

PROPERTY COMPLIANCE REPORT

A MONTHLY PUBLICATION ON LOW-INCOME HOUSING TAX CREDIT COMPLIANCE

June 2004, Volume VII, Issue VI, Published By Novogradac & Company LLP

Industry Incensed by HUD's New Housing Choice Voucher Policy

By Alex Ruiz, Staff Writer, Novogradac & Company LLP

Rep. Barney Frank (D-Mass.) last month introduced legislation that would fully fund the Section 8 program. The legislation would counteract a new U.S. Department of Housing and Urban Development (HUD) policy on reimbursing local housing authorities for Section 8 Housing Choice vouchers.

The measure would clarify the calculation of per-unit costs payable under expiring annual contributions contracts for tenant-based rental assistance that are renewed in fiscal year 2004. HUD's new policy is an interpretation of the Fiscal Year 2004 Appropriations Act and several housing industry organizations have warned that the policy change could create a funding crisis for hundreds of housing agencies and affect thousands of voucher holders. H.R. 4263 was introduced with 24 co-sponsors and was referred to the House Committee on Financial Services. H.R. 4263 has been introduced in the House to correct the problem. A hearing on the bill was scheduled for May 20; however, as the *Property Compliance Report* went to press, the outlook for its passage was unknown.

Due to the escalating cost of Section 8 vouchers, Congress placed a provision in HUD's 2004 Appropriations Act to modify federal funding to public housing authorities (PHAs) to renew existing vouchers. To comply with the change, HUD recently issued guidance to PHAs regarding the implementation of this provision, which raised immediate and intense opposition from many in the affordable housing industry. And in the weeks following, a debate has formed between HUD and housing advocates and providers. On the one side, HUD insists the policy is a congressional mandate enacted as a result of spiraling costs. And on the other, affordable housing groups argue that Congress specifically appropriated enough funding to cover all Section 8 vouchers expected to be used in fiscal year 2004 and HUD's interpretation of the statute is unnecessarily narrow.

"This guidance clarifies the law to our partners in this program - housing authorities, participating landlords and the

residents they serve," said HUD Assistant Secretary Michael Liu. "HUD continues to work with housing authorities to assist them in managing their programs to meet the need of their residents."

The Consolidated Appropriations Act (Public Law 108-199), which was signed into law on January 30, 2004, enacted changes in the Housing Choice Voucher Program, formerly known as Section 8, to fund PHAs at levels that more closely reflect actual funding needs and local rental market changes. HUD says the Act instructs the department to pay PHAs vouchers based on a unit cost reported to HUD as of August 1, 2003. The Act allows for additional adjustment of the August 2003 unit costs by applying an inflation factor. PHAs that can document higher local inflation rates have until July 15, 2004 to submit requests to HUD for consideration of additional appropriations.

Under current projections, HUD says it expects that fewer than half of the 2,500 public housing authorities that participate in the Housing Choice Voucher Program will experience any change under the congressionally imposed mandate. However, since the release of HUD's guidance there has been a strong and steady flow of opposition to the department's new position. In addition, HUD released a white paper in late May that asserts that greater flexibility is needed to improve the Section 8 voucher program, regardless of budget pressures. "The Flexible Voucher Program: Why A New Approach to Housing Subsidy Is Needed" reports that while recent attention has focused more on cost savings and concerns expressed by Congress and HUD about the spiraling costs of the voucher program, the program needs reform because the present statutory framework leads to large errors in the distribution of assistance amounts, indefinite support of some assisted households, targeting that may not reflect locally determined needs and priorities, negative incentives for tenants and lack of focus on transitioning families to self-sufficiency.

For example, the paper says that the verification of household income and determination of tenant contribution to

(continued on page two)

Industry Incensed

(continued from page one)

rent for program purposes has become so complex that it is difficult to perform these functions accurately. "It is far more time-consuming to determine the right rent contribution for a low-income household than to calculate the federal income tax for that household," HUD says.

In the days and weeks following the notice's publication, a coalition was formed, comprised of concerned stakeholders that include the American Association of Homes & Services for the Aging, the Council for Affordable and Rural Housing (CARH), the Institute of Real Estate Management (IREM), the Institute for Responsible Housing Preservation, the National Affordable Housing Management Association (NAHMA), the National Apartment Association (NAA), the National Association of Affordable Housing Lenders (NAAHL), the National Association of Home Builders (NAHB), the National Leased Housing Association (NLHA), the National Low Income Housing Coalition (NLIHC), the National Multi Housing Council (NMHC) and the National Association of Realtors (NAR). The coalition issued a statement last month denouncing HUD's policy.

"We are shocked by HUD's decision, particularly since Congress specifically appropriated enough funding to cover all of the Section 8 vouchers expected to be used in fiscal year 2004," the coalition's statement says. "It is estimated that HUD's new voucher renewal policy will leave \$175 million to \$310 million of the funds Congress appropriated for vouchers unspent this year at the same time as it threatens to force some families into homelessness."

NMHC points out that property owners face some of the most difficult decisions in the near-term. "Apartment owners who accept vouchers agree to comply with a number of time-consuming and sometimes onerous regulatory burdens that they could avoid by not accepting subsidized renters," NMHC says. "HUD's new policy now puts property owners in the untenable position of either having to evict residents or accept significantly reduced rent. If that reduced rent is not enough to operate and maintain the property and pay the property's mortgage, owners will find themselves in a no-win situation."

