



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

ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

July 16, 2004

MEMORANDUM FOR: All Multifamily Hub Directors
All Multifamily Program Center Directors
All Multifamily Operations Officers
All Directors of Project Management
All Supervisory Project Managers

A handwritten signature in cursive script that reads "Beverly J. Miller".

FROM: Beverly J. Miller, Director, Office of Asset Management, HTG

SUBJECT: Reiteration and Reminder – Participation Process and Decisions; Existing Policy

During the last 18 months, the Department has been preparing to fully implement the Active Partner Performance System (APPS). In doing so, members of Headquarters staff and management have discussed the implementation with numerous parties interested and active in the Department's programs. Most recently the Deputy Assistant Secretary for Multifamily Programs, Stillman Knight, hosted a 1.5-day task force to discuss the current procedures and how they function in the field environment. A rule, notifying the public that APPS will be made the single method to file previous participation certification applications, was published for comment on April 19, 2004. The comment period ended May 19, 2004, after which time a final rule will be published. In preparing to implement APPS it became clear that some existing policies and procedures for participation processing and review and use of APPS in the field offices are being implemented inconsistently. This memorandum seeks to clarify and encourage consistent and measured use of existing policies in several areas.

RISK INDICATOR: The APPS risk indicator, a.k.a. flag, is a device to alert us to noncompliance and the concomitant risk that such noncompliance may presage. An owner of a multifamily housing resource must be held to high standards to avoid risk of loss to HUD/FHA. The placing of a flag is your notation and alert to your colleagues that a potential risk from unresolved noncompliance has surfaced. Repetitive noncompliance, especially in the same area, indicates higher risk to the Department. However, with the exception of delinquencies, defaults, assignments, foreclosure and failure to complete an OMHAR debt restructuring rehabilitation¹ the Hub Director has authority to approve a delay in recording a flag and also to not record a flag. We issued guidance describing the Hub Directors' authority on May 27, 2003. While this memorandum

¹ The Department invests significant resources in every restructured note including a direct outlay for rehabilitation, therefore, the Departmental considers failure to complete the rehabilitation a serious and significant risk factor

dealt with issues surrounding inspections, it should be considered valid guidance for other areas where the Hub Director has discretion. In using their authority the Hub Director should be remember that recording a flag has no affect on participation, unless the noncompliance event remains unresolved at the time the participant requests new or revised participation. In these cases the unresolved noncompliance requires a review and decision in Headquarters (HQ) regarding the risk to the Department of proceeding with the new or revised business participation. In using the allowed discretion the Hub Director should determine documented facts that a participant is not responsible for or complicit in the resulting noncompliance. Under such circumstances, that party probably should not be flagged (e.g., the fee agent who advises the board to do certain things to avoid an event of noncompliance, but the board ignores the advice, should probably not be flagged). In determining whether to use her/his discretion the Hub Director should direct staff to provide factual materials and documents regarding unique, extenuating circumstances. Staff in the Hub must disclose for review all cases of repetitive noncompliance for the Hub's Director's review and consideration.

PARTICIPANT NOTICE: Notice to the participant is **REQUIRED!** There are no exceptions; make sure that you inform participants when a flag is recorded in APPS. A specific message to the individual participant (individual or company) is the best course of action to follow. Participants in a property, the persons and companies, are listed on the HUD 2530 filed with the field office at the time of clearance. If; however, the form is not available, notice to the primary responsible party in the organization constitutes effective notice to all owner parties and affiliates in the ownership chain. **When notice to specific persons and companies is not possible, then notice to the primary parties should include an admonition that they should pass the information along to their affiliates and partners.** Examples include:

- Notice to the primary contact in the owner organization or management agency as satisfactory notice for all principals and affiliates in the operating organization or management agency.
- Board presidents or chairpersons are the primary responsible parties where boards are in place and notice to the board president or chairperson is satisfactory.
- For Limited Liability Companies and partnerships notice may be provided to the primary responsible party as shown in the official records at HUD.

Assuring proper and consistent notice procedures are followed results in active and early participant action to resolve noncompliance events. It is the participants' responsibility to assure HUD is notified of changes in contacts and participant status. REMS is the official source of address information and is kept current by the responsible PM.

You should notify participants when you decide to delay or not record a flag in APPS. This strengthens our administrative record clearly showing the Department is carefully considering the case and not acting arbitrarily. Note, while not required, this step is strongly suggested as a good operating practice.

Finally, you must notify the participant when you resolve a flag in APPS.

FLAG RESOLUTION: Field office staff and management should be equally careful and

timely in making the determination to resolve a flag the office placed. In resolving noncompliance, the desired outcome must always be full compliance and cessation of repetitive noncompliance to the Department's satisfaction. Part of resolution is to determine participant processes, procedures, operating methods and/or policies were altered (as needed) to eliminate or reduce the likelihood of similar noncompliance in the future.

CONSULTANTS: Under the present regulations consultants of any type must be cleared prior to participation. It appears from anecdotal information that some consultants are not being requested to provide a 2530 application and certification. This is a reminder to examine transactions where consultants are or could be involved closely and to ask for 2530 application and clearance documents. Consultants are active in non-profit transactions, but are also active in profit deals for such things as development advice, tax credit advice, etc.

2530 APPLICATION EVENTS: Any change that results in a new or additional general partner, managing member (LLC) and board chairperson requires a new 2530 be filed. Generally these parties are in "control" of the operations. Limited partners and stockholders may alter their participation in the company without a revised 2530 application, unless the participant was not cleared previously for the property under review. In this latter case, our regulations show the levels of participation where a limited partner or stockholder must file (>24% limited partners and >10% stockholders). The regulations are not specific regarding members in a Limited Liability Company; therefore, all members are expected to file a 2530 application, regardless of their individual interest in the company. Board member additions always require a new 2530 for the participant.

It is also policy that an event that significantly changes the control of an entity is considered a 2530 application event. If in doubt field office staff should require an explanation of changes and discuss those with personnel in HQ.

YOU CANNOT DENY PARTICIPATION LOCALLY BASED ON 2530 FLAGS:

The field office always performs two important and related tasks in reviewing new or revised participation; assessing the capability of the participant and reviewing the previous participation record. These reviews are sometimes related but not identical.

Offices can deny participation when the participant does not meet your capability standards. For example, where a new participant requests to manage a property in your jurisdiction you need to examine the qualifications of that party. Do they have skills, abilities and knowledge to successfully run a Multifamily Property? If not then you can and should reject their application to become the agent. Similarly, participants seeking significant ownership roles should undergo, at a minimum, a mortgage credit examination whether they make the request with a new (d)(4) or in a TPA or Section 8 property sale. Consultants should be able to show they have the skills and abilities and knowledge in the consulting area.

ONLY the MF Participation Review Committee in HQ can deny participation based on risk indicators in APPS.

This memorandum is intended to assist with analysis and decision making related to previous participation matters. Hub Directors are requested to assure all staff and supervisors who

have responsibility for new or existing property oversight and monitoring in Asset Management and Development are aware of and familiar with its contents. The contents of this memorandum may be shared with all participants. If there are questions about implementation or general clarifications contact your assigned participation analyst in the Policy and Participation Standards Division at (202)-708-1320, or call your desk officer.

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