



MORTGAGE BANKERS ASSOCIATION

April 3, 2023

Regulations Division
Office of General Counsel
U.S. Department of Housing and Urban Development
451 7th St, SW
Room 10276
Washington, DC 20410

Re: Docket No. FR-6320-A-01

To Whom It May Concern:

On behalf of the Mortgage Bankers Association (MBA),¹ thank you for the opportunity to comment on HUD's proposal to transition to a single Section 8 regulation and a single Housing Assistance Payment (HAP) contract for its Section 8 project-based rental assistance programs. While the concept is appealing and well-intended, MBA unfortunately believes the impact of the proposed changes will have a significant negative impact on the supply of these affordable units.

MBA urges HUD to reconsider this proposal, and to use all tools to preserve existing properties. Specifically, our reasoning for the reconsideration of the proposal is below.

A. Reserve for Replacement

(1) To ensure project capital needs are met, HUD intends to require an owner to establish a HUD-controlled reserve for replacement account, with initial and annual deposits determined by means of a periodic capital needs assessment (CNA). Are there circumstances under which HUD should consider waiving the need for a CNA and, if so, what circumstances and why?

Response: MBA believes the reserve for replacement account proposal is duplicative, and is mitigated fully by current procedures and regulations, and request it be withdrawn. This language does not recognize the crucial role lenders play in maintaining Section 8 properties. Requiring an additional

The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 400,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets, to expand homeownership, and to extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of more than 2,200 companies includes all elements of real estate finance: independent mortgage banks, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies, credit unions, and others in the mortgage lending field. For additional information, visit MBA's website: www.mba.org.

reserve would be duplicative for several reasons, increase costs, and likely further hamper the development of affordable rental housing:

- For FHA-insured projects, in either a refinance or acquisition, a new capital needs assessment (CNA) is ordered, Critical and Non-Critical Repairs are identified and completed, a projection of future capital needs is made, the amount of the annual deposit to the reserve for replacements is established, and in the case of 223(f) transactions, a substantial initial deposit to the reserves for replacement deposit – often times over \$1,000 per unit – is made at closing. There need not be any additional analysis over and above what is done at this time.

Furthermore, periodic CNAs are already completed for FHA-insured projects. A new CNA is ordered every ten years by HUD Asset Management, and additional requirements would be duplicative with no additional benefit.

- For GSE financed projects, the same happens at the time of a new loan – a new CNA is ordered, new annual deposits are set, and repairs are identified and required to be made. For standard refinances or acquisition (without a rehab or new tax credits), the loan term is only ten years. At that time, the loan must be refinanced, and the new lender will require a new CNA, new annual deposits to be set, and any repairs to be done. So, just like with an FHA-insured loan, a new CNA is done every ten years. This will ensure the property is in good condition and future capital needs are budgeted for.
- For GSE-financed acquisition/rehab properties with new tax credits, the loan term is 15 years. The CNA for these properties will determine the capital needs for these projects for 15 years, and the annual deposits to the reserves for replacement will be adjusted accordingly. Furthermore, these properties will go through a rehabilitation of up to \$60,000 per unit. These rehabilitations repair, upgrade, and modernize the property, extend the useful life of the property, and improve living conditions for the tenants. Also, for a 15-year period, the tax credit investor serves as the investment limited partner (ILP) of the deal. As the ILP, the tax credit investor monitors the performance and condition of the property through their dedicated asset management divisions. This ensures the property remains in good condition. Tax credit transactions are generally financed at the end of year 15, at which time a new CNA will be required by the new lender, and the process begins again. In addition, tax credit projects often have inspections by the agency (usually a housing finance agency) that awards the tax credit for each property.
- Both GSE lenders and MAP lenders will service the loan. Servicing the loans entails periodic inspections of the property to ensure the condition of the property remains acceptable, so additional requirements are unnecessary.

