

**MEMORANDUM OF UNDERSTANDING  
DATED February 27, 2012**

Between the  
**U.S. Department of Housing and Urban Development (Wisconsin)**  
and  
**Rural Housing Service in Wisconsin**  
and  
**Wisconsin Housing and Economic Development Authority**

**INTRODUCTION**

The U.S. Department of Housing and Urban Development (“HUD”), the Rural Housing Service of the Rural Development mission area in Wisconsin, an Agency of the U.S. Department of Agriculture (“RHS”) and the Wisconsin Housing and Economic Development Authority (“WHEDA”), wish to enter into the following Memorandum of Understanding (“MOU”) regarding the Subsidy Layering Review of the sources and uses of funds in projects combining Low Income Housing Tax Credits (“LIHTC”) with other federal funding resources including: any loan, grant guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or other form of direct or indirect assistance from the Federal Government, or any agency or instrumentality thereof or such other as described herein. This MOU may also cover the Subsidy Layering Review of the sources and uses of HUD Assistance in projects that do not include LIHTCs as addressed on page 4 of this MOU.

**SCOPE OF THE AGREEMENT**

Under this agreement, HUD, RHS and WHEDA (collectively, “Parties”), agree to cooperate in their efforts to assure that projects receiving multiple forms of assistance are not receiving more assistance than is necessary to provide affordable housing, in compliance with Section 102(d) of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act), Section 911 of the Housing and Community Development Act of 1992, the Housing and Economic Recovery Act of 2008, and any relevant program regulations and guidelines. WHEDA agrees to perform subsidy layering reviews and share information as described under this MOU. This MOU is limited to the following programs and transactions:

- HUD Assistance: Section 236 Decoupling, Section 202 Prepayment, Section 202 Restructuring, Section 8 Project-Based Vouchers Housing Assistance Payments Contracts.
- RHS Assistance: Section 515, and Preservation Revolving Loan Fund (PRLF)

**THE PARTIES AGREE AS FOLLOWS:**

- (a) Subsidy layering analysis under this MOU must be performed by WHEDA at minimum 1) upon initial application review (aka Reservation of LIHTC) and 2) after project completion (aka issuance of LIHTC form 8609).
- (b) To share information among the Parties, not otherwise protected under the Privacy Act or the HUD Reform Act and its implementing regulations, on project costs or other information as necessary to complete the SLR.
- (c) To use the following fee norms as published annually by WHEDA; including but not limited to:
- Builder's Profit: Six percent (6%) of Construction Contract Amount
  - General Overhead: Two percent (2%) of the Construction Contract Amount
  - General Requirements: Six percent (6%) of the construction contract
  - Developer's Fee: Fifteen percent (15%) of the total development cost for developments of 24 units or less; twelve percent (12%) for developments with 24 units or more; and eight percent (8%) of the acquisition costs only for the acquisition rehabilitation costs.
- (d) The above fee norms will be used in the analysis of the amount of assistance that is necessary for a project. As allowed by Section 911, fees may exceed the maximums when justified by special circumstances. The percentage allowances above for Builder's Profit, General Overhead and General Requirements are general guidelines and may be exceeded but their sum should not exceed 14% of the construction contract unless otherwise provided for in WHEDA's applicable Qualified Allocation Plan ("QAP").
- (e) The Parties agree to the definitions and formulas for the determination of profits, costs and amounts of assistance in the QAP and related application and appendices for the State of Wisconsin. Or, if not defined in the QAP, the definitions used by RHS shall prevail. Allowable equity will be determined by RHS requirements and further explained in Exhibit C, Appendix O.
- (f) The Parties understand that none of the Parties to this agreement certify the accuracy of the LIHTC applicant's eligibility or certifies to the applicant's compliance with Section 42 of the Internal Revenue Code. The Parties understand that the owner certifies that information to HUD, RHS and to WHEDA as being true and correct representations.

- (g) The Parties 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, RHS and WHEDA employees. Further, the Parties understand that specific information on a proposal may be shared with the applicant and other providers of funds on the respective proposals as appropriate.
- (h) The Parties will review, as necessary, the fee norms on builder or general contractor charges (builder's profit, builder's overhead, and general requirements) established by this MOU relative to WHEDA's QAP or other regulations. The developer's fee or any other fees allowed by the identified funding resources will also be reviewed. Any revised fee norms will be added as an amendment to this agreement and be used in subsequent analysis of LIHTC requests, so long as the 'other fees' do not conflict with RHS requirements.
- (i) The Parties agree to cooperate and share available resources and information, not otherwise protected under the Privacy Act, according to procedures detailed later in this MOU, including but not limited to, 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 impacting the proposed development, terms of proposed property acquisition or value.
- (j) Any modifications to the conditions of this agreement must be reviewed and accepted in writing by all Parties. Any revision to this agreement will be added as an amendment.
- (k) As provided for by Section 911(c) of the Housing and Community Development Act of 1992, if HUD determines that WHEDA has failed to comply with the guidelines for subsidy layering review, the authority to perform the subsidy layering review may be withdrawn.
- (l) The Parties agree that, as provided under the Housing and Economic Recovery Act of 2008, SLRs and the Section 911 Certifications contemplated under this MOU are not required for projects receiving HUD mortgage insurance or HOME funds, unless accompanied by other applicable assistance.

