97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2010–16707 Filed 7–8–10; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Docket ID FEMA–2008–0010]**

### National Fire Academy Board of Visitors

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Committee Management; Notice of Open Federal Advisory Committee Meeting.

**SUMMARY:** The National Fire Academy Board of Visitors will meet by teleconference on August 2, 2010.

**DATES:** The teleconference will take place Monday, August 2, 2010, from 10 a.m. to 12 p.m., e.s.t. Comments must be submitted by July 30, 2010.

**ADDRESSES:** Members of the public who wish to obtain the call-in number, access code, and other information for participation in the public teleconference should contact Teressa Kaas as listed in the **FOR FURTHER INFORMATION CONTACT** section by July 30, 2010, as the number of teleconference lines is limited and available on a first-come, first served basis. Members of the public may also participate by coming to the National Emergency Training Center, Building H, Room 300, Emmitsburg, Maryland. Written material as well as requests to have written material distributed to each member of the committee prior to the meeting should reach Teressa Kaas as listed in the **FOR FURTHER INFORMATION CONTACT** section by July 30, 2010. Comments must be identified by docket ID FEMA–2008–0010 and may be submitted by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: FEMA–RULES@dhs.gov.* Include the docket ID in the subject line of the message.
- *Fax:* 703–483–2999.
- *Mail:* Teressa Kaas, 16825 South Seton Avenue, Emmitsburg, Maryland 21727.

*Instructions:* All submissions received must include the docket ID for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

*Docket:* For access to the docket to read background documents or comments received by the National Fire Academy Board of Visitors, go to *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Teressa Kaas, 16825 South Seton Avenue, Emmitsburg, Maryland 21727, telephone (301) 447–1117, fax (301) 447–1173, and e-mail *teressa.kaas@dhs.gov.*

**SUPPLEMENTARY INFORMATION:** Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463). The National Fire Academy Board of Visitors will be holding a teleconference for purposes of reviewing National Fire Academy Program activities, including the status of campus maintenance and capital improvements, the budget update, the Academy update, Board discussions and new items. This meeting is open to the public.

The Chairperson of the National Fire Academy Board of Visitors shall conduct the teleconference in a way that will, in her judgment, facilitate the orderly conduct of business. During its teleconference, the committee welcomes public comment; however, comments will be permitted only during the public comment period. The Chairperson will make every effort to hear the views of all interested parties. Please note that the meeting may end early if all business is completed.

### Information on Services for Individuals with Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Teressa Kaas as soon as possible.

Dated: June 28, 2010.

**Denis G. Onieal,**

*Acting Deputy United States Fire Administrator, United States Fire Administration, Federal Emergency Management Agency.*

[FR Doc. 2010–16704 Filed 7–8–10; 8:45 am]

**BILLING CODE 9111–45–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5417–N–01]**

### Administrative Guidelines; Subsidy Layering Reviews for Proposed Section 8 Project-Based Voucher Housing Assistance Payments Contracts

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Notice.

**SUMMARY:** This document provides Administrative Guidelines which qualified Housing Credit Agencies (HCAs) as defined under Section 42 of the Internal Revenue Code of 1986 (IRC), must follow in implementing subsidy layering reviews in accordance with the requirements of Section 2835(a)(1)(M)(i) of the Housing and Economic Recovery Act of 2008 (HERA). In certain instances, described below, HUD will follow these Guidelines in implementing subsidy layering reviews to satisfy the requirements of Section 102(d) of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act or HRA). The requirements in this Notice, which implement the requirements of Section 2835(a)(1)(M)(i) of HERA, do not supersede the subsidy layering requirements of other Federal programs.

Section 102(d) of the HUD Reform Act was enacted to ensure that Housing projects receiving HUD assistance do not receive excessive compensation by combining various forms of HUD program assistance with assistance from other Federal, State, or local agencies (other Government Assistance). Section 2835 (a)(1)(F) of HERA provides that for project-based voucher housing assistance payments (HAP) contracts for existing housing, a subsidy layering review in accordance with section 102(d) of the HRA shall not be required. Under HERA, when project-based voucher assistance is proposed for newly constructed and rehabilitated structures, subsidy layering reviews may be satisfied if the applicable State or local agency has conducted such a review. HUD has defined these agencies to be qualified housing credit agencies (HCA), which may include State housing finance agencies, participating jurisdictions under the HOME program, or other State housing agencies that meet the definition of a HCA as defined under Section 42 of the IRC of 1986.

This Notice sets forth the guidelines HCAs must use in conducting subsidy layering reviews for newly constructed and rehabilitated structures combining

other forms of government assistance, and Section 8 project-based voucher assistance.

**FOR FURTHER INFORMATION CONTACT:** Michael Dennis, Deputy Director, Office of Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4228, Washington, DC 20410; telephone number 202–402–3882 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

**SUPPLEMENTARY INFORMATION:**

## I. Background

### *A. The Housing Economic Recovery Act of 2008*

HERA (Pub. L.110–289) was enacted July 30, 2008. HERA made numerous revisions to the Section 8 project-based voucher program. On November 24, 2008 (73 FR 71037), HUD published a **Federal Register** Notice to provide information about HERA's applicability to HUD's public housing and Section 8 tenant-based and project-based voucher programs. That Notice provides an overview of key provisions of HERA that affect HUD's public housing programs, and identifies those provisions that are self-implementing requiring no action on the part of HUD for participants to commence taking action to be in compliance, and those provisions that require implementing regulations or guidance on the part of HUD. The November 24, 2008, Notice states that the HERA provision relating to the elimination of subsidy layering reviews for existing housing is self-implementing; the provision relating to State or Local agencies performing subsidy layering reviews for project-based voucher HAP contracts for new construction and rehabilitated projects is not self-implementing. The Notice states that guidance on how such reviews must be conducted would be forthcoming and this Notice provides such guidance.

### *B. Section 102 of the HUD Reform Act of 1989*

24 CFR part 4 implements section 102 of the HRA, (42 U.S.C. 3545) and contains a number of provisions designed to ensure greater accountability and integrity in the way in which the Department makes assistance available under certain of its programs. Section 4.13 of 24 CFR requires HUD to certify, in accordance with section 102(d) of the HRA, that assistance made available by the Department for a specific housing project will not be more than is necessary to make the assisted activity feasible after taking into account assistance from other government sources. In order to make that certification, a subsidy layering review must be performed. HERA eliminates the certification requirement of 24 CFR 4.13 for new construction and rehabilitated housing under the project-based voucher program where the applicable State or local agency has performed a subsidy layering review. Certification under section 102(d) of the HRA is still required, however where HUD conducts the review.

### *C. Section 911 of the Housing Community Development Act of 1992*

Section 911 of the Housing Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992) (HCDA), allows State HCAs to perform subsidy layering review certifications to satisfy the requirements of section 102(d) of the HRA for projects utilizing or expecting to utilize low-income housing tax credits (LIHTCs). To date, however, the Department has not delegated its authority to HCAs for subsidy layering reviews required for covered projects receiving Section 8 project-based vouchers. While Section 911 of the HCDA is a discretionary provision that PIH has not implemented for projects receiving project-based voucher assistance, section 2835(a)(1)(F) of HERA is mandatory and shall be satisfied pursuant to HERA and these Administrative Guidelines, instead of Section 911.

