

# Subsidy Layering Review

## MEMORANDUM of UNDERSTANDING



March 27, 2012

**SUBSIDY LAYERING REVIEW  
MEMORANDUM OF UNDERSTANDING  
BY AND AMONG THE  
RURAL HOUSING SERVICE (NEVADA);  
U.S DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (SAN FRANCISCO  
OFFICE OF MULTIFAMILY HOUSING); AND  
NEVADA HOUSING DIVISION**

**PARTIES:**

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) is entered into by and among the U.S. Department of Housing and Urban Development’s San Francisco Office of Multifamily Housing (“HUD SF”), with oversight responsibility for Nevada, the Nevada Housing Division (“NHD”) and U.S. Department of Agriculture Rural Development’s Rural Housing Service in Nevada (“RD”) (each, individually, a “Party”, or collectively, the “Parties”; each singular reference to a Party shall refer jointly, severally and collectively to the Parties as set forth herein).

**PURPOSE:**

The Parties wish to enter into this MOU regarding the subsidy layering review of the sources and uses of funds in projects receiving federal housing tax credits, HUD SF assistance under its capital advance and Federal Housing Administration (“FHA”) multifamily insurance programs, and/or assistance provided by USDA Rural Development.

**BACKGROUND:**

The U.S. Department of Housing and Urban Development (“HUD”) provides assistance to develop, rehabilitate and/or refinance low-income multi-family housing through a variety of funding programs, and HUD SF administers such assistance in the State of Nevada. Section 102(d) of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act) requires the Secretary of HUD to limit assistance granted to a project to: “not more than is necessary to provide affordable housing after taking account of . . . Other Government Assistance”. Section 911 of the Housing and Community Development Act of 1992 provides that this requirement may be satisfied by a certification by a housing credit agency to the Secretary of HUD, that the combination of assistance within the jurisdiction of the Secretary shall not be greater than is necessary to provide affordable housing.

The Internal Revenue Service (“IRS”), through Section 42 of the Internal Revenue Code of 1986, as amended, provides tax credits to encourage the development of housing for very low and low income tenants that are administered through State or local housing credit agencies. NHD administers the respective tax credit program in the State of Nevada.

RD administers a loan program authorized by Section 515 of the Housing Act of 1949, which provides financing for housing very low and low income tenants in rural areas. RD also administers a multi-family loan guarantee program (Section 538) designed to provide financing for low and moderate income tenants in rural areas.

**SCOPE OF AGREEMENT:**

Under this MOU, RD, through its State Director for Rural Development, HUD SF, through its Multifamily Housing Hub Director, and NHD, through its Administrator, agree to engage in cooperative efforts to enable each agency to assure that only the necessary assistance is provided through each federal program. This MOU will cover applications for new construction as well as applications for transfer and/or rehabilitation. The Parties acknowledge that this MOU, to the extent that it applies to HUD assistance, is expressly limited to project applications under HUD’s Section 202 Supportive Housing for the Elderly” and “Section 811 Supportive Housing for Persons with Disabilities” capital advance

programs and FHA multifamily insurance programs for the State of Nevada, and shall specifically exclude applications for mortgage insurance under the following programs: Sections 213, 220, 221(d)(3), 221(d)(4), and 231 of the National Housing Act (12 U.S.C. 1707, et. seq.) (HUD-assisted projects subject to this MOU shall be referred to herein as “**Applicable HUD Projects**”). The Parties also acknowledge that this MOU, to the extent that it applies to NHD Assistance, is expressly limited to applications for LIHTC funding.

