



HUD SHUTDOWN ALREADY IMPACTING HUD-ASSISTED HOUSING AND FHA LOAN CLOSINGS

By Stephen Niles and Jessica Cassella

The stalemate continues. The partial shutdown of the federal government, affecting HUD and several other government agencies, is now in its 19th day. Approximately 95% of HUD's employees nationwide are now "furloughed" – meaning that they are legally prohibited from working on HUD matters. In addition, while HUD has "excepted/intermittent" personnel that are required to report to work during the shutdown, they are only supposed to work on certain types of critical matters such as those affecting life or safety. Given how difficult it is these days to find anyone at HUD for guidance on the shutdown, we have summarized below some "highlights" of the limited information shared in recent days by HUD, and some affordable housing industry representatives, relating to the shutdown's impact on HUD's rental assistance and FHA loan programs.

Impact on HUD's PBRA HAP Contracts and Other HUD Rental Assistance Contracts

Information provided by HUD and others this past week indicates that the shutdown is already creating problems for those seeking to renew Section 8 Project Based Rental Assistance ("PBRA") HAP contracts, particularly those that expired since the shutdown began on December 22, 2018. In a January 7, 2019 press release (the "**HUD Press Release**"), HUD reported that due to the shutdown, HUD failed to renew approximately 1,150 PBRA HAP contracts that expired during the shutdown period. HUD is currently trying to determine whether it has any available funds that could be used to renew the 1,150 expired contracts "on a rolling basis." These expired contracts represent about 5% of the nearly 23,000 HAP contracts nationwide.

The HUD Press Release further indicates that:

- Approximately 500 more HAP contracts are expected to expire in January, and an additional 550 HAP contracts in February. If the shutdown continues, HUD will not be able to renew these contracts.

- The vast majority of HAP contracts (approximately 21,150) had fully executed HAP contracts prior to the shutdown, and “... their January and February payments have been obligated and will be disbursed without interruption.”

On a related note, some industry members have suggested that owners of projects with PBRA HAP contracts should promptly check LOCCS, HUD’s subsidy disbursement system, to confirm how much HUD subsidy remains available under their individual HAP contracts.

In a HUD memorandum dated January 4, 2019 addressing HUD’s rental assistance programs (the “Rental Assistance Memo”), HUD indicated that during the first 30 business days of a shutdown (i.e., approximately through the end of January 2019):

- HUD shall continue making payments under Section 8 contracts, rent supplement contracts, Section 236 agreements, and Project Rental Assistance Contracts (PRAC) “on an as needed basis to ensure ongoing viability of assets and preservation of affordable housing.” (emphasis added). Such payments, however, will be “... contingent on budget authority being available from prior year appropriations or recaptures.”
- “HAP/PRAC payments from funds obligated prior to a shutdown period are anticipated to occur without any major disruption.” (emphasis added).

According to the Rental Assistance Memo, owners experiencing delays in subsidy payments can seek HUD approval to access project reserves to help cover shortfalls. Projects with FHA-insured loans, and many projects with HUD-held grants, loans, or certain types of HAP contracts, are required to maintain certain reserves (e.g., replacement reserves, residual receipts) that may be available for these purposes. Owners seeking to access the reserves should contact the Director of the applicable HUD Regional Office or Satellite Office to request HUD approval to use such reserves. We note that if the shutdown continues for an extended period of time, project reserves will, in many instances, be insufficient to cover shortfalls arising due to delayed/unpaid HAP contract subsidy. Owners confronting a long-term shutdown will likely look to reduce expenses and/or increase revenues by, among other things, deferring maintenance/repairs; cutting back on services; delaying vendor payments; and, in some cases, possibly raising tenant rents or evicting residents (subject to applicable laws and the terms of tenant leases).

As to the Section 8 Housing Choice Voucher (“**HCV**”) program, HUD has informally advised some industry members that HUD has sufficient funding to make February voucher payments due under the program. However, funding for HCV payments due in March appears problematic if the shutdown continues.

The Good News: After previous government shutdowns, HUD was authorized to retroactively pay owners for the HAP contract subsidy payments that were missed during the shutdown period – and, to our knowledge, owners were not required to evict tenants to address subsidy shortages. Also, given that the majority of multifamily projects with PBRA HAP contracts (and many with Project-Based

Voucher contracts and HCVs) also have FHA-insured loans, we presume that HUD (and Congress) will seek to do whatever it can to prevent HAP subsidy shortfalls from causing defaults on such loans – and the FHA insurance claims losses that typically result from such defaults.

Impact on HUD's FHA Loan Funding/Closings

Since the shutdown began, HUD has provided relatively little guidance relating to the impact of the shutdown on new closings under HUD's FHA multifamily loan programs. However, in a HUD Memorandum dated January 4, 2019 addressing these programs (the "FHA Loan Memo"), HUD indicates that during the first 30 business days of a shutdown (again, presumably through the end of January 2019):

- Closings will be conducted for FHA multifamily initial endorsements "... on projects with firm commitments issued on or prior to December 21, 2018 that have a scheduled closing during the shutdown period, and closings on final endorsements that have critical external deadlines."
- MAP Lenders servicing construction loans and administering non-critical repair escrows "may, at their and Owners' and General Contractors' risk, process interim construction draws." (emphasis added)
- No change orders will be processed or approved.
- No applications for multifamily mortgage insurance will be accepted or processed.

