



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-8000

ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

Special Attention of

All Multifamily Hub Directors

All Multifamily Program Center Directors

All Directors of Project Management

All Field Counsel

Expires:

Notice H 2014-5

Issued: March 25, 2014

Expires: This notice remains in effect until
amended, revoked, or superseded.

Cross References

2 CFR 2424.1100

Subject: Use of the Limited Denial of Participation (LDP)

I. Purpose

The purpose of this Notice is to establish requirements and procedures for Multifamily Hub Directors (Hub Director) and Multifamily Program Center Directors (Program Center Director) to initiate proceedings against FHA-insured multifamily borrowers who have failed to meet program requirements.

The Office of Multifamily Housing currently does not maintain a “Bad Borrower” listing. Such a listing would encompass borrowers who have violated HUD requirements, caused a claim or a loss to the FHA Insurance Fund (Insurance Fund) or have failed to keep their property in acceptable physical condition. Although the Active Partners Performance System (APPS) places flags on borrowers, the system does not lend itself to maintaining a list and is not consulted until well after the application process has been initiated.

The Department does maintain a list of individuals and entities that are subject to restrictions on doing business with the Department. The Limited Denials of Participation, Funding Disqualifications and Voluntary Abstentions List is maintained by the Departmental Enforcement Center (DEC). The “active” list, which includes only those restrictions currently in effect, is available to the public on [HUD’s website](#).¹ It provides the name and location of the individual or business, the geographic and programmatic scope of the disqualification, and the term of the disqualification. It also provides contact information for the HUD official most familiar with the action. The DEC also maintains an “inactive” list, which consolidates expired actions. Information from this list is stored in APPS. It is also available by contacting the DEC.

¹ The Limited Denials of Participation, Funding Disqualifications and Voluntary Abstentions List, is located at: https://www5.hud.gov/ecpcis/main/ECPCIS_List.jsp

The Office of Multifamily Housing intends to increase the use of the Limited Denial of Participation (LDP) process to ensure that borrowers that have caused a claim to be made against the Insurance Fund are prevented from initiating new business with the FHA for at least a year. Unlike the APPS system, which flags risky borrowers and gives HUD the discretion to deny participation, an LDP imposes a mandatory barrier to initiating new business while it is in effect. Since the LDP list is publicly available, it is in effect HUD's "Bad Borrower" List. By requiring that LDP actions be considered for the principals of a borrower that has caused a claim against the insurance fund, HUD is reducing the risk of future claims against the fund.

II. Background

A Limited Denial of Participation is an action taken by an authorized HUD official to exclude a party from further participation in a HUD program or programs. The scope of the LDP is limited to the physical jurisdiction of the office that issued it. If the LDP is signed by the Deputy Assistant Secretary for Multifamily Housing Programs or the Director, Office of Asset Management, its scope is nationwide and encompasses all multifamily housing programs.

HUD regulations at 2 CFR Section 2424 Subpart J provide a process for HUD to issue an LDP. An LDP can be issued by a Program Center Director, a Hub Director, the Director, Office of Asset Management, the Deputy Assistant Secretary for Multifamily Housing Programs or the Assistant Secretary for Housing.² An LDP excludes the program participant from participating in multifamily housing programs under the jurisdiction, both regionally and programmatically, of the official who issued it. LDPs are effective on issuance and typically remain active for 12 months.³

According to HUD's regulations, an LDP should be issued "based on the best interests of the Federal Government."⁴ Its purpose is to reduce the government's risk by restricting individuals or entities from participation in new business with the Department as a direct consequence of a failure to comply with HUD program requirements. HUD has discretion to issue an LDP in a wide range of circumstances; this guidance specifically requires the initiation of the LDP process when a borrower has caused a claim to be made against the FHA Insurance Fund.

The term "borrower" in this context includes all principals of the project who were required to sign a Form HUD-2530 in connection with the project.

III. Processing Guidance

A. Issuance of Show Cause Letter

When a claim has been made against a project in its portfolio, the Program Center Director's

² Delegations of Authority for the Office of Housing - Federal Housing Administration (FHA); Redelegations of Authority Regarding Multifamily Housing Programs 77 FR 37241, Section III(C).

³ Twelve months is the maximum term per 2 CFR Section 2424.1120.

