

MULTIFAMILY FINANCE KEY ISSUES JANUARY 2010

Multifamily Finance

The credit freeze continues to affect the multifamily market. NAHB multifamily members continue to report that construction lending is at a standstill. Multifamily developers with construction loans on viable projects in good markets are having difficulty obtaining permanent take-out loans. Fannie Mae, Freddie Mac and the FHA Multifamily mortgage insurance programs have kept the multifamily market afloat. But the agencies' underwriting requirements have tightened considerably, and we do not expect a retrenchment from this position. Equity requirements of 35 to 40 percent have become the norm.

Alleviating Liquidity Problems in the Commercial Markets

The drying up of the CMBS market has affected multifamily financing. Although CMBS consist mostly of office, hotel and retail loans, some portion are multifamily loans. Trade associations focused on commercial activity urged administration officials and Congress to find ways to alleviate the liquidity issues for the broader commercial real estate market.

Term Asset-Backed Securities Loan Facility Program

In response to the CMBS problem, the Treasury and Federal Reserve Board launched the Term Asset-Backed Securities Loan Facility (TALF) program in March. The program provides financing to investors to support their purchases of AAA-rated asset-backed securities for recently originated auto loans, credit card loans, student loans and SBA-guaranteed loans. In May, the program was expanded to include CMBS and securities backed by insurance premium finance loans. The inclusion of CMBS as eligible collateral for TALF loans will help prevent defaults on economically viable commercial properties, including some multifamily rental properties, increase the capacity of current holders of maturing mortgages to make additional loans, and facilitate the sale of distressed properties.

In August, the Federal Reserve Board and the Treasury Department announced an extension of TALF for newly issued asset-backed securities (ABS) and legacy CMBS through March 31, 2010. Treasury said that, although conditions had improved, the markets for ABS backed by consumer and business loans and for CMBS remained impaired and seemed likely to remain so for some time. However, because new CMBS deals can take a significant amount of time to arrange, the Federal Reserve and Treasury approved TALF lending for newly issued CMBS through June 30, 2010.

Commercial Real Estate Loans Workout Guidance

Also of concern for multifamily financing is the large share of commercial real estate (CRE) debt outstanding held by banks and insurance companies, which hold 50 percent and 10 percent of such debt, respectively. According to the Real Estate Roundtable, banks have \$1.5 trillion in CRE loans on their books that are even more vulnerable than CMBS, especially for the small

regional and community banks that have high exposures to troubled construction and land development loans. Owners of CRE properties seeking restructurings or refinancings have encountered resistance from banks, which have tightened underwriting and leverage requirements in light of falling property values and declining cash flows.

In late October, to help address this issue, the federal banking regulators issued new guidance with the objective of encouraging institutions to pursue workouts on troubled commercial real estate (CRE) loans, a category that includes residential land acquisition, development and construction (AD&C) loans. Their stated intent is to ensure that supervisory policies and actions do not impair the flow of credit to viable borrowers and projects. The statement says that financial institutions that implement prudent CRE workouts will not be subject to criticism for engaging in such efforts and loans should not be subject to adverse classification solely because the value of the underlying collateral has declined.

The policy statement is a positive step in encouraging workouts as a preferred course of action and in directing examiners to make balanced assessments of institutions' workout efforts. The direction provided on allowing institutions to avoid using liquidation values when assessing collateral and on bifurcation of loans should be helpful to builders and developers. In general, however, the criteria specified for prudent loan workouts will allow institutions fairly limited ability to structure workouts for AD&C borrowers.

Government Sponsored Enterprises (GSE)

Housing Goals

The *Housing and Economic Recovery Act of 2008* (HERA) directed that the Enterprise housing goals for 2008 carry over to 2009 and required FHFA to review those goals to determine their feasibility given current market conditions and, if appropriate, to make adjustments to the goals. In May, FHFA published a proposed rule for public comment establishing the 2009 housing goals for Fannie Mae and Freddie Mac. Stating that the 2008 levels were not feasible due to current market conditions, FHFA proposed lower 2009 housing goal and home purchase subgoal levels. Restrictions on the availability of private mortgage insurance for borrowers with lower down payments, a surge in refinancing, the increasingly important role of FHA in the marketplace, and a slowdown in the multifamily market were cited as factors for reducing the goals.

