



March 1, 2011

Ms. Vicki Bott
Deputy Assistant Secretary
Office of Single Family Housing
Federal Housing Administration
U.S. Department of Housing and Urban Development
451 Seventh Street, SW
Washington DC 20410

Dear Ms. Bott:

I am contacting you on behalf of Community Associations Institute¹ regarding the process by which FHA has enacted changes to its condominium insurance program as well as the agency's plans for future program revisions.

As CAI has noted in prior correspondence to Secretary Donovan and to FHA, our membership has been concerned by the lack of transparency in the development of new policies by FHA that affect condominiums. On behalf of CAI's membership, I am again renewing our request that FHA employ a more open and transparent process as the agency considers further changes to its condominium insurance program. Specifically, CAI requests that FHA publish any new program requirements for condominiums in the *Federal Register* and solicit public comment on the proposed changes.

During the last significant effort to coordinate condominium program requirements, HUD's General Counsel advised the Office of Single Family Housing that taking a more public approach to policymaking can be helpful to the agency as well as to the consumers of the agency's programs. Specifically, former HUD General Counsel Diaz wrote:

¹ CAI is the only national organization dedicated to fostering competent, well-governed community associations that are home to approximately one in every five American households. For nearly 40 years, CAI has been the leader in providing education and resources to the volunteer homeowners who govern community associations and the professionals who support them. CAI's 30,000 members include community association volunteer leaders, professional managers, community management firms, and other professionals and companies that provide products and services to community associations.

2. *Federal Register Notice. Revised guidelines for legal documentation, while not rising to the level of a substantive rule that must be published in the Federal Register, still would affect the interests of many groups (attorneys, homeowners, planners, developers) who would not receive direct notice of changes through regular handbook distribution. Publication of revised guidelines in a policy notice in the Federal Register should result in a more widespread and rapid dissemination of revised FHA policy. A single one-time notice could be used, but Housing should consider the advisability of using a Federal Register notice that solicits public comment before a final policy on condominium and PUD legal documents is adopted. As in the present situation, whenever an agency is considering a course of action or policy that involves divergent interests and classes of persons or when the issues are complex, interrelated, and represent a numbers [sic] of concessions and compromises, an administrative record can be very useful in sorting out the equities and buffering the agency's eventual decisions against legal and political challenge.²*

CAI's membership is making every reasonable effort to comply with FHA condominium insurance program requirements, with many condominiums spending as much as \$6,000 to submit their condominium for certification or recertification through the HRAP process. For this process to work smoothly for both condominium associations and FHA, the rules governing the program should be clear and consistent as well as transparently and evenly applied by the homeownership centers. Regrettably, this has not always been the case, despite the best efforts of FHA staff, which CAI's members greatly appreciate.

CAI has previously voiced its concerns with the individual association underwriting criteria formulated by FHA that form the crux of the changes to the agency's condominium programs. No explanation of how the criteria were determined has been released for public evaluation. Further, no analysis has been made available to the public describing how these new criteria have improved loan performance or affected individual homeowners.

Given that FHA program eligibility is withdrawn for all creditworthy borrowers living in a condominium that runs afoul of any one of FHA's new criteria, the stakes are incredibly high for communities where FHA continues to play a vital countercyclical role. Further, the administration's announcement that FHA has begun to withdraw from the marketplace by premium increases and implementing additional program eligibility restrictions means these homeowners will be further cut off from the housing finance system before private capital can service these markets.

Because many first-time and low- to moderate-income borrowers are being excluded from FHA's programs when purchasing a condominium, it is our understanding that FHA will further refine its condominium insurance program requirements. CAI requests that the new program requirements be developed using the process of notice and public comment through the *Federal Register*.