⁴ 2 CFR Section 2424.1100

staff (“Staff”) prepares a Show Cause letter for each of the principals listed on Form HUD-2530 for the property. The Show Cause letter(s) provides notice that HUD is considering restricting the recipient’s future participation in HUD programs through the issuance of an LDP. The letter provides the recipient with the opportunity to demonstrate why the LDP should not be issued. It should indicate that if the recipient does not respond, HUD may view his or her silence as indication that the recipient contributed to the actions in question. The Show Cause letter should invite the recipient to discuss his or her response at a conference with the Program Center Director within 30 days of the issuance of the letter. Attachment One provides a sample Show Cause letter.

The Staff should draft the Show Cause letter(s) within two weeks of notification of the claim. The Staff then sends the draft(s) to the Director of Compliance for the DEC for approval. The DEC will review the draft Show Cause letter(s) for regulatory compliance and should complete the task within a week. The DEC may request that the field office suspend action on the LDP in order to consider the borrower for debarment or suspension. Once the DEC has approved the letter, the letter is ready for the Program Center Director’s signature and for transmission to the addressee(s). Copies of the signed letter(s) should be sent by email to the Director, Office of Asset Management, the DEC and the appropriate Hub Director.

B. Response to the Show Cause Letter—PC Director’s Determination

The recipient is provided 30 days to respond to the Show Cause letter. If the recipient submits a written response within the allowed timeframe or meets with the Program Center Director to make its case, the Program Center Director is required to address the recipient’s response in his or her determination. The information available to the Program Center Director, as well as the response provided by the recipient, should be used to determine whether to recommend that the LDP be issued. The LDP should be issued if the evidence establishes that at least one of the following conditions has been met:⁵

- Future participation by this individual in an FHA multifamily insurance program would constitute an unsatisfactory risk,
- The individual’s actions that led to the claim against the Insurance Fund constitutes an “irregularity” in the individual’s past performance,
- The person did not comply with all contractual or regulatory requirements,
- The person violated any law, regulation or procedure in the process of applying for financial assistance, insurance or a loan guarantee,
- The person violated any law, regulation, or procedure as a recipient of assistance, insurance or a guarantee,
- The person has made or has caused to be made a false statement for the purpose of influencing an action of the Department; or
- Imposition of an LDP by any other HUD office.

In the case of a principal of a property who has caused a claim to be made against the Insurance Fund, the most relevant reason for issuing an LDP will likely be “approval of an applicant

⁵ For a full list of conditions, see [2 CFR 2424.1110](#).

for insurance would constitute an unsatisfactory risk.”⁶ In all cases, the LDP is based on the best interests of the Federal Government.

C. Notice of the Limited Denial of Participation

The Program Center Director sends the determination, along with a draft LDP, to the Hub Director for action. The Program Center Director includes in his or her LDP recommendation the names and addresses of the parties the LDP should be issued against, and the recommended geographic scope of the LDP. If the Hub Director determines that an LDP is not warranted, a Letter of Determination is sent to the appropriate individuals, with a copy to the Program Center Director and the DEC. If the Hub Director determines that an LDP against one or more principals is warranted, and that the scope of the LDP should be regional, the Hub Director mails a Notice of LDP to the principal(s). If the Hub Director determines that the scope of the LDP should be national, the Hub Director should forward the recommendation and documentation to the Director, Office of Asset Management, for issuance of an LDP with a national scope. The notice, whether issued by the Hub Director or a Headquarters official, must contain the following information (Sample Attached as Attachment Two):⁷

1. Notice that an LDP is being imposed. The notice must specify the individual to whom it applies;
2. The cause for the LDP (e.g., that future participation in FHA insurance programs by the borrower would constitute an unsatisfactory risk, as evidenced by the filing of a claim against the insured property);
3. The scope of the denial of participation. The notice must specify that the LDP will remain in effect for 12 months. It must list the programs to which it applies. This will generally include all programs administered by the Office of Multifamily Housing. The notice must also describe the geographic area covered by the LDP. For a small entity that only does business within the Hub’s geographic jurisdiction, this will be the Hub Office jurisdiction. If the entity has multiple insured properties or has properties in other parts of the country, the limitation should be imposed nationally and the LDP Notice should be signed by a Headquarters Official. If the LDP is signed by the Director, Office of Asset Management or by the Deputy Assistant Secretary for Multifamily Housing Programs, the scope of the LDP will extend nationwide; and
4. Notice of the right to contest the imposition of the LDP and notice of the right to submit a written request for a conference in support of that effort.

