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June 8, 2012

Mr. Dan Sullivan
Acting Director, Multifamily Development
U. S. Department of Housing and Urban Development
Room 6148
451 Seventh Street, SW
Washington, DC 20410-8000

Re: “Revised Requirements for Project Capital Needs Assessments, Estimated Reserves for Replacements and Remedies for Accessibility Deficiencies”

Dear Mr. Sullivan:

Thank you for the opportunity to comment on HUD’s draft mortgagee letter, “Revised Requirements for Project Capital Needs Assessments, Estimated Reserves for Replacements and Remedies for Accessibility Deficiencies.”

NAHMA is a non-profit trade association whose mission is to promote the development and preservation of quality affordable multifamily housing. Our members are property owners and managers, industry stakeholders, and providers of goods and services to the affordable housing industry.

NAHMA appreciates that the mortgagee letter is intended to ensure the continued viability of FHA-insured properties and to reduce the likelihood of financial losses to the FHA. Nevertheless, we are concerned the guidance will not be flexible enough for lenders and HUD to address individual needs of the insured properties. NAHMA members worry that high reserve for replacement (R4R) deposits and required minimum balances resulting from the project capital needs assessment (PCNA) will constrain their ability to effectively manage the properties—especially rent-restricted affordable communities. Unless more flexibility is permitted, the PCNA may discourage borrowers from using FHA loans, and it may even preclude the use of the 223(a)(7) or 223(f) loans for refinancing.

Page 1: Section II Applicability

The mortgagee letter states it is not applicable to Project Capital Needs Assessments (PCNAs) required for Mark-to-Market restructurings. NAHMA requests further clarification that the notice does not apply to Mark-to-Market restructured properties.

Page 2: Section III (B)(3) Reserve for Replacement Deposit Minimums for New Applications under Section 221(d)(4)

NAHMA members believe that allowing a waiver of the Reserve for Replacement (R4R) formula based calculation which results in a per unit per annum deposit requirement of greater than \$500 is an improvement over the previous requirement to set deposits exclusively by formula calculations. However, members would like to see greater waiver authority regarding the R4R deposit minimums that may be appropriate for the unique circumstances of the property.

Page 6: Section V (A) Repairs and Replacements Included in the Reserve for Replacement

We applaud HUD for recognizing that there are legitimate differences in the business decisions owners make when distinguishing between operating expenses and capital replacement items. However, requiring that the “defined policy [must be] consistently applied year after year” could lead to undue denials of R4R release requests that might, due to changing circumstances, be contrary to the policy established at the time of underwriting. HUD should provide some flexibility so that field offices may exercise reasonable judgment.

Page 7: Section V (D) Estimated Total and Minimum Replacement Reserve Balances

Requiring mandatory “minimum balances” is problematic. This should be changed to establish targets that are clearly defined as desirable “targets” or “goals” but are not mandatory.

For properties in poor condition, a PCNA should be used to identify and fund for major rehabilitation and replacement as a condition of granting the loan. Without some flexibility, however, the PCNA projections may preclude the use of the FHA insured loans. For buildings that are basically sound and require relatively little rehabilitation in the next 15 or 20 years, large mandatory R4R minimum balances and deposits projected from the PCNA will discourage borrowers from using FHA insured loans.

Projects limited to OCAF increases or capped by the market may well find it impossible to adequately fund the reserves, if minimum balances become mandatory. A NAHMA member offered an example to illustrate how problematic required minimum balances and high R4R deposits could become for affordable properties. The member:

“... was very concerned when HUD refused to increase the R&R impound as required on six or more green loans that had just been underwritten and closed. HUD contended that the section 8 funding was inadequate to allow for increases in the [R4R] impound of \$2000 to almost \$6000 per month.”

Affordable providers are also concerned that the high R4R deposits and minimum balances will prevent them from effectively responding to changes in the housing market. In some cases, inflexibility to modify the R4R deposit requirements for loans granted pursuant to this mortgagee letter could essentially force owners into the Mark-to-Market program. They explained:

“If there are very high mandated impounds because of the PCNA, the HUD landlord will not have the same option of reacting to the changes in the rental

market as his conventional counterpart. The Rent Comparability Study (RCS) in such times may well force otherwise viable properties into OAHF Lite or Mark-to-Market. Some consideration should be given to excluding HUD mandated reserve for replacement impounds from the RCS, especially when conventional landlord may choose to suspend similar impounds. The same should also apply to special fees that conventional landlords pass along to their renters while HUD landlords with Section 8 are prohibited from passing along.”

These providers also questioned how HUD would administer R4R accounts in which each property had its own minimum balance. Particular concerns focused on whether HUD would have staff available and authorized to adjust these balances and deposits on a per property basis:

“...currently the [R4R] impounds are increased pursuant to OCAF, AAF, or budget based rent increases. How will this be handled in regard to further increases as dictated by the PCNA or updated PCNA requirements? Will increases be done solely based on the PCNA or will there be a continued dual adjustment method? We are concerned with the difficulty in determining the ongoing required impound based on the PCNA, as projected forward, based on rehabilitation and major repairs that should impact on the projected needs of the reserves for the remaining life of the building. The impound should be adjusted downward following a major improvement or replacement. Who is qualified and who will be responsible to make such adjustments? We doubt that the CA [contract administrator], PBCA [performance-based contract administrator] or HUD will have the personnel.”

Page 9: Section V (H) Only PCNA Enumerated Repairs and Replacements May be Drawn from the Reserve for Replacement Escrow

This paragraph states R4R draws are only allowed for items identified by the PCNA unless an item is specifically approved by the HUB director. As discussed in Section V.A., NAHMA is concerned that a literal reading of this paragraph will cause administrative burdens for HUD and hardships for owners. First, we feel this policy unfairly limits options for owners to pay for repairs when unexpected failures and catastrophes occur. One NAHMA member suggested that a possible result of this policy might lead owners “to include virtually everything up to and including the kitchen sink” in the PCNA just to avoid withdrawal problems in future. Another member offered this reaction based on a recent denial of a R4R request:

“In other words, if the PCNA states that the boiler should last another 5 years but it fails after the first year and needs to be replaced, too bad. We cannot draw for it from replacement reserves because it’s not on the PCNA. We have run into this recently where our HUD asset manager would not allow us to draw for something because it was ‘not supposed to fail for another 3 years.’ I feel that we are being punished for the estimation mistakes of the assessor.”

Pages 10 Section VI C(3)and 11 Section VI (E) Forensic Examinations

NAHMA urges HUD to provide a waiver of the forensic examination requirements when a property is being purchased because sellers may not allow the forensic examinations.

Page 15: Section VII (E)(1) Shelf Life of PCNA Reports

The mortgagee letter provides other applications with a “shelf life” of up to two years with their PCNAs. The six-month shelf life for PCNA reports to support Section 223(f) loans is not long enough. NAHMA recommends extending the shelf life up to a year prior to a Section 223(f) application for Firm Commitment.

Conclusion

Thank you again for the opportunity to offer our comments on the draft mortgagee letter. Please do not hesitate to contact me if you have questions or would like more information.

Sincerely,

A handwritten signature in black ink that reads "Kris Cook". The signature is written in a cursive, flowing style.

Kris Cook, CAE
Executive Director