

**MEMORANDUM OF UNDERSTANDING**

Between the  
United States Department of Agriculture, Rural Housing Service (North Carolina)  
and  
The Department of Housing and Urban Development (HUD)  
and  
North Carolina Housing Finance Agency

**INTRODUCTION**

The United States Department of Agriculture acting through the Rural Housing Service of the Rural Development mission area in North Carolina hereinafter referred to as "RHS," and The Department of Housing and Urban Development Multifamily Housing "HUD" and North Carolina Housing Finance Agency, hereinafter referred to as "State Agency", collectively, "the parties", wish to enter into the following Memorandum of Understanding (MOU).

**ALL PARTIES THEREFORE AGREE AS FOLLOWS**

Under this MOU, RHS, and the State Agency agree to engage in cooperative efforts as described in Attachment A to this MOU, which is hereby incorporated by reference.


Under this agreement, HUD, through its Field Office Director (herein referred to as "Field Director") and the State Agency agree to engage in cooperative efforts as described in Attachment B to this MOU, which is hereby incorporated by reference.

**MODIFICATION OF AMENDMENT PROVISION**

This MOU will be modified or amended by written agreement of RHS, HUD and the State Agency. Requests for amendments to the MOU will be initiated by the parties through written notification.

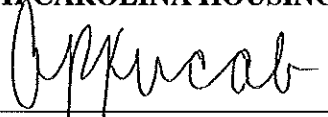
**ACCEPTANCE AND SIGNATURE OF EACH PROVIDING PARTY**

**U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

By:   
Edward Jennings, Jr.  
Regional Administrator

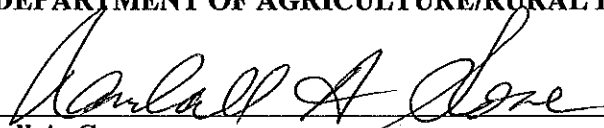
02/29/12  
Date

**NORTH CAROLINA HOUSING FINANCE AGENCY**

By:   
A. Robert Kucab  
Executive Director

2/29/12  
Date

**U.S. DEPARTMENT OF AGRICULTURE/RURAL DEVELOPMENT**

By:   
Randall A. Gore  
State Director

2/29/12  
Date

**ATTACHMENT A  
TO MEMORANDUM OF UNDERSTANDING**

February 29, 2012

Between the

United States Department of Agriculture, Rural Housing Service, North Carolina (RHS)  
and

North Carolina Housing Finance Agency (NCHFA)

**INTRODUCTION**

Reference is made to Memorandum of Understanding (MOU or Agreement) dated February 29, 2012 between RHS, HUD, and NCHFA. This document will provide the specific protocol to be followed for conducting the subsidy layering review between RHS and NCHFA.

**SCOPE OF THE AGREEMENT**

Under this Agreement, RHS, and NCHFA, State Agency agree to engage in cooperative efforts to enable RHS to assure that only the necessary assistance is provided through the Section 515 program or other federal sources subject to Federal Subsidy Layering requirements and to enable the State Agency to effectively evaluate tax credit requests of RHS applicants, as provided in Section 42 of the IRS Code.

**PURPOSE**

The purpose of this document is to establish the general conditions under which the State Director and State Agency agree to cooperate.

**BOTH PARTIES AGREE:**

- (a) To share information, not otherwise protected under the Privacy Act, on project costs.
- (b) To follow the fee norms, established in the applicable Qualified Allocation Plan as published annually by NCHFA; including but not limited to:
  - (1) Builder's profit,
  - (2) General overhead
  - (3) General requirements
  - (4) Developer's fee
    - i. Fees also will not exceed amounts allowed by RHS.
- (c) The above fee norms will be used in the Agency's analysis of the total amount of assistance that is necessary for a proposal. RHS will prepare an analysis in a spreadsheet format on all loan requests based on information provided by the applicant and applicable RHS program requirements at the following times:
  - (1) When accepted as a loan request;
  - (2) Just prior to approval; and
  - (3) Review the approved cost certification and subsidy layering review prepared by NCHFA.
- (d) For underwriting purposes, NCHFA will rely on the following:
  - (1) the current RHS approved operating budget to determine projects' operating expenses as provided by the borrower,
  - (2) the 2% initial operating and maintenance capital as the rent-up reserve,
  - (3) accept RHS's approved replacement reserve amount, and
  - (4) will not require a separate operating reserve unless approved by RHS.

