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Memorandum No.
2005-LA-1804

January 3, 2005

MEMORANDUM FOR: John C. Weicher, Assistant Secretary for Housing, Federal Housing
Commissioner and Chairman of Mortgagee Review Board, H

Margarita Maisonet, Director, Departmental Enforcement Center,
CV

Joan S. Hobbs

FROM: Joan S. Hobbs, Regional Inspector General for Audit, 9DGA

SUBJECT: GMAC Commercial Mortgage
Pasadena, CA

Canoga Care Center
Canoga Park, CA
Project No. 122-22028

INTRODUCTION

We have completed a review of the Canoga Care Center project, located in Canoga Park, California. We initiated the review as part of an overall Office of Inspector General inquiry into the default of Section 232 insured projects, and due to concerns raised by the Los Angeles Multifamily Hub about the Canoga Care Center project. Our objectives were to determine whether the project was operated in accordance with the regulatory agreements and to identify the reasons for the mortgage loan default. Although our initial focus and approach was a review of project operations to identify the cause of the default, we concluded that the loan was jeopardized prior to any operations under HUD's Section 232 insurance program. We found that GMAC Commercial Mortgage did not properly originate the loan, and the improper loan origination substantially contributed to the mortgage default. We therefore recommend that GMAC Commercial Mortgage be held accountable for the improper \$6.7 million insured loan origination and the \$3.3 million loss incurred by HUD when the insured note was sold. We also recommend civil and/or administrative actions against the individual lender, owner, and operator officials involved in the improper loan origination.

METHODOLOGY AND SCOPE

We reviewed pertinent records and interviewed officials of the Los Angeles HUD Multifamily Hub, GMAC Commercial Mortgage (lender), UHCSC/Canoga, Inc. (owner), and Living Center of Canoga Park, Inc./Eldercare Inclusive Foundation (operator). We reviewed the reports and working papers prepared by the project's independent auditor, and also reviewed documents obtained from two title companies. Our review generally covered the period from Firm Commitment application in May 2000 through project note sale in April 2004. However, we reviewed other periods of time as appropriate.

BACKGROUND

The Canoga Care Center is a 200 bed skilled nursing facility built in 1968, and purchased by UHCSC/Canoga, Inc. in October 2000. Financing for the purchase was provided in part by a \$6,696,000 Section 232 insured mortgage loan originated by GMAC Commercial Mortgage.¹ The insured loan defaulted in October 2002, and the note was assigned to HUD in August 2003. HUD paid claims to GMAC Commercial Mortgage totaling \$6,692,518 in conjunction with the assignment, and resold the note in April 2004, for \$3,262,104. Losses to HUD on this loan after various fees and adjustments totaled \$3,321,917.

RESULTS OF REVIEW

GMAC Commercial Mortgage did not properly originate the HUD insured mortgage loan, and the improper loan origination was a critical factor in the subsequent mortgage default and claim. The project was also not operated in accordance with the regulatory agreements, but issues pertaining to project operations are being pursued independently of the loan origination issues, and will be addressed in a separate report.

The mortgage note should not have been submitted to HUD for insurance endorsement

GMAC Commercial Mortgage misled HUD relative to key aspects of the insured loan transaction in requesting both Firm Commitment approval and final insurance endorsement. As a result, HUD insured the \$6.7 million loan for a project operated by an entity encumbered by over \$3 million of delinquent debt. The improper loan origination substantially contributed to the mortgage loan default that ultimately resulted in a loss of over \$3.3 million to HUD.

GMAC Commercial Mortgage processed the majority of the Canoga Care Center loan documents as if the existing operator (Living Center of Canoga Park, Inc.) would be replaced with a management agent (Living Center of the Valley, Inc.). A new operating entity or management agent was deemed necessary because the existing operator was encumbered by over \$3 million of (primarily Federal tax) liens. GMAC Commercial Mortgage officials were aware of the liens against the existing operator. However, when it was determined that the new operator could not qualify for State licensing, the loan was closed and submitted for insurance endorsement with Living Center of Canoga Park, Inc. substituted as the operator.

¹ GMAC Commercial Mortgage is a HUD approved mortgage lender under 24 CFR 202.

