March 29, 2021

The Honorable Mark A. Calabria
Director
Federal Housing Finance Agency
400 7th Street, S.W.
Washington, DC 20219

Re: Radon Testing Requirements

Dear Director Calabria:

The below signed national associations represent for-profit and non-profit multifamily property owners, lenders, developers, managers, housing cooperatives, investors, and housing agencies involved in providing affordable rental and cooperative housing to millions of American families, submit the following comments for consideration by the Federal Housing Finance Agency ("FHFA") in its review of radon requirements for use in Fannie Mae and Freddie Mac (the "Enterprises") multifamily financing programs. For the reasons set forth in more detail below, we have serious concerns about the execution challenges and feasibility of any potential action at this time to adopt the American National Standard Institute and American Association of Radon Scientists and Technologies (ANSI\AARST) radon standard set forth in the *Protocol for Conducting Measurements of Radon and Radon Decay Products in Multifamily Buildings*. This standard was recently adopted by the Housing and Urban Development ("HUD") in its December 18, 2020, Multifamily Accelerated Processing (MAP) Guide. Further analysis of the workability of the ANSI\AARST standard for the Enterprises is needed, including institution of a reasonable process for obtaining input from owners, lenders, investors, and technical experts, in order to ensure full consideration of all relevant factors consistent with the Enterprises' mission.

In our view, adoption of a radon testing protocol without a full investigation on the infrastructure necessary to implement such a change would be short-sited. We urge FHFA to conduct a thorough, transparent review of the feasibility, efficacy, and cost benefits of before implementing such an expansive change.

Background

Radon, a colorless and odorless gas, is a naturally occurring substance that can accumulate in buildings. In 2010, a group of public and private groups, including the Environmental Protection Agency, Department of Housing and Urban Development and the Department of Health and Human Services, released the National Radon Action Plan (NRAP). NRAP presents a long-range strategy for eliminating avoidable radon-induced lung cancer in the United States. The Plan's near-term goals are to reduce radon risk in 5 million homes and to save 3,200 lives by 2020. While the 2020 goals offer bold and important milestones, they are not the endpoint. The most recent report for 2020 is not

yet available but its objectives include reduction of radon related health issues for residents in multifamily properties.

As noted previously, the American National Standards Institute (ANSI) and the Association of Radon Scientist and Technologists (AARST), published a recommended protocol for conducting measurements of radon in multifamily buildings. The protocol is multifaceted but the most important to highlight is the recommendation to test 100 percent of ground floor units plus 10 percent of additional units on each floor. HUD, in its December 2020 update to the MAP Guide, has adopted this recommendation.

In assessing potential hazards in housing, federal regulators have not uniformly referenced the work of third-party expert organizations like ANSI. For example, when developing protocols for conducting property inspections and for lead-based paint in pre-1978 housing, HUD developed its own standard in guidance documents and by rulemaking, while EPA confirmed a slightly different set of practices. Neither agency referenced nor chose to adopt the testing protocol developed by the American Society for Home Inspectors, a well-respected third-party organization dedicated to advancing home inspection to protect consumers. This approach warrants evaluation by FHFA prior to its final decision on the required radon testing for Enterprise multifamily loans.

Using data from various federal agencies, EPA has prepared a map that highlights the general pattern of radon levels across the country. The map includes data at the county level and divides the country into three zones based on the likelihood of radon levels exceeding what EPA has determined to be the action level of is 4 pCi/L (picocurries per liter). According to an EPA publication, "the average indoor radon level is estimated to be about 1.3 pCi/L, and about 0.4 pCi/L of radon is normally found in the outside air. The U.S. Congress has set a long-term goal that indoor radon levels be no more than outdoor levels. While this goal is not yet technologically achievable in all cases, most homes today can be reduced to 2 pCi/L or below." EPA recommends that buildings be tested to determine indoor radon levels and in the case of radon levels in excess of the action level, EPA recommends that a continuous venting system be installed to reduce the level of radon gas in the structure.

Proposed Changes to Radon Testing Protocols

The undersigned associations are committed to protecting the health of our residents and supports the goal of a unified approach for Radon testing for the Enterprises. As the FHFA evaluates whether to require the Enterprises to adopt the ANSI\AARST testing protocol we believe there are a number of efficacy and implementation concerns that deserve further consideration prior to moving forward with a final decision.

Testing Protocol Efficacy

Prior to enacting a rule change for radon testing FHFA should undertake a detailed, informed decision, backed by a thorough analysis of the data available. In our analysis, the data available to the public is insufficient to make the determination that 100 percent ground level testing will achieve the desired results. Further research and information

about the infrastructure needed to carry out these new protocols is necessary before moving forward.

- Radon testing has never been subject to federal rulemaking with the requisite research, analysis, and transparency. Methods of testing have not been subjected to efficacy testing by federal agencies. Radon testing and mitigation professionals are not certified using consistent criteria as are certified lead-based paint inspectors and abatement professionals.

- Broadly, the adoption of the ANSI\AARST among multifamily lenders and at the state level sees little or no uniform approach. The basis for HUD adopting the standard is not set forth in the new MAP Guide. From what we have been able to learn, it appears that HUD based its action on an unpublished, non-peer reviewed study, entitled "Evaluating and Assessing Radon Testing in Housing." The study (funded by a HUD grant) has not been made available to the public (although we have requested a copy), and the sole public reference to it appears to be a Sept. 9, 2019, Power Point presentation available here.

- The lack of transparency and rigor surrounding the support for this far-reaching change on testing protocols is concerning. More analysis and greater transparency is necessary before imposing a greatly expanded protocol.

