




U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-8000

FEB 22 2010

MEMORANDUM FOR: All Hub and Program Center Directors
All Contract Administrators

FROM:  Carol J. Galante, Deputy Assistant Secretary for Multifamily
Housing Programs, HT

SUBJECT: Waivers to the Section 8 Regulations and the Section 8
Renewal Guide

The Department is committed to preserving the existing stock of affordable housing. To assist in this effort, the Office of Multifamily Housing Programs is proposing changes to the Section 8 regulations and revising parts of the Section 8 Renewal Guide.

Until the changes are finalized, you may recommend that Headquarters waive certain parts of the Section 8 regulations and the Renewal Guide. Specifically, Headquarters will on a case-by-case basis, entertain the following:

- A. Regulatory waiver requests of 880.205(a), 881.205(a) and 883.306(a) for a nonprofit owner with a new regulation Section 8 contract for new construction or substantial rehabilitation that wishes to receive:
1. A distribution limited to six percent on initial equity investment for projects for elderly families, or
 2. A distribution limited to ten percent on initial equity investment for projects for non-elderly families, or
 3. Unlimited distributions for preserving long term affordability under Chapter 15, Nonprofit Section 8 Preservation Effort.
- B. Section 8 Renewal Guide waiver requests for certain sections of Chapter 3 and Chapter 15.
1. Chapter 3, Option One – Mark-Up-To-Market

The Note found after Section 3-2D on page two that permits rents to be increased up to but not exceeding the use restricted levels.

2. Chapter 15, Nonprofit Section 8 Preservation Effort
 - a. Section 15-8, Cap on Market Rents, that requires the project manager or contract administrator to lower the comparable market rents in the rent comparability study to reflect any use restriction on the rents that can be charged; for example, tax credit restricted rents. This waiver will allow rents to go up to the market rent level, as determined by the rent comparability study.
 - b. Item A., Section 15-13, Project Eligibility, that requires the project to have a Real Estate Assessment Center (“REAC”) score greater than 30.
 - c. The prohibition against for-profit owners who wish to comply with the requirements of Chapter 15 from obtaining the benefits available under the chapter. Thus, the owner will know the rents permitted after the rehabilitation is completed.

Finally, you are reminded that upon completion of processing under Item C of Section 15-6, Budget-Based Rent Increase, the PM/CA must inform the Owner of the new rents. This will assist the owner in obtaining financing.

Waivers may be issued in relation to specific preservation transactions, either potential or in progress. Major features of the transaction should be clearly defined. Waivers will not be issued for transactions that have already closed. Waiver requests should indicate the specific provision(s) to be waived and describe, in detail, the preservation transaction, including: proposed sources of financing (including federal, state, local, and private sources); proposed change in project ownership; timing of the transaction; and how the waiver(s) would facilitate the preservation of the project. The waiver request should indicate if any related requests have been or will be submitted to allow for prepayment of the existing mortgage, decoupling of Interest Reduction Payments, or deferral of flexible subsidy loans.

All waiver requests with supporting documentation must be reviewed and approved by the Hub Director and faxed to Willie Spearmon, Director, Office of Housing Assistance and Grant Administration. The fax number is (202) 708-3104. Waiver requests may be denied by a Hub Director without HQ concurrence.

If you have any questions, please contact Stan Houle at (202) 402-2572 or Kerry Mulholland at (202) 402-2649.