General Overview of the Previous Participation Process

In addition to program-specific application requirements, the approval of the U.S. Department of Housing and Urban Development (HUD or the “Department”) is required for particular individuals and legal entities to participate in certain HUD-financed, HUD-subsidized and/or other HUD-regulated multifamily projects and healthcare facilities with respect to programs administered by HUD’s Office of Housing. This approval process, which was instituted in 1966, is called Previous Participation Review. Because the process originally involved submission of the form HUD-2530, it has been informally known as the 2530 process. In October 2016, HUD published a final rule1 revising the Previous Participation Review process and implementing a Processing Guide to provide further guidance.2 This User Guide to HUD’s Previous Participation

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1. See Retrospective Review—Improving the Previous Participation Reviews of Prospective Multifamily Housing and Healthcare Programs Participants, 81 FR 71244 et seq. (Oct. 14, 2016) [hereinafter FR Notice]. The revised regulations are provided as Appendix A to this Guide.

Review Process (2530 approval) (the “Guide”) explains the key features of this revised process.

**Brief History**
Previous Participation Review has been in existence since the 1960s. The concept is simple: don’t throw good money after bad. If HUD knows that a participant has not upheld its regulatory and contractual obligations and responsibilities in the past, it should think twice before providing additional funding and/or assistance. As with all regulations, as time passed and industry conventions changed, the regulations needed updating. HUD attempted to update the regulations in 2006, but that effort was flawed in certain key ways. First, HUD attempted through the revised regulations to require electronic submission through the Active Partners Performance System (APPS). Unfortunately, at the time, the APPS system had a number of glitches. Because of the system’s shortcoming, requiring only submission through APPS created in some cases extreme burden and unnecessary frustration. Secondly, the threshold for Previous Participation Review in the 2006 proposal captured Low-Income Housing Tax Credit (LIHTC) syndicators and investors. Completing an APPS filing for these LIHTC participants, including their officers and directors, proved untenable and some even refused to invest in HUD projects. In response, Congress passed the Preservation Approval Process Improvement Act of 2007. This statute prohibited HUD, until such time as HUD completed revisions to the 2006 regulations, from requiring electronic APPS submissions from any prospective participants, and specifically prohibited HUD from requiring previous participation submissions from “limited liability corporate investors,” or LLCIs (defined as investors “who own or expect to own an interest in entities which are allowed or are expected to be allowed low-income housing tax credits under section 42 of the Internal Revenue Code”). It also effectively stopped any further efforts by HUD to implement the 2006 revisions

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4. Id.
to the regulations. When HUD resumed the effort to revise the regulations, it held a number of meetings with industry groups and sought to gain more insight from the public regarding problems with the Previous Participation Review process, which in many ways have been addressed in the revised regulations and Processing Guide.

As a result, the revised regulations and Processing Guide continue to allow for either submission of paper filings or electronic filings through APPS. The revised regulations and Processing Guide are also meant to supersede all preceding memos and handbooks issued by HUD relating to Form HUD-2530, APPS, Previous Participation Review and LLCIs. Note, though, that there are a number of logistical elements and instructions explained in the “APPS User Guide” that are not fully detailed in the Processing Guide and may still need referencing.

We have attempted in this Guide to summarize the salient components of Previous Participation Review. This Chapter 1 of the Guide provides an overview of the Previous Participation Review process, including a description of the types of projects that are subject to the Previous Participation Review process, and the types of events that trigger Previous Participation Review. In Chapters 2 and 3 of the Guide, we will identify what entities and individuals are subject to Previous Participation Review and describe how those entities and individuals, and their applicable organizational structures, should be identified and presented to HUD. In Chapter 4 of the Guide we will describe the manner in which Previous Participation Review submissions should be prepared and submitted to HUD. In Chapters 5 and 6 of the Guide we will discuss the “flags,” or risk markers that HUD has the authority to impose on participants that may impact their ability to obtain approval for subsequent participation in covered projects and how to manage the Previous Participation Review process and obtain the requisite HUD approvals, despite the existence of flags. Finally, in Chapter 7 of the Guide,

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6. We have been advised by HUD staff that they are working on appropriate revisions to the APPS User Guide to make it consistent with the revised regulations and Processing Guide but to date these revisions have not yet been published.