NAHB submitted comments generally agreeing that the single family home purchase goals were not feasible but pointed out that actions taken by the GSEs, such as tightening underwriting and increasing delivery fees, are reasons why such goals cannot be met. In addition, NAHB disagreed with FHFA's proposal to leave the special affordable multifamily dollar-based goal at the current levels of \$5.49 billion for Fannie Mae and \$3.92 billion for Freddie Mac. With FHFA projecting multifamily originations between \$43 and \$65 billion in 2009, NAHB recommended that FHFA set higher special affordable multifamily dollar-based goals for the Enterprises than proposed.

On August 10, FHFA issued a Final Rule on the 2009 affordable housing goals. As expected, FHFA confirmed that the 2009 housing goal and home purchase subgoals established by HUD several years ago are not feasible. FHFA reviewed public comments and decided to adjust the housing goal levels downward and leave the three home purchase subgoal levels as proposed in the proposed rule. However, FHFA did set higher dollar-based special affordable multifamily housing goals than in the proposed rule, per NAHB’s recommendation. Fannie Mae’s goal will be \$6.56 billion, and Freddie Mac’s will be \$4.6 billion.

The table below compares the final 2009 goals, with the proposed goals and the 2008 goals.

Goal	Final 2009 (percent)	Proposed 2009 (percent)	2008-2009 (suspended) (percent)
Low and moderate-income housing	43	50	56
Special affordable housing	18	23	27
Underserved areas	32	37	39
Low- and moderate-income home purchase subgoal	40	40	47
Special affordable home purchase subgoal	14	14	18
Underserved areas home purchase subgoal	30	30	34
Minimum dollar-based special affordable multifamily housing subgoal	Fannie Mae: \$6.56 billion Freddie Mac: \$4.60 billion	Fannie Mae: \$5.49 billion Freddie Mac: \$3.92 billion	Fannie Mae: \$5.49 billion Freddie Mac: \$3.92 billion

Pursuant to HERA, in 2010 and beyond, there will be four annual single family housing goals and one annual multifamily special affordable housing goal. Within the single family goal there are separate goals for home purchase and refinance mortgages. These new goals replace the 2004 – 2009 overall goals covering mortgage financing for all property types (single and multifamily combined), property uses (owner or renter occupied), and purposes (purchase and refinance combined). Additionally, no investor-owned single family (one- to four-unit) properties will be included in the goals. FHFA expects to issue a proposed rule on the 2010 affordable housing goals by the end of the fourth quarter of 2009 (it has not been published as of January 14, 2010).

Duty to Serve Underserved Markets for Enterprises—Advance Notice of Proposed Rulemaking

FHFA is required, beginning in 2010, to establish a manner for evaluating the Enterprises’ compliance with the new statutory duty to serve underserved markets. The duty includes service to three underserved markets— manufactured housing, affordable housing preservation and rural areas. On August 4, FHFA published an Advance Notice of Proposed Rulemaking (ANPR) seeking comments on the characteristics and types of Enterprise transactions and activities that

should be considered and how such transactions and activities should be evaluated and rated. This would lead to a proposed rulemaking for further public input. NAHB submitted a comment letter which reiterates our support for the duty to serve requirement; offers several suggestions on the characteristics and types of transactions the Enterprises should consider; and provides an option for a definition of rural areas.

On October 30, in its Annual Housing Report to Congress, FHFA said it received over 100 comment letters from a variety of organizations in response to the ANPR. FHFA indicated that it expects to issue a proposed rule on the duty to serve underserved markets by the end of the fourth quarter of 2009. (As of January 14, 2010, no proposed rule has been published.) NAHB staff plan to review and comment on the proposed rule when it is issued.