## II. Certification

### *A. HUD's Certification Requirements Pursuant to 102(d) of the HUD Reform Act*

24 CFR 4.13 states that before HUD makes any assistance subject to the subpart available with respect to a housing project for which other government assistance is, or is expected, to be made available, HUD will determine, and execute a certification, that the amount of the assistance is not more than is necessary to make the assisted activity feasible after taking account of the other government assistance. This review certifies no overlap of government subsidies when combining HUD housing assistance and forms of other Federal, State or local government assistance. Where a HCA has performed a subsidy layering review for a project that has been allocated LIHTCs and the subsidy layering review took into consideration the proposed project-based voucher assistance, section 2835(a)(1)(F) of HERA eliminates the need for the HRA section 102(d) certification requirement. However, HUD's obligation to certify in accordance with 102(d) of the HRA and implementing regulations at 24 CFR 4.13 still exists where a review has not been substituted in accordance with the Guidelines contained in this Notice.

In addition, since a HCA is designated for the purpose of allocating and administering the LIHTC program under section 42 of IRC, and there will be cases where there are other forms of government assistance involved in proposed project-based voucher projects that do not include LIHTC, in those cases where the HCA is not able to conduct such reviews, HUD will conduct subsidy layering reviews and make the required HRA section 102(d) certification in accordance with 24 CFR 4.13 for such projects. HUD will also conduct the review where there is no HCA available, or the applicable HCA has declined to perform the subsidy layering review.

### *B. HCA Certification Under HERA*

With the enactment of HERA, a HRA section 102(d) certification is not required by the applicable HCA performing the review. These Guidelines require that HCAs make an initial certification to HUD when the agency notifies HUD of its intent to participate. The HCA certification provides that the HCA will, among other things, properly apply the Guidelines which HUD establishes. In addition, after a subsidy layering review has been performed or where one has already been performed, HCAs must certify that the total assistance provided to the project is not more than is necessary to provide affordable housing (Appendix B).

## III. Intent To Participate

A HCA must notify HUD of its intent to participate before any subsidy layering reviews are performed pursuant to this Notice. Questions or requests for clarification relating to subsidy layering reviews for units under the project-based voucher program and the implementation of these Guidelines should be addressed to HUD Headquarters, Section 8 Financial Management Division, and should be answered prior to an HCA's notification to HUD of its intent to participate.

### *A. Letter to HUD*

An interested HCA must apprise HUD of its intent to perform subsidy layering reviews for newly constructed and rehabilitated projects that will receive project-based voucher assistance by

sending a brief letter (Appendix A), executed by an authorized official of the HCA informing HUD that it (1) has reviewed these Administrative Guidelines; (2) understands its responsibilities under these Administrative Guidelines; and (3) certifies that it will perform the subsidy layering review as it relates to project-based voucher assistance in accordance with all statutory, regulatory and Guideline requirements. Such letters should be forwarded via e-mail to the Section 8 Financial Management Division at HUD Headquarters at the following address: *pih.financial.management.division@hud.gov.*

*B. HUD Acknowledgement*

Once HUD has been notified of an HCA's intention to participate, HUD will acknowledge that participation by a written letter to the HCA, and post the agency's name on the Office of Public and Indian Housing's Web site as a participating agency. Once an HCA's intent to participate has been acknowledged by HUD through the response letter, that agency may perform subsidy layering reviews, and certify such reviews have been performed, for proposed project-based voucher HAP contracts for newly constructed or rehabilitated units in accordance with the Agency's existing requirements, provided such requirements are in substantial compliance with these Guidelines.

*C. Revocation of Participation*

If HUD determines that a HCA has failed to substantially comply with these Guidelines, or statutory or regulatory requirements, HUD may revoke the HCA's authority to perform subsidy layering reviews for proposed project-based voucher HAP contracts. HUD will inform the HCA in writing of such determination.

*D. HUD Participation*

HUD will follow these Guidelines in conducting the required subsidy layering reviews, and issue a HRA section 102(d) certification pursuant to such review, for projects in cases where the HCA's authority has been revoked by HUD; in cases where an HCA opts to not accept the responsibilities pursuant to section 2835(a)(1)(F) of HERA; and in those cases where project-based voucher assistance is combined with other government assistance that does not include LIHTCs, and the HCA does not have the authority to conduct such review.

## IV. Definitions

*Category 1 Subsidy Layering Review*—Subsidy layering review for proposed project-based voucher HAP contracts where the HCA will conduct the review and it will consider project-based voucher assistance.

*Category 2 Subsidy Layering Review*—Proposed project-based voucher HAP contracts where a subsidy layering review has been performed by an HCA without consideration of project-based voucher assistance.

*Covered Assistance and Affected HUD Programs* includes any contract, grant, loan, cooperative agreement or other form of assistance, including the insurance or guarantee of a loan or mortgage, that is provided under a program administered by the Department for use in, or in connection with, a specific housing project. Assistance provided under Section 8(o)(13) of the U.S. Housing Act of 1937 (42 U.S.C. 1437f) (project-based vouchers) for new construction or rehabilitated projects is considered "covered assistance" under section 102(d) of the HRA for subsidy layering review purposes.

*Other government assistance* is defined to include any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance from the Federal government, a State, or a unit of general local government, or any agency or instrumentality thereof.

*Substantial Compliance*—For purposes of making the HERA certification, a HCA may perform subsidy layering reviews for proposed project-based voucher HAP contracts for newly constructed and rehabilitated units in accordance with the Agency's existing requirements, provided such requirements are in substantial compliance with these Guidelines. To be in substantial compliance, the Agency's guidelines shall be at least as stringent as these Guidelines, and require equivalent disclosures from the ownership entity.

## V. Public Housing Authority (PHA) Responsibilities

*A. When Subsidy Layering Reviews Are Required*

PHAs must request a subsidy layering review when a new construction or rehabilitation project has been selected pursuant to program regulations at 24 CFR part 983 and the project combines other forms of governmental assistance. As part of the selection process, the PHA must require information regarding all HUD and/or other Federal, State or local governmental assistance to be disclosed by the project owner. Form HUD–2880 (Appendix C) may be used for this purpose, but is not required. The PHA must also instruct the owner to complete and submit a disclosure statement even if no other governmental assistance has been received or is anticipated. The statement must be submitted with the owner's application for project-based vouchers. The PHA must also inform the owner that if any information changes on the disclosure, either by the addition or deletion of other governmental assistance, the project owner must submit a revised disclosure statement. If before or during the HAP contract, the owner receives additional HUD or other governmental assistance for the project that results in an increase in project financing in an amount that is equal to or greater than 10 percent of the original development budget, the Owner must report such changes to the PHA and the PHA must notify the HCA, or HUD (if there is no participating HCA in their jurisdiction), that a further subsidy layering review is required.

*B. Requesting Performance of Subsidy Layering Reviews*

The PHA must request a subsidy layering review through the participating HCA. A list of participating HCAs will be posted on HUD's Office of Public Housing's Web site and updated periodically. If an HCA is not designated in the PHA's jurisdiction, the PHA should contact the Office of Public Housing and Voucher Programs, Financial Management Division. The PHA will be informed if there is in fact an HCA in their jurisdiction that will conduct the review or if the PHA must submit the required documentation to HUD Headquarters for the subsidy layering review.

