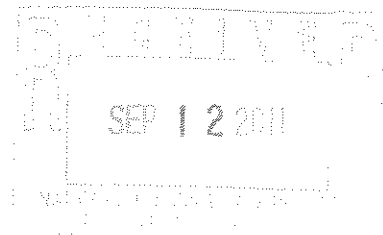




OFFICE OF HOUSING

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-1000



Mr. James R. Grow
National Housing Law Project
703 Market Street, Suite 2000
San Francisco, CA 94103-2130

Dear Mr. Grow:

Thank you for your August 10, 2011, letter to Secretary Donovan regarding tenant notice and comment on operating cost adjustment factor (OCAF) rent adjustments. In your letter, you indicate OCAF rent adjustment requests should be subject to tenant notice in order to comply with the requirements at 12 U.S.C. Section 1715z-1b.

Under the Housing and Community Development Amendments of 1978, 12 USC 1715z-1b, where the Department of Housing and Urban Development approval is required for an owner's request for a rent increase, tenants of multifamily housing projects must be given adequate notice and opportunity to comment on such actions (12 USC 1715z-1b(b)(1)). The tenants' right to notice and comment are initiated only when HUD's "written approval is required with respect to an owner's request for rent increase...." That is, the mortgagor must request the rent increase in order for the Housing and Community Development Amendments of 1978 to be implicated. If the mortgagor does not initiate the rent increase request, the Housing and Community Development Amendments are not impacted and, as a result, the tenants need not be given notice and opportunity for comment.

Addressing specifically the issue of OCAF rent adjustments, Section 524 of the Multifamily Assisted Housing Reform and Affordability Act (MAHRA) states the "Secretary shall annually adjust the rents using an operating cost adjustment factor established by the Secretary (which shall not result in a negative adjustment) or, upon the request of the owner and subject to approval of the Secretary, on a budget basis." Further, through the regulation at 24 CFR 402.2(c), HUD defines OCAF to mean "an operating cost adjustment factor established by HUD, which may not be negative, that is applied to the existing contract rent (less the portion of that rent paid for debt service)." OCAF adjustments are HUD-initiated and not based on an owner's request. Because HUD is the one initiating the rent increase (not the mortgagor), the Housing and Community Development Amendments of 1978 is not impacted.

It should be noted that though tenants are not required to be notified of an OCAF rent adjustment, they still must be notified of any adjustment to utility allowance that would result in a decrease in the utility allowance pursuant to 24 C.F.R. sections 245.405 and 245.410. Although the utility allowance adjustment is conducted in conjunction with the contract rent adjustment, utility allowances are not an element of contract rent under MAHRA.

I hope this information is helpful. If I can be of further assistance, please let me know.

Sincerely,

A handwritten signature in black ink that reads "Aretha Williams". The signature is written in a cursive, flowing style.

Aretha Williams
Acting Director
Office of Housing Assistance
and Grant Administration