



MEMORANDUM FOR: Minnesota MF Hub Lenders, General Contractors & HUD Inspection Staff

SUBJECT: Requirements for Construction Changes- Circular 03-03

Date: March 27, 2003

It has come to our attention that numerous construction changes are being made prior to HUD's approval. At one project these changes exceeded 10% of the total construction cost. Change Order requirements are in place to assure that the contractors are paid for additional work done and to avoid non-payment to subcontractors, which can result in their placing a Mechanic's Lien on the property.

Construction contract changes (Change Orders) to the scope of contract work, contract price or contract time must be requested by the Mortgagor through the lender on Form HUD-92437. Making changes without HUD's prior approval is a violation of the Regulatory Agreement between the Mortgagor and HUD. Construction Contracts (form HUD-92442) and Building Loan Agreements (form HUD-92441) include a paragraph addressing the requirements for changes to the Drawings and Specifications. These forms are signed by the General Contractor and the Mortgagor respectively and are included in the initial endorsement documents.

Requirements for Construction Changes are clearly outlined in Handbook 4470.1 REV-2, Chapter 9; Handbook 4460.1 REV2, section 3-12; and MAP Guide, Section 13.8. Please note the provisions for Emergency Changes that allow construction to progress without disruption (4470.1 REV-2, 3-12 C.). At the very least, with the number of cell phones on site during construction, and the number of HUD Construction Analysts available to take your calls (see number below) this office expects that on-site managers request our verbal acknowledgement of, if not acquiescence in, changes that must be immediately effected before any paperwork is submitted to record our approval. Change Orders *will not be approved if submitted after the final* HUD Representative's Trip Report unless written approval is given by the HUB Director.

Lenders should discuss Change Order requirements and procedures with their clients and General Contractors. Additionally, the lenders and owners must ensure that the General Contractors' and their Subcontractors' bids/estimates are current at the initial endorsement stage to reduce the frequency and severity of Change Order requests post-closing. Construction changes with a positive cumulative effect of \$5000 or more require a cash deposit with the Mortgagee to cover the cost increase. HUD may authorize the Mortgagee to accept a letter of credit instead of cash. Written consent of the surety is required before approving changes that increase cost 10 percent or more for those cases where the assurance of completion requirements were satisfied with a payment and performance bond.

Thank you for your anticipated and renewed closer attention to this important protective device, making for smoother transitions between final inspection, cost certification, and final endorsement. Please contact our A&E officials at 612-370-3051, exts. 2266, 2272, 2295, or 2294, or Cindy Mohs, our Mortgage Credit Examiner in charge of reviewing your payout requests at ext. 2268, with any questions or comments.