Fannie Mae

# Multifamily Selling and Servicing Guide

## Effective as of October 30, 2024

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# Summary of Changes

| HIGHLIGHTS |
|---|
| **Effective for Mortgage Loans Committed as of October 30, 2024**, removed the Borrower's requirement to execute a Payment Guaranty (Pricing Incentive Recapture) (Form 6020.PIR) for Sponsor-Initiated Affordability (SIA) Housing Properties. |

### Primary Change

To support the creation and preservation of affordable workforce housing, updated Part III, Chapter 7: Multifamily Affordable Housing Properties, to remove the required Payment Guaranty (Pricing Incentive Recapture) (Form 6020.PIR) for SIA Properties.

### Questions

Please contact Jane Christen, at jane_christen@fanniemae.com, with any questions.

# Chapter 7 Multifamily Affordable Housing Properties

## Section 701 Generally

### 701.01 Description

Requirements

An MAH Property is a Property that is encumbered by a regulatory agreement, land use restriction agreement, extended use agreement, or similar restriction (an Affordable Regulatory Agreement) that

- limits rents that can be charged to tenants, or
- imposes income limits on tenants.

An Affordable Preservation Transaction is any transaction involving an MAH Property that:

- currently has rent or income restrictions meeting the eligibility criteria of an MAH Property, but the Property is potentially at risk of being lost from the affordable housing inventory through conversion to market-rate housing;
- is not receiving new LIHTCs; and
- is being acquired or refinanced, but excludes a Mortgage Loan paying off the initial construction loan.

### 701.02 Eligible Lenders

Requirements

You must be approved in writing to Deliver MAH Mortgage Loans.

## Section 702 MAH Property Eligibility

### 702.01 Eligible Characteristics and Underwriting

Requirements

You must ensure that an MAH Property has rent or income restrictions that meet or exceed 1 of the following:

- **20% @ 50%:** at least 20% of all units have rent or income restrictions in place making them affordable to households earning no more than 50% of AMI as adjusted for family size.

- **40% @ 60%:** at least 40% of all units have rent or income restrictions in place making them affordable to households earning no more than 60% of AMI as adjusted for family size (except for New York City, where at least 25% of all units have rent or income restrictions in place, making them affordable to households earning no more than 60% of AMI as adjusted for family size).
- **HAP contract:** at least 20% of all units are subject to a project-based HAP contract.
- **Special Public Purpose:** the Property
  - is subject to an Affordable Regulatory Agreement imposed by a government entity, containing other rent and/or income restrictions,
  - has rent or income restrictions that meet or exceed **20% @ 80%:** at least 20% of all units have rent or income restrictions in place making them affordable to households earning no more than 80% of AMI as adjusted for family size, and
  - meets a noteworthy special public purpose.
- **Sponsor-Initiated Affordability:** the Borrower may voluntarily self-impose rent and income restrictions to preserve or create multifamily affordable housing. These restrictions must:
  - require the Property to have
    - rent and income restrictions that meet or exceed **20% @ 80%**: at least 20% of all units have rent and income restrictions in place making them affordable to households earning no more than 80% of AMI as adjusted for family size, and
    - restricted unit rent limits not exceeding 30% of the adjusted AMI;
  - be placed on record against the Property by executing the Sponsor-Initiated Affordability Agreement (Form 6490);
  - be in place at the Property by the Mortgage Loan Origination Date;
  - require the Property to comply with the Sponsor-Initiated Affordability Agreement (Form 6490) within 12 months after the Mortgage Loan Origination Date;
  - remain in place during the Mortgage Loan term; and

 

- be certified annually by the Borrower and monitored by an Administering Agent for compliance with the Sponsor-Initiated Affordability Agreement (Form 6490).

## Guidance

An MAH Property may also:

- be subject to FHA Risk Sharing;
- be financed using tax-exempt Bonds;
- receive LIHTCs under Section 42 of the Internal Revenue Code, and its related U.S. Treasury regulations;
- be subject to inclusionary zoning (e.g., targeting certain income levels or employees of certain firms or institutions, etc.) or resale restrictions; or
- receive other state, local or federal subsidies which are conditioned on the affordability of some or all of the units in the Property, including Rural Housing Service (RHS) Section 515 Loans, and Loans insured under Section 202 or Section 236 of the National Housing Act.

## Requirements

You must:

- Reflect the impact of the rent or income restrictions in your underwriting.
- Maintain a copy of the applicable Affordable Regulatory Agreement or Property restrictions in your Servicing File.

## Operating Procedures

For any Property with Sponsor-Initiated Affordability, the Borrower must execute the:

- Sponsor-Initiated Affordability Agreement (Form 6490); and
- Modifications to Multifamily Loan and Security Agreement (Sponsor-Initiated Affordability Restrictions) (Form 6271)~~; and~~.
- ~~Payment Guaranty (Pricing Incentive Recapture) (Form 6020.PIR).~~

To commit and Deliver a Mortgage Loan that qualifies as Special Public Purpose or Sponsor-Initiated Affordability, refer to:

- Multifamily Affordable Housing Property Definition – Special Public Purpose FAQs; and
- Sponsor-Initiated Affordability FAQs.

### 702.02 Ineligible Characteristics and Underwriting

Requirements

You must not underwrite or price the Property as an MAH Property if it has:

- less than 3 years of rent or income restrictions remaining on the Affordable Regulatory Agreement and is expected to transition to market rents during the term of the Mortgage Loan; or
- 3 or more years of LIHTC restrictions remaining, but the Borrower intends to enter into the Qualified Contract Process (per Section 42 of the Internal Revenue Code) within 3 years after the Mortgage Loan Origination Date.

Operating Procedures

If a Property will have existing rent, income, and/or occupancy restrictions when you Deliver the Mortgage Loan, you must indicate the "MAH type" in C&D under "Other Attributes", even if you cannot underwrite the Property as an MAH Property or Affordable Preservation Transaction per this Section 702.02: Ineligible Characteristics and Underwriting.

