

Nixon Peabody LLP

Affordable Housing Law Alert

Developments in Affordable Housing Law

DECEMBER 30, 2005

HUD Allows Paper 2530 Filings Until April 30, 2006

By Monica Sussman, Anthony Ruvo, and Richard Price

As reported in previous alerts, HUD has implemented its APPS system (electronic 2530 submission system). Many participants were having difficulties in filing 2530s under APPS, and HUD permitted paper filings for the month of November. Many of the system difficulties have continued, and HUD has again extended the deadline so that paper 2530s may be submitted 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. We had a good number of unhappy clients who had not completed the APPS process but had failed to file a paper 2530 before the end of November, while paper filings were permitted. *Do not* let this happen to you.

In addition, you need to work diligently on getting active on APPS. To the extent you are encountering difficulties on APPS, please e-mail us and HUD so that they are aware that there are problems and what the problems are.

Attached is a copy of the HUD memo.



NIXON PEABODY LLP
ATTORNEYS AT LAW

This newsletter is intended as an information source for the clients and friends of Nixon Peabody LLP. The content should not be construed as legal advice, and readers should not act upon information in this publication without professional counsel. Copyright © 2005 Nixon Peabody LLP. All rights reserved.

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
Gary R. Eisenman	geisenman	212-940-3722
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 Fifth Street, 46th Floor
213-533-1050

Manchester, NH
889 Elm Street
603-628-4000

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

Visit our web site at www.nixonpeabody.com



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-8000

ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

Signed December 29, 2005 advance copy wwh

MEMORANDUM FOR: All Multifamily Hub and Program Center, Multifamily Operations Officers, Multifamily Staff and Supervisors, Owners, Management Agents, Mortgagees and other Participants in HUD Programs

FROM: Brian D. Montgomery, Assistant Secretary for Housing – Federal Housing Commissioner, H

SUBJECT: Active Partner Performance System (APPS) Electronic Filing

Effective immediately and through April 30, 2006, participants in HUD programs may file previous participation clearance applications, HUD Form 2530 either in paper form or via the Active Partner Performance System (APPS). **Hub and Program Center Directors are responsible for informing participants of this option.** HUD is processing a formal notice of this option. This memorandum allows a final period in which participants may choose either a paper or electronic method to file applications for participant clearance.

Background

The Active Partner Performance System (APPS) was implemented on October 12, 2005. The implementation followed a regulatory rule making process where a proposed rule was published in May 2004. Comments were received and a final rule was published on April 13, 2005. All participants are required to use APPS to make requests for participation clearance; there are no exceptions in our regulations. Applicants who cannot obtain a participation clearance may lose an opportunity to complete a pending business transaction. A transition period of an additional 6 months was provided in the final rule to allow participants to complete input of baseline data to the HUD systems and, if not already accomplished, to acquaint themselves with the full system operations. An additional period was allowed from October 28, 2005 through November 30, 2005 during which participants could choose either a paper or electronic application method.

Manuals needed to operate the system, a tutorial and a “quick start guide” have been continuously available and updated on the HUD Internet web site since the proposed rule was published in 2004. Staff in Housing has addressed multiple audiences about the system and its requirements since 2001.

At this time HUD knows of no specific systemic issues that might stand in the way of any participant entering data or applying for clearance. However, there have been broad statements made about general functionality (slow, frequent timeouts, etc.), which allegedly are impacting the business process of some participants (however, the Department knows participants who have indeed accomplished the process of baseline creation and application on line). The Department is undertaking a further review to rule out any systemic issues in the application or the subsystems serving it.

The Department while taking this step will allow this further option period during which participants may choose either paper or electronic applications for participation clearance. Barring the discovery of a significant system or infrastructure problem, the Department does not intend to offer this option again. The Department expects that all participants diligently pursue completion of their participant baseline information during the next 90-120 days. After this period, participants who cannot meet the regulatory requirements will need to postpone further applications for clearance until they can do so through the online Active Partner Performance System (APPS).

There are always upgrades and improvements to be made to any computer application, and as issues arise they are identified and resolved. This process is ongoing and is not considered cause for alteration of the normal business processes.

Regulations

The regulations at 24 CFR, 200.217 state:

Sec. 200.217 Filing of previous participation certificate on prescribed form.

- (a) Effective October 11, 2005¹, or on such later date as may be allowed by HUD, all principals in HUD multifamily mortgage and project based subsidy programs must submit an electronic Previous Participation Certificate (form HUD-2530) via HUD's secure web server as a condition prerequisite to new or revised participation. Prior to this date, principals are required to file form HUD-2530 as a condition prerequisite to new or revised participation. Filing requirements are as prescribed by the Assistant Secretary for Housing-Federal Housing Commissioner at the occurrence of any of the events below:

This passage states clearly that HUD may alter the effective date and that the filing requirements are as prescribed by the Commissioner.

In order to accommodate participants and to reduce or eliminate the effects of unforeseen and unpredictable problems, participants will be provided an option to apply for required participation clearances either in paper form or via APPS.

¹ HUD granted an extension for paper applications through November 30 2005.

The term of the option period is through April 30, 2006. Effective after April 30, 2006, all participants in HUD multifamily mortgage and project based subsidy programs must submit an electronic Previous Participation Certificate (form HUD-2530) via HUD's secure web server as a condition prerequisite to new or revised participation. Providing this option should not be construed in any way to change any other portion of HUD regulations other than as stated herein.

All participants in Multifamily Programs are reminded that failure to register and complete the data input required by APPS will restrict new and revised participation until after system inputs are completed. Introductory and explanatory information, including a system tutorial, are available on HUD's Internet Site at:

<http://www.hud.gov/offices/hsg/mfh/apps/appsmfhm.cfm>

Questions concerning this Notice should be directed to Kimberly Munson in the Office at Asset management at 202-708-1320. This notice should not be construed in any way to change any other portion of the regulations other than the extension granted herein.