

## HUD Notice on Monitoring Public Housing Development Transactions June 29, 2007

On June 20, HUD issued PIH Notice 2007-15 (the "Notice") clarifying how certain HUD rules apply to PHA-affiliated entities involved in development activities. We separately summarized that guidance. Here, we summarize the Notice's reminders about basic public housing development rules that apply to all development activities, regardless of whether affiliated entities are involved, and to HUD's intended monitoring approach for both affiliate and general development issues.

**The Notice Contains Compliance Reminders, Including Need to Obtain HUD Approval For Certain Activities.** HUD issued the Notice, in part, to respond to an OIG report questioning whether PHAs were complying with basic public housing development requirements when dealing with affiliated entities. The Notice reminds PHAs that:

- In general, HUD permission is required before a PHA can mortgage or grant a security interest in public housing assets.
- Prior HUD approval is required to pledge future allocations of Capital Funds to support a borrowing to finance physical improvements or development.
- HUD must approve public housing expenditures for mixed-finance public housing development.
- The ACC requires that PHAs follow HUD rules when disposing of public housing assets even when transferring property to an affiliated entity.
- The ACC limits expenditures from a PHA's "General Fund" to paying operational and development costs of public housing, purchasing HUD-approved investment securities, and other expenditures authorized by HUD.

**HUD Will Review the Audited Financial Statements and the PHA's Plan.** HUD will monitor PHA development transactions, including in hot-button areas such as procurement, encumbrances and dispositions, and improper cost allocations. Transactions previously approved by HUD are not subject to further scrutiny or investigation. In its monitoring efforts, HUD will first focus on disclosures made by the PHA in its audited financial statements and PHA plans. If this review indicates potential non-compliance – for example, if the audit reveals a bank loan secured by public housing assets that HUD had not approved – HUD will investigate further.

**HUD May Allow Cures or Require Enforcement of Non-Compliant Transactions.** In cases of non-compliance, HUD may require the PHA to reimburse (or cause reimbursement of) any improperly spent PHA funds, or to unwind any improper development activities. For example, if HUD finds that a third party developer misspent HUD funds, the PHA will need to pursue the developer for reimbursement. HUD could also require a PHA to revise or terminate executed agreements, or stop an ongoing development process. Further, HUD may choose to pursue an enforcement

action, which presumably includes referring the matter to the Enforcement Center for further prosecution.

**The Notice Includes a Monitoring Checklist for Affiliated Entity Issues.** The attached Affiliate/Instrumentality Reference Sheet (the “affiliates checklist”) applies to HUD review of affiliated entities. The Notice does not have a checklist for the non-affiliated monitoring issues. The affiliates checklist states that no investigation is required where:

- The PHA does not have any Instrumentalities or Affiliates; or
- No public housing funds have been used, and Affiliates or Instrumentalities have not conducted public housing development activities; or
- HUD previously approved the development activities.

But, HUD will investigate:

- Basic facts about the Instrumentalities or Affiliates;
- Whether formation costs were properly paid for;
- The cost allocation arrangement between the PHA and its affiliated entities;
- Compliance with Generally Accepted Accounting Principles, if required; and
- Procurements of and by Affiliates and Instrumentalities.

As with all PHA activities, PHAs should keep good records to easily respond to HUD reviews so that evidence of compliance is easily available.

**Please call or email any of the Reno & Cavanaugh PLLC attorneys below to discuss the Notice.**

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