

May 14, 2014

Via Electronic Submission: Section8RenewalGuide@hud.gov

Department of Housing and Urban Development
451 7th street, S.W., Room 6134
Washington, DC 20410-0500

Re: Section 8 Renewal Policy Guide – Proposed Revision

Dear Sir or Madam:

On behalf of the undersigned organizations, please accept our comments on the Section 8 Renewal Policy Guide Book. Our organizations represent for-profit and nonprofit housing owners, developers, managers, lenders and valuation professionals involved in the provision of affordable rental housing. Our members are appreciative of the U.S. Department of Housing and Urban Development's (HUD) effort to provide a comprehensive approach to preserving affordable housing.

The Section 8 renewal guide is a pivotal document that is used by HUD staff, contract administrators, housing providers, appraisers and other professionals to process the renewal options and understand the policies related to Section 8 Housing Assistance Payment (HAP) contracts that have been renewed or will be renewed under the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRAA). We appreciate HUD's continued efforts to ensure that this document is accurate and represents congressional intent. However, we have identified several issues related to the proposed changes which raise significant concerns among our collective memberships.

We have limited our comments to several key concerns. Comments on other guidebook provisions will be submitted individually by several of the undersigned organizations.

I. Proposed Changes to Chapter 9 (Rent Comparability)

HUD is proposing the use of raw census data as a comparison of proposed renewal rents established by an owner contracted Rent Comparability Study (RCS) for the purposes of determining whether a second HUD-contracted RCS is warranted. In announcing the proposed change, HUD states:

"...that research by the Department has shown that market rent estimates, as determined by an owner's RCS, are often higher than market rent estimates, as determined by a RCS secured by the Department. In May 2012, the Department issued new guidance to require appraisers to provide additional justification if the gross rent potential in the RCS exceeded 110 percent of the Fair Market Rent (FMR) in rural areas or the Small Area Fair Market Rent (SAFMR) in urban areas.

The Department's industry partners provided significant feedback regarding this new guidance, citing policy and technical concerns. In light of these considerations, the Department suspended implementation of the guidance in order to more thoroughly consider how best to address the Department's concerns regarding rent levels reflected in owner's RCSs.

After further consideration, including consultation with HUD's Office of Policy Development, and Research (PD&R), the Department proposes to implement a revised benchmark against which owner RCS rents can be assessed. As a preliminary matter, the Department believes the most reliable benchmark is a market-based, rather than a FMR-based, measure. Further, HUD believes that the most comprehensive market-based benchmark would be median gross rents, as determined and as published by the United States Census Bureau or some other comparable source. HUD considers these rents comprehensive because they are available for every zip code within the United States. The new guidance would require a comparison of the rents in the RCS to a market-based benchmark (i.e., median rent estimates published by the United States Census Bureau or other comparable source), should RCS rents exceed 110 percent of the median rents for the zip code area. Should this be the case, HUD will order a third party RCS and undertake a comparison of the RCSs."

Our organizations oppose using the benchmark as proposed above. Median gross rents, as determined and published by the Census, do not reflect market conditions because they are based on outdated information and are not adjusted for inflation. We strongly believe that HUD's costs will rise due to the number of RCSs that will be triggered by the proposal to require an RCS when the market rent proposed by the property owner exceeds 110 percent of the median gross rent for that zip code. We commissioned research, described in further detail below, which supports this conclusion.

We also object to HUD's proposal to eliminate the ability of the owner to appeal an RCS and review a copy of HUD's RCS. If the objective is to preserve housing, it is important that the rent established be a true comparable market rent. The lack of due process suggests that HUD is attempting to force rents that are below the comparable market.

HUD's expansion of the current "no appeal" policy in Option 1 (mark up to market) situations to the other renewal options fails to recognize that a flawed study by either appraiser could result in a significant rent reduction that would threaten the viability of the property. HUD should allow the owner to request a copy of the HUD-contracted RCS, and where there are large discrepancies; permit both appraisers to discuss their results. It is not uncommon for there to be errors in square footage, transposition errors, the disallowed use of assisted units as comps, etc.

