

April 6, 2020

The Honorable Benjamin S. Carson
Secretary
U.S. Department of Housing and Urban Development
451 Seventh Street, SW
Washington, DC 20410

Dear Secretary Carson:

Thank you for your efforts to combat the devastating toll of the COVID-19 virus on the public health of our fellow Americans and our nation's housing sector. NAHB applauds the quick, decisive actions of this Administration to assist homeowners struggling to pay their mortgages as a result of the COVID-19 crisis. As you and your colleagues in the Federal Housing Administration (FHA) and the multifamily officials within the Office of Housing implement the Coronavirus Aid, Relief and Economic Security (CARES) Act, I request your attention to several urgent concerns regarding FHA-insured and HUD-assisted multifamily properties.

Residents of FHA-insured and HUD-assisted properties are likely to feel the harmful economic impact of the COVID-19 crisis long after the national emergency declaration ends. Many of these renters live paycheck to paycheck. Lost wages and unemployment will leave them financially burdened and less able to make timely rent payments. Fortunately, HUD secured additional appropriations to cover shortfalls in tenant rent contributions for households assisted through Section 8 Project-Based Rental Assistance and Housing Choice Vouchers. However, unassisted renters across the country will struggle to pay rent. As a result, property owners will struggle to make their mortgage payments and maintain sound property operations.

Prior to enactment of the CARES Act, HUD took some preliminary measures to assist multifamily owners on a case-by-case basis. These measures should be expanded. NAHB also believes the new law offers opportunity to implement forbearance and tenant protections in a way that protects residents, provides much needed relief for multifamily owners and mitigates negative impacts on the GI/SRI Insurance Fund. Our recommendations follow.

HUD Should Expand Access to Residual Receipts and Reserves for Replacement to Cover Mortgage Payments on Multifamily Properties

The "Questions and Answers for Multifamily Stakeholders Coronavirus (COVID-19)"¹ states that HUD will consider policy, handbook, and regulatory waivers on a case-by-case basis to provide flexibility for owners and management agents to respond to unique needs. NAHB is urging HUD to provide blanket waivers for using replacement reserves to cover lost rental income. In response to a question asking whether FHA-insured borrowers may use reserve for replacement accounts to cover payments for delinquent mortgages, the document replied:

"Owners may submit requests to HUD field staff for non-traditional uses of reserve for replacement accounts. Field staff will review such requests based on account balances and future needs, project needs, owner compliance and other criteria consistent with Chapter 4 of HB 4350.1. In addition, HUD field staff will need to see evidence of the loss of rental receipts."

¹See https://www.hud.gov/sites/dfiles/Housing/documents/HUD_Multifamily_Corona_QA_FINAL.pdf. (March 29, 2020)

Considering the widespread financial impact of the COVID-19 pandemic, NAHB urges HUD to provide more flexibility for owners and managers of FHA-insured and/or HUD-assisted properties to use residual receipts and reserves for replacement accounts. NAHB strongly urges HUD to issue a housing notice and mortgagee letter providing blanket waivers for using residual receipts and reserves for replacements to cover necessary expenses, such as mortgage payments, when rental income is insufficient to cover the expenses due to the COVID-19 crisis. NAHB strongly urges FHA to authorize lenders to approve releases of reserve for replacements, to the extent funds are available, so that borrowers can meet debt service payments. Likewise, we urge HUD to accept requests for the releases orally or in writing to expedite approvals of such requests, and to suspend the required reserve for replacement deposits from FHA-insured and HUD-assisted properties for a minimum of three months.

NAHB believes there is precedent allowing widespread use of residual receipts and reserve for replacement funds to cover mortgage payments when owners are faced with unforeseen financial hardships beyond their control. On July 13, 2007, a memorandum, “Expedited Processing for Use of Residual Receipts and Reserve for Replacement Funds,”² noted that some properties were experiencing delays receiving Section 8 subsidies through no fault of their own. The memo noted this situation could result in inadequate operating funds to meet a property’s needs. The memo instructed, “When this occurs, property owners may request HUD approval to use available residual receipts and/or reserve for replacement funds to meet mortgage and other necessary operating expenses of the property.” It continued:

“In recognition of the current Section 8 funding delays and the necessity for owners to access available residual receipts and/or reserve for replacement funds as quickly as possible, I am requesting all Multifamily Offices to assure that priority processing be given to these requests. Our goal is to process these requests within one business day of receipt.”

