MORTGAGE BANKERS ASSOCIATION

November 19, 2019

Elizabeth Arteaga
Housing Program Officer
Office of Multifamily Production
US Department of Housing and Urban Development
451 7th Street, NW, Room 6134
Washington, DC 20410

Re: MBA LIHTC Working Group HUD Recommendations to Reduce Barriers to Affordable Housing

Dear Ms. Arteaga:

This letter responds to your request to Terry Wellman and Michael Bisanz for suggestions from the Low-Income Housing Tax Credit (LIHTC) Working Group of MBA's FHA Committee, on items the Department of Housing and Urban Development (HUD) may want to consider as it develops its plan to respond to the Executive Order establishing a White House Council on Eliminating Regulatory Barriers to Affordable Housing.[1]

In response to your request, the LIHTC Working Group has developed the following outline of recommendations, organized against three different types of actions HUD could take to reduce barriers to affordable housing: (1) cost savings; (2) updating/modernizing program requirements, and (3) improving processing efficiency. We recognize the importance of exploring ways to address the nationwide shortage of affordable housing, and we hope you find these suggestions helpful.

I. RECOMMENDATIONS FOR COST SAVINGS

A. Reduce the burden of Davis Bacon wage rate requirements on affordable housing

- HUD should work with the Department of Labor to reinstate the prior policy of assigning only Residential wage schedules to FHA-assisted new construction and substantial rehabilitation projects. "Split-wage" decisions create unwarranted operational complexity and increase the cost of the housing, reducing its affordability.
- HUD should also work with the Department of Labor to modernize the story-limit for projects that may be assigned a residential wage schedule, by converting it to a height limit that is consistent with modern construction and building codes for apartment buildings.

[1] https://www.whitehouse.gov/presidential-actions/executive-order-establishing-white-house-council-eliminating-regulatory-barriers-affordable-housing/

B. Reduce HUD examination fees from 0.30% to 0.10%

- This recommended reduction in fees, which is already in effect for affordable properties located within Opportunity Zones, should be extended to cover all projects meeting the definition of "affordable."

C. Reduce Broadly Affordable MIP from 0.25% to 0.10%

- MIP on Broadly Affordable properties (those with 90% of units covered by rent/income restrictions and have a minimum of 10% rent advantage to market) should be reduced because they present an extremely low risk to the insurance fund.

D. Modify treatment of certain costs

- HUD should allow costs associated with obtaining and syndicating LIHTCs, as well as those associated with tax-exempt bonds (in excess of currently allowed limits of 5.5% of the mortgage amount when combined with lender fees), to be mortgageable. This would reduce the need for a costly bridge loan and allow for more HUD-insured mortgage funds to be available during the construction period.

E. Clarify in the new MAP Guide that relocation costs for 223(f) transactions are mortgageable

- Relocation costs are mortgageable under Section 221(d)(4) and should be considered as such for 223(f) transactions as well.

II. RECOMMENDATIONS TO UPDATE/MODERNIZE PROGRAM REQUIREMENTS

A. Broaden the definition of "affordable" to include "naturally-occurring affordable housing" and "workforce" housing.

- Due to the scarcity of LIHTCs, many local jurisdictions are encouraging the development of "workforce" housing to meet the increased demand for affordable housing. These projects typically have a significant rent advantage to market, but many of these projects have income restrictions at 80% or 100% of AMI and do not qualify for any beneficial underwriting parameters, MIP, or fee savings under HUD programs. Allowing for increased leverage and reduced costs on these transactions would encourage the creation of more naturally occurring affordable housing without the use of federal or state tax credits.
- HUD should also modify its requirements related to occupancy preference, which currently prohibits housing options such as "Hometown Heroes" affordable housing for teachers, firefighters, and police.