Methodology Concerns

Our main concern centers on the use of unadjusted gross median rent data by zip code from the American Community Survey (ACS). We feel that the use of this data point is not representative of today's actual market rents for many reasons, including:

- The most recent ACS data by zip code are 5-year estimates based on data collected from 2008 through 2012, and the Guidebook makes no provision for even a basic inflation adjustment. As a result, the rent comparisons **will be based on rent data two to six years old**, which will be virtually three to seven years old by the time new 5-year ACS estimates are available.
- **The Guidebook fails to include instructions for users when there is no median gross rent for the zip code available.** There are limited instructions on downloading the median gross rent data from the ACS. For example, if the median gross rent for a given zip code is over \$2,000 per month, American FactFinder (Census' data output tool) simply reports the rent as "\$2,000+". For some high-cost areas, that number could be significantly higher than \$2,000 per month. In addition, there are many zip codes where the sample size is insufficient to report any median gross rent at all.
- **The ACS median gross rents specified by the Guidebook are tenant-reported rents, not asking rents.** Tenants could have been living in a unit for many years, and their rent could be significantly lower than the unit would rent for if it were on the market as a vacant unit. ACS summary files do include median gross rent by year the tenant moved into the unit, and in theory this could be used to alleviate some of the problem, but the Guidebook provides no instructions on this, and it would greatly exacerbate the small sample and missing observation problems.
- **Median gross rents specified by the Guidebook are not separated by housing type or size of the housing unit** - by using the aggregated tables, a studio apartment's rent and a five bedroom single-family house's rent would be given the same weight. Again, ACS summary files provide some information that could theoretically be used to adjust for this, such as aggregate gross rent by units in structure, but this also would tend to exacerbate small sample problems, and the Guidebook eschews such complications by simply specifying the broadest possible measure of median rent based on units in all types of structures—including manufactured housing, recreational vehicles, those that lack complete plumbing or are otherwise physically inadequate, and those receiving any form of government subsidy.
- **The trade groups commissioned research from MPF Research, a private provider of data on apartment (investment-grade rental units in buildings with five or more units) market conditions throughout the country.** The median gross rents from the 2008-2012 ACS 5-year estimates for zip codes in 23 metropolitan areas were compared to the average rents that MPF Research collected in the first quarter of 2014. Median gross rent data were collected from the American FactFinder tool as described in the Section 8 Guidebook. A wide variety of metropolitan areas were chosen, ranging in size and demographics. For each zip code, MPF compared their average gross rent to the ACS median gross rent and recorded the percentage difference. Zip codes that had a non-disclosable median gross rent from the ACS, zip codes that had only "\$2,000+" recorded as their median gross rent, and zip codes where MPF

did not have a large enough sample were excluded from the analysis. The number of zip codes for each percent difference was then aggregated, as shown in the attached tables.

MPF's analysis found varying results depending on the metropolitan areas. Many of the concerns explained above could be a reason for this, and not necessarily the same reasons in every case. One overall finding, however, is that rents available in the private market are different from the rents reported in the ACS. For many of the metro areas, a significant number has a difference of 10 percent or greater, meaning that they would exceed the 110 percent benchmark set forth in the Section 8 Guidebook.

- **No statistical rationale is given for the 110 percent benchmark.** The accompanying table shows that 110 percent would in many instances require HUD to commission a third party RCS. Our research shows that 140 percent is likely a more reasonable benchmark. In high-cost markets, it may be necessary to establish a different benchmark.

Recommended Rent Comparability Policy Changes

- We believe HUD's proposal is conceptually a good faith effort to devise a benchmark that has some ties to the market. However, as noted above, we believe that HUD's proposed benchmark is flawed. **If HUD proceeds with using this benchmark, however, we predict that HUD-contracted RCSs will be the norm and not the exception.** We are not aware that HUD has the resources to pay for such a high number of RCSs or to review them. The data collected by the industry groups suggest that 140 percent of the median ACS data would be more appropriate than the 110 percent suggested in the draft renewal guidebook. Our preference would be to use a better comparison, particularly as there is no evidence that zip codes in any way correlate to real estate markets.
- **A more appropriate comparison would be the actual rents from comparable properties used for the last 10 years trended.** In other words, HUD has rent comp studies submitted by both owners' appraisers and HUD appraisers that could be used to compile a database that field offices could use as a comparison. To set up such a database, HUD could approach various colleges and universities that could accomplish the task by creating a graduate studies project for students. Alternatively, HUD could hire interns to do the data entry. With such data, HUD could determine a reasonable variation from their database rents and proceed with a second RCS when there is a significant deviation.
- **Recognizing that creating such a database, while optimal, would take a year or more, we suggest in the interim another trigger to determine whether a second RCS may be necessary.** We will call it the "five percent test." In other words, if the owners' rent comp study shows that the new proposed rent is five percent more or five percent less than the current rents for

that particular project, the field office could elect to contract for a second rent comp study.

Review Checklists

HUD's proposal specifically authorizes Field Offices and Contract Administrators to develop their own worksheets for completing RCS reviews. We believe that HUD submitted a universal checklist to the Contract Administrators last December for their review. Has HUD finalized that checklist to ensure consistency of reviews? Our preference is that an agreed upon checklist be used.