- (e) To align our application review processes so that RHS can review and approve the appraisal, capital needs assessment, sales price, and projected operating budget prior to the NCHFA's full application deadline.
- (f) In all cases where the results of an analysis conducted by NCHFA indicate that there will be excess or shortfall of assistance, NCHFA and RHS will reach an agreement for reducing excess assistance or covering shortfalls.
- (g) In the event that excess assistance is not reduced through other means, RHS may reduce the amount of its loan to ensure that RHS assistance provided is not more than is necessary to provide affordable housing after taking account of assistance from all Federal, State, and local sources. Approval of any reduction will require formal notification to the applicant and the State Agency and the RHS National Office.
- (h) NCHFA's approval of the cost certification showing the audited development cost of the project after the development is complete and the final sources and uses of funds for projects receiving both RHS funds and tax credits will serve as the final subsidy layering review. If an Identity of Interest exists between the borrower and the contractor, the audit will be performed in accordance with Government Audit Standards (GAS) as required by RHS.
- (i) RHS does not certify accuracy of the tax credit applicant's eligibility, nor does it certify the applicant's compliance with requirements of Section 42 of the Internal Revenue Code. The State Agency understands that the owner certifies the information to RHS as being true and correct representations and that RHS carries out periodic reviews and analysis of the data to verify compliance with its requirements.
- (j) The general information shared under this Agreement is for internal analysis and will not be disclosed to other than the appropriate RHS and State Agency employees and that specific information on a proposal may be shared with the applicant and other providers of funds on the respective proposals as appropriate.
- (k) Cooperate and share available resources and information not otherwise protected under the Privacy Act, including material changes in the applicant's proposal that may result in significant changes in the anticipated sources and uses, including size and scope of the project, amounts or sources of available funding resources, or other operational changes regarding the proposed development, terms of proposed property acquisition or value, or any other item identified in the attached appendix.

**RHS IN NC AGREES:**

- (a) RHS agrees to inform any applicants seeking both tax credit and RHS loan assistance that the MOU will be applied to the processing of their request for RHS assistance. As part of the RHS application package, RHS will request that the borrower provide documents to RHS as referenced in Appendix A.
- (b) To provide to the State Agency information on Section 515 projects being considered and receiving Section 515 funding decisions. RHS will only disclose information that is not protected under the Privacy Act. If RHS obtains a Privacy Act waiver from the borrower it will provide information as follows:
  - (1) A list of Section 515 loan applications and their status;
  - (2) For each loan request on the list, the most recent *Form RD 1924-13* or other cost estimation documents;

- (3) A copy of *Form RD 3560-31* and any identity-of-interest (IOI) disclosure information that has been provided to RD;
- (4) A copy of any notification of selection for further processing issued to applicants;
- (5) When the construction is completed, the final *Form RD 1924-13* including any cost analysis prepared by RD;
- (6) A copy of the Annual Operating Budget, Form RHS 3560-7;
- (7) A copy of any purchase contract or agreement provided by the applicant;
- (8) A copy of any appraisal made available to RHS for use in evaluating the proposal;
- (9) A copy of any Capital Needs Assessment provided by the applicant; and
- (10) The results of any analysis on necessary assistance to the applicant and the State Agency.