*C. Providing Documents Required for Review*

The PHA is responsible for collecting all required documentation from the owner. The documentation required is contained within Appendix D. The PHA is also responsible for providing the HCA with all documents required for the subsidy layering review. The documents must be forwarded to the HCA with a cover letter. If the initial submission to the HCA is incomplete, the HCA is in need of further documentation, or if new information becomes available, the PHA must provide the documentation to the HCA during the review process.

The PHA should contact the HCA to determine whether any documents the PHA is required to provide are already in the possession of the HCA. If the most recent copies of documents the PHA has collected from the owner are already in the HCA's possession, the PHA must state in its cover letter to the HCA which documents are not included because the HCA has informed it that the documents are already in the HCA's possession. The PHA must still maintain a complete set of the required documents with the project file for

quick reference by either HUD or the PHA.

*D. Subsidy Layering Review Timing and Outcome*

In accordance with program regulations at 24 CFR 983.55, a PHA may not provide project-based voucher assistance until after the required subsidy layering review has been performed in accordance with these Guidelines. Therefore, before entering into an Agreement To Enter into Housing Assistance Payments Contract (AHAP), the PHA must await the outcome of the subsidy layering review. All other pre-AHAP requirements must also be satisfied before AHAP execution (*e.g.,* environmental review). If the HCA with jurisdiction over the project has conducted the subsidy layering review, the HCA must certify to HUD that the project-based voucher assistance is in accordance with HUD subsidy layering requirements. The HCA must provide a copy of the certification to the PHA to signify to the agency that the subsidy layering review has been completed and a determination has been made that the project-based voucher assistance does not result in excessive government assistance. The PHA may proceed to execute an AHAP at that time.

If the subsidy layering review results in excessive public assistance, the HCA will notify HUD, in writing, with a copy to the PHA, of the outcome. The notification will include either a recommendation to reduce the LIHTC allocation, proposed amount of PBV assistance, or other assistance, or a recommendation to permanently withhold entering into an AHAP for the proposed project. HUD will consult with the HCA and the PHA prior to issuing its final determination either adopting the HCA' s recommendation or revising the recommendation. Once the PHA receives HUD's final decision, the PHA must notify the owner in writing of the outcome.

If HUD conducts the review, HUD is responsible for making the required HRA section 102(d) certification pursuant to 24 CFR 4.13. If it is determined that the project-based voucher assistance does not result in excessive government subsidy, HUD will notify the PHA in writing. If it is determined that combining housing assistance payment subsidy under the project-based voucher program with other governmental assistance results in excessive public assistance, HUD will require that the PHA reduce the level of project-based voucher subsidy or inform the owner that the provision of project-based voucher assistance shall not be provided.

**VI. Subsidy Layering Review Categories—Overview**

*A. Category 1—Proposed Project-Based Voucher HAP Contracts Where the HCA's Subsidy Layering Review Includes Proposed Project-Based Voucher Assistance*

Section 2835(a)(1)(F) of HERA provides that a subsidy layering review in accordance with section 102(d) of the HRA is not required if a subsidy layering review has been conducted by a qualified HCA. Section 42(m)(2) of the IRC mandates that HCAs ensure that the amount of housing tax credit awarded to a project is the minimum amount necessary for the project to be placed-in-service as affordable rental housing. As part of its Section 42(m)(2) review, the HCA considers all Federal, State, and local subsidies which apply to the project. In making the determination that the LIHTC dollar amount allocated to a project does not exceed the amount the HCA determines is necessary for the financial feasibility of the project, the HCA must evaluate and consider the sources and uses of funds and the total financing planned for the project, the proceeds expected to be generated by reason of the LIHTC, the percentage of the LIHTC dollar amount used for project costs, and the reasonableness of the developmental and operational costs of the project. The subsidy layering review Guidelines under this Notice are similar to those required under the IRC section 42(m)(2) review.

The amendment made to the requirements of HRA section 102(d) pursuant to section 2835(a)(1)(F) of HERA (for purposes of project-based voucher assistance), alleviates the duplication of subsidy layering reviews (that consider the same factors for the same reasons) by both HUD and HCAs. The only other review element that an HCA must consider with the addition of project-based voucher assistance to a proposed project, is the effect the operational support provided by the project-based vouchers will have on the HCA's analysis in regards to the level of subsidy required to make the project feasible without over compensation. HCAs must therefore analyze the operating pro forma that reflects the inclusion of the project-based voucher assistance as part of the subsidy layering review process. The operational support analysis will consider the debt coverage ratio (DCR) and the amount of cash-flow generated by an individual project to determine if excess funding exists within the total development budget.

In light of the above, when a proposal for project-based voucher assistance is contemporaneous with the application for or award of LIHTCs, the subsidy layering review required by these Guidelines may be fulfilled by the IRC section 42(m)(2) review, if such review substantially complies with the subsidy layering review requirements under this Notice. The Department expects that in most cases it will. If the IRC section 42(m)(2) review substantially complies with the requirements of a subsidy layering review under this Notice, the HCA may make the required certification (Appendix B) to HUD without conducting an additional subsidy layering review pursuant to these Guidelines. If the HCA can not make the required certification because the operation pro forma was not reviewed as part of its IRC section 42(m)(2) review in the manner required by these Guidelines, the HCA must perform the limited review as described in section VII. B. of this Notice, and if necessary reduce the subsidy source within its control— (*i.e.,* the total tax credit allocation amount) or promptly notify HUD of a recommendation to reduce the project-based voucher units or subsidy.

Where HUD conducts the review, for the reasons previously stated, in addition to evaluating the operational budget, HUD must analyze whether certain development costs (specifically general condition, over-head, profits, and developer's fee) are or were excessive. If it is determined that such costs are excessive, HUD will reduce the amount of project-based voucher assistance to a level that will sustain the projects viability without overcompensation. HUD will notify the PHA before any action to reduce the project based vouchers units due to issues of overcompensation.

*B. Category 2—Proposed Project-Based Voucher HAP Contracts Where Subsidy Layering Review Has Been Performed by Qualified HCA Without Consideration of Project-Based Voucher Assistance*

Where a subsidy layering review has been conducted by a HCA on a proposed project-based voucher project for purposes of allocating LIHTCs which may have also included other forms of government assistance, but such review did not consider project-based voucher assistance (*e.g.,* project-based vouchers were obtained subsequent to the LIHTC allocation), the HCA may conduct a limited review with an emphasis on the operational aspects of the project in accordance with Section VII. B. of these Guidelines.

Although project-based voucher projects under Category 2 must undergo a limited subsidy layering review, the HCA must still be able to certify when

combining HUD and other governmental assistance, including project-based voucher assistance, that the project is not receiving excessive compensation. The HCA will be able to make this certification if the review performed as required by section 42(m)(2) of the IRC substantially complied with these Guidelines. In addition to ensuring there is no excessive subsidy, the review must also consider whether there is any duplicative forms of assistance (*i.e.,* rental assistance from some other State, Federal or local source). If it is found that there is duplicative rental assistance for the same unit, the unit does not qualify for project-based voucher assistance, and the HCA must apprise the PHA of such finding. For purposes of this analysis, LIHTC units are not considered duplicative rental assistance.

**VII. Subsidy Layering Review Guidelines—Procedural Description**

Subsidy layering reviews are required prior to the execution of an AHAP for new construction and projects that will undergo rehabilitation, if the project combines project-based voucher assistance with other governmental assistance. When an HCA has conducted a subsidy layering review in connection with the allocation of LIHTC, the standards used by the HCA must substantially comply with these Guidelines. When HUD is conducting the subsidy layering review, it will follow these Guidelines and use the Subsidy Layering Review Analysis form (Appendix E).