(2) Should HUD provide an incentive to owners to use their own capital to establish and/or make continued deposits to a reserve for replacement account? If yes, how might the incentive be structured? Should access to the incentive be tied to a particular outcome? the project assisted under section 524 is undergoing rehabilitation? If not, why not?

Response: A common occurrence in an acquisition or refinance is to request a Mark Up to Market (MUTM) of the contract rents and request a new 20-year contract. To justify a MUTM, there is often some level of repairs, interior and exterior, that need to be done. In an acquisition, borrower funds

along with the loan funds are often needed to purchase the property and make the repairs. For properties that are refinancing, loan funds are generally used to make repairs. A Chapter 15 MUTM to post rehab rents is sufficient incentive for the owner to make the repairs. Additional incentives or escrows would be duplicative in nature.

The lenders will have determined the long-term capital needs of the project for 10 or 15 years. Additional reserves for replacement funding over and above those set by the lender are not needed.

B. Rehabilitation

(3) Should the standard program regulation address requirements when a project assisted under section 524 is undergoing rehabilitation? If not, why not?

Response: For the reasons stated above, additional oversight or requirements for rehabilitations are not needed. Section 8 projects often go through tax credit acquisition/rehabilitation. To receive tax credits, state housing finance agencies often have a minimum level of rehabilitation that must be performed. For example, in California, a minimum of \$40,000 per unit in repairs is required. However, this amount is often exceeded.

When financing these tax credit projects, the owner will determine the level of the rehabilitation, but the adequacy of the scope of work must also be approved by the lender, who will hire a third-party firm to help make this determination. If the loan is to be FHA-insured, HUD architects will also determine the adequacy of the rehabilitation. In addition, the tax credit investor must review and approve the scope of work with its own third-party inspector.

Many stakeholders have sufficient opportunities to determine the scope of a rehabilitation and repairs. Owners must satisfy the conditions of the state housing finance agency (to be awarded the tax credits), the lender, HUD, and the tax credit investor. Adding another layer of requirements would make complicated and challenging transactions even more so.

For repairs outside of a rehabilitation, requests for transfer of a HAP contract to a new owner (usually occurring at an acquisition) require a CNA to be provided, which will determine necessary repairs and reserve for replacement deposits. This would be in addition to what the lender requires.

HUD should be seeking ways to make the process easier and more efficient, not the other way around. Adding rehabilitation requirements under section 524 is unnecessary.

(4) If the standard regulation should address rehabilitation, what elements of rehabilitation should it cover (i.e., rehabilitation planning, tenant relocation, use of the pass-through)? Are there items that should be excluded from the regulation?

Response: For the reasons stated above, additional rehabilitation requirements are not needed. In addition, HUD Asset Management account executives are already overburdened. MUTM and requests for new 20-year contracts in conjunction with new loans can take up to three months or longer, which can often lead to a delay in closing. Adding another layer or review (of the scope of work for the rehabilitation), will only make the process slower.

For relocation, additional requirements under section 524 are not needed, as Section 8 projects are covered under the Uniform Relocation Act. Additional regulations under a different act would only be confusing and complicate the transaction more.

C. Project Finances

(5) To ensure compliance with the reserve for replacement requirement, HUD intends to require all owners to submit annual financial reports. Please comment.

Response: Additional monitoring of deposits to the reserves for replacement is not required. Lenders already automatically collect reserve deposits for each loan.

Owners of projects with FHA-insured loans are already required to submit an annual audit. If audits are to otherwise be required, they should be limited to projects that are 50% or more covered by a contract.

(6) Should the standard program regulation contain any limits on distributions? If not, how should HUD ensure that owners dedicate appropriate funds to operating and maintenance costs, and that taxpayer funds are not providing excessive compensation to owners?

Response: Distributions should not be limited. Lenders and tax credit investors already ensure that the property is maintained properly. In addition, REAC inspections, coupled with annual audits calculating surplus cash, perform this same function.

