

CHAPTER 18. SUBSIDY LAYERING/TAX CREDITS

- 18-1. GENERAL. Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (Public Law 101-235) requires applicants seeking HUD insured multifamily mortgages to disclose assistance to be received from other government sources, the financial interests of persons involved in the project and the sources of funds to be made available to the project and the uses to which the funds are to be put. These disclosures are required to ensure greater accountability and integrity in the provision of the programs administered by the Department.
- 18-2. GRANTS/LOANS. For projects involving grants/loans, follow the instructions in Chapter 16.
- 18-3. REVIEW RESPONSIBILITIES. The Valuation staff has the primary responsibility for reviewing projects involving Low Income Housing Tax Credits (LIHTCs).
- A. A determination by Valuation that the combination of LIHTCs, HUD mortgage insurance or subsidies results in excessive profits for the sponsor/mortgagor could impact the maximum insurable mortgage.
- B. Valuation will note any required mortgage reduction in the Remarks Section of Form HUD-92264.
- 18-4. LIHTCs. For projects involving LIHTCs:
- A. Reduce the maximum insurable mortgage by the amount noted by Valuation in the Remarks Section of Form HUD-92264.
- B. Require a copy of the commitment letter/agreement between the mortgagor and the investing partner(s) that will be making the periodic payments of syndication proceeds.
- C. If the Sources and Uses Statement indicates that the project will involve a resident initiative fund, consider the amount of this fund when computing the total estimated cash requirements in Section II of Form HUD-92264-A.

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(18-4) D. If the sponsor/mortgagor does not evidence sufficient working capital to meet the estimated cash requirements for settlement because of the required mortgage reduction resulting from the LIHTCs:

1. Prepare a letter:

a. Advising the mortgagee that the project is a tentative mortgage credit reject.

b. Requiring the mortgagee to notify the sponsor/mortgagor to submit a financing plan detailing how the cash requirements will be met.

2. The financing plan must:

a. Be submitted within 20 working days of notification to the mortgagee. (The letter should be date specific.)

b. Identify and/or include:

(1) The source(s) of capital.

(2) The amount to be obtained from each source.

(3) Verifications from source(s) identified.

(4) Conditions under which funds will be provided.

(5) The existence of bridge loan financing.

(a) If the mortgagor entity obtains bridge loan financing which is secured by future syndication proceeds:

1. Require a commitment letter from the lending institution which:

a. Details all conditions under which the loan will be made.

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(18-4) b Certifies that the loan is not secured by the project and that the lending institution has no claim, and will not later assert any claim, against the mortgaged property, mortgage proceeds, any reserve or deposit made with the mortgagee or other required by HUD in connection with the mortgage transaction, or against the rents or other income from the mortgaged property for payment of any part of the loan transaction. Must include criminal certification which appears in paragraph 3-2. B.1. above.

2 Evidence must be provided at initial closing that the loan has been satisfied or assumed by a third party. If the latter is the case, require:

a Documentation that the lending institution has approved the transfer of the loan obligation to a third party.

b A certified statement from the lending institution stating that the mortgagor will not be responsible for repayment of the loan in the event of a default by the third party.

(b) If a principal of the mortgagor entity obtains a bridge loan which is personally guaranteed or secured by personal assets, require a statement from the lending institution which:

1 Identifies which assets, if any, were used to secure the loan.

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(18-4)2 Includes the certification reflected in paragraph 3-2.B.1. above.

3. When requesting the financing plan advise the mortgagee to alert the sponsor/mortgagor that:

a. At initial endorsement, the sponsor(s) and the funding sources identified in the plan must certify that they have no claim, and will not later assert any claim against the mortgaged property, mortgage proceeds, any reserve or deposit made with the mortgagee or other required by HUD in connection with the mortgage transaction, or against the rents or other income from the mortgaged property for payment of any part of the loan transaction. Certifications must contain criminal certification identified in paragraph 3-2.B.1. above.

b. The deferred collection of any cost relating to any loan obtained by the sponsor(s) cannot be an obligation of the mortgagor entity.

E. If the financing plan is unacceptable or not submitted with 20 working days of notification to the mortgagee:

1. For any conditional commitment application, a commitment may be issued which:

a. Specifies the reason(s) for the rejection of the financing plan.

b. Includes a narrative statement explaining the results of the analysis of the financial statements and financing plan and listing the estimated cash requirements.

c. Requires the submission of an acceptable financing plan with the firm commitment application.

2. For any firm commitment application where a conditional commitment was issued, reject the application and require a reopening fee if a new application is submitted within 90 days. After that time, a new processing fee would be required.

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(18-4) 3. For any firm commitment application where the conditional commitment stage was bypassed, issue a conditional commitment which includes the items identified in paragraphs 18-4.E.1.a., b. and c.

F. The firm commitment application should contain a certification, signed by an authorized agent of the mortgagor, stating the mortgagor's intent regarding the working capital deposit.

1. If the mortgagor agrees that any funds remaining in the working capital deposit after final completion will be deposited into the reserve for replacements account or other restricted account specified by HUD:

a. The working capital deposit will be recognized as an eligible use of funds in Valuation's review of the Sources and Uses Statement.

b. All disbursements must be approved by HUD.

2. If the mortgagor elects to have unused working capital funds returned to it:

a. The working capital deposit will not be recognized as an eligible use of funds in Valuation's review of the Sources and Uses Statement.

b. The mortgagee is responsible for approving disbursements of working capital.

