



St. James Capital L.L.C.

Industry News and Highlights

August 17, 2007

HUD Memo Re: Previous Participation Procedures:

The attached HUD memo (undated) supersedes the Previous Participation memo dated June 21, 2007. The memo sets forth that not only is HUD suspending electronic filing of forms 2530, but also suspends all filing requirements for limited liability company investors “who own or expect to own an interest in entities which receive or are expected to receive Low Income Housing Tax Credits.” Instead of filing a 2530, LLC investors in tax credit deals must now submit a certification in the form outlined in the memo. See the attached memo for further details.

Section 8 Funding Update:

On August 14th, HUD held a meeting with industry representatives to discuss the Section 8 funding situation. A copy of a memo from the Mortgage Bankers Association detailing the meeting is attached hereto. Basically, HUD has indicated that Section 8 contracts that expire in the first three quarters of HUD’s fiscal year (October 1, 2006 to June 30, 2007) will be funded for the remaining term of the contract (one year increments only). For Section 8 contracts that expire in the last quarter of HUD’s fiscal year, HUD will send a letter to the owner telling it how much the property is being funded and for how long. HUD indicated that its current budget does not allow for a full funding of all section 8 and that it will need a budget increase of nearly \$2 billion to solve this Section 8 problem.



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

ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

MEMORANDUM FOR: All Multifamily Hub Directors
All Multifamily Program Center Directors
All Multifamily Operations Officers

FROM: John L. Garvin, Senior Advisor to FHA Commissioner/Acting
Deputy Assistant Secretary for Multifamily Housing
Programs, HT

SUBJECT: Previous Participation Certificate (PPC) Operating Procedures
Limited Liability Corporate Investor

This memorandum supersedes the memorandum entitled, "Previous Participation Certificate (PPC) Operating Procedures Limited Liability Corporate Investor" dated June 21, 2007.

The President recently signed into law the Preservation Approval Process Improvement Act of 2007. This law requires the Department to take certain actions in regard to the Previous Participation operating procedures until HUD submits the proposed new rule to the House and Senate authorizing committees for review. The proposed rule is undergoing review and will be published and implemented as soon as possible. The proposed rule will be published in the Federal Register with the appropriate comment period.

In summary, the law requires HUD to suspend immediately all filing requirements for limited liability corporate investors who own, or expect to own, an interest in entities which have received or are expected to receive Low-Income Housing Tax Credits under section 42 of the Internal Revenue Code. The law also directs HUD to suspend mandatory electronic filing of previous participation certificates.

This memorandum provides instructions and reporting requirements regarding implementation of the law as it relates to Limited Liability Corporate investors and streamlines the earlier guidance following additional review and consultation with the Hub Directors.

Identification and Certification of Eligible Limited Liability Corporate Investors (LLCI)

The Field Office will request from each entity which claims to be a limited liability corporate investor the following certification:

I, Name of Authorized Signer, am authorized to certify to each and every item stated below.

I certify that **Name of LLC** is:

- a. An eligible limited liability corporate investor as noted in the Preservation Approval Process Improvement Act of 2007 and as defined herein;
- b. Investing in **name of owner/mortgagor entity,** which made a complete application to the State Tax Credit Agency (TCA) to receive Low-Income Housing Tax Credits under Section 42 of the Internal Revenue Code or to which the TCA issued an allocation or letter of intent to allocate Low-Income Housing Tax Credits under Section 42 of the Internal Revenue Code;
- c. A company organized under a State limited liability company statute, an investor corporation, an investor limited partnership, or an investor limited liability limited partnership; and
- d. An investor with limited or no control over routine property operations or HUD regulatory and/or contract compliance, even if the investor may take control (albeit not routine or repetitive control) of the ownership entity or assume the operating responsibilities in the event of the default of the operating partner or upon specific events all defined under the investment contract/agreement.

I further certify that should any of the facts that support the certifications above change or the company for which this certification is made withdraws from participation in the owner/mortgagor, I will notify HUD immediately providing full disclosure and explanation of the change(s).