## Section 703 Property Income and Underwriting

### 703.01 Underwritten NCF

Requirements

You must use the following table to calculate Underwritten NCF.

| REQUIRED UNDERWRITTEN NCF (MULTIFAMILY AFFORDABLE PROPERTY) | | |
|---|---|---|
| Item | Function | Description |
| | | CALCULATION OF NET RENTAL INCOME |
| 1 | | GROSS RENTAL INCOME – the least of:<br><br>• rents permitted under any federal, state, or local subsidy program applicable to the Property, as adjusted for AMI, family size, and number of bedrooms in a unit, and reductions for the applicable utility allowances[1];<br>• rents permitted under any restrictive covenants, subordinate financing requirements, or an Affordable Regulatory Agreement recorded on the Property; or<br>• based on a current rent roll,<br>- actual rents in place for occupied units, plus<br>- for vacant units, the lowest of:<br>▪ actual rents in place for comparable occupied units;<br>▪ market rents; and<br>▪ permitted rents, described above (multiplied by 12).[2]<br>Rent from non-project based Housing Choice Vouchers must not exceed the average rent for comparable units without non-project based Housing Choice Vouchers.<br><br>You must include incremental HAP contract income per Part III, Chapter 7: Multifamily Affordable Housing Properties, Section 707.01: Properties with Both HAP Contracts and LIHTC Units. |
| 2 | PLUS | To the extent deducted as an operating expense, rents for other non-revenue units (e.g., model units deducted in the “model apartment” operating expense in the “general and administrative” category, or actual rent from employee units deducted in the “employee” operating expense in the “payroll and benefits” category). |
| | EQUALS | GROSS POTENTIAL RENT (GPR)[1] |
| 3 | MINUS | Physical vacancy – applicable actual rents for vacant units and MAH unit type (e.g., 20% @ 50%, 40% @ 60%, or HAP contract) based on a current rent roll (multiplied by 12).[3] |
| 4 | MINUS | Concessions – the aggregate amount of forgone residential rental income from incentives granted to tenants for signing leases, such as free rent for 1 or more months, move-in allowance, etc.).[3] |
| 5 | MINUS | Bad debt – the aggregate amount of unpaid rental income determined to be uncollectable, including any adjustments to other income for bad debt.[3] |

| REQUIRED UNDERWRITTEN NCF (MULTIFAMILY AFFORDABLE PROPERTY) | | |
|---|---|---|
| Item | Function | Description |
| | EQUALS | NET RENTAL INCOME (NRI)[2, 3, 4] |

1 For Properties with HAP contracts, you

- may use newly approved rents if they are effective by the first day of the month after the Mortgage Loan Origination Date, even if the rents exceed trailing GPR, but
- may not use rents based on
  - an agreement to enter into a HAP contract (AHAP),
  - commitment to enter into a Housing Assistance Payment contract (CHAP), or
  - a "comfort letter".

2 You may underwrite HAP contract rents up to:

- 5% above market rents if the MAH Property is located in an Eligible MSA; or
- 10% above market rents if the MAH Property is located in a Strong Market, provided the Property's
  - HAP contract expires after the Maturity Date, and
  - current and average 3-year physical occupancy is greater than or equal to 95%.

3 The total of Items 3, 4, and 5 must equal the greater of

- the GPR including any permitted HAP contract rent increases multiplied by the percentage difference between
  - the trailing 3-month net rental collections (annualized), and
  - trailing GPR excluding any HAP contract rent increases not in effect before the Mortgage Loan Origination Date; and
- either
  - 5% of GPR, including any permitted HAP contract rent increases, or
  - 3% of GPR, including any permitted HAP contract rent increases, if:
    - the Property is located in a Strong or Nationwide Market per Form 4660;
    - for a Property without a HAP contract, the actual rents for restricted units are at least 10% below comparable market rents; and
    - the economic vacancy (i.e., the total of Items 3, 4, and 5) is supported by current and 3 years of historical economic vacancy data.

4 You must assess the NRI, including any declines, and make adjustments per Part II, Chapter 2: Valuation and Income, Section 202: Income Analysis.

**CALCULATION OF OTHER INCOME[5]**

| REQUIRED UNDERWRITTEN NCF (MULTIFAMILY AFFORDABLE PROPERTY) | | |
|---|---|---|
| Item | Function | Description |
| 6 | PLUS | Actual other income (except premiums and corporate premiums) generated through ongoing operations. The income must:<br><br>• be stable;<br>• be common in the market;<br>• exclude one-time extraordinary non-recurring items; and<br>• be supported by prior years.<br>You must assess the individual month's other income within the prior full-year operating statement or, at a minimum, an operating statement covering at least the trailing 6 months (annualized).<br><br>If there are fluctuations, you may use other income that exceeds the trailing 3-month other income (annualized), provided it does not exceed the highest 1-month other income used in the trailing 3-month other income calculation. |
| 5 If premiums or corporate premiums are applicable for a particular MAH Property, inclusion of premium income is permitted consistent with Part II, Chapter 2: Valuation and Income, Section 202: Income Analysis. | | |
| CALCULATION OF COMMERCIAL INCOME | | |
| 7 | PLUS | Actual income from leased and occupied commercial space per Part II, Chapter 1: Attributes and Characteristics, Section 109: Commercial Leases. |
| 8 | PLUS | Actual income from STR units. |
| 9 | MINUS | 10% of the actual commercial space income.[6] |
| 10 | PLUS | Commercial parking income (e.g., public parking) that does not exceed actual trailing 12-month collections.[6] |
| 11 | PLUS | Laundry and vending, parking, and all other income per Part II, Chapter 2: Valuation and Income, Section 202: Income Analysis. |
| 6 If net commercial income is greater than 20% of EGI, then reduce to 20% of EGI. | | |
| | EQUALS | EFFECTIVE GROSS INCOME (EGI) |
| CALCULATION OF OPERATING EXPENSES | | |