The LDP is effective immediately.⁸ The Hub or Headquarters informs the Hub and Program Center and sends a copy of the Notice of LDP to the Director of the Compliance Division of the

⁶ 2 CFR Section 2424.1110(a)(1)

⁷ 2 CFR Section 2424.1125

⁸ 2 CFR Section 2424.1115

Departmental Enforcement Center for posting to the Department's official [LDP List](#). The Program Center staff enters an LDP flag in APPS per the HUD [APPS User Guide](#) Chapter 6.

D. Right to Contest a Notice of Limited Denial of Participation

The borrower who receives a Notice of LDP has the right to request a conference with the official who issued it or the official's designee.⁹ When the Issuing Official is the Deputy Assistant Secretary for Multifamily Housing Programs or the Director, Office of Asset Management, the Hub Director with jurisdiction over the subject property will generally be designated as the Department's representative. The borrower has the right to bring a representative to the conference and is invited to present all relevant information and materials at that time. The HUD official presides at the conference. This official is responsible for determining whether to terminate, modify or affirm the LDP, and for informing the borrower of his or her determination in writing.

E. Timing for Contesting a Notice of Limited Denial of Participation

1. Upon receipt of a Notice of LDP, the recipient borrower has 30 days to request a conference for the purpose of contesting the LDP.
2. If the borrower requests a conference, it shall be held within 15 days after the Department's receipt of the request, unless the borrower waives this time limit.
3. From the date the conference is held, or after any agreed-upon extension to permit the borrower to submit additional materials, the HUD Designated Official has 20 days to issue a written decision withdrawing, modifying, or affirming the LDP.

F. Written Determination

The official who presided at the conference must issue his or her determination in writing. The official has the option to terminate, modify or affirm the LDP.¹⁰

i. Termination

If the LDP is terminated, the written determination should describe the evidence produced by the borrower that justified the reversal of the LDP. Following the issuance of the termination, the Issuing Official should immediately inform the DEC and absolve the participant flag in APPS.¹¹

⁹ Pursuant to 2 CFR 2424.1130(b), the borrower may elect to have a hearing before a Departmental Hearing Officer ("Hearing Officer"). The Hearing Officer will issue findings of fact and make a recommended decision. The issuing official will review the findings and recommendation and make a final decision.

¹⁰ 2 CFR Section 2424.1130(a)

¹¹ See APPS Users' Guide, Section 6.3.

ii. Modification

If, after receiving the borrower's evidence, the official determines that it is in the best interest of the government to modify the LDP, the written justification should describe the justification for the modification, and the evidence that supports the determination. The determination must advise the recipient that there is a further right to contest the notice and to request a hearing before a Departmental Hearing Officer. The official should immediately inform the DEC of the modification, and should make any necessary changes to the flag in the APPS system.

iii. Affirmation

If after receiving the borrower's evidence, the official determines that the evidence supports upholding the LDP, the official issues a written determination stating that the LDP is affirmed. The determination must advise the recipient that there is a further right to contest the notice and to request a hearing before a Departmental Hearing Officer.

G. Right to Contest LDP before a Departmental Hearing Officer

The borrower who receives a Notice of LDP has a right to contest the sanction before a Departmental Hearing Officer whether or not the borrower first contests the LDP with the Issuing Official.¹² The borrower has 30 days from the receipt of the LDP, or from the receipt of the affirmation or modification of the LDP, to request a hearing. Requests for hearings before a Departmental Hearing Officer must be submitted to:

Docket Clerk
Departmental Enforcement Center
1250 Maryland Avenue, SW, Suite 200
Washington, DC 20024

IV. Information Collection

The information collection requirements contained in this document are pending approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB control number 2502-0118. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

¹² 2 CFR Section 2424.1130(b)

For further information, please contact Norman Dailey at (202) 402-8371.

Carol J. Galante
Assistant Secretary for Housing-
Federal Housing Commissioner

ATTACHMENT 1

XXX, LLC
St. Louis, MO 63111

Re: Request to Show Cause

To Whom It May Concern:

The Department of Housing and Urban Development hereby requests that you show cause why you should not face adverse administrative action by the Department, up to and including debarment, for your apparent failures to comply with HUD requirements in your exercise of responsibilities as the Manager of [property] and borrower under the FHA Section 220 Substantial Rehabilitation program. This inquiry is predicated on the claim against the FHA Insurance Fund due to the default on Loan ###.