**IN ORDER TO EFFECTUATE THE OBJECTIVES OF THIS MOU, THE PARTIES AGREE AS FOLLOWS:**

1. To share information on project costs.
2. To limit the total of Builders Profit, General Overhead and General Requirements to no more than 14% of the project development cost, or to that amount prescribed in the Qualified Allocation Plan (QAP), whichever is less. Developers Fees will be limited to no more than 15% of the project development cost as prescribed in the QAP. Contractor fees may also be limited in accordance with criteria set forth in the QAP.
3. That for projects utilizing RD and LIHTC funding, project reserves will be established as the greater of those levels prescribed in the QAP or by RD through its calculations based on a comprehensive needs analysis. Other underwriting criteria, such as debt coverage ratios, will utilize the more stringent criteria contained in the QAP.
4. That if a developer elects a lesser fee than the above fee norms to obtain extra points, the elected fees shall be used for calculation instead of the fee norms.
5. That the above fee norms or the developer-elected fee, if less, shall be used in the analysis of the amount of assistance that is necessary for a proposal. NHD shall prepare an analysis on all loan requests:
  - a) When a tax credit application is accepted for a project utilizing RD or HUD SF funding;
  - b) Just prior to award of the tax credits; and
  - c) When the cost certification is completed and prior to the issuance of an IRS 8609, indicating the amount of the tax credits.
6. That the definitions and formulas for the determination of profits, costs and amounts of assistance in the qualified allocation plan and regulations for the State of Nevada, attached hereto and incorporated herein, shall be applied. In the event that any portion of the attached regulations, relevant to this MOU, is amended, revised or altered (“amended regulations”), the amended regulation and its newer fee norms shall be followed unless NHD, HUD SF or RD raises a timely objection with the other Parties within the public comment period prescribed in the QAP.
7. That in all cases where results of an analysis indicate there will be excess assistance (defined as more than the lesser of \$25,000 or 1 percent of the total development cost as authorized by NHD), NHD shall consult with the applicant and with HUD SF and/or RD, as applicable, to reach an agreement for reducing the excess assistance. The following alternatives are examples of actions that may be taken, in order of priority:
  - a) Reducing the amount of tax credits requested; or
  - b) Reducing the level of assistance provided by one or more of the other sources of funds; or

- c) Revising the uses (beginning with hard costs and any resulting soft costs) to include eligible costs for any funding participants, provided the project enhancement is consistent with the applicable agency program statutes and the intent of the agency programs and will assist the resident population being served by the housing.
8. That, for a new HUD SF and/or RD loan proposal, in the event that excess assistance is not reduced through other means, HUD SF and/or RD, as applicable, may adjust its loan to ensure that HUD SF and/or RD assistance is not more than is necessary to provide affordable housing after taking into account assistance from all federal, state and local sources. Approval of any reduction shall require formal notification to the applicant and NHD.
9. That the information shared under this MOU is for internal analysis only and shall not be distributed or disclosed to any party other than the appropriate NHD, HUD SF or RD employees. Specific information on a proposal may be shared, however, with the applicant and other providers of funds on the respective proposals, as appropriate. Any information furnished to the parties under this MOU is subject to the Freedom of Information Act, 5 U.S.C. Section 552, the HUD Reform Act, and the Privacy Act, 5 U.S.C. Section 552a and, as to NHD only, the Nevada Open Records Act.
10. That each and every provision of this MOU is subject to the laws and regulations of the United States, and shall be enforced and interpreted in accordance with applicable federal laws, regulations, directives, circulars, and/or other guidance.

**RD AGREES:**

1. To provide to NHD and/or HUD SF information on Section 515 or 538 projects being considered and receiving Section 515 or 538 funding decisions as follows:
  - A. A list of 515 or 538 loan requests and their status:
    - a) Within 30 days after an applicant is determined to be eligible and will be considered for funding.
    - b) Within 30 days after loan approval.
    - c) Within 30 days of receiving the final cost certification.
  - B. For each loan request on the list, the most recent Form RD 1924-13 "Estimate and Certificate of Actual Cost," or other cost estimation documents.
  - C. A copy of Form HUD 2530/RD 1944-37 "Previous Participation Certification" and any "Identity of Interest" disclosure information that has been provided to RD.
  - D. When construction is completed, the ACTUAL Form RD 1924-13, including any cost analysis prepared by RD.
2. To inform any applicant seeking tax credits in connection with HUD and/or RD assistance that this MOU will be applied to the processing of their request for tax credits. A copy of this MOU shall be provided to applicants for their guidance when combining the assistance by any or all of the agencies.