Effective Date

The proposal indicates that the proposed changes (when finalized) are effective immediately unless noted otherwise in this transmittal. We recommend that the "immediate effect" be tempered with a reasonable time for implementation. A 90- day execution time period for properties just starting the renewal process would be beneficial. For properties already in the midst of a transaction, we recommend that the current rules apply.

II. Chapter 2-3 (C.2)

We are concerned that HUD would deny or condition HAP renewals for fair housing or 504 charges/complaints that have not been adjudicated. Such action violates the Administrative Procedure Act and likely the Fifth Amendment. Further, to risk the housing of other residents not involved in any fair housing or 504 complaint is unwarranted. While the industry has always supported the proper enforcement of the Fair Housing Act, this section should be stricken in its entirety for the reasons noted above. Including any proposed action related to a fair housing or 504 violation in a Section 8 renewal guidebook is not necessary and will only cause confusion. Fair Housing or 504 issues are the jurisdiction of the Office of Fair Housing and the Department of Justice, and decisions related to purported violations should not be subject to a field office or contract administrator's interpretation.

III. Chapter 12

We are unclear why the Section 8 Renewal Guidebook would restate policies that are included elsewhere, specifically related to the Real Estate Assessment Center (REAC). HUD should simply reference the other guidance (e.g. 4350.1 guidance, REAC regulations, etc.). Repeating them creates confusion and suggests that HUD is modifying an existing policy. Not to mention in the future, when HUD does change a REAC or asset management policy, a revision to the guidebook would be necessary also.

We appreciate this opportunity to comment and appreciate HUD's efforts to seek input. If you have any questions, please contact Denise Muha, with the National Leased Housing Association, dmuha@nlha.com, 202.785.8888 or Caitlin Walter, with the National Multifamily Housing Council, cwalter@nmhc.org, 202.974-2343.

Appraisal Institute
Council for Affordable and Rural Housing
Institute of Real Estate Management
LeadingAge
Mortgage Bankers Association
National Affordable Housing Management Association
National Apartment Association
National Association of Home Builders
National Association of Housing Cooperatives
National Leased Housing Association
National Multifamily Housing Council

MPF Research Analysis of Their Median Rent per Zip Code vs Median Gross Rent per Zip Code from the American Community Survey,
 Commissioned by the Real Estate Trade Groups

Preliminary Findings: 110% is not a reliable benchmark- a higher benchmark such as 140% (shown here as 40% to 49%, 50%+) would be more appropriate

Market	50%+	40% to 49%	30% to 39%	21% to 29%	16% to 20%	11% to 15%	6% to 10%	0% to 5%
Atlanta-Sandy Springs-Marietta, GA	2	0	1	6	0	4	3	6
Baltimore-Towson, MD	2	1	0	3	0	2	4	7
Birmingham-Hoover, AL	0	0	2	1	0	0	0	0
Boston-Cambridge-Quincy, MA-NH	20	10	9	9	5	5	1	4
Chicago-Joliet-Naperville, IL-IN-WI	2	3	3	8	5	3	13	16
Cleveland-Elyria-Mentor, OH	5	0	2	0	2	1	1	5
Columbus, OH	0	1	2	0	0	1	3	2
Dallas-Fort Worth-Arlington, TX	2	1	1	4	4	4	7	12
Denver-Aurora-Broomfield, CO	6	2	2	5	2	10	9	12
Houston-Sugar Land-Baytown, TX	4	2	3	5	2	6	7	14
Kansas City, MO-KS	0	1	2	1	1	1	2	3
Los Angeles-Long Beach-Santa Ana, CA	21	5	11	11	7	9	14	20
Nashville-Davidson-Murfreesboro-Franklin, TN	2	0	2	1	0	0	3	3
New York-Northern New Jersey-Long Island, NY-NJ-PA	22	4	2	1	3	4	6	7
Philadelphia-Camden-Wilmington, PA-NJ-DE-MD	2	4	2	2	1	3	8	12
Phoenix-Mesa-Glendale, AZ	2	0	0	1	0	0	1	3
Pittsburgh, PA	5	0	1	1	3	1	1	6
Portland-Vancouver-Hillsboro, OR-WA	4	0	2	1	1	1	6	17
Riverside-San Bernardino-Ontario, CA	0	0	0	0	0	1	2	5
Seattle-Tacoma-Bellevue, WA	11	2	5	4	2	7	8	8
Tampa-St. Petersburg-Clearwater, FL	0	0	3	2	0	1	5	3
Virginia Beach-Norfolk-Newport News, VA-NC	1	1	0	2	0	0	0	2
Washington-Arlington-Alexandria, DC-VA-MD-WV	5	5	3	7	2	9	11	12
TOTALS	118	42	58	75	40	73	115	179
	7%	3%	4%	5%	3%	5%	7%	11%