| REQUIRED UNDERWRITTEN NCF (MULTIFAMILY AFFORDABLE PROPERTY) | | |
|---|---|---|
| Item | Function | Description |
| 12 | MINUS | Line-by-line stabilized operating expenses. Stabilized operating expenses are the expenses during normal ongoing Property operations, not affected by a<br><br>• lease-up,<br>• rehabilitation,<br>• or other short-term positive or negative factors.<br>Non-recurring, extraordinary operating expenses must not be included.<br><br><br>You must assess:<br><br>• the past operating history;<br>• the appraiser's expense analysis;<br>• all information available to you (including Property contracts, utility bills, real estate tax assessments, insurance policies, and comparable assets); and<br>• the Borrower's budget (in the case of an acquisition).<br><br>You must:<br><br>• analyze historical operations at the Property;<br>• apply an appropriate increase over the prior year's operations in determining an estimate; and<br>• include all STR-related expenses n their respective expense line items, including<br>- cleaning,<br>- furnishing, and<br>- repairs. |
| 13 | MINUS | Property management fee equal to the greatest of:<br><br>• 4% of EGI[7];<br>• actual property management fee (exclude any portion of a non-arm's-length property management fee that is subordinated to the Mortgage Loan); or<br>• market property management fee. |

| REQUIRED UNDERWRITTEN NCF (MULTIFAMILY AFFORDABLE PROPERTY) | | |
|---|---|---|
| Item | Function | Description |
| 7 Minimum management fee may be 3.5% of EGI (rather than 4% of EGI) if the:<br><br>• underwritten management fee is at least $300 per unit;<br>• actual management fee is equal to or less than the underwritten management fee; and<br>• market management fees support the underwritten management fee for similarly sized MAH properties.<br>If the MAH Property is located in a Strong Market or Eligible MSA and the Mortgage Loan's original UPB is greater than $6 million, the minimum management fee may be the greatest of<br><br>• 2.5%,<br>• $300 per unit,<br>• the actual management fee, or<br>• market management fees for similarly sized MAH properties. | | |
| 14 | MINUS | Real estate taxes based on the greatest of:<br><br>• actual future tax bill(s) covering a full calendar year;<br>• prior full year's taxes multiplied by 103% (the 3% trending is not required for trailing 12-month or year-to-date annualized expenses); or<br>• in California, the sum of:<br>- any special assessments; plus<br>- the millage rate multiplied by the greater of the<br>▪ Mortgage Loan amount, or<br>▪ assessed value.<br><br>You must:<br><br>• consider any automatic reassessment upon acquisition in the next 12-month period; and<br>• for any tax abatement, exemption, deferral, or PILOT expiring within 36 months after the Mortgage Loan Origination Date, underwrite fully assessed real estate taxes. |

| REQUIRED UNDERWRITTEN NCF (MULTIFAMILY AFFORDABLE PROPERTY) | | |
|---|---|---|
| Item | Function | Description |
| 14 continued | MINUS | If the Property has real estate tax abatements, exemptions, deferrals, or PILOTs, they must:<br><br>• be in effect at closing (or at conversion in the case of a Forward Commitment), per written documentation from the state or local tax assessor;<br>• survive a foreclosure on the Mortgage Loan such that Fannie Mae or a subsequent owner will retain the abatement, exemption, deferral, or PILOT as long as the rent, income, or other restrictions are maintained (i.e., it is tied to the Property and not the owner); and<br>• if governed under the California Welfare Tax Exemption Program, meet the following:<br>- if a refinance, the Borrower must be in and remain in compliance with the California Welfare Tax Exemption program; or<br>- if an acquisition or a Transfer/Assumption where the Affiliate with Control of the Borrower (which is typically a non-profit entity), or the non-profit entity itself, is changing you must:<br>▪ escrow at least 6 months of full real estate taxes at closing which will be released after confirming that the California Welfare Tax Abatement is approved and in place at the Property;<br>▪ ensure that the Borrower has demonstrated experience with the California Welfare Tax Abatement Program; and<br>▪ ensure that the Borrower is and remains eligible for the California Welfare Tax Abatement Program. |

| REQUIRED UNDERWRITTEN NCF (MULTIFAMILY AFFORDABLE PROPERTY) | | |
|---|---|---|
| Item | Function | Description |
| 14 continued | MINUS | If governed under the Florida affordable housing property exemption (per Sections 196.1978(1) and (2) of the Florida Statutes),<br><br>• for a refinance, the Borrower must initially be in compliance, and remain in compliance, with the Florida affordable housing property exemption; or<br>• for an acquisition or a Transfer/Assumption, you must:<br>- confirm the Borrower applies to the county taxing authority within 60 days after the Mortgage Loan Origination Date;<br>- escrow full taxes until you confirm the Florida affordable housing property exemption is approved and in place at the Property; and<br>- after confirmation, refund the escrowed taxes to the Borrower.<br>If the Property benefits from real estate tax abatements, exemptions, deferrals, or a PILOT that will not survive a Foreclosure Event, then you may use a reduced real estate tax payment only if:<br><br>• upon reapplying for the original underwritten tax abatement or an alternative tax abatement, Fannie Mae or a subsequent Property owner would qualify for the tax abatement;<br>• the rent or income restrictions at the Property are maintained; and<br>• you have ensured that:<br>- if a qualified non-profit entity is required to participate in the ownership structure of the MAH Property in order to qualify for the tax abatement, exemption, or deferral, a sufficient number of qualified non-profits currently operate in the market (at least 3 for an MSA with a population of less than 1 million and at least 5 for an MSA with a population of 1 million or greater), and in the event of a foreclosure, could serve in the replacement ownership structure to qualify for the tax abatement, exemption, deferral, or PILOT; and<br>- the original or alternative tax abatement, exemption, deferral, or PILOT has<br>▪ been established in the state's statutes,<br>▪ been in effect for at least 10 years, and<br>▪ the Lender conducted all appropriate due diligence and confirmed that there is no material risk that the tax abatement, exemption, or deferral legislation will be repealed or revised in a manner that would affect the Property's ability to continue to qualify for the tax abatement, exemption, deferral, or PILOT. |

