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NAHMAanalysis 2006-0203

GAO's Report on Late Housing Assistance Payments (HAPs) for Project-Based Contracts

Effective Date or Deadline

The information in this NAHMAanalysis is derived from a United States Government Accountability Office (GAO) report to Congressional requesters, "Project-Based Rental Assistance HUD Should Streamline Its Processes to Ensure Timely Housing Assistance Payments."¹ There is no deadline for HUD to implement the recommendations GAO offered to improve the timeliness of HAP payments.

Background

Late HAPs have been and continue to be a source of frustration for affordable housing providers. In recent years, NAHMA has received numerous reports from members about the financial strain on Section 8 properties caused by late HAPs. In addition to anecdotal evidence we gathered, NAHMA has conducted numerous member surveys to quantify the severity of the problem. Industry trade association partners were encouraged to invite their members' participation in the surveys as well.

While the surveys were informal and unscientific, they did suggest a recurring pattern of late subsidy payments to owners. With some specific facts to support our arguments, NAHMA led an industry coalition that sought congressional oversight on this matter. On March 2, 2004, NAHMA and nine other industry partners² wrote to House Financial Services Committee Chairman Mike Oxley, Committee Ranking Member Barney Frank, Housing and Community Opportunity Subcommittee Chairman Bob Ney and Subcommittee Ranking Member Maxine Waters. Our industry letter urged these key housing policy makers to request that GAO, which serves as the investigative arm of Congress, study the late HAP problem and determine:

¹United States Government Accountability Office. "Project-Based Rental Assistance HUD Should Streamline Its Processes to Ensure Timely Housing Assistance Payments," GAO-06-57: November 2005.

² Other industry partners who signed the letter were the American Association of Homes and Services for the Aging, Council for Affordable Rural Housing, Institute for Real Estate Management, National Apartment Association, National Association of Home Builders, National Association of Housing Cooperatives, National Association of Realtors, National Leased Housing Association, and National Multi Housing Council.

- The major reason(s) affordable housing operators receive late HAPs;
- 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 HAPs;
- 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 HAPs to operators; and
- What other options might be available, whether legislative or regulatory, to ensure operators receive their HAPs on time.

We reasoned, "... 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."

On June 2, 2004, the four members of Congress sent a joint letter to GAO formally requesting the study. The request stated, "... we believe an objective examination of the timeliness of HAP payments and the factors that affect timeliness could be helpful in ensuring the continuing availability of affordable housing." The representatives specifically asked GAO to:

- Determine the extent to which HUD makes HAPs in a timely and predictable manner;
- Identify the factors that affect the timely provision of HAPs;
- Assess the impact that the timing of HAPs might have on the availability of affordable housing; and
- To the extent warranted, describe options for ensuring timely HAPs.

Summary

The GAO report discusses "the extent to which HUD makes monthly housing assistance payments in a timely manner, the factors that affect the timeliness of the payments and the effects that payment delays have on project owners and their willingness to continue providing affordable housing." GAO considered payments disbursed by the first business day of the month³ to be timely. Payments delayed by at least two weeks were considered significantly late. The report focuses on project-based HAPs; it does not discuss late tenant-based HAPs. Likewise, it concentrates on HUD's payment processes, with only passing references to Congress' role in the appropriations process and no attention at all to OMB's part in releasing funds to HUD for distribution. GAO offered HUD three recommendations for improvement, and HUD concurred with them all.

³ PBCAs are contractually obligated to pay owners by the first business day of the month. HUD uses the same standard for the contracts administered by traditional CAs and HUD staff.

Key Findings

- No statutory or regulatory standard exists for HUD’s timeliness of subsidy payments to owners.
- The primary factors affecting the timeliness of HAPs were:
 - the process of renewing owners’ contracts;
 - internal HUD processes for funding contracts and monitoring how quickly each contract uses its funding; and
 - untimely, inaccurate, or incomplete submissions of monthly vouchers by project owners.⁴
- Late monthly voucher payments were more likely to occur when a contract had not been renewed by its expiration date. A contract renewal may be pending when one or more parties involved in the process have not completed the necessary steps to finalize the renewal.
- The most common cause of a significantly late HAP payments were:⁵
 - payment withheld pending contract renewal: 60 percent;
 - owner’s voucher required HUD review: 24 percent;
 - contract need additional funds obligated: 11 percent; and
 - other reasons: 5 percent.
- HUD’s failure to promptly allocate and obligate additional funds to contracts also results in late payments.
 - Some HUD field office staff do not have access to data systems, were not trained to use the systems, or were not trained to monitor funding levels.
 - HUD frequently underestimates the amount of money a contract will need when it makes obligations at the beginning of a year.
 - HUD's existing monitoring has failed to prevent payment delays for HAPs that need more obligated funds.
- The type of contract administrator involved affected the timeliness of the payment.⁶
 - Data from FY 2004 indicate that CAs of both types had significantly lower percentages of significantly late payments (roughly 5 percent of their contracts) than HUD administered contracts (roughly 14 percent).
 - For chronically late payments (contracts which had at least six significantly late payments per year), traditional contract administrators were found to be more timely in payments than PBCAs or HUD staff. According to GAO, “9 percent of HUD-administered contracts experienced chronic late payments, while 3 percent of PBCA-administered contracts and 1 percent of traditionally administered contracts had chronic late payments.”
 - Also, “Payments on PBCA- and HUD administered contracts have more elaborate monthly processing requirements than do the payments on traditionally administered contracts that HUD processes.”
- Based on data from FY 2004, timeliness of payments also varied by state. However, GAO could not offer an explanation for this situation.

