

October 6, 2010

Ms. Gail Williamson
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Office of Housing Assistance and Grant Administration
U.S. Department of Housing and Urban Development
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RE: Draft Changes to the Section 8 Renewal Guide July 2010 (As Revised)

In General

The National Affordable Housing Management Association (NAHMA) appreciates this opportunity to comment on HUD's Draft Changes to the Section 8 Renewal Guide. After reviewing the draft guide and seeking input from our members, NAHMA believes HUD has proposed a number of positive changes. There were, however, several sections for which our members requested clarification. The requested clarifications and comments on specific sections are detailed below.

Comments

Section 2-5.B.1 (Rent Comparability Study [RCS]). The section indicates that by statute, the RCS is valid for five years from the date the owner's appraiser signs the HUD-92273-S8, Rent Comparability Grid.

Please clarify whether the five-year term of the RCS also applies to Annual Adjustment Factor (AAF) rent increases processed under HUD Notice H97-14.

Section 2-7.A (Contract Terms). NAHMA strongly agrees with HUD's statement, "The Department believes long-term, multiyear contracts assist in preserving affordable housing." Our members' experiences confirm that the lending community looks more favorably on long-term Section 8 contracts for underwriting purposes. Long-term renewals, especially the 20-year contracts, will greatly assist the efforts of owners and agents to secure favorable lending terms to finance rehabilitation and/or preservation of affordable properties.

Section 2-12.C. (Waiver of the Prohibition on Distributions for Nonprofit Owners). The draft guide would allow HUD, at the owner's request, to grant regulatory waivers of the prohibition on distributions for nonprofit owners. Waivers would be granted on a case-by-case basis for individual projects and would survive conveyance to another nonprofit owner. The nonprofit owner must establish good cause by describing how the distribution will be used to further its nonprofit mission and specifically how its mission would benefit the tenants in the property or HUD (by increasing neighborhood services, developing more affordable housing, etc.). According to the Department, "The waiver is designed to further the preservation of the low-income housing stock...."

Feedback from our members suggests this change may give nonprofit owners access to a valuable source of revenue that can be retained, and in turn, used to build or preserve more affordable housing. We believe this policy will benefit efforts to preserve affordable housing.

Section 2-12. D.3.b. (Increased For-Profit Owner Distributions Partially-assisted Section 221(d)(3) BMIR, 236, and RHS Section 515/8 properties). The draft guide indicates that the owners of these properties are eligible for an increased distribution on the Section 8 units.

Please confirm that the increase in distributions continues even if the owner selects a different renewal option after the expiration of the Mark-Up-to-Market contract. For example:

- a. If the owner selects Option 2, OCAF after the Mark-Up-to-Market contract expires, and the RCS rents are higher than the current contract, would the increase in the limited dividend as a result of the previous Mark-Up-to-Market contract still continue unchanged?
- b. If the owner selects Option 3, and the rents are reduced to market, would the owner still be able to retain a portion of the increase in limited dividend from the prior Mark-Up-to-Market Increase? And would the limited dividend be reduced by the rent reduction, and not be reduced to the original limited dividend level prior to the Mark-Up-to-Market contract?

Section 2-14. (Operating Cost Adjustment Factor). NAHMA feels compelled to raise concerns about HUD's methodology for calculating the OCAF, even though this subject may be beyond the scope of the draft guide. It is essential for HUD to develop an OCAF that accurately measures increases in operating costs. Basing OCAFs on past expenditures bears no relation to current or future funding needs. This methodology does not even necessarily reflect a property's true costs in the past; it only reflects what the property was able to spend. To preserve affordable, financially viable properties for the long-term, HUD should revisit its method for determining the OCAF, with emphasis on timely application and an accurate representation of operating cost increases.

Section 2-15.A.2. (Vacancy Loss Rate for Budget Based Rent Increases). NAHMA members' feedback on the budget based vacancy instructions ranged from "extremely confusing" to "unworkable."

