

Nixon Peabody LLP

Affordable Housing Law Alert

Developments in Affordable Housing Law

MARCH 20, 2006

Electronic 2530 Deadline Looms

As reported in previous *Alerts*, HUD has implemented its APPS (electronic 2530 submission) system. While clients continue to report software problems, some have been able to complete the process.

At the same time, the new guidance changes accompanying the APPS rules are chilling investor participation. This guidance eliminated the so-called “three-tier rule.” As such, large, multi-tiered, publicly traded entities are faced with inputting potentially huge amounts of data about far-flung corporate structures—with little connection to the HUD-assisted investment and questionable cost-benefit to the investor or HUD.

Many participants have had difficulties in filing 2530s under APPS and HUD has issued extensions for paper submissions, currently through the end of April 2006.

If you have not completed the APPS process, it is *CRITICAL* that you file paper 2530s during this window for any transactions you think you may be involved with. In addition, you should continue to work on getting an active 2530 profile into APPS. If you are encountering difficulties with APPS, please call **Monica Sussman**, **Richard Price**, or **Anthony Ruvolo** to report those problems, so we can make sure HUD is aware of the issues. There is no additional extension for paper 2530 filings at this time.

Rural Housing Issues Series of NOFAs and New Restructuring Demo Program

The Rural Housing Service has issued a series of notices of funding availability (“NOFA”) in the federal register today, March 20th. Each NOFA has its own deadline and selection requirements but take together they form a unified implementation of RHS’ budget and agenda. The NOFAs implement anticipated funding for the Section 515 rural multifamily loan program, and the Sections 514 and 516 farm-labor housing programs. One NOFA also contains procedural updates for coordination with local priorities across the board, including the 538 program, which is subject to an earlier NOFA.

In addition, there are two NOFAs for new efforts, one for the Section 515 revolving loan demonstration, and another for Section 533 housing preservation grants. These will help



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implement efforts to create preservation tools that RHS badly needs.

There is also a NOFA for the new \$16-million rural-housing voucher program. This program is authorized through RHS, but administered through HUD. The inter-agency agreement appears to provide that the rural voucher will largely function like Section 8 vouchers but with additional restrictions, such as, they must be tenant-based with no project basing.

However, perhaps the most exciting news was released in RHS's March 16 NOFA, which implements a new program for restructuring Section 515 mortgages. This NOFA implements provisions in the U.S. Department of Agriculture's 2006 Appropriations Act and seeks applications for up to \$172.951 million, with all but about \$8 million for debt deferrals (about \$7.5 million for soft loans and the remainder for grants or 0% loans). RHS hopes to use these mechanisms to revitalize up to 200 Section 515 properties with up to 5,400 units. Applications are due by April 17, 2006, and funding must be obligated by September 29, 2006.

The NOFA contains a short application form to aid applicants. Submissions will be divided into simple, moderate, and complex transactions. "Simple" consists of debt deferral only. "Moderate" consists of a deferral and use of another RHS restructuring tool. "Complex" includes the elements of the other submission types plus funding from a third party, such as Section 538 loan guarantees. Debt deferrals may be for up to 20 years. The NOFA provides a point-scoring system that RHS will use to judge applications.

HUD Issues Proposed Section 8 M2M Changes

In the March 14 Federal Register, HUD proposed regulatory changes to the Mark-to-Market program, including changes to Section 8 renewal processing. Many of these changes are technical clarifications of ongoing practices, such as a project processing through mark-to-market is eligible for refinancing through the Section 223(a)(7) program. Other changes may well prove positive, such as allowing compound interest on the HUD-held soft subordinate debt created as a result of the mortgage restructuring process. Government loans that accrue compound interest at the applicable federal rate are more likely to be included in basis for a 9-percent tax-credit transaction.

At least one change raises concern. These proposed rules seek to recast HUD's administrative appeals process. The Multifamily Assisted Housing Reform and Affordability Act (MAHRAA), which authorized the mark-to-market program, forbids taking appeals of most HUD mark-to-market decisions to court. The new rules would provide an administrative appeal process with significant limitations on the information an owner can submit, even prohibiting new information if HUD feels it could have been raised at an earlier stage. Comments are due May 15, 2006, and can be submitted to <http://www.regulations.gov> (refer to Implementation of Mark-to-Market Program Revisions, RIN 2502-AH86, Docket No. FR-4751-P-01; HUD 2006-0003).

If you have any questions about the content of any of the above articles, please contact the author, Richard Price, at rprice@nixonpeabody.com or 202-585-8716.

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