State Housing Finance Agency Bond and Liquidity Initiative

The Housing and Economic Recovery Act (HERA) passed in 2008, provided states \$11 billion in new tax-exempt housing bond authority to help stimulate the housing market. This authority expired December 31, 2009. However, most HFAs have not been able to use the additional bond authority because of the financial crisis. HFAs have been frozen out of the housing bond market, unable to find investors willing to buy their long-term, fixed-rate bonds at rates that allow HFAs to lend the proceeds affordably. In addition, the lending and financial capacity of HFAs that issued variable rate demand obligations (VRDOs), which allowed them to offer lower mortgage rates in recent years, has been constrained severely. HFAs have had great difficulty remarketing the VRDOs, because many of the institutions that remarket the debt and serve as buyers of last resort have left the market, been significantly downgraded, or are imposing unreasonable terms and excessive rates.

Part of the Administration's housing market stability initiative announced in February was to provide support to state and local housing finance agencies (HFAs). In October, the Administration followed up on that intent with the introduction of a new initiative for state and local HFAs that will help support low mortgage rates for low and middle income borrowers to purchase homes, as well as provide financing for the development of affordable multifamily rental housing. The initiative has two components. The New Issue Bond Program (NIBP) may be used by HFAs to issue mortgage revenue or tax-exempt multifamily bonds, which will then be securitized by government sponsored enterprises Fannie Mae and Freddie Mac (GSEs) and purchased by the Treasury Department. All HFA bonds must be issued by December 31, 2009. The bond proceeds may be put into escrow and used in 2010. HFAs requested allocations of over \$22.4 billion, of which \$5.3 billion was for multifamily.

The second component is the Temporary Credit and Liquidity Program (TCLP) program which authorizes the GSEs to provide credit enhancement and liquidity for VRDOs previously issued by HFAs and currently outstanding. TCLP will help reduce the costs of maintaining existing financing for the HFAs. Treasury will backstop the GSE replacement credit and liquidity facilities for the HFAs by purchasing an interest in them using authority granted under HERA.

On January 13, 2010, the Treasury Department, HUD and the Federal Housing Finance Agency (FHFA) announced the completion of all transactions under the initiative. Over 90 state and

local HFAs participated for an aggregate total of \$15.3 billion in new issuance. Twelve HFAs participated in the TCLP for a total usage of \$8.2 billion.

FHA Multifamily Mortgage Insurance Programs

The FHA multifamily mortgage insurance programs support the construction and rehabilitation of affordable rental housing for low and moderate income households. Although the benefits of using FHA insurance are substantial, the process can be lengthy and burdensome, particularly if the borrower is using Low Income Housing Tax Credits (LIHTCs). The Housing and Economic Recovery Act of 2008 (HERA) included some important improvements to the FHA mortgage insurance programs, and HUD is in the process of implementing them. There is also a legislative effort underway that would give HUD additional tools for the preservation of affordable multifamily rental properties, many of which are FHA-insured.

Implementation of HERA

Since HERA was passed, HUD has issued two Mortgagee Letters (2008-19 on July 22, 2008, and 2009-24 on July 29, 2009) explaining what actions have been taken to implement HERA. Progress on the specific requirements has been mixed. Two provisions of importance to NAHB members have not been implemented yet. The first is the requirement for HUD to establish a pilot program for streamlined review of FHA-insured projects with LIHTCs. The pilot is to include the appointment of designated underwriters for these projects. HUD continues to grapple with how to implement this provision.

The second issue is the elimination of duplicative physical inspections of properties that already are inspected by state housing finance agencies (HFAs). HUD lawyers say that a HUD Uniform Physical Condition Standards (UPCS) inspection - referred to as the REAC inspection - is necessary for HUD to protect its rights to enforce its contracts and that other inspection procedures are not comparable. Therefore, HUD will not, in accordance with the statute, require mortgagees to perform the inspections on these properties, but instead, HUD will contract for REAC inspections itself. This will require additional budget authority for HUD. HUD has informed Congress about progress and issues surrounding implementation of this provision.

In late April, HUD moved forward on an additional provision in HERA, which is to solicit recommendations from stakeholders on further improvements to the FHA multifamily insurance programs. HUD published in the Federal Register a Request for Recommendations Regarding Administrative and Procedural Changes to Expedite the Approval of Applications for FHA-Insured Multifamily Mortgages Involving Low-Income Housing Tax Credits or Tax-Exempt Bonds. Staff submitted a set of recommendations based on NAHB members' recommendations. In addition, the comment letter urged HUD to implement the provisions in HERA quickly.

