



OFFICE OF HOUSING

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

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**Special Attention of:**

Multifamily Regional Center Directors  
Multifamily Satellite Office Directors  
Multifamily Asset Management Branch Chiefs  
Multifamily Production Branch Chiefs  
Office of Healthcare Programs Directors

**NOTICE H 2016-15**

**Issued:** October 20, 2016

Multifamily Housing (insurance and assistance program participants) and Healthcare program participants, including Borrowers, Owners, Sponsors, Principals, Management Agents, General Contractors, Operators, Construction Managers, Master Tenant/Landlords and other interested stakeholders

**Expires:** This Notice remains in effect until amended, superseded or rescinded.

**SUBJECT: Processing Guide for Previous Participation Reviews of Prospective Multifamily Housing and Healthcare Programs' Participants**

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**Purpose**

This Processing Guide (Guide) supplements HUD's Previous Participation Review regulations in 24 CFR part 200, subpart H. The Guide defines Controlling Participants for previous participation review, new flag approval, and rejection guidance and flag protocols in federal programs of certain participants seeking to take part in multifamily housing and healthcare programs administered by HUD's Office of Housing. The Guide aids in clarifying and simplifying the process by which HUD reviews previous participation of participants that have decision making authority over their projects as one component of HUD's responsibility to assess financial and operational risk to projects in these programs.

Pursuant to 24 CFR part 200, subpart H, HUD will not make substantial changes to this Guide without providing a 30-day notice and an opportunity to comment to the public. However, HUD notes that many titles of HUD officials and other contact information are noted in this Guide for many purposes. By way of illustration and not limitation, HUD may update any reference to titles, email addresses, websites or other information regarding HUD officials in this Guide (whether such update is necessary because of changes to titles, responsibilities, personnel, reorganization or for any other reason) without providing notice and an opportunity for comment. HUD may make other non-substantial changes made to this Guide without notice and comment.

This Guide updates and clarifies previous procedures and supersedes outstanding policy and guidance concerning previous participation review found in previous Housing notices and in the following: Multifamily Accelerated Processing (MAP) Guide Handbook 4430.G, Multifamily Asset Management and Project Servicing Handbook 4350.1, Healthcare Mortgage Insurance Program Handbook 4232.1, and Mortgage Insurance for Hospitals 4615.1. HUD will incorporate elements of this Guide into these handbooks. In addition, the Guide supersedes the Previous Participation (HUD-2530) Handbook 4065.1.

**Applicability of the Previous Participation Review:**

This Guide applies to Covered Projects administered by the Office of Multifamily Housing and the Office of Healthcare Programs, as listed in HUD's regulations in 24 CFR Part 200 subpart H:

- a. FHA-Insured Projects. A project financed or proposed to be financed with a mortgage insured under the National Housing Act, a project subject to a mortgage held by the Secretary under the National Housing Act, or a project acquired by the Secretary under the National Housing Act; these may include projects that are insured under the following sections of the National Housing Act: sections 213, 220, 221(d)(3), 221(d)(4), 223(a)(7), 223(d), 223(e), 207/223(f), 232/223(f), 242/223(f), 231, 232, 232(i), 236, 241(a), 241(f) or 242;
- b. Housing for the elderly or persons with disabilities. Non-insured projects that include Section 202 Direct Loans or Section 202 or Section 811 Capital Advances;
- c. Risk-share projects. Projects that are insured under sections 542(b) or 542(c) of the Housing and Community Development Act of 1992;
- d. Projects subject to continuing HUD requirements: Projects subject to a use agreement or any other affordability restrictions pursuant to a program administered by HUD's Office of Housing; and
- e. Subsidized Projects. Projects in which 20 percent or more of the units now receive or will receive a subsidy in the form of:
  - Interest reduction payments under section 236 of the National Housing Act (12 U.S.C. 1715z-1);
  - Rental Assistance Payments under section 236 of the National Housing Act (12 U.S.C. 1715z-1);
  - Rent Supplement payments under section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s); or
  - Project-based rental assistance pursuant to housing assistance payment contracts under

Section 8 of the Housing Act of 1937. This includes projects converting to PBRA assistance pursuant to the Rental Assistance Demonstration (RAD). This does not include project-based assistance provided under the Housing Choice Voucher program administered by HUD's Office of Public and Indian Housing or project-based assistance provided under the McKinney Act, administered by HUD's Office of Community Planning and Development.

For the Sections 223(a)(7), 223(f), 241(a), 232(i) and 223(d) programs Controlling Participants are only subject to Previous Participation review if they were not previously approved to participate in that project (provided they have not changed roles in the project without prior approval).

### **Change in Controlling Participants:**

To the extent the program requirements (including without limitation any contractual documents) governing a Covered Project require HUD consent for a change in a Specified Capacity or other Controlling Participant, consent to such change is subject to Previous Participation review.

### **Waiver Authority**

Program offices may waive any portion of this Guide that is not a regulatory requirement, subject to an appropriate justification, as required by HUD for all waivers. HUD expects waivers to be rare and in response to unique circumstances meeting the intent of HUD's Previous Participation review regulations.

### **Program Requirements**

The sections below outline who is subject to a Previous Participation review; the submission requirements and review procedures; considerations for approval and rejection; and the participant flagging process.

#### **A. Controlling Participants for Previous Participation Review Purposes:**

**Submittal of Controlling Participants.** Previous Participation review is required for Controlling Participants. In connection with each Triggering Event, Lenders in insured projects and entities serving in the Specified Capacities listed below in non-insured projects shall provide to HUD a list of all Controlling Participants. As stated throughout this Guide, HUD makes the ultimate determination of who is deemed to be a Controlling Participant. In reviewing the information submitted or if circumstances change prior to final HUD approval of a Triggering Event, HUD may determine that other individuals or entities are Controlling Participants necessary to review. However, HUD providing final approval of a Triggering Event confirms that all Controlling Participants with respect to that Triggering Event have been properly identified to HUD's satisfaction. Unless HUD discovers that individuals or entities have not been properly disclosed in accordance with the organizational chart requirements listed in this Processing Guide, HUD shall not change a determination of whether or not an individual or entity is a Controlling Participant after providing final approval for a Triggering Event.