 

| REQUIRED UNDERWRITTEN NCF (MULTIFAMILY AFFORDABLE PROPERTY) | | |
|---|---|---|
| Item | Function | Description |
| 14 continued | MINUS | If the timeframe for the real estate tax abatement, exemption, deferral, or PILOT is shorter than the Mortgage Loan term, or begins phasing out or expires within 5 years after the Maturity Date, you must consider:<br><br>• a Bifurcated Mortgage Loan structure (i.e., 2 notes secured by a single first Lien Security Instrument);<br>• an amortization schedule that accommodates the elimination of the abatement; or<br>• providing clear justification and support in the refinance analysis.<br>For a Property with a tax abatement, the Modifications to Multifamily Loan and Security Agreement (Tax Abatement or Exemption) (Form 6251) must be executed even if you do not underwrite the tax abatement. |
| 15 | MINUS | Insurance equal to:<br><br>• the quoted expense, for insurance policies with a bona fide written quote from a reputable broker for a new 12-month policy; or<br>• 110% of the current expense, for insurance policies with a remaining term of less than 6 months. |
| 16 | MINUS | Utilities, water and sewer, repairs and maintenance, payroll and benefits, advertising and marketing, professional fees, general and administrative, ground rent, and all other expenses per Part II, Chapter 2: Valuation and Income, Section 202: Income Analysis. |
| | EQUALS | UNDERWRITTEN NET OPERATING INCOME (UNDERWRITTEN NOI) |
| 17 | MINUS | Replacement Reserve expense per Part II, Chapter 2: Valuation and Income, Section 202.01: Underwritten Net Cash Flow (Underwritten NCF). |
| | EQUALS | UNDERWRITTEN NCF |

## 703.02 Underwriting

### 703.02A Appraised Value and Underwriting Value

☑ Requirements

In addition to the Appraisal requirements in Part II, Chapter 2: Valuation and Income, Section 201.02: Appraisal, you must:

- Include 2 separate opinions of the Appraised Value based on:
  - Restricted Value from the Affordable Regulatory Agreement, using
    - comparable multifamily rental properties,
    - the Property's submarket,
    - properties with similar rent or income restrictions, and
    - any tax abatements or exemptions.
  - Unrestricted Value from the Property's income and expenses without the Affordable Regulatory Agreement (e.g., market rents, occupancy, and operating expenses), using
    - comparable multifamily market rate rental properties,
    - the Property's submarket, and
    - full taxes if rental income restrictions are required by a tax abatement or exemption.
- Ensure that each Appraised Value is based on a market cap rate without any upward or downward adjustment for:
  - special financing (other than adjusted cap rates for Credit Enhancement Mortgage Loans); or
  - tax credit benefits.
- Determine the appropriate Appraised Value for the Underwriting Value per Part II, Chapter 2: Valuation and Income, Section 201: Market and Valuation.

### 703.02B Market Study

☑ Requirements

If the Property is subject to a HAP contract that will expire before the Mortgage Loan Maturity Date, you must include a market study (which can be part of the Appraisal) that:

- is prepared by a qualified real estate professional; and
- identifies the absorption rate, lease-up period, and rent level for comparable market rate rental properties in the submarket.

## 703.02C Affordable Regulatory Agreement Restrictions

### Guidance

To underwrite the Mortgage Loan as an MAH Property, the Affordable Regulatory Agreement restrictions should remain in effect for the term of the Mortgage Loan.

### Requirements

When the Affordable Regulatory Agreement restrictions have 3 or more years remaining but will expire before the Mortgage Loan Maturity Date, you must provide support to underwrite to the MAH Preservation standards in the Form 4660, taking into account factors such as:

- restricted rents below market rate rents;
- the Property's history of operating as an MAH Property;
- the Borrower's history and experience owning and operating MAH Properties;
- the Borrower's intention to renew the Affordable Regulatory Agreement;
- the amount of time between the Maturity Date and when the Affordable Regulatory Agreement restrictions expire;
- market strength; and
- how the Property compares to comparable market rate properties in terms of occupancy, condition, and amenities if the Borrower intends to convert the Property to market rate rents and if no rent advantage exists.

See Part III, Chapter 7: Multifamily Affordable Housing Properties, Section 702.01: Eligible Characteristics and Underwriting regarding self-imposed restrictions.

## 703.02D 35-Year Amortization

### Requirements

If you use a 35-year amortization term, the:

- Property must have LIHTCs with at least 8 years remaining in the initial 15-year compliance period; and
- minimum MAH Mortgage Loan term must equal the greater of

 

- the remaining initial compliance period, and
- 10 years.

## 703.02E LIHTC Income Averaging

Guidance

When a Sponsor elects LIHTC Income Averaging for a Property with new LIHTCs, you should consider:

- Will LIHTC Income Averaging impact other non-LIHTC regulatory agreements?
- Is LIHTC Income Averaging compatible with other funding and subsidy source requirements, including any project-based HAP contract?
- Has LIHTC Income Averaging been approved by the
  - state agency, and
  - LIHTC investor or syndicator?
- Will the on-site Property management staff have sufficient experience?
- Will the unit mix be impacted, including
  - unit parity,
  - multi-building election,
  - floating units, and
  - market rate units?
- What is the rent advantage, especially for units above 60% of AMI?
- For a Forward Commitment,
  - is the Property not a resyndication of a property previously developed or preserved using LIHTCs and subject to an existing extended use agreement, or
  - if the Property is a resyndication, have you confirmed the property has completed its extended use period?
- Does the market study include capture rates for each unit designation supporting LIHTC Income Averaging?