HUD is still in the process of reviewing and preparing responses to comments submitted in response to the Federal Register notice.

Bill Introduced to Increase the FHA Statutory Mortgage Loan Limits for Elevator Buildings

On July 31, H.R. 3527, The FHA Multifamily Loan Limit Adjustment Act of 2009, was introduced by Representatives Anthony Weiner (D-NY) and Gary Miller (R-CA). The bill would allow the HUD Secretary to increase the mortgage loan limits for elevator buildings by up to 50 percent of the amounts specified for non-elevator units. Currently, there is only about a 10 percent difference between non-elevator and elevator buildings, even though the costs of constructing an elevator building are, on average, about 45 percent higher. The bill would also give the HUD Secretary the authority to designate other “extremely high cost areas” in addition to Alaska, Hawaii, Guam and the Virgin Islands.

The bill would address the fact that current FHA multifamily loan limits are severely restricting the ability to use FHA insurance programs to finance rental housing in many urban areas. While the base loan limits and high cost factors have been raised over the past eight years to address issues in most parts of the country, the problems are now concentrated in major cities where high-rise construction is involved. HUD data show that, over the past seven years, there have been 478 Section 221(d)(4) new construction projects (without federal assistance) finally endorsed for HUD insurance. Of those 478 projects, only 31 involved elevator structures. Most recently, in fiscal years 2007 and 2008, only three elevator projects nationwide have been endorsed for insurance with FHA.

On September 16, 2009, the House passed H.R. 3527 by voice vote. The focus will now turn to obtaining a sponsor in the Senate, and it is hoped that Senator Schumer, who supports H.R. 3527, will agree to introduce a companion bill.

Draft Preservation Bill Circulated

The House Committee on Financial Services Chairman, Barney Frank (D-MA) is planning to introduce a bill that would encourage the preservation of federally assisted affordable housing. A draft bill is circulating among industry groups and has been the focus of two hearings already; the first hearing’s sole witness was HUD Secretary Shaun Donovan, and the second hearing’s witnesses were mostly nonprofit housing groups. The draft bill would remove some statutory and regulatory barriers to preservation, create incentives for owners to remain in HUD programs and establish incentives for preservation entities to acquire and rehabilitate these properties. Additionally, the bill protects tenants from displacement due to mortgage maturity, prepayments and opt-outs.

Properties covered under the bill include those financed by the following programs:

- Section 8 project-based rental assistance
- Section 202 elderly housing
- Section 236
- Section 221(d)(3) with Below Market Interest Rates (BMIRs)
- Sections 221(d)(3), 202, 236 and 231 with Rent Supplements or Rental Assistance Payments (RAP)

- Sections 515, 514 and 516 (rural rental housing and farm labor housing)

While the bill would provide some important and needed tools to facilitate the preservation of affordable rental housing, it also contains several provisions that would undermine the ability or desire of housing developers to participate in these transactions. NAHB, along with a coalition of industry groups, has expressed strong opposition to these provisions to Chairman Frank and to HUD Secretary Donovan. The provisions would violate existing contracts between owners and HUD and give tenants unprecedented rights to sue owners. The provisions are:

Right of First Purchase Before Conversion of Multifamily Housing and Federal First Right of Purchase Before Conversion of Multifamily Housing

The draft bill creates qualified preservation owners (QPO), which refers to a for-profit or nonprofit owner of a housing project that agrees to use and affordability restrictions for 30 years in exchange for receiving incentives to acquire and rehab a property or to continue its use as affordable housing. However, the QPO must also agree to provide an assignable right of refusal in favor of a state housing finance agency (HFA) at an agreed-upon price. This right of refusal is subordinate to a federal right of first refusal provision discussed below.

The draft bill creates a federal first right of purchase by imposing a two-year notification period to tenants on owners whose covered housing property has an impending “conversion event.” A conversion event includes the expiration or non-renewal of a project-based rental assistance contract, any full payment, expiration, prepayment or termination of a mortgage for the housing; or any termination or expiration of use restrictions of affordability requirements for the housing. During this period, an owner cannot sell or otherwise transfer the property or enter into any sale or other transfer of the housing. During the first 12 months of this period, if an owner receives an offer to purchase the property from a QPO, the owner has to accept the offer and sell to that purchaser.

