



## HUD UPDATES SECTION 8 RENEWAL POLICY GUIDEBOOK

By Stephen Niles and Ben Funk

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Earlier this month, HUD published its updated Section 8 Renewal Policy Guidebook (the Revised Guide or Guide), a critical document that governs the terms and conditions for renewing thousands of project-based Section 8 HAP contracts nationwide. The Revised Guide, which is effective November 5, 2015, addresses some “lessons learned” since the existing Guide was last updated back in 2012 (the Old Guide). The Revised Guide also imposes a few new and potentially significant hurdles for those pursuing renewals.

We have summarized below some of the substantive changes reflected in the Revised Guide – particularly as they relate to the six “Renewal Options” available under the Guide. While the Revised Guide provides some helpful clarification of HUD policies, it also raises some new questions. We also note one somewhat tricky issue: in some instances, the “Explanation of Changes” provided by HUD at the beginning of the Revised Guide is inconsistent with the actual revisions made by HUD in the relevant Chapters of the Guide.

While not an exhaustive list of the substantive changes reflected in the Revised Guide, we have identified below a few items that may be of particular interest to you.

- **HUD Confirmation of Market Rents:** The Guide indicates that, for renewals under Options One (Mark Up-To-Market), Option Two (OCAF or Budget-Based), and Chapter 15 (discussed below), HUD will order its own Rent Comparability Study (RCS) if the market rents in the owner’s RCS exceed 140% of the Median Gross Rent By Zip Code Tabulation Area. Although somewhat unclear from the Guide, this requirement for HUD to obtain its own RCS apparently also applies to certain Option 4 (Exception Projects) renewals and rent adjustments. Under prior HUD guidance, HUD obtained its own RCS only for Option One (Mark-Up-To-Market) transactions. Please be advised that the median rent figures for the 140% threshold test are identified on HUD’s web site. This expanded requirement for HUD to obtain its own RCS is made effective January 1, 2016.

- MAP Appraisal In Lieu of HUD RCS: The Guide allows HUD to use the lender-ordered MAP appraisal to serve as a substitute for the HUD-required RCS if the project involves new FHA-insured financing. Under HUD’s prior guidance, this action required a waiver from HUD.
- After Rehab Rents for For-Profit Owners: The Guide permits for-profit owners to obtain renewals under Chapter 15, the Chapter which permits rent increases under Option One (Mark-Up-To-Market) and Option Two (OCAF or Budget-Based) at “after rehab” rent levels. Under HUD’s prior guidance, this action required a waiver from HUD.
- Special Chapter 15 Rules for For-Profit Owners: The Guide indicates that for-profit owners can renew under Chapter 15/Option Two for purposes of Capital Repairs, but must use Chapter 15/Option One if seeking a Transfer or a Transfer with Capital Repairs.
- “After Rehab” Rents Prior to Rehab: The Guide states that in the context of a HAP contract renewal and refinancing, if the new financing will require full debt service at closing (e.g., Fannie Mae or Freddie Mac Mod Rehab Programs, or the FHA 223(f) program), HUD can allow the “after rehab” Chapter 15 rents to go into effect at the initial loan closing (i.e., before rehabilitation has even begun). Under HUD’s prior guidance, this action required a waiver from HUD.
- No LIHTC/Use-Restricted Cap on Chapter 15 Contract Rents: According to the Guide, for Chapter 15 renewals, HUD will not lower the comparable market rents in the RCS to reflect any use restriction on the allowable rent levels (e.g., LIHTC-restricted rents). Under HUD’s prior guidance, this action required a waiver from HUD.
- Increased Distributions to Nonprofit and For-Profit Owners: HUD’s “Explanation of Changes” to the Guide indicates that both for-profit and nonprofit owners renewing under Option 2 (OCAF or Budget-Based Rent Increases) can access increased distributions if they renew for 20 years. The language of the relevant Guide provision is less clear on this point. Under HUD’s prior guidance, nonprofit owners had to obtain a waiver from HUD.
- Davis Bacon: The Guide expressly recognizes that rehabilitation undertaken in connection with a renewal under Chapter 15 does not, in and of itself, trigger Davis Bacon wage rates (but, it notes that certain FHA financing will impose such wage rates). This is a noteworthy affirmation of HUD’s longstanding position, particularly in light of recent HUD guidance indicating that Davis Bacon wage rates apply to rehabilitation undertaken in connection with Section 8 Project-Based Voucher (“PBV”) contracts.
- HUD’s Refusal to Renew: The Guide lays out the procedures HUD will follow (e.g., notice to owner and tenants; owners’ appeal rights; short-term renewals) if HUD refuses to renew an expiring HAP contract due to a project’s poor condition or the owner’s/agent’s wrongful conduct.

- Early Termination of HAP Contracts: The Guide expressly permits the “early termination” of pre-MAHRA HAP contracts to allow for 20-year renewals under various Renewal Options. It also indicates that both pre-MAHRA HAP contracts and most MAHRA contracts can be terminated early to participate in Chapter 15 renewals.
- Requirement for New RCS: The Guide generally requires a new RCS if an owner is seeking to (i) terminate a HAP contract early and renew under the same or a different Option, or (ii) renew an expiring contract for more than 5 years.
- Budget-Based Rent Increases: The Guide clarifies and modifies HUD’s rules for computing budget-based rent increases, and expressly recognizes that certain fees relating to LIHTC transactions may be included in such increases.
- “Old Reg” State Agency HAP Contracts: The Guide adds a new Chapter 16 that identifies the renewal options available to owners of projects with “old reg” State Agency HAP contracts (generally, the November 1975 version of the HUD-52645A). According to HUD, but for the renewal options available under Chapter 16, these HAP contracts would automatically terminate upon prepayment of the related State Agency financing.

If you would like to review a complete copy of the Guide, it can be found at the following link:  
[http://portal.hud.gov/hudportal/documents/huddoc?id=Section8\\_Renewal\\_Guide.pdf](http://portal.hud.gov/hudportal/documents/huddoc?id=Section8_Renewal_Guide.pdf)

Should you have questions about the Guide, or its application to a particular situation, please call Stephen Niles (D. 202.495.7210), Ben Funk (D. 202.495.7209) or another Klein Hornig attorney.