

HUD's Untold Preservation Story

BY BILL KELLY

While public attention has been focused on sweeping legislative initiatives, the Department of Housing and Urban Development (HUD) multifamily team, under the leadership of Secretary Shaun Donovan and Deputy Assistant Secretary for Multifamily Housing Carol Galante, has quietly put in place a stronger framework to preserve the affordable housing inventory using existing statutory authorities. The individually modest-seeming changes have the ability to unlock the entrepreneurial energies of preservation owners and purchasers by removing outdated barriers to business.

The complexity of the 20-plus subprograms under which assisted housing has been financed over decades makes any effort to modernize program guidance a daunting task. Galante created a senior role to lead the charge and recruited Margaret Salazar, who formerly executed complex preservation transactions as production chief in San Francisco. Salazar and the multifamily team are painstakingly scoping the limits of HUD's legal authorities and combing through regulations, handbooks, notices, and waiver authorities with a preservation eye.

Key results to date include a policy favoring 20-year Housing Assistance Payments program contract renewals and affordability restrictions, replacing policy in many offices that favored short-term renewals. Another revision, in Housing Notice 11-05, lays out principles for the deferral of flexible subsidy debt in connection with the sale or refinancing of a project for long-term preservation, clarifying both the applicable standards and the waiver process. For low-income housing tax credit rehabilitation, the Notice permits seller financing for the difference between the new appraised



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HUD also has provided new tools to recapitalize the aging portfolio of Sec. 202 properties. Notice H 2010-14 allows sponsors to refinance old low-interest 202 loans even where no debt service savings is anticipated, Notice H 2010-26 permits the subordination of 202 loans to new financing, and we anticipate that HUD will provide additional flexibility as it moves to implement the Sec. 202 Supportive Housing for the Elderly Act of 2010.

Sec. 202 and other HUD-subsidized projects will benefit from Notice H 2011-03, which allows sponsors to combine chronically vacant efficiencies into larger units responsive to today's market sensibilities. Under serious consideration is a policy that would incentivize transfers to stronger owners by allowing Sec. 202 sponsors to retain sale proceeds. On the debt side, the Federal Housing

Administration is revising its underwriting guidance to encourage loans to preserve projects with precious Sec. 8 contracts, and we anticipate changes later this year to allow owners to finance more significant rehabilitation than previously allowed under the Sec. 223(f) program.

Some reforms are not profound policy breakthroughs, but cost-saving process changes that streamline HUD's asset management and maintain owner commitment. For example, Notice H 11-08 allows contributions to pension plans for management agent employees who work at multiple properties. And field offices were given greater authority to schedule REAC inspections, to avoid scheduling during rehabilitation.

Reportedly nearing completion is a preservation-friendly revised Sec. 8 Renewal Guide. HUD's draft would allow nonprofit owners to retain cash flow generated from more efficient management and to use some of this cash flow on other properties in their portfolios. Elimination of the tax credit rent cap for projects rehabilitated under Chapter 15 would facilitate recapitalization. Separately, HUD is reworking the Asset Management Handbook to allow New Regulation Sec. 8 projects to have broader access to residual receipts for uses including cost-saving energy conservation measures.

Much remains to be done. For example, HUD should exercise its authority to extend the period in which it permits assignment or forgiveness of mark-to-market debt to nonprofit purchasers, eliminating an artificial, self-imposed deterrent to preservation. But the progress to date and the announced "to do" list reflect a serious and refreshing commitment to reducing regulatory impediments to preservation. ■

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