The federal right of first purchase applies to housing that is financed by a loan or mortgage or assisted under the Section 8 project-based, Section 221(d) below market interest rate, Section 236, Section 202, and rent supplement programs; all of the multifamily rural housing programs administered by the U.S. Department of Agriculture (USDA); as well as any housing financed by the Community Development Block Grant (CDBG) program, HOME Investments Partnerships and the McKinney-Vento Homeless Assistance programs. CDBG and HOME provide only gap financing for affordable housing; as such, only a small amount of funding could trigger the right of first refusal provision. In addition, these provisions would apply to Sections 42, 142(d) and 147 of the Internal Revenue Code, programs for which the House Financial Services Committee has no jurisdiction.

Third Party Beneficiary Status for Residents

This provision would permit tenants and resident associations to become third party beneficiaries to contracts between HUD and other parties, such as owners. As a third party, they would have the right to sue to enforce HUD requirements or to seek damages.

Limited Participation for Certain Section 515 Owners

The bill would prohibit participation in the preservation program by owners that are a party to a prepayment lawsuit and would condition participation by owners who were awarded damages through a prepayment lawsuit on their contributing the lesser of 50 percent of the damage award or \$100,000 towards revitalizing the property.

Resident Access to Building Information

This provision would allow residents to have access to certain financial information related to a property and property owner, including confidential business information such as statements of profit and loss, statements of account balances and management contracts. Information on the 2530 previous participation form, which contains social security numbers, would also be disclosed upon request.

There are other provisions that are problematic, as well, including what appears to be limited ability to use FHA insurance on preservation transactions unless waivers are granted by the HUD Secretary. NAHB staff has discussed these aspects of the draft bill with the Deputy Assistant Secretary for Multifamily Housing.

NAHB, working with an industry coalition, has taken several steps to express our concerns about these and other provisions in the bill. A letter was sent to Chairman Frank, as well as to the HUD Secretary, explaining why the industry could not support the draft bill as drafted. On September 15, NAHB, along with our industry partners, met with Chairman Frank to discuss the draft bill. Chairman Frank agreed to eliminate two of the four offending provisions – the right of first purchase and a prohibition on certain owners of Section 515 to participate in the preservation program unless they contribute significant equity – and he agreed to work with us to revise the remaining two issues in a manner acceptable to the industry.

After meeting with Chairman Frank, the group was able to discuss other technical issues with the House Financial Services Committee staff. The Committee staff was receptive to taking additional comments on the rest of the draft bill. A set of recommendations was submitted by the group, and NAHB also submitted some additional written comments to the staff. NAHB staff will continue to work with our industry partners, Chairman Frank and members of the House Financial Services Committee as this bill moves forward.

Federal Rental Assistance

The Section 8 Housing Choice Voucher program, administered by the U.S. Department of Housing and Urban Development (HUD), provides rental subsidies to approximately two million very-low income households who obtain housing in the private rental market. In recent years, the program has been the subject of increasing policy discussions because of its growing costs and strain on the HUD budget. Funding levels have fluctuated, causing public housing agencies (PHAs) to struggle to maintain assistance to current tenants. Although several

legislative proposals to make significant policy changes did not move forward, efforts to reform the program continue.

Section 8 Voucher Reform Act

NAHB has been working with the House and Senate on a voucher reform bill for some time. In July 2007, the House overwhelmingly passed the Section 8 Voucher Reform Act of 2007 (SEVRA). The bill as passed included several of NAHB priorities, including provisions to streamline the unit inspection process and to place the responsibility of translating documents and providing interpretation services to persons with limited English proficiency (LEP) on HUD, rather than property owners.

The companion Senate bill, S. 2684, was introduced by Senator Dodd (co-sponsored by Senators Schumer, Reed, Menendez and Brown) in March 2008. Although a hearing was held and all of the witnesses expressed support for the bill, no further action was taken in 2008.