On May 10, 2000, GMAC Commercial Mortgage provided HUD with the Firm Commitment application package stipulating Living Center of the Valley, Inc. was the project management company. The Firm Commitment application included an affirmative statement from GMAC Commercial Mortgage that Living Center of the Valley, Inc. was then managing, and would continue to manage, the property.² However, Living Center of the Valley, Inc. never did manage the property, and just days before the loan closed, several key documents were executed and/or altered, substituting Living Center of Canoga Park, Inc. for Living Center of the Valley, Inc. as the operator.³

The Firm Commitment application package included a variety of requisite exhibits, including Previous Participation Certifications (Form HUD-2530s), Supplement to Application for a Multifamily Housing Project (Form HUD-92013 Supp) and commercial credit reports.⁴ All of these documents were prepared and submitted to HUD by GMAC Commercial Mortgage representing that Living Center of the Valley, Inc. was the project management agent. If the loan had been processed with Living Center of Canoga Park, Inc. as the management agent or operator, the significant Federal tax lien problem would have been disclosed to HUD on the Form HUD-92013 Supp and/or the commercial credit report, and would have resulted in an application rejection.

The undisclosed \$3 million in liens against Living Center of Canoga Park, Inc. remained in force after the HUD loan closing, and led to the operator filing for bankruptcy protection within three months after insurance endorsement. The bankruptcy proceedings temporarily held other creditors at bay, so the loan remained current for nearly two years. However, the loan defaulted in October 2002, shortly after the Living Center of Canoga Park, Inc. bankruptcy was dismissed without relief from any creditors.

Notwithstanding the fact that all loan processing, including the Firm Commitment, application underwriting, mortgage credit analysis and approval, reflected operation of the project by Living Center of the Valley, Inc., GMAC Commercial Mortgage allowed the loan to close on October 4, 2000, and submitted the note for HUD's insurance endorsement with Living Center of Canoga Park, Inc. continuing as lessee operator of the project. The loan file submitted to HUD included opinion statements and certifications from the mortgagor attorney and the mortgagor falsely attesting to the propriety of all loan and supporting documents. HUD relied on these opinion statements/certifications, GMAC Commercial Mortgage's fiduciary responsibility to HUD, and the assumed integrity and competence of GMAC Commercial Mortgage, in endorsing the loan for insurance.

² This statement was in the "Review of Ownership and Management" section of the "Underwriting Review and Summary" and was signed by both a GMAC Commercial Mortgage Vice President and an Assistant Vice President.

³ The Regulatory Agreement was executed by Living Center of Canoga Park, Inc., and the Management and Operating Agreement was altered substituting Living Center of Canoga Park, Inc. for Living Center of the Valley, Inc. Virtually all other operator/management agent documents pertained to and were executed by Living Center of the Valley, Inc.

⁴ These exhibits were required by HUD Handbook 4470.1 REV-2 and/or the Los Angeles HUD Multifamily Hub for all Principals as defined by 24 CFR 200.215(e)(1) including management agents and nursing home operators.

**AUDITEE COMMENTS AND
OIG EVALUATION OF AUDITEE COMMENTS**

An advance copy of the memorandum report was provided to GMAC Commercial Mortgage for their comments, and was discussed with them at an exit conference on December 2, 2004. The December 2, 2004, written response from GMAC Commercial Mortgage expressed disagreement with our conclusions generally, and categorically denied any assertion that they had actively misled HUD or misrepresented the facts or circumstances of the Canoga Care Center loan. Their written response is included as Appendix B, and our evaluations of the response comments are as follows:

Comment Synopsis

GMAC Commercial Mortgage contends that HUD was advised of the legal/financial problems associated with Living Center of Canoga Park, Inc. via the title Commitment provided with the application for Firm Commitment on May 10, 2000, and the September 24, 2000, facsimile transmission of a draft pro-forma title policy including correspondence from the owner attorney.

OIG Evaluation

The title Commitment submitted with the Firm Commitment application did not identify any title problems that would be unusual or alarming for an existing nursing home operation. Moreover, it did not identify or allude to the over \$3 million of delinquent debt against Living Center of Canoga Park, Inc. Also, the September 24, 2000, facsimile transmission (from the GMAC Commercial Mortgage attorney to the HUD attorney) did not identify any of the financial problems faced by Living Center of Canoga Park, Inc.

Comment Synopsis

GMAC Commercial Mortgage disclaims any role in or knowledge of the last minute substitution of Living Center of Canoga Park, Inc. for Living Center of the Valley, Inc., but asserts that the substitution did not impact on the eventual mortgage default. They suggest that the cause of the default may have been faulty and possibly unlawful project operations, and delays by both the mortgagor and HUD in removing Living Center of Canoga Park, Inc. as manager/operator.