B. Increase the noise threshold at which an EIS is required above 75 dB

- The current "unacceptable" threshold of 75 dB does not consider modern-day traffic counts, rail traffic, transportation-oriented developments, etc. As a result, the current threshold precludes HUD financing of truly transit-oriented developments (TOD). While an EIS waiver is possible, and such waivers have been approved, the additional time that the waiver process adds to the transaction is onerous. TODs should be encouraged because of their environmental benefits rather than discouraged by bureaucratic delays.

C. Eliminate outdated environmental prohibitions

- Prohibitions such as prohibiting construction within the “engineered fall distance” of a tower or within 50 feet of rail do not account for modern engineering standards and so prevent otherwise beneficial projects from being financed through HUD programs.

D. Set target closing date at issuance of Firm Commitment

- Setting the target closing date at issuance of Firm Commitment is current practice for LIHTC Pilot transactions and should be extended to apply to all affordable transactions. The uncertainty created by a lengthy OGC review adds unnecessary time and cost to transactions.

E. Eliminate the requirement for full building permits to be delivered at closing

- Many jurisdictions issue “permit ready” letters or partial permits throughout the construction process. HUD’s requirement for a full permit is inconsistent with industry standard and, as a result, delays closing where a local jurisdiction will not issue a full permit (e.g., cases where demolition is required).
- Building permits are generally very costly and result in greater funding of the HUD-insured mortgage or equity bridge loan at closing, which results in higher interest costs for developers, which reduces the affordability of the resulting housing.

F. Expand the treatment of “public” subordinate financing to include financing from non-profits and other similar entities

- The current definition of “quasi-public” in the MAP Guide should be broadened to include many of the foundations and non-profit entities that provide important subordinate financing to affordable transactions.

G. Allow for use of 2014 version of Subordination Agreement for all LIHTC transactions

- The 2014 form was generally accepted by state and local jurisdictions that provided subordinate financing for affordable transactions. The new form has presented challenges that are preventing these important sources of financing from being combined with HUD transactions.

H. Allow for delayed funding of Operating Deficit escrow on 221(d)(4) transactions until construction completion

- The current requirement (for non-Pilot transactions) that the escrow be funded at Initial Endorsement results in a funded and unused escrow held by the lender through the construction period, though the Operating Deficit escrow is not needed until after Final Endorsement. The timing of the funding creates unnecessary interest carry costs when the equity bridge loan is used to fund the escrow.

I. Allow for hard-pay subordinate financing and eliminate surplus cash note for subordinate loans from public sources.

- There are currently subordinate loan programs specifically for affordable housing in various jurisdictions that cannot be combined with HUD financing.

III. RECOMMENDATIONS TO IMPROVE PROCESSING EFFICIENCY

A. Expansion of Pilot processing to all "affordable" transactions

- HUD should allow an early review of items such as HEROS, AHFMP, Relocation Plan, 9839-B, etc., which will create better efficiency and allows for faster issuance of Firm Commitment.

B. Increase the number of units for which CPD review is necessary to 300

- The current threshold of 200 units adds an unwarranted time-consuming review to many transactions.

C. Reduce the level of plans and specifications required at Firm Application

- Currently, an 80% set of plans and specs, a "draft" Architectural and Cost Review Report, and CNA e-Tool are required at Firm Application. These items are generally the largest source of delays on affordable projects. Moreover, the requirement of the e-Tool effectively negates the "deferred" submission that is allowed under the MAP Guide. Allowing these items to be delivered 30 days before closing would appear to provide HUD enough time to review and approve the plans and specs prior to closing.

D. Require the HEROS review to be completed to the maximum extent possible at the earliest application submission

- The current practice (by many HUD offices) of reviewing the HEROS at Firm Application results in delays in two-stage processing transactions.

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Affordable housing is a serious concern nationwide, and MBA and our members appreciate being included in HUD's process of identifying the actions it could take to have a positive impact on the supply of affordable housing, including affordable multifamily rental housing. For additional information or questions about these recommendations, please feel free to contact me at swalker@mba.org or at 202-557-2747.

Sincerely,

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Associate Vice President/Multifamily
Commercial/Multifamily Group

cc: Terry Wellman, PNC Real Estate
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