We urge HUD to revise this section to provide specific, clear and consistent instruction. For example, Section 2-15.A.2. states, "For profit and nonprofit owned projects with 100 percent section 8 may include a vacancy loss rate of **3 percent in the budget.**" (Emphasis added.) Please clarify this vacancy rate percentage. First, typical multifamily projects build budget-based adjustments with a five percent vacancy loss. The paragraph seems to reduce the vacancy loss rate promised to for-profit owners in their original agreements with HUD from five percent to three percent. Secondly, members were unsure how this paragraph applies to Section 202/8 properties. Under current HUD policy, Section 202 projects have no allowance for vacancy loss. It appears that paragraph 2-15.A.2 would allow 202 properties to use a three percent vacancy allowance, but *only if* the property is 100 percent Section 8. For Section 202 properties that are partially assisted with Section 8, members were unclear whether these properties may also use 3 percent vacancy, or if they must continue operating at zero vacancy. Finally, paragraph 2-15.A.2 is inconsistent with the description found in the explanation of changes in paragraph 2.H.ii of the Transmittal Notice. The explanation of changes indicated that the guide is being revised in Section 2-15.A.2 to "Allow nonprofit owned projects with 100% Section 8 to include a **vacancy rate of 5 percent in the budget.**" (Emphasis added.)

Section 2-15.A.3.a.2. (Establishing Budgets for Budget-Based Rent Increases). NAHMA supports this paragraph, which allows nonprofit owners of old regulation or LMSA contracts to include a six percent return on initial equity in the budget. We also believe this change may compliment the benefits of the Waiver of the Prohibition on Distributions for Nonprofit Owners described in Section 2-12.C.

Section 2-15.C. (Cost of Low Income Housing Tax Credit [LIHTC] Compliance Reports). Found in the budget-based rent increase section, this paragraph allows projects with LIHTCs to

include in their budgets the cost of the annual compliance reports that must be submitted to the tax credit allocation entity. NAHMA welcomes this change as a positive step in the right direction.

Nevertheless, HUD should take additional steps to assist mixed-financed properties that do not currently have the option to request budget-based rent increases. Without the equity from the tax credits, many of the preserved HUD properties may have opted-out, defaulted on their mortgages or fallen into physical disrepair. Our members report that the cost of LIHTC compliance grows significantly every year. NAHMA strongly urges HUD to rescind all of its policies that prohibit owners and agents from treating mandatory LIHTC compliance fees and related charges as eligible project expenses.

Section 2-16.A.2.c. (Processing Renewals – Checking DUNS Number). The Draft Guide instructs, “The PM/CAs must check the DUNS Number to assure the Owner is in good standing” during the contract renewal process. However, there is no DUNS number requirement at this time. This mandate should be removed or modified to reflect the requirement has not yet taken effect.

Section 2-16. A.2.i.5. (Processing Renewals – Preparing a Contract Renewal). The paragraph instructs HUD staff or contract administrators to, “Affix the DUNS Number to the contract,” when preparing a contract renewal. At this time, not all properties will have this number because the requirement for a DUNS number has not taken effect. This mandate should be removed or modified to reflect the requirement to have a DUNS number has not yet taken effect.

Section 2-16.B.1.b. (Rent Schedule Form HUD 92458 Submittals). This part of the draft guide indicates that the owner submits the Rent Schedule for annual rent adjustments for Multiyear contracts. Please clarify whether the rent schedule should reflect the proposed rents per the OCAF worksheet, and be completed and signed by the owner, or whether the rent schedule should be submitted as an unsigned “draft.”

Section 2-16.B.2.b. (Cap on Rent Adjustments). Here, HUD establishes that the OCAF-adjusted Rent Comparability Study as the ceiling on rent adjustments—including budget-based rent increases. NAHMA members have concerns about how each of these factors—the RCS and OCAF—are determined.

First, determining whether a rent is “comparable” can be a matter of serious disagreement. A long-standing concern has been whether comparable market rents could be determined to include the types of services provided at the assisted properties. Likewise, rural properties have difficulty determining comparables because there are few, if any, market-rate rental properties in the same location.