In June 2009, Representative Maxine Waters (D-CA), Chair of the House Financial Services Subcommittee on Housing and Community Opportunity introduced H.R. 3045, the Section 8 Voucher Reform Act of 2009. Two hearings were held prior to introduction of the bill, the first with Secretary Donovan as the sole witness, and the second with industry representatives as witnesses. Secretary Donovan was very supportive of the bill, saying it was a key step in improving the voucher program. He was particularly supportive of the proposed funding formula and also mentioned streamlining the unit inspection process, reforming rent and income calculations and reallocating unused voucher authority among public housing agencies that could use it as important provisions in the bill. Witnesses at the second hearing were also very supportive of the bill.

In July, the House Committee on Financial Services completed its mark-up of H.R. 3045 and approved the bill. H.R. 3045 include several important provisions supported by NAHB, including streamlining of the unit inspection process, a revised funding formula for the program that ensures stability of the flow of funds to public housing agencies (PHAs), and improvements to the Section 8 project-based voucher program. It would also restore previous assistance levels by authorizing 150,000 new vouchers.

However, there are a few outstanding issues of concern to NAHB. H.R. 3045 omitted provisions related to ensuring that persons with Limited English Proficiency can access HUD housing programs, which were included in the earlier SEVRA bill. H.R. 3045 also contains changes to screening requirements for new Section 8 voucher applicants, for which housing industry groups have expressed concern. Staff will continue to work with Committee members to address these concerns as the bill moves forward. There is no Senate companion bill at this time.

HUD Rental Assistance for Preservation and Transformation (RAPT) Initiative

HUD is in the process of identifying the characteristics of a “new” rental assistance model that will support the preservation and development of affordable housing. Of primary importance to

HUD is streamlining its rental assistance programs (there are 13 different rental assistance programs administered by HUD), leveraging private capital to support preservation and development activities, increasing resident mobility (i.e., giving residents the option to move with ongoing rental assistance) and creating market discipline for owners.

HUD is conducting a series of meetings with stakeholders to get their input on possible characteristics of a new rental assistance model. NAHB staff participated in an all-day meeting on January 7 that included nonprofit developers, investors, lenders, a few state and local officials, and representatives from several housing industry trade associations. HUD Secretary Donovan, Deputy Assistant Secretary for Multifamily Housing Carol Galante and Barbara Sard, Special Assistant to the Assistant Secretary for Public and Indian Housing, opened the meeting and explained the initiative. Participants then broke into work groups and reconvened later to give briefings on their discussions. Secretary Donovan returned for the briefings and participated in the discussions that followed.

While a set of very detailed questions was given to participants, there were several critical key issue areas:

- Administration of rental assistance contracts: what roles and responsibilities should HUD retain and what could be contracted out, including: entering into a HAP contract; establishing underwriting guidelines; determining initial rents; determining operating cost adjustments; physical property inspections; monitoring financial performance; setting admission preferences; reviewing/approving requests to move rental assistance from one property to another; opting to decrease units under contract due to excessive vacancies; opting not to renew the contract.

It was difficult to determine whether or not any group came to consensus on these issues, as the reporting from each group was brief. There seemed to be general agreement that the HAP contract should be between HUD and the owner (not a contract administrator) and that the decision to renew a contract should remain with the owner (assuming the owner is in compliance). Others commented that, unless HUD has capital in the project (or mortgage insurance), underwriting should be left to the lenders.

Rent setting was also a major topic, with most participants expressing the view that rents should be set to market. The Secretary was not in complete agreement, citing the high rent levels in places like New York City.

- Resident mobility and creating owner discipline: there are two issues here – giving residents greater choice in housing and ensuring that owners have an incentive to keep their property well-maintained (what HUD is calling “market discipline”). This issue is focused on the current Section 8 project-based rental assistance program. Thus, if a resident in a Section 8 project-based property wanted to move, the resident would take their rental subsidy to a new unit in a different property.

HUD expressed the opinion that owners of subsidized housing should operate on the same basis as market rate owners, that is, tenants will move if the property is not well-

maintained. Thus, if a tenant in a subsidized property is not happy with the physical conditions, the tenant could move with their subsidy. Some participants suggested that HUD should be viewing this as a compliance issue, rather than a mobility issue. It was further suggested that if HUD is interested in tenant mobility, they should revise how Fair Market Rents (FMR) are set – using the 40th percentile of rents limits the universe of housing available to Section 8 holders. It was also suggested that more vouchers and more production would further the goal of resident mobility. HUD indicated that they are looking at the FMR system with the objective of moving to more “locally” based rent setting.

