



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

451 7th Street, SW
Washington, DC 20410
(202) 708-0001

December 6, 2010

John Doe
ABC Realty Co.Inc
123 2nd Avenue
AnyState, US 00001

Re: ABC APARTMENTS
REMS: 8000XXXX
FYE: 12/31/2007

Dear John Doe,

Over the past several months the Office of Multifamily Housing Programs (including the Office of Affordable Housing Preservation) has been in discussions with the directors of several affordable housing trade groups and some owners who have participated in the Mark-to-Market (M2M) program regarding the proper use of the reserve for replacement account and the criteria to earn the incentive performance fee (IPF.) Below is an excerpt from HUD's letter of October 18, 2010 to counsel at the law firm of Holland and Knight addressing these issues and that may have financial implications for you as well:

"There has been substantial discussion about the inappropriate use of operating income to cover expenses that should have been paid from Replacement Reserves and an owner's right to receive M2M Incentive Performance Fees ("IPF(s)"). Notwithstanding (a) the collaborative M2M underwriting process, and (b) written guidance to owners, project accountants and M2M stakeholders from the Office of Affordable Housing Preservation ("OAHP") since 2004, some owners and their representatives continue to express confusion with respect to their responsibilities under the M2M HUD-held cash-flow second mortgage loans called Mortgage Restructuring Mortgages ("MRM(s)") and the notes that evidence an MRM indebtedness (the "MRN(s)"). This confusion may stem from a failure by program participants to recognize fully the legal impact of the Multifamily Assisted Housing Reform and Affordability Act of 1997, as amended ("MAHRA"), on the rights and obligations of owners of these properties.

Whatever the source of the confusion, I want to reassure you that OAHP and the Office of Multifamily Housing Programs are committed to work together in an effort to achieve a more seamless application of these matters. We plan to issue

additional Replacement Reserves guidance in the near future. In the interim, HUD field offices will generally allow the reimbursement from Replacement Reserves to operating accounts of those sums which OAHP has determined should have been drawn from the Replacement Reserves in the first instance. Upon request for reconsideration submitted to OAHP by an owner, OAHP will review the outstanding demands that have been made to owners for the return of IPFs associated with (a) the use of funds from operating accounts instead of the Replacement Reserves, and (b) late payments made by owners on an MRN, and will provide relief when an owner clearly appears to have acted in good faith, but in a manner inconsistent with the requirements of the MAHRA program. In some instances, however, when an owner has taken an IPF but the conditions to do so set forth in the M2M regulatory agreements were clearly not satisfied prior thereto, an appropriate demand for the return of the IPF will be made. Examples might include the following: an owner's financial report shows surplus cash, from which the payment due on the MRN was not made prior to the taking of the IPF, or the property received less than a 60 rating for the year from HUD's Real Estate Assessment Center."

If you have been denied an IPF for FY 2006 through 2009 due to failure to properly request a reimbursement from the reserve for replacement account or due to a late MRN payment and you believe you have generally acted in good faith, you may submit a request to OAHP for a reconsideration of the IPF payment for that year. An example of "good faith" may be demonstrated when an owner paid IPF after or contemporaneously with making the required MRN payment. Situations where an owner's financial report shows surplus cash, from which the payment due on the MRN was not made prior to the taking of the IPF, or the property received less than a 60 rating for the year from HUD's Real Estate Assessment Center provide a couple of examples of failure to act in good faith.

If you believe that you meet the above criteria and wish to request a reconsideration of your eligibility to receive an IPF you may address your request to me at this address:

Office of Multifamily Housing Preservation
Washington Office Center
409 3rd Street SW, Suite 200
Washington, DC 20024

Requests will not be considered after 90 days from the date of this letter therefore it is suggested that you use a mail service with some sort of tracking ability. Be sure to include all documentation needed to support the sufficiency of your request.

Should you have further questions about the reconsideration process, please contact Mr. Michael Murphy for assistance. He may be reached at michael.r.murphy@hud.gov or by telephone at 202/402-8388.

Sincerely,

Linda W. Field
Director of Portfolio Management
Office of Affordable Housing Preservation

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