

March 2, 2004

The Honorable Michael G. Oxley  
Chairman  
House Financial Services Committee  
2129 Rayburn House Office Building  
Washington, DC 20515

The Honorable Barney Frank  
Ranking Member  
House Financial Services Committee  
B-301C Rayburn House Office Building  
Washington, DC 20515

The Honorable Robert Ney  
Chairman  
House Financial Services Subcommittee  
On Housing and Community Opportunity  
B-303 Rayburn House Office Building  
Washington, DC 20515

The Honorable Maxine Waters  
Ranking Member  
House Financial Services Subcommittee  
On Housing and Community Opportunity  
B-301C Rayburn House Office Building  
Washington, DC 20515

Dear Chairman Oxley, Chairman Ney, Ranking Member Frank, and Ranking Member Waters,

We, the undersigned organizations, represent private sector owners and managers of federally subsidized multifamily housing. We are writing to request your assistance in urging the General Accounting Office (GAO) to study the reasons for and explore possible solutions to a chronic problem concerning the U.S. Department of Housing and Urban Development's (HUD) failure to make timely rental subsidy payments to operators of privately owned subsidized housing. The rental subsidies at issue are known as Housing Assistance Payments (HAPs).

Late HAP payments occur frequently when the HAP contract is due for renewal with HUD. However, late payments are not limited to contract renewals. For instance, some owners and agents have reported that they are not receiving the full amount of gross rent increases on time. Others experience gaps in payment in the middle of a contract, which sometimes last for several months; still others suddenly stop receiving payments near the end of one federal fiscal year and the start of another. Reports of late HAP payments also surface during periods when HUD is operating under multiple continuing resolutions.

Owners and agents report several reasons for the late payments. Common explanations affordable housing providers received from local HUD staff and /or Performance Based Contract Administrators (PBCAs) include: money has not been received from Washington; funds are insufficient; documentation has been misplaced; paperwork must be reviewed; staff are in training, etc. Also, affordable housing providers believe HUD's failure to process contract extensions or rent adjustments in a timely fashion have contributed to this problem.

The explanation our members report hearing most often from HUD field staff or their contract administrators is "lack of funding" from Washington. We believe this situation arises because of the time it takes for appropriated funds to be processed by the Administration and released into the field. It is our understanding that HUD must justify their funding requests to the Office of Management and Budget (OMB), and that it can take from 30 days to 3 months for OMB to release appropriated funds to HUD for distribution. Because HUD receives money for HAP payments on a quarterly basis, gaps in funding can also occur if funds necessary for the next quarter are not released before the remaining resources are exhausted. If the process between HUD and OMB breaks down or drags out, the likelihood that affordable housing operators will receive late HAP payments increases.

HUD has assured us that the Department has been working to correct the late HAP payment problem. We commend the Department's efforts, and we acknowledge the higher priority they have assigned to addressing this problem.

Additionally, we believe an objective examination of this problem by GAO auditors could be helpful in identifying the root causes of the problem, and ultimately, in providing valuable guidance to craft a permanent solution. We respectfully request that you ask the GAO to determine:

- The major reason(s) affordable housing operators receive late HAP payments;
- The role multiple continuing resolutions might play in causing late payments;
- The extent to which processing appropriated funds through OMB and HUD contributes to late HAP payments;
- Whether the current requirement subjecting HAP contract renewals to annual appropriations increases the likelihood of late payments;
- The reasons late HAPs occur so often at contract renewal time;
- Steps HUD has taken to promote timely HAP payments to operators; and
- What other options might be available, whether legislative or regulatory, to ensure operators receive their HAP payments on time.

Understanding the major causes of this problem and identifying a permanent solution is imperative to our members. Despite late HAP payments, properties must continue to fund operational costs.

Detailed talking points on this subject have been provided for your review. To facilitate this request, we have also provided a draft letter requesting the GAO study for your consideration.

Thank you for your assistance in helping to resolve this matter. Please feel free to contact Michelle Kitchen, the National Affordable Housing Management Association's Director of Government Affairs, at 703-683-8630 for additional information.

Sincerely,

American Association of Homes and Services for the Aging  
Council for Affordable Rural Housing  
Institute for Real Estate Management  
National Affordable Housing Management Association  
National Apartment Association  
National Association of Home Builders  
National Association of Housing Cooperatives  
National Association of Realtors  
National Leased Housing Association  
National Multi Housing Council

## **LATE HOUSING ASSISTANCE PAYMENT (HAP) CONTRACTS**

### **DEFINITION**

HAPs are the contractual rental subsidy payments made by HUD to the owner of a federally-assisted housing unit. These payments are usually made through the Section 8 Housing Certificate Fund. All HAP renewal contracts are subject to annual appropriations.

### **A CHRONIC PROBLEM**

Gaps in payment have been occurring sporadically since the inception of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA) renewals process.

Although not all owners and agents are experiencing late HAPs, the situation causes a hardship for those who do.

There are generally no formal advanced warnings that payments will be late. However, the likelihood of encountering this problem seems to increase at contract renewal times. Another problematic time is at the end of one federal fiscal year and the start of another. Some owners have not received the full amount of gross rent increases on time. Others experience gaps in payment in the middle of a contract, lasting sometimes several months.