⁴ See page 3 of the report.

⁵ See page 18 of the report. HUD databases included a reason code to explain the late payment for only 55 percent (34,828 payments) of significantly late payments on contracts administered by HUD or PBCAs for FY 2002 through 2004.

⁶ See page 13 of the report.

- States representing the highest percentages of significantly late HAPs on PBCA-administered contracts (at nine percent or more) were Alaska, California, Connecticut, District of Columbia, Illinois and Nevada and New Jersey.
 - “For HUD-administered contracts, 19 states had 15 percent or more of their payments” that were two weeks or more late in 2004.”⁷
- Local market factors primarily drive opt-out decisions; owners interviewed by GAO said late HAPs would not cause them to opt-out of HUD’s affordable housing programs.
 - Continuing resolutions should not affect HAP timeliness, according to GAO’s discussions with HUD’s budget staff.
 - “Although HUD has made changes to improve contract administration, it has not comprehensively addressed the factors that most affect the timeliness of payments--that is, its contract renewal and contract funding and monitoring processes.”⁸
 - HUD has no system for alerting owners about late payments or expected time for resolution.

GAO’s Recommendations and HUD’s Responses

GAO made three recommendations to HUD for improving timeliness of HAP payments.⁹ In a letter to GAO dated October 25, 2005, signed by Assistant Secretary for Housing Brian Montgomery¹⁰, HUD agreed with all of them. The specific recommendations and excerpts from Assistant Secretary Montgomery’s response follow.

GAO 1. “Streamline and automate the contract renewal process to prevent processing errors and delays and eliminate paper/hard copy requirements to the extent practicable.”

HUD: “Streamlining and automating the business process for renewing and amending assistance contracts will require a comprehensive review of existing procedures and policies. This review is currently being undertaken as part of comprehensive program Business Process Reengineering (BPR). We anticipate that this initiative will identify areas where efficiencies in process can be realized, including addressing the fact that the current renewal and amendment process relies heavily on paper transactions and extensive participation of HUD, PBCAs, and project owners.”

GAO 2. “Develop systematic means to better estimate the amounts that should be allocated and obligated to project-based housing assistance payment contracts each year, monitor the ongoing funding needs of each contract, and ensure additional funds are promptly obligated to contracts when necessary to prevent payment delays.”

HUD: “...[HUD] plans on achieving improvements in this area through training, data quality reviews, and data systems maintenance. To determine how best to improve the current estimation/allocation system, HUD has obtained a contractor to analyze the current systems and make recommendations as to improvements that will allow us to better identify emerging funding requirements as well as improve the allocation of available resources.”

⁷ See page 15 of the report.

⁸ See page 31 of the report.

⁹ See page 32 of the report.

¹⁰ See pages 37-38 of the report. The specific HUD comments are found on page 38.

GAO 3. “Notify owners if their monthly housing assistance payments will be late and include in such notifications the date by which HUD expects to make the monthly payment to the owner.”

HUD: “...HUD agrees that notification of owners if anticipated payments are delayed is desirable. HUD believes that the systemic enhancements outlined above will lead to a clearer understanding of the reasons for delayed payments and identify measures that may resolve such problems. HUD will also examine the feasibility of notifying project owners if HUD anticipates that there will be a significant delay in payment due to an issue beyond the control of the owner.”

Some Interesting Statistics¹¹

- HUD made three-fourths of its monthly housing assistance payments by the due date in the fiscal years 1995-2004;
- Of the 3.2 million monthly housing assistance payments made for fiscal years 1995 through 2004, 25 percent were late. Over this same period, 89 percent were paid on time or less than one week overdue. However, 8 percent (or 25,000) of the payments were significantly late (by two weeks or more);
- During fiscal years 2002 through 2004, 79 percent of HAPs were timely, but 7 percent were significantly late.

Positive Aspects of This Policy/Proposal

This report represents an independent, unbiased documentation of the late HAP payment problem. Solving the late HAP problem is likely to require further congressional action, either through oversight of HUD, additional funding for the BPR, legislative action or some combination thereof. The GAO report is the first step in building a legislative history of this subject.