OIG Evaluation

We do not know whether GMAC Commercial Mortgage officials were actively involved in the manager/operator substitution, but they were aware of the substitution.⁵ They were also aware of the substantial debt encumbering Living Center of Canoga Park, Inc. Nevertheless, they allowed the loan to close and requested insurance endorsement with Living Center of Canoga Park continuing as operator. HUD was never advised of any significant financial problems pertaining to the manager/operator. In fact, it does not appear that HUD was even aware that Living Center of the Valley, Inc. was a separate legal entity from Living Center of Canoga Park, Inc. HUD had issued the Firm Commitment under the assumption that Living Center of the Valley, Inc. was then managing and would continue to manage the property.

⁵ On September 27, 2000, the GMAC Commercial Mortgage attorney provided HUD with the Regulatory Agreement – Nursing Homes referencing Living Center of Canoga Park, Inc. as the Lessee and Operator.

The connection between Living Center of Canoga Park, Inc.'s preexisting financial impediments, the bankruptcy filing and dismissal, and the mortgage default is described in a June 18, 2003, operator response to the draft Independent Public Accountant audit of the project. Our review also supports this scenario although there were other owner and operator issues that exacerbated the project's financial difficulties. However, the principal issue is not whether the loan would also have defaulted under Living Center of the Valley, Inc.'s management. HUD's Commitment for insurance was based on project management by Living Center of the Valley, Inc., and no such Commitment would have been issued with proper disclosure and processing of the loan with Living Center of Canoga Park, Inc. as operator or management agent. Full disclosure to HUD of facts known by GMAC Commercial Mortgage regarding the two manager/operator entities as required and expected of any HUD approved prudent lender,⁶ would have prevented the ultimate \$3.3 million loss to HUD because the loan would not have been closed or endorsed for insurance.

Several efforts were made by the owner and HUD to replace the operator but these efforts were inhibited primarily because the nursing home license belonged to the operator, Living Center of Canoga Park, Inc. The legal status of the altered Management and Operating Agreement was also questionable, as was the lease agreement between the previous owners and Living Center of Canoga Park, Inc. that included a provision binding all successors in interest of the original parties.

Comment Synopsis

The GMAC Commercial Mortgage written response contrasts the lender loan origination responsibilities under HUD's "fast-track" and "Multifamily Accelerated Processing" programs and contends that a credit and claims history on an operator/manager, i.e. Living Center of Canoga Park, Inc., was not required under the fast-track processing applicable to this project.

OIG Evaluation

We did not suggest that the Canoga Care Center project was subject to any of the new or different processing requirements promulgated under HUD's Multifamily Accelerated Processing program. We also acknowledge that there may be differing interpretations as to the requirements of HUD Handbook 4470.1 REV and 24CFR 200.215(e)(1). However, the HUD Los Angeles Multifamily Hub's interpretation of the handbook and CFR was and is that credit histories (credit reports) and the disclosure of any delinquent Federal debt (on form HUD-92013 Supp) have always been required for all management agents and nursing home operators. The fact that GMAC Commercial Mortgage did submit both credit reports and form HUD-92013 Supps for the intended management agent, Living Center of the Valley, Inc., is tacit acknowledgement of the LA Multifamily Hub requirement if not the handbook and CFR requirements. Moreover, GMAC Commercial Mortgage did have both knowledge and documentation of the over \$3 million of delinquent debt against Living Center of Canoga Park, Inc. They were obligated by their fiduciary responsibility as a HUD approved lender to disclose this information to HUD.

⁶ Code of Federal Regulations 24 CFR 202.5(j)(4) provides that "Neither the lender or mortgagee, nor any officer, partner, director, principal or employee of the lender or mortgagee shall ... Be engaged in any business practices that do not conform to generally accepted practices of prudent mortgagees or that demonstrate irresponsibility."

Comment Synopsis

GMAC Commercial Mortgage categorically denies that they may have misrepresented the facts or circumstances of the Canoga Care Center loan to HUD. They characterize their statement that “Living Center of the Valley, Inc. dba Management Resources is the current management company of the property and will continue to manage the property,”⁷ as inconsequential and only a “minor error.”

OIG Evaluation

We view the subject statement differently. We believe it constitutes an overt misstatement by GMAC Commercial Mortgage officials that misled HUD as to the identities of the existing and proposed operator/manager entities. HUD’s processing of the loan suggests that they were not even aware there were two different operator/manager entities. This likely occurred because of the similarities between the two entity names, and the signed statement by GMAC Commercial Mortgage officials actively promoting the misconception to HUD.