Controlling Participants are those entities and individuals (i) serving as a Specified Capacity with respect to a Covered Project and (ii) the entities and individuals in control of the Specified

Capacities. At least one natural person must be identified as a Controlling Participant for each Specified Capacity. The chart below shows the Specified Capacities for the listed programs.

**Specified Capacities**

	<b>Multifamily Housing</b>	<b>Office of Residential Care Facilities</b>	<b>Office of Hospital Facilities</b>
<b>Borrower or Owner</b>	X	X	X
<b>Management Agent</b>	X	X	X
<b>Operator</b>		X	X
<b>General Contractor</b>	X	X	X
<b>Construction Manager</b>			X
<b>Master Tenant/Landlord</b>		X	X

Controlling Participants. The entities serving as a Specified Capacity are Controlling Participants of the Covered Project for the programs listed. In addition, the individuals and entities determined by HUD to exercise financial or operational control over these entities are also Controlling Participants. Controlling Participants require Previous Participation review and must complete Previous Participation review submissions. Any individual or entity who exercises financial or operational control of a Specified Capacity is considered to be a Controlling Participant and required to complete a Previous Participation review submission, unless excluded below. Controlling Participants include both entities and natural persons. If a Controlling Participant is an entity, the submission must include the people who exercise the day-to-day financial or operational control for that entity. Notwithstanding the foregoing or anything else in this Guide, if HUD determines that an individual or entity does not actually exercise financial or operational control of a Covered Project or Specified Capacity, such individual or entity shall not be considered a Controlling Participant.

List of Controlling Participants: For purposes of Previous Participation review, unless excluded below or otherwise determined by HUD not to be a Controlling Participant, the following shall be considered to exercise financial or operational control over the listed entities and shall be considered Controlling Participants:

1. Entities and individuals owning, directly or indirectly, 25% or more of a Specified Capacity.
2. The controlling owners (entities and/or individuals) of the entity that controls the Specified Capacity, these include individuals or entities with the ability to direct the Specified Capacity to enter into agreements relating to the Triggering Event, including without

limitation individuals or entities that own at least 25 percent of entities determined to control an entity that is a Specified Capacity.

3. Any officers and other equivalent executive management (including Executive Director and other similar capacities) of the Specified Capacity or Controlling Participant who are directly responsible to the board of directors (or equivalent oversight body) and who have the ability to prevent or resolve violations or circumstances giving rise to flags related to the Covered Project.
4. Managers or managing members of Limited Liability Companies (LLCs).
5. General partners of limited partnerships, including “administrative” general partners or other general partners if they exercise day-to-day control over the entity.
6. Partners in a general partnership.
7. Executive Director (or equivalent position) of a non-profit corporation.
8. With respect to non-profit Borrowers under the Section 242 program, the executive management (Chief Executive Officer, Chief Financial Officer, and Chief Operating Officer, or equivalents) of the Borrower and the members of the Board of Directors that HUD determines have control over the finances or operation of the hospital (typically the President, Vice President, Treasurer, and Chairman of the Finance Committee, or equivalents).
9. Members of a for-profit corporation’s Board of Directors who are also officers of the corporation.
10. Controlling stockholders of a corporation. A controlling stockholder is the holder of sufficient voting stock or shares in a corporation to prevail in any stockholders' motion. In most cases the controlling stockholder will be subject to the previous participation filing requirements of those owning at least 25% of a Specified Capacity or Controlling Participant. However, this listing is meant to trigger filing requirements for shareholders who may technically evade the 25% ownership filing requirement but exercise financial or operational control over the Specified Capacity.
11. Trustees of a trust.
12. For real estate investment trusts (REITs), the REIT itself, the chief executive officer (or equivalent position) and all company officers (except those officers determined by HUD not to exercise day-to-day control over the REIT, the Specified Capacity or the Covered Project) must file.
13. For insured projects, if applicable, the person (people) and/or entity (entities) to be listed on the Regulatory Agreement Non-Recourse Debt section.

14. Any other person or entity determined by HUD to exercise day-to-day, financial or operational control over a Specified Capacity. While it is unlikely, this may include any officers, directors or members of an executive management team who would otherwise not be required to make a submission (even of shell entities or other entities that may fall into the exclusions below), if such person is exercising control over the Specified Capacity. This listing is meant to capture those rare individuals who structure their participation so as to technically circumvent HUD requirements but who de facto exercise control over the Specified Capacity. HUD believes that the individuals and entities described in the list above accurately account for the Controlling Participants in the vast majority of cases and that invoking an additional submission through this catch-all listing should be rare.

If the applicant or Mortgagee has any reason to believe that any Controlling Participant is not of sound mind or body or is otherwise incapacitated, such information must be disclosed to HUD to review and determine whether another individual is acting as a Controlling Participant.

List of Exclusions: Except that any Specified Capacity is a Controlling Participant, and unless otherwise determined in writing by HUD in a specific transaction to exercise day-to-day control of a Covered Project or Specified Capacity, Controlling Participants do not include the following:

1. Wholly-owned entities. Any entity that is 100% owned or controlled by one individual or entity is excluded. Such entities are not exercising control; the individual or entity that wholly owns them is exercising control. An organizational chart may include one or more tiers of wholly-owned entities. All wholly-owned entities in all tiers are excluded.
2. Shell entities. Entities that do not take actions themselves but only serve as legal vehicles through which the partners, members or owners of such entity take actions are excluded. These entities are not exercising control; the partners, members or owners of such entities are controlling. The “middle tiers” of an organizational chart are often shell entities.

For example, if a Borrower (“Borrower LLC”) has a managing member (“Managing Member”) that is a joint venture partnership of two entities (“Partner 1” and “Partner 2”) and day-to-day control of Managing Member is exercised by Partner 1, then Partner 1 is the Controlling Participant of the Borrower. In this example, neither Managing Member nor Partner 2 are actually exercising control and are excluded. If Partner 1 is itself a shell LLC, with three members, then the individual(s) or entity(ies) that exercise day-to-day control of Partner 1 would be the Controlling Participant(s). If day-to-day control of Partner 1 is exercised by Member A, then Partner 1 would be excluded and Member A would be the Controlling Participant. If the organizational chart reflects this arrangement and unless additional information or special circumstances warrant further inquiry, HUD will accept Member A’s certification that it is the Controlling Participant and will not require an examination of the various entities’ organizational documents to confirm that Managing Member and Partner 1 are excluded shell entities.