 

Requirements

You must identify and mitigate any risks from electing LIHTC Income Averaging.

### 703.02F Initial LIHTC Equity

Requirements

For any MAH Property with new LIHTCs, you must ensure at least 20% of the aggregate LIHTC equity that the LIHTC investor or syndicator must contribute into the limited partnership is received on or before the Mortgage Loan Origination Date.

### 703.02G Developer Fees

Guidance

You should analyze the development budget, including the

- developer fee due the Sponsor or any Affiliate, and
- any deferred developer fee (i.e., the portion of the developer fee shown as a source in the sources and uses statement).

If the deferred developer fee is greater than 50% of the total developer fee, you should confirm there are sufficient

- hard and soft contingency budgets, and
- projected surplus cash flows to repay the deferred developer fee within the initial compliance period.

### 703.02H Rent-Stabilized Units

Guidance

Refer to Part II, Chapter 2: Valuation and Income, Section 205: Rent-Stabilized Properties regarding rent-stabilized MAH Property units.

## Section 704 Subordinate Financing

### 704.01 Interest Rate and Payments

Requirements

You must ensure any subordinate loan:

 

- has a fixed rate; and
- any non-Soft Financing has:
  - interest payable on a current basis; and
  - no deferrals or accruals.

## 704.02 Loan Term

### Requirements

You must ensure any non-fully amortizing subordinate loan, including any Soft Financing, matures at least 180 days after the Maturity Date of the Mortgage Loan and any Pre-Existing Mortgage Loans.

### Guidance

A fully amortizing subordinate loan may mature at any time regardless of the Mortgage Loan Maturity Date. A subordinate loan may also be fully or partially forgiven at any time per its loan documents.

## 704.03 Collateral and Credit Support

### Requirements

You must ensure the Mortgage Loan obtains the same credit support and collateral as any subordinate loan, including any

- recourse to the Borrower or any guarantor, or
- additional collateral.

You may secure the subordinate loan with a Lien on the Property if the Lien:

- is subordinated to the Security Instrument's Lien per
  - Part III, Chapter 7: Multifamily Affordable Housing Properties, Section 704.07: Subordination Agreement,
  - Part III, Chapter 7: Multifamily Affordable Housing Properties, Section 704.08: Lien Priority and Title Insurance Policy, and
  - Part III, Chapter 7: Multifamily Affordable Housing Properties, Section 704.09: Form of Subordinate Loan Documents; and
- includes only the same collateral covered by the Mortgage Loan's

Security Instrument.

## 704.04 Soft Financing

Requirements

| Provision | To be considered Soft Financing... |
|---|---|
| Financing Terms | Subordinate loan terms must comply with Part III, Chapter 7: Multifamily Affordable Housing Properties, Section 704: Subordinate Financing. |
| Payments | • Any subordinate loan payments due during the Mortgage Loan term, including any fees, must be payable only from the surplus NCF remaining after all other payments (due and owing) are made on the Mortgage Loan or any Pre-Existing Mortgage Loans.<br>• No more than 75% of the surplus NCF must be available for payments on all Soft Financing unless the note is payable to the Sponsor or an Affiliate. |
| Events of Default | Failure to pay principal and/or interest due to lack of surplus NCF must not be an event of default. |
| Subordination | Subordination must comply with Part III, Chapter 7: Multifamily Affordable Housing Properties, Section 704.07: Subordination Agreement. |

Guidance

Soft Financing may have:

- a nominal interest rate (e.g., 1% or 2%);
- interest that does not accrue;
- principal payments that do not fully amortize the subordinate loan over its term; or
- a loan term significantly longer than the Mortgage Loan term, with the subordinate loan either
  - being forgiven over time or at its maturity date, or
  - due only upon the sale of the Property.

## 704.05 Subordinate Lender

Requirements

| If the Lender type is... | Then... |
|---|---|
| Public / Quasi-Public / Not-for-Profit Lender | A subordinate loan provided by a public, quasi-public, or not-for-profit Lender may<br><br>• be Soft Financing, or<br>• require mandatory payments of P&I, or interest-only. |
| Private Lender | You must ensure that any subordinate financing originated by a private, for-profit Lender is Soft Financing per Part III, Chapter 7: Multifamily Affordable Housing Properties, Section 704.04: Soft Financing. |

## 704.06 Developer's Notes

Requirements

You must ensure any developer note or advance due the Sponsor or an Affiliate is Soft Financing per Part III, Chapter 7: Multifamily Affordable Housing Properties, Section 704.04: Soft Financing.

## 704.07 Subordination Agreement

Requirements

For all subordinate financing, including Soft Financing, you, the Borrower, and the subordinate Lender must enter into either:

- Fannie Mae form Subordination Agreement (Affordable) (Form 6456), if the subordinate Lender is a government entity; or
- Fannie Mae form Subordination Agreement (Conventional) (Form 6414), if the subordinate Lender is not a government entity.

## 704.08 Lien Priority and Title Insurance Policy

Requirements

 

You must ensure:

- The subordinate loan, along with any Lien securing the subordinate loan, remains at all times, subordinate to the Security Instrument's Lien, including any refinancing.
- The Subordination Agreement is recorded in the land records immediately after the subordinate security instrument is recorded.
- The lender's title insurance policy reflects the recordation of the Subordination Agreement.

## 704.09 Form of Subordinate Loan Documents

☑ Requirements

You must confirm that the subordinate loan documents:

- comply with this Chapter;
- include the specific provisions required by the Subordination Agreement; and
- do not require the Borrower to maximize rents at the Property (even if the Property is subject to an Affordable Regulatory Agreement).