Signed: _____ Date: _____

Approved: _____ Date: _____
(Field Office Hub/PCD Director)

1. In order to know which entities in the ownership entity may be qualified LLCIs, the field office must review the contents of the owner/mortgagor organization chart and obtain the above certification from each LLCI entity, which holds any interest greater than 25% in the ownership entity. The field office must request the organization chart or description of the ownership entity from the operating principal (the general partner, managing member, majority/controlling stockholder, board chairperson, etc). The Handbook allows for such information to come from the principal's attorney.
2. Once an entity provides a complete, signed certification as described above, the field office Hub or PC Director will countersign on the certification below the LLCI signatory. The Hub or PC Director will issue a letter which names the LLCI entity, the person who signed on behalf of the LLCI entity, the full address of record of the LLCI entity, the proposed ownership interest in the owner (a percentage owned in the owner entity; see exhibit 1 for an example) and states that the entity will not be required to file a PPC submission in accordance with the Preservation Approval Process Improvement Act of 2007. A copy of the letter and certification will be retained in the docket file for the property and a copy sent to the Office of Asset Management in HQ, Attention: PPSD. HQ copies must be dispatched at the end of each week.
3. Where an entity is determined not to qualify as an LLCI, the field office will issue a letter which names the LLCI entity, the person who signed on behalf of the LLCI entity, the full address of record of the LLCI entity, the proposed ownership interest in the owner (a percentage owned in the owner entity; see exhibit 1 for details) and states that the entity does not qualify as an LLCI and must; therefore, complete all PPC submission requirements. Provide a brief explanation of reason(s) they do not qualify. A copy of the letter and certification (if received) will be retained in the docket file for the property and a copy sent to the Office of Asset Management in HQ, Attention: PPSD. HQ copies must be dispatched at the end of each week.

If there are any questions concerning this memorandum, e-mail your questions to James E. Collins (james.e.collins@hud.gov)

Attachments

Exhibit 1 (revised)

Determining the LLCI Percentage of Ownership (refer to Figure 1 below)

Assume first that the ownership entity comprises 100% of the total interests available. Assume next that the operating participant (e.g., general partner, managing member, etc.) has a 1% interest in the total 100% available. Assume last the "limited partners" control/own the remaining 99% interest.

Tier one comprises the GP and the limited partner. Other tiers are created in two ways:

1. Via a pass through entity, and/or
2. Via a transaction where another entity provides investment funding.

Refer to Figure 1 below

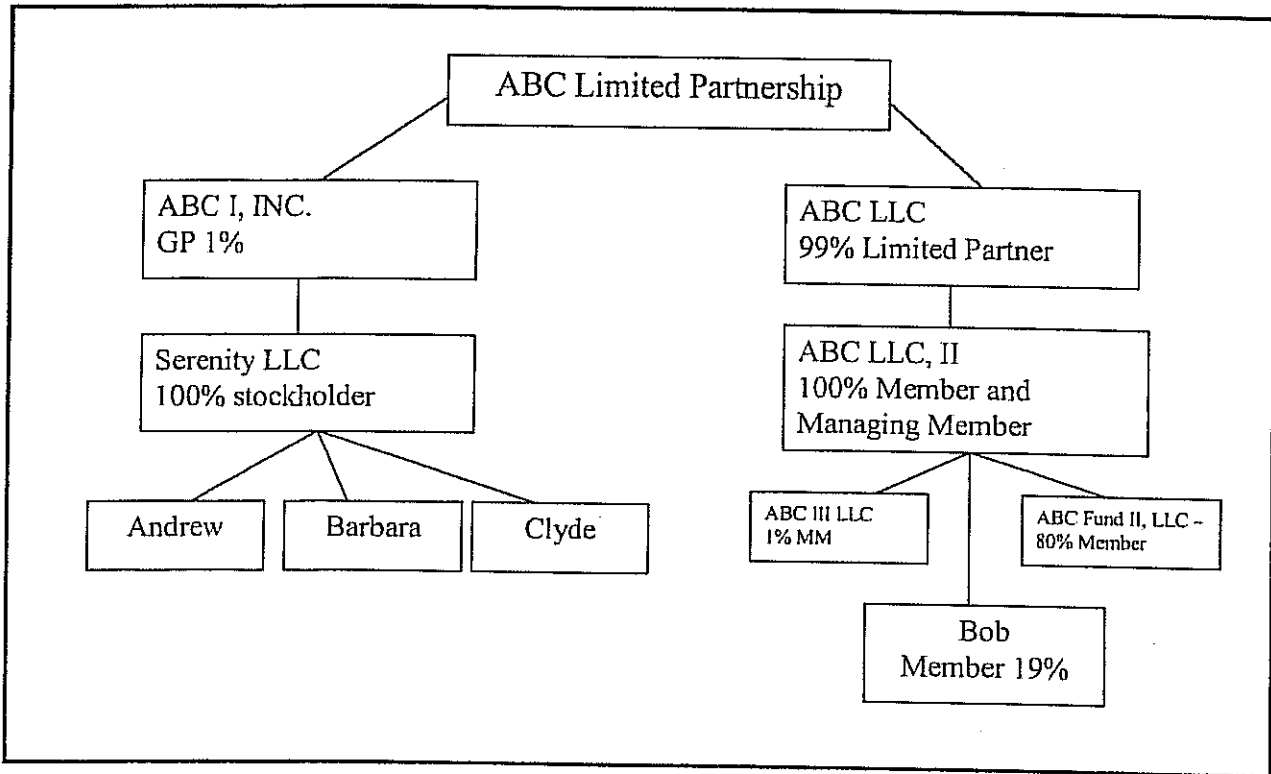
ABC Limited Partnership is the 100% owner of the project.

