

HUD 221(d)(4) Construction Loan Checklist

Market-rate multifamily new construction or substantial rehab through FHA Section 221(d)(4) — borrower-side workflow from program selection through stabilization and final endorsement. Not legal or lending advice; lender, HUD, and counsel guidance controls.

Phase 1 — Program Fit & Pre-Development Strategy

221(d)(4) is the marquee HUD program for new construction or substantial rehab of multifamily — non-recourse, fully amortizing 40-year loan after a construction period of up to 24 months. Long timeline, heavy process; rewards sponsors who can wait.

Project & Sponsor Eligibility

- Project is new construction OR substantial rehab (rehab cost > greater of \$17,400/unit (adjusted) or 15% of replacement cost, OR 2+ major building systems being replaced).
- 5+ residential units, market-rate or affordable.
- Project meets HUD's standards for design, density, and amenities.
- Borrower is a single-asset entity (SAE/SPE) — form before firm application.
- Sponsor / key principals pass HUD Previous Participation (2530 / APPS) review.
- Sponsor / key principals have demonstrable experience with similar-scale projects (HUD scrutinizes this heavily for first-time HUD borrowers).
- General contractor has multifamily experience and acceptable bonding capacity.
- No felony, federal default, LDP/SDN issues among principals or GC.

Site Control & Land

- Land controlled via fee simple, long-term ground lease (typically 75+ years), or executed PSA with sufficient closing flexibility.
- Zoning permits the proposed use as-of-right or entitlements path is well underway.
- Utilities available with documented capacity.
- No environmental or geotechnical conditions that would derail the project.

Loan Sizing Pre-Underwriting

- Preliminary sizing against the three tests: (1) DSCR (typically 1.176x for market-rate), (2) LTC (typically 85% market-rate, 87% affordable, 90% LIHTC), (3) statutory per-unit limits.
- BSPRA (Builder/Sponsor Profit and Risk Allowance) — 10% credit added to replacement cost for market-rate; understand how it affects sizing and whether to include.
- Estimate MIP (currently 65 bps construction / 25 bps permanent for market-rate; lower for green/affordable).
- Estimate construction interest, taxes, insurance during construction (carry costs are significant on a 18–24 month build).
- Build full sources & uses: land, hard costs, soft costs, financing fees, FF&E, contingency (typically 5–10% hard cost), working capital, operating deficit reserve, initial operating deficit (IOD).
- Compare to bank construction + agency permanent take-out; HUD wins on rate + term + non-recourse, loses on time and process complexity.

Team Assembly

- MAP-approved lender experienced specifically in 221(d)(4) (this matters — 223(f) experience is not the same).
- HUD-experienced borrower's counsel.
- Architect of record (AOR) experienced with HUD design standards (HUD MPS — Minimum Property Standards).
- General contractor (GC) — must execute AIA contract (typically AIA A102 with HUD modifications).
- Cost estimator if needed.
- Civil engineer, geotech, environmental consultant.
- Construction inspector / construction monitor (often HUD-approved third party).
- Title company experienced with HUD construction closings.
- Equity partner / LP if applicable; coordinate with HUD on equity structure.

Phase 2 — Concept Meeting & Pre-Application

221(d)(4) typically requires both a concept meeting AND a pre-application stage before firm application. This adds months but reduces the risk of a late surprise.

Concept Meeting

- Lender presents preliminary project summary to local HUD multifamily office.
- Discuss site, sponsor, design concept, market, and preliminary sizing.
- Capture HUD feedback on red flags, market concerns, or program-fit issues.

Pre-Application Submission

- Site control documentation.
- Schematic plans and outline specs from architect.
- Preliminary market study (HUD-compliant scope).
- Preliminary appraisal or feasibility analysis.
- Sponsor narrative and experience.
- Preliminary sources & uses.
- Phase I Environmental ESA (preliminary acceptable).
- Pay first half of HUD application fee (0.15% at pre-app, 0.15% at firm).

HUD Pre-Application Review

- Receive HUD invitation letter (or denial).
- Letter sets parameters: loan amount range, identified issues to address, conditions for firm app submission.
- Adjust project, sources & uses, and design based on the invitation.

Phase 3 — Design Development & Third-Party Reports

Between pre-app and firm app, the project is fully designed and all third-party reports are completed to HUD scope.

Design Documents

- Construction documents (CDs) developed to ~95–100% by the architect.
- Design meets HUD MPS, accessibility (Fair Housing Act, Section 504, ADA where applicable).
- Energy efficiency / green requirements if pursuing reduced MIP via green MIP program (Energy Star, NGBS, LEED, etc.).
- Civil engineering completed; site plan approved.
- Structural, MEP, fire protection drawings completed.
- Specifications package finalized.

