

MEMORANDUM OF UNDERSTANDING

Between the
U. S. Department of Agriculture, Rural Housing Service (Pennsylvania)
and
U. S. Department of Housing and Urban Development
and
Pennsylvania Housing Finance Agency

INTRODUCTION

The U.S. Department of Agriculture acting through the Rural Housing Service of the Rural Development mission area in Pennsylvania (hereinafter referred to as "RHS"), and the U.S. Department of Housing and Urban Development (hereinafter referred to as "HUD"), and the Pennsylvania Housing Finance Agency (hereinafter referred to as "State Agency"), collectively "the parties", wish to enter into a Memorandum of Understanding (MOU) regarding their respective roles and responsibilities in the accomplishment of Subsidy Layering Reviews (SLR) related to affordable housing projects developed and financed within the Commonwealth of Pennsylvania. The State Agency is to serve as the designated entity to perform the primary subsidy layering reviews for low-income housing tax credit developments that will receive funding or assistance from HUD or RHS and newly constructed or rehabilitated developments that will receive project-based voucher assistance.

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, which is hereby incorporated by reference.

Under this MOU, HUD and the State Agency agree to engage in cooperative efforts as described in Attachment B, 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: Jane C.W. Vincent 3/13/2012
Jane C.W. Vincent Date
Regional Administrator

PENNSYLVANIA HOUSING FINANCE AGENCY

By: Brian A. Hudson, Sr. 3/13/12
Brian A. Hudson, Sr. Date
Executive Director

U.S. DEPARTMENT OF AGRICULTURE/RURAL DEVELOPMENT

By: Thomas P. Williams 3-13-12
Thomas P. Williams Date
State Director

U.S. DEPARTMENT OF AGRICULTURE/RURAL DEVELOPMENT

By: Tammye H. Trevino 3/13/12
Tammye H. Trevino Date
Administrator for Housing and Community Facilities Programs

**ATTACHMENT A
TO MEMORANDUM OF UNDERSTANDING**

Between the
U. S. Department of Agriculture, Rural Housing Service, Pennsylvania (RHS)
and
Pennsylvania Housing Finance Agency (PHFA)

INTRODUCTION

Reference is made to Memorandum of Understanding (MOU or Agreement) dated *MAR 13*, 2012 between RHS, HUD and PHFA. This document will provide the specific protocol to be followed for conducting subsidy layering reviews between RHS and PHFA.

SCOPE OF THE AGREEMENT

Under this agreement, RHS, through its State Director for Rural Development (herein referred to as "State Director"), and PHFA (herein referred to as "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. The State Agency will have the responsibility of performing subsidy layering reviews.

PURPOSE

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

I. BOTH PARTIES AGREE:

- (a) To share information on project costs.
- (b) To use the fee norms for items such as builder's profit, general overhead, general requirement and developer's fee established in the applicable Qualified Allocation Plan as published annually by the State Agency.
- (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 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:
 - (1) When accepted as a loan request;
 - (2) Just prior to approval; and

- (3) When the cost certification is completed and prior to issuance of IRS Form 8609, indicating the amount of tax credits.
- (d) For underwriting purposes, State Agency will rely on the following:
 - (1) the current RHS approved operating budget to determine project's operating expenses;
 - (2) the 2% initial operating and maintenance capital as the rent-up reserve;
 - (3) accept RHS's approved replacement reserve amount and will not require a separate operating reserve unless approved by RHS; and
 - (4) set the approved rents to be the lower of either the low-income housing tax credit (LIHTC) or Fair Market rents for the area unless a different rent is agreed to by both Agencies
- (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 PHFA's full application deadline
- (f) In all cases where the results of an analysis indicate that there will be excess or a shortfall of assistance, PHFA and RHS will reach an agreement for reducing the excess assistance or covering the shortfall.
- (g) In the event that excess assistance is not reduced through other means, RIIS will reduce the amount of its loan to ensure that RIIS assistance provided is not more than is necessary to provide affordable housing after taking into account the assistance from all Federal, State and local sources. Approval of any reduction in RHS assistance will require formal notification to the applicant and the State Agency and the RIIS National Office.
- (h) State Agency's approved 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 and State Agency do not certify accuracy of the tax credit applicant's eligibility, nor do they 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 the RIIS 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, unless required by law, will not be disclosed to other than the appropriate RHS and State Agency employees, however 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, 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, or terms of proposed property acquisition or value.

II. RHS IN PENNSYLVANIA AGREES:

- (a) To provide to the State Agency information on Section 515 projects being considered and receiving Section 515 funding decisions 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 "Estimate and Certificate of Actual Costs" or other cost estimation documents;
 - (3) A copy of Form HUD 2530/RD 1944-37 "Previous Participation Certification" and any identity-of-interest (IOI) disclosure information that has been provided to RHS;
 - (4) A copy of Form RD 3560-31 and any identity of interest (IOI) disclosure information that has been provided to RD;
 - (5) A copy of any notification of selection for further processing issued to applicants;
 - (6) When the construction is completed, the final Form RD 1924-13 including any cost analysis prepared by RHS;
 - (7) A copy of the Annual operating Budget, Form RD 3560-8;
 - (8) A copy of any purchase contract or agreement provided by the applicant;
 - (9) A copy of any appraisal made available to RHS for use in evaluating the appraisal;
 - (10) A copy of any Capital Needs Assessment provided by the applicant; and
 - (11) The results of any analysis on necessary assistance to the applicant and the State Agency.

III. STATE AGENCY 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 RIIS in Pennsylvania the following data:

- (1) The list of tax credit loan requests received from applicants that indicate they are seeking financing from RIIS;
- (2) For each loan request, a copy of the Tax Credit Application with the detailed construction and development cost breakdown, 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 a copy of the 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 RIIS funds and tax credits is made; and
- (4) A list of all reservation 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.