The September 24, 2000, facsimile sent to the HUD attorney by the GMAC Commercial Mortgage attorney was a re-transmittal of part of the facsimile they received from the owner attorney on September 18, 2000. The facsimile sent to HUD did not include the last nine pages of the owner attorney facsimile, which detail the over \$3 million of liens against Living Center of Canoga Park, Inc. Whether intentional or not, this omission facilitated the closing and unwitting insurance endorsement by HUD of a loan involving an operator with serious and prohibitive financial difficulties.

At the very least, the actions and inactions of GMAC Commercial Mortgage officials in the origination of the Canoga Care Center loan represent imprudent and irresponsible lending practices which are grounds for administrative action by the Mortgagee Review Board under 24 CFR 25.9(p).

RECOMMENDATIONS

We recommend the Assistant Secretary for Housing – Federal Housing Commissioner and Chairman, Mortgagee Review Board:

- 1A. Initiate settlement negotiations with GMAC Commercial Mortgage seeking reimbursement for the \$3,321,917 in losses on the Canoga Care Center insured loan. If an equitable settlement cannot be reached, undertake appropriate remedial actions against GMAC Commercial Mortgage as available under Mortgagee Review Board regulations and authority.

⁷ This statement was in the May 10, 2000, Firm Commitment application Underwriting Review Summary and was signed by two GMAC Commercial Mortgage officials.

We recommend the Director, Department Enforcement Center:

- 1B. Take appropriate civil and/or administrative actions against the individual lender, owner, owner attorney and operator officials principally involved in the improper loan origination.

In accordance with HUD Handbook 2000.06 REV-3, within 60 days please provide us, for each recommendation without a management decision, a status report on: (1) the corrective action taken; (2) the proposed corrective action and the date to be completed; or (3) why action is considered unnecessary. Additional status reports are required at 90 days and 120 days after report issuance for any recommendation without a management decision. Also, please furnish us copies of any correspondence or directives issued because of the review.

If you have any questions, please contact me at (213) 894-8016, or Charles Johnson, Assistant Regional Inspector General for Audit, at (602) 379-7243.

SCHEDULE OF QUESTIONED COSTS AND FUNDS PUT TO BETTER USE

<u>Recommendation Number</u>	<u>Type of Questioned Cost</u>		<u>Funds Put to Better Use 3/</u>
	<u>Ineligible 1/</u>	<u>Unsupported 2/</u>	
1A			\$3,321,917

1/ Ineligible costs are costs charged to a HUD-financed or HUD-insured program or activity that the auditor believes are not allowable by law, contract or Federal, State or local policies or regulations.

2/ Unsupported costs are costs charged to a HUD-financed or HUD-insured program or activity and eligibility cannot be determined at the time of audit. The costs are not supported by adequate documentation or there is a need for a legal or administrative determination on the eligibility of the costs. Unsupported costs require a future decision by HUD program officials. This decision, in addition to obtaining supporting documentation, might involve a legal interpretation or clarification of Departmental policies and procedures.

3/ Funds Put to Better Use represent costs that will not be incurred in the future if our recommendations are implemented. This includes funds that may be collected and deposited into the insurance fund to offset outlays (claims).

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December 2, 2004

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RE: Response to Draft OIG Audit
Canoga Care Center
Canoga Park, California
FHA Project No. 122-22028

Dear Mr. Johnson:

We appreciate the opportunity to review and respond to OIG's draft audit findings relative to the above-referenced transaction, and we appreciate the time and effort that OIG staff have spent reviewing this matter.

However, we do not agree with OIG's conclusions generally, and more particularly, we categorically deny the assertion in the draft audit that any party at GMAC Commercial Mortgage Corporation ("GMACCM") actively misled or misrepresented the facts or circumstances of the Canoga Care Center loan to HUD. Indeed, we want to underscore GMACCM's long standing commitment to HUD. GMACCM currently services a HUD-insured loan portfolio of \$7.6 billion and with well over \$900 million of HUD multifamily and healthcare loan originations in 2003 alone, neither GMACCM nor its employees have any motivation other than to perform their duties in full compliance with HUD's rules and regulations.

BACKGROUND

By way of background, we understand that OIG is conducting an overall inquiry into the default of Section 232 loans in general, and initiated a review of the subject transaction in response to concerns raised by the Los Angeles Multifamily HUB Office.

