



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF MULTIFAMILY HOUSING ASSISTANCE RESTRUCTURING

DATE: March 23, 2004

TO: Production Offices and PAEs

cc: Ted Toon, Portfolio Manager
Genevieve Tucker, PAE Management Coordinator

FROM: Charles H. Williams, Director

SUBJECT: Tenant Meetings, Notices, and the Outstanding Public Interest Survey Performance Incentive Fee

PURPOSE

This purpose of this memorandum is to:

1. Remind the Production Offices and PAEs of the need to adhere to the requirements in the Operating Procedures Guide (OPG), Chapter 3, relative to providing notice to tenants, local government officials, and all interested parties (collectively the "Tenant Stakeholders"), conducting tenant meetings, and making materials available to Tenant Stakeholders.
2. Remind the Production Offices and PAEs of the requirements in the OPG, Appendix L, Section III, relative to addressing the Tenant Stakeholder comments in the Restructuring Plan submission package.
3. Introduce a revised Form 3.3 Notice of 1st Restructure Plan Consultation/ Tenant Meeting. The revision is intended to clarify that the M2M restructuring will not impact the amount of rent the tenant pays. This change is effective for all projects for which the notice of the first tenant meeting is distributed subsequent to the date of this memorandum.
4. Change the requirements for sending the Form 3.5 Notice to Tenants of the Completed Restructuring Plan or Other Conclusion and the Form 3.6 Notice to Local Government Officials of the Completed Restructuring Plan, to have it sent after closing or expiration of the appeal rights on an Action Other Than Closing. This change is effective immediately.
5. Clarify the requirements that must be met for PAEs to earn the Outstanding Public Interest Survey Incentive Fee (as defined in the Portfolio Restructuring Agreement, Exhibit 5, note 7). This change is reflected in a PRA Amendment of this date, and is effective for all projects for which the Notice of Second Tenant Meeting is distributed subsequent to the date of the PRA Amendment.

TENANT STAKEHOLDER INTERACTION

The OPG contains specific direction on the requirements for providing the notices of tenant meetings, conducting tenant meetings, making information available to tenants, documenting attendance at tenant meetings, and summarizing and addressing comments received from Tenant Stakeholders in the Restructuring Plan. (Please refer to Chapter 3, Section 3-9, Appendix E, and Appendix L, Section III). PAEs are reminded of the following highlights and advised of these changes introduced in this guidance.

1. REMINDERS:

- a. Form 3.7, Resident Feedback Form, must be used in all Second Tenant Meetings (form originally provided on the Resource Desk; revised form attached hereto). PAEs may use additional survey forms to obtain tenants' comments about the property and its management, but the Resident Feedback Form must be used at a minimum.
- b. Materials provided to the Tenant Stakeholders must have certain owner and financial information redacted (refer to the OPG, Appendix E, for guidance).
- c. Ensure each Full Restructuring Plan submission contains the information required in Section III, Appendix L, of the OPG, relative to providing information on the first and second tenant meetings and addressing how tenant comments were considered in the proposed Restructuring Plan.

2. CHANGES:

- a. The revised Form 3.3 must be used for all first tenant meeting notices prepared after the date of this memorandum.
- b. The Forms 3.5 and 3.6 are to be sent to the appropriate parties within 10 calendar days after closing of the restructuring or expiration of appeal rights on the AOTC determination. In the event of a closing, a brief narrative must be attached to the form outlining any changes from the Restructuring Plan shared with Tenant Stakeholders at the Second Tenant Meeting. This change supersedes the requirement to send the Forms 3.5 and 3.6 following the owner's execution of the Restructuring Commitment or within 10 calendar days after the AOTC determination.
- c. When preparing Forms 3.5 and 3.6, PAEs are to select one of the available options to indicate the status of restructuring. PAEs should not provide additional explanatory text. Revisions to these forms (to effectuate the change described below) are being introduced with this memorandum and are attached for your immediate use.

OUTSTANDING PUBLIC INTEREST SURVEY INCENTIVE FEE

As a result of recent audits, it has come to our attention that there is inconsistency in the treatment of this incentive fee. Consequently, it has been determined that the documentation requirements need clarification and the approval process needs to be strengthened.

The PAE can only earn the Outstanding Public Interest Survey Performance Incentive Fee after conducting both the First and Second Tenant Meetings and OMHAR's approval of the Restructuring Plan (or recommendation to AOTC). Those assets that are completed before conducting the Second Tenant Meeting and developing the Restructuring Plan are not eligible for this incentive fee.

Based on the PRA requirements (as amended in PRA Amendment of this date), the PAE's ability to earn the Outstanding Public Interest Survey Performance Incentive Fee is dependent on OMHAR's determination that the PAE has

“. . . provided outstanding service in addressing the tenants' questions and concerns regarding the Debt Restructuring and has protected the public interest regarding promoting the availability of decent and affordable housing. Determination will be based upon Director's review of tenant responses to surveys distributed by PAE in tenant meetings and/or other information that may be available; and the PAE's certification of compliance with the Guide requirements, as may be modified from time to time, regarding tenant and local community notice and participation. (Portfolio Restructuring Agreement, Exhibit 5, Note 7)

In order to earn this incentive fee, the PAE must: certify to those items in Section B of Form 3.8, PAE Certification for Outstanding Public Interest Survey Performance Incentive Fee Form ("PAE Certification"), which states that the PAE has complied with the requirements in Chapter 3 and Section III of Appendix L of the OPG (all of which the PAEs should review in its entirety). In addition, Resident Feedback Forms completed by tenants at the Second Tenant Meeting and comments, if any, received from Tenant Stakeholders must be generally favorable. As with all PAE invoices, the certifications and supporting materials are subject to audit by OMHAR.

When invoicing for this fee,

1. The PAE must complete Sections A and B of the PAE Certification; attach all Resident Feedback forms, all comments provided by Tenant Stakeholders, and the PAE's invoice; and send the package to the Invoice Specialist. The Invoice Specialist will log in the invoice and provide the package to the Relationship Manager (RM) for review and approval. If for some reason the PAE cannot certify to all the items in Section B, an explanation must accompany the form.

2. The RM must complete the review within three business days to ensure timely processing of the invoice. If there are no negative comments about the PAE's performance on the Resident Feedback forms or in the Tenant Stakeholders' comments, the PAE has certified to all items in Section B of the PAE Certification, and the RM has no cause to question the PAE's performance, the RM will sign the form in Section C evidencing to OMHAR's Invoice Specialist that the PAE is entitled to payment of the fee and return the entire package to the Invoice Specialist for processing.
3. If there are any negative comments about the PAE's performance on the Resident Feedback forms or in the Tenant Stakeholders' comments, and/or if the PAE has not certified to all items in Section B of the PAE Certification for Outstanding Public Interest Survey Performance Incentive Fee Form, and/or if the RM has cause to question the PAE's performance, the RM will research the matter and make a determination whether to approve or decline the payment of the performance incentive fee. The RM must justify the decision in writing. If it is determined that the PAE is not entitled to this incentive fee, the RM must return the Form to the PAE, along with the written justification supporting the decision, and must notify the Invoice Specialist of the need to adjust the PAE's invoice accordingly.

CONTACTS

Questions about this memorandum should be directed to Genevieve Tucker, PAE Management Coordinator, by email at Genevieve_A._Tucker@HUD.GOV, or by calling 202-708-0001, extension 3754.