

FHA Non-Recourse Policy -- Multifamily Mortgage Insurance Programs

For all new FHA-insured mortgages, including the refinance of currently FHA-insured mortgages, the Regulatory Agreement now includes a section addressing the non-recourse “carve-outs” identified as “Section 50.” **The provisions of this Section do not alter the non-recourse nature of the loan but do require the signatories to accept personal liability for certain acts and project funds:**

- a) for funds or property of the Project coming into its hands which, by the provisions of the Regulatory Agreement, it is not entitled to retain;
- b) for authorizing the conveyance, assignment, transfer, pledge, encumbrance, or other disposition of the Mortgaged Property or any interest therein in violation of Section 36(a) of the Regulatory Agreement without the prior written approval of HUD; and
- c) for its own acts and deeds, or acts and deeds of others, which it has authorized in violation of the provisions of the Regulatory Agreement.

In short, the signatories must take responsibility for their actions and actions of others which they authorize. For example, if an improper distribution of Surplus Cash is made to the signatory, they are responsible for repayment of those funds, but repayment of the loan balance remains non-recourse. The signatory is not responsible for acts committed by others without their knowledge. HUD has no objection to affiliated entities indemnifying individuals. Paragraph (c) only applies to (a) and (b).

The lender (AGM) will perform the Mortgage Credit review of the sponsoring entity and identify to HUD who has been proposed to sign Section 50. Once accepted by HUD, the signatories are specified in the HUD loan commitment. Current HUD policy for the identification of the appropriate signatories is summarized as follows:

1. For privately held entities: Generally, two signatures are required. In most cases, HUD, upon the Lender’s recommendation, shall select one individual signatory to sign in his or her individual capacity and the project parent/sponsor entity to sign in a corporate capacity. In any specific deal, underwriting may point to a different entity with the requisite **control and involvement or interest in the Project, positive credit history**, and **adequate financial strength** relative to the size of the loan to serve in the capacity required by Section 50. In some circumstances, particularly in circumstances

involving very large, capitalized, and experienced corporate entities with complex corporate organizational structures, the underwriting may not reveal an apparent individual with the requisite control, positive credit history, and adequate financial strength, to reasonably serve in the required capacity, whereas the parent/sponsor entity itself may possess such necessary characteristics to act as the sole necessary signatory. In considering whether or not such an entity may serve as the sole signatory to Section 50, HUD and the Lender shall take into consideration whether such an entity has been deemed by a GSE as an appropriate signatory to provisions similar to Section 50 in a recent GSE transaction. Provided that such an entity is determined to hold the requisite **positive credit history** and **adequate financial strength** required by Section 50, the GSE-approved entity may be deemed an appropriate sole signatory for Section 50 and HUD program staff need not identify additional signatories. A copy of relevant excerpts from the recently-closed transactions may provide adequate evidence of such GSE approval.

2. For publicly traded corporations or REITS, or Non-profit organizations: The parent/sponsor entity itself is acceptable as the sole signatory. For such entities, any individual signing behalf of the corporate entity does not sign in an individual capacity, but to bind the parent/sponsor, and no personal liability will be claimed against the individuals signing in such a capacity.
3. For any corporate entities required to execute Section 50: Every corporate officer is not required to sign. Whomever the corporate entity has authorized to bind the company in connection with the proposed transaction may sign, provided that Mortgage Credit review has discretion to require additional signatories if warranted in a specific (exception) situation.
4. Please note the following prohibitions related to Section 50:
 - i. Insertions of “or successors” language to the identification of signatories is not allowed. The Regulatory Agreement can and should be amended when there is a new individual who is responsible for the provisions of Section 50.
 - ii. Riders to the regulatory agreement that attempt to limit a signatory’s liability are NOT allowed.
 - iii. Section 50 may not be omitted because a project has been processed as an a7 versus another section of the Act.
5. This recourse policy only applies to the “bad acts” described in Section 50.

Regulatory Agreement - Form HUD-92466M

SECTION IX. NON RECOURSE

50. **NONRECOURSE DEBT.** The following individuals/entities as identified in the “**Firm Commitment**” (which means the commitment for insurance of advances or commitment for insurance upon completion issued to Lender by HUD under which the debt evidenced by the Note is to be insured pursuant to a Section of the Act, dated _____):

do not assume personal liability for payments due under the Note and Security Instrument, or for the payments to the Reserve for Replacements, or for matters not under their control, provided that said individuals/entities shall remain personally liable under this Agreement only with respect to the matters hereinafter stated; namely: (a) for funds or property of the Project coming into its hands which, by the provisions hereof, it is not entitled to retain; (b) for authorizing the conveyance, assignment, transfer, pledge, encumbrance, or other disposition of the Mortgaged Property or any interest therein in violation of Section 36(a) of this Agreement without the prior written approval of HUD; and (c) for its own acts and deeds, or acts and deeds of others, which it has authorized in violation of the provisions of this section 50. The obligations of the individuals/entities referenced above shall survive any foreclosure proceeding, any foreclosure sale, any delivery of any deed in lieu of foreclosure, any termination of this Agreement, or any release of record of the Security Instrument.

Individual/Entity
Title

Individual/Entity
Title