Moreover, this report corroborated much of what we already knew about late HAP payments. Specifically, they occur quite frequently, are usually resolved within two weeks of the due date, and are more likely to occur during a contract renewal, mark-to-market, or mark-up-to-market process, and owners receive no advanced warning. It also corroborates our arguments about the damaging toll late subsidy payments have on the operations of affordable properties. GAO noted that some properties are in a better financial position to continue operations until the subsidy arrives; but they also spoke with owners who incurred thousands of dollars worth of penalties for late payments on their mortgages and utility bills which could have been avoided if they had received their subsidy payments on time.

Issues of Concern to NAHMA

There is no deadline by which HUD must implement these recommendations, and without pressure from Congress to make such changes, it is not clear that they will be made quickly—if at all.

Much of HUD’s hopes for improving its HAP contract renewal process rests on its Business Process Reengineering (BPR) effort. The BPR is a long-term project intended to improve “inefficient or redundant processes” and to integrate data systems.¹² Although HUD’s goal is to automate the contract

¹¹ HUD does not track the exact date owners receive their HAPs from either traditional CAs or PBCAs. As described in footnote #4 on page 9 of the report, GAO used the date the U.S. Treasury disbursed funds to the CA as its standard of timeliness for these contracts.

¹² See page 21 of the report.

renewal process by 2007, GAO's believes the BPR is not currently focused on streamlining HAP payment process or eliminating late subsidy payments.¹³ In the current budget-cutting environment, it is unclear whether the BPR will receive enough funding to be implemented effectively. GAO also pointed out the shortcomings of this strategy:

“HUD has recognized that its contract renewal process is cumbersome and inefficient and wants to cut contract processing time as one goal of a broader BPR effort. However, that effort has just gotten under way and currently is not closely focused on the housing assistance payment process. As a result, if HUD were to rely solely on the reengineering effort, it would miss opportunities to effect more immediate improvements to the processing of contract renewals. In addition, HUD effectively could prevent many delayed payments by better estimating the amounts it needs to obligate to contracts each year, more systematically monitoring contract funding levels on an ongoing basis, and promptly allocating and obligating additional funding to contracts when necessary.”¹⁴

HUD's response to GAO's recommendation to notify owners when subsidies will be late—specifically that it will study the feasibility—is fairly non-committal. This is especially disappointing because this seems to be the easiest recommendation to implement. A simple e-mail to the owner, or industry representatives if there is a large scale delay, would go a long way toward helping owners to plan for the lag-time. NAHMA has been advocating for such alerts for years.

Also, the delay in receiving HAPs may be more severe than reflected in GAO's statistics. Buried in a footnote on page 9 of the report is a caveat that raises some concern about the true timeliness of payments to owners. A lag time on release of payments to owners by contract administrators is not reflected in the statistics. According to GAO, HUD's data systems do not track the exact date owners receive their payments from the PBCAs or traditional contract administrators. Because GAO did not have this precise information, they decided to “characterize timeliness based on the date the U.S. Treasury disbursed funds to the contract administrator.” GAO estimates the turnaround time for PBCAs to release funds to owners is one to five days. Since most project-based Section 8 contracts are under the administration of CAs, we are concerned the report may be casting a more positive light on this situation than is truly the case.

NAHMA is surprised, and a bit skeptical, of GAO's determination that operating under temporary, stop-gap funding measures known as continuing resolutions has no effect on timeliness of HAP payments. The report states,

“According to HUD headquarters officials, operating under a continuing resolution rather than an appropriation should not affect the timeliness of housing assistance payments. According to HUD budget officials, under a continuing resolution, HUD has funding available to meet its contractual obligations to pay project owners and, if need be, to renew rental assistance contracts.”¹⁵

Presumably, the budget officials referred to in this report would be the appropriations law staff in the Office of the HUD CFO. It should be noted that the opinion expressed in this report directly contrasts with information NAHMA has been told repeatedly by HUD's Multifamily Housing staff. Having money available is one thing; moving it through the process is another.

We were also surprised that OMB's role in the funding process was not examined at all. We would have liked some discussion about the turn-around time for moving appropriated funds to HUD.

¹³ See page 21 of the report.

¹⁴ See page 31 of the report.

¹⁵ See page 24 of the report.

Finally, if HUD is having difficulty training new employees and renewing contracts, they need to focus on a new way to accomplish doing so. GAO recommended that HUD should make better use of information technology related to these programs. HUD supports the suggestion and states that it is an ongoing effort. Nevertheless, we feel it is HUD's responsibility to press Congress for the funding it needs for training, hiring staff with the proper skill sets to manage and administer the payment and/or contract renewal process, manage the performance of its own staff, and to set goals for making improvements promptly.

NAHMA's position

Not surprisingly, NAHMA is unequivocal in our position that HAPs must be made to owners on time. Ideally, we believe HUD should pay a penalty to owners when HAPs are late, just as owners must pay late fees on missed mortgage and / or utility payments which result from the late HAP. We will continue to monitor the timeliness of HAPs, press HUD to make the recommendations suggested by GAO and urge Congress to monitor HUD's progress through oversight activity.