Moreover, NMHC warns that even if the short-term funding problem is resolved, potential long-term consequences remain. "If HUD continues to try to cut its Section 8 budget, lenders and investors will avoid properties [that] accept vouchers," NMHC says. "This will make it even more difficult for property owners to accept voucher holders, which, in turn, will make it even more difficult for those in need to find safe, decent, affordable housing."

Echoing that sentiment, NLIHC Executive Director Sheila Crowley condemned HUD's policy decision as "a cataclysmic failure of the federal government to keep the public trust."

On April 21, Senate HUD Appropriations Subcommittee Ranking Member Barbara Mikulski, D-Md., sent a letter to HUD Secretary Alphonso R. Jackson requesting that HUD provide funding for every voucher currently in use. Similarly, Senate Banking Committee Ranking Member Paul Sarbanes, D-Md., and Sen. Susan Collins, R-Maine, sent Jackson a letter objecting to the formula HUD will use to provide FY 2004 voucher funding. "[W]e believe HUD's guidance applies the law inappropriately, and that HUD has the ability, within the statuto-

(continued on page three)

PCR EDITORIAL BOARD

Publisher

Michael J. Novogradac, CPA

Editor

Jane Bowar Zastrow

Associate Editor / Staff Writer

Alex Ruiz

Technical Editor

James R. Kroger, CPA

Contributors

Addi Robison, California

Keith Stanley, California

Production

Alona Harrison

PCR INFORMATION

Editorial material in this publication is for informational purposes only and should not be construed otherwise. Advice and interpretation regarding property compliance or any other material covered in this publication can only be obtained from your tax advisor.

Address all correspondence and editorial submissions to:
Jane Bowar Zastrow
Property Compliance Report
Novogradac & Company LLP
246 First Street, 5th Floor
San Francisco, CA 94105
Telephone: 415.356.8034
E-mail: cpas@novoco.com
ISSN 1536-6863

No portion of this material may be reprinted without written permission of Novogradac & Company LLP
© Novogradac & Company LLP 2004 - All Rights Reserved.

PCR ADVISORY BOARD

Angela M. Christy
Faegre & Benson LLP

Evelyn Danowitz
Simpson Housing Solutions,
LLC

Debbie Davis
New Mexico Mortgage Finance
Authority

Terry Harrell Jabezynski
Dominium Management
Services, Inc.

Ronald D. Hurd
AmerUs Capital Management

Michael Kotin
Kay-Kay Realty Corporation

Suzanne Phillips
Texas Department of Housing
and Community Affairs

Bruce Solari
Solari Enterprises

Ruth Theobald
TheoPRO Compliance
& Consulting, Inc.

Donna Unsinn
Pinnacle Realty Management
Company

Suzanne Vice
California Tax Credit
Allocation Committee

For reprint information and
prices, contact Alex Ruiz at
415.356.8088;
or e-mail
alex.ruiz@novoco.com

Visit us on the web:
www.taxcredithousing.com

Industry Incensed

(continued from page three)

ry framework, to provide adequate funding for all housing vouchers in use," the letter reads.

However, Rep. James Walsh, R-N.Y., chairman of the House Appropriations subcommittee that oversees HUD funding, told an Allentown, Pa. newspaper that the agency interpreted the bill correctly. He pointed out that Congress approved a 14 percent increase this year, to \$14.5 billion, to renew vouchers - even with the cuts. *The Morning Call* reported last month that Walsh said, "It's the only way we can continue to provide assistance to the people that need housing. We've really struggled with this."

Still, some members of Congress have sided with the opposition to HUD's new policy. House Democratic Leader Nancy Pelosi, D-Calif., and Frank also released a statement last month criticizing the Bush administration for the change. "This administration is breaking a 30-year promise to help low-income families, the elderly and the disabled to afford decent, safe housing. This will impact not only needy families but also the private landlords who rent homes to them," the statement said.

"This change is shortsighted, and it is sudden," Pelosi continued. "Clearly, the administration has decided not to wait for Congress to weigh in on its new Section 8 proposal, which was included in this year's budget, to reduce and block grant the voucher program. It has already drawn criticism from both sides of the aisle this year."

Reuters reports that Liu responded to criticism by denying that the decision was a "ploy" by the administration. "This was a provision constructed, put together, by the appropriations committees of the House and Senate," Liu said. "It got support from both sides of the aisle." Liu is also quoted as saying that some housing agencies fail "to make the most efficient use of their resources."

The Dallas Morning News says HUD Secretary Alphonso Jackson last month called such warnings "overly dire." "We're not cutting the subsidies. We're doing what the Congress asked us to do," Jackson told the *News*.

NCSHA reported last month that HUD officials said that they will consider increasing payments to PHAs that can show their costs will exceed the amount of funds they would receive under the new formula due to market-driven rent increases, but not due to other voucher cost increases. NMHC also reported last month that it was working diligently on the issue and is in daily contact with regulators, legislators and other housing advocates in an effort to resolve this situation before vouchers are rescinded. ❖

This article first appeared in the June 2004 issue of Novogradac & Company's Property Compliance Report and is reproduced here with the permission of Novogradac & Company LLP.

© Novogradac & Company LLP 2004 - All Rights Reserved.

This editorial material is for informational purposes only and should not be construed otherwise. Advice and interpretation regarding property compliance or any other material covered in this article can only be obtained from your tax advisor. For further information visit www.taxcredithousing.com.