Unfortunately, at this time, it is unclear how soon the government shutdown will end (or how it will end). Some industry members believe the shutdown will end sometime next week – and, we are certainly hoping for the same (if not sooner). In the meantime, we wanted to help keep you updated with this Housing Alert. Please do not hesitate to contact us with any questions. Steve Niles can be reached at 202-495-7210, and Jessie Cassella can be reached at 202-495-4087.

HUD's Rental Assistance Payments to Multifamily Property Owners During the Lapse

January 7, 2019

- HUD's Project-Based Rental Assistance (PBRA) program represents approximately **23,000 contracts serving 1.2 million units**.
- The vast majority of these contracts (**approximately 21,150**) had fully executed agreements before the lapse occurred on December 21st, and their January and February payments have been obligated and will be disbursed without interruption.
- As of January 3rd, roughly 1,150 contracts are up for renewal but currently under suspension (i.e., not executed) in our system because funds were not obligated prior to December 22nd. Contracts are continually being renewed on a rolling basis. The process requires executed agreements signed by both the property owner and HUD.
- HUD is determining whether we have any available funds that could be obligated to renew these contracts and working through the processing of these contracts to determine what could be signed if funding is available.
- The number of expiring contracts will increase as time goes on, as we anticipate approximately 500 additional contracts will expire and be up for renewal in January and 550 in February. Without additional funding, HUD cannot renew these contracts or obligate funds – doing so would be in violation of *The Antideficiency Act*.
- As in previous shutdowns, HUD sent a notice to property owners on January 4th notifying them that they can use their reserves, where available, to cover any shortfalls.
- All of HUD's multifamily properties are privately owned and financed. As such, owners have reserve funds at their disposal to cover costs in the event of a shutdown.
- Historically, HUD has reimbursed owners following a shutdown and never experienced evictions.
- HUD has called in additional field office employees to go through these suspended contracts to determine what we might be able to complete or renew based on available funding.
- HUD is focused on the health and safety of tenants, and continues working to ensure the funding it has available will go to contracts that can be renewed.



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

OFFICE OF HOUSING

January 4, 2019

MEMORANDUM FOR: Section 8 Property Owners, Project Rental Assistance Contract (PRAC) Property Owners, and other Assisted Property Owners

FROM: Lamar Seats, Deputy Assistant Secretary, Office of Multifamily Housing Programs

SUBJECT: Impact of Government Shutdown on Multifamily Asset Management Activities

As you are aware, the partial government shutdown continues as the Department of Housing and Urban Development's spending authority expired on Friday, December 21, 2018, due to the lack of appropriated funding. Pending appropriations needed to operate, most asset management activities must cease for the duration of the shutdown.

Excepted and Intermittent staff will be available for those activities which affect life and safety, and for which binding obligations must be honored under the terms of contracts. During the first 30 business days of a shutdown, the following activities will continue:

1. Making payments under Section 8 contracts, rent supplement contracts, Section 236 agreements, and Project Rental Assistance Contracts (PRAC) on an as needed basis to ensure ongoing viability of assets and preservation of affordable housing. Payments will be contingent on budget authority being available from prior year appropriations or recaptures. Payments may require processing Section 8 and PRAC renewals for expiring contracts and processing amendment funds for non-expiring Section 8 contract renewals.

Please note that HAP/PRAC payments from funds obligated prior to a shutdown period are anticipated to occur without any major disruption.

Owners of properties with FHA insured mortgages or 202/811 Capital Advances may submit requests for releases from their reserve for replacement accounts to cover funding shortfalls caused by non-payment of monthly rental subsidy.

2. Process payments to PBCAs.
3. Continued management of HUD-owned and Mortgagee-in-Possession projects.
4. Approval of emergency repairs related to health and safety.
5. Respond to issues relating to the imminent threat to the safety of the residents, or to the protection of property in HUD-insured or assisted multifamily projects.



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We look forward to resuming normal operations once government funding resumes. Please contact Jen Larson at (202) 402-7141 or at Jennifer.L.Larson@hud.gov if you have any questions regarding this memorandum.



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OFFICE OF HOUSING

January 4, 2019

MEMORANDUM FOR: FHA Multifamily Lenders

FROM: Lamar Seats, Deputy Assistant Secretary, Office of Multifamily Housing Programs

SUBJECT: Impact of Government Shutdown on Multifamily FHA Mortgage Insurance Applications and Production Activities

As you are aware, the partial government shutdown continues as the Department of Housing and Urban Development's spending authority expired on Friday, December 21, 2018, due to the lack of appropriated funding. Pending appropriations needed to operate, most FHA Multifamily activities must cease for the duration of the shutdown. Separate guidance will be issued with respect to Asset Management activities.

Excepted and intermittently available staff will be available for those activities which affect life and safety, and for which binding obligations must be honored under the terms of their contracts. During the first 30 business days of a shut down the following will apply:

- Closings will be conducted for FHA Multifamily Initial Endorsements on projects with Firm Commitments issued on or prior to December 21, 2018, that have a scheduled closing during the shutdown period, and closings on Final Endorsements that have critical external deadlines. Contact the Regional Production Division Director by e-mail to confirm scheduled closing dates.
- MAP Lenders servicing construction loans and administering non-critical repair escrows may, at their and Owners' and General Contractors' risk, process interim construction draws. Contract construction inspections which have been funded will be conducted. HUD will perform or review construction inspections on a post-review basis at such time the government re-opens.
- No change orders will be processed or approved.
- No applications for Multifamily FHA mortgage insurance will be accepted or processed.

We apologize for the disruption in service and look forward to resuming normal operations once government funding resumes. Please contact Pat Burke, Acting Director of MF Production at patricia.m.burke@hud.gov if you have any questions about this memorandum.