² HUD OGC Legal Opinion CIS-0091, p. 9-10. (emphasis added)

As previously noted, HUD's Office of General Counsel has advised the Office of Single Family Housing that prior revisions to its condominium insurance program requirements would benefit from a public vetting. Further, the statutory changes in the Housing and Economic Recovery Act that led to changes in FHA's condominium program were enacted in June of 2008, yet FHA has failed to propose any change in its regulations or relevant HUD Handbooks. Rather, changes have been implemented solely through Mortgagee Letter, which offer limited, if any, discretion for FHA staff and are generally effective upon release.

Implementation of such sweeping changes through administrative order has meant that condominium associations are forced to comply with new program rules without prior notice. That these rules are subject to further change without notice is also unsettling for program participants.

In a normally functioning market, conducting business in this manner would mean that homeowners and purchasers would turn from FHA to other sources of credit. However, as Commissioner Stevens recently noted, this is not an option in the current market.

During his colloquy with Rep. Steve Stivers (OH-15) regarding FHA's condominium program requirements at a February 16, 2011, hearing of the House Subcommittee on Insurance, Housing, and Community Opportunity, Commissioner Stevens stated:

We are currently one of the few institutions that will insure a condominium; particularly the high loan-to-value—most of the private insurers will not engage in this market and so we are the sole source provider.³

As Commissioner Stevens noted, options other than FHA are severely constrained for condominium owners or purchasers seeking to access the housing finance system. Liquidity has not yet returned to these markets and a precipitous withdrawal of FHA support either through new program restrictions or other means will have significant consequences. Using a public process to craft new condominium program guidelines can help reduce unintended barriers to homeownership while also ensuring better compliance with FHA guidelines.

A recent example of how public policy can be informed and improved through notice and public comment is the Federal Housing Finance Agency's (FHFA) proposed rulemaking on private transfer fees. FHFA's initial policy to limit the use of private transfer fees was through agency guidance, which did not require notice and public comment. Notwithstanding this, FHFA published its proposed private transfer fee guidance to inform the market of its intention to restrict their use and to solicit public comment on the proposal. FHFA's proposed agency guidance was the subject of more than 4,000 comments.

Given the substantial public interest and the information the agency gathered by engaging all interested parties, FHFA opted to reissue its proposed guidance as a proposed rule. FHFA altered its proposal to reflect the comments received, which will result in a practical adjustment in the use of private transfer fees in the housing market. By making full use of notice and public

³ February 16, 2011, hearing of the House Subcommittee on Insurance, Housing, and Community Opportunity entitled, *Are There Government Barriers to the Housing Market Recovery?*

comment, FHFA has improved its public policy and built a broad base of support for its proposal.

CAI's members share the views expressed by Commissioner Stevens during the February 16th congressional hearing that FHA incurred losses on its condominium-related book of business and that adjustments are necessary to protect taxpayers from loss. Markets were over-built and underwriting standards failed to ensure that borrowers would be able to pay their mortgages.

The commissioner did mention that condominiums serve as an important point of access to homeownership for many first-time and low- to moderate-income Americans. This is true. Given this, CAI believes that before FHA withdraws its support from the housing finance system that the agency should more fully consider how its policies impact families living in condominiums that never were transferred to owner control due to a developer bankruptcy. Additionally, CAI believes FHA should also give further consideration on how its policies affect homeowners in condominiums that may violate one of the agency's criteria. Under the current program rules, these creditworthy homeowners do not have access to FHA support in a manner similar to other American households. CAI believes this is an inequity that can be addressed by FHA while the agency continues to take action to protect taxpayers from loss.

CAI's members appreciate the effort and dedication of FHA staff during the housing and financial crisis and clearly see the benefit that FHA's countercyclical support for the mortgage market brought. This support has extended to the condominium market, but the process used to extend this support has increased uncertainty in the market and reduced the ability of qualified and creditworthy households to benefit from the agency's extraordinary efforts. CAI's members believe a more public process that involves notice and public comment will help FHA achieve its important policy goals, improve program compliance, and increase the number of creditworthy homeowners that can access the housing finance system.

I am available to discuss this request and the contents of this letter at your convenience, and I look forward to the courtesy of your reply.



Thomas M. Skiba, CAE
Chief Executive Officer