Now & Next
Affordable Housing Alert

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HUD fast-tracks FHA financing for experienced LIHTC developers

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Mortgagee Letter 2026-13 creates an Express Lane for FHA-insured new-construction financing designed to reduce regulatory barriers to affordable housing development.

What's the impact?

- The Express Lane is open to new-construction 4% LIHTC/tax-exempt bond and 9% LIHTC transactions insured under Section 221(d)(4), with no loan size or unit cap, but excludes projects with HUD Section 8 project-based rental assistance.
- The experience and financial strength of the full development team will be key to Express Lane eligibility and to meeting HUD's reemphasized 30-day firm commitment decision timeline.
- HUD lowers the minimum tax-credit equity pay-in at Initial Endorsement of 10%; final plans, specifications, and third-party reports may follow the firm commitment if HUD receives them at least 15 days before closing.

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On November 2, the US Department of Housing and Urban Development (HUD) issued Mortgagee Letter 2026-13, implementing the Low-Income Housing Tax Credit (LIHTC) Express Lane Initiative for Section 221(d)(4) new construction loans, effective immediately. The Express Lane is intended to reduce Federal Housing Administration (FHA) processing times for highly experienced and capable LIHTC developers.

Background

HUD describes the Express Lane as consistent with Executive Order 14394, "Removing Regulatory Barriers to Affordable Home Construction," signed March 13. It is designed to test a streamlined FHA review process for experienced development partners, recognizing that LIHTC developers, syndicators, and lenders often underwrite expenses and net operating income more conservatively than HUD. The existing LIHTC 221(d)(4) Pilot remains in effect; the Express Lane is intended for a different cohort of projects focused on new construction.

Key changes from the 2019 LIHTC Pilot

The Express Lane modifies several policies from the 2019 LIHTC Pilot program:

- **No deferred developer fee requirement.** The requirement to defer at least 25% of the developer fee has been removed.
- **No unit cap.** The maximum project size limit of fewer than 200 units has been eliminated.
- **4% deals now eligible.** New-construction 4% LIHTC transactions with tax-exempt bonds, previously ineligible, are now included.
- **Standard leverage.** The 65%–75% maximum loan-to-cost (LTC) limit is eliminated, reverting to the standard 80% LTC allowed under the Housing and Economic Recovery Act.
- **Limited early deliverables.** Pre-application submissions are limited to specified environmental items, detailed below.
- **30-day firm commitment timeline.** HUD maintains its 30-day deadline for deciding whether to issue a firm commitment on complete Express Lane applications.
- **Fewer environmental exclusions.** Environmental eligibility limitations have been reduced to two compliance factors, detailed below.

Notably, the Express Lane does not relax HUD's loan sizing or underwriting standards. Standard Section 221(d)(4) thresholds under the Multifamily Accelerated Processing (MAP) Guide—including LTC, debt service coverage ratios, and net operating income calculations—continue to apply; the benefit is an expedited underwriting review and closing process.

Who is eligible?

- **New-construction projects.** Eligibility is limited to new-construction projects insured under Section 221(d)(4) with LIHTC-restricted rents. Projects with HUD Multifamily Section 8 project-based rental assistance are excluded. There are no limits on loan size or number of units.
- **Existing HUD borrowers.** Borrowers submitting under prior credit approval who are active in LIHTC transactions are deemed eligible.
- **LIHTC developers/owners.** The development team must be managed and controlled by an experienced LIHTC developer/owner. Prior HUD experience is a strength but not required. Principals must:
    - Have developed, placed in service, and stabilized at least three LIHTC transactions in the past five years, at least one comparable in size and scope.
    - Meet the tax credit investor's industry-standard guarantee thresholds of $1 million liquidity and $5 million net worth through the active entity and individual principals alone, without third-party guarantors — developers relying on future developer fees from in-process deals are ineligible.
    - Show a stable portfolio, with stabilized LIHTC portfolio DSCR above 1.15, occupancy above 93%, and few individual transactions below those metrics. The lender must detail a stabilization plan for any stressed deals.
    - Have a positive previous participation record — Real Estate Assessment Center scores above 80, positive Management and Occupancy Reviews, and no Tier 1 or 2 flags — if previously active in HUD programs.
- **Experienced general contractors.** Eligible general contractors much have at least five Section 221(d)(4) and LIHTC projects completed in the past 10 years, comparable experience in size and scope, working capital above HUD's 5% standard without hypothecation of assets or parent/principal equity infusions, and at least five Davis-Bacon projects in the past 10 years.
- **Experienced architects.** Architects must have design and supervisory experience on comparable projects, prior experience preparing construction documents for MAP lender and HUD review in Section 221(d)(4) transactions, and design and construction supervision on five such projects in the past 10 years to be eligible.
- **Experienced management agents.** Eligible management agents must be currently operating at least five LIHTC-compliant projects, with experience held at the company level rather than based solely on recent hires.

Environmental screens and early deliverables

Projects with noise above 75 decibels or contamination exceeding unrestricted residential levels without a regulator-approved remediation plan are not eligible but may proceed under standard processing. Between concept meeting and applying, lenders must submit project information for four environmental reviews: HUD's Tribal consultation, lender-initiated Section 106 consultation with the State Historic Preservation Officer, the initial public notice for the floodplain/wetland 8-step process (if applicable), and endangered species consultation. Mitigation plans must be submitted with the firm application for any above-ground storage tank separation-distance risks and noise levels between 65 and 75 decibels. HUD may still shift a project to standard processing if environmental issues require extended review. It also notes that these environmental eligibility factors may change if environmental regulations are revised or eliminated through rulemaking.

Process improvements

- Concept meetings remain required, but Express Lane projects receive priority scheduling.
- HUD's tax credit equity pay-in requirement at initial endorsement is limited to 10%, giving developers and investors flexibility to structure the remaining pay-in.
- Final plans, specifications, and third-party Architecture, Engineering, and Cost reports may be submitted at least 15 days before closing rather than before firm commitment to align with other funding sources' review processes.
- An Economic Market Analysis Division review only required if requested by the regional production division director.

Complex legal documents, including trust indenture, note, organizational documents, ground lease, title, and subordinate financing, may be submitted for legal review during the application process, and HUD's Office of General Counsel may be consulted to reduce closing delays.

What owners and developers should consider now

- **Benchmark your team.** Confirm that the developer, general contractor, architect, and management agent meet the experience, liquidity, net worth, and portfolio thresholds before committing to an Express Lane timeline.
- **Engage your MAP lender early.** HUD encourages lenders to discuss proposed transactions with the regional production division director before submitting a concept package.
- **Front-load environmental work.** Begin Tribal, Section 106, floodplain/wetland, and endangered species materials so they are ready immediately after the concept meeting.
- **Revisit deal structure.** Reassess leverage, developer fee deferral, and equity pay-in schedules considering the 80% LTC and 10% initial equity requirement.

Opportunities for owners and developers

Our Affordable Housing Team will continue to track implementation of the LIHTC Express Lane and is available to help clients evaluate eligibility, screen development teams against the Express Lane thresholds, structure transactions, prepare organizational and restrictive covenant documents for HUD review, and navigate the expedited FHA process. HUD has directed questions on the Mortgagee Letter to Margaret Lawrence. For more information on the content of this alert, please contact your Nixon Peabody attorney or:

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