3. Tax credit investors. Syndicator and direct investor entities in Low-Income Housing

Tax Credits, Historic Tax Credits, New Markets Tax Credits or other tax credits (if HUD determines such credits are substantially similar to the listed tax credits) are excluded unless such entities exercise day-to-day control or seek other involvement that would trigger the need for previous participation review. HUD may still require a so-called “LLCI certification,” an “Identification and Certification of Limited Liability Investor Entities,” “Passive Investor Certification” or any other such certification. Acceptable language for such certification is attached as an addendum to this Guide.

4. Passive participants. If an entity’s organizational documents specify which members, partners or owners are authorized to exercise day-to-day control of that entity, then any other members, partners or owners who are not authorized to exercise day-to-day control of an entity are excluded.
5. Minor officers. If HUD determines that an officer of a corporation or other entity does not have significant involvement in a Covered Project, such officers are excluded. Typically, “significant involvement” means an ability to prevent or resolve violations or circumstances giving rise to flags related to the Covered Project.

In the event HUD requests an officer who has not provided a Previous Participation Review submission to provide a submission, HUD shall accept certification from the officer that (s)he has limited involvement in the Covered Project, does not exercise operational or financial control over the Covered Project and does not have the ability to prevent or resolve violations or circumstances giving rise to flags related to the Covered Project (as listed below in Section G, “Flags”).

6. Members of a Board of Directors. Members of a non-profit or for-profit corporation’s board of directors who do not exercise control over the corporation in another capacity (for example, as Executive Director or other manager or officer of the non-profit corporation) are excluded. This exclusion does not apply to the members of boards of directors of hospitals, the rule for which is specified in the Regulation and captured in #8 within the Listing of Controlling Participants above.
7. Less than 25% ownership interest. Unless exercising control through another capacity, members, partners, stakeholders and owners of entities with less than a 25% interest in an entity are excluded. This exclusion does not apply to any such member, partner, stakeholder or other owner of an entity (“Proposed Excluded Member”) who would have an interest greater than 25% if the combined percentages of all other members, partners, stakeholders or other owners (including beneficial interests in trusts) with whom the Proposed Excluded Member has an “Identity of Interest,” or a conflict of interest because of familial relation or common financial interest, exceeds 25%. Whether an Identity of Interest or conflict of interest exists is determined by HUD. If the program requirements of the applicable program in which the Covered Project is participating speak to Identify of Interest or conflict of interest, those program requirements control.
8. Nursing Homes and Assisted Living Facilities. With respect to projects under the

Section 232 program, the nursing home administrator and equivalent positions in assisted living facilities are excluded.

9. Publicly Held Companies. For publicly held companies, the chief executive officer (or equivalent position), the controlling shareholder (if any), and other individual(s), if any, identified as having day-to-day control over a Specified Capacity or Covered Project, including any relevant project manager(s), must file but the publicly held company shall otherwise be treated as an individual without need for other individual shareholders to file certifications in their individual capacity or identify their social security or tax identification numbers.
10. Mortgagees. Mortgagees acting in their capacity as such are excluded.
11. Public housing agencies. Public housing agencies, whether in their capacity as owning and operating public housing or otherwise, are excluded. Public housing agencies are subject to different oversight and review by HUD's Office of Public and Indian Housing.
12. No Exercise of Financial or Operational Control. Any individual or entity determined by HUD not to exercise financial or operational control of a Covered Project or Specified Capacity shall not be considered a Controlling Participant.

**B. Organization Charts:**

An organization chart must be submitted for each Specified Capacity and for any entity within the organization chart if requested by HUD. Organization charts are visual representations of the ownership structure of an organization. Organizational charts are already required for the underwriting purposes as a part of the application or request for most Triggering Events. This Guide clarifies that such organizational charts shall also be submitted with the Previous Participation review submissions for the purposes of Previous Participation review. If the application or request for a Triggering Event does not otherwise require submission of organizational charts, this Guide clarifies that such organizational charts are required for purposes of Previous Participation review. All organization charts submitted in connection with a Triggering Event are considered part of the application for HUD review and subject to the certifications stating that the application is true and complete. The organization chart must be clear enough so that a person unfamiliar with the Covered Project and the entities involved can understand the ownership and control structure. The organization chart must comply with the following guidelines:

1. Clearly show all tiers of the ownership structure, including the members or owners of the entities listed.
2. Show all participants, not just those who the Lender or Applicant considers to be principals or Controlling Participants. HUD may accept an organizational chart without a full listing of all participants if HUD determines that such a listing would be unduly burdensome.
3. Show percentages of ownership and role in the entity (e.g. Limited Partner, General Partner, Managing Member, Tax Credit Syndicator/Investor, etc.). The percentages must add to

100%. However, if there are more than 10 holders of an ownership interest in an entity, no one with less than a 10% interest must be individually disclosed. In that case, holders with less than a 10% ownership interest in the entity may be listed as a group by indicating the total percentage of ownership interests held by the group and the total number of members of the group (e.g., “8 members own portions of the remaining 12%”). For public companies, shareholders holding less than 10% interest can be grouped by indicating the aggregate percentage and identified as “widely held” (e.g., “80% of shares are widely held”). To the extent ownership interests are aggregated, the Applicant must provide any information requested by HUD regarding such interests.

4. List at least one natural person, not just entities; provided, however, tax credit investors and other investors that are not exercising day-to-day control are not required to list a natural person.
5. Provided that nothing in this Guide is meant to alter any underwriting requirements, for purposes of Previous Participation review, with respect to tax credit investors and other investors that are not exercising day-to-day control over a Specified Capacity or Controlling Participant, only the investor entity and its percentage ownership in the Specified Capacity need be shown; it is not necessary to show the members, partners or owners of the investor entity. HUD notes that additional information relating to investors may be required separately through underwriting review.
6. Each Specified Capacity must be shown on a separate organization chart (e.g. Borrower, Operator, Management Agent, Master Tenant, etc.).
7. With respect to each entity on the organization chart except wholly owned entities, tax credit investors and other investors that are not exercising day-to-day control, the executive management teams (for example, all senior officers such as CEO, CFO, President, Executive Director, etc., but not department heads or lower level management) and any members of a Board of Directors must be disclosed to HUD even if such individuals are not considered to be Controlling Participants and do not need to file Previous Participation review submissions. Such information must be updated if it changes prior to the Triggering Event. HUD may accept an organizational chart without a full listing of an entity’s Board of Directors if HUD determines that such a listing would be unduly burdensome.