Multifamily Mortgage Forbearance and Tenant Protections in the CARES Act

The CARES Act calls for an immediate 120-day moratorium on evictions and associated fees for non-payment of rent for all properties insured, guaranteed, supplemented, protected or assisted in anyway by HUD, Fannie Mae, Freddie Mac, the rural housing voucher program, or covered properties under the Violence Against Women Act, which includes Low Income Housing Tax Credit (LIHTC) projects. After the 120 days, owners must give 30-days written notice of an eviction.

The law also includes multifamily mortgage forbearance for all federally backed mortgages (Fannie Mae, Freddie Mac or FHA). Owners may request forbearance for 30 days, with the option of two additional 30 days as needed for a total of 90 days. Forbearance may be requested from the date the bill is enacted until *the sooner of* the termination of the national emergency declaration or December 31, 2020. The CARES Act prohibits multifamily owners from evicting tenants for nonpayment or charging late fees during their forbearance period. Borrowers cannot issue a notice to vacate until after the forbearance period and cannot require the tenant to vacate the unit until 30 days after the notice to vacate.

If an owner takes the forbearance later in the year, they are still required to have a moratorium on evictions immediately after passage of the legislation for 120 days, and then additionally during the forbearance period. It is NAHB’s understanding that if forbearance is taken immediately, those two eviction periods would occur concurrently.

² A copy of the July 13, 2007 memo accompanies this letter.

NAHB is extremely concerned that residents could misinterpret the statutory restrictions on evictions as a “rent holiday.” Our members are gravely concerned that some tenants who can pay their rent will fail to do so because they cannot be evicted for non-payment. It is imperative for HUD to play a leadership role and remind tenants of their obligation to pay their rent or work out repayment plans with property owners if they are unable to do so. Of course, assisted tenants should request income re-certifications pursuant to HUD’s existing procedures.

Because the CARES Act does not dictate the repayment period for a loan under the forbearance, HUD should exercise its regulatory authority to provide flexible repayment terms. As noted earlier in this letter, the COVID-19 pandemic is causing widespread economic hardship for many renters, and owners of FHA-insured and HUD-assisted are under statutory obligations to continue housing tenants who are unable to pay rent. For these reasons, NAHB strongly urges FHA to allow owners to repay sums owed while the property was in forbearance at the end of the mortgage. Likewise, FHA should allow long repayment periods that exceed 12 monthly installments. In addition, HUD should not prohibit evictions beyond the time limits set in the CARES Act.

Construction and Site Inspections

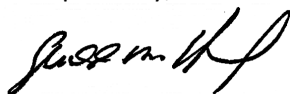
Finally, NAHB is aware that some regional multifamily production offices are seeking technological solutions to satisfy construction and site inspection requirements under the FHA multifamily mortgage insurance programs. NAHB encourages FHA to continue using technology and providing waivers to the greatest extent possible under these unusual circumstances.

Housing is an economic driver that is an important factor in revitalizing a community. Home building generates substantial local economic activity, including new income and jobs for residents, and additional revenue for local governments. In fact, NAHB estimates that the total one-year impact of building 100 multifamily units in a typical local area supports 161 local jobs, over \$8 million in local wages and salaries and more than \$2.2 million in local taxes.³ It is especially important to continue multifamily construction projects during this time of widespread business closures, increased unemployment and reduced revenues for local governments.

Conclusion

Thank you for considering NAHB’s recommendations. Please do not hesitate to contact me to further discuss the issues raised in this letter. I look forward to continuing to work together.

Respectfully,



Gerald M. Howard
Chief Executive Officer
National Association of Home Builders

cc: The Honorable Brian Montgomery
Mr. C. Lamar Seats

³ “The Economic Impact of Home Building in a Typical Local Area: Income, Jobs and Taxes Generated,” by the National Association of Home Builders Housing Policy Department, April 2015. <https://www.nahb.org/-/media/NAHB/news-and-economics/docs/economics/economic-impact/economic-impact-local-area-2015.pdf>.