



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

ASSISTANT SECRETARY FOR HOUSING-  
FEDERAL HOUSING COMMISSIONER

February 6, 2009

MORTGAGEE LETTER 2009-06

TO: All FHA-Approved Multifamily Mortgagees

SUBJECT: Temporary Authority for Multifamily Hubs to  
Process Waiver Requests Pertaining to the  
Three-Year Rule for Section 223(f)

**Purpose**

This mortgagee letter sets forth the Department's policy to grant temporary authority to Multifamily Hub Directors to grant waivers of the Three Year Rule for Section 223(f) (MAP Guide, Section 3.8.a Eligible Property), for the purpose of providing liquidity to recently constructed, self sustaining properties that are unable to secure permanent long term financing due to the freeze in the capital markets. This mortgagee letter will benefit applications that meet all of the qualifications of the Section 223(f) program, except for the fact that the property was originally constructed or substantially rehabilitated less than three years prior to the date of application for Firm Commitment. Eligible applications will have a Certificate of Occupancy dated no later than July 31, 2008. The waiver authority granted under this Mortgagee Letter expires six months from publication. The Department will evaluate the effectiveness of this waiver authority based upon applications received and may elect to extend the program based upon that evaluation.

**Background**

A number of fully operating, self sustaining properties, which have recently been constructed or rehabilitated, are now unable to secure permanent long-term financing due to the freeze in the capital markets. At this time, the Department recognizes the need to provide liquidity to the market place. In order to do so, waiver authority of the Section 223(f) eligibility restriction to properties that have been completed or substantially rehabilitated for 3 years prior to the date of application is required.

Historically, Section 223(f) program requirements have been temporarily modified to better meet program goals when economic conditions greatly decreased the availability of credit. When the Section 223(f) Handbook was originally published, it set forth a Special Eligibility Program that was applicable to recently completed projects, where construction was started before June 30, 1974 and completed before the end of 1975. This special program was implemented to address liquidity shortages prevailing in multifamily real estate financing at that time that prevented otherwise sound projects from obtaining permanent financing. The existing capital market credit freeze is similarly constraining the availability of permanent financing today. This Mortgagee Letter provides relief similar to that provided in 1974, but also includes additional requirements to ensure that the

properties are viable, self sustaining and will not jeopardize the long term financial stability of the Section 223(f) program.

### **Waiver Authority**

As of the date of this Mortgage Letter, Hub Directors will have temporary authority to waive the Three-Year Rule for the Section 223(f) program for a six month period subject to the conditions and processing instructions below. The requirements of this Mortgage Letter may not be waived by Hub Directors.

### **Conditions**

1. This waiver authority applies only to the refinancing of conventionally funded projects that were originally constructed or substantially rehabilitated less than three years prior to the date of application for Firm Commitment and that have a Certificate of Occupancy for the entire project dated no later than July 31, 2008.
2. Projects that previously applied for mortgage insurance under other HUD programs and withdrew their applications are ineligible.
3. Any prepayment restriction associated with the new Section 223f financing must be discussed with the applicant.
4. The final mortgage amount shall only be sufficient to pay off existing indebtedness, as defined in Chapter 8.9.E of the MAP Guide and may not include an equity payment to the owner.
5. All other applicable program requirements for the Section 223(f) program must be met, including compliance with Chapter 10.8 of the MAP Guide that pertains to the nondiscrimination provisions of the Fair Housing Act, along with Executive Order 11063 and Appendix 5c, Paragraph E that concerns accessibility requirements for persons with disabilities.
6. The applicant must submit documentation evidencing that efforts to obtain permanent conventional financing have been unsuccessful, or that current offers of conventional financing have been cancelled. This documentation should include rejection letters from prospective lenders or cancellation letters from lenders that had previously committed financing.
7. 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.
8. A minimum of one full year (non-annualized) audited financial statements are required.
9. The project must have achieved Sustaining Occupancy for a period of three months immediately prior to the date that the application for Firm Commitment is submitted.

Sustaining Occupancy is defined as having sufficient income to pay all operating expenses, monthly debt service, escrow and reserve for replacement requirements. Only leases with 12 month terms will be considered in the calculation. The certified rent roll level of occupancy for the most recent three-month period must be no less than 90% of the total units in the entire project, including all phases. Unusual rent concessions, other discounts and short term leases that are not typical in the market and that are offered by a landlord to induce a prospective tenant to enter into a lease must be taken into consideration when evaluating the credibility of the 90% occupancy requirement. The market analysis contained in the appraisal report must justify any processing occupancy rate that exceeds the certified rent roll occupancy level.

10. No waiver of the requirement for submission of “as-built” plans shall be permitted.
11. As per outstanding requirements, a current Phase I Environmental Assessment must be submitted. It should reference any prior Environmental Assessments and these older reports should be submitted if available.
12. In accordance with the Uniform Standards of Professional Appraisal Practice, the appraisal report should discuss any current listing of the subject and any offers made and/or accepted to purchase, lease or option the project. Also, since these projects are recently constructed or rehabilitated, depreciation will be minimal or significantly reduced, contributing to the reliability of the Cost Approach. Processing offices are reminded that this approach is required and should be considered in the reconciliation process.
13. Copies of any market studies and updates that were made in conjunction with obtaining the current loan must be submitted. The market analysis in the appraisal report will address current market conditions of the subject property.
14. Inspections/Repairs. All of the existing MAP Guide requirements related to project inspection, repair escrows, and protection against latent defects associated with the new Section 223(f) financing are applicable to cases processed under this waiver authority. In addition, the following requirements apply:
  - a. Any latent defects that became apparent during the warranty period provided under the project’s original construction contract, whether repaired or not, must be disclosed at the time of application.
  - b. The Project Capital Need Assessment shall assess the adequacy of the repairs performed to address any latent defects and determine whether any additional repairs are required to correct the defects, and shall establish a cost to complete the repairs.
  - c. All repairs required under this category, whether critical or non-critical, must be performed prior to closing and may not be included in the mortgage.

## **Hub Submission Requirements to HQ**

Chapter 11.2.J of the MAP Guide requires that waivers granted at the Hub level must be submitted with supporting documentation to the Office of Multifamily Housing Development. This information should be provided at the time the decision is made to grant the waiver. It is important that this information is provided timely for all approved waivers in order for HQ to evaluate the effectiveness of this policy.

If there are any questions regarding the action taken on this waiver request, please contact Joseph Sealey, Director of Technical Support at (202) 402-2559.

Sincerely,

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