C. **Filing the Previous Participation Certification**

(1) To fulfill the Previous Participation review requirements, applicable controlling participant must file a Previous Participation Certification. The Previous Participation review shall occur concurrently with the review of the application for mortgage insurance or other request for approval of a Triggering Event. Participants may utilize either the electronic Active Partners Performance System (APPS) or a paper alternative. Participants should not file both an APPS submission and a paper form. HUD strongly encourages participants to utilize the APPS system.

The following chart indicates which filing options are available for which programs.

<b>Filing Method</b>	<b>Multifamily Housing &amp; Grant Administration Projects</b>	<b>Office of Residential Care Facilities</b>	<b>Office of Hospital Facilities</b>
Active Partners Performance System (APPS) Submission	X	X	X
OR			
Form HUD-2530 (paper)	X		X
Consolidated Certification <sup>1</sup> Previous Participation Section (paper)		X	

- (2) It is the participant's responsibility to ensure that the filing is correct, complete and accurate. The participant should ensure compliance with the certifications is met. In rare instances, if there is a certification that the Controlling Participant cannot certify to, the participant must strikethrough that certification and provide a signed letter of explanation.
  
- (3) As part of the Previous Participation Certification, participants are only required to list all projects which they have participated in over the previous 10-year period. However, to the extent HUD has information that precedes the previous 10 years, HUD reserves the right to review and consider a participant's Previous Participation in federal projects beyond the 10-year period when determining whether to approve participation in a Triggering Event. Controlling Participants must include all previous participation from the past 10 years in: (a) Covered Projects, (b) housing projects with current flags under the U.S. Department of Agriculture's previous participation review system and (c) any other housing project participating in a federal, state or local or government program if during the Controlling Participant's participation in the housing project (i) the housing project was foreclosed upon; (ii) the housing project was transferred by a deed in lieu of foreclosure; or (iii) an event of default, or similarly termed event, was declared and remained after any applicable notice and cure periods against the housing project or the Controlling Participant pursuant to the government program's project documents.

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<sup>1</sup> Consolidated Certifications are the following forms: HUD 90013-ORCF, Consolidated Certification-Borrower, HUD 90014-ORCF, Consolidated Certification-Principal of the Borrower, HUD 90015-ORCF, Consolidated Certification-Operator, HUD 90017-ORCF, Consolidated Certification-Management Agent, and HUD 90018-ORCF, Consolidated Certification-General Contractor.

**Active Partners Performance System (APPS) Submission Instructions**

HUD has made several upgrades to the system to improve the applicant submission process. For example, HUD now allows for electronic signatures of APPS submissions, ability to upload submission packages, and has improved the baseline submission to allow for edits. HUD encourages participants to utilize the APPS system when filing the Previous Participation Certification as it saves a substantial amount of time and allows for faster review of submissions by HUD reviewers.

Here is a link to the APPS resources:

[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/housing/mfh/apps/appsmfhm](http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/apps/appsmfhm)

**For questions about the APPS system contact the Multifamily Housing Systems Help Desk by phone at (800) 767-7588 or [Apps-F24p@hud.gov](mailto:Apps-F24p@hud.gov).**

Step 1: System Registration	This step registers Controlling Participants in the APPS system. See the APPS Quick Tips for detailed instructions on the registration process: <a href="http://portal.hud.gov/hudportal/documents/huddoc?id=appsquicktips.pdf">http://portal.hud.gov/hudportal/documents/huddoc?id=appsquicktips.pdf</a>
Step 2: Create a Baseline	This step establishes the organizational structure and previous participation of Controlling Participants. See Chapter 2 of the APPS Userguide for specific instructions and screen shots: <a href="http://portal.hud.gov/hudportal/documents/huddoc?id=chapter2.pdf">http://portal.hud.gov/hudportal/documents/huddoc?id=chapter2.pdf</a>
Step 3: Create a Property Submission	This step creates a submission for a Controlling Participant's role in a specific project. See Chapter 3 of the APPS Userguide for specific instructions and screen shots: <a href="http://portal.hud.gov/hudportal/documents/huddoc?id=chapter3.pdf">http://portal.hud.gov/hudportal/documents/huddoc?id=chapter3.pdf</a>
Step 4: Complete the Certification and Submit to HUD	In this step Controlling Participants electronically certify to previous participation certifications and send the submission to HUD for review. See the discussions above regarding what projects must be included and if there is a certification the Controlling Participant cannot certify to. See also Chapter 7 of the APPS Userguide for specific instructions and screen shots: <a href="http://portal.hud.gov/hudportal/documents/huddoc?id=CHAPTER7.PDF">http://portal.hud.gov/hudportal/documents/huddoc?id=CHAPTER7.PDF</a>
Step 5: Upload the Organization Chart with the Signature Pages	The user uploads the Organization Chart and Signature Pages into the APPS system. See Section B for a description of what the organization chart must include.

**Form HUD-2530 Completion Instructions<sup>2</sup>**

*It is the participant's responsibility to assure that the Form HUD-2530 is correct, complete and accurate.*

<b>Form Section</b>	<b>Instructions</b>
<b>Review certification language</b>	The participant should assure that compliance with the certification is met. See the discussion above if there is a certification the Controlling Participant cannot certify to.
<b>Block 2</b>	List Project Name and Number

<sup>2</sup> Until further notice, if using the paper Form HUD-2530, use these instructions.

