

14. This paragraph (or additional numbered paragraphs, if necessary) is intended for the inclusion of any opinions that are not included in the Opinion form, but that are required for a state law issue (e.g., state-specific documentary stamp tax opinion) or Program Obligations (e.g., legal opinion required for pre-approval of Special Limited Partners (SLP)). Note, the Closing Guide requires the SLP opinion be provided by an attorney licensed in the applicable state.

SECTION IV: CONFIRMATIONS

Identity of Interest/Conflict of Interest

Confirmation (d): The attorney signing the Opinion cannot have an identity of interest with any party to the transaction, including employment by a Controlling Participant of the Borrower. No waivers are possible in such instance. In instances where other members of the Borrower's Counsel's law firm have an interest in Borrower or another entity involved in the transaction, such interest must be disclosed in writing in the Opinion; such disclosure does not excuse the attorney from considering if the interest compromises his or her professional judgment in rendering the opinion. Further, Borrower's Counsel must interpret the applicable ethics rules governing the practice of law in the jurisdiction where counsel is licensed, the Property Jurisdiction, and the Organizational Jurisdiction and confirm that the identity of interest is acceptable under applicable ethics rules. Any interest disclosed must be acceptable to the local Office of Multifamily Production. It is unacceptable for counsel to Lender to represent Borrower in whole or in part or to provide all or a part of the Opinion. Confirmation (d) reflects these requirements.

Liens

Confirmation (e): Borrower's Counsel must confirm that there are no liens against the Mortgaged Property regardless of an argument that, at the time of closing, there may be liens that have actually not been released even though the title company has received funds and/or release documents to do so and intends to process the release after the closing. Except in cases involving the insurance of secondary loans, HUD is only authorized to insure first mortgages; consequently, there cannot be any liens on the Mortgaged Property that prime the HUD-insured loan when HUD endorses the Note for insurance. Confirmation (e) must not be changed.

Litigation

Confirmation (g): If Borrower (or the General Partner, Managing Member, Manager or similar person or entity thereof) is involved in any litigation or there is any litigation pertaining to the Project, or is threatened in writing, all such litigation matter(s)

must be disclosed in writing to the local Office of Multifamily Housing and HUD field counsel in order that HUD can determine whether the endorsement of the Note is possible. As with pending litigation, litigation threatened in writing must be identified and explained so that the risk can be appropriately assessed by HUD. Note that litigation involving a General Partner, Managing Member, Manager or similar controlling person or entity of Borrower must also be disclosed to the local Office of Multifamily Housing and HUD Field Counsel. If any of the litigation involves compliance with civil rights, accessibility, or fair housing requirements, including litigation under The Fair Housing Act, (regardless of whether a General Partner, Managing Member, Manager or similar controlling person or entity or some lesser component of Borrower is the subject of the litigation), it must immediately be brought to the attention of appropriate Fair Housing and Equal Opportunity personnel. Litigation, including the results of docket searches, must be listed on an exhibit to the Opinion and Confirmation (g) must reference such exhibit.

Opinion Form

Confirmation (h): The Opinion shall not deviate from the standard Opinion of Borrower's Counsel (HUD-91725M), unless the changes have been identified to and specifically approved in writing by HUD field counsel. A comparison copy of the Opinion to the standard form HUD-91725M shall be attached as Exhibit to the Opinion. The comparison copy is required for all transactions.

ADDITIONAL INSTRUCTIONS

Acceptability of Counsel

The attorney (or law firm) issuing the Opinion is responsible for ensuring that he or she has the necessary experience, expertise, competence, and authority to provide the Lender and HUD with the required opinions relating to the laws of the applicable states and local jurisdictions governing the transaction, and to seek additional opinions when, in the attorney's professional judgement, such opinions are necessary. Borrower's Counsel must opine as to the law of the Property Jurisdiction and must also opine as to the law of the state of Borrower's organization (and any General Partners, Managing Members, or Managers, as applicable), if different from the Property Jurisdiction. If an attorney rendering the Opinion has a concern about whether its issuance may be considered unauthorized practice of law, that attorney should contact the relevant authorities for clarification and/or retain additional counsel as necessary. HUD field counsel is not responsible for the actions or determinations of Borrower's Counsel on this matter, unless there is a specific State law or requirement to the contrary.

Circumstances may arise where an additional attorney or law firm separate from Borrower's Counsel is needed to provide one of the required opinions in the Opinion of

Borrower's Counsel. In such situations, provided that the additional attorney or law firm is not engaged and relied upon by Borrower's Counsel, this opinion may be delivered directly to HUD as an addressee (and Lender or Lender's counsel, if applicable) by the attorney or firm providing the supplemental opinion, provided the separate opinion satisfies the requirements of the Opinion of Borrower's Counsel form and these Instructions.

Reliance on Other Opinions

In instances where Borrower's Counsel is relying on opinions issued by other attorneys, the Opinion must be modified. Examples include cases involving a separate opinion for bond financing documentation, property jurisdiction vs. organizational jurisdiction, zoning, etc. Borrower's Counsel shall specifically reference and attach the additional opinion(s) and identify these attachments as exhibits, and such opinions shall track the language of the Opinion of Borrower's Counsel form as close as is practical under the circumstances and satisfy the requirements of these Instructions. HUD field counsel may exercise discretion in this area, taking the unique circumstances into account.

Signatures

The Opinion shall be signed by an authorized attorney(s) of the law firm, in the name of such attorney(s), in the name of the law firm, or on behalf of the law firm.

Warning Language

This language is not intended to apply to matters of professional legal judgment exercised by Borrower's Counsel.