MPF Research Analysis of Their Median Rent per Zip Code vs Median Gross Rent per Zip Code from the American Community Survey (contd)

Market	-1% to -5%	-6% to -10%	-11% to -15%	-16% to -20%	-21% to -29%	-30% to -39%	-40% to -49%	-50%+	TOTALS
Atlanta-Sandy Springs-Marietta, GA	7	11	17	21	21	10	3	0	112
Baltimore-Towson, MD	10	16	2	3	0	0	0	0	50
Birmingham-Hoover, AL	1	2	2	3	1	1	0	0	13
Boston-Cambridge-Quincy, MA-NH	3	1	0	0	0	0	0	0	67
Chicago-Joliet-Naperville, IL-IN-WI	15	9	3	1	0	1	0	0	82
Cleveland-Elyria-Mentor, OH	9	6	0	5	1	0	0	0	37
Columbus, OH	2	9	5	5	4	0	0	0	34
Dallas-Fort Worth-Arlington, TX	17	28	26	24	21	3	0	0	154
Denver-Aurora-Broomfield, CO	6	4	4	2	2	0	0	0	66
Houston-Sugar Land-Baytown, TX	13	11	27	18	13	3	0	0	128
Kansas City, MO-KS	3	10	9	4	9	1	0	0	47
Los Angeles-Long Beach-Santa Ana, CA	10	13	3	4	0	0	1	0	129
Nashville-Davidson-Murfreesboro-Franklin, TN	11	4	0	0	1	0	0	0	27
New York-Northern New Jersey-Long Island, NY-NJ-PA	4	5	0	1	1	1	0	0	61
Philadelphia-Camden-Wilmington, PA-NJ-DE-MD	13	7	8	1	1	1	0	0	65
Phoenix-Mesa-Glendale, AZ	4	5	11	15	23	7	5	0	77
Pittsburgh, PA	3	1	0	0	0	0	0	0	22
Portland-Vancouver-Hillsboro, OR-WA	6	7	4	4	1	0	0	0	54
Riverside-San Bernardino-Ontario, CA	5	15	8	7	6	3	2	0	54
Seattle-Tacoma-Bellevue, WA	19	12	5	3	1	2	0	0	89
Tampa-St. Petersburg-Clearwater, FL	5	10	7	13	5	3	0	0	57
Virginia Beach-Norfolk-Newport News, VA-NC	3	6	8	7	4	0	0	0	34
Washington-Arlington-Alexandria, DC-VA-MD-WV	27	19	11	3	2	0	0	0	116
TOTALS	196	211	160	144	117	36	11	0	1575
	12%	13%	10%	9%	7%	2%	1%	0%	

MPF Research Analysis of Their Median Rent per Zip Code vs Median Gross Rent per Zip Code from the American Community Survey (contd)

Market	Count of Total Zips	% Total Zips with Sample	Zips with No ACS Rent or \$2000+	% of Net Zip Codes with Sample
Atlanta-Sandy Springs-Marietta, GA	227	49%	11	52%
Baltimore-Towson, MD	169	30%	29	36%
Birmingham-Hoover, AL	132	10%	14	11%
Boston-Cambridge-Quincy, MA-NH	286	23%	21	25%
Chicago-Joliet-Naperville, IL-IN-WI	414	20%	17	21%
Cleveland-Elyria-Mentor, OH	118	31%	5	33%
Columbus, OH	137	25%	3	25%
Dallas-Fort Worth-Arlington, TX	283	54%	11	57%
Denver-Aurora-Broomfield, CO	148	45%	16	50%
Houston-Sugar Land-Baytown, TX	251	51%	15	54%
Kansas City, MO-KS	235	20%	18	22%
Los Angeles-Long Beach-Santa Ana, CA	387	33%	36	37%
Nashville-Davidson-Murfreesboro-Franklin, TN	120	23%	7	24%
New York-Northern New Jersey-Long Island, NY-NJ-PA	919	7%	145	8%
Philadelphia-Camden-Wilmington, PA-NJ-DE-MD	390	17%	49	19%
Phoenix-Mesa-Glendale, AZ	164	47%	3	48%
Pittsburgh, PA	383	6%	59	7%
Portland-Vancouver-Hillsboro, OR-WA	131	41%	6	43%
Riverside-San Bernardino-Ontario, CA	164	33%	17	37%
Seattle-Tacoma-Bellevue, WA	171	52%	16	57%
Tampa-St. Petersburg-Clearwater, FL	136	42%	6	44%
Virginia Beach-Norfolk-Newport News, VA-NC	124	27%	26	35%
Washington-Arlington-Alexandria, DC-VA-MD-WV	352	33%	96	45%
TOTALS				