

**FHA Multifamily Housing Policy Handbook
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- 57 6) nonprofit corporation with officers and directors;
- 58 7) any other public or private single asset borrower entity; and
- 59 8) any combination of acceptable ownership forms can be used to establish a
60 joint venture for the purpose of jointly sharing the risks and rewards by
61 contributing the appropriate knowledge, skills, or assets necessary to a
62 successful development project; however, the borrower must always be a
63 single asset borrower entity.

64 B. Foreign Nationals and Corporate Entities

65 Generally, foreign nationals and corporate entities may participate as principals.
66 However, the single asset borrower entity must be registered in the U.S. and in
67 the state where its corporate office is located. At least one principal with
68 operational decision-making authority must be a U.S. citizen or a foreign national
69 lawfully residing in the U.S. with an immigration status granted by the U.S.
70 government enabling that person to exercise such authority. A U.S. based
71 developer and managing member of the project's ownership entity must meet the
72 U.S. Department of Housing and Urban Development's (HUD) requirements for a
73 domestic principal/manager.

74 **1.2.3 ORGANIZATIONAL DOCUMENTS**

75 A. Borrower Entity

76 The borrower entity must submit organization documents for all ~~loan modification~~
77 ~~requests~~ changes in organizational structure occurring after closing. This
78 requirement also applies to all entities that become the FHA-insured borrower by
79 a transfer of ownership interest (TOI), reorganization, re-domestication, or
80 restructuring of the borrower entity. For multi-tier entities, borrower entities are
81 also required to submit organizational documents for controlling entities (i.e.,
82 when the general partner or manager/managing member are business entities).
83 The following documents are required for all such borrower entity and controlling
84 entity types:

- 85 1) A certificate signed by the secretary or other appropriate officer or designee
86 of the borrower (which may be the individual executing the loan documents).
- 87 a) indicating that the organizational documents attached to the certificate
88 (which documents are listed in items 2 through 5 below) are true and
89 correct copies and have not been amended, modified, rescinded, or
90 revoked, and remain in full force and effect;
- 91 b) including the name and title of the borrower's officers and key principals
92 and a sample signature of the individuals authorized to execute the loan
93 documents; and

- 94 c) dated the day of the final closing.
- 95 **Note:** This secretary’s certificate does not need to be further witnessed by
96 others.
- 97 2) Filed formation documents, including any and all amendments, certified
98 copies from the Secretary of State within 30 days of closing, or such longer
99 period approved by the HUD closing attorney:
- 100 a) certificate of limited partnership, for partnerships;
- 101 b) articles of organization, for LLCs;
- 102 c) articles of incorporation, for corporations; or
- 103 d) other applicable document as appropriate.
- 104 3) The entity’s governing document, including any and all amendments,
105 executed or authorized by resolution, certified as complete and correct by an
106 officer or other authorized representative of such entity, as appropriate (e.g.,
107 partnership agreement, operating agreements by-laws, etc.).
- 108 4) Evidence that the transaction is authorized, and that the borrower has
109 authority to execute all transaction documents, if not provided explicitly in the
110 governing document, such as a resolution, consent of the partners of a
111 partnership, consent of the members of an LLC, or other evidence of proper
112 authorization as local law and custom dictate.
- 113 5) Status certificate, such as a certificate of good standing, from the Secretary of
114 State where the borrower is organized, dated within 30 days of the closing, or
115 such longer period approved by the HUD closing attorney. If the borrower is
116 not organized in the state where the project is located, the borrower must also
117 submit a certificate from the Secretary of State in the project state, indicating
118 its authority to conduct business in the project jurisdiction.
- 119 6) If an EB-5 investment structure is proposed, see MAP Guide Chapter 8.2 for
120 general guidance.

121 B. HUD-Required Provisions

122 The borrower entity’s organizational governing documents (partnership
123 agreement, operating agreement, or by-laws, as applicable) must provide that
124 the borrower be in existence at least as long as the term of the insured loan, and
125 must contain certain provisions required by HUD, including without limitation,
126 provisions that indicate the following:

- 127 a) the HUD regulatory agreement takes precedence in the event of any
128 conflict with the organizational documents;

- 129 b) the borrower is authorized to enter into the transaction; and
130 c) the borrower is a single-purpose, single asset entity.
131 d) Sample language related to the HUD-required provisions is set forth in
132 Part 5 of the Multifamily Program Closing Guide, as the same may be
133 amended from time to time.

134 C. Indemnification Limited

135 No organizational document provisions indemnifying the members, partners,
136 officers, and directors of the borrower are acceptable, except as follows:

- 137 1) A nonprofit borrower may indemnify its principals, but only to the extent
138 mandated by state law or to the extent that such indemnification can be paid
139 from available proceeds of liability insurance coverage or from HUD-approved
140 allowable sources permitted by program obligations (allowable funds may, if
141 the nonprofit is subject to a residual receipts requirement pursuant to another
142 HUD program, be limited to residual receipts).
143 2) A for-profit borrower may indemnify its principals only to the extent that such
144 indemnification is limited to available proceeds of liability insurance coverage
145 or distributions from surplus cash, if available.
146 3) Until funds from a permitted source for payment of indemnification costs are
147 available, the borrower entity shall not:
148 a) pay funds to any members, managers, partners, officers, and directors; or
149 b) pay the deductible on an indemnification policy for any members,
150 managers, partners, officers, and directors.