*A. Category 1 Subsidy Layering Reviews*

For Category 1 projects, HCAs will review all proposed sources and uses of funds. HCAs will also consider all loans, grants, or other funds provided by parties other than HUD and will assess the reasonableness of any escrow or reserve (*i.e.,* maintenance, operational, and replacement reserves) proposed for the project, even if such reserves do not affect the amount of subsidy allowed under applicable program rules.

1. Development Standards—In General

a. Safe Harbor

Safe Harbor standards are generally applicable development standards. Although the safe harbor standards can be exceeded under certain circumstances, projects for which the owner's documented development costs and fees are within the safe harbor standards can move forward without further justification. If any of the owner's costs and/or fees exceed the safe harbor limits, but are within the maximum allowable amount, additional justification and documentation are required.

b. Maximum Allowable Amounts

Maximum Allowable Amounts by comparison are those that cannot be exceeded under any circumstances. If values provided by the project owner exceed the maximum allowable amounts, reductions must be made in either the proposed amount of PBV assistance, or the LIHTC equity to bring the values below the maximum allowable amounts before the HCA can make its certification to HUD and where HUD is performing the review, before the HRA section 102(d) certification can be made. In the case of LIHTC syndication proceeds, if the values provided by the project owner are lower than the minimum LIHTC price, the PHA shall not enter into an AHAP with the owner unless the LIHTC allocation is reduced to bring the value of the tax credits at or above the minimum LIHTC price.

Between the safe harbor standard and the maximum allowable amounts for each of the factors considered in the review is a range in which values may be acceptable if, in the opinion of the reviewer, they are justified based on project size, characteristics, location, and risk factors. Additional documentation must be requested from the project owner that demonstrates the need for values that exceed the safe harbor standards. If the review is being conducted by an HCA, instead of HUD, project costs exceeding the safe harbor standards must be consistent with the HCA's published qualified allocation plan. Under no circumstances may costs exceed the total maximum allowable amounts.

For all projects falling within category 1, the reviewer (either an HCA, or HUD) must evaluate development costs to determine whether pre-development cost associated with the construction of the project is within a reasonable range, taking into account project size, characteristics, locations and risk factors; whether over-head, builder's profit and developer's fee are also within a reasonable range, taking into account project size, characteristics, locations and risk factors.

2. Equity Capital and Syndication Proceeds—In General

If the project involves the use of LITHCs, the subsidy layering review must also include an analysis of the equity that is made available to the project through the syndication or sale of LIHTCs. The amount of equity capital contributed by investors to a project partnership shall not be less than the amount generally contributed by investors in current market conditions, as determined by the HCA. The HCA must act during the development process to ensure that syndication proceeds going into the project are kept within an acceptable range.

3. Safe Harbor Percentage Allowances

HCAs will use the following safe harbor standards which HUD has established for subsidy layering analysis purposes for project-based voucher HAP contracts: The percentage allowances may be negotiated between the safe harbor and maximum allowable amounts with the project sponsor and the individual HCAs to reflect their assessment of the market and to respect their qualified allocation plan. Any approved fees that exceed safe harbor amounts must be justified by special circumstances.

a. Standard (1)

General Condition safe harbor—six percent (6%) of construction contract amount.

b. Standard (2)

Over-head safe harbor—two percent (2%) of construction contract amount.

c. Standard (3)

Builder's Profit: Safe harbor—six percent (6%) of construction contract amount.

The total allowed or allowable Safe Harbor percentages for General Conditions, Overhead and Builder's Profit are based on hard construction costs and the maximum combined costs shall not be more than 14% of the hard construction cost.

d. Standard (4)

Developer's fee: Safe harbor—twelve percent (12%) of the total development cost (profit and overhead);

The maximum allowable developer's fee is 15% of the project costs (profit and overhead).

4. Net Syndication Proceeds

LIHTCs safe harbor shall be determined by the HCA conducting the review based on the equity market in its State. The HCA must carefully consider the equity market and establish and enforce reasonable equity pricing assumptions. If the amount of equity going into the project from the syndication of tax credits is below the current market price limit without satisfactory documentation of the reasons for the lower amounts, the PHA shall not enter into the AHAP with the owner.

5. When Development Costs Are Excessive

If the costs for builder's profit, or developer's fee, exceed the safe harbor values without satisfactory documentation for the need for higher costs, either the HCA or HUD will take the actions outlined below:

a. HCA Performing Review

In cases where a HCA is performing the review, the HCA must reduce the subsidy source within its control, *i.e.,* the total tax credit allocation amount, whenever necessary to balance the project's sources and uses.

b. HUD Performing Review

Where HUD is performing the review and it is determined that after evaluating allowable sources and uses that the combination of assistance will result in excessive subsidy, HUD will reduce the proposed amount of PBV assistance.

6. When Development Costs Are Within Safe Harbor

If all Safe Harbor standards are met, the HCA must examine the effect project-based voucher assistance will have on the operations pro forma before making its LIHTC allocation. If the Safe Harbor and operational standards (discussed in sub-section 8 directly below) are met, the HCA must submit its certification to HUD with a copy to the applicable PHA along with its sources and uses statement. If HUD is conducting the review, HUD will make the determination and notify the PHA that an AHAP may be signed.

7. Operations Standards

a. Debt Coverage Ratio

In addition to the analysis of the development budget as part of the subsidy layering review process, the HCA must also evaluate the project's 15-year operating pro forma and apply the standards discussed below and contained within the Operations section of Appendix E. Project-based voucher assistance and the amount of cash flow the project-based voucher rent amounts will generate for a given project must be carefully analyzed. The HCA must analyze the project's projected Debt Cover Ratio (DCR) over a 15-year period (the maximum initial term of the project-based voucher HAP contract). The DCR is determined to ensure that the net-income for the project is sufficient to cover all repayable debt (*i.e.,* non-forgivable loans) over the life of the debt. In order to determine realistic costs over a 15-year period, the HCA must use appropriate trending assumptions for their market area. Generally, operating expenses should be trended at 3% to 7% per year and rent increases should be trended at 2% to 5% per year for the first 5 years and 5% for each year thereafter.

The minimum DCR is 1.10 and the maximum DCR may be up to 1.45 provided cash flow for the project does not exceed the limit established in accordance with section VII.A.7.b. of this Notice.

If it is projected that the DCR will not fall below the minimum DCR, the project should have sufficient cash flow to pay all project operating expenses; pay all amortized debt on the project, and have an acceptable percentage of the required debt service available for other uses. In addition, the established DCRs should ultimately provide sufficient cash-flow to subsidize very low-income and extremely low-income families through the project-based voucher program that the LIHTC program is unable to reach.

If the DCR exceeds the maximum stated above, there may be government assistance in the project which is more than necessary to make the project feasible.