## 704.10 Prepayment

☑ Requirements

The Borrower may not prepay or redeem the subordinate loan without Fannie Mae's consent.

## 704.11 LIHTC Equity Bridge Loans

☑ Requirements

| LIHTC Equity Bridge Loan | Requirements |
|---|---|
| Lender Eligibility | The LIHTC equity bridge lender must not be on ACheck. |
| Repayment | Must be completely repaid on or before the final LIHTC equity payment associated with the Property's placed-in-service date. |

| LIHTC Equity Bridge Loan | Requirements |
| --- | --- |
| Amount | Maximum of 80% of aggregate LIHTC equity contribution. |
| Funding Conditions | No performance hurdles or Property performance benchmarks tied to bridge loan payments. |
| Note | • Non-recourse to Borrower.<br>• Fixed or variable rate. |
| Guaranty (Repayment or Completion) | Must be subordinated to any Guaranty in favor of Fannie Mae. |

| Bridge Loan Collateral Types (multiple types allowed) | Bridge Lender Affiliated with You or LIHTC Investor | Bridge Lender Unaffiliated with You, LIHTC Investor, or Sponsor | Bridge Lender Affiliated with Sponsor |
| --- | --- | --- | --- |
| Assignment of Rights to Capital Contribution from LIHTC Equity Investor | Acceptable | Acceptable | Unacceptable |
| Assignment of Development Fee | Acceptable | Acceptable | Acceptable |
| Subordinate Security Instrument | Unacceptable | Unacceptable | Unacceptable |

| Bridge Loan Collateral Types (multiple types allowed) | Bridge Lender Affiliated with You or LIHTC Investor | Bridge Lender Unaffiliated with You, LIHTC Investor, or Sponsor | Bridge Lender Affiliated with Sponsor |
|---|---|---|---|
| Assignment of General or Limited Partnership Interests | Acceptable if Bridge Lender has LIHTC experience | Acceptable if Bridge Lender has LIHTC experience | • Acceptable for general partnership Interests<br>• Unacceptable for limited partnership Interests |
| Subordination Agreement | Conventional Form | Conventional Form | Affordable Form |

## Section 705 Restrictive Covenants and Affordable Regulatory Agreements

### Requirements

For MAH Properties and non-MAH Properties, the Affordable Regulatory Agreement, except for a HUD Use Agreement, must be subordinated to the Lien of the Security Instrument if the agreement:

- grants rights, remedies, or powers similar to that of a secured creditor to any aggrieved party;
- impairs the Lien rights or priority of the Lien of the Security Instrument;
- contains any Borrower obligations other than the affordability restrictions;
- contains any rights or remedies to enforce the affordability restrictions other than specific performance or injunctive relief; or
- does not terminate upon Mortgage Loan foreclosure.

To subordinate the Affordable Regulatory Agreement to the Security Instrument Lien

- use an approved Subordination Agreement, or

 

- for an Affordable Regulatory Agreement with a subordinate loan, use Subordination Agreement (Affordable) (Form 6456).

Guidance

The rights, remedies, and powers of a secured creditor would typically include:

- the ability to appoint a receiver;
- the right to collect rents directly from the mortgaged property;
- the right to take possession of the mortgaged property;
- limitations on transferring title to you or to a subsequent transferee by foreclosure or deed in lieu;
- no requirement to give you notice of violations of or amendments to the Affordable Regulatory Agreement; and
- the ability to remove or replace the Property manager without your prior consent.

## Section 706 ROAR Loan

### 706.01 Generally

Requirements

You must ensure any ROAR Loan:

- is a Mortgage Loan or Credit Enhancement Mortgage Loan using a Credit Enhancement Instrument;
- has a fixed rate;
- has a minimum Mortgage Loan amount of $5 million; and
- is secured by an MAH Property that:
  - currently has Stabilized Residential Occupancy, but will likely experience tenant displacement significant enough to lower the Underwritten DSCR, calculated using the Gross Note Rate, below the required DSCR set forth in Form 4660; and
  - will undergo repairs, replacements, or improvements costing $10,000 per unit or more (based on the total number of residential units at the Property), or qualifies as a Moderate Rehabilitation Property.

## 706.02 Timing

Requirements

Within 18 months after the Mortgage Loan Origination Date

- the ROAR Work must be completed, and
- Restabilized Residential Occupancy must be achieved.

## 706.03 General Underwriting

Guidance

In addition to complying with Part III, Chapter 3: Moderate Rehabilitation Mortgage Loans, you should also review and evaluate:

- the reasonableness of the estimated cost of the ROAR Work and the completion schedule;
- whether the ROAR Work can be completed and the Restabilized Residential Occupancy achieved within 18 months after the Mortgage Loan Origination Date;
- the Borrower's experience in developing or rehabilitating properties similar to the ROAR Property;
- the tenant relocation plan, including budget and schedule;
- the ROAR Work budget, including monthly sources and uses during the rehabilitation period;
- any construction risks;
- the LIHTC investors' financial strength, experience, and reputation; and
- the projected rent levels relative to market rents.