Cost Estimating & Contractor Procurement

- GC engaged; cost estimate developed against final CDs.
- Trade buyout sufficient to support cost certainty.
- AIA A102 contract drafted with HUD amendments (or HUD's required form).
- Performance and payment bonds (typically 100% of contract amount) or HUD-approved letter of credit alternative.
- Davis-Bacon wage determination obtained (federal prevailing wage applies).
- Cost certification process understood by GC and sponsor.

Required Third-Party Reports

- Final market study to HUD scope.
- Appraisal — MAP-compliant, including “as-complete” and “as-stabilized” values.
- Phase I ESA (and Phase II if needed); HUD-specific items per MAP Guide (radon, asbestos, lead, mold, noise, vapor encroachment).
- Geotechnical report.
- Architectural and cost review by lender's architectural team or third-party.
- Plan and cost review (PCR / 92264-A) prepared by lender.
- Site & neighborhood standards review.

Phase 4 — Firm Application

The firm app is the full underwriting package — typically thousands of pages.

Borrower / Sponsor Deliverables

- 3 years sponsor financial statements (entity and personal for key principals).
- Schedule of real estate owned (REO) and contingent liabilities.
- Liquidity verification (HUD requires evidence of cash to cover operating deficit and contingencies).
- Net worth verification — typically equal to loan amount in aggregate among principals.
- SAE organizational documents, EIN, good standing.
- Equity structure documents (LP agreements if syndicated).
- Form HUD-2530 (Previous Participation) for all principals via APPS.
- Credit check authorizations.

- Sponsor experience resume and project list.
- AFHMP.
- Management plan and management agent identification (HUD-9839).
- Tenant assistance plan if rehab with existing tenants.

Construction-Side Deliverables

- Final plans and specifications.
- Executed AIA construction contract with HUD amendments.
- GC financials (3 years), bonding capacity letter, schedule of work in progress.
- Subcontractor list.
- Construction schedule (CPM).
- Site control documentation (deed, ground lease, or PSA + extensions sufficient to close).
- Title commitment with HUD endorsements; current ALTA survey.
- Zoning verification, building permit status.
- All government approvals (site plan, plat, special use, etc.).
- Utility will-serve letters.
- Davis-Bacon wage decision.

Lender-Prepared Components

- HUD forms package (HUD-92013, HUD-92264, HUD-92264-A, HUD-92403, HUD-92438, HUD-92485, etc.).
- Mortgage credit review.
- Replacement reserve analysis.
- Operating deficit reserve and IOD (initial operating deficit) sizing.
- Working capital deposit (typically 4% of loan).
- Lender narrative.

Submission

- Lender uploads firm app to HUD.
- Pay second half of HUD application fee.
- Calendar HUD review (target 60 days for in-queue review; typically longer in practice).

Phase 5 — HUD Underwriting & Firm Commitment

Underwriting Loop

- Track and respond to HUD punch list questions.
- Address any sizing, design, or environmental conditions raised.
- Negotiate reserve sizes, escrow amounts, and any operating restrictions.

Firm Commitment

- Receive Firm Commitment letter.
- Review all closing conditions (typically 50–100+ items).

- Confirm loan amount, interest rate parameters, MIP, term, amortization, reserve requirements.
- Lender prepares closing checklist.

Phase 6 — Rate Lock

Like 223(f), the rate is locked via GNMA execution. Timing is critical — too early creates breakage risk, too late delays closing.

- Confirm rate lock authorization from sponsor.
- Pay rate lock deposit (typically 0.5%).
- Receive rate lock confirmation; confirm coupon, all-in rate, GNMA price.

Phase 7 — Initial Closing

“Initial closing” = HUD endorses the note for the construction phase. Loan is funded; construction begins.

Pre-Closing Items

- All Firm Commitment conditions cleared or scheduled to be cleared at closing.
- Title commitment final with all HUD endorsements (ALTA 9, comprehensive, survey, zoning 3.1, contiguity, mechanics lien coverage, environmental protection lien).
- Survey final and certified to all required parties.
- Building permit issued.
- Bonds (P&P) issued and delivered, or HUD-approved LC posted.
- Insurance: builder's risk (replacement cost), general liability, workers comp, automobile, umbrella, professional (architect, engineers).
- All consultant insurance certificates with required endorsements.
- Utility commitments confirmed.
- Equity fully committed and capital call mechanism documented.

