

UPDATE ON IMPLEMENTATION OF HOUSING AND ECONOMIC RECOVERY ACT OF 2008

On November 18, NAHB and MBA staff met with Janet Golrick, Acting Deputy Assistant Secretary for Multifamily Housing; Joyce Allen, Director, Office of Multifamily Housing Production; and Bill Hill, Policy and Participation Standards Director in the Office of Multifamily Asset Management. We met to discuss progress on implementing provisions contained in the Housing and Economic Recovery Act of 2008 (HERA) related to streamlining the processing of FHA-insured loans with low income housing tax credits (LIHTC).

To date, HUD has taken the following actions:

HERA Provisions: (1) Eliminates need for HUD subsidy layering review of FHA-insured projects involving LIHTCs which undergo a tax credit subsidy layering review; (2) Eliminates HUD cost certification requirement for FHA multifamily housing loans which also use LIHTCs in cases where the loan-to-cost ratio is less than 80%. A mortgagee letter has been drafted which will revise the subsidy layering requirements to eliminate the need for the review for a LIHTC-FHA-insured loan. In addition, the letter will exempt LIHTC loans from cost certification requirements if the loan has a loan-to-cost ratio of less than 80 percent at the time of issuance of the firm commitment. HUD hopes to have the mortgagee letter published by the end of December.

HERA Provision: Bars HUD from requiring escrowing of tax credit proceeds or posting of a letter of credit for FHA loans involving tax credits. In anticipation of this provision, HUD published Mortgagee Letter 2008-19 prior to the passage of HERA. However, there was confusion and uneven implementation among field offices as to the pay-in schedule for the tax credit equity.

In response to NAHB and MBA recommendations, HUD has clarified the intent of Mortgagee Letter 2008-19 (which sets forth the tax credit equity requirements for an FHA-insured loan), with HUB Directors on a conference call and at the September training session in Nashville of 80 field office project managers and supervisory project managers. The training focused on processing of applications with LIHTCs. Field staff was informed that Mortgagee Letter 2008-19 should be interpreted to provide maximum flexibility for the negotiation of the pay-in schedule for tax credit investment and that pro-rata distribution of tax credit investment was not envisioned by the Mortgagee Letter.

In addition, the forthcoming mortgagee letter mentioned above will clarify the requirement in Mortgagee Letter 2008-19 that the initial installment of LIHTC proceeds should be equal to or exceed 20 percent of the LIHTC proceeds. The clarification will state that the 20 percent should be applied to the HUD-required investment (the cash investment requirement) rather than the entire tax credit proceeds.

HERA Provisions: Requires HUD to establish a pilot program to demonstrate the effectiveness of streamlining the review process for FHA-insured LIHTC loans. HUD must appoint designated underwriters, to be responsible for reviewing these applications and determining eligibility for insurance in lieu of the processing functions otherwise performed by other HUD staff. There are some Departmental challenges in implementing this provision of HERA which will take additional time to work through. HUD has provided Chairman Frank's office a status on these provisions.

HERA Provision: Exempts LIHTC properties from HUD physical inspection requirements if the tax credit allocating agency already performs them. HUD lawyers have indicated that a HUD Uniform Physical Condition Standards (UPCS) inspection - usually referred to as the REAC inspection - is necessary for HUD to protect its rights to enforce its contracts. It was noted that the REAC inspections are statistically valid and can be relied upon as a valid representation of conditions throughout the entire property. HUD believes there is no similar assurance with any other inspection. Therefore, HUD will not, in accordance with the statute, require mortgagees to perform the inspections on these properties, but instead, HUD will contract for REAC inspections itself. This will require additional budget authority for HUD.

NAHB staff discussed the fact that some state HFAs already use the REAC protocol or something very similar. HUD staff said that if a significant number of state HFAs use the HUD REAC inspection protocol, it may be possible to find common ground, perhaps some form of a memorandum of understanding with those states. The potential might be there, which would allow HUD to use the HFA inspections or vice-versa. NAHB staff committed to working with NCSHA to determine what HFAs use and how many are using REAC or a comparable standard that would suffice for HUD's purposes.

Regardless, an amendment to the current regulation relating to physical property inspections will be required to implement this provision of HERA. In the meantime, HUD could not give a date certain as to when mortgagees would be able to stop performing inspections. HUD has informed Congress regarding progress and issues surrounding full implementation of this provision.

OTHER NEWS

Section 223(f) Three-Year Rule

MBA wrote to Commissioner Montgomery in October requesting that the Department institute a pilot program under which the current three-year rule be waived to allow the refinancing of properties that had completed construction in 2007 but could not secure permanent financing in the current market. NAHB supports this request. At least one waiver request has been received on this issue already. HUD was optimistic that the waiver would be granted before the end of November. As part of that waiver, a set of criteria would be articulated that would provide guidance for other properties as to under what circumstances a waiver of the three-year rule would be granted. Those criteria would be shared with the field offices.

HUD is very aware of the current market situation and the need for HUD to assist wherever reasonable to facilitate the financing of affordable rental housing. A mortgagee letter is being

drafted that would provide guidelines for mortgagees, owners and field staff as to when the field office could approve the refinancing of a property that had obtained a certificate of occupancy in 2007. All Section 223(f) underwriting criteria would have to be met except for the 3-year rule and other qualifying criteria will be indicated in the mortgagee letter. The mortgagee letter should be issued by the end of December.

HUD Transition

While only briefly mentioned at the meeting, the Transition Team for the Obama Administration is already meeting with HUD staff to discuss issues. It was previously announced that the HUD Transition Team will be led by Roberta Actenburg (formerly Assistant Secretary for Fair Housing and Equal Opportunity), Xavier Briggs (formerly Assistant Secretary for Policy Development and Research) and Bruce Katz (formerly Chief of Staff to the Secretary). While not officially announced, it appears that Nic Retsinas (formerly FHA Commissioner) will also play a key role on the Transition Team.