**NCHFA AGREES:**

- (a) The State Agency agrees to inform any applicants seeking both tax credit and RHS loan assistance that the MOU will be applied to the processing of their request for tax credits. A copy of the MOU will be provided to applicants for their guidance when combining the assistance provided by both agencies.
- (b) To provide to RHS in North Carolina the following data:
  - (1) The list of tax credit loan requests received from applicants that indicate they are seeking financing from RHS;
  - (2) For each loan request, a copy of the Tax Credit Application including the detailed construction and development cost breakdowns, anticipated rent schedules, and operating proforma data used to estimate the amount of tax credits for which the developer would be eligible;
  - (3) *IRS Form 8609* and approved cost certification showing the cost data used to determine the development cost of the project after the development is complete and the final sources and uses of funds for projects receiving both RHS funds and tax credits is made;
  - (4) A list of all allocation requests to RHS for comment in an effort to coordinate the use of limited resources and to ensure that no existing projects are adversely affected.
  - (5) NCHFA contracted market study.
- (c) To provide information at the close of each application cycle and issuance of *IRS Form 8609*.

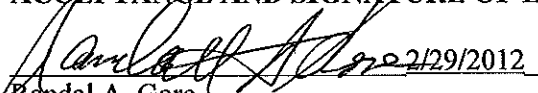
**PERIOD OF AGREEMENT**


This Agreement will remain in effect until terminated by written notification of either party.

**MODIFICATION OF AMENDMENT PROVISION**

This Agreement will be modified or amended by written agreement of RHS and the State Agency. Requests for amendments to the Agreement will be initiated by either of the two parties through written notification.

**ACCEPTANCE AND SIGNATURE OF EACH PROVIDING PARTY**

  
Randal A. Gore  
State Director, US Department of Agriculture  
Rural Development

  
A. Robert Kucab  
Executive Director,  
North Carolina Housing Finance Agency

### Appendix A, Applicant Document Checklist

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 any 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 include only permanent uses and 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 comply with USPAP requirements and establish the “as is” market value of the property, before construction or rehabilitation, and without consideration of any financial implications of tax credits or project based voucher or other subsidy or tenant 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 minimum 15 or 20-year period. Income and expenses must be trended at percentages as prescribed by program regulations or the QAP.
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. Commitment letter for any project-based voucher or other tenant assistance.
14. Proposed project-based voucher gross rent amounts and projected utility allowances.
15. A capital needs assessment conducted or approved by NCHFA and RHS.
16. Sales or Purchase Agreement if applicable.

**ATTACHMENT B**  
**TO MEMORANDUM OF UNDERSTANDING**

February 29, 2012

Between the

The Department of Housing and Urban Development (HUD)

and

North Carolina Housing Finance Agency (NCHFA)

**INTRODUCTION**

Reference is made to Memorandum of Understanding (MOU) dated February 29, 2012 between RHS, HUD and NCHFA. This document will provide the specific protocol to be followed for conducting the subsidy layering review between HUD and NCHFA.

**SCOPE OF THE MOU**

Under this MOU, HUD, through Field Office Director (herein referred to as "Field Director") and the NCHFA, (herein referred to as "State Agency"), collectively "the parties", agree that subsidy layering reviews must be performed whenever applicant disclosure is required by Section 102(b) and (c) of the Reform Act and upon issuance of form IRS-8609, indicating the amount of tax credits awarded engage in cooperative efforts to enable HUD to assure that only the necessary assistance is provided through the following programs: HUD's Section 8 Project-Based Rental Assistance Program authorized under 42 U.S.C. §1437f, HUD's Multifamily Mortgage Insurance Program authorized under 12 U.S.C. §1713 and HUD's Capital Advance under 12 U.S.C §1701q, HUD's HOME Investment Partnerships Program (HOME) authorized under title II of the Cranston-Gonzalez National Affordable Housing Act (1990) (42 U.S.C. §12701 et seq.), or other non-HUD federal sources subject to subsidy layering review requirements.

**PURPOSE**

The purpose of this document is to establish the general conditions under which the Field Office Director and State Agency agree to cooperate.