## 706.04 Additional Underwriting and Loan Documents

Requirements

You must underwrite the ROAR Loan per the following table.

| Topic | Description |
| --- | --- |
| Underwritten NCF | GPR must comply with Part III, Chapter 7: Multifamily Affordable Housing Properties, Section 703.01: Underwritten NCF; Underwritten NCF can be based on the Restabilized Residential Occupancy and normalized operating expenses achievable within 18 months after the Mortgage Loan Origination Date. |
| Appraisal | The Appraisal must include an opinion of the value of the Property on both an "as is" and an "as completed" basis that incorporates the ROAR Work to be completed after the Mortgage Loan Origination Date. |
| Occupancy During ROAR Work | Physical Occupancy: minimum of 50%; and<br>Economic Occupancy: minimum of 50%. |
| Minimum DSCR During ROAR Work | Using the ROAR Stressed NCF, actual fixed interest rate, and maximum loan amount based on the "as completed" value<br><br>• 0.75 on an amortizing basis, or<br>• 1.00 on an interest-only basis, if applicable. |
| Rehabilitation Reserve Agreement | Required. |
| Key Principal Guaranties | The Key Principal must execute a<br><br>• Completion Guaranty (Form 6018), and<br>• an operating deficit guaranty. |

 

| Topic | Description |
| --- | --- |
| Letter of Credit | Any Letter of Credit must:<br><br>• comply with Part I, Chapter 2: Mortgage Loan, Section 204: Letters of Credit; and<br>• equal at least 125% of the difference between the maximum Mortgage Loan amount based on<br>- the “as completed” value, and<br>- the “as is” value. |
| Additional Credit Support | May be required. |
| Underwriting Fee | You must:<br><br>• charge the Borrower an underwriting fee equal 3 basis points of the Mortgage Loan amount; and<br>• pay that amount to Fannie Mae. |

## Section 707 HAP Contract Properties

### 707.01 Properties with Both HAP Contracts and LIHTC Units

☑ Requirements

For a Mortgage Loan secured by an MAH Property or a Credit Enhancement Mortgage Loan, if the Property has both HAP contracts and LIHTC units, you must underwrite the Mortgage Loan using 1 of the following options.

 

| Choice | Requirements |
| --- | --- |
| Option 1 | Underwrite the rents from HAP contract units using the lowest of<br><br>• market rents,<br>• HAP contract rents, and<br>• applicable LIHTC rents.<br>Applicable LIHTC rents are the lower of<br><br>• maximum allowable LIHTC rents minus utility allowances, and<br>• actual rents in place for occupied units subject to a LIHTC Affordable Regulatory Agreement. |
| Option 2 | Underwrite the rents from HAP contract units using the additional income above the LIHTC rents (LIHTC overage) if:<br><br>• at least 20% of the Property's units are subject to a project-based HAP contract;<br>• the HAP contract rents are less than or equal to market rents;<br>• the weighted average LIHTC unit rents are least 10% below market;<br>• the MAH Property is located in a market or submarket with 90% or greater economic occupancy, both for market rate and MAH Properties; and<br>• the Sponsor has experience and success owning and operating properties with HAP contracts.<br>If the HAP contract expires before the Mortgage Loan Maturity Date, you must ensure the Property's Underwritten DSCR is greater than or equal to<br><br>• 1.05 based on the LIHTC rents, and<br>• 1.10 based on the LIHTC rents after the HAP contract expires. |

## 707.02 Restabilization Reserve

Requirements

 

For all Tier 2 and Tier 3 Mortgage Loans, you must establish a Restabilization Reserve for an MAH Property that has a HAP contract if the HAP contract term (excluding any annual or incremental government appropriation conditions) expires before the Mortgage Loan Maturity Date.

The Restabilization Reserve must:

- equal the monthly Mortgage Loan P&I, multiplied by the greater of
  - 6 months, or
  - the lease-up period determined by the market study per Part III, Chapter 7: Multifamily Affordable Housing Properties, Section 703.02B: Market Study; and
- remain in place until
  - the Property achieves underwritten occupancy for 90 days at market rate rents, or
  - the HAP contract is renewed with an expiration date after the Mortgage Loan Maturity Date.

You may eliminate the Restabilization Reserve if the:

- weighted average LIHTC unit rents are at least 10% below market;
- MAH Property is located in a market or submarket with 90% or greater economic occupancy, both for market rate and MAH Properties; and
- Sponsor has experience and success owning and operating properties with HAP contracts.

### 707.03 HAP Contract Review Sheet

☑ Requirements

Before you Deliver the Mortgage Loan, you must:

- complete the Section 8 Housing Assistance Payments (HAP) Contract Review Sheet and Certification (Form 6422); and
- confirm that all conditions for approval are met.

## Section 708 Refinancing Section 236 Properties – IRP is Maintained

Requirements

For Fannie Mae to consider the cash flow from an IRP, the Borrower must decouple the IRP from the existing Section 236 note and mortgage by

- prepaying the Section 236 Loan, and
- having the IRP transferred to a new Mortgage Loan (which will be then considered a Section 236 Loan for purposes of continuing the IRP).

## 708.01 No Additional Proceeds

Requirements

If the Borrower is not seeking additional proceeds based on the IRP, you must exclude the amount of the IRP from the LTV and Underwritten DSCR.

## 708.02 Additional Proceeds from Mortgage Loan

Requirements

If the Borrower is seeking additional proceeds from the Mortgage Loan based on the IRP, then you must ensure that:

- The Mortgage Loan has equal monthly payments of P&I.
- The portion of the Mortgage Loan sized based on the Underwritten NCF meets Fannie Mae's LTV and Underwritten DSCR requirements without considering the IRP cash flow.
- The portion of the Mortgage Loan sized based on the IRP cash flow has an Underwritten DSCR of at least 1.00.
- The financing structure reflects the remaining term of the IRP through a bifurcated note or amortization structure.

In a Forward Commitment transaction, if the IRP is decoupled from the original Section 236 Loan, you do not need to ensure principal amortization during the construction phase.

## 708.03 Additional Proceeds from Other Sources

Requirements

 

If the Borrower is seeking additional proceeds from sources other than the Mortgage Loan based on the IRP, you must:

- factor the debt into the Property's overall LTV; and
- comply with Part III, Chapter 7: Multifamily Affordable Housing Properties, Section 704: Subordinate Financing.