<b>Form HUD-2530 Completion Instructions<sup>2</sup></b> <i>It is the participant's responsibility to assure that the Form HUD-2530 is correct, complete and accurate.</i>	
<b>Form Section</b>	<b>Instructions</b>
<b>Block 7</b>	Controlling Participants on the organization chart must match Block 7
<b>Blocks 8 and 9</b>	Write "See Organization Chart"
<b>Block 10</b>	Insert Social Security Number or Tax ID Number for each Controlling Participant
<b>Bottom of Page 1</b>	The Controlling Participants listed in Block 7 must also be listed in the signature block at the bottom of Page 1.
The Controlling Participants must sign and date the submission.	The Controlling Participants must sign and date the submission. Authorized person(s) may sign on behalf of other person(s) or entities. It is the signer's responsibility to assure that they are authorized to sign on behalf of others. Each signature block must include a signature.
<b>Schedule A</b>	All principals listed in Block 7 must be listed in Column 1
Column 2	Column 2 must include all previous participation from the past 10 years. See discussion above regarding what projects must be included.  Controlling Participants with No Previous Participation should write "No Previous Participation, First Experience."
Column 3 Principal Role	Principal roles must be included in Column 3
Column 4 Loan Status	The Status of the Loan must be listed in Column 4.  Note: This section is not applicable for General Contractors that did not have ownership interest in the project.
Column 5	Identify (check box) whether the project was ever in default during the participant's participation in Column 5. If the "yes" box is checked a detailed explanation of the circumstances (including mitigating factors) must be provided.  Note: This section is not applicable for General Contractors that did not have ownership interest in the project.
Column 6	List the latest Management Review and Physical Inspection dates and scores in Column 6. If there are no scores, write "None."  Note: This section is not applicable for General Contractors that did not have ownership interest in the project.
<b>Business Partner Registration System (BPRS) Registration</b>	Each Controlling Participant must be registered in the BPRS System. Here is a link: <a href="https://hudapps2.hud.gov/apps/part_reg/apps040.cfm">https://hudapps2.hud.gov/apps/part_reg/apps040.cfm</a>
<b>Organization Chart</b>	Attach an organization chart. See Section B for a description of what the organization chart must include.

<b>Consolidated Certification Completion Instructions</b>	
<i>It is the participant's responsibility to assure that the Consolidated Certification is correct, complete and accurate.</i>	
<b>Form Section</b>	<b>Instructions</b>
<b>Review certification language in the Consolidated Certification</b>	The participant should assure that compliance with the certification is met.
<b>Attachment 1</b>	Participants with Previous Participation must complete Attachment 1 of the Consolidated Certification for projects participated in over the past 10 years. See discussion above regarding what projects must be included.
<b>Business Partner Registration System (BPRS) Registration</b>	Each Controlling Participant must be registered in the BPRS System. Here is a link: <a href="https://hudapps2.hud.gov/apps/part_reg/apps040.cfm">https://hudapps2.hud.gov/apps/part_reg/apps040.cfm</a>
<b>Organization Chart</b>	Attach an organization chart with Social Security Numbers or Tax ID numbers for Controlling Participants. See Section B for a description of additional items the organization chart must include.

D. Approval of Participants

If there are no flags in the system and the applicant is able to make all the certifications or HUD has approved any reason as to why a certification cannot be made, the Previous Participation review is considered complete and the submission will be approved.

If there are current flags in the system, HUD staff will review:

- The comments in the system related to the flag.
- The lender or participant's explanation of the flag and any mitigation of risk associated with the flag.
- Whether flags need to be resolved.
- The flag history in the system to assess patterns of misconduct and risk to the Department.

Based upon this review, including review of the certifications, HUD will determine whether or not the Controlling Participant poses an unacceptable Risk to the Covered Project, in accordance with the definition in 24 CFR 200.212, namely whether the Controlling Participant could be expected to participate in the Covered Project in a manner consistent with furthering the Department's purposes. Based on this determination, HUD may approve, disapprove, limit or otherwise condition the continued participation of the Controlling Participant in the Triggering Event.

Disapproval is only appropriate in the relatively few cases where the risks present cannot be mitigated. HUD will disapprove a Controlling Participant if the Controlling Participant is suspended, debarred or subject to other restriction pursuant to 2 CFR part 180 or 2 CFR part 2424. HUD may disapprove a Controlling Participant if HUD determines: (i) The Controlling Participant is materially restricted, including voluntarily, from doing business with HUD (other than the restrictions listed above) or any other department or agency of the federal government if the Commissioner determines that such restriction demonstrates a significant risk to proceeding with the Triggering Event; or (ii) HUD determines that the Controlling Participant's record of Previous Participation reveals significant risk to proceeding with the Triggering Event that cannot be adequately mitigated.

In lieu of disapproval, HUD may (1) condition or limit the Controlling Participant’s participation; (2) temporarily withhold issuing a determination in order to gather more necessary information; or (3) require the Controlling Participant to remedy or mitigate outstanding violations of HUD requirements to the Commissioner’s satisfaction in order to participate in the Triggering Event. A remedy or mitigation may include resolving any underlying issues that caused the existing flags or other measures that demonstrate to HUD’s satisfaction that that the Controlling Participant could be expected to participate in the Covered Project in a manner consistent with furthering the Department’s purpose of supporting and providing decent, safe and affordable housing for the public.

In accordance with these provisions, if a HUD official approves a participant’s participation while a flag remains outstanding, the determining HUD official shall annotate the APPS system with a comment to the outstanding flag keeping a record of why approval is warranted and what, if any, conditions were imposed. The participant shall receive written notification of such determination and such explanatory comments. The purpose of this record is to prevent a repetitive HUD review in the future. If the circumstances and risks related to a flag have been determined by HUD to be mitigated, such risks and circumstances shall also be deemed mitigated and approval shall be approved under similar conditions, if any, for future Triggering Events, unless additional violations are present, circumstances have changed or additional information has come to light.

<b>HUD Offices &amp; Officials Responsible for Approval of Participants with Flags</b>				
	Office of Multifamily Housing & Assisted Housing Oversight Division, 220, 221(d)(4), 223(a)(7), 223(f), 231, 241(a) Programs		Office of Residential Healthcare Facilities	Office of Hospital Facilities
	Production	Asset Management		
Participants with Tier 1 Flags	Director of Multifamily Housing Production (HQ)	Director, Office of Asset Management and Portfolio Oversight (HQ)	Director, Office of Residential Care Facilities or Delegate	Director, Office of Hospital Facilities
Participants with Tier 2 Flags	Production Division Director	Asset Management Division Director	Supervisory Account Executive	Director, Office of Hospital Facilities
Participants with Tier 3 Flags	Branch Chief		Supervisory Account Executive	Director, Office of Hospital Facilities

E. Disapproval of Participants:

If a recommendation for disapproval is proposed, HUD staff will notify the participant, and, in the case of an FHA-insured loan, the Lender, in advance of the recommendation, which notification shall include the basis for the anticipated disapproval and, if known, what information is needed to resolve HUD's concerns. This notification will allow an opportunity for the participant to provide additional arguments for HUD's consideration to preserve processing efficiency and cut down on requests for reconsideration.