(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 RIIS 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

PENNSYLVANIA HOUSING FINANCE AGENCY

 3/13/12
Brian A. Hudson, Sr. Date
Executive Director

U.S. DEPARTMENT OF AGRICULTURE/RURAL DEVELOPMENT

 3-13-12
Thomas P. Williams Date
State Director

U.S. DEPARTMENT OF AGRICULTURE/RURAL DEVELOPMENT

 3/13/12
Tammye H. Trevino Date
Administrator for Housing and Community Facilities Programs

EXHIBIT A

DEFINITIONS:

General Overhead: Includes general operation items necessary for the contractor to be in business. They may include, but are not limited to the following: tools and minor equipment; worker's compensation and employer's liability; unemployment tax; Social Security and Medicare; manager's, clerical and estimator's salaries; pension and bonus plans; main office insurance, rental, utilities, miscellaneous expenses; general liability insurance; legal, accounting, and data processing; automotive and light truck expense; vehicle expenses; depreciation of overhead capital expenditures; and office equipment maintenance.

General Requirements: Includes items that are required in the construction contract for the contractor to provide for the specific project. They do not include items that pertain to a specific trade nor overhead expenses of the contractor's general operation. Items may include, but are not limited to, the following: Field supervision; field engineering such as field office, sheds, toilets, phone; performance and payment or latent defects bonds; const certification; building permits; site security; temporary utilities; property insurance; and cleaning or rubbish removal.

**ATTACHMENT B
TO MEMORANDUM OF UNDERSTANDING**

Between the
U. S. Department of Housing and Urban Development (HUD)
and
Pennsylvania Housing Finance Agency (PHFA)

INTRODUCTION

Reference is made to Memorandum of Understanding (MOU) dated MAR 13, 2012 between RHS, HUD and PHFA. This document will provide the specific protocol to be followed for conducting subsidy layering reviews between HUD and PHFA (herein referred to as "State Agency").

SCOPE OF THE MOU

Under this MOU, HUD and the PHFA, collectively "the parties," agree to cooperate in their efforts to assure that only the assistance necessary to provide affordable housing is provided to a project receiving low-income housing tax credits and HUD Housing Assistance. HUD Housing Assistance refers to those programs administered by the Federal Housing Administration (FHA) or the Office of Housing or a newly constructed and rehabilitated project receiving project-based voucher assistance. The parties further agree that subsidy layering reviews must be performed whenever applicant disclosure is required by Section 102(b) and (c) of the Housing and Community Development Reform Act of 1989 (herein referred to as the "Reform Act") and upon issuance of form IRS-8609, indicating the amount of tax credits awarded. In accordance with Section 911 of the Reform Act, the State Agency will have the responsibility of performing subsidy layering reviews for the Commonwealth of Pennsylvania.

PURPOSE

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

I. BOTH PARTIES AGREE:

- (a) To inform any applicants seeking 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.
- (b) 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.
- (c) To use the fee norms for items such as builder's profit, general overhead, general requirement and developer's fee established in the applicable Qualified Allocation

Plan as published annually by PHFA. 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. As allowed by Section 911, fees may exceed the norms when justified by special circumstances and approved by both HUD and the State Agency.

- (d) To use the definitions and formulas for the determination of profits, costs, and amounts of assistance as outlined in the Qualified Allocation Plan for the State.
- (e) 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 applicant certifies the information to HUD and to the State Agency as being true and correct representations.
- (f) 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 and as permitted by the Reform Act and its implementing regulations.

II. HUD AGREES:

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 Certification and/or 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.

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 and the developer's disclosure(s) of sources and use of funds.

- (2) When the development is complete (i.e., cost certifies), the final sources and uses of funds, the IRS Form 8609 and the section 911 certification and documents.
- (c) In all cases where the results of the subsidy layering review indicate that there will be excess assistance, the State Agency will reduce the amount of low income housing credits or the State Agency soft debt, if any, to eliminate the excess as required by Section 42 of the IRS Code.

PERIOD OF MOU

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

MODIFICATION OF AMENDMENT PROVISION

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

INDEMNIFICATION

Each party to this MOU must seek its own legal representation and bear its own costs including judgments in any litigation that may arise from performance of their respective obligations under this MOU. It is specifically understood and agreed that no party will indemnify any other party in such litigation.

MISCELLANEOUS PROVISIONS

(a) This MOU is not intended to, and does not, restrict the authority of any party to act as provided by law, statute or regulation.

(b) This MOU addresses the activities of the parties, and as such does not address (and thus does not restrict) the activities and authorities of any other Federal or State agency or office.

(c) This MOU is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, by any person against either the United States or the State of Pennsylvania or their respective departments, agencies, entities, officers, employees, or agents, or any other person.

(d) This MOU may be executed in one or more counterparts, each of which will be considered an original document.

(e) Any information furnished to the parties under this MOU is subject to the Freedom of Information Act, 5 U.S.C. Section 552, the Privacy Act, 5 U.S.C. 552a, unless otherwise exempt from disclosure pursuant to this or other laws.

(f) The invalidity or unenforceability of any provision of this MOU shall not affect the validity or enforceability of the remaining provisions of this MOU.

GOVERNING LAW

This MOU shall be governed by and construed in accordance with the laws of the State of Pennsylvania and the Federal laws of the United States of America. Federal law will prevail in case of conflict.

ACCEPTANCE AND SIGNATURE OF EACH PROVIDING PARTY

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

By: Jane C. W. Vincent 3/13/2012
Jane C. W. Vincent Date
Regional Administrator

PENNSYLVANIA HOUSING FINANCE AGENCY

By: Brian A. Hudson, Sr. 3/13/12
Brian A. Hudson, Sr. Date
Executive Director