Specifically, HUD seeks your justifications and explanations for:

- a. The project's default on its FHA-insured mortgage with [Lender] Commercial Mortgage, LLC as of May 1, 2012,
- b. The use of project funds for ineligible and unsupported expenses,
- c. The misuse of tenant security deposit reserve funds; and
- d. Incorrect accounting reports that concealed improper transfers from tenant security deposit reserve funds.

Your written response to these inquiries must be submitted within 30 days of your receipt of this Notice, unless an extension is granted for good cause, based upon a request made within this period. The response may be mailed to:

Director
Program Center
U.S. Department of Housing and Urban Development
Address
City, State, Zip Code

A request for a conference with _____ may also be made within the 30 day period. If you do not respond, HUD may view your silence as indication that you contributed to the actions listed above.

After considering any response you make to these inquiries, HUD will determine whether administrative action is appropriate. If you have any questions regarding this process, please call Stanley E. Field, Director, Compliance Division, Departmental Enforcement Center. Mr. Field may be reached at (202) 245-4122.

Sincerely,

Program Center Director
Multifamily Hub

Enclosures

cc:

Director, Office of Asset Management, Multifamily Housing

Director, Departmental Enforcement Center

Director, Compliance Division, Departmental Enforcement Center

ATTACHMENT 2
CERTIFIED MAIL – RETURN RECEIPT REQUESTED
AND REGULAR MAIL

Mr. XXX

Subject: Notice of Limited Denial of Participation

Dear Mr. XXX:

This is to notify you that, pursuant to Title 2 of Code of Federal Regulations (C.F.R.) Part 2424, Subpart J, as amended, the Department of Housing and Urban Development (HUD) is restricting your participation in HUD programs. You are subject to this sanction by virtue of being a participant, contractor, and/or principal thereof as defined at 2 C.F.R. Section 2424.995. This Limited Denial of Participation (LDP) shall take effect on the date of this letter and prohibits your participation in certain HUD programs as described below.

1. Reasons for the Sanction

As the former Executive Director of X Housing Authority (XHA), you did not maintain complete and accurate books of account of the XHA operations. As shown in a program compliance review, you withdrew funds for cashier's checks, on two occasions, from the XHA operating account, on only your signature, in the amount of \$100,000, and upon only your request, in the amount of \$33,312.35, which violated the XHA check writing policy that requires two signatures for all checks disbursed. Furthermore, there was no documentation to support that these checks were issued for the benefit of a Housing Authority program. In additional transactions, you used your XHA credit card to purchase miscellaneous personal items and entertainment, including meals (\$868.38) and flowers (\$677.34). Finally, over a 5-month period, you withdrew \$86,862.35 from the Housing Authority's operations account in 45 separate transactions for which you did not supply any justification.

2. Cause for the Sanction

The following are deemed to be causes for an LDP, as set forth under 2 C.F.R. Section 2424.1110(a):

- (2) There are irregularities in a person's past performance in a HUD program,
- (4) The person has failed to honor contractual obligations or to proceed in accordance with contract specification or HUD regulations; and
- (8) The person has committed any act or omission that would be cause for debarment under 2 CFR 180.800.

3. Scope and Effect of the Sanction

By virtue of this LDP, you or any entity with which you are affiliated will not be permitted to participate in any way in the following programs: All Public Housing and Community Planning and Development programs. The scope of this limitation is appropriate because of the seriousness of the violations.

4. Term of the Sanction

Unless withdrawn or modified as a result of evidence presented by you at the conference described below, this LDP shall be in effect for a period of twelve (12) months. That term is considered appropriate because of the serious nature of the offenses.

5. Area of Effect

This LDP shall be in effect throughout the jurisdiction of the Texas Offices. You are advised, however, that all offices of the Department are notified of our action and may act in accordance with 2 C.F.R. Section 2424.1110(c).