<b>HUD Offices &amp; Officials Responsible for Rejection of Participants with Flags</b>			
	Office of Multifamily Housing & Assisted Housing Oversight Division, 220, 221(d)(4), 223(a)(7), 223(f), 231, 241(a) Programs	Office of Residential Healthcare Facilities	Office of Hospital Facilities
	Production	Asset Management	
Participants with Tier 1, Tier 2 or Tier 3 Flags	Regional Director or Delegate	Division Director, Office of Residential Care Facilities or Delegate	Division Director, Office of Hospital Facilities

F. Reconsideration of a Disapproval:

Participants have the right to request a reconsideration of HUD decisions disapproving participants. The Controlling Participant shall submit requests for such reconsideration in writing within 30 days of receipt of HUD's notice of disapproval. The review committee or reviewing officer shall schedule a review of such requests for reconsideration. The Controlling Participant shall be provided written notification of such a review at least 7 business days in advance of the reconsideration. The reconsideration shall not occur prior to the date provided to the Controlling Participant so that the Controlling Participant shall be provided the opportunity to submit such supporting materials as the Controlling Participant desires or as the review committee or reviewing officer requests. However, reconsideration need not be conducted through a formal meeting and the Controlling Participant may not necessarily have an opportunity to appear before the reviewing official in person.

Before making its decision, the review committee or reviewing officer will analyze the reasons for the decision(s) for which reconsideration is being requested, as well as the documents and arguments presented by the Controlling Participant. The review committee or reviewing officer may affirm, modify, or reverse the initial decision. Upon making its decision, the review committee or reviewing officer will provide written notice of its determination to the Controlling Participant setting forth the reasons for the determination(s). Reconsideration decisions shall not be rendered by the same individual who rendered the initial review. Please see the below table for the officials responsible for rendering reconsideration decisions applicable to each program area. The decision rendered by the officials below is final agency action.

HUD Offices & Officials Responsible for Reconsideration of a Rejection		
Office of Multifamily Housing & Assisted Housing Oversight Division	Office of Healthcare Programs	
	Office of Residential Healthcare Facilities	Office of Hospital Facilities
Director, Office of Asset Management and Portfolio Oversight or Delegate	Director, Office of Residential Care Facilities or Delegate	Director, Office of Hospital Facilities or Delegate

G. **Flags**

HUD utilizes flags in the APPS system as a way to assess risk associated with participants in Office of Multifamily Housing and Office of Healthcare Programs projects. A flag does not automatically exclude an applicant from participation in HUD’s programs; however, flags are considered risk factors that require appropriate mitigation, where possible. Flags are to be a meaningful representation of risk, and therefore, they should not be placed for minor infractions that do not pose a risk to HUD. HUD will notify participants in writing when flags are placed.

1.Placement of Flags. When there is a violation or other circumstance warranting a flag in connection with a Covered Project, as listed in the charts below, HUD shall place a flag on all Controlling Participants who contributed to the violation or circumstance or failed to intervene appropriately but shall not place a flag on any Controlling Participant determined by HUD not to have contributed to the violation or circumstance (or if it is otherwise determined by HUD that placement of a flag on such Controlling Participant would be inappropriate). HUD shall not place any flags on Controlling Participants in connection with violations that occur prior to the

Controlling Participant’s involvement in the Covered Project. HUD shall not place flags relating to ongoing violations on Controlling Participants who become involved with a Covered Project with HUD’s consent in order to mitigate or remedy the ongoing violation, provided that HUD may place flags on such a Controlling Participant related to new violations occurring after the Controlling Participant has become involved with the Covered Project.

For the Office of Multifamily Housing & Assisted Housing Oversight Division, Tier 1 and 2 manual flags must be reviewed by the Branch Chief prior to placement. For the Office of Healthcare Programs, all manual flags must be reviewed by the Director of Asset Management prior to placement. The Branch Chief and Director of Asset Management, respectively, shall ensure that their office’s Account Executive notifies the flagged participant of the flag placement and provides adequate comments in the APPS system detailing the reason for the flag.

For any flag, if the Branch Chief or Director of Asset Management has reason to believe that placement of the flag is inappropriate, the Branch Chief and/or Director of Asset Management may approve removal of the flag or no placement of the flag in the first place. For example, HUD is aware that currently, when an owner purchases a portfolio, HUD’s Financial Assessment of Multifamily Housing (FASS) system may have trouble accepting the financial statement submission of the new owner. In this circumstance, the system may perceive the new owner as having multiple failures to file financial statements because each property in the portfolio may be perceived as

missing a financial statement. In this circumstance, the system may indicate that a Tier 2 flag would be appropriate, but obviously no flag is warranted. In this circumstance, the Account Executive shall not place a flag on the Controlling Participant's record or shall remove any such unwarranted flag relating to such circumstance. The Branch Chiefs and Directors of Asset Management have authority to make similar determinations in other circumstances.

2. Tiers of Flags. HUD has developed three flag tiers, which reflect varying levels of risk to HUD. Tier 1 flags are elevated risk to HUD. HUD considers Tier 1 flags to be a significant long-term risk to HUD and warrant significant mitigation in new transactions. Tier 2 flags are considered an ongoing risk to HUD. For Tier 2 flags that have a resolution date (as listed in the chart below), flags will not be removed until the time period has expired even if the action has been resolved earlier. This is considered a risk factor in production and asset management transactions. Tier 3 flags are considered a single risk to HUD and will be removed when the reason for the flag is corrected.

**Tier 1 Flags: Elevated Risk to the Department**

Tier 1 flags warrant permanent consideration when reviewing Controlling Participants for their participation in Triggering Events. Except that HUD will disapprove a Controlling Participant if the Controlling Participant is currently suspended, debarred or subject to other restriction pursuant to 2 CFR part 180 or 2 CFR part 2424, participants with Tier 1 flags may still participate in a Triggering Event if the risk posed by the flag has been appropriately mitigated.

