U.S. Department of Housing & Urban Development
Office of the Regional Counsel - Region V
77 West Jackson Boulevard, Room 2617
Chicago, IL 60604-3507

January 12, 2017

MEMORANDUM FOR: Debbie Gray, Chicago Asset Management Division Director, Office of Multifamily Housing, 5AHMLAP

ATTN: Ernest Cooper, Asset Resolution Specialist, 5AHMLA

FROM: Courtney Minor, Regional Counsel, 5AC

SUBJECT: By-Laws Restructure
Sangamon Terrace Apartments
FHA Project No: 071-EE251 ("Project")

As requested, this office reviewed the By-Laws Restructure ("Restructure") request for the restructuring of Sangamon Terrace, NFP's By-Laws ("ST NFP By-Laws"). Currently, the ST NFP By-Laws provide the HUD Sponsor, Englewood Cooperative Apartments ("ECA"), with the right to appoint the directors of Sangamon Terrace, NFP, an Illinois not for profit corporation ("ST NFP"). The request seeks approval for the Restructure of the ST NFP By-Laws in such a manner as to eliminate ECA's rights concerning the directors of ST NFP in order to address a tax issue associated with the federal low-income housing tax credits allocated for the referenced HUD Section 202 mixed-finance Project. While, for the reasons discussed below, the restructuring seems unnecessary to achieve the tax credit protections sought, we may nonetheless defer to ECA's and ST NFP's counsel's opinion that it is preferable, if not necessary, since, in our opinion, the actions are neither detrimental to HUD's legal or program interests nor outside the bounds of your office's business election.

Following its receipt of a reservation for Capital Advance authority, ECA created ST NFP. Because the Project is a Section 202 mixed finance transaction, ECA also created Sangamon Terrace, LP, an Illinois limited partnership, to serve as the mixed finance owner ("Owner") as defined in 24 CFR Section 891.805. ECA also created Sangamon Terrace GP LLC, an Illinois limited liability company ("ST GP LLC"), to serve as the general partner of the Owner in compliance with the definition of "private nonprofit organization" as defined in 24 CFR Section 891.805. ST GP LLC has been established with two members, ST NFP and ECA. ST NFP holds a 49%-member interest and ECA holds a 51%-member interest.

ST NFP received the $3,894,600 Section 202 Capital Advance and loaned the proceeds to Owner. The loan is a non-recourse obligation of Owner. According to the Owner's investor limited partner the loan has been characterized as non-recourse on the assumption that ECA and ST NFP are not related entities. Section 4.01(pp) of the Amended and Restated Limited Partnership Agreement of Owner ("Partnership Agreement") requires that "After the end of the first year of the Credit Period, ST NFP will not be treated as related to the General Partner for purposes of Code Section 752 and the Treasury Regulations issued thereunder...." Whether two entities are related can be measured, in part, by whether there is common control of the organizations. Common control could exist when there are overlapping officers and directors. To eliminate this possibility, the parties are requesting that there be no overlapping officers or directors of ECA and ST NFP following the HUD final closing and prior to the end of the first year of the tax credit compliance period. Additionally, they seek to eliminate ECA's control over who serves on ST NFP's board of directors as set forth in the ST NFP By-Laws.

To aid in our analysis of the aforementioned request, we have reviewed the following:

1. Articles of Incorporation of ST NFP
2. By-Laws of ST NFP
3. First Amendment to the By-Laws of ST NFP
4. Resolutions for Approval of First Amendment
5. Redline to show changes to the By-Laws
6. Amended and Restated Operating Agreement of ST GP LLC ("Operating Agreement")
7. Owner's Partnership Agreement

After an analysis of the above documents and a review of HUD Handbook 4571.3, Rev-1, Chapter 3-66, we find that the documents as revised continue to give HUD adequate protection regarding ECA's involvement in the Project. ECA's 51%-member interest in ST GP LLC makes ECA the ultimate decider in Owner's activities. The relationship between ECA and ST NFP is set forth in the Operating Agreement. There is no provision in the Operating Agreement that allows ST NFP, as the 49% minority member, to (1) unilaterally acquire by purchase or assignment ECA's 51% majority member interest, or (2) cause the removal and replacement of ECA. More importantly, even if ST NFP had such rights, HUD has approval rights over whether ST NFP could exercise such rights. Any attempt by ST NFP to acquire ECA's interest or cause ECA to exit ST GP LLC would require HUD approval. In addition, HUD has independent approval rights by virtue of Section 10.14 of the Operating Agreement.

Consequently, we have no legal objection should you decide to grant this request. Again, while the restructuring seems unnecessary to achieve the tax credit protections sought, we may nonetheless defer to ECA's and ST NFP's counsel's opinion that it is preferable, if not necessary, since, in our opinion, the actions are neither detrimental to HUD's legal or program interests nor outside the bounds of your office's business election.

If you have any questions or if we may be of further assistance, please contact Kim Yow Harris, of my staff, at 312/913-8617. Additionally, we ask that once you render your decision, you send my office a copy of that decision.