



Administrative Issues Affecting Multifamily Program Operations/Preservation

The National Leased Housing Association (NLHA) represents providers of federally assisted rental housing. NLHA's members are developers, owners, lenders, housing managers, and housing agencies that provide housing for over 3 million families across the United States. The myriad of federal housing programs that provide rental housing each have specific criteria required by law and regulations that are unique to the type of subsidy and/or mortgage insurance provided by HUD.

We see our role as an advocate for affordable housing, an advocate for providers and for HUD, and a facilitator to communicate with HUD, Treasury and Capitol Hill concerns and ideas expressed by practitioners.

Below is a summary of specific issues related to communication (or lack of) and other concerns that impede the ability of providers to operate and preserve the stock of federally assisted rental housing along with a few recommendations.

Communication of Policy: Keeping abreast of the housing program requirements is challenging. Many of the programs were created 30 to 40 years ago, amended by Congress several times and are subject to a myriad of overlapping rules. Both HUD staff and housing providers are responsible for understanding the rules which has proved increasingly difficult as various interpretations of the regulations have been issued. While it is often necessary for HUD to offer guidance and clarifications on regulatory issues, it is difficult to keep track of policy and program changes when they are done informally and more difficult yet, when such guidance is not communicated to the industry.

Over the years, HUD's Office of Multifamily Housing has been moving away from rulemaking to avoid the requirements of the Administrative Procedures Act (APA) and has increasingly relied on other forms of pronouncements, which can be promulgated more simply, in the operation of its housing programs. We agree that the promulgation of regulations for every interpretation or issuance of guidance (depending on the topic) is not always necessary and the use of Notices, Mortgagee Letters and Handbooks can be helpful to facilitate program operations and aid in compliance. However, in recent years,



HUD has moved away from these forms of guidance and have issued ‘interpretations’ or “guidance” via email to the field offices, through internal memos to the field, and sometimes verbally through conference calls.

Compliance with program requirements is difficult, if not impossible, as the informal guidance is often not communicated to housing providers or is done so in a haphazard way. For example, “memos” that are issued are never posted on the HUD website and HUD often refuses to share them with housing providers even when the memo outlines or clarifies what is required of the housing providers.

The lack of standardization in the development of “guidance” makes it increasingly difficult for housing providers (and HUD field staff) to keep track of the policy and procedure changes. Further, the policy or procedure revisions that are made by the informal guidance are often impractical, imposing undue burdens on providers and often conflict with the goals of the programs and/or the statute governing the program(s).

The Office of Management and Budget (OMB) recognized that there was a serious problem with informal guidance throughout the Government and in January of 2007 issued “Good Guidance Practices.” We urge the Department to review the guidance and immediately cease the use of informal policymaking. We also request that any guidance be properly vetted and communicated to the industry.

Role of Field Offices: The field offices have a much reduced role than in previous years and often have no ability to make decisions on even the most routine matters. Field office personnel should be adequately staffed and trained (and made aware of policy changes) to enable them to make decisions on most matters without consulting HUD headquarters. Many transactions are delayed for months because of the need (or perceived need) for review and approval by headquarters. Previous participation reviews (known as 2530 reviews) are a good example of this. Headquarters staffers are overburdened and putting more decisions back to the field office would free them from the myriad of retail issues that consume their time. Of course, field office personnel must not formulate their own policies but act in accordance with the rules and guidance set forth by Headquarters.

Staff Needs: A recent report indicates that 26 percent of HUD staff are at or nearing retirement age. Over the last 10 years, HUD has lost many seasoned and capable staffers to retirement with few replacements being hired. Remaining staff have been tasked with assuming the responsibilities of the departing individuals impacting productivity and morale. Further, there are staffers whose roles and responsibilities remained undefined. We urge the Department to focus on succession plans to enable continuity and require accountability. We stand ready to request that Congress provide sufficient funding for this purpose.

Consistency in Policy Application: The Office of Multifamily Housing has in recent years relied on Performance Based Contract Administration (PBCA) to perform functions previously the purview of the field offices. Generally, the process has worked well, but



there is a continuous struggle to maintain consistency with the application of policy and procedures among contract administrators. Often, the field offices (who oversee the contract administrators (CAs) in their area) have different interpretations about what is required of housing providers and how compliance is to be achieved. This requires CAs to operate differently in different areas of the country and confuses owner/managers who have properties in varied locations. The CAs participate in monthly conference calls which provide an arena to have questions answered, but inconsistencies remain. NLHA recommends that HUD Headquarters appoint an “ombudsman” that can field questions from both CA and owner/agents concerning various issues related to contract renewals and occupancy matters. Such a move coupled with standardization regarding the issuance of policy interpretations under OMB’s “good guidance” memo could go along with toward uniformity.

Section 8 Payments: The Office of Multifamily has antiquated computer systems that need to be merged and updated to improve the quality of data and expedite the flow of information. The Section 8 HAP payment process is particularly problematic and has contributed to lengthy delays in paying project owners (coupled with inadequate budget requests). NLHA would like to recognize the efforts of HUD staff, particularly Steve Martin who within the boundaries of the current system made great headway in clearing up a backlog of late payments over the last year.

The industry has requested that Congress provide adequate monies for Section 8 contract renewals and further requested that a portion of subsidy dollars to be transferred to the capital accounts to improve the disbursement systems. HUD has a contractual obligation to make such payments and failure to do so in a timely manner has put properties at risk of foreclosure, delayed routine maintenance and alienated housing providers. The Department must also ensure that its budget requests are sufficient to renew expiring contracts for 12 months.

Preservation: HUD’s Office of Affordable Housing Preservation (OAHP) is charged with processing transactions under the “Mark to Market” program which involves restructuring of FHA loans to enable Section 8 properties to operate at a market rent as required under the Multifamily Assisted Housing Restructuring Act (MAHRA). This office is staffed with individuals that possess significant real estate experience and the sophistication to process complex transactions. NLHA believes it may be worthwhile for that office to assume other transaction type responsibilities in the preservation arena (property disposition, 202 refinancings, 236 decouplings, etc.) in order to better utilize staff resources.

As mentioned above, a number of the “unwritten” or informal policies that are referred to above have thwarted numerous preservation transactions that were brought before the Office of Multifamily Housing. In fact, the House of Representatives has drafted preservation legislation that contains a significant number of provisions that do not alter current law, but direct HUD to act under current law. There appears to be a lack of coordination with OGC to determine HUD authority on various matters resulting in missed opportunities.



As an example, there is confusion within the Department about the ability of HUD to transfer Section 8 project based HAP contracts to other properties. HUD has had such authority under Section 8(b)(b) of the Housing Act of 1937 for many years, but because the Department was reluctant to use such authority, Congress has included a provision in recent appropriations bills to address the issue, albeit in a cumbersome manner.

Specifically, it has been very difficult over the past three years to obtain transfers of Section 8 contracts on properties destroyed by Hurricane Katrina to new replacement properties. HUD needs a coherent policy on transfers that recognizes that there may be sound reasons for replacement housing to have a different unit configuration and number of units from the destroyed project. A similar recognition by HUD is desirable in the reconstruction of obsolete or non-marketable units, for example the replacement of 100 efficiencies with 80 one-bedroom units. A lack of flexibility by HUD has resulted in several instances in a reduction of assisted units not by 15 or 20 percent, but to zero.

NLHA has a long and positive relationship with HUD and our goal is to ensure that the scarce housing made affordable through federal rental assistance programs is maintained at high levels and preserved for the long term.

September 2008

