



Affordable Housing Alert

Developments in affordable housing law

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New HUD policy promises to facilitate the use of FHA mortgage insurance with historic tax credits and new markets tax credits

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On March 3, 2008, HUD, issued new procedures (the “Master Lease Policy”) which permits the use of master lease ownership structures with FHA multifamily mortgage insurance programs. This much-awaited policy change is designed to facilitate the use of FHA mortgage insurance in tandem with federal and state historic tax credit programs and new markets tax credit programs, as well as low-income housing tax credits in transactions that also use leasing structures. Under the Master Lease Policy, local FHA offices must obtain the approval of HUD headquarters before an FHA mortgage insurance transaction may use a leasing structure. Approvals will be granted on a case-by-case basis. The Master Lease Policy also sets out additional rules governing the underwriting, closing, and asset management of these transactions.

In 2006, Nixon Peabody obtained HUD approval for a client on the first HUD Headquarters-approved FHA transaction to formally use a master lease structure. Since then, Nixon Peabody attorneys have worked closely with several clients to help secure the Master Lease Policy, which is based to a significant degree on the model established in the 2006 transaction.

The Master Lease Policy applies to the 220, 221(d)(4) and 231 mortgage insurance programs. These FHA programs insure mortgage loans to facilitate the new construction or substantial rehabilitation of multifamily rental or cooperative housing for moderate-income families, elderly, and the handicapped. Previously, HUD policy had been that properties with master leasing structures generally were not eligible for FHA-insured loans. This was because the FHA requires its mortgagor to operate the property subject to a HUD regulatory agreement. As such, HUD had generally not permitted a party other than the mortgagor or its agent to have access to or control over rental income or other assets of the property. In master leasing transactions, by contrast, the property is operated and leased by a master tenant entity distinct from the borrower of the FHA-insured loan.

The Master Lease Procedures have been issued in draft form. HUD expects to issue a Mortgage Letter within 90-120 days.

If you have any questions concerning the application of the new Policy or HUD programs and tax credits in general, please feel free to contact Monica Sussman at 202-585-8833 or msussman@nixonpeabody.com; Anthony Ruvolo at 202-585-8820 or aruvolo@nixonpeabody.com; or Andrew S. Potts, Esq. at 202-585-8337 or apotts@nixonpeabody.com.

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