- No cost-benefit calculations have been provided that could inform consideration of a new standard and whether it should be tailored in the Fannie Mae and Freddie Mac settings. Protection of health is critically important, in a world of limited resources and affordable housing priorities, but research and a careful analysis of the implications of such a policy change of such magnitude must be included in the decision-making process. While the individual cost of radon tests may not be prohibitive, the efficacy and the potential impacts on delays in loan closings must be evaluated.

Implementation of Increased Testing Requirements

FHFA must also consider a myriad of implementation issues that have been identified regarding workforce capacity and its impact to execution timelines.

- Notably, no analysis has been provided on the feasibility of implementation. Widespread reports indicate limited field testing and laboratory capacity for processing this dramatically increased volume of radon testing especially when factoring in the new broader radon testing requirements approved by HUD plus the potential of all Enterprise loan purchases. There is a lack of information on the time delays that could result from this expanded testing requirements, there is no documented information on the impacts that these delays would have on affordability, in general and specifically on size and types of housing and communities.

- HUD's use of the ANSI\AARST recommended testing protocol was just adopted in December 2020; consequently, the new protocol has not been widely tested in practice. However, we have heard from several members that this new revised sampling protocol has exposed shortages in the ranks of trained radon professionals to execute the test. This has added additional time and costs to tests as workers have had to travel across the country to carry out inspections. Expanding the number of properties that may be required to adopt this new protocol will, undoubtedly, exacerbate existing capacity issues. Rather than rushing to implement this new protocol for the Enterprises, we urge the FHFA to take the time to learn from the implementation of the new MAP Guide protocol. Much can be learned gathering information on the cost, efficacy, and implementation of the newly implemented HUD protocol to determine how best to proceed for the Enterprises. A thorough understanding of the existing capacity of the industry is imperative to inform how to ramp up capacity to meet the new testing requirements.

- Capacity also influences the ability of the Enterprises to meet their duty-to-serve missions for affordable, small balance and rural properties. Affordable properties are often the most capital constrained and cannot absorb significant cost increases. Capacity constraints will drive up costs if testing resources are scarce leading to a reduced ability to obtain capital for this important asset class. Rural assets suffer from the same constraints in capacity which simply may be exacerbated by their location. In order to avoid delays in closing and manage capacity constraints a post-closing testing requirement within a certain timeframe should be an option to consider. Capacity and cost impacts for these asset types warrant special consideration that must be addressed in order for the Enterprises to meet their missions.

- Applying the ANSI\AARST standard to every loan without exception eliminates any discretion that may be appropriate from technical experts. For example, no consideration is included as to whether a building has been built using radon resistant construction techniques and materials, how recently a building may have been tested for radon and whether a complete retest is required, or a more limited test could be applied. This is very relevant for properties that are seeking refinancing and may already be within an Enterprises portfolio and have had a radon test conducted within a few years. Location within an area of known high or low incidence area for radon exposure should also be considered as part of an evaluation for exception by a radon expert. Until it issued the revisions to the MAP guide, HUD relied on EPA's county by county assessment of radon levels in requiring radon testing. Building features should also be a relevant consideration. HUD has not previously required testing in properties that are built over an open-air garage. Unlike other environmental testing protocols, radon testing requires leaving a collection device in a likely occupied apartment unit for at least 48 hours. Unlike other types of environmental testing that may be performed on occupied

apartment buildings, the accuracy of the collection protocol is highly dependent on resident behavior. Anecdotal reports have found that apartment residents have been extremely unreceptive to having foreign objects left in their homes for testing purposes. This has become a heightened concern over the past year, as access to properties has been limited due to public health concerns. The results of radon testing are very dependent on testing conditions, including weather, season, and air flow in test site. Radon professionals have reported that cannisters have been moved, tampered with or subject to conditions (including HVAC, open windows, fans and use of vacuum in the unit) all of which may invalidate test results.

Recommendations

We recommend that the FHFA establish a reasonable and transparent process for consideration of a new radon testing protocol for the Enterprises and we ask that you also consider the following:

- Conduct an independent analysis of the basis for the as yet unpublished HUD study, when it becomes available.
- Seek input from owners, lenders, technical experts, and stakeholders on the implications of adopting the ANSI\AARST guidelines including a requirement to only use testers approved by companies affiliated with AARST.
- Develop a well-supported cost-benefit analysis, including estimated impacts on capacity, financing delays and housing affordability.
- Determine what levels of discretion to delegate to radon professionals for testing, establishing clear guidance.
- Implementation of testing protocols should be coordinated with the testing industry to determine capacity of the workforce.
- Evaluate field testing and laboratory capacity and use the findings to ensure an informed basis for implementation utilizing a phased-in approach over a number of years, to be determined.
- Commit to study the results no later than 24 months after adoption of any revisions to environmental testing protocols, and adjust the requirements as warranted. Special focus should be placed on evaluating whether the increased testing protocols positively impacted the identification of radon.
- Evaluate implementing a post-closing testing and mitigation process in order to alleviate extended delays while testing is completed. The Enterprises already utilize post-closing processes where risks can be mitigated through the use of agreements and deposits.

We are hopeful that you will find these comments not only helpful in determining new standards and protocols for Radon testing for multifamily projects but are ones that the

industry stakeholders also find prudent, responsible, and sufficiently thorough to ensure the health and safety of the residents. The undersigned and our members appreciate your consideration of our views and would be pleased to participate in further discussions with you and your staff.

If you have any questions or for further information, please contact Sharon Walker at swalker@mba.org or Dave Borsos at dborsos@nmhc.org

We look forward to working further with you on this important issue for the multifamily industry.

Respectfully,

Commercial Real Estate Finance Council

Council for Affordable and Rural Housing

Mortgage Bankers Association

National Apartment Association

National Affordable Housing Management Association

National Association of Home Builders

National Association of Housing Cooperatives

National Association of Realtors

National Leased Housing Association

National Multifamily Housing Council