Tier 1 Flags:

<b>Flag Type</b>	<b>Reason</b>	<b>Duration of Flag</b>
Mortgage Assignment/Conveyance of Title	Mortgagee assigned title or conveyed property to HUD	Permanent flag*
FHA Claim or Partial Payment of Claim	Claim payment by HUD	Permanent flag*
HUD Property Disposition	Foreclosure, loan sale, or other property disposition effort by HUD	Permanent flag*
Mortgagee in Possession (MIP)	HUD becomes the MIP	Permanent flag*
Deed in Lieu of Foreclosure	HUD receives a deed in lieu of foreclosure	Permanent flag*
Limited Denial of Participation (LDP)—Current or Past	Participant is currently or has previously been placed on the LDP list	Permanent flag
Suspension or Debarment—Current or Past	Participant is currently or has previously been placed on the Debarment list or the participant is or was temporarily suspended from participation in HUD programs	Permanent flag
Voluntary Abstention or Exclusion—Current or Past	Participant is currently or has previously been subject to a voluntary abstention from participation in HUD programs	Permanent flag
Conviction for fraud or embezzlement of funds	Participant has been convicted of fraud or embezzlement of funds	Permanent flag

**Participants with Tier 1 flags may be approved if:**

Participants with Tier 1 flags may be approved if:

1. The participant is not currently suspended, debarred or subject to other restriction pursuant to 2 CFR part 180 or 2 CFR part 2424;
2. HUD determines that, because the participant has sufficiently improved operations and oversight to ensure that further violations will not occur or for other compelling reasons, the flag is not indicative of ongoing risk.

Questions that may be relevant to this analysis include:

- What has the participant done to mitigate the risk indicated by the flag?
- Is the flagged condition indicative of a current pattern of behavior? What has the participant done to change the underlying causes of the flagged condition or otherwise prevent the flagged condition from occurring again?
- Is the flagged condition limited in number and/or geography relative to the participant’s whole portfolio? Was the flagged condition an isolated event?
- Has significant time passed since the condition was flagged?
- Was the flagged condition caused by market or other forces outside the participant’s control?
- How does the participant’s role in the flagged condition compare to his/her role in the Triggering Event and Covered Project for which they are currently seeking approval?

\*Unless otherwise determined by HUD due to mitigating circumstances.

**Tier 2 Flags: Compliance Risk to the Department**

Tier 2 flags warrant consideration for an extended period of time when reviewing Controlling Participants for their participation in Triggering Events, even after the underlying reason for the flag is resolved. A “Repeated” Offense means that a Controlling Participant has had three or more instances of the violation in a seven-year period.

Flag Type	Explanation	Duration of Flag
Repeated Failure to File Annual Financial Statements	Repeated Failure to File Annual Financial Statements (three or more occurrences in a seven-year period).	Retained until there have been five (5) years with no missed filings of Annual Financial Statements.
Default-Financial	60 days or more behind on loan payments	Retained for five (5) years after the placement date of the flag.
Unacceptable Physical Condition of a property	A property received a Real Estate Assessment Center (REAC) score below 30, two consecutive REAC scores below 60, Repeated REAC scores below 60, or other Repeated failures to maintain decent, safe and sanitary conditions	May be removed upon the completion of a five (5) year period in which the property receives no REAC score below 60.
Unauthorized Distributions	Repeated incidents of Unauthorized Distributions	Retained for five (5) years after the placement date of the flag.
Repeated Unresolved Audit Findings	Repeated Unresolved Audit Findings	Retained for five (5) years after the placement date of the flag provided that audit findings have been resolved.

Conversion to Unapproved Use	Project was converted to a use that is not permitted under the program obligations	Retained for five (5) years after the placement date of the flag
Unauthorized Alteration to Facility	Project or part of the project completed a significant addition/alteration/construction/licensure status without prior approval	Retained for five (5) years after the placement date of the flag.
Unauthorized Change in Participant	When a Transfer of Physical Assets (TPA), Change of Management Agent, Lessee or other change of Controlling Participant requiring HUD consent is completed without prior HUD approval.	Retained for five (5) years after the placement date of the flag.
Unauthorized Secondary Financing	When Secondary Financing is utilized without prior HUD approval.	Retained for five (5) years after the placement date of the flag.
Miscellaneous Violation of Business Agreements	Repeated violations of business agreements (e.g., breaking use agreement or affordability restrictions, repeated unacceptable management reviews, repeated failure to comply with an action plan, non-compliance with program requirements, non-responsive to HUD requests)	Retained for five (5) years after the placement date of the flag
Suspension/Termination of Payments	When HUD suspends subsidy payments due to non-compliance with Program Obligations	Retained for five (5) years after the placement date of the flag.
General Contractor Performance – Construction Compliance	Material failure to build project in accordance with approved Plans and Specifications (During Construction Period)	Retained for five (5) years after the placement date of the flag provided that noncompliance has been cured to HUD’s satisfaction.
General Contractor Performance – One Year Warranty	Failure to correct material warranty issues identified in HUD’s Nine-Month and 12-Month Warranty Inspections (After Construction Period)	Retained for five (5) years after the placement date of the flag provided that noncompliance has been cured to HUD’s satisfaction.

**Participants with Tier 2 flags may be approved if:**

Participants with Tier 2 flags may be approved if HUD determines that, because the participant has sufficiently improved operations and oversight to ensure that further violations will not occur or for other compelling reasons, the flag is not indicative of ongoing risk.

Questions that may be relevant to this analysis include:

- Are the underlying conditions causing the flag resolved?
- What has the participant done to mitigate the risk indicated by the flag?
- Is the flagged condition indicative of a current pattern of behavior? What has the participant

done to change the underlying causes of the flagged condition or otherwise prevent the flagged condition from occurring again?

- Is the flagged condition limited in number and/or geography relative to the participant's whole portfolio? Was the flagged condition an isolated event?
- Has significant time passed since the condition was flagged?
- Was the flagged condition caused by market forces outside the participant's control?
- How does the participant's role in the flagged condition compare to his/her role in the Triggering Event and Covered Project for which they are currently seeking approval?

