

MULTIFAMILY FINANCE ISSUES FALL BOARD 2009

FHA Multifamily Mortgage Insurance Programs

Implementation of HERA

Since HERA was passed, HUD has issued two Mortgagee Letters (2008-19 on July 22, 2008, and 2009-24 on July 29, 2009) explaining what actions have been taken to implement HERA. Progress on the specific requirements has been mixed. Two provisions of importance to NAHB members have not been implemented yet. The first is the requirement for HUD to establish a pilot program for streamlined review of FHA-insured projects with LIHTCs. The pilot is to include the appointment of designated underwriters for these projects.

The second issue is the elimination of duplicative physical inspections of properties that already are inspected by state housing finance agencies (HFAs). HUD lawyers say that a HUD Uniform Physical Condition Standards (UPCS) inspection - referred to as the REAC inspection - is necessary for HUD to protect its rights to enforce its contracts. HUD says 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.

In speaking with HUD, NAHB staff discussed the fact that some HFAs already use the REAC protocol or something very similar. HUD said that if a majority of HFAs use the HUD REAC inspection protocol, it may be possible to enter into a memorandum of understanding with those HFAs. NAHB staff committed to working with the National Council of State Housing Agencies (NCSHA) to determine how many HFAs use REAC or a comparable standard that would suffice for HUD's purposes. Regardless, an amendment to the current regulation on property inspections will be required to implement this provision of HERA. In the meantime, HUD could not give a date as to when mortgagees would be able to stop performing inspections. HUD has informed Congress about progress and issues surrounding implementation of this provision.

In late April, HUD moved forward on an additional provision in HERA, which is to solicit recommendations from stakeholders on further improvements to the FHA multifamily insurance programs. HUD published in the Federal Register a Request for Recommendations Regarding Administrative and Procedural Changes to Expedite the Approval of Applications for FHA-Insured Multifamily Mortgages Involving Low-Income Housing Tax Credits or Tax-Exempt Bonds. Comments were due June 29. Staff submitted a set of recommendations based on NAHB members' recommendations (see below). In addition, the comment letter urged HUD to implement the provisions in HERA quickly.

NAHB Multifamily Member Group Completed FHA Recommendations

A group of multifamily members finalized a set of recommendations on ways to improve the FHA multifamily mortgage insurance program, which was distributed to members at large. The recommendations cover staffing and training, processing and program requirements. The recommendations were submitted to the new Deputy Assistant Secretary (DAS) for Multifamily Housing (this is in addition to the formal submission in response to the Request mentioned above).

Bill Introduced to Increase the FHA Statutory Mortgage Loan Limits for Elevator Buildings

On July 31, H.R. 3527, The FHA Multifamily Loan Limit Adjustment Act of 2009, was introduced by Representatives Anthony Weiner (D-NY) and Gary Miller (R-CA). The bill would allow the HUD Secretary to increase the mortgage loan limits for elevator buildings by up to 50 percent of the amounts specified for non-elevator units. Currently, there is only about a 10 percent difference between non-elevator and elevator buildings, even though the costs of constructing an elevator building are, on average, about 45 percent higher. The bill would also give the HUD Secretary the authority to designate other “extremely high cost areas” in addition to Alaska, Hawaii, Guam and the Virgin Islands.

The bill would address the fact that current FHA multifamily loan limits are severely restricting the ability to use FHA insurance programs to finance rental housing in many urban areas. While the base loan limits and high cost factors have been raised over the past eight years to address issues in most parts of the country, the problems are now concentrated in major cities where high-rise construction is involved. HUD data show that, over the past seven years, there have been 478 Section 221(d)(4) new construction projects (without federal assistance) finally endorsed for HUD insurance. Of those 478 projects, only 31 involved elevator structures. Most recently, in fiscal years 2007 and 2008, only three elevator projects nationwide have been endorsed for insurance with FHA.

On September 16, 2009, the House passed H.R. 3527 by voice vote. The focus will now turn to obtaining a sponsor in the Senate, and it is hoped that Senator Schumer, who supports H.R. 3527, will agree to introduce a companion bill.

Draft Preservation Bill Circulated

The House Committee on Financial Services Chairman, Barney Frank (D-MA) is planning to introduce a bill that would encourage the preservation of federally assisted affordable housing. A draft bill is circulating among industry groups and has been the focus of two hearings already; the first hearing’s sole witness was HUD Secretary Shaun Donovan, and the second hearing’s witnesses were mostly nonprofit housing groups. The draft bill would remove some statutory and regulatory barriers to preservation, create incentives for owners to remain in HUD programs and establish incentives for preservation entities to acquire and rehabilitate these properties. Additionally, the bill protects tenants from displacement due to mortgage maturity, prepayments and opt-outs.

