



ASSISTANT SECRETARY FOR HOUSING  
FEDERAL HOUSING COMMISSIONER

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, DC 20410-8000

Mr. David L. Ledford  
Senior Staff Vice President  
Housing Finance and Land Development  
National Association of Home Builders  
1201 15th Street, NW  
Washington, DC 20005

MAR 18 2009

Dear Mr. Ledford:

Thank you for your February 6, 2009, letter providing comments and recommendations regarding Mortgagee Letter 2009 (ML), Temporary Authority for Multifamily Hubs to Process Waiver Requests Pertaining to the Three-Year Rule for Section 223(f). The Department has carefully reviewed the issues raised in your letter and offers the following responses.

1. The ML requires projects to have a Certificate of Occupancy (CO) dated no later than July 31, 2008. Your letter suggests that projects with a CO date no later than the ML publication date (February 6, 2009) should be eligible.

Response: This requirement was originally imposed to limit applications to projects that had achieved sustaining occupancy, assuming an average timeframe to achieve this target of approximately 6 months (July 31, 2008 to February 6, 2009). We will consider whether this requirement is too restrictive and will determine whether it could prevent otherwise worthy projects from taking advantage of the waiver.

2. The ML states that projects that previously applied for mortgage insurance under other HUD programs and withdrew their applications are ineligible. Your letter seeks to have this requirement removed.

Response: This requirement was originally imposed to prevent projects from applying under the waiver authority if they previously withdrew applications under an insured program due to Davis-Bacon Wage requirements. We will consider whether this prohibition is necessary in order to implement the waiver authority in accordance with Davis-Bacon Wage requirements.

3. The ML states that the applicant must submit evidence that all interest and/or debt service payments have been made on time since the beginning of the current loan. Your letter requests that this requirement be removed from the ML.

Response: An evaluation of prior payment histories is a critical factor in determining the acceptability of a proposed borrower. In addition, current debt service payments also demonstrate the financial health of the proposed project. Although this specific requirement does not exist for the Section 223(f) program, applications processed under that program

have been occupied for a significant period of time and have a demonstrated operating history. The additional requirement contained in the ML is necessary and reasonable to ensure the protection of the Department's interest. We will not modify this requirement.

4. The ML currently requires that a minimum of one full year audited financial statements be submitted. Your letter requests that this requirement be revised to the lesser of one year or the length of time that the property has been in operation.

Response: We recognize that some projects submitting applications under this waiver authority may have been in operation for less than one year and may not have commissioned audited financial statements prior to the time of application submission. We will consider whether the existing requirement would limit the number of potential applicants under the program and determine whether an alternative submission requirement may be appropriate from applicants with less than one full year of operation.

5. The ML requires a project to have achieved sustaining occupancy for a period of three months immediately prior to the date that the application for Firm Commitment is submitted. Your letter requests that this requirement be changed to the achievement of sustaining occupancy for a period of three months immediately prior to the date that the Firm Commitment is issued.

Response: We are currently determining whether the program requirements can be modified to permit projects to demonstrate achievement of sustaining occupancy while applications are being processed or after firm commitment issuance but prior to initial endorsement. In making this determination, we must consider the processing burden on field staff to ensure that it could be effectively implemented. We understand that modifying this requirement would increase the number of projects eligible to participate in the program and potentially lower borrowers' costs by decreasing processing time.

6. The ML highlights that projects processed under the waiver authority will be recently constructed or rehabilitated and that depreciation will be minimal or significantly reduced. As a result, this portion of the ML clarifies that the Cost Approach has increased relevance for projects applying under this program. Your letter requests that the appraisal requirements of the ML mirror the requirements of the traditional Section 223(f) program.

Response: Utilization of the Cost Approach is currently a requirement for all Section 223(f) loans regardless of the age of the structures. The ML does not modify our existing appraisal requirements for the use of a Cost Approach. It simply reminds field staff that this approach has greater relevance in cases where the waiver authority will be granted. We will not modify this portion of the ML.

7. The ML imposes a few minimal additional repair and inspection requirements with regard to the existence of latent defects. Your letter states that these requirements are reasonable, but unnecessary.

Response: We have concluded that the additional requirements in this area are necessary to

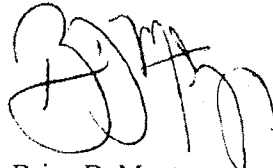
protect the Department's interests. Because all of the projects that will be considered under the waiver authority will be recently constructed and are not HUD-insured, we believe that these requirements are reasonable and necessary in order to mitigate the increased risk associated with financing non-seasoned projects.

8. Finally, your letter expresses disappointment that the Department has granted this waiver authority for a six month period. Your letter requests that the authority be made permanent.

Response: We granted waiver authority for a six month period in order to assess the effectiveness of the program and to provide an opportunity to modify program requirements to better meet future market demand. We anticipate that this assessment may result in adjustments to certain existing requirements.

Thank you again for your thoughtful comments and recommendations. If you have any questions regarding our response, please contact Joseph Sealey, Director of Technical Support at (202) 402-2552.

Sincerely,



Brian D. Montgomery  
Assistant Secretary for Housing-  
Federal Housing Commissioner