



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

ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

August 13, 2010

MORTGAGEE LETTER 2010-26

TO: All FHA-Approved Multifamily Mortgagees

SUBJECT: Further Policy Guidance to Defer Submission of Final Architectural Plans and Specifications Introduced by Mortgagee Letter 2008-19, Streamlined Processing of Multifamily Mortgage Insurance Applications Involving Low Income Housing Tax Credits

Purpose

This Mortgagee Letter (ML) serves to provide additional guidance for mortgagees to implement the processing change introduced in Mortgagee Letter 2008-19 (ML 08-19), titled “Streamlined Processing of Multifamily Mortgage Insurance Applications Involving Low Income Housing Tax Credits (LIHTC).” ML 08-19 authorizes owners associated with a MAP application for one of the FHA mortgage insurance programs listed to defer the submission of final architectural Drawings and Specifications until 30 days before the date scheduled for Initial Endorsement of the loan. The following guidance clarifies the type of MAP third-party assessments, field office review analyses and MAP Lender documentation that should be completed at the Firm Commitment stage in lieu of what is normally required when final plans and specifications are submitted.

This ML also serves as a response to a stakeholder’s comment concerning Federal Register Notice 5299-N-01, Vol. 74, No. 81, published Wednesday, April 29, 2009, which requested recommendations on administrative and procedural changes that HUD should adopt to expedite approval of Multifamily Housing projects involving LIHTCs or Tax-exempt Bonds. Specifically, the commenter expressed concern about the scope of, or ability to provide, the plan review report required in the MAP Guide (See, for example, Chapter 5, Section 5.6B.2. and Appendix 4A II.A.17.), as part of the Firm Commitment application without final architectural Drawings and Specifications.

Background

On July 22, 2008, HUD issued ML 08-19 to set forth the Department’s policy for refining the processing of MAP applications for projects being constructed or substantially rehabilitated with LIHTCs as a source of funds. The intent of ML 08-19 was to enable HUD to more closely mirror the conventional marketplace in the processing of LIHTC projects.

Among the changes outlined in ML 08-19 is a revision to the policy regarding the timing of

the submission of final architectural Drawings and Specifications. ML 08-19 allows Lenders to provide “schematic” drawings at the time of submission of the Firm Commitment application. Final architectural Drawings and Specifications may be submitted after the issuance of the Firm Commitment, but at least 30 days prior to the date scheduled for Initial Endorsement.

Historically, architectural and third-party cost review reports would be requirements of the Firm Commitment application. Without final architectural Drawings and Specifications, the third-party architectural and cost reviewers are unable to conduct a complete analysis. As a result, they have been unwilling, unable or reluctant to qualify/condition their opinion/estimate of overall cost based on schematic drawings or preliminary architectural plans and specifications. In addition, the streamlined or expedited process did not contemplate multiple third-party architectural and cost review reports. Consequently, questions have arisen concerning the exact type of documentation the HUD offices will require with the Firm Commitment application to satisfy these architectural submissions. The Department is providing this ML in order to address these matters.

Hubs and Program Centers (PCs) should determine that the project will achieve Initial Endorsement within 60 days after issuance of a Firm Commitment, conditioned upon the submission of acceptable final architectural Drawings and Specifications. In addition, the final architectural Drawings and Specifications and supporting reviews detailed below must be submitted at least 30 days prior to the scheduled Initial Endorsement to provide adequate time for HUD review and approval.

Applicable Programs

MAP applications involving LIHTC submitted under the following programs:

Section 221 (d) Mortgage Insurance for Multifamily Housing

Section 220, Mortgage Insurance for Rehabilitation and Neighborhood Conservation

Section 231, Mortgage Insurance for Rental Housing for the Elderly

Documents to be Included in the Firm Commitment Application

The Hub or PC will accept from the Mortgagee schematic, line or working drawings (Preliminary Plans) with the submission of the Firm Commitment application, in lieu of final architectural Drawings and Specifications. Mortgagees, Hubs and PCs must review the level of experience of all development team members proposed by the Mortgagor and must determine that only those with adequate knowledge of and experience with HUD’s development, design and building requirements are approved to submit Preliminary Plans. Hubs and PCs should also consider the complexity of the proposed design and construction when determining whether to permit Preliminary Plans submission. The Preliminary Plans must be sufficient for HUD staff to ascertain the acceptability of the construction elements of the proposal, with no questionable design concepts, elements or deficiencies. The Lender’s Cost analysis shall evaluate appropriateness of the type of structure, construction methods and materials, considering costs and future maintenance.

In addition, the Preliminary Plans must be sufficient in nature to enable the general contractor to provide a relatively close estimate of construction costs, to avoid underwriting issues

after the submission of the final architectural Drawings and Specifications. Owners may want to consider utilizing a “cost plus” contract due to the potential that construction costs may change between the time of Firm Commitment issuance and Initial Endorsement. With a lump-sum contract, contractors may include sums to cover the additional risk of cost increases due to variances or unforeseen elements between the Preliminary Plans and the final architectural Drawings and Specifications, which could jeopardize the viability of the development.

Firm Commitment applications submitted pursuant to this ML should continue to include all items under MAP Guide Appendix 4A II, *Application for Firm Commitment*, with the following exceptions: Item A.16 Certification from Mortgagor’s Architect, which must be submitted with the final architectural Drawings and Specifications; Item A.17, the Report prepared by Lender’s architectural analyst, must cover all elements except the review of the final architectural Drawings and Specifications and cost package; Item A.22, Contract drawings and specifications; the Preliminary Plans must include items I through V. below; and Item A.25, Cost estimate package, which must be submitted, but will recognizably be a preliminary written cost estimate, utilizing Form HUD-2328, *Contractor’s and Mortgagor’s Cost Breakdown*.

