

NAHMAanalysis

NATIONAL AFFORDABLE HOUSING MANAGEMENT ASSOCIATION

Ensuring NAHMA Members Receive the Latest News and Analysis of Breaking Issues in Affordable Housing

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Streamlining Management and Occupancy Reviews (MORs) for Section 8 Housing Assistance Programs Final Rule

Background

In March 2015, HUD issued a proposed rule that amended the project-based Section 8 housing assistance payment (HAP) program regulations by requiring MORs to be conducted according to a schedule set by HUD. At the time, NAHMA strongly agreed and shared with HUD that the proposed changes were “necessary to provide consistency across programs and allow HUD the flexibility to set a schedule that is more in-line with the needs of the programs. Moving to a risk-based MOR schedule benefits HUD, property owners and management agents (O/As) and residents. HUD will be able to focus its staff and resources on areas that require greater attention. A risk-based system will incentivize and reward good management practices. O/As will save time preparing for the MORs, accompanying the PBCA during the MORs and following up on items from the reviews. This will free O/As to spend more time on day-to-day management tasks. Residents will have less frequent unit inspections, which they often consider disruptive.” This NAHMAanalysis provides members a brief update on HUD’s responses to the issues that NAHMA raised at the proposed rule stage.

For over a decade, NAHMA advocated for HUD to move from annual MORs to a risk-based schedule based on a property’s overall rating and adopt a schedule like the Real Estate Assessment Center’s (REAC) physical inspections schedule and rating, which requires a property’s next inspection to be scheduled in three years, two years or one year (i.e., 3-2-1 schedule) based on their inspection score. NAHMA is pleased that HUD’s [final rule](#) and schedule for MORs is consistent with our recommendations. HUD also published a [separate notice](#) specifying the MOR schedule and linking a project’s annual MOR rating with HUD’s new risk-based asset management model classification to determine the frequency of a project’s MOR. Members should be aware that the effective date of this final rule and the MOR schedule is September 26, 2022, which means that Contract Administrators (CAs) will begin conducting reviews pursuant to the performance-based MOR schedule at that time.

In the final rule, HUD stated it made several changes because of public feedback:

1. “HUD has decided against proceeding with the proposed changes regarding the permitted duration of vacancy payments;
2. HUD’s proposed rule provided that HUD could inspect a project at any time. HUD at the final rule stage requires that an MOR be performed within 6 months following a change in ownership or management irrespective of a project’s performance-based MOR schedule. HUD believes adding an inspection at a change in ownership or management is appropriate to ensure that the MOR is based on the current management at the time;
3. HUD is requiring that the CA review all tenant files for each sampled file going back to the previous MOR. In other words, if an MOR is taking place 36 months from the previous MOR, the CA must assess the current year’s tenant files and tenant files going back to the previous MOR, for each sampled file; and
4. HUD is making changes to the final MOR schedule, which is published elsewhere in this issue of the Federal Register.”

Notable HUD Responses to Public Comments

While NAHMA supported overall policy change within this final rule, we are disappointed to see HUD did not adopt our recommendation for properties with full Mark-to-Market restructurings.

NAHMA Comment: A subset of properties that the proposed rule and accompanying notice does not address is the properties that have had full Mark-to-Market restructurings. HUD officials previously advised NAHMA that Section 519 of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA) requires annual compliance reviews of restructured Mark-to-Market properties. Because these properties were not specifically mentioned, we are unsure if HUD has changed its position that MAHRA requires annual MORs, or if these properties would fall under the category of “may be inspected at any time” outside of the schedule. NAHMA would prefer that these properties were inspected according to the proposed MOR schedule, just as other properties subject to annual HAP compliance reviews will be. Nevertheless, if HUD has not changed its position, we believe HUD can still provide a 36-month, 24-month, 12-month schedule by allowing scaled-back limited reviews between the full MORs for high-performing properties. Limited reviews could include analyses of the properties’ financial statements, surplus cash analyses, the risk-based asset management model classification and / or other information that HUD already collects to ensure regulatory compliance.

HUD Response: HUD response: Section 519(b)(1) of MAHRA requires CAs to monitor the status of projects renewed under Mark-to-Market at least annually. Therefore, this schedule would not and could not apply to restructured Mark-to-Market properties.

NAHMA Comment: At the time of publication, NAHMA strongly opposed HUD’s proposed changes to vacancy payment regulations that would permit owners to receive

vacancy payments in the amount of 80 percent of the contract rent for only the first 30 days of a vacancy, rather than the current 60 days of a vacancy. NAHMA stated that the current vacancy payment policies already include incentives for owners to rent vacant units as quickly as possible. Our members do not believe a convincing case has been made to reduce the period for vacancy payments.... In addition, NAHMA was very concerned that the proposed rule would effectively penalize O/As who lose rent while following HUD's occupancy rules. Finally, NAHMA was concerned that HUD has proposed this change without fully understanding the impact it will have on affected properties.

HUD Response: As noted above, the final rule stated, "HUD has decided against proceeding with the proposed changes regarding the permitted duration of vacancy payments."

Conclusion

NAHMA appreciates HUD finalizing this rule. The final rule adopted many of the policy changes for which NAHMA advocated. NAHMA Members should be on the lookout for forthcoming HUD policy changes on NSPIRE/physical inspections, HOTMA, and Rent Comparability Studies (RCS). All are expected to be finalized later this year.