**I. BOTH PARTIES AGREE:**

- (a) To share information on project costs for all projects financed with a combination of low-income housing tax credits and any of the aforementioned forms of HUD assistance.
- (b) To follow the fee norms, established in the applicable Qualified Allocation Plan as published annually by NCHFA; including but not limited to:
  - (1) Builder's profit
  - (2) General overhead
  - (3) General requirements
  - (4) Developer's fee

- (c) The above fee norms will be used in the State Agency's analysis of the total amount of assistance that is necessary for a project. Pursuant to Section 911 of the Housing and Community Development act of 1992, fees may exceed the norms when justified by special circumstances and approved by both HUD and the State Agency.
- (d) In all cases where the results of an analysis indicate that there will be excess or shortfall of assistance, the State Agency and HUD will reach an agreement for reducing excess assistance or covering shortfalls.
- (f) The State Agency and HUD understand that neither the State Agency nor HUD certifies the accuracy of the tax credit applicant's eligibility or certifies to the applicant's compliance with Section 42 of the Internal Revenue Code. The State Agency understands that the owner certifies the information to HUD and to the State Agency as being true and correct representations.
- (g) The State Agency and HUD understand that, unless required by law, the general information shared under this MOU is for internal analysis and will not be disclosed to other than the appropriate HUD and State Agency employees. Further, the State Agency and HUD understand that, specific information on a proposal may be shared with the applicant and other providers of funds on the respective proposals as appropriate.

## **II. HUD AGREES:**

- (a) To provide to the State Agency information on tax credit projects being considered for HUD assistance as follows, upon request:
  - (1) A copy of any notification of insurance commitment or subsidy contract issued to applicants;
  - (2) A copy of any Cost Analysis provided to, or prepared by HUD;
  - (3) The results of any analyses on necessary assistance prepared by HUD to the applicant and the State Agency.
- (b) To inform any applicants seeking a combination of both Tax Credits and HUD Housing assistance that the MOU will be applied to the underwriting of the Tax Credit application. A copy of the MOU may be provided to applicants for their information.

## **III. STATE AGENCY AGREES:**

- (a) To maintain the following information:
  - (1) The list of tax credit requests received from applicants that indicate they are seeking a combination of Tax Credits and HUD Housing Assistance.
  - (2) For each request a copy of the Tax Credit Application with the development cost breakdown used to estimate the amount of tax credits for which the developer would be eligible;

- (3) Documentation supporting the subsidy layering review findings.
- (b) To provide to HUD the following information, upon request:
  - (1) The section 911 certification of subsidy layering review findings (as indicated in the IRS Form 8609) and a copy of the developer's disclosure(s) of sources and use of funds.
  - (2) When the development is complete and the final sources and uses of funds in projects receiving both tax credits and HUD Housing Assistance the IRS Form 8609 and the section 911 certification.

**IV. PERIOD OF MOU**

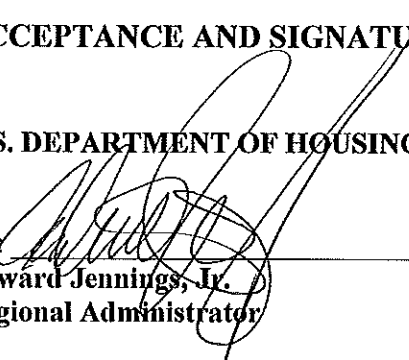
This MOU will remain in effect until terminated by written notification of either of the parties.

**V. MODIFICATION OF AMENDMENT PROVISION**

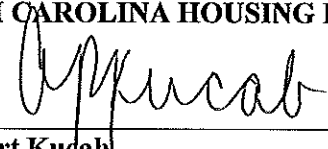
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**ACCEPTANCE AND SIGNATURE OF EACH PROVIDING PARTY**

**U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

By:  \_\_\_\_\_ 02/29/2012  
Edward Jennings, Jr. Date  
Regional Administrator

**NORTH CAROLINA HOUSING FINANCE AGENCY**

By:  \_\_\_\_\_ 02/29/2012  
A. Robert Kudab Date  
Executive Director