Article

Government Shutdown Could Undercut Stability in the Multifamily Market

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As the government shutdown continues, landlords and tenants receiving subsidies under Section 8 from the Department of Housing and Urban Development find themselves in a precarious position. HUD provides two key types of subsidies: project-based rental assistance (PBRA), where HUD directly contracts with landlords to open up specific properties to low-income tenants; and tenant-based vouchers, where the housing subsidy is tied to the tenant rather than the rental property unit. Both types have been caught in the political crossfire.

Properties receiving PBRA subsidies have been hit hardest to date. HUD can't renew expiring PBRA contracts during the shutdown. To put this into context, the average PBRA contract covers 52 tenancies. Already, sources estimate that more than 1,150 PBRA contracts, which subsidized rent and utilities for approximately 1.2 million households, have lapsed. Another 1,050 PBRA contracts are set to expire by the end of February. A number of these contracts are in Dallas-Fort Worth.

For unexpired PBRA contracts, monthly payments are supposed to continue for the first 30 days of the shutdown. For tenant-based vouchers, if the government doesn't reopen before the end of February, the program will run out of funding before the housing authorities make voucher payments to landlords nationwide when March rents are due. Because there is no firm indication of when the shutdown will end, tenants are faced with the difficult task of very quickly coming up with the portion of their rent normally subsidized by the government.

In the midst of the federal government shutdown, landlords are left in limbo. On the one hand, property owners can evict their tenants en masse when the full amount of rent doesn't come in. HUD has issued a letter asking that landlords instead use their reserve to cover funding shortfalls caused by the non-payment of monthly rent subsidies. Presumably, though, no landlord can operate indefinitely on their reserves. On the other hand, landlords can wait for the shutdown to end and hope that the government eventually catches up on paying subsidies. This option is even riskier for landlords with expired PBRA contracts, as they must also hope that the government renews their expired contract and backdates the renewal. However, there are no guaranties this will occur.

The longer the shutdown lasts, the more likely it is that landlords will be forced to evict tenants for financial reasons. This is especially true for landlords who owe obligations to lenders and who may have difficulty servicing their debt without the full rental income. However, landlords may face a number of additional challenges, including:

- An overloaded system: Although eviction proceedings in Texas receive priority settings, there are only so many Justices of the Peace. If landlords with expired or unpaid PBRA contracts start evicting large groups of tenants, it could put a huge strain on the judicial system

- Increased complexity: Evictions are highly technical and require strict compliance with the Texas Property Code. Evictions involving HUD or Section-8 housing are even more complex and involve federal regulations, as well. The nature of these complexities will depend on the type of assistance at play. On top of these federal regulations, most landlords receiving HUD-assistance payments have a contract with HUD and/or an addendum to their leases with individual tenants that imposes additional obligations for the landlord. For example, the eviction may require getting the local Public Housing Authority involved. A failure to follow these additional requirements will, at best, likely result in delay with the landlord having to go back and start the process over again. However, the failure to properly terminate a Section-8 tenancy can actually expose the landlord to additional liability from a wrongful eviction suit, bad press, and a lengthy entanglement with local and federal agencies
- Significant logistical hurdles: If the average expiring PBRA contract covers 52 tenancies, this means that the average landlord would have to handle 52 separate evictions, likely in the same very-short time frame.Each eviction will require notices created, delivered, and documented appropriately; eviction petitions filed and served; eviction trials with a property manager present; and writs of possession obtained and executed where law enforcement removes the tenant and delivers possession of the property back to the landlord, which requires coordination with the sheriff or constable.

Regardless of which option landlords pursue, they risk losing significant sums of money. If they wait on the government, they lose rent income in the interim, at the very least, with no guaranty of recoupment. If they choose to evict, they have to pay filing fees, service fees, writ-of-possession fees, and constable fees. Then, once landlords recover possession of a property, they still have turnover time before they find and start receiving income from new tenants. Amidst the confusion created by the shutdown, one thing is clear: the time to prepare is now.

The full article can also be viewed here.

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