Since variances in such things as vacancy rate, operating cost increases, and rent increases all affect the net operating income of a project, the HCA must perform further trending analysis to determine whether the number of proposed project-based vouchers should be reduced or whether the proposed rent amounts should be reduced. For example, if over the 15-year period the DCR begins to decrease and at some point it falls below the minimum of 1.10, all trending assumptions and costs should be re-visited before recommending a reduction in the project-based voucher subsidy. After further analysis, if the DCR is still at a level above the maximum allowable level, the HCA may either reduce the LIHTC allocation amount (for category 1 projects) or recommend to HUD the appropriate PBV subsidy amount including supporting documentation. HUD will require that the PHA reduce the level of project-based voucher subsidy. When HUD is performing the review, HUD will, if necessary, reduce the voucher units or monthly project-based voucher rents proposed by the PHA.

b. Cash-Flow

In addition to determining an acceptable DCR, actual cash flow to the project must also be analyzed. Cash-flow is determined after ensuring all debt can be satisfied and is defined as total income to the project minus total expenses. If the cash flow (minus any acceptable reserve amounts) exceeds 10% of total expenses, the cash generated from the project-based voucher assistance may be greater than is necessary to provide affordable housing. If the cash-flow is greater than 10% of the total operating expenses, the HCA must require the owner to re-visit the operating pro-forma to bring cash flow to a level that does not exceed 10% of the total operating expenses. If the owner declines, the HCA shall recommend to HUD a reduction in the project-based voucher rents or the number of project-based voucher units. Any recommendation shall include documentation to support the HCA's recommendation. When HUD performs the review, and cash flow is greater than 10% of the total operating expenses, HUD will notify the PHA of its determination and instruct the PHA to require the owner to re-visit the operating pro-forma to bring the cash flow to a level that does not exceed 10% of the total operating expenses. If the owner declines, HUD will notify the PHA of the maximum number of project-based voucher units that may be approved and the maximum project-based voucher rent amounts that may be approved.

*B. Category 2 Subsidy Layering Reviews*

Projects falling within Category 2 shall only be required to undergo a limited review. The limited review shall consist of a review of the 15-year Operations Pro Forma and a review to ensure there is no duplicative assistance (as stated above in section VI.B.). The Operating Standards outlined in section VII.A.7. above shall be used for Category 2 subsidy layering reviews. Where it is determined that the inclusion of project-based voucher assistance will result in governmental assistance that is more than necessary to provide affordable housing, the HCA will make a recommendation, including supporting documentation, to HUD as to the appropriate PBV subsidy amount. If HUD is performing the review, HUD will, if necessary, reduce the voucher units or monthly project-based voucher rents proposed by the PHA.

**VIII. Monitoring**

HUD may perform quality control reviews of subsidy layering reviews performed by participating HCAs. The quality control reviews will examine the following:

- Whether all required documents and materials were available to the reviewer.

• Whether the values were correctly determined to be inside or outside of the approvable range.

• If values were above the safe harbor standards, whether sufficient documentation was available to the reviewer to justify the higher costs.

• If necessary, whether subsidy was reduced correctly.

If it is determined that any required documentation was not provided, or that any portion of the review was performed incorrectly, HUD may require appropriate corrective action.

Dated: July 2, 2010.

**Milan Ozdinec,**

*Deputy Assistant Secretary for Office of Public Housing and Voucher Programs.*

## Appendix A—HCA's Notice of Intent To Participate

[_____, 20__]

U.S. Department of Housing and Urban Development, 451 7th Street, SW., Room 4232, Washington, DC 20410, By: E-mail: *pih.financial.management.division@hud.gov.*

**Re: HCA's Intent To Participate—Subsidy Layering Reviews for Proposed Project-Based Voucher Housing Assistance Payments Contracts**

Ladies and Gentlemen:

The undersigned, a qualified Housing Credit Agency as defined under Section 42 of the Internal Revenue Code of 1986, hereby notifies the United States Department of Housing and Urban Development that it intends to conduct Subsidy Layering Reviews pursuant to *HUD's Administrative Guidelines for Proposed Section 8 Project-Based Voucher Housing Assistance Payments Contracts,* for the purpose of ensuring that the combination of assistance under the Section 8 Project-Based Voucher Program with other Federal, State, or Local assistance does not result in excessive compensation. By signifying our intent to participate, the _____(name of agency) hereby certifies that:

The required personnel have reviewed the above cited statutes, the **Federal Register** Notice—*Administrative Guidelines: Subsidy Layering Reviews for Proposed Section 8 Project-Based Voucher Housing Assistance Payments Contracts, and 24 CFR Section 983.55.*

The agency understands its responsibilities under the above cited statutes and the Guidelines; the agency certifies it will perform subsidy layering reviews in accordance with all statutory, regulatory and Guideline Requirements, as well as any future HUD Notices, Directives, or other program information.

By executing this Intent To Participate, the undersigned acknowledges that its participation will continue unless and until, the Department of Housing and Urban Development revokes this intent or _____(name of agency) informs HUD, in writing, upon 30 days notice of its decision to withdraw its intent to participate.

This Notice of Intent to Participate is hereby executed and dated as of the date first listed above. By executing this Notice of Intent, the _____(name of agency) certifies that, upon HUD approval, the _____(name of agency) shall immediately assume the responsibility of performing subsidy layering reviews for proposed Section 8 Project-based Voucher Housing Assistance Payments Contracts.

The Undersigned requests that the Department of Housing and Urban Development please direct all inquiries and correspondence relating to this Notice to:

[UNDERSIGNED NAME AND TITLE]
[STREET ADDRESS]
[CITY], [STATE] [ZIP]
Attention of: [NAME], [TITLE]
By Phone—[XXX–XXX–XXXX]
By Fax—[XXX–XXX–XXXX]
By E-mail—[e-mail address]

[NAME OF AGENCY]

By: _____

Name:

Title:

The completed, signed, and dated Notice of Intent to Participate should be sent as a PDF attachment to an e-mail message addressed to Miguel Fontanez at *pih.financial.management.division@hud.gov.* The e-mail message subject line should read "Submission of Notice of Intent to Participate."

For questions concerning the submission and receipt of the e-mail please call (202) 708–2934.

## Appendix B—HCA Certification

For purposes of the provision of Section 8 Project Based Voucher Assistance authorized pursuant to 42 U.S.C. 8(o)(13), pursuant to section 2835(a)(1)(M)(i) of the Housing and Economic Recovery Act of 2008 (HERA), Section 102 of the Department of Housing and Urban Development Reform Act of 1989, and in accordance with HUD's Administrative Guidelines, all of which address the prevention of excess governmental subsidy, I hereby certify that the Section 8 project-based voucher assistance provided by the United States Department of Housing and Urban Development to _____, located in _____, is not more than is necessary to provide affordable housing after taking into account other government assistance.

_____

Name of HCA

_____

Printed Name of Authorized HCA Certifying Official

_____

Signature of Authorized HCA Certifying Official

_____

Date

## Appendix C—HUD Form 2880

BILLING CODE 4210–67–P

# Applicant/Recipient Disclosure/Update Report

**U.S. Department of Housing and Urban Development**

OMB Approval No. 2510-0011 (exp. 10/31/2012)

**Instructions.** (See Public Reporting Statement and Privacy Act Statement and detailed instructions on page 2.)

## Applicant/Recipient Information

**Indicate whether this is an Initial Report** ☐ **or an Update Report** ☐

| | |
|---|---|
| 1. Applicant/Recipient Name, Address, and Phone (include area code): | 2. Social Security Number or Employer ID Number: |
| 3. HUD Program Name | 4. Amount of HUD Assistance Requested/Received |

5. State the name and location (street address, City and State) of the project or activity:

## Part I Threshold Determinations

1. Are you applying for assistance for a specific project or activity? These terms do not include formula grants, such as public housing operating subsidy or CDBG block grants. (For further information see 24 CFR Sec. 4.3).
   ☐ **Yes** ☐ **No**

2. Have you received or do you expect to receive assistance within the jurisdiction of the Department (HUD), involving the project or activity in this application, in excess of $200,000 during this fiscal year (Oct. 1 - Sep. 30)? For further information, see 24 CFR Sec. 4.9
   ☐ **Yes** ☐ **No.**

If you answered "**No**" to either question 1 or 2, **Stop**! You do not need to complete the remainder of this form. ***However***, you must sign the certification at the end of the report.