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We further understand that the draft audit concludes that GMACCM processed the majority of the Canoga Care Center loan documents as if the existing operator, Living Center of Canoga Park, Inc. ("LCCP") would be replaced as management agent by Living Center of the Valley, Inc. ("LCV"), because LCCP had substantial tax liens and a new operating entity was needed. The draft audit also concludes that when it was determined that LCV could not qualify for a State license that the loan was then closed with LCCP as operator. The draft report appears to conclude on page 3 that the tax liens were "undisclosed", presumably to HUD, and that the liens drove LCCP into bankruptcy, which in turn caused the property to default on the HUD insured Section 232 loan. However, the draft Audit does not explain how OIG established this causality.

GMACCM'S FILE AND STAFF REVIEW

We reviewed this matter with a number of GMACCM staff and with its closing attorney, Mr. William Michaud. GMACCM was greatly disturbed by this default, and spent considerable asset management staff time on the matter. However, we believe that the information we have is at variance with the conclusions contained in the draft Audit.

With the exception of the existing nursing home license included in the firm application package, which you would expect to reflect the current management entity; i.e., LCCP, everything that GMACCM was provided by the applicant and subsequently submitted to HUD was consistent with the applicant's instructions that LCV would be the management agent upon closing of the proposed acquisition financing. The fully executed Management and Operating Agreement by and between the applicant and LCV that was submitted to HUD as part of the application for firm commitment certainly supported this intention.

GMACCM COMMUNICATIONS WITH HUD WERE REASONABLE

The file contains a title commitment sent to HUD in the application for firm commitment, which referenced several title exceptions that suggested LCCP's legal/financial problems; i.e., Schedule B, Part II, Item #16 (pending court action), #17 (lien for unpaid property taxes), and #18 (abstract of judgment). The title commitment also reflected the existence of an unrecorded lease with LCCP. Nevertheless, the applicant communicated to GMACCM its intention to contract with LCV to operate the property following acquisition under a management and operating agreement, not a lease. As such, GMACCM's and HUD's focus was on LCV since LCCP's involvement with the subject project was expected to end at or before closing.

However, at closing HUD entered into a Regulatory Agreement for Nursing Homes, which, together with a Management and Operating Agreement that was attached, reflected LCCP as the management agent. Indeed, the attached Management and

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Operating Agreement reflects a pen and ink change, substituting LCCP for LCV as the management agent. We understand that Mr. Allan Lowy, counsel for the mortgagor, acknowledged making this change.

Mr. Michaud's files support the fact that the Regulatory Agreement Nursing Homes was prepared only after receiving a specific request for same from HUD's attorney, Mr. H. Richard Thomas. We surmise that Mr. Thomas requested this agreement because it is common for property owners to enter into an operating lease with a healthcare service provider. However, the subject transaction involved no such lease. Indeed, Mr. Michaud found it necessary to amend HUD's standard form of Regulatory Agreement Nursing Homes so that its standard references to Lease and Lessee would also apply to the terms Management and Operating Agreement and Operator. Mr. Michaud's information also supports the conclusion that the Management and Operating Agreement, which was purportedly altered at closing, was provided by Mr. Lowy to HUD before the closing at Mr. Thomas' request.

Prior to closing, on September 24, 2000, Mr. Thomas was sent via facsimile a draft pro-forma title policy as well as correspondence from Mr. Lowy to seller's counsel detailing the liens and other exceptions to title that would need to be cleared prior to closing. We do not know how OIG drew its conclusions, but it is clear that HUD was made aware of the issues with LCCP per the original title commitment, and more specifically in Mr. Michaud's communication to Mr. Thomas, on September 24, 2000, with its various attachments.

POSSIBLE FACTORS LEADING TO DEFAULT

GMACCM has insufficient information to conclusively determine what caused the default, and the draft Audit did not provide any additional information on this point. We know that GMACCM included a review summary in its application for firm commitment to HUD that stated that LCV was the current manager, when it was only to be the future manager. However, that summary was provided as a courtesy, was meant only to summarize other information, was materially correct in spite of this minor error, and did not affect the processing and underwriting of the application. The file contains multiple references to LCV, including a fully executed management and operating agreement by and between the applicant and LCV dated March 30, 2000. The date upon which LCV was to assume management of the subject property was immaterial to the underwriting.

Moreover, the structure of this transaction should have eliminated complications associated with certain remedial actions over that commonly found in most other Section 232 transactions. Unlike many nursing home properties, where the licensed provider leases the building from the owner, cares for the residents and operates the property, LCV was only to be the management agent. As such, the manager could have easily been

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terminated by the mortgagor or HUD. On the other hand, a lessee would have to have been evicted, which is generally more difficult to do. That should have provided the mortgagor and HUD with a greater ability to solve the problem of a non-performing manager.