151 D. Limitation on Encumbrance of Entity

152 Neither the Borrower, nor its members, managers, partners, officers, or
153 directors, shall, *...grant a security interest in any of the Mortgaged Property (as*
154 *defined in the Regulatory Agreement for Multifamily Projects (HUD-92466M)*
155 *(Regulatory Agreement)) or any interest therein (see Regulatory Agreement §35,*
156 *as the same may be revised, amended, or replaced from time to time).*

157 HUD [Notice 95-66](#) is no Longer in Effect

158 HUD seeks no recourse against entities or individuals in their capacities as
159 managers or managing members of LLC borrowers. However, any entity or
160 individual identified by the lender and consented to by HUD will be required to
161 acknowledge Section 50 of the Regulatory Agreement and may directly face
162 liability (separately from the borrower entity) for the acts listed in Section 50, and
163 this would include an individual's personal capacity.

164 **1.2.4 DEFINITION OF PRINCIPAL FOR REGULATORY AGREEMENT PROVISION SECTION 50**

165 A. Privately Held Entities

166 1) For privately held entities, the provision generally requires two signatures for
167 project sponsors. In most cases, HUD, upon the lender's recommendation,
168 approves an individual signatory to sign in his or her individual capacity and
169 the project parent/sponsor entity to sign in a corporate capacity.

170 2) In any specific deal, underwriting may conclude that an entity with the
171 requisite control and involvement or interest in the project that possesses a
172 positive credit history and adequate financial strength relative to the size of
173 the loan may serve in the capacity required by Section 50.

174 3) In some circumstances, particularly involving large, capitalized, and
175 experienced corporate entities with complex corporate organizational
176 structures, the underwriting may not reveal any apparent individual to
177 reasonably serve in the required capacity, whereas the parent/sponsor entity
178 itself may possess such necessary characteristics to act as the sole
179 necessary signatory.

180 4) The lender may consider whether the entity has been approved as an
181 appropriate signatory to provisions similar to Section 50 in a recent
182 Government Sponsored Enterprise (GSE) transaction.

183 a) A GSE transaction refers to any Fannie Mae or Freddie Mac loan
184 program, such as DUS or risk sharing, in which they have approved the
185 signatory on the comparable carve out provisions.

186 b) HUD will also consider the Federal Home Loan Bank as a GSE, if they
187 also have similar approval.

188 c) The GSE-approved entity may be an appropriate sole signatory for
189 Section 50 if they have positive credit history and adequate financial
190 strength. A copy of relevant excerpts from the recently closed transactions
191 would evidence such GSE approval.

192 B. Publicly Traded Corporations

193 1) For publicly traded corporations, real estate investment trusts, or nonprofit
194 organizations, the parent/sponsor entity itself is acceptable as the sole
195 signatory.

196 2) For such entities, any individual signing on behalf of the corporate entity does
197 not sign in an individual capacity, but to bind the parent/sponsor.

198 3) No personal liability will be claimed against the individuals signing in such a
199 capacity.

200 C. Nonprofit Borrowers

- 201 1) For nonprofit borrowers, the parent/sponsor entity should be named.
202 2) The Single Asset borrower should not be the signatory named in Section 50.

203 D. Corporate Entities Required to Execute Section 50

- 204 1) An officer, entity, or other person authorized to bind the company in
205 connection with the proposed transaction may sign.

206 E. Prohibitions Related to Section 50

- 207 1) Insertions of “or successors” language to the identification of signatories is not
208 allowed. The Regulatory Agreement can and should be amended when there
209 is a new individual who is responsible for the provisions of Section 50.
210 2) Riders to the Regulatory Agreement that attempt to limit a signatory’s liability
211 are not allowed.
212 3) Section 50 may not be omitted simply because a currently insured project has
213 been processed as a Section 223(a)(7).

214 **1.2.5 PRINCIPALS AND OTHER PARTIES IN CONTROL**

215 The individuals and entities who exercise operational and financial control over a project
216 are subject to review. This review includes underwriting review and a review of previous
217 participation of such individuals and entities in federal programs.

218 A. Defining Principals

- 219 1) Principals can be categorized as:
- 220 a) Active principals are individuals or entities who singly, or with others,
221 direct and control the borrower and are responsible for the borrower’s
222 ability to execute any and all actions for the benefit of the project,
223 regardless of the extent of their equity interest.
- 224 b) Passive principals are persons or entities who singly, or with others, have
225 limited or no decision-making power or control over the borrower but who
226 have an ownership interest of 25 percent or more (10 percent for
227 corporations) in the borrower.
- 228 c) The borrower is the single asset entity owner.
- 229 2) A principal may be a public or private entity or an individual or business entity
230 proposing to participate in a project as an owner or general contractor.

231 3) A principal maintains significant decision-making authority regarding an FHA-
232 insured loan transaction and/or retains a significant percentage of ownership
233 in a single asset borrower entity.

234 4) The principal's role can involve active participation in directing the activities
235 and affairs of the borrower entity or passive participation when an ownership
236 interest has been acquired in the entity.

237 5) All types of principals are subject to financial and credit disclosure and
238 underwriting.

239 B. Determining Principals and Individuals in Control

240 The term principal in the Multifamily Accelerated Processing (MAP) Guide refers
241 to individuals and entities that exercise operational and financial control over a
242 project. Regional Center or Asset Management Servicing Site Staff consider
243 principals in three contexts:

244 1) individuals or entities which must be disclosed for previous participation
245 review;

246 2) persons or entities required to execute Section 50 of the HUD Regulatory
247 Agreement; and

248 3) individuals or entities which possess financial and/or legal control of the
249 borrower, thereby requiring full or limited financial and credit analyses.

250