## Part II Other Government Assistance Provided or Requested / Expected Sources and Use of Funds.

Such assistance includes, but is not limited to, any grant, loan, subsidy, guarantee, insurance, payment, credit, or tax benefit.

| Department/State/Local Agency Name and Address | Type of Assistance | Amount Requested/Provided | Expected Uses of the Funds |
|---|---|---|---|
| | | | |
| | | | |

(**Note**: Use Additional pages if necessary.)

## Part III Interested Parties. You must disclose:

1. All developers, contractors, or consultants involved in the application for the assistance or in the planning, development, or implementation of the project or activity and
2. any other person who has a financial interest in the project or activity for which the assistance is sought that exceeds $50,000 or 10 percent of the assistance (whichever is lower).

| Alphabetical list of all persons with a reportable financial interest in the project or activity (For individuals, give the last name first) | Social Security No. or Employee ID No. | Type of Participation in Project/Activity | Financial Interest in Project/Activity ($ and %) |
|---|---|---|---|
| | | | |

(**Note**: Use Additional pages if necessary.)

## Certification

**Warning**: If you knowingly make a false statement on this form, you may be subject to civil or criminal penalties under Section 1001 of Title 18 of the United States Code. In addition, any person who knowingly and materially violates any required disclosures of information, including intentional non-disclosure, is subject to civil money penalty not to exceed $10,000 for each violation.

I certify that this information is true and complete.

| | |
|---|---|
| Signature:<br><br>X | Date: (mm/dd/yyyy) |

**Public reporting burden** for this collection of information is estimated to average 2.0 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection information unless that collection displays a valid OMB control number.

**Privacy Act Statement**. Except for Social Security Numbers (SSNs) and Employer Identification Numbers (EINs), the Department of Housing and Urban Development (HUD) is authorized to collect all the information required by this form under section 102 of the Department of Housing and Urban Development Reform Act of 1989, 42 U.S.C. 3531. Disclosure of SSNs and EINs is optional. The SSN or EIN is used as a unique identifier. The information you provide will enable HUD to carry out its responsibilities under Sections 102(b), (c), and (d) of the Department of Housing and Urban Development Reform Act of 1989, Pub. L. 101-235, approved December 15, 1989. These provisions will help ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. They will also help ensure that HUD assistance for a specific housing project under Section 102(d) is not more than is necessary to make the project feasible after taking account of other government assistance. HUD will make available to the public all applicant disclosure reports for five years in the case of applications for competitive assistance, and for generally three years in the case of other applications. Update reports will be made available along with the disclosure reports, but in no case for a period generally less than three years. All reports, both initial reports and update reports, will be made available in accordance with the Freedom of Information Act (5 U.S.C. §552) and HUD's implementing regulations at 24 CFR Part 15. HUD will use the information in evaluating individual assistance applications and in performing internal administrative analyses to assist in the management of specific HUD programs. The information will also be used in making the determination under Section 102(d) whether HUD assistance for a specific housing project is more than is necessary to make the project feasible after taking account of other government assistance. You must provide all the required information. Failure to provide any required information may delay the processing of your application, and may result in sanctions and penalties, including imposition of the administrative and civil money penalties specified under 24 CFR §4.38.

**Note**: This form only covers assistance made available by the Department. States and units of general local government that carry out responsibilities under Sections 102(b) and (c) of the Reform Act must develop their own procedures for complying with the Act.

## Instructions

### Overview.

A. Coverage. You must complete this report if:
   (1) You are applying for assistance from HUD for a specific project or activity **and** you have received, or expect to receive, assistance from HUD in excess of $200,000 during the during the fiscal year;
   (2) You are updating a prior report as discussed below; or
   (3) You are submitting an application for assistance to an entity other than HUD, a State or local government if the application is required by statute or regulation to be submitted to HUD for approval or for any other purpose.

B. **Update reports (filed by "Recipients" of HUD Assistance): General**. All recipients of covered assistance must submit update reports to the Department to reflect substantial changes to the initial applicant disclosure reports.

### Line-by-Line Instructions.

**Applicant/Recipient Information.**
All applicants for HUD competitive assistance, must complete the information required in blocks 1-5 of form HUD-2880:

1. Enter the full name, address, city, State, zip code, and telephone number (including area code) of the applicant/recipient. Where the applicant/recipient is an individual, the last name, first name, and middle initial must be entered.
2. Entry of the applicant/recipient's SSN or EIN, as appropriate, is optional.
3. Applicants enter the HUD program name under which the assistance is being requested.
4. Applicants enter the amount of HUD assistance that is being requested. Recipients enter the amount of HUD assistance that has been provided and to which the update report relates. The amounts are those stated in the application or award documentation. NOTE: In the case of assistance that is provided pursuant to contract over a period of time (such as project-based assistance under section 8 of the United States Housing Act of 1937), the amount of assistance to be reported includes all amounts that are to be provided over the term of the contract, irrespective of when they are to be received.
5. Applicants enter the name and full address of the project or activity for which the HUD assistance is sought. Recipients enter the name and full address of the HUD-assisted project or activity to which the update report relates. The most appropriate government identifying number must be used (e.g., RFP No.; IFB No.; grant announcement No.; or contract, grant, or loan No.) Include prefixes.

**Part I. Threshold Determinations - Applicants Only**

Part I contains information to help the applicant determine whether the remainder of the form must be completed. **Recipients filing Update Reports should not complete this Part.**

If the answer to ***either*** questions 1 or 2 is No, the applicant need not complete Parts II and III of the report, but must sign the certification at the end of the form.

**Part II. Other Government Assistance and Expected Sources and Uses of Funds.**

A. Other Government Assistance. This Part is to be completed by both applicants and recipients for assistance and recipients filing update reports. Applicants and recipients must report any other government assistance involved in the project or activity for which assistance is sought. Applicants and recipients must report any other government assistance involved in the project or activity. Other government assistance is defined in note 4 on the last page. For purposes of this definition, other government assistance is expected to be made available if, based on an assessment of all the circumstances involved, there are reasonable grounds to anticipate that the assistance will be forthcoming.

   Both applicant and recipient disclosures must include all other government assistance involved with the HUD assistance, as well as any other government assistance that was made available before the request, but that has continuing vitality at the time of the request. Examples of this latter category include tax credits that provide for a number of years of tax benefits, and grant assistance that continues to benefit the project at the time of the assistance request.