Tier 1; ABC I, INC owns 1% and ABC LLC owns 99%.

Tier 2; Serenity LLC (a pass thru) owns 100% of the stock in ABC I, Inc and ABC LLC, II (a pass thru) Owns 100% of ABC LLC. ABC LLC II owns 99% of ABC Limited Partnership.

Tier 3; Andrew, Barbara, and Clyde own respectively 24%, 26% and 50% of Serenity LLC. Barbara and Clyde must file a PPC, Andrews does not. ABC III LLC is the 1% interest managing member of ABC LLC, II, while ABC Fund II, LLC owns 80% of ABC LLC, II. ABC III LLC owns 0.9% ($0.01 \times 0.99 = 0.009$) of ABC Limited Partnership and is a managing member; ABC Fund II, LLC owns 79% ($0.80 \times 0.99 = 0.792$) of ABC Limited Partnership.

Figure 1





Title: Section 8 Funding - August 16
Source: MBA
Date: 8/16/2007

On August 14, HUD held a meeting with representatives of a number of trade groups to receive a status report on the Section 8 HAP Funding situation for FY07. To provide a consistent report to our members, the National Leased Housing Association drafted notes from the meeting which the groups agreed to distribute to our members. NLHA's notes follow.

HUD reports that projects with HAP Anniversary dates in the first three quarters of the fiscal year (October 1, 2006 to June 30, 2007) will be funded very soon for July and August (if they have not been funded already). These HAP contracts will also have funding reserved to their next anniversary date. In other words, if the HAP anniversary date is May 31, 2007, the contract will have funds reserved through April 30, 2008.

If a property has a multi-year contract with an anniversary date that falls between July 1 and September 30, or the property has a contract that expires during that time-frame, HUD will be sending the owner a notification letter in the next few weeks that will tell them how much the property is being funded and for how many months. As an example, if the property's contract expires on August 31, the contract will be renewed for one year or

multi-years (subject to annual appropriations), but the property will not receive 12 months of funding at renewal. The contract will likely provide for 60 or 90 days of funding with the expectation that the remaining months will be funded out of the FY08 appropriations.

HUD will provide amended HAP contract language (in Section 2 of the HAP contract) that indicates that the renewal is for one year etc, but the funding will be provided incrementally. This outcome relates to a legal opinion from HUD's Chief Financial Officer combined with the fact that HUD did not request and Congress did not appropriate sufficient funds for all 4th quarter renewals to be funded for the full twelve months. Again, the property will receive funding, but it will be in increments.

For those with mark to market closings scheduled in the very near future, the closing may be delayed a week or two because of this situation. HUD assured the groups that the closings are a top priority and the closing will occur SOON.

It is clear that HUD will not have sufficient funds for FY08 if Congress appropriates what is currently proposed. HUD expects to have an audit report of all contracts finalized by mid-September which will more accurately identify project-based renewal costs, but NLHA estimates that an additional \$2 billion over the FY08 HUD budget request will be required.