### **REASONS FOR LATE HAPS**

Numerous factors, which are not necessarily mutually exclusive, account for late HAPs.

Reasons HUD field staff and/or contract administrators commonly offer owners and agents to explain the late payments include:

- Money has not been received from Washington;  
This is a common explanation at the end of a federal fiscal year, or when there are multiple continuing resolutions.
- Funds received from DC are insufficient;  
This is often the explanation for late gross rent increases;
- Documentation has been misplaced;
- Paperwork must be reviewed; and
- Staff is in training.

Affordable housing operators believe other contributing factors include:

- The Department's failure to process contract extensions or rent adjustments in a timely fashion;

- Delays in moving appropriated funds into the field; After funds are appropriated, OMB must release them to the agencies; reportedly, this can take from 30 days to 3 months. HUD does not receive its money from OMB in one single annual allocation; they receive it quarterly. The funding requests must be justified, and can take considerable time.
- Multiple continuing resolutions have caused budgetary uncertainty about the amount of funding available and whether enough funds will be available to fund expiring contracts for the time covered by the CR.

## **IMPLICATIONS FOR OWNERS AND MANAGERS**

- Owners and management agents must still continue to operate the property, make the mortgage payments, and incur the other costs of doing business. Until the HAP payments arrive, owners and agents must cover these costs, often by borrowing from capital needs reserve funds. However, it may be necessary to defer maintenance because reserve funds are being used to pay the mortgage.
- Reserve funds may be dangerously depleted if they must be used to pay the mortgage for several months, placing the property at risk of being in default. The government should not cause solidly performing properties to become endangered financially.
- In addition to these pressures, the owner/agent incurs costs of the processing and tracking of these funds, as well as the loss of interest, since these funds are routinely invested. These costs are not recouped when the HAP payments are received, because the HAP payments do not include such costs.
- The situation is particularly difficult for sites that cannot access reserves or other alternative gap funding sources to sustain full operations. In those situations, some owners and agents have had to skip mortgage payments and payments to other creditors, temporarily cut staff and / or reduce pay.

## **A THREAT TO PRESERVATION EFFORTS**

Private sector owners and management agents play an important role in providing quality affordable housing. Unfortunately, many have come to believe that this situation will not be resolved until some sort of penalty is assessed to HUD for making late payments. If the ongoing problem with late HAP payments continues, responsible owners and agents will be more likely to opt-out of HUD programs, and needy families will have even fewer housing options.

The Honorable David M. Walker  
Comptroller General  
General Accounting Office  
441 G Street, NW  
Washington, DC 20548

Dear Mr. Walker:

We are writing to request that the General Accounting Office (GAO) study an issue brought to our attention by owners and management agents who operate federally subsidized affordable housing. According to these affordable housing operators, the U.S. Department of Housing and Urban Development's (HUD) regularly fails to make timely rental subsidy payments to operators of privately owned subsidized housing. The rental subsidies at issue are known as Housing Assistance Payments (HAPs).

We have been advised that late HAP payments occur frequently when the HAP contract is due for renewal with HUD. However, late payments are not limited to contract renewals. For instance, some owners and agents have reported that they are not receiving the full amount of gross rent increases on time. Others experience gaps in payment in the middle of a contract, which sometimes last for several months; still others suddenly stop receiving payments near the end of one federal fiscal year and the start of another. Reports of late HAP payments also surface during periods when HUD is operating under multiple continuing resolutions.

Owners and agents report several reasons for the late payments. Common explanations affordable housing providers received from local HUD staff and /or Performance Based Contract Administrators (PBCAs) include: money has not been received from Washington; funds are insufficient; documentation has been misplaced; paperwork must be reviewed staff are in training, etc. Also, affordable housing providers believe HUD's failure to process contract extensions or rent adjustments in a timely fashion have contributed to this problem.

The explanation for late HAP payments affordable housing operators reported hearing most often from HUD field staff or their contract administrators is "lack of funding" from Washington. Owners and agents believe this situation arises primarily because of the time it takes for appropriated funds to be processed by the Administration and released into the field. If the process between HUD and OMB for requesting and releasing appropriated funds breaks down or drags out, affordable housing operators believe the likelihood of receiving late HAP payments increases.

Many low-income families and senior citizens are struggling to find quality affordable housing. As policy makers seek to increase the availability of housing opportunities for these families, it is important to preserve the current stock of affordable housing. We are concerned that if the Department is having problems making the proper amount of HAP payments in a timely manner, responsible owners and agents will be more likely to opt-out of HUD programs, and needy families will have even fewer housing options.

In the interest of programmatic oversight, we request that GAO undertake a study reports of late HAP payments. We would ask GAO staff to determine:

- The major reason(s) affordable housing operators receive late HAP payments;

- The role multiple continuing resolutions might play in causing late payments;
- The extent to which processing appropriated funds through OMB and HUD contributes to late HAP payments;
- Whether the current requirement subjecting HAP contract renewals to annual appropriations increases the likelihood of late payments;
- The reasons late HAPs occur so often at contract renewal time;
- Steps HUD has taken to promote timely HAP payments to operators; and
- What other options might be available, whether legislative or regulatory, to ensure operators receive their HAP payments on time.

Thank you in advance for your response to this inquiry.

Sincerely,