   The following information must be provided:

   1. Enter the name and address, city, State, and zip code of the government agency making the assistance available.
   2. State the type of other government assistance (e.g., loan, grant, loan insurance).
   3. Enter the dollar amount of the other government assistance that is, or is expected to be, made available with respect to the project or activities for which the HUD assistance is sought (applicants) or has been provided (recipients).
   4. Uses of funds. Each reportable use of funds must clearly identify the purpose to which they are to be put. Reasonable aggregations may be used, such as "total structure" to include a number of structural costs, such as roof, elevators, exterior masonry, etc.

B. Non-Government Assistance. Note that the applicant and recipient disclosure report must specify all expected sources and uses of funds - both from HUD ***and any other source*** - that have been or are to be, made available for the project or activity. Non-government sources of

funds typically include (but are not limited to) foundations and private contributors.

**Part III. Interested Parties.**

This Part is to be completed by both applicants and recipients filing update reports. Applicants must provide information on:

1. All developers, contractors, or consultants involved in the application for the assistance or in the planning, development, or implementation of the project or activity and
2. any other person who has a financial interest in the project or activity for which the assistance is sought that exceeds $50,000 or 10 percent of the assistance (whichever is lower).
   **Note:** A financial interest means any financial involvement in the project or activity, including (but not limited to) situations in which an individual or entity has an equity interest in the project or activity, shares in any profit on resale or any distribution of surplus cash or other assets of the project or activity, or receives compensation for any goods or services provided in connection with the project or activity. Residency of an individual in housing for which assistance is being sought is not, by itself, considered a covered financial interest.

The information required below must be provided.

1. Enter the full names and addresses. If the person is an entity, the listing must include the full name and address of the entity as well as the CEO. Please list all names alphabetically.
2. Entry of the Social Security Number (SSN) or Employee Identification Number (EIN), as appropriate, for each person listed is optional.
3. Enter the type of participation in the project or activity for each person listed: i.e., the person's specific role in the project (e.g., contractor, consultant, planner, investor).
4. Enter the financial interest in the project or activity for each person listed. The interest must be expressed both as a dollar amount and as a percentage of the amount of the HUD assistance involved.

**Note** that if any of the source/use information required by this report has been provided elsewhere in this application package, the applicant need not repeat the information, but need only refer to the form and location to incorporate it into this report. (It is likely that some of the information required by this report has been provided on SF 424A, and on various budget forms accompanying the application.) If this report requires information beyond that provided elsewhere in the application package, the applicant must include in this report all the additional information required.

Recipients must submit an update report for any change in previously disclosed sources and uses of funds as provided in Section I.D.5., above.

**Notes:**

1. All citations are to 24 CFR Part 4, which was published in the Federal Register. [April 1, 1996, at 63 Fed. Reg. 14448.]
2. Assistance means any contract, grant, loan, cooperative agreement, or other form of assistance, including the insurance or guarantee of a loan or mortgage, that is provided with respect to a specific project or activity under a program administered by the Department. The term does not include contracts, such as procurements contracts, that are subject to the Fed. Acquisition Regulation (FAR) (48 CFR Chapter 1).
3. See 24 CFR §4.9 for detailed guidance on how the threshold is calculated.
4. "Other government assistance" is defined to include any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance from the Federal government (other than that requested from HUD in the application), a State, or a unit of general local government, or any agency or instrumentality thereof, that is, or is expected to be made, available with respect to the project or activities for which the assistance is sought.
5. For the purpose of this form and 24 CFR Part 4, "person" means an individual (including a consultant, lobbyist, or lawyer); corporation; company; association; authority; firm; partnership; society; State, unit of general local government, or other government entity, or agency thereof (including a public housing agency); Indian tribe; and any other organization or group of people.

**Appendix D—Documents To Be Submitted by the PHA to the Applicable HCA or HUD Headquarters for Subsidy Layering Reviews**

1. Narrative description of the project. This should include the total number of units, including bedroom distribution. If only a portion of the units will receive project-based voucher assistance, this information is needed for both the project as a whole, and for the assisted portion.

2. Sources and Uses of Funds Statement

Sources: List each source separately, indicate whether loan, grant, syndication proceeds, contributed equity, *etc.* Sources should generally include only permanent financing. If interim financing or a construction loan will be utilized, details should be included in a narrative (item 3 below).

Uses: Should be detailed. Do not use broad categories such as "soft costs." Acquisition costs should distinguish the purchase price from related costs such as appraisal, survey, titled and recording, and related legal fees. Construction and rehabilitation should include builder's profit and overhead as separate items.

3. Narrative describing details of each funding source. For loans, details should include principle, interest rate, amortization, term, and any accrual, deferral, balloon or forgiveness provisions. If a lender, grantor, or syndicator is imposing reserve or escrow requirements, details should be included in the narrative. If a lender will receive a portion of the net cash flow, either as additional debt service or in addition to debt service, this should be disclosed in the narrative.

4. Commitment Letters from lenders or other funding sources evidencing their commitment to provide funding to the project and disclosing significant terms. Loan agreements and grant agreements are sufficient to meet this requirement.

5. Appraisal Report. The appraisal should establish the "as is" value of the property, before construction or rehabilitation, and without consideration of any financial implications of tax credits or project-based voucher assistance.

An appraisal establishing value after the property is built or rehabilitated is not acceptable unless it also includes an "as is" valuation.

6. Stabilized Operating Proforma. Should include projected rental, commercial, and miscellaneous income, vacancy loss, operating expenses, debt service, reserve contributions and cash flow.

The analysis must be projected over a 15 year period. Income and expenses must be trended at ____ percent.

7. Tax Credit Allocation Letter. Issued by the State tax credit allocation agency, this letter advises the developer of the amount of LIHTCs reserved for the project.

8. Historic Tax Credits. Some projects in designated historical districts may receive an additional one time historic tax credit. When applicable, the amount of the historic tax credit should be disclosed.

9. Equity Contribution Schedule. If equity contributed to the project will be paid in installments over time, a schedule should be provided showing the amount and timing of planned contributions.

10. Bridge Loans. If the financing plan includes a bridge loan so that proceeds can be paid up front when equity contributions are planned over an extended period, appropriate details should be provided.

11. Standard disclosure and perjury statement

12. Identity of Interest Statement

13. PHA commitment letter for project-based voucher assistance

14. Proposed project-based voucher gross rent amounts

# Appendix E

## Subsidy Layering Analysis Form

SUBSIDY LAYERING ANALYSIS SUMMARY — Appendix E

Project Name, Sponsor and Phase Information

Number of units

| SUMMARY: Subsidy Layering Guideline Standards (Note A) | This Project | "Safe Harbor" Standard | "Ceiling" Standard |
|---|---|---|---|
| 1. Builder Profit/General Condition/Over-head | | 6%,2%,6% | 14% Gen Cond + OH&P |
| 2. Developer Fee | | 12.0% | 15.0% |
| 3. Net Equity Proceeds | | $0.80 | Market rate |
| 4. Debt Coverage Ratio | | 1.10 | 1.45 |

**Calculation of Net Equity Proceeds from Syndication (Guideline Standard 3)**

**(a) Gross LIHTC Equity Syndication Proceeds from Investor**

**(b) Equity Proceeds Not Available for Project Uses**

(i) Bridge Financing Costs (on loans to be repaid by equity) **(Note A)**

(A) Bridge loan interest

(B) Bridge loan costs other than interest (lender legal, bank fees, etc.)

(ii) Other Syndication Fees and Expenses **(Note B)**

(A) Ownership entity organizational and legal cost

(B) Syndication fees paid from gross syndication proceeds

(C) Tax credit fees (to LIHTC-awarding agency, etc.)