GMACCM took proactive steps and remained in regular communication with the manager and mortgagor. GMACCM's asset management records indicate that GMACCM filed an initial notice of default with HUD on September 9, 2002, and subsequently delivered various notices and related communications to both the local HUD office and headquarters over the following eleven month period of time leading up to assignment of the subject loan. GMACCM staff had repeated communications with the manager to the effect that mortgage payments were delinquent due to over-assessment of real estate taxes. The manager made multiple representations to the effect that it was obtaining a tax exemption and would receive a refund, thereby providing funds to bring the loan current.

Some mortgage payments were made but the loan remained in default. On more than one occasion Mr. Lowy also made representations that the mortgagor would cure the default. On April 21, 2003, Mr. Lowy advised GMACCM that the manager held the license and that fact provided complications in obtaining past Medicare reimbursements. Mr. Lowy indicated at that time that the manager had filed bankruptcy and it was unclear where the operating funds had been spent.

On May 8, 2003, an anonymous caller contacted GMACCM, claiming he was a recently terminated employee of the management company and, among other things, that project funds had been transferred to the Royal Hills Pharmacy, and affiliate of LCCP and LCV. If this is correct, then the direct cause of the default were the manager's faulty (and allegedly unlawful) operations and the mortgagor's (and HUD's) delay in promptly removing the manager.

Clearly, the use of LCV versus LCCP would not have changed the outcome. As we now know, LCV and LCCP were affiliated and their management practices could be assumed to be similar if not the same. Changing affiliates could not, in and of itself, be the step that avoided default. Rather, default was clearly caused by the mortgagor's inability to make its mortgage payments. Moreover, as is discussed below, HUD's then current "fast-track" program requirements would not have put GMACCM or HUD in the position to detect such operating deficiencies.

ANALYZING COMMUNICATIONS AND FUTURE OPERATIONS

The Draft OIG Audit raises the issue of remedial actions, including possible civil and/or administrative actions against GMACCM. We do not believe that GMACCM's

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actions were the cause of the loss incurred by HUD on the subject transaction, nor do we believe that sanctions against GMACCM will aid future program administration. Moreover, the bifurcation of responsibilities and communications between GMACCM and HUD at issue here no longer exists. GMACCM submitted the subject transaction under HUD's fast-track program, which pre-dates the current "Multifamily Accelerated Processing" or "MAP" program and *no longer exists today*. There are significant differences between HUD's fast-track program and the requirements under HUD's current MAP program, especially as they relate to the underwriting of operators/managers of health care facilities.

Under the fast-track program the Lender packages an application containing the various elements required by HUD. A fast-track application does not contain the representations and warranties from the Lender to HUD that the more recently developed MAP program requires, instead keeping all of the underwriting responsibilities with HUD. Under fast-track HUD staff perform the project review, including but not limited to the architectural, cost, environmental, valuation, mortgage credit and management reviews (as opposed to the Lender under MAP), with HUD responsible for all underwriting and determination of an ultimate credit decision, including any conditions under which same will be granted. Issues related to the management agent are underwriting issues which, under fast-track, would normally be advanced as part of HUD's underwriting process. The Lender did not make any underwriting conclusions under fast-track.

On the other hand, under today's MAP program the Lender is responsible for a detailed underwriting of the operator/manager, which would include a review of the Admissions Contract, Owner/Operator Certification pertaining to bankruptcy and HUD applications submitted or to be submitted within an eighteen month period, financial statements; Medicare/Medicaid Cost Reports for the prior three years, state licensing surveys (inspection reports), not to mention the additional credit and claims history information now required for both the subject property and all other identity of interest entities/facilities under HUD's current professional liability insurance review procedures; all of which were not required under the now defunct fast-track program that was in existence at the time the subject transaction was processed.

While we do not believe that the last minute substitution of the intended management agent resulted in losses to HUD under the subject loan, to the extent further traditional or TAP (a predecessor to MAP that remains in existence today) processing is performed in the future, the adoption of certain procedures such as joint mortgage credit underwriting and an essential facts checklist to be used and confirmed at closing would prove beneficial. Such procedures should greatly reduce the risk of errors and omissions at the mortgage credit stage, and also help eliminate any last minute substitutions at closing, as appears to have occurred here.

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We remain available should you wish to discuss this matter further.

Sincerely,



Dean W. Wantland
Senior Vice President