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Affordable Housing Alert

SEPTEMBER 13, 2022

HUD permits more frequent distributions for certain properties

By Richard Michael Price and David M. Hornstein

HUD issued Mortgagee Letter 2022-16 allowing multifamily owners to take monthly distributions.



What's the Impact?

- / Mortgagee Letter 2022-16 permits more frequent distributions, including monthly surplus cash distributions
- / The policy change will free up capital on a more frequent and regular basis for Multifamily Borrowers
- / You must be an "Eligible Borrower" with loans endorsed after the date of the notice, and meet several other requirements

On September 7, 2022, HUD issued Mortgagee Letter 2022-16, permitting more frequent surplus cash distributions from certain insured multifamily projects. Eligible owners could be allowed to take even monthly distributions. The formula for calculating the available surplus cash for distribution will not change. Typically, eligible borrowers are only permitted annual or semi-annual surplus cash distributions from HUD FHA-insured multifamily projects. This policy change will be reflected in the next edition of HUD Form 92466M.

The policy change is limited to certain new FHA-insured multifamily properties. Owners must apply for this change and amend their form Regulatory Agreement at closing. This only applies to unsubsidized FHA-insured multifamily mortgage loans. That means that this policy change does not apply to HUD-held mortgages, or properties with Section 8 PBRA contracts. To be clear, this is only available to loans endorsed after the effective date of the Mortgagee letter.

Additional conditions must also be met, including:

- / Must be in compliance with all other HUD requirements
- / The project must meet the minimum Debt Service Coverage Ratio in its program obligations
- / Most recent REAC inspection score(s) must be 80 or above with no REAC score(s) below 60 during the three prior fiscal years
- / Must be two full fiscal years from final endorsement of new construction, substantial rehabilitation properties, and Transfer of Physical Assets properties
- / Must be one full fiscal year after 223(f) loan endorsement (unless the borrower has owned at least two FHA-insured projects for the prior five full fiscal years with no APPS flags or regulatory violations during that time period)
- / Must perform a surplus cash calculation monthly, which is limited only to that demonstrated positive surplus cash
- / Must still comply with annual surplus cash requirements
- / This new release of surplus cash cannot adversely impact any outstanding surplus cash note(s)

Looking ahead

FHA-insurance applicants should consider if seeking this distribution change will have a positive impact on their transaction.

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