## Section 709 LIHTC Properties – Lender Equity Interest

☑ Requirements

Fannie Mae will only purchase a Mortgage Loan secured by a LIHTC Property in which you are an equity investor (directly or indirectly) in the Borrower if the following conditions are met:

- Your equity interest in the Borrower is solely for obtaining the LIHTCs in the Property, and you have no
  - management authority for the Property, or
  - equity interest (other than the LIHTCs) in
    - the Borrower,
    - any Key Principal,
    - any Person holding a Controlling Interest in the Borrower or Key Principal,
    - any Principal, or
    - any Guarantor.
- You and the equity syndicator are organized to ensure independent analysis and decision making occurs in the
  - underwriting and approval of the debt,
  - equity investments, and
  - servicing of the Mortgage Loan.
- Your underwriting submission includes:
  - a description of the relationship among the
    - Lender,
    - Borrower, and

 

- applicable Lender Affiliate; and

- an organizational chart or diagram showing:
  - the complete Borrower ownership structure, including any Lender or Lender Affiliate equity interest; and
  - each entity's ownership interest.

## Section 710 Transactions with Fannie Mae Debt and Equity Interests

### 710.01 Transactions Funded with Tax-Exempt Bond Proceeds

☑ Requirements

If a Mortgage Loan will be funded with tax-exempt bond proceeds and the Property securing the Mortgage Loan qualifies for LIHTCs, you must confirm:

- If Fannie Mae owns or plans to acquire a direct or indirect equity interest in the Borrower, it does not own or intend to acquire an interest in the tax-exempt Bonds.
- If Fannie Mae owns or plans to acquire an interest in the tax-exempt Bonds, it does not own or intend to acquire a direct or indirect equity interest in the Borrower.

### 710.02 Fannie Mae Credit-Enhanced Tax-Exempt Bond Issuance

☑ Requirements

You must confirm that if Fannie Mae credit enhances tax-exempt Bonds issued to fund a Mortgage Loan, it does not also own or intend to acquire a direct equity interest in the Borrower.

If Fannie Mae owns or intends to acquire an indirect equity interest in the Borrower through a fund, you must confirm:

- Fannie Mae’s indirect equity interest in the Borrower is less than 50%;
- in the case of a LIHTC transaction:
  - the IRS documentation filed in connection with the Bond issuance shows that none of the Bond proceeds were applied to pay any portion of Fannie Mae’s credit enhancement fee;

 

- the Bond issuer and the Borrower have either
  - entered into a LIHTC agreement that acknowledges Fannie Mae's equity interest, or
  - consented in writing to Fannie Mae's equity interest; and
- any required notices to the Borrower and the issuer under a LIHTC agreement have been provided; and

- in the case of a non-LIHTC transaction, the issuer and the Borrower have consented in writing to Fannie Mae's equity interest.

## Section 711 FHA Risk Sharing

### 711.01 Description

Guidance

Fannie Mae and the HUD have a risk sharing agreement to share risk on Mortgage Loans for certain MAH transactions. HUD's risk sharing is in the form of mortgage insurance from FHA. HUD takes 50% of the risk of loss, and the remaining 50% of the loss is shared by you and Fannie Mae.

### 711.02 Eligibility

#### 711.02A Borrowers, Key Principals, Guarantors, and Principals

Requirements

You must ensure that the Borrower (and each Key Principal, Guarantor, and Principal) is not on the most current "List of Parties Excluded from Federal Procurement or Nonprocurement Programs".

#### 711.02B Generally

Requirements

You must ensure:

- All FHA Risk Sharing Mortgage Loans are fixed rate with no interest-only period.
- The minimum Mortgage Loan term is 15 years.
- The Property has an affordability restriction where

- at least 20% of the units are rent-restricted and occupied by families with incomes no more than 50% of AMI as adjusted for family size, or
- at least 40% (25% in New York City) of the units are rent-restricted and occupied by families with incomes no more than 60% of AMI as adjusted for family size.

- The residential unit's gross rent is restricted to no more than 30% of the unit's Imputed Income Limitation per Section 42 of the Internal Revenue Code.
- Rent, income, and/or occupancy restrictions are in effect for at least the term of the Mortgage Loan. For MAH Properties with remaining affordability restrictions of less than 18 years, the affordability restrictions will be considered senior to the Lien of the Mortgage Loan when enforcing restrictions.

Guidance

The Property is not located in:

- a 500-year floodplain and likely occupied by tenants who may not be sufficiently mobile to avoid injury or death during floods or storms;
- a Federal Emergency Management Agency-mapped Special Flood Hazard Area 100-year floodplain (except where no buildings or Improvements other than minor grubbing) will be in the floodplain and the floodplain area will be permanently dedicated to non-development;
- the Coastal Barrier Resources System per the Coastal Barrier Resources Act, 16.U.S.C.3501; and
- a Runway Clear Zone (at a civil airport) or Clear Zone (at a military airfield) if the Property is newly constructed or substantially rehabilitated.

### 711.02C Cash Out

Guidance

There is no limit on the amount of cash out in an FHA Risk Sharing transaction.

## 711.03 Mortgage Insurance Premium

### Requirements

Your pricing for an FHA Risk Sharing Mortgage Loan must include a sufficient amount to pay the mortgage insurance premium due to FHA.

### Guidance

Fannie Mae will make this FHA premium payment on or before its due date.

## 711.04 Subsidy Layering Review

### Requirements

You must ensure the Borrower obtains a subsidy layering review when required by federal laws.  FHA Risk Sharing Mortgage Loans are a source of federal government assistance.

### Operating Procedures

After the subsidy layering review is complete, the applicable reviewing office will issue a certification to the Borrower stating the total amount of governmental assistance is not more than is necessary to provide affordable housing after taking into account other government assistance.  You must receive the certification before

- Rate Lock, or
- obtaining a Commitment for a tax-exempt Bond transaction.

## 711.05 Lender FHA Risk Sharing Reserve and Loss Sharing Modifications

### Operating Procedures

If a Mortgage Loan was approved for FHA Risk Sharing, you must indicate an "FHA risk sharing" Mortgage Loan Type on the Mortgage Loan Certificate (Form 6505).