Closing Documents

- Note, Mortgage / Deed of Trust, Security Agreement.
- Regulatory Agreement (life-of-loan covenant package).
- Building Loan Agreement and disbursement procedures.
- Construction Contract with HUD amendments.
- Owner-Architect Agreement (HUD-modified AIA).
- Off-Site Bond / improvements bond if applicable.
- Working Capital Escrow funded (4%).
- Operating Deficit Reserve funded (sized per HUD).
- Initial Operating Deficit funded if required.
- Latent Defects Escrow (2.5% of construction contract, held 15+ months post-completion).
- Borrower's counsel opinion addressing HUD's required points.
- Title affidavits and gap indemnities.

Closing & Initial Endorsement

- All documents signed and delivered to title and HUD.
- Funds wired and verified by phone (wire fraud risk).
- HUD performs initial endorsement of the note.
- Mortgage / DOT recorded.
- Notice to Proceed issued to GC.
- First draw funded (typically land acquisition + soft costs incurred to date).

Phase 8 — Construction Period

Up to 24 months. Lender, HUD, and the construction monitor watch progress monthly. Borrower's job is to stay ahead of draws, change orders, and reporting.

Monthly Draw Process

- GC submits AIA G702/G703 to architect.
- Architect certifies.
- Construction monitor / inspector inspects and signs off.
- Lender reviews and submits to HUD.
- HUD approves draw.
- Funds disbursed to borrower / GC; lien waivers collected.
- Update construction budget vs. actual; track contingency burn.

Change Orders

- All change orders documented on HUD-2437 (or current form).
- Architect, GC, lender, and HUD approval for material changes.
- Contingency line monitored; HUD approval required if exceeded.

Compliance During Construction

- Davis-Bacon weekly certified payrolls submitted by GC and all subs.
- Davis-Bacon compliance interviews and on-site reviews.
- Section 3 reporting if applicable.
- EEO / nondiscrimination posters and policies on site.
- Insurance maintained and renewed during construction.
- Quarterly construction progress reports.

Substantial Completion

- Architect certifies substantial completion.
- Certificate of occupancy obtained.
- Punch list developed; retention held against completion.
- Latent defects escrow funded if not at initial closing (or rolled forward).

Phase 9 — Cost Certification

After completion, GC and borrower submit certified statements of actual costs. HUD may resize the loan downward if actual costs are below underwritten.

- GC submits cost certification (HUD-92330 series) audited by independent CPA.
- Borrower submits mortgagor cost certification (HUD-92330-A) audited by independent CPA.
- Lender reviews and submits to HUD.
- HUD reviews; possible loan reduction if costs are lower than estimated.
- Final loan amount confirmed.

Phase 10 — Final Endorsement & Permanent Phase

Final endorsement converts the construction loan to permanent. The 40-year amortization clock starts.

Final Endorsement Package

- Cost certification approved.
- Final survey reflecting as-built conditions.
- Final title policy update (date-down).
- Certificate of occupancy and lien-free completion certificates.
- All construction contract retainage released or escrowed.
- Punch list complete or escrowed.
- Latent defects escrow in place.

Final Endorsement

- HUD final endorsement of the note.
- Construction loan converts to permanent loan.
- MIP rate may step down (construction MIP higher than permanent).
- Replacement reserve deposits begin.

Phase 11 — Lease-Up & Ongoing Compliance

Lease-Up

- Execute leasing plan; track absorption against pro forma.
- Operating deficit reserve / IOD covers shortfalls until breakeven.
- Stabilization (typically 90% occupancy for 90 days) triggers reserve release per Regulatory Agreement.

Ongoing Compliance Calendar

- Annual financial statement (AFS) via REAC/FASS — within 60 days of fiscal year end.
- Monthly P&I + MIP payments.
- Replacement reserve deposits.
- REAC physical inspections.
- Distributions only from surplus cash, after fiscal year end, per Regulatory Agreement.

- HUD approval required for ownership/management/principal changes (2530).
- Insurance renewals to lender.
- AFHMP maintenance and 5-year update.
- Annual property tax payment confirmed.

File Closeout

- Final closing binder assembled (initial closing + final endorsement docs).
- All HUD forms, third-party reports, contracts, title policy, survey, insurance, opinions retained.
- Compliance calendar populated and assigned.

HUD/FHA program requirements change frequently. Current MAP Guide and HUD Notices govern. Confirm thresholds, fees, MIP rates, and forms with your MAP lender — and start the process at least 12 months before you need to close.