

3.1.19: Tax Increment Financing and 7.16: Tax Abatements

HUD is providing latitude to recognize additional value for Variable and Partial Term Tax Abatements for Section 223(f). Also, HUD is clarifying policy on Tax Increment Financing.

HUD currently recognizes value for Criteria 3 and 10, Form HUD 92264-A, when (1) the tax abatement is for the term of the mortgage, (2) it runs with the real estate versus the type of sponsorship, (3) involves a governmental ground lease or (4) the project is a low loan-to-value LIHTC transaction. HUD is changing its policy on restricting any value consideration involving variable and partial term tax abatements to align with industry standards.

HUD's intent with this policy change is to enable the Borrower to fully benefit from the abatement or tax increment financing ("TIF") incentive in the debt service mortgage, avoiding a constraint from a traditional market value estimate that does not consider the contributory value of the TIF or partial or variable term abatement. HUD wants to clarify that this approach applies to all affordability levels, including market rate projects. The Lender must ensure that the resulting valuation is reasonable and accomplishes the fundamental policy intent without injecting risk into the transaction. Valuation conclusions that appear inflated to maximize cash out proceeds, with aggressive or poorly supported underlying analysis assumptions, will be heavily scrutinized during HUD's review.

The MAP Guide is hereby revised to allow the capitalized value in Criteria 3 and 10 from a variable or partial term tax abatement or tax increment financing in underwriting, subject to the following standards:

1. The lender must document the tax abatement or TIF will be in effect at initial/final endorsement.
2. The lender must provide a copy of the enabling statute and narrative analysis for the tax abatement or TIF program.

~~3. The With the closing package, the lender must provide draft documentation demonstrating the tax abatement or TIF is transferrable for the duration of the HUD insured mortgage and can survive a foreclosure or assignment of the HUD insured mortgage. This documentation may consist of a modification or amendment of the preexisting agreement with the entity granting the tax abatement or TIF. If no publicly recorded agreement exists, a new agreement such as a Land Use Restriction Agreement may be entered and recorded.~~

~~to be recorded in the public records, such as a Land Use Restriction Agreement, demonstrating the abatement is fully transferrable and will survive a foreclosure or assignment of the HUD insured mortgage.~~

~~3. — All product types, including market rate projects, may recognize the value of tax abatement or tax increment financing in Criteria 3 and 10. HUD will require a Rider to the Regulatory Agreement documenting the terms of the abatement and the owner's required compliance with ~~the any~~ restrictions imposed by the entity granting the abatement, i.e., affordable or middle income housing. Non-compliance in maintaining the tax abatement as underwritten may be considered a violation of the Regulatory Agreement. If there are no required affordability restrictions, the Rider is not required.~~

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~~4.5.~~ The MAP Appraiser engaged by the Lender must provide a separate value for the TIF or partial term or variable abatement and detail the valuation methodology used to derive the supplemental value conclusion to be added to the underlying market value estimate at full real estate taxes. While HUD is not prescribing a valuation methodology, a discounted cash flow analysis or similar recognized and accepted appraisal methodology, should be used to recognize a value from the abatement that is time-limited and

does not endure for the term of the insured loan. The assumptions in the underlying analysis must be clearly detailed and carefully justified in the appraisal report.

~~5.6.~~ Abatements or TIF with a remaining term of ~~for~~ less than ~~five-three~~ (53) years will not be recognized for value. The lender must underwrite to full real estate taxes.

~~6.7.~~ Criterion 5 must include a bifurcated debt service mortgage structure supported by the lender's calculations and amortization.

~~7.~~ The Lender must provide a narrative risk analysis and stress test analyzing the terms of the abatement or TIF for HUD's consideration.

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~~8.~~ HUD may consider other underwriting factors, such as ownership experience and the likelihood of maintaining the abatement, in determining whether adding value from a TIF short-term or variable term tax abatement is an acceptable risk for mortgage insurance.

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