The Preliminary Plans for the Firm Commitment application must include the following:

- I. Sketch plans that must include at a minimum:
 1. Location map with property clearly defined.
 2. Sketch plan of the site showing overall dimensions of main building(s), major site element, e.g. parking lots, and location of existing utilities, e.g. water, sewer, electric, gas, in the streets adjacent to the site. Contour lines and elevations are not required in the sketch site plan.
 3. Sketch plans of main building(s) must show overall dimensions of:
 - a. Typical floor plan(s) showing apartment types and placement;
 - b. Ground floor plan(s) showing common areas;
 - c. Sketch floor plan(s) of typical dwelling units(s);
 - d. Sketch floor plan(s) of accessibility unit(s) noting all accessible features and measurements: Typical wall section(s) showing footing, foundation, and wall and floor structure. Notes must indicate basic materials in structure, floor and exterior finish.

Sketch plan dimensions must be sufficient to allow the HUD Architectural Analyst to calculate the Gross Floor Area for the entire project and the Net Rentable Areas for all the apartment units in the project.
- II. Description of any required demolition, and the corresponding cost.
- III. A description of the accessibility design details and features to determine Fair Housing requirements and other applicable civil rights accessibility requirements. (See MAP Guide, Appendix 5, for a discussion of Civil Rights accessibility requirements)

- IV. Outline Specifications - Summary description of design features including mechanical, engineering and plumbing (MEP) to compare with the preliminary HUD-2328.
- V. A preliminary HUD-92264, *Multifamily Summary Appraisal Report* is required in the Firm application submission. However, the final HUD-92264 from the Lender's third-party architect and cost analyst as required in Appendix 4A, II, A.7, will be due at final submission.

MAP Third-Party Architectural/ Engineer Report Exhibit

An architectural and engineering review report is normally provided with complete drawings and specifications in a Firm Commitment application. To submit Preliminary Plans instead of final architectural Drawings and Specifications, the third-party analyst will provide a partial report based on the Preliminary Plans. Irrespective of the state of completion of the architectural drawings and specifications, the analyst's work is ongoing throughout the design process. The analyst will have already completed some work write ups, i.e. the site review, offsite, the surveyor's report, etc. It would be of value to the Hub/ PCs to receive the analyst's review and recommendation on what has been done to date. The analyst will not write two separate reports but submit a partially complete A/E review report along with the above exhibits; we anticipate this will save the Hubs/ PCs review time on the final Drawings and Specifications. The third-party analyst is responsible for completing the third-party review report and submitting it with the final Drawings and Specifications. The third-party analyst will also include with the final architectural Drawings and Specifications a Standard Certification amended to the date of the final review report.

Hub/PCs Review of the Firm Commitment Application

The HUD staff will conduct a preliminary review of the Preliminary Plans, and related documents, including the associated costs and the preliminary third-party review reports. HUD staff will review the estimated project costs based on Form HUD-2328 to determine that such costs are reasonable and comparable to other HUD LIHTC project data; determine whether the proposed general contractor is acceptable pursuant to outstanding requirements with sufficient working capital, experience, etc.; verify that the Preliminary Plans are in compliance with all applicable requirements, with appropriately qualified certifications executed; and, based on a site visit by the Appraiser, verify that the requested land or "as is" rehabilitation value, rent and expense estimates are reasonable and supported by the Appraisal. Phase I (ASTM Practice E 1527-05) environmental report must contain no significant unresolved environmental issues that would justify a rejection finding on Form HUD-4128, "Environmental Assessment & Compliance Findings for the Related Laws."

Provided that the overall proposal is determined to be acceptable, and there are no environmental and/or Previous Participation issues, a Firm Commitment will be issued at the conclusion of the review. When the final architectural Drawings and Specifications are submitted before Initial Endorsement, the HUD Architectural Analyst will finalize its review. Based on HUD's architectural and cost reviews being based on the Preliminary Plans, the Firm Commitment should contain special conditions that will have to be satisfied in HUD's determination prior to

Initial Endorsement. The special conditions will pertain to the completion of the HUD review, based upon the final documents to be submitted before Initial Endorsement.

Exhibits to be Submitted Before Initial Endorsement

Immediately upon being advised of the issuance of a Firm Commitment, the Lender should take measures to obtain and submit the documents listed below. These documents must be provided as soon as possible, but no later than 30 days before the anticipated date of Initial Endorsement. This will enable the HUD staff to complete their final review, and make any necessary adjustments to the Firm Commitment. The final architectural Drawings and Specifications and other architectural and construction documents should incorporate any recommendations from the MAP third-party reviewers.

The documents to be provided at this stage include the following:

1. Complete and final plans and specifications, including the appropriate Davis-Bacon wage decisions. (MAP Appendix 4A item A22). Note: If a wage decision is issued or modified after submission of these documents but prior to Initial Endorsement, that later wage decision will apply to the project. Housing staff remains responsible for consulting HUD Labor Relations staff to insure that the current wage decision is provided at Initial Closing.
2. Final version of the Form HUD-2328, signed by all appropriate parties.
3. Complete MAP third-party architectural and cost review reports.

These reports should be based upon the reviewer's assessment of the final plans, specifications and the contractor's HUD-2328. (MAP Appendix 4A items A16, A17 and A25).

Waiver Authority

The requirements of this Notice may not be waived by Hub Directors.

/s/

David H. Stevens
Assistant Secretary for Housing –
Federal Housing Commissioner