(D) Other syndication fees and costs (accounting, cost certification, etc.)

(E) Total deductions from equity syndication proceeds -

**(c) Amount of Equity Contribution Per Dollar of Tax Credit to the Project**

(i) Net Equity Proceeds as of the Placed-in-Service Date (a(i) minus b(ii)(E))

(ii) Enter amount of annual tax credit allocation (from tax credit award letter):

(iii) Multiply by 10 (LIHTC award amont is annual allocation per year for 10 years) X 10

(iv) Equals total LIHTC allocation to project over 10 years: $ -

(v) Multiplied by investor's ownership percentage: X

(vi) Equals LIHTC allocation to the investor:

(vii) Net proceeds (c(i)), divided by LIHTC allocation to investor (c(vi)), yields net equity per dollar of =

**Calculation of Debt Coverage Ratio (guideline standard 4)**

**(a) Net Operating Income**

(i) Total Operating Income

(ii) minus Total Operating Expenses

(iii) Equals NOI

**(b) Debt Coverage Ratio**

(i) Debt Service

(II) Net Operating Income (4.(a)(iii) above) divided by Debt Service equals DCR:

**(c) Cash Flow**

(i)Annual Reserve contributions

(ii) Cash Flow (4.a.iii minus 4.b.i minus 4.c.i)

(iii) Cash Flow as a percentage of Expenses (4.c.ii divided by 4.a.ii)

**Notes:**

**A.** Analysis must confirm that only reasonable, market-rate bridge loan interest and costs are recognized (to avoid excess profits that may result when loans are not negotiated through arm's-length transactions).

**B.** Syndication expenses are total costs (other than bridge loan interest and costs) incurred by the owner in obtaining cash for the sale of tax credits to investors. Include only those expenses incurred because of the extraordinary legal, organizational and accounting services and activities associated with utilizing tax credits.

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## Appendix F—Sources and Uses Statement (Sample Format)

**SOURCES**

*Debt Sources*

Mortgage—

Loans—

Other Loans (specify)—

Other (Specify)—

*Equity Sources*

Grants available for project uses—

Estimated Net Syndication Proceeds—

Additional Owner Equity Necessary [1]—

Other Equity Sources (specify)

Total Sources $_____

[1] This line may be used for the additional amount needed from the owner to balance sources against uses when no additional monies are available from other sources.

**Project Uses**

Mortgage Replacement Cost Uses—
Total Land Improvements—
Total Structures—
General Requirements—
Builder's General Overhead—
Builder's Profit [2]—
Architects' Fees—
Bond Premium—
Other Fees—
Construction interest—
Taxes—
Examination Fee—
Inspection Fee—
Financing Fee—
FNMA/GNMA Fee—
Title & Recording—
Legal—
Organization—
Cost Certification Fee—
Contingency Reserve (Sub Rehab)—
BSPRA/SPRA (if applicable)—
Acquisition Costs—

**Subtotal Mortgageable Replacement Cost Uses $_____**

*Non-Mortgage Uses*

*(i.e. Uses Payable by Sources Other than the Mortgage)* [3]
Working Capital Reserve or [4]—
Operating Deficit Reserve [5]—

**Subtotal Non-Mortgageable Uses $_____**

**Total Project Uses $_____**

*Estimated Net Syndication Proceeds*

The HCA may use this format before completing the Net Syndication Proceeds estimate line above on the Sources and Uses Statement, and must use this format to reflect final allocation determination assumptions.

Total Tax Credit Allocation-$_____
Estimated Gross Syndication Proceeds-$_____
Syndication Expenses:
Accountant's Fee-$_____
Syndicator's Fee-$_____
Attorney's Fee [6]-$_____
HCA Fee-$_____
Organizational Expense [7]-$_____
Other (Specify)-$_____
Subtotal Syndication Expenses-$_____ [8]
Bridge Loan Costs less Interest (if applicable)-$_____
Adjustment for Early and Late Installments (See Glossary, Net Syndication Proceeds Estimate for adjustment explanation)-$_____
Total Reductions from Gross-$_____
Estimated Net Syndication Proceeds-$_____

[FR Doc. 2010–16827 Filed 7–8–10; 8:45 am]

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[2] Builder's Profit for non-Identity-of-Interest cases (a SPRA allowance may also be added below). See also Standard #1 safe harbor and ceiling standard alternatives before completing. The Mortgage Use lines relating to Builder's Profit and Developer's Fee may be left blank if alternative funding standards are used, and the amounts are reflected below.

[3] Note that syndication expenses are included below in the estimation of *Net* tax credit proceeds for this Statement, and therefore, are not included within this Statement.

[4] Only Letter of Credit Costs may be included if the reserve is funded by a Letter of Credit.

[5] Indicate the full cash reserve amount if funded by LIHTC proceeds. Indicate only the costs of obtaining a Letter of Credit for the reserve if funded by a Letter of Credit at initial closing.

[6] Such fees may not duplicate legal nor title work charges already recognized. Therefore, only fees associated with the additional legal service associated with LIHTC projects should be recognized here by the HCA.

[7] Such expenses may not include Organizational expenses which are already included, and should not be duplicated. Therefore, only extraordinary organizational expenses incurred because of the additional LIHTC-associated application preparation activities should be included here.

[8] *See* Guideline Standard #3 for separate safe harbor and ceiling limitations for private and public offerings.

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. 5378–N–03]**

### Notice of Proposed Information Collection; Comment Request (Economic Opportunities for Low- and Very Low-Income Persons): Withdrawal of Notice

**AGENCY:** Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

**ACTION:** Notice, withdrawal.

**SUMMARY:** The Office of Fair Housing and Equal Opportunity, Economic Opportunity Division is announcing the withdrawal of the Economic Opportunity for Low- and Very Low-Income Persons (Section 3) proposed information collection published June 23, 2010. The proposed information collection materials are being withdrawn until final comments are received within HUD. Subsequent notice regarding these proposed information collection materials will be published at that time.

**DATES:** The withdrawal is effective July 9, 2010.

**FOR FURTHER INFORMATION CONTACT:** Staci Gilliam, Director, Economic Opportunity Division, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 7th Street, SW., Room 4116, Washington, DC 20410; telephone 202–402–3468, (this is not a toll-free number). Hearing or speech-impaired individuals may access this number TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8399.

**SUPPLEMENTARY INFORMATION:** This Notice is withdrawing the previous proposed information collection notice regarding Economic Opportunity for Low and Very Low-Income Persons (Section 3), published June 23, 2010. Recipient agencies should continue to use the current version of form HUD 60002 until further notice.

*Title of Proposed Notice:* Economic Opportunity for Low-and Very Low-Income Persons.

*Office:* Fair Housing and Equal Opportunity.

*OMB Control Number:* 2529–0043.

*Description of Information Collection:* This is a withdrawal of a proposed information collection.

**Authority:** The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: July 1, 2010.

**Staci Gilliam Hampton,**

*Director, Economic Opportunity Division.*

[FR Doc. 2010–16701 Filed 7–8–10; 8:45 am]

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5375–N–26]**

### Federal Property Suitable as Facilities To Assist the Homeless

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

**FOR FURTHER INFORMATION CONTACT:** Kathy Ezzell, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7266, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

**SUPPLEMENTARY INFORMATION:** In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were