



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

ASSISTANT SECRETARY FOR HOUSING-  
FEDERAL HOUSING COMMISSIONER

November 23, 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 black ink that reads "Beverly J. Miller".

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

SUBJECT: Revision #1 to "Reiteration and Reminder – Participation Process and Decisions; Existing Policy", dated July 16, 2004

Effective immediately, this memorandum revises the instructions regarding consultants and Limited Liability Companies.

Limited Liability Companies

Delete from the July 16, 2004 memorandum the following section:

"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.** "

Insert in its place the following:

To determine who must submit HUD Form 2530, treat a limited liability company as if it were a limited partnership. For example, the "managing member" is like a general partner and must file a previous participation certificate in all cases. "Managing Member" includes any member that manages any part of the business affairs of the LLC. Other "members" in the LLC should be treated as if

they were limited partners; therefore, they would file a previous participation certificate in all cases where they have a 25% or greater (> or = 25%) interest in the LLC.

### Consultants<sup>1</sup>

In the regulations consultants are defined as “A person or firm that furnishes or proposes to furnish advisory services in connection with the financing or construction of a project and the related HUD requirements. Such services may include, but are not limited to, the selection and negotiation of contracts with a general contractor, architect, attorney or management agent.”

Delete from the July 16, 2004 memorandum the following section:

**“CONSULTANTS:** Under the present regulations consultants of any type must be cleared. It appears from anecdotal information that some consultants are not being requested to provide a 2530 application and certification. We plan to clarify the consultancy factors in an upcoming regulation. This is a reminder to examine transactions where consultants are or could be involved more closely and to ask for 2530 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.”

Insert in its place the following:

Every consultant, as defined in the regulations that wishes to participate during the financing and construction or rehabilitation of a project must apply for 2530 clearance.

However, consultants are also present in many capacities after the “traditional’ development phase of a project and when performing duties which pose a material risk to the Department such consultants must also apply for clearance. But, we need to be cautious and fair and not arbitrarily presume a material consultancy relationship exists. The use of a consultant must be reasonable and necessary.

Consultants may be related parties and; therefore, the rules for reporting identity of interest expenditures must be strictly observed.

Consultants engaged by the ownership for ownership needs and paid from funds other than operating income are not subject to 2530 clearance.

Field personnel may use the following criteria to determine where a consultant relationship exists. Once field personnel make such a determination then they must next determine that the consultant’s participation poses a material risk to the Department and then, and

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<sup>1</sup> Consultant as used in this memorandum includes packagers

only then, should they require the consultant to file HUD Form 2530.

- The person or firm provides specific expertise, which is only rarely or occasionally required, providing an economy to the client;
- The action of the consultant is material in that it has a material and substantial impact on the property operations;
- The consultant's service is paid from project operating funds; and
- The service is temporary.

Routinely staff should also determine whether or not the service performed by a consultant is redundant or duplicative of services already paid or budgeted for from project operating income.

Thank you for your assistance. If you have questions, please contact your assigned participation analyst in the Policy and Participation Standards Division at (202)-708-1320.