



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

ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

June 21, 2007

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

A handwritten signature in black ink, appearing to read "Charles H. Williams".

FROM: Charles H. Williams, Deputy Assistant Secretary for
Multifamily Housing Programs, HT

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

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 are undergoing review and will be published and implemented as soon as possible. The revised 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 are allowed or are expected to be allowed 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.

Review of Limited Liability Corporate Investors (LLCI)

1. Identify qualified LLCI's. Only an LLCI with all of the following characteristics is qualified:

- a. A qualified LLCI is a company organized under a State limited liability company statute, an investor corporation, an investor limited partnership, or an investor limited liability limited partnership. All non-qualified entities must follow all PPC submission requirements;
- b. A qualified LLCI is an investor with limited or no control over routine property operations (the LLCI may require routine reporting by the operating partner; for example copies of HUD reports may be required) or HUD regulatory compliance (for example, the LLCI does not have the right to select the management agent or auditor or designate operating procedures or policies);
- c. A qualified LLCI may have rights to take 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. However, these events do not provide for routine or repetitive control;
- d. A qualified LLCI must be investing in a property for which the State Tax Credit Agency issued an allocation of or issued a letter of intent to allocate Low Income Housing Tax Credits under Section 42 of the Internal Revenue Code;

Qualification 1a is met by obtaining a signed copy of the State Tax Credit Agency tax credit allocation or letter of intent to allocate tax credits for the specific property under review; and

- e. A qualified LLCI invests under an agreement with the owner of a property and must pay all agreed upon sums as long as the owner is not in default under the investment contract. All such agreements are subject to HUD review.
2. In order to decide which entities in the ownership entity are qualified LLCI's, the field office must obtain and review the contents of all investment contracts with LLCI entities. This includes the contracts of each LLCI within the organization which holds any interest greater than 24% of the ownership entity. To assure consistency and accuracy of the review, the field office must request an organization chart or description of the ownership entity. This must be obtained from the operating principal (the general partner, managing member, majority/controlling stockholder, board chairperson, etc). The Handbook provides for such information to come from the principal attorney. The field office will then determine from reading each contract whether each entity claiming LLCI status meets all criteria in number 1 (seek local HUD counsel advice and assistance as needed).
 3. Once an entity is determined to meet the LLCI qualifications, the field office will issue a letter which names the entity, the person who signed the investment

contract on behalf of the entity, the full address of record of the 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 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.

4. Where an entity is determined not to qualify as an LLCI, the field office will issue a letter which names the entity, the person who signed the investment contract on behalf of the entity, the full address of record of the 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 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

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. Serenity LLC owns 99% of ABC Limited Partnership ($1 \times .99 = .99$)

Tier 3; Andrew, Barbara, and Clyde own respectively 24%, 26% and 50% of Serenity LLC. All 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, but still files a PPC as the managing member. ABC Fund II, LLC owns 79% ($0.80 \times 0.99 = 0.792$) of ABC Limited Partnership and must file a PPC

Figure 1