**Tier 3 Flags: Temporary Risk to the Department**

Tier 3 flags relate to a single and/or less serious incident of non-compliance and can be resolved and removed. Participants with Tier 3 flags shall be approved, subject to satisfaction of the conditions listed below prior to or at the closing of the Triggering Event transaction. In the case of FHA Insurance, any conditions not met by the issuance of the Firm Commitment shall be special conditions to the Firm Commitment.

Flag Type	Reason	Duration of Flag	Approval Condition(s):
Failure to File Financial Statements	Automatically Flagged when the Annual Financial Statements are overdue	Removed when the missing Annual Financial Statements are filed or five (5) years after the placement date of the flag, whichever is sooner	The Annual Financial Statement must be filed.
Delinquent payments three or more times in the last year.	Flagged when borrower fails to make mortgage payment by the fifteenth of the month, three or more times in a given one-year period.	Removed when there is a one-year period of time in which borrower has made all mortgage payments by the fifteenth of each respective month, or five (5) years after the placement date of the flag, whichever is sooner.	<ul style="list-style-type: none"> <li>• Delinquencies cured (no longer delinquent).</li> <li>• Explain the cause of the delinquencies.</li> <li>• Efforts and/or a plan acceptable to HUD to avoid future delinquencies must be put in place.</li> </ul>
Unacceptable Physical Condition	Most recent REAC score is below 60, and additional (does not need to be consecutive) REAC score(s) below 60 over the past seven years.	Removed when the most recent REAC score is above 59.	Certify that 100% of the units in the project with the low REAC score have been inspected and all physical deficiencies have been remedied.
Unsatisfactory Management Review	Flagged when there is an Unsatisfactory Management Review	Removed when there is a Satisfactory Management Review, or five (5) years after the placement date of the flag whichever is sooner	Provide evidence that a satisfactory response to the management review was provided to HUD or the Contract Administrator.
Unauthorized Distributions	One incident of Unauthorized Distributions	Removed when the unauthorized distribution is repaid or otherwise resolved or five (5) years after the placement date of the flag	Unauthorized distributions must be repaid.

		whichever is sooner	
Material Unresolved Audit Findings	Material Unresolved Audit Findings	Removed when the finding is resolved or five (5) years after the placement date of the flag whichever is sooner	Provide evidence that the audit finding was resolved in manner satisfactory to HUD.
Failure to Provide or Comply with Action Plan	Failure to provide or comply with a HUD required action plan and/or certification in a timely manner.	Removed when the action plan is received and in good standing or five (5) years after the placement date of the flag whichever is sooner.	Provide evidence that the Action Plan was approved by HUD and implementation has begun.

3. Flag Resolution and Removal of Flags. Tier 1 flags are permanent and are not removed from the APPS system, except where indicated in the Tier 1 chart above that HUD determines removal is warranted due to mitigating circumstances. Tier 2 flags will be removed from the APPS system upon the completion of the conditions and time periods listed in the Tier 2 chart above. Tier 3 flags shall be removed from the APPS system upon the resolution of the violation giving rise to the flag. Participants shall be notified in writing when flags are resolved and/or removed and may request confirmation of flag resolution and/or removal if they do not receive such notification.

Notwithstanding anything else in this Guide, for any flag, if the Branch Chief or Director of Asset Management determines in writing that retention of the flag for the time periods listed above is inappropriate and unduly burdensome on the Controlling Participant or HUD, the Branch Chief and/or Director of Asset Management may waive this Guide’s requirements with respect to duration of the flag and approve the flag’s removal. In providing this determination, the Branch Chief or Director of Asset Management must consider any comments in the APPS system, including any comments indicating why the flag is warranted. If comment in the APPS system clearly describe that the flag is warranted and set out a justification for approval in forthcoming transactions despite the presence of the flag (as discussed in this Guide above), the flag may not be unduly burdensome and retention of the flag may be warranted. If, however, the Branch Chief or Director of Asset Management determines that retention of the flag is unwarranted or otherwise inappropriate and unduly burdensome on the Controlling Participant, the Branch Chief or Director of Asset Management shall indicate the basis for such determination and direct that the flag be removed.

H. Significant Changes to the Guide

HUD will not make any significant changes to the Guide without first offering advance notice and the opportunity for comment for a period of not less than 30 days.

I. Technical Assistance

Technical Assistance can be found on the HUD website at:  
[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/housing/mfh/prevparticipation](http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/prevparticipation).

Questions can be directed to:

<b>Office of Multifamily Housing &amp; Assisted Housing Oversight Division</b>	MF_PreviousParticipation@hud.gov
<b>Office of Residential Healthcare Facilities</b>	<a href="mailto:LeanThinking@hud.gov">LeanThinking@hud.gov</a> <a href="http://www.hud.gov/healthcare">www.hud.gov/healthcare</a>
<b>Office of Hospital Facilities</b>	<a href="mailto:Hospitals@hud.gov">Hospitals@hud.gov</a> 1-877-HLTH-FHA <a href="http://www.hud.gov/healthcare">www.hud.gov/healthcare</a>

**Addendum: Identification and Certification of Limited Liability Investor Entities**

The following certification is to be submitted as part of the FHA loan application from each entity which claims to be a limited liability investor.

**Project Name:**  
**FHA Project #:**

**I, [name of authorized signer],** am authorized to certify on behalf of [name of investor entity] to each and every item stated below.

I certify that **[name of investor entity]** is:

- a. Investing in **[name of owner/mortgagor entity]**, which anticipates receiving **[list applicable tax credits, e.g.: Low-Income Housing Tax Credits pursuant to Section 42 of the Internal Revenue Code]**;
- b. A limited liability company, an investor corporation, an investor limited partnership, an investor limited liability limited partnership or other similar entity with limited liability; and
- c. An investor with limited or no control over routine property operations or HUD regulatory and/or contract compliance, unless it should take control of the ownership entity or assume the operating responsibilities in the event of the default of the operating partner or upon specific events defined in the **[name of owner/mortgagor entity]**'s [operating agreement / partnership agreement / organizational documents].

I further certify that should any of the facts or circumstances that support the certifications above change or the entity for which this certification is made withdraws from participation in the owner/mortgagor, I will notify HUD immediately in writing, providing full disclosure and explanation of the change(s).

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Edward L. Golding  
Principal Deputy Assistant Secretary