Properties covered under the bill include those financed by the following programs:

- Section 8 project-based rental assistance
- Section 202 elderly housing
- Section 236
- Section 221(d)(3) with Below Market Interest Rates (BMIRs)
- Sections 221(d)(3), 202, 236 and 231 with Rent Supplements or Rental Assistance Payments (RAP)
- Sections 515, 514 and 516 (rural rental housing and farm labor housing)

While the bill would provide some important and needed tools to facilitate the preservation of affordable rental housing, it also contains several provisions that would undermine the ability or desire of housing developers to participate in these transactions. NAHB, along with a coalition of industry groups, has expressed strong opposition to these provisions to Chairman Frank and to HUD Secretary Donovan. The provisions would violate existing contracts between owners and HUD and give tenants unprecedented rights to sue owners. The provisions are:

Right of First Purchase Before Conversion of Multifamily Housing and Federal First Right of Purchase Before Conversion of Multifamily Housing

The draft bill creates qualified preservation owners (QPO), which refers to a for-profit or nonprofit owner of a housing project that agrees to use and affordability restrictions for 30 years in exchange for receiving incentives to acquire and rehab a property or to continue its use as affordable housing. *However, the QPO must also agree to provide an assignable right of refusal in favor of a state housing finance agency (HFA) at an agreed-upon price. This right of refusal is subordinate to a federal right of first refusal provision discussed below..*

The draft bill creates a federal first right of purchase by *imposing a two-year notification period to tenants on owners whose covered housing property has an impending “conversion event.”* A conversion event includes the expiration or non-renewal of a project-based rental assistance contract, any full payment, expiration, prepayment or termination of a mortgage for the housing; or any termination or expiration of use restrictions of affordability requirements for the housing. *During this period, an owner cannot sell or otherwise transfer the property or enter into any sale or other transfer of the housing. During the first 12 months of this period, if an owner receives an offer to purchase the property from a QPO, the owner has to accept the offer and sell to that purchaser.*

The federal right of first purchase applies to housing that is financed by a loan or mortgage or assisted under the Section 8 project-based, Section 221(d) below market interest rate, Section 236, Section 202, and rent supplement programs; all of the multifamily rural housing programs administered by the U.S. Department of Agriculture (USDA); as well as any housing financed by the Community Development Block Grant (CDBG) program, HOME Investments Partnerships and the McKinney-Vento Homeless Assistance programs. CDBG and HOME provide only gap financing for affordable housing; as such, only a small amount of funding could trigger the right of first refusal provision. In addition, these provisions would apply to Sections 42, 142(d) and

147 of the Internal Revenue Code, programs for which the House Financial Services Committee has no jurisdiction.

Third Party Beneficiary Status for Residents

This provision *would permit tenants and resident associations to become third party beneficiaries to contracts between HUD and other parties, such as owners.* As a third party, they would have the right to sue to enforce HUD requirements or to seek damages.

Limited Participation for Certain Section 515 Owners

The bill would prohibit participation in the preservation program by owners that are a party to a prepayment lawsuit and would condition participation by owners who were awarded damages through a prepayment lawsuit on their contributing the lesser of 50 percent of the damage award or \$100,000 towards revitalizing the property.

Resident Access to Building Information

This provision would allow residents to have access to certain financial information related to a property and property owner, including confidential business information such as statements of profit and loss, statements of account balances and management contracts. Information on the 2530 previous participation form, which contains social security numbers, would also be disclosed upon request.

There are other provisions that are problematic, as well, including what appears to be limited ability to use FHA insurance on preservation transactions unless waivers are granted by the HUD Secretary. NAHB staff has discussed these aspects of the draft bill with the Deputy Assistant Secretary for Multifamily Housing.

NAHB, working with an industry coalition, has taken several steps to express our concerns about these and other provisions in the bill. A letter was sent to Chairman Frank, as well as to the HUD Secretary, explaining why the industry could not support the draft bill as drafted. On September 15, NAHB, along with our industry partners, met with Chairman Frank to discuss the draft bill. Chairman Frank agreed to eliminate two of the four offending provisions – the right of first purchase and a prohibition on certain owners of Section 515 to participate in the preservation program unless they contribute significant equity – and he agreed to work with us to revise the remaining two issues in a manner acceptable to the industry.

After meeting with Chairman Frank, the group was able to discuss other technical issues with the House Financial Services Committee staff. The Committee staff was receptive to taking additional comments on the rest of the draft bill. A set of recommendations was submitted by the group, and NAHB also submitted some additional written comments to the staff. NAHB staff will continue to work with our industry partners, Chairman Frank and members of the House Financial Services Committee as this bill moves forward.

Section 223(f) Refinancing Waiver

The FHA Section 223(f) program provides mortgage insurance for the refinancing of multifamily rental properties that have been operating for at least three years. The three-year restriction was implemented to prevent developers from avoiding the Davis Bacon labor requirements connected to using FHA mortgage insurance for new construction and substantial rehabilitation. However, the three-year restriction is preventing multifamily developers who are desperately seeking take-out financing for construction loans or to refinance an existing loan from securing needed financing. NAHB's multifamily members report that it has become increasingly difficult to find sources of mortgage credit for recently completed, self-sustaining multifamily properties due to the intensifying credit market crisis.

In February 2009, in response to requests from the industry, HUD issued Mortgagee Letter 2009-06, Temporary Authority for Multifamily Hubs to Process Waiver Requests Pertaining to the Three-Year Rule for Section 223(f). HUD acknowledged the dire economic conditions and said the waiver program will help address liquidity shortages in the multifamily market that are preventing otherwise sound projects from obtaining permanent financing.