**HUD AGREES:**

- (a) To provide to WHEDA information on LIHTC projects being considered for HUD assistance as follows:
  - (1) A copy of any notification of 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 WHEDA
- (b) To provide to WHEDA information described in Exhibit A for projects being considered for HUD Assistance which do not involve LIHTC, but for which a SLR is being requested. WHEDA shall not be obligated to conduct SLR for projects not involving LIHTC, but may do so at its discretion. WHEDA reserves the right to charge a project or its sponsor a \$1,000.00 fee for each SLR WHEDA conducts which does not involve LIHTC.

**RHS AGREES:**

- (a) RHS agrees to inform any applicants seeking both tax credits 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 3560, HB 3, Chapter 7, "Transfer of Project Ownership", if applicable.
- (b) To provide WHEDA with information on Section 515 projects and PRLF projects being considered for and receiving Section 515 funding, so long as said information is not protected under the Privacy Act or if RHS obtains a Privacy Act waiver from the borrower, 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 RHS (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 RHS (RD);
  - (6) A copy of the approved Annual Operating Budget, *Form RD 3560-8*;
  - (7) A copy of any purchase contract or agreement provided by the applicant along with an amendments;

- (8) A copy of any appraisal made available to RHS for use in evaluating the proposal, including any review comments by RHS along with a copy of the engagement letter including both RHS and WHEDA; and
  - (9) A copy of any Capital Needs Assessment provided by the applicant along with any review comments by RHS.
  - (10) RHS will provide the results of any analysis on necessary assistance to the applicant and WHEDA.
- (c) RHS will use the fee norms above to analyze 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 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 LIHTCs.
- (d) In all cases where the results of an analysis conducted by RHS indicate there will be excess or shortfall of assistance, WHEDA and RHS will reach an agreement for reducing excess assistance or covering shortfalls, if possible. The following alternatives are examples of actions that can be taken:
- (1) Reducing the amount of LIHTCs or PRLF requested;
  - (2) Reducing the level of assistance provided by one or more of the sources of funds;  
or
  - (3) Revising the uses to include eligible costs for any funding participants, provided the project enhancement is consistent with the intent of the Rural Rental Housing program and will assist the resident population being served by the housing.

**WHEDA AGREES:**

- (a) To inform any applicants seeking a combination of both LIHTC and either HUD Assistance or RHS loan assistance that the MOU will be applied to the underwriting of the LIHTC application. A copy of the MOU may be provided to applicants for their information.

(b) To maintain the following information:

- (1) The list of LIHTC requests received from applicants that indicate they are seeking either HUD Housing Assistance or assistance from RHS;
- (2) For each applicant's request, a copy of the LIHTC application and development cost breakdowns, anticipated rent schedules and operating proforma data used to estimate the amount of LIHTC 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; and
- (4) WHEDA contracted market study.

(c) To provide to HUD the following information:

- (1) The *Section 911 certification* (Exhibit B) of subsidy layering review findings and a copy of the developer's disclosure(s) of sources and uses of funds.
- (2) When the development is complete include the final sources and uses of funds in the projects receiving LIHTC and HUD Assistance and the *Section 911 Certification*.

(d) For projects involving HUD Assistance, in cases where the subsidy layering review indicates that there will be an excess of assistance, to reduce the amount of LIHTC to eliminate the excess as required by Section 42 of the IRS Code or request HUD to reduce the amount of HUD Assistance.

(e) To provide to RHS the following information:

- (1) The list of LIHTC and PRLF requests upon receipt from Applicant that indicate they are seeking financing, or currently have financing from RHS;
- (2) For each such LIHTC or PRLF request, a copy of the LIHTC or PRLF application including the detailed construction and development cost breakdowns, anticipated rent schedules, and operating pro forma data used to estimate the amount of tax credits for which the developer would be eligible;
- (3) *IRS Form 8609, cost certification*, (or other applicable state form or document accepted by WHEDA 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 LIHTCs ; and

- (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.
  