G. The firm commitment must be conditioned to require the following information be provided before or at the initial loan closing:

1. A disclosure of the name and pecuniary interest (Refer to 24 CFR Part 12.32 and Note on page 18-6) of:

a. All principals of the mortgagor entity.

b. The general contracting firm.

c. The housing consultant.

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(18-4) d. Any other person who has a pecuniary interest in the project or activities for which the assistance is sought that exceeds \$50,000 or 10 percent of the assistance, whichever is lower.

NOTE: If any of the parties in paragraphs a through d are business entities, the disclosure must include an identification of:

1. For corporations, each officer, director, and principal stockholder.
2. For partnerships, each general partner and limited partner with a 25 percent or more interest for partnerships.

NOTE: A pecuniary interest is defined as financial involvement in the project including, but not limited to situations in which an individual or entity:

1. has an equity interest in the project;
  2. shares in any profit on resale or any distribution of surplus cash or other assets of the project; or
  3. receives compensation for any goods or services provided in connection with the project.
2. Certifications disclosing all identity of interest relationships between parties to the transaction.

a. Obtain certifications from:

- (1) All principals of the sponsor/mortgagor;
- (2) Mortgagee;
- (3) General Contractor;
- (4) Management agent;
- (5) Syndicator;
- (6) Developer; and

(18-4)(7) Party making bridge loan, if any.

b. Refer to paragraph 11-10.A.4 for the type of situations which constitute an identity of interest.

3. Certification signed by an authorized agent of the mortgagor entity that the following information, audited by a CPA or IPA and as of the cut-off date, will be provided as part of its cost certification documentation:

a. For those cases where the mortgagor entity or third party obtains a bridge loan;

(1) Source of funding of the loan;

(2) Original amount of the loan;

(3) Term;

(4) Interest rate;

(5) Summary of repayment provisions;

(6) Monthly summary of balance remaining and accrued interest;

(7) Uses of expended funds; and

(8) Summary of payments of interest and principal and funding sources for these payments (i.e., investor contributions, advance from principal sponsors, etc.).

b. A Schedule of Syndication Proceeds.

(1) The amount of syndication proceeds received from the investing partner to date.

(2) Purposes for which syndication proceeds received as of the cut-off date were used.

(3) Dates, terms and conditions under which future investor contributions are to be made.

(18-4) NOTE: The above certifications must include the criminal certification reflected in paragraph 3-2.B.1. above.

18-5. PRE-COST CERTIFICATION CONFERENCE. Advise the mortgagee, mortgagor and the mortgagor's accountant that in addition to the cost certification documents required by paragraph 11-6.

A. The mortgagor's accountant must detail in the notes to the financial statements and provide as part of the audited statement:

1. Comparative Sources and Uses of Funds Statement which identifies changes between the statement approved by HUD during commitment processing and the statement prepared as of cost certification cut-off date. The Sources and Uses of Funds Statement must itemize:

a. All available funds:

(1) Mortgage proceeds.

(2) Grants/loans from:

(a) Federal, State and/or local governments.

(b) Nongovernment sources.

(3) Gross amount of syndication proceeds before deducting syndication, legal or other intermediary costs. Include both funds received to date and anticipated funds from future investor contributions. Attach a list of the dates and amounts to be received from future investor contributions.

b. All purposes for which funds will be disbursed.

(1) Breakdown should identify the uses for each source of funding.

(2) Identify actual uses to date and anticipated future uses.



(18-5) c. Notes to the comparative statement should provide a detailed explanation of any changes.

2. The information required in paragraph 18-4.G.3 above.

B. The mortgagor must include the following in the cost certification submission:

1. A brief summary of the terms on which the owner will participate (is participating) in the LIHTCs program. Include:

a. The annual credit amount, the type(s) of credit (acquisition and/or rehab); the date the 10-year credit period will begin; the credit percentage awarded for each type of credit; and the maximum qualified basis for each type of credit.

b. Which income eligibility limit will apply (50/60 percent of median income) and how many units, if any, will be set-aside for families with incomes below 40 percent of the median income (deep-rent skewing).

c. List of units for which credits will be claimed. Give the number of units in each bedroom size and the initial tax credit rent limit for each unit size. Also, indicate which units, if any, will be held for families with incomes below 40 percent of the median income.

2. A copy of IRS Form 8609, Low Income Housing Tax Credit Allocation Certification, if there has been any change since the copy submitted in an early stage of processing.

3. A report on the status of any tax credit allocation still in process and a copy of any credit agency reservation form or other document indicating agencies intent to award credits to the project.

4. A statement in which the applicant agrees to promptly notify the HUD Field Office of any change in the information provided in the information detailed by the mortgagor's accountant relative to the LIHTCs. This

(18-5) statement must contain the criminal certification found on the reverse side of Form HUD-92417, Personal Financial and Credit Statement.

18-6. COST CERTIFICATION. When the cost certification documents are received, Mortgage Credit will:

A. Determine allowable costs in accordance with paragraph 11-10. The information provided relative to the bridge loan and syndication proceeds are not taken into consideration in determining allowable costs.

B. Provide valuation with a copy of Form FHA-2331-A, a draft Form FHA-2580 and the information contained in paragraph 18-5 above. Based upon their review, Valuation will advise Mortgage Credit of any adjustment to the maximum insurable mortgage.

C. Revise line 10 of Form FHA-2580 to reduce the maximum insurable mortgage by the amount indicated by Valuation.