**NHD AGREES:**

1. To inform any applicants seeking tax credits in connection with HUD SF and/or RD assistance that this MOU will be applied to the processing of their request for tax credits. A copy of this MOU shall be provided to applicants for their guidance when combining the assistance by any or all of the agencies.
2. To provide RD and/or HUD SF the following data:
  - a) The list of tax credit loan requests received from applicants that indicate they are seeking financing from HUD SF and/or RD within 30 days following each allocation round.

- b) For each loan request a copy of the Tax Credit Application (excepting back-up and third-party documents) with the detailed cost breakdown used to estimate the amount of tax credits for which the developer would be eligible within 90 days following the application.
- c) The Section 911 certification of subsidy layering review findings and a copy of the project's sources and uses.
- d) When applicable, a second 911 certification when the development is complete and the final cost certifications have been submitted to NHD for issuance of IRS Forms 8609.

**HUD SF AGREES:**

- 1. To provide to NHD and/or RD information on Applicable HUD Projects that receive a funding decision, as follows:
  - A. A copy of any firm commitment or subsidy contract issued for such Applicable HUD Projects.
  - B. The most recent cost estimation documents for such Applicable HUD Projects.
  - C. A certification that principals have been cleared through HUD's "Previous Participation Certification" process for such Applicable HUD Projects.
  - D. Any "Identity of Interest" disclosure information provided to HUD SF for such Applicable HUD Projects.
  - E. When construction is completed, the ACTUAL cost analysis prepared or approved by HUD SF for such Applicable HUD Projects, to the extent that a HUD cost certification review is required under HUD's then respective program requirements.
- 2. To inform any applicants seeking tax credits in connection with HUD SF and/or RD assistance that this MOU will be applied to the processing of their request for tax credits. A copy of this MOU shall be provided to applicants for their guidance when combining the assistance by any or all of the agencies.

**NO FINANCIAL COMMITMENT:**

The purpose of this MOU is to set forth in general terms, the basis on which the Parties will cooperate, and as such, does not constitute a direct financial obligation for expenditures, personnel, property or services. Any future transfer of funds or obligation to undertake certain work must be confirmed by an appropriate funding agreement executed by authorized officials of the Parties. In addition, this MOU does not give any third party any benefit, legal or equitable right, remedy or claim under this MOU.

**PERIOD OF AGREEMENT:**

This MOU shall become effective the date of the last signature herein and remain in effect until terminated by written notification of any of the three parties.

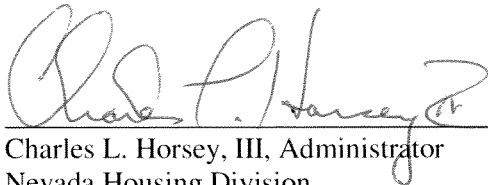
**ENTIRE AGREEMENT:**

This MOU constitutes the entire agreement among the Parties, superseding all prior oral or written agreements, understandings, representations, warranties, and courses of conduct and dealing regarding the subject matter hereof.


**MODIFICATION AND AMENDMENT PROVISION:**

This MOU may be modified or amended by written agreement of all Parties. Requests for amendments to this MOU may be initiated by any Party through written notification to all Parties.

**ACCEPTANCE AND SIGNATURE OF EACH PROVIDING PARTY:**

  
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Charles L. Horsey, III, Administrator  
Nevada Housing Division

3-27-12  
Date

  
\_\_\_\_\_  
Ophelia B. Basgal, Regional Administrator  
U.S. Department of Housing and Urban Development

3/27/12  
Date

  
\_\_\_\_\_  
Sarah J. Adler, State Director  
USDA Rural Development

March 27, 2012  
Date