However, the Mortgagee Letter contained overly restrictive requirements and limited the waiver program to six months, even though HUD implemented a similar waiver for a period of 18 months when economic conditions greatly decreased the availability of credit during the period June 1974 through the end of 1975. NAHB staff solicited comments on the waiver from members and, on February 25, sent a letter to then-FHA Commissioner Montgomery asking that the program be implemented for at least 18 months and that some of the restrictions be removed or modified. On March 18, NAHB received a response from HUD, most of which was very positive. They agreed to consider a number of our recommendations, although they did not specify when they might make actual changes.

On July 31, HUD announced a six-month extension of the Section 223(f) three-year waiver program. In addition to the extension of the program, HUD revised some of the requirements and restrictions contained in the original mortgagee letter, in line with NAHB's previous recommendations, to allow more properties to participate. Of note, HUD eliminated the prohibition from participating in the waiver program on projects that previously applied for mortgage insurance under other HUD programs but withdrew their applications. Properties with a Certificate of Occupancy less than three years prior to the date of application for Firm Commitment are eligible for the waiver.

FHA Mortgage Insurance for Projects Under Construction Waiver

HUD recently issued Mortgagee Letter 2009-26 which provides temporary authority to provide FHA multifamily mortgage insurance under the Sections 221, 221(d)(3) and (d)(4) and Section 231 programs to projects that have been unable to complete construction due to a loss of funding. The parameters of the authority are fairly narrow in that only non-HUD-insured new construction apartment projects that have started or completed site improvements and building foundation work are eligible. Substantial rehabilitation is not eligible.

Certain other conditions must be met. All construction work must have stopped before an application for FHA insurance is submitted, and construction cannot commence until the project receives initial endorsement. Davis Bacon wage rates will apply to all construction work going forward, but will not be applied retroactively to the construction in place. Additional requirements include submission of a new (not updated) appraisal and market study. The temporary authority is effective for the next six months, at which point HUD will evaluate the effectiveness of the waiver and may elect to extend the program if warranted.

HUD Announces the FHA Multifamily Mortgage Insurance Premiums for FY2010

HUD published the FHA multifamily mortgage insurance premiums (MIPs) for FY2010 in the September 17 Federal Register. The MIPs are unchanged from FY2009. The Section 221(d)(4) new construction/substantial rehabilitation program without Low Income Housing Tax Credits (LIHTCs) is 50 basis points or 45 basis points with LIHTCs. The MIP for the Section 207/223(f) refinance or purchase for apartments with or without LIHTCs is 45 basis points. For a complete list, please refer to the Federal Register Notice.

Member Education

To help members understand the FHA multifamily mortgage insurance programs, NAHB has held two webinars on using the Section 221(d)(4) and Section 223(f) programs. A third webinar is tentatively planned for October.

Section 8 Housing Voucher Program

Section 8 Voucher Reform Act

NAHB has been working with the House and Senate on a voucher reform bill for some time. In July 2007, the House overwhelmingly passed the Section 8 Voucher Reform Act of 2007 (SEVRA). The bill as passed included several of NAHB priorities, including provisions to streamline the unit inspection process and to place the responsibility of translating documents and providing interpretation services to persons with limited English proficiency (LEP) on HUD, rather than property owners.

The companion Senate bill, S. 2684, was introduced by Senator Dodd (co-sponsored by Senators Schumer, Reed, Menendez and Brown) in March 2008. Although a hearing was held and all of the witnesses expressed support for the bill, no further action was taken in 2008.

On June 25, 2009, Representative Maxine Waters (D-CA), Chair of the House Financial Services Subcommittee on Housing and Community Opportunity introduced H.R. 3045, the Section 8 Voucher Reform Act of 2009. Two hearings were held prior to introduction of the bill, the first on May 13, with Secretary Donovan as the sole witness, the second on June 4th with industry representatives as witnesses. Secretary Donovan was very supportive of the bill, saying it was a key step in improving the voucher program. He was particularly supportive of the proposed funding formula and also mentioned streamlining the unit inspection process, reforming rent and income calculations and reallocating unused voucher authority among public housing agencies

that could use it as important provisions in the bill. Witnesses at the second hearing were also very supportive of the bill.

On July 23, the House Committee on Financial Services completed its mark-up of H.R. 3045 and approved the bill. H.R. 3045 include several important provisions supported by NAHB, including streamlining of the unit inspection process, a revised funding formula for the program that ensures stability of the flow of funds to public housing agencies (PHAs), and improvements to the Section 8 project-based voucher program. It would also restore previous assistance levels by authorizing 150,000 new vouchers.

However, there are a few outstanding issues of concern to NAHB. H.R. 3045 omitted provisions related to ensuring that persons with Limited English Proficiency can access HUD housing programs, which were included in the earlier SEVRA bill. H.R. 3045 also contains changes to screening requirements for new Section 8 voucher applicants, for which housing industry groups have expressed concern. Staff will continue to work with Committee members to address these concerns as the bill moves forward. There is no Senate companion bill at this time.