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Affordable Housing Law Alert

Developments in Affordable Housing Law

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HUD Issues Final Rule on Project-Based Voucher Program

By *Michael H. Reardon*

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Today, HUD issued the final rule revising the regulations governing the Project-Based Voucher (“PBV”) Program at 24 CFR Part 983 (70 FR 59892). The final rule implements statutory changes contained in the Quality Housing and Work Responsibility Act of 1998 and the FY 2001 Appropriations Act to the Program. It also responds to public comments to the Proposed Rule, published on March 18, 2004. Three important revisions in the final rule, which were the focus of comments from the industry, are noted below:

- The rule addresses the manner in which a Public Housing Agency (“PHA”) shall select proposals submitted by owners for a PBV contract, and in particular the competitive selection of proposals. The final rule makes clear that the PHA may select without further competition a proposal for housing that already has been selected for assistance pursuant to a government program that required competitive selection of proposals. The earlier competitive selection cannot have considered the possibility of future PBV assistance. If the PHA is not selecting a proposal that has already undergone competitive selection for another federal, state, or local program, the PHA’s selection process must be in accordance with the selection procedures established in the PHA’s administrative plan.
- No more than twenty-five percent of units in a project may receive PBV assistance with the exception of projects for the elderly, persons with disabilities, or families receiving supportive services. The proposed rule defined the supportive services exception solely in the context of the Family Self-Sufficiency program. Industry comments urged HUD to grant discretion to PHAs to define what constitutes “supportive services” for the purposes of the exception to the twenty-five percent limitation for projects with families receiving supportive services. HUD accepted these comments, and in the final rule, agreed with the industry view that a PHA may define in its administrative plan the definition of “supportive services.”



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- With respect to extension of the PBV contract term beyond the initial 10-year contract term, HUD only addressed a portion of the concerns raised with respect to limitations contained in the proposed rule. The final rule gives PHAs the discretion to extend the term of the Contract for an additional period of up to five years, not to exceed an aggregate total term of fifteen years. However, the final rule continues to provide for this extension to be granted “within one year before expiration.” Most tax credit investors want an assurance up-front that the PBV contract will be extended for at least an additional five years after the initial 10-year term.

In many areas the final rule has taken the approach of giving the PHAs more discretion in the implementation of the PBV Program, consistent with the industry comments on the proposed rule. The full text of the final rule may be found by clicking on the below link. <http://a257.g.akamaitech.net/7/257/2422/01jan20051800/edocket.access.gpo.gov/2005/pdf/05-20035.pdf>.

Affordable Housing Team

Please feel free to call or e-mail (*emailname@nixonpeabody.com*) any of the Affordable Housing team members listed below.

ATTORNEY	E-MAIL NAME	PHONE
Paul E. Bouton	pbouton	617-345-1240
Arlo M. Chase	achase	212-940-3758
David P. Corsi	dcorsi	415-984-8426
Harry J. Kelly	hkelly	202-585-8712
John L. Kelly	jkelly	212-940-3790
Randall Kelly	rkelly	202-585-8760
Joseph Lynch	jjlynch	212-940-3717
Richard M. Price	rprice	202-585-8716
Michael H. Reardon	mreardon	202-585-8304
Anthony D. Ruvolo	aruvolo	202-585-8820
Jeffrey W. Sacks	jsacks	617-345-1056
Alexandra Stefanovic	astefanovic	202-585-8158
Monica H. Sussman	msussman	202-585-8833
Patrice Harris Talbott	ptalbott	202-585-8729
Dwayne M. Toliver	dtoliver	202-585-8852
Stephen J. Wallace	swallace	202-585-8714
Justine E. Wilcox	jjwilcox	202-585-8745

Albany, NY
30 South Pearl Street
518-427-2650

Boston, MA
100 Summer Street
617-345-1000

Buffalo, NY
40 Fountain Plaza, Suite 500
716-853-8100

Garden City, NY
990 Stewart Avenue
516-832-7500

Hartford, CT
185 Asylum Street
860-275-6820

Los Angeles, CA
555 West 5th Street, 46th Floor
213-533-1050

Manchester, NH
889 Elm Street
603-628-4000

McLean, VA
2010 Corporate Ridge, Suite 700
703-827-8095

New York, NY
437 Madison Avenue
212-940-3000

Orange County, CA
2040 Main Street, Suite 850
949-475-6900

Palm Beach Gardens, FL
4400 PGA Boulevard, Suite 900
561-626-3011

Philadelphia, PA
1818 Market Street
215-246-3520

Providence, RI
One Citizens Plaza
401-454-1000

Rochester, NY
1100 Clinton Square
585-263-1000

San Francisco, CA
Two Embarcadero Center
415-984-8200

Washington, DC
401 9th Street, N.W., Suite 900
202-585-8000

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