6. Affiliates

In accordance with 2 C.F.R. Section 2424.1110(d), this LDP applies to all entities with which you are affiliated. "Affiliate" is defined at 2 C.F.R. Section 180.905 as follows:

Affiliate. Persons are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other or a third person controls or has the power to control both. The ways we use to determine control include, but are not limited to:

- (a) Interlocking management or ownership,
- (b) Identity of interests among family members,
- (c) shared facilities and equipment,
- (d) Common use of employees; or
- (e) A business entity which has been organized following the exclusion of a person which has the same or similar management, ownership, or principal employees as the excluded person.

The following are known affiliates subject to the LDP:

None

The LDP applies to your participation with all affiliates within the above definition whether or not such affiliates are known to HUD.

7. Supporting Documentation

A copy of the documents upon which this LDP is based will be provided upon request. The document is identified as follows:

X Housing Authority, Departmental Enforcement Center Report, (6/17/11).

8. Procedures Governing LDPs

A copy of a compilation of the regulations governing HUD sanctions, including LDPs, found at 2 C.F.R. Part 2424 and 24 C.F.R. Part 26 as amended, is enclosed with this notice.

9. Request for Conference

Within 30 days after receiving this notice, you may request, in writing, a conference on this sanction in accordance with 2 C.F.R. Section 2424.1130. If you request such a conference, you have the right to have it held within 15 days after the Department's receipt of the request. #####, (What replaces Gail Owens ?)has been designated by me to act on my behalf as the conference presiding official in the event you request a conference. You should contact her directly concerning a date for a conference. Ms. ##### may be reached at the following address and telephone number:

U.S. Department of Housing and Urban Development

(What's the correct mailing address?)

Please note that your opportunity to contest an LDP is outlined in Paragraph 11 below and fully set forth at 2 C.F.R. Section 2424.1130.

10. Decision Following Conference

Within 20 days after the conference, or within 20 days after any agreed upon extension of time for submission of additional materials by you, you will be advised of the decision to terminate, modify, or affirm the LDP as the case may be.

11. Opportunity to Contest the LDP

Pursuant to 2 C.F.R. Section 2424.1130, as amended, you may contest the imposition of an LDP as follows:

- (a) Within 30 days after receiving a Notice of Limited Denial of Participation, you may request a conference with the official who issued such notice. The conference shall be held within 15 days after the Department's receipt of your request for a conference, unless you waive this time limit. The official or designee who imposed the sanction shall preside. At the conference, you may appear with a representative and may present all relevant information and materials to the official or designee. Within 20 days after the conference, or within 20 days after any agreed-upon extension of time for submission of additional materials, the official or designee shall,

in writing, advise you of the decision to terminate, modify, or affirm the limited denial of participation. If all or a portion of the remaining period of exclusion is affirmed, the notice of affirmation shall advise you of the opportunity to contest the notice and to request a hearing before a Hearing Officer. You have 30 days after receipt of the notice of affirmation to request this hearing. If the official or designee does not issue a decision within the 20-day period, you may contest the sanction before a Hearing Officer. Again, you have 30 days from the expiration of the 20-day period to request this hearing. If you request a hearing before the Hearing Officer, you must submit your request to the following address:

Docket Clerk
Departmental Enforcement Center
1250 Maryland Avenue, SW, Suite 200
Washington, DC 20024

- (b) You may skip the conference with the official who issued the notice and request a hearing before a Hearing Officer. This must also be done within 30 days after receiving a Notice of Limited Denial of Participation. If you opt to have a hearing before a Hearing Officer, you must submit your request to the Docket Clerk, Departmental Enforcement Center, at the address above. The hearing before the Hearing Officer is more formal than the conference before the sanctioning official described above. The Hearing Officer will conduct the hearing in accordance with 24 CFR Part 26, Subpart A. The Hearing Officer will issue findings of fact and make a recommended decision. The sanctioning official will then make a final decision, as promptly as possible, after the Hearing Officer's recommended decision is issued. The sanctioning official may reject the recommended decision or any findings of fact, only after specifically determining that the decision or any of the facts are arbitrary, capricious, or clearly erroneous.

This notice shall serve as the Department's complaint in any hearing on this matter. If you do not submit the request within the 30-day period, the sanction shall become final.

Sincerely,

Director
Hub

Enclosures

cc:

Inspector General

Director, Technical Oversight and Planning Division, Office of the Inspector General

Director, Departmental Enforcement Center

Director, Compliance Division, Departmental Enforcement Center