MBA will be working with NLHA and other groups to alert Members of Congress to the need for additional appropriations to fully fund these Section 8 contracts.

Mortgage Bankers Association of America
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Title: FHA Priorities
Source: MBA
Date: 8/3/2007

Over 30 members responded to our request to prioritize a number of issues affecting FHA production and asset management. Attached are (1) a list of all the issues in priority order, and (2) the list of priorities that was presented to Acting Deputy Assistant Secretary John Garvin on August 2.

Related Document(s):

- ▶ FHA Issues
- ▶ FHA Priorities

John Garvin spent almost two hours with Tom Szydowski (Chair, Multifamily Committee), Dee McClure (Vice Chair, Multifamily Committee) and Cheryl Malloy (MBA staff). The meeting was cordial and focused primarily on John's view of his new position and MBA's priorities.

John made it clear that he will retain his position as Senior Advisor to FHA Commissioner Montgomery while also acting in the position of Deputy Assistant Secretary for Multifamily Housing. He stated that he expects to remain in both positions for the long term, which we believe could be beneficial to multifamily. Because of the dual responsibilities, he plans to travel less than Hank Williams did.

From John's perspective, the major issue now facing Multifamily Housing is funding for Section 8 housing assistance payments contracts. (See HUD Highlights dated August 3.) John clearly understands the concerns of owners and lenders because of his background with the Texas Housing Finance Agency. And he assured us that HUD is doing everything it can to make payments to owners in a timely manner. We indicated that MBA is concerned about this issue and would work with other interested groups toward a long-term solution.

John's experience with the Texas HFA has made him supportive of, and knowledgeable about, affordable multifamily housing production and preservation. He expressed concern about the low volume of FHA multifamily commitments and plans to spend some of his time visiting field offices with low production volumes to emphasize the importance of increasing production. We encouraged John to stress the importance of following the MAP Guide, including the timeframes, as well as the need to "review and not redo". John agreed that, with dwindling staff resources, it is key for HUD offices to review submissions rather than reprocess the entire transaction and to view lenders as partners in producing and preserving housing.

The following priorities were discussed:

(1) MIP increase: John fully understands this issue and indicated that it is a priority within the Department. It is unclear at this point whether the notice implementing the MIP increase and requesting comments would be published. Conversations within the Department, with OMB and with Members of Congress are ongoing. He had not yet seen the letter from Members of the House and we have subsequently sent him a copy.

(2) Review not redo: We pointed out the importance of the FHA programs in supplying affordable housing, particularly as vacancy rates have decreased in many areas with homeownership not as easily accessible or sustainable as previously. John agreed that a revitalized FHA is key to addressing many issues resulting from recent events in the subprime lending market. He indicated that he hopes to meet with the HUB Directors in the near future and plans to use that opportunity to encourage production and adherence to the MAP Guide. We stressed the importance of using his limited travel opportunities to visit field offices to encourage production and preservation.

(3) Healthcare issues: John was aware of the key issues and believes that guidance

on accounts receivable financing is "do-able" in the short term. He also stated his hope to issue guidance on other issues, e.g. professional liability insurance, soon. When asked about moving the policy part of the Section 232 program under the Office of Insured Healthcare Facilities, John indicated that the issue remained under discussion, but it was probably not a short term solution.

(4) Previous participation: John is a strong advocate of APPS and wants to move to a fully automated previous participation process as soon as possible. However, he does understand that there are problems with initial entry into the system and the resolution of flags and other issues that require Headquarters involvement. He indicated both a willingness to help resolve issues with the system and to consider maintaining the paper option -- as long as the volume remains small.

(5) Streamlining processing of applications with low income housing tax credits: Because of his background with a state agency, John understands this business and wants FHA to have a larger market share. He plans to issue, soon, streamlined guidance on subsidy layering. And he promised to go back to the staff and determine the status of the other streamlining suggestions made by MBA and a field office working group.

There was not sufficient time to address the asset administration issues, but John indicated that he wanted to continue the dialogue. He stated that he found the meeting helpful and encouraged regular meetings with MBA leadership. He also agreed to participate in a MAP Lenders roundtable in late September or early October. The next meeting with John has tentatively been set for September 5.

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