D. HUD Enforcement

(7) In the interest of providing clarity and transparency, HUD believes it would be beneficial to include in the regulation a subpart on enforcement, where the tools available to HUD and the circumstances under which such tools could be employed would be addressed. Please comment.

Response: MBA does not oppose including enforcement provisions, but it is unclear on how these would be added to a contract. Would existing contracts need to be revised? That would be a daunting process, taking years if not decades to complete. A better approach may be an incentive provided with a Use Agreement (such as was used for 202's when first allowed to prepay) – e.g., incentives like distributions or access to HUD controlled proceeds from a refinance or sale.

E. Vacancy Payments

(8) What incentives could HUD use to encourage owners to re-lease vacant units quickly? Are there programmatic changes HUD might consider to encourage this result?

Response: MBA believes vacancy payments should be discontinued if there are long-term vacancies.

F. Scope

(9) What topics should be addressed in a standard program regulation? For example, should the regulation be comprehensive, addressing all aspects of the program, ranging from renewal,

management, occupancy, enforcement, and nondiscrimination, accessibility for persons with disabilities and equal opportunity requirements? If not, how should the scope of the regulation be limited?

Response: The scope of the regulation should be limited. Adding too much to the regulation will make the program more rigid and less nimble. A process to request waivers in justifiable circumstances should be a part of any process, as no policy is perfect to cover every potential outcome.

(10) HUD expects to incorporate into the regulation tenant rights equivalent to those that apply currently to tenants residing in projects assisted under RAD PBRA HAP contracts (as currently described in Notice H 2019–09/PIH2019–23). Should the regulation contain a subpart addressing tenant rights and responsibilities? If so, what specific topics should the subpart cover?

Response: Notice H 2019–09/PIH2019–23 is lengthy and includes many provisions. This should be a separate rulemaking process to ensure all parties impacted by updated requirements have the ability to voice their concerns and recommendations.

G. Renewal Options

(11) Upon expiration, most contracts in MFH’s portfolio are eligible for renewal under section 524 of MAHRA. HUD intends to require renewal of such contracts by means of the standard program contract, so that as owners renew, they will be subject to the requirements laid out in the standard program regulation. Please comment.

Response: HUD’s intention to reduce complexity by creating a consolidated HAP contract is well intentioned, however, the proposal will add an additional and duplicative form of HAP. True consolidation would not occur until every HAP contract is renewed, which would be decades as the various forms of HAPs and the underlying regulations would still exist negating any streamlining efficiencies. Further, it is unclear when the new contract would be required – would it be at the end of the existing contract or at the end of the preservation term?

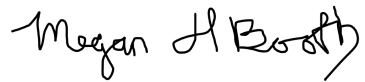
H. Other Comments

(12) In addition to the subject areas described above, MFH welcomes any other input that interested parties believe would contribute to the successful design and implementation of a standard program regulation and contract, including input on education and outreach efforts that would assist owners in understanding and complying with requirements in the standard program regulation and contract.

Response: MBA believes that the MUTM process can be very helpful in preserving properties, but the process is slow and should be streamlined. MBA recommends additional training for HUD AEs and PBCAs. HUD AE’s and PBCA’s should be given incentives or disincentives for their actions and timeliness. Lastly, incentives for owners and operators could be made based on a formula to determine ROI of the Section 8 dollars. For example, if a project's last 3 years of audits indicate some minimum percentage of funding for annual capital needs replacement, the OCAF is increased a bit more and split 75/25 into the RFR and distributions.

Thank you for the opportunity to comment. MBA strongly urges HUD to reconsider this proposal. The impact of the significant proposed change, while well intentioned, will greatly decrease the supply of affordable housing units.

Sincerely,

A handwritten signature in black ink that reads "Megan H. Booth". The signature is written in a cursive, flowing style.

Megan H. Booth
Associate Vice President
Commercial /Multifamily Policy
Mortgage Bankers Association