



U.S. Department of Housing and Urban Development
MASSACHUSETTS STATE OFFICE, NEW ENGLAND AREA
Office of Housing
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Fax (617) 565-6257

Alfred Shaw, Portfolio Manager
MassHousing
One Beacon Street
Boston, MA 02108

JAN 14 2005

Dear Mr. Shaw:

SUBJECT: Project Name : Chauncy House
Project No. : 023-44183/MA06-M000-075

After approval of the recent rent increase for the subject project a number of concerns were brought to our attention by and on behalf of tenants about the posting(s) to tenants. After reviewing these concerns, we have determined that the mortgagor, The Community Builders, Inc. ("TCB"), failed to fully comply with the rent increase notice requirements of 24 CFR Part 245. Consequently, as set forth below, the "Owner's Certification as to Compliance With Tenant Comment Procedures" must be rejected and corrective action taken to remedy the deficiencies.

As you know, on December 9, 2004, a group of 25 Chauncy House tenants wrote to HUD, MassHousing and TCB, complaining that they had been denied a meaningful opportunity to participate in the rent increase process. The tenants, many of whom we are told are non-English-speaking, alleged that TCB violated the tenant participation process by failing to provide proper notices to the tenants as required by 24 CFR 245.310(a) and by failing to follow DOJ and HUD's Limited English Proficiency ("LEP") guidance when it did not translate the notices into Cantonese.

With respect to the issues raised about the adequacy of the tenant notices required under 24 CFR 245.310(a), we have reviewed the materials provided by TCB, including its certification to MassHousing and HUD that it complied with 24 CFR 245. The certification, dated August 1, 2004 and signed by TCB's senior property manager, states that TCB had, *inter alia*, distributed a notice to tenants in the forms and manner required by 24 CFR 245.310. TCB's notice to tenants did not comply with the requirements.

¹ Attorneys for the tenants claim that a large number of residents speak Chinese and read Cantonese. With respect to the LEP issues raised, HUD's Regional Office of Fair Housing and Equal Opportunity will be conducting a review under Title VI of the Civil Rights Act of 1964, as amended, to ascertain, among other issues, whether or not tenants were denied meaningful participation based on their race and national origin.

24 CFR 245.310(a) requires that the mortgagor must provide notice, in a form required by HUD, that the mortgagor is seeking an increase in the maximum allowable rents. The notice must state the reasons that the proposed increase is being requested and is needed. In this instance, TCB sought a rent increase in order to, *inter alia*, recover the owner's annual return of contribution, yet TCB did not list the owner's return among the reasons for seeking a rent increase. In fact, as subsequent events demonstrated, the increased (albeit incorrect) owner's return was the primary reason that the rents increased by 25%. Thus, tenants were not given adequate notice of, or an opportunity to comment on, a major reason that TCB sought the increase. Had the tenants been informed of the increased owner's return as required, it is very possible that the mistake that resulted in the large rent increase could have been identified earlier and avoided. Accordingly, based on this information, we are rejecting TCB's certification of compliance with 24 CFR 245. In order to correct TCB's non-compliance with HUD's tenant participation regulations, the rent increase must be rescinded. If TCB initiates a new request for a rent increase, it must provide the tenants with a meaningful opportunity to participate in that process as set forth below.

The tenants raised a number of other concerns about the posting(s) to tenants which lead to additional questions about whether tenants had the information needed to comment on the proposed rent increase and an opportunity to participate in the process in a meaningful manner.

To correct for these problems, please advise TCB that if it wants to seek an increase in the maximum allowable rents, its notice to tenants must comply with 24 CFR 245.310 and HUD Handbook 4350.1 Chapter 7, including the following:

- One Notice should be posted and distributed showing *all* unit rents and the utility allowances.
- The posting must include all reasons for the rent increase including the owner's return if this is proposed.
- The posting should direct tenants to submit comments to the owner or MassHousing. This will help ensure that the reviewer at MassHousing receives any tenant comments in a timely fashion.
- A survey should be used to set the utility allowances. Estimates based on standard allowances used by housing authorities are sometimes helpful, but it is not the best estimate available for a project with current, actual, utility bills available.
- The Notice must comply with DOJ and HUD's LEP guidance so that all tenants are notified and have an opportunity to participate in the rent increase process.

There is another reason that the rent increase request must be disapproved. On November 26 we advised you that in the processing of the recent rent increase for the subject project, an incorrect figure was used for the owner's annual return. We also advised Maria Correia, a TCB official, of this error on November 24.

As we explained, the Department does not allow for inclusion of the new authorized annual return as a budget line item. Priority purchasers, such as the case with TCB, were not

allowed to utilize a Section 241(f) loan and as such there was no guarantee of future project-based Section 8 subsidies, which would be needed to amortize the Section 241(f) loan. Unlike earlier Title II and Title VI Plans Of Action (POA), no rent increases or additional Section 8 subsidies were granted at POA approval for these Capital Grant Projects. Therefore, the increased authorized annual return was not budgeted. If the project generates surplus cash, the higher amount of owner's annual return would be applicable, but for budget purposes the original 6% return on equity included in budgets prior to the POA approval must be used. Since the higher amount of annual return was erroneously included in the budget calculations, rather than the 6% figure, resulting in a much larger rent increase than authorized, the rent increase must be rescinded.


As you will recall, on December 3, in a conference call with you, other MassHousing staff, HUD staff, and TCB, TCB officials agreed that, due to the annual return issue and problems with the tenant notices, TCB would withdraw the rent increase request and restart the process. We now understand that TCB did not withdraw the rent increase request, as had been agreed, and instead indicated that because a Section 8 HAP contract had been signed by MassHousing, TCB officials believed there was no need to withdraw the rent increase request.² TCB's actions are troubling in this regard because they have caused the residents to be unnecessarily alarmed by inordinately large rent increases and in some cases we are told with threatened evictions.

Therefore, pursuant to the Secretary's authority to approve, disapprove or adjust rent increase requests, you should rescind approval of the rent increase and advise TCB to correct for any rents charged over the prior authorized rent levels. The owner should be advised of all reductions made to the budget. MassHousing should issue a revised Exhibit A to the Section 8 Contract, based on the prior rents, and advise TCB to make the correction on their next monthly voucher.

TCB must also be advised to credit residents for any portion of the previously approved rent increase paid, and further advised that TCB should reduce the next monthly voucher by any portion of the rent increase billed and collected through the subsidy payment process. Please let us know if you anticipate any problems with respect to this process.

If there are any questions, please contact Warren Mroz of my staff at (617) 994-8543.

Very sincerely yours,


Leonard J. Ferrantino
Chief, Project Management
New England Multifamily HUB

² It is unclear to us when the Section 8 HAP contract was signed by MassHousing and transmitted to TCB. What is clear is that at the time of TCB's agreement to withdraw the rent increase request, the TCB officials who made that agreement had been informed that an error had been made in the rent calculations, that there were issues with the tenant participation requirements and that HUD and MassHousing were disapproving the rent increase on the basis of the error.