- (f) To incorporate into its LIHTC allocation process a “Preliminary RD Underwriting” to provide to RHS the opportunity to incorporate its underwriting standards prior to LIHTC allocations. Please see Exhibit C for example, Appendix O.

**PERIOD OF AGREEMENT**

This agreement will remain in effect until terminated with a 30 day written notification by any Party if determined that the SLR reviews are not adequate to protect all Parties interest or that the reviews do not comply with Agency guidelines. Any party so terminating must submit written notification to all other Parties.

**ACCEPTANCE AND SIGNATURE OF EACH APPROVING PARTY**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

By: [Signature] Date: 2/27/12  
Name: Michael R. Riley  
Title: Asst. Dir.

**RURAL HOUSING SERVICE IN WISCONSIN**

By: [Signature] Date: 2/27/2012  
Name: Steph Conroy  
Title: State Director

**WISCONSIN HOUSING AND ECONOMIC DEVELOPMENT AUTHORITY**

By: [Signature] Date: 2/27/2012  
Name: Wyman Winstan  
Title: Executive Director



**Exhibit A**

**HUD Subsidy Layering Review Checklist for Developments without  
Low-Income Housing Tax Credit Projects**

Project Name, Location: \_\_\_\_\_

Sponsor/Applicant: \_\_\_\_\_

\_\_ Narrative Description of Project, including:

\_\_ Total number of units

\_\_ Type of unit, bedroom distribution

\_\_ Portion and type of units receiving assistance, compliance with partial assistance requirements, if applicable

\_\_ Sources of Funds:

\_\_ Each Source Listed Separately with Details

\_\_ Principle

\_\_ Interest Rate

\_\_ Amortization Term

\_\_ Uses of Funds:

\_\_ Detailed Breakdown of Project Costs, including hard and soft cost items

\_\_ Commitment Letters from All Sources of Financing Disclosing Significant Terms

\_\_ Historic Tax Credits (as applicable)

\_\_ Amount of Credit

\_\_ Equity Investment Commitment Letter

\_\_ Amount of Investment

\_\_ Equity Contribution Schedule showing amount and timing

\_\_ Bridge Loan Details (as applicable)

Appraisal Report, if available, establishing the “as is” value of the property before construction or rehabilitation, and without consideration of any financial implications of tax credits or project-based assistance.

Operating Performa showing projected project income, expenses and cash flow

Housing Authority Approval of PBA Voucher Assistance for Project, if applicable

Standard Disclosure and Perjury Statement, Identity of Interest Statement

Form HUD-2880

Initial Contract Rents, if applicable

Housing Authority letter confirming gross contract rents with applicable tenant utility allowances, if applicable

**Exhibit B**

**HOUSING CREDIT AGENCY  
HUD SECTION 911 CERTIFICATION**

Pursuant to Section 102(d) of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act) and Section 911 of the Housing and Community Development Act of 1992, as amended, the Housing and Economic Recovery Act of 2008 and in accordance the Memorandum of Understanding dated February 27, 2012 for delegation and acceptance of the responsibility for subsidy layering review,

WHEDA hereby certifies that we have performed a review of the sources and uses of funds for:

Project Name:

Project Number:

And that review shows:

*that the amount of equity capital contributed by investors to the project partnership is not less than the amount generally contributed by investors in current market conditions; and*

*that the Debt Coverage Ratio and project cash flow are within a reasonable range, as specified in the Qualified Allocation Plan (QAP) taking into account project size, project characteristics, project location and project risk factors: and,*

(Check the applicable statement below.)

\_\_\_\_\_ *that project costs, including developer fees, are within a reasonable range as specified in the Qualified Allocation Plan (QAP) taking into account project size, project characteristics, project location and project risk factors; or,*

\_\_\_\_\_ *that project costs exceed the ranges specified in our QAP in recognition of the following factors:*

Attached hereto please find the approved project Sources and Uses Statement, 15 year DCR and Cash flow statement, and other documentation necessary to support the findings.

Certified by: \_\_\_\_\_

Date: \_\_\_\_\_

Exhibit C

APPENDIX O

Special LIHTC Submittal Requirements for USDA Section 515 (RD) Projects

LIHTC Application One The following are threshold items which the LIHTC applicant must submit.