There was consensus that allowing resident mobility in project-based properties might be desirable but will be difficult, if not impossible, to achieve without additional vouchers that could travel while leaving the unit-based subsidy in place. Also expressed was the concern of fairness; that people on waiting lists for a voucher or project-based assistance should not be bumped by someone who is already served but choosing to move.

- How to leverage private capital to support preservation and development activities: this area included discussions on rental assistance contract terms, using post-rehab rents in the underwriting process; appropriations risk, market risk, options for mixed-income housing; and allowable returns on investment. There was wide agreement that leveraging private capital for project-based properties would not be possible if the project-based subsidy is permitted to “leave.” Lenders and investors view that situation as highly risky. Some suggestions related to alleviating risk included the creation of a government guarantee or insurance related to appropriations risk on rental subsidy contracts.

HUD intends to review proposals from stakeholders and draft a proposed program over the course of 2010. HUD was asked how this initiative relates to the Section 8 Voucher Improvement Act (SEVRA), which is still pending in Congress. HUD said that these are parallel efforts. NAHB staff would like input from members on these issues. In addition, several of the housing industry trade associations expressed an interest in submitting some joint recommendations to HUD.

HOME Investment Partnerships Program – Possible Regulatory Revisions

HUD is holding a series of meetings with stakeholders to solicit input on possible regulatory improvements to the HOME program. HUD also plans to hold a webinar on this topic in the near future. The last major revision to the HOME programs regulations occurred in 1996. HUD said the plan is to issue a proposed rule sometime this year.

NAHB staff participated in one of the meetings on January 14, 2010. HUD asked participants (most in attendance at this meeting were Participating Jurisdictions at the state level; there were also a few Community Housing Development Corporations (CHDOs)) to focus on five specific areas: CHDO performance; foreclosure crisis (preventing future use of HOME for refinancing of sub-prime and predatory loans or receiving down payment assistance for use with such loans); identifying obstacles to using HOME for transit-oriented development; using HOME for energy

efficient improvements; and what property standards should be used for the rehabilitation or development of HOME-assisted units. After discussing these topics, HUD asked participants if there were other areas that should be reviewed.

Highlights of the discussion:

- HUD is seriously concerned about the lack of performance by CHDOs; some CHDOs have held reservations for HOME funds for years without ever developing a single unit of housing. The participating jurisdictions offered a number of solutions, including requiring competitive applications with identified projects; providing more and better technical training; and encouraging CHDOs to work with for-profit development partners to help increase their capacity and become more experienced.
- HUD has found that HOME funds were used as downpayment assistance or to help refinance predatory or subprime loans, which eventually went into foreclosure. They asked for suggestions on how to ensure that HOME funds are used for sustainable housing. Suggestions included: require homeownership counseling by a HUD-approved counselor; require the use of identified lenders who are familiar with the program; do not allow subordination of the HOME loan.
- Participants identified obstacles to using HOME for transit-oriented development: cost and availability of land; Davis Bacon requirements (HOME funds trigger Davis Bacon for the entire project) which raises the cost, especially for higher density, mid to high rise housing; environmental review requirements (e.g., proximity of train tracks causes environment issues, but the whole point is to be close to transportation); and the small amount of HOME that typically goes into the total financing of a project.
- Participants identified obstacles to using HOME funds for energy improvements: the cost of energy audits; the availability of energy raters (some states have few or no raters); the cost and complexity of energy audits for multifamily properties; the cost of obtaining a green standard certification (e.g., LEED).
- Participants discussed the difficulty of identifying a property standard, because there are different codes and standards used with other housing finance programs that are used with HOME. There was clearly a lack of understanding of the difference between a property inspection standard (such as HUD's Housing Quality Standards or the REAC inspection standards) and what a "rehab" standard might be.
- Other issues identified by participants: the need to streamline/eliminate duplicative property inspections; the need to review how HOME and LIHTCs could work better together; removal of the Section 8 hold harmless rent policy now being contemplated by HUD's PD&R department and its impact on HOME rents; the complications for compliance caused by different rents in HOME/LIHTC properties.