As we noted in Section 2-14, NAHMA is concerned that the current OCAF does not reflect true operating cost increases. The situation becomes more problematic if the OCAF-adjusted RCS is the ceiling for all rent adjustments. For example, some of our members reported that their properties’ original mark-to-market underwriting overestimated rent revenue and underestimated expenses. The challenge of maintaining financial viability of these properties is made more difficult when the OCAF is based on the amount of money properties *were able to spend*, rather than true cost increases. Likewise, we have asked HUD to provide a mechanism to mitigate unforeseen / emergency operating cost increases. To date, HUD has not pursued these options.

NAHMA believes a more accurate OCAF would help address these situations. However, if the Department insists on holding rents to OCAF-adjusted market comparables, then it must ensure OCAF measures true operating cost increases. In addition, HUD should allow properties to offset cost increases by charging reasonable fees, which are consistent with standard industry practices for market-rate rentals.

Section 2-16.B.3. (Tenant Notifications for Rent Increases). According to this paragraph, “Tenant Notification under 24 CFR Part 245 is not required for OCAF rent adjustments but is required for budget-based rent adjustments.” NAHMA supports this clarification for OCAF increases.

We also urge HUD to provide further guidance about whether the tenant posting notices are required for Annual Adjustment Factor (AAF) or Mark-Up-to-Market rent increases. Our members report inconsistent direction from HUD field offices and contract administrators on notice requirements for these programs.

Section 2-17. (DUNS Number). The draft guide states, “All project owners and parent entities receiving monthly rental assistance were required to register with Dun & Bradstreet and obtain a Data Universal Numbering System (DUNS) Number by December 31, 2009.”

We respectfully observe that HUD did not issue an official notice requiring owners to have a DUNS number (regardless of whether they received ARRA funds) by December 31, 2009. The section then instructs owners, HUD field staff and contract administrators to include the DUNS numbers on certain documents and in iREMS. This section should be modified to reflect that HUD had no official requirement for all project owners to have a DUNS number by the end of last year.

Section 3-7. (Option 1 Renewal Requests). As part of the renewal request for Option 1, Mark-Up-to-Market, the owner must submit “a detailed description of any proposed repairs and related costs.”

Please clarify the timeframe for such repairs. For example, are these repairs anticipated in the next 12 months?

Section 6-3.B. (Budget-Based Rent Adjustments for Multi-Year Contracts). Revisions to this section permit budget-based rent adjustments in a multiyear contract *only if* the owner submits an RCS and the proposed rents do not exceed comparable market rents.

NAHMA members are concerned about how this provision will be applied to the Section 202, Section 811, and Section 515 projects, which fall under Option 4. For example, the rents at renewal for a Section 202 property will be based on the lower of OCAF or BBA. If two years later, there is a significant increase in insurance or utility costs, the owner must have an RCS done, and any rent increase will be limited to comparable rents. This scenario will be a problem if the reason the property initially used Option 4 was because it needed “exception rents” to operate.

Section 11-4.B.3. (Translating Notices). This paragraph states, “If the population of the property speaks a language other than English, Owners are encouraged to provide the notification letters [one-year notification to tenants of the Section 8 contract’s termination/expiration and the owner’s intent to renew or opt-out] in the appropriate languages.”

HUD has done an excellent job of translating key documents for individuals with limited English proficiency. NAHMA strongly urges HUD to continue building its library of translated documents by providing the following tenant notification letters in the 14 most common languages (including English) used in the multifamily portfolio:

- Appendix 11-1 “One-Year Notification Letter—Owner Does Not Intend to Renew;”
- Appendix 11-2 “One-Year Notification Letter—Owner Intends to Renew;”
- Appendix 11-3 “150-Day Notification of Prepayment Letter for LIPHRA and ELIHPA projects; and
- Appendix 11-4 “OAHP Second Notice of Opt-Out—120 Day Notice to Tenants.”

Section 11-4.C. (Sample One-Year Notification Letter). The paragraph incorrectly identifies the sample one-year notification letter to tenants when the owner decides to opt-out as Appendix 11-2. The correct opt-out notice is Appendix 11-1.

Conclusion

Thank you for considering NAHMA's comments. Please do not hesitate to contact me or Michelle Kitchen, NAHMA's Director of Government Affairs, if you would like additional information with respect to NAHMA's comments.

Regards,

A handwritten signature in black ink, appearing to read "Kris Cook".

Kris Cook, CAE
Executive Director