

Revisions to Chapter 2 of the MAP Guide

Lender Qualifications

Frequently asked questions, such as the one below have prompted the following revisions to Chapter 2 of the MAP Guide:

8. Can an affiliate of a MAP Lender be the tax credit syndicator and own an interest in the mortgagor entity?

Yes. This answer revises Section 2.5 of the MAP Guide. An affiliate of a MAP Lender can be the tax credit syndicator and own an interest in the mortgagor entity under the following conditions:

- A. In all instances where there is an identity of interest between the MAP Lender and the tax credit syndicator, a request for authorization must be submitted to the HUD field office with jurisdiction for each separate project being processed.**
 - 1. The affiliated tax credit syndicator will hold no more than a one percent interest in the mortgagor entity. During the interim period in which the affiliated tax credit syndicator is holding the syndicated ownership interests for sale to the investors, the percentage may be higher but when the interests are sold, the affiliated tax credit syndicator or any affiliate or subsidiary of the tax credit syndicator may not own more than one percent of the mortgagor entity. The reason to allow the nominal ownership interest in the mortgagor entity by the syndicator is that ownership of even a small amount assists the tax credit syndicator in the due diligence required for the tax credit investors. The tax credit syndicator exercises due diligence to ensure that the project's financing, ownership, management and compliance are satisfactory to the investors and certain regulatory agencies. The tax credit syndicator and mortgagor are interested in seeing that the sale of the tax credits is processed and administered smoothly and correctly.**
 - 2. If a potential serious problem arises in a syndicated tax credit project, the tax credit syndicator or its legal nominee, as part owner of the mortgagor, would have the legal standing to step into the shoes of the general partner and remedy any problem that might jeopardize their rights or expose them to liability. HUD has the same interest as the tax credit syndicator does in keeping the project fiscally current.**
- B. HUD has the responsibility of ensuring that the affiliated tax credit syndicator does not improperly influence the MAP Lender. Therefore, the MAP Lender and the affiliated tax credit syndicator each must provide to the HUD field office specific Representations and Warranties on each case submitted. The Representations and**

Warranties must be signed, dated and contain the criminal warning language found in item C. below.

1. The MAP Lender's Representation and Warranty must state:

a. With respect to any loan that it will underwrite under MAP:

1) No officer or employee of _____(insert the name of affiliated tax credit syndicator) or any director or direct or indirect parent thereof will have any loan-specific control or influence in _____'s (insert the name of MAP Lender) underwriting of the MAP loan (except by providing factual information to _____(insert the name of MAP Lender) in the same manner as would be provided by an unaffiliated syndicator).

2) _____(insert the name of MAP Lender) will not condition its commitment to provide such financing on _____(insert the name of affiliated tax credit syndicator) being selected as the tax credit syndicator for the project to be financed by the MAP loan.

b. _____(insert the name of MAP Lender) will notify HUD promptly in writing in the event of any change or event, which causes any of the foregoing Representations or Warranties to be materially untrue or inaccurate.

2. The MAP Lender's affiliated tax credit syndicator's Representation and Warranty must state:

a. In the regular course of its business it syndicates tax credit investments in owners of multifamily affordable housing projects.

b. With respect to any project loan that is to be underwritten by _____ (insert the name of MAP Lender) and that _____(insert the name of affiliated tax credit syndicator) intends to syndicate to tax credit investors:

1) No officer or employee of _____(insert the name of MAP Lender) will have any loan-specific control or influence in _____'s (insert the name of affiliated tax credit syndicator) processing of the owner's application for tax credit syndication (except by providing factual information to _____ (insert the name of affiliated tax credit syndicator) in the same manner as would be provided by an unaffiliated lender).

2) _____ (insert the name of affiliated tax credit syndicator) will not condition its commitment to syndicate the project on debt financing for such project

being provided by _____ (insert the name of MAP Lender).

3) Except during the interim period in which _____ (insert the name of affiliated tax credit syndicator) is holding the syndicated ownership interests in the mortgagor entity for sale to investors, neither _____ (insert the name of affiliated tax credit syndicator) nor any affiliate or subsidiary thereof will hold an ownership interest in the mortgagor other than a nominal (one percent or less) ownership interest.

c. _____ (insert the name of affiliated tax credit syndicator) will notify HUD promptly in writing in the event of any change or event, which causes any of the foregoing representations or warranties to be materially untrue or inaccurate.

C. The Representations and Warranties must include the following criminal warning language: WARNING: HUD will prosecute false claims and statements. Convictions may result and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)”

D. HUD field offices cannot waive or modify the above Representations and Warranties without first obtaining written permission of the Office of Multifamily Development. (7/13/04)