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HUD Section 8 Renewal Policy Guidebook

Background

On August 7, 2015, the U.S. Dept. of Housing and Urban Development (HUD) released a revised [Section 8 Renewal Policy Guidebook](#), which contains comprehensive guidance for renewing expiring Section 8 Housing Assistance Payment (HAP) contracts. The guidebook includes some policy changes, which will apply to all renewal or amended rent packages received by HUD (or post-marked) November 5, 2015 or later.

According to HUD, “the guidebook incorporates the procedures contained in previous Section 8 expiring contract Housing Notices, along with a number of changes. As a living document, over time this Guide is expected to contain nearly all of the information related to the renewal of expiring Section 8 HAP contracts....The instructions in this Guide apply to all Contract Administrators who are responsible for overseeing Section 8 HAP contracts. This includes Contract Administrators who have performance based contracts with HUD. Contract Administrators with performance based contracts are also required to follow the Guidebook for the Section 8 Contract Administration Initiative.”

On May 4, 2014 NAHMA joined with other industry partners to submitted comments on a draft renewal guide. The purpose of this NAHMAanalysis is to review the industry comments to highlight recommendations adopted into the renewal guide. Also, other key changes, identified by HUD, will be highlighted.

Proposed Changes to Chapter 9 (Rent Comparability)

In reviewing the 2014 draft guide, HUD proposed using 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. NAHMA and industry partners strongly opposed this policy and provided significant feedback and recommendations regarding this new guidance, citing policy and technical concerns. NAHMA continues to believe median gross rents, as determined and published by the Census, are not representative of actual market conditions because they are based on outdated information and are not adjusted for inflation. If implemented, “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.” NAHMA and

industry partners outlined several major recommendations to improve the methodology including, commissioning a study of the HUD's methodology.

Prior to the 2014 draft issued by HUD, NAHMA had provided numerous recommendations to Chapter 9 in a 2012 draft issued by the agency; some of the changes were adopted while others remain unchanged in the final version. The following changes were recommended in previous comments to HUD:

- 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.

HUD response: In the final Renewal Guide, Chapter 9, page 23, HUD has addressed industry concerns. HUD provided a section, "Special procedures when RCS shows that a project's median market rent exceeds 140 percent of the median gross rent for the project's zip code." In the section, HUD states, "the requirements will apply for all contracts where the owner's RCS concludes a project's median gross rent exceeds 140 percent of the "Gross Rent by Zip Code Tabulation Area" as published by the U.S. Bureau of the Census or other comparable source as determined by HUD. These requirements do not apply to studies undertaken as part of the MTM process. Appraisers will need to access the median rent figures on HUD's [website](#)."

"In a few instances, the listing contains either a "***" or "\$2800+". If the project is located in a zip code with a "\$2,800+" in the number field, then a HUD RCS is only required if the new comparable market rents exceed \$2,800 (\$2000 X 140%), and the project's overall rent increase would exceed 5 percent. For those projects located in zip codes with "***", a HUD RCS is only required if the project's overall rent increase would exceed 5 percent."

NAHMA also objected to HUD's provision to eliminate the ability of the owner to appeal an RCS under this special procedure section and review a copy of HUD's RCS. In the final Renewal Guide, HUD continues to deny owners appeal of RCS, however owners can request a copy of the HUD RCS. In Chapter 9, pg.33, HUD states, "There are no negotiations allowed nor is there an appeal process when there are differences between comparability studies....An owner may request a copy of the HUD RCS without going through the Freedom Of Information Act

process.” Additionally, HUD did not accept the industry’s recommendation to establish a RCS comparison database.

Review Checklists

NAHMA recommended HUD finalize a universal checklist for RCS reviews to ensure consistency of reviews. The previous proposal would have authorized field offices and Contract Administrators to develop their own worksheets for completing RCS reviews. HUD provided a finalized checklist on their [website](#).

Effective Date

NAHMA also expressed concerns with the 2012 draft guide provision “that the proposed changes (when finalized) are effective immediately unless noted otherwise in this transmittal.” NAHMA recommended, “The effective date provide a reasonable time for implementation, specifically that a 90- day execution time period for properties just starting the renewal process. For properties already in the midst of a transaction, we recommend that the current rules apply.” HUD adopted the recommendations, as the final guide was published on August 7, 2015. HUD states the guide is effective on November 5, 2015 and only applies on or after that date. More importantly, for the RCS requirement that HUD will hire a third-party appraiser to complete a HUD RCS should rents in the owner’s RCS exceed 140 percent of the Median Gross Rent by Zip Code Tabulation Area- the effective date of this change is 150 days from the date of the transmittal, which would be January 4, 2016.

Chapter 2-3 (C.2)

NAHMA also expressed concerns that HUD would deny or condition HAP renewals for fair housing or 504 charges/complaints that have not been adjudicated. NAHMA believed this action “violated the Administrative Procedure Act and likely the Fifth Amendment”. NAHMA recommended this section should be removed. HUD did not include this provision in the final guide.

NAHMA Comments – Chapter 12

NAHMA recommended HUD reference other guidance (e.g. 4350.1 guidance, REAC regulations, etc.) and not repeat them to avoid confusion and provide flexibility for future policy changes. HUD did not adopt this recommendation and the final guide continues to reference other HUD-issued guidance.

Conclusion

The final Section 8 Renewal Guide adopts some of NAHMA’s previous recommendations, specifically around RCS reviews. Overall, many sections remain unchanged from the 2012 and 2014 draft guides. NAHMA will continue to work with the Department to clarify the necessary provisions and address problematic areas as the guide becomes effective.