1. This form, signed by a representative of RD (aka Rural Housing Service-WI) signifying receipt of the checked items, at minimum, 30 days prior to the submittal of the LIHTC Application One. **A representative of RD (aka Rural Housing Service) must sign this form.**
  - Proposed Ownership Entity and all principals.
  - Proposed Scope of Work in narrative form. Include cost estimates, current and assumed post transaction rents, operating expenses, change in number or type of units, consolidation of multiple properties, proposed operating budget for RD transactions, etc.
  - A Proposed Sources and Uses Statement showing all sources of funding, including financing terms, for the project including proposed lien position.
  - Executed Purchase Agreement, if available.
  - Additional requirements:
    - If principals currently own properties financed by RD, provide a certification the principals are in compliance with all regulatory documents, agreements, etc.
    - A rent comparability study is required for all projects in which a rent increase is being planned along with documentation as to how effected residents will be protected by the planned rent increase.
    - RD Form 3560-7 with a typical proposed budget will be required. The form can be found at <http://www.rurdev.usda.gov/mt/docs/rhsdocs/3560-07.pdf>
  - Letter from HUD or WHEDA Contract Administration showing actual or preliminary approval of contract rent increase if the financing structure in the application assumes a rent increase under any HUD program\*. **IMPORTANT NOTE: Without written support of a rent increase from HUD, or WHEDA Section 8 Contract Administration, current contract rents will be used. All applicants are encouraged to contact WHEDA Section 8 Contract Administration prior to applying to understand potential rent increases or decreases dictated by the HAP Contract.**

Checked Items have been received

\_\_\_\_\_  
Signature by RD (Rural Housing services-WI)

\_\_\_\_\_  
Date

2. Applicant to provide a letter from RD indicating preliminary approval of the following:
  - The applicant is an eligible entity per RD regulation 3560.55.
  - The loan is for eligible purposes.
  - RD has determined a need for the property.
  - RD may assist with additional rental assistance units if available at the time of the transaction or discussion with developer on providing Private Based Assistance.
  - RD will indicate potential rent structure not to exceed the comparable market rents for the community as determined by a rent comparable study. With projects having less than 100% project based rent subsidy, rents will be the lesser of CRCU or LIHTC limits.
  - Identify loan(s) that will be assumed.

**Exhibit C (continued)**

**APPENDIX O**

**Special LIHTC Submittal Requirements for USDA Section 515 (RD) Projects**

**LIHTC Application Two. The following are threshold items which the LIHTC applicant must submit.**

1. This form, signed by a representative of RD (aka Rural Housing Service-WI) signifying receipt of the checked items, at minimum, 30 days prior to the submittal of the LIHTC Application Two. **A representative of RD (aka Rural Housing Service) must sign this form.**

Evidence that the following items have been submitted to RD as a complete transfer application according to HB-3-3560, Chapter 7, "Transfer of Project Ownership", "Transfer Request Checklist", if applicable:

- Proposed Transaction (Executive Summary; MFH Transfer & Assumption Attachments 7-B-2 & 7-b-3; Purchase Agreement; etc).
- Proposed Repairs (Capital Needs Assessment, Cost Estimates Form RD 1924-13; etc.)
- Documentation of Market Rents & Value (Appraisal; Rent Comparability Study, etc.)
- The sales price must fit within RD requirements. RD does not restrict the sales price on transactions that do not include any new hard debt so long as all RD transfer requirements are met. In all other situations, the sales price will be the lower of the appraised value, based on an appraisal accepted by RD, or the amount of the third party debt service that fits within the maximum allowable rents for the property.
- Financial Aspects of the Transaction (Application for Federal Assistance SF 424; Proposed Budget Form RD 3560-7; Sources and Uses of Funds)
- Third Party Funding (Application for Funding; Commitment Letters, etc.)
- Proposed Purchaser (Previous Participation; Purchases Financial Statement, Credit Report Fees, etc.)
- Proposed Management (Management Plan, Management Certification, Affirmative Fair Housing Marketing Plan, etc.)
- Proposed Organizational Documents for Purchaser
- Other – Assurance Agreement Form RD 400-4; Equal Opportunity Agreement Form 400-1; Certification regarding Drug Free Workplace Form RD 1910-11; Request for Rental Assistance Form RD 3560-25.etc.
- Acknowledgment that an RD's architect must be involved with the development of the scope of work, any pay request, contract change orders and inspections.

Checked Items have been received

\_\_\_\_\_  
Signature by RD (Rural Housing services-WI)

\_\_\_\_\_  
Date

**Exhibit C (continued)**

**APPENDIX O**

**Special LIHTC Submittal Requirements for USDA Section 515 (RD) Projects**

**LIHTC Application Three (Final) The following are threshold items which the LIHTC applicant must submit.**

1. This form, signed by a representative of RD (aka Rural Housing Service-WI) signifying receipt of the checked items, at minimum, 30 days prior to the submittal of the LIHTC Application Three.
  2. RHS will have five days to review and concur in. **A representative of RD (aka Rural Housing Service) must sign this form.**
- Copy of the Final Cost Certification including third party audit.

Checked Items have been received

\_\_\_\_\_  
Signature by RD (Rural Housing services-WI)

\_\_\_\_\_  
Date