

## HUD COVID-19 Updates and FAQs Part Two

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Since our [last update](#) on HUD's response to the Coronavirus (COVID-19), HUD has continued to update guidance and FAQs that have helped explain HUD's position on various operational issues relating to HUD-regulated projects impacted by COVID-19. In particular, HUD's Office of Multifamily Housing has issued updates to its COVID-19 FAQs, last updated May 21, 2020, available [here](#). To help keep members of the affordable housing community informed of COVID-19's continuing effect on HUD housing programs, we provide below a brief summary of some of the recent HUD updates that may be of particular interest. Notable HUD updates include guidance on Housing Assistance Payments (HAP) contract renewals, HAP rent adjustments, FHA loans, 2530 flag issues, and environmental reviews.

### **FHA-Insured Loan Forbearance and 2530 Flags**

HUD has clarified that so long as CARES Act forbearance takes place prior to a borrower missing a loan payment, HUD will not consider the loan to be "delinquent" or in "default" – and, therefore, the missed payment should not trigger a 2530 flag in HUD's Active Partners Participation System (APPS). However, HUD indicates that the Department has discretion to issue a 2530 flag if a borrower fails to repay the forbearance amount or otherwise defaults under its forbearance agreement. For a borrower with a CARES Act forbearance to avoid a 2530 flag—which flag could limit a borrower's ability to participate in a new, HUD-regulated transaction—the borrower will need to ensure that timely loan payments are made until the forbearance agreement is in place, and that the borrower complies with the terms of the forbearance agreement.

### **Asset Management Guidance**

#### ***Rent Comparability Studies (RCS)***

HUD advises that HUD and Performance Based Contract Administrators (PBCAs) will continue to review each RCS submitted by a Section 8 HAP project owner pursuant to the Section 8 Renewal Guide. HUD indicates that if the Guide would require HUD to obtain a third-party RCS to evaluate the market rent information supplied in the owner's RCS, and HUD Field staff is not able to obtain the HUD third-party RCS due to circumstances relating to COVID-19, HUD will develop an "alternative mechanism" to respond to Section 8 HAP owners' RCS submissions. Unfortunately, the HUD guidance does not yet provide any detail with regards to what such "alternative mechanism" might entail.

HUD also recognizes that Section 8 HAP project owners with upcoming fifth-year contract rent adjustments (to market rents), and who may be required to submit a new RCS to support the adjustment, may not be able to obtain an RCS due to COVID-19. HUD states that until the RCS is obtained, it will continue to pay the current rent amounts after the fifth-year anniversary date. Section 8 HAP owners will be required to submit RCSs as soon as emergency conditions relating to COVID-19 allow. Once the RCS has been approved, new rent amounts, including any adjustments by HUD, will be made retroactive to the fifth-year anniversary date.

### ***Project Capital Needs Assessments (PCNAs)***

For FHA-insured borrowers with upcoming ten-year anniversaries, Multifamily Housing will allow the postponement of regular PCNA updates until September 30, 2020. This postponement applies to properties with PCNA reports due between March 15, 2020 and September 30, 2020.

### ***Residual Receipts (RR) and Section 8 HAP Owners***

HUD will temporarily allow the suspension of RR HAP offsets, in certain circumstances. All Project Rental Assistance Contracts (PRACs) may suspend offsets for RR through December 31, 2020, while Section 8 HAP Owners must receive approval before suspending offset payments. HUD has authorized the Multifamily Asset Management Division Directors in the Field to approve suspension of offset payments through December 31, 2020.

### **Rental Assistance Demonstration (RAD)**

In light of social distancing measures due to COVID-19, and in an attempt to provide Public Housing Authorities (PHA) and owners additional time to execute individual tenant leases following a RAD closing, HUD will allow the HAP effective date to be the first day of the third full month following a RAD closing (this option will be available upon request). This is a notable update as the HAP is otherwise required to be effective the first day of either of the first two months following a RAD closing. This option will be available to PHAs and owners for any closing that occurs through September 30, 2020.

### **Environmental Review, Historic Preservation and Tribal Consultation**

HUD expanded on its guidance as it relates to physical site reviews for Phase I ASTM Environmental Site Assessments (ESAs). Where an ESA preparer can access the site, but not the interior of buildings or units, HUD will accept an ESA with just an exterior inspection provided that the ESA preparer has an alternative means of viewing the interior. Where travel to the site is not practicable, HUD will accept the ESA without a physical site visit for proposed 223(f) refinancing projects or for acquisition so long as the site is “low risk based on current and historical uses.” The ESA preparer will need to provide in its report the reasons that a site visit did not take place, meet the ASTM E1527-13 standard, and show adequate means of viewing the interior and exterior offsite. For projects that do require onsite reviews, HUD will

accept draft ESAs without the physical site visit information for the purposes of a pre-application or application.

For RAD, HUD expands guidance of what may be considered “adequate means” for viewing the interior of a building or units, including phone interviews with staff and photographs, or publicly available sources including satellite photos and drone video. If travel is unfeasible, HUD will not require a site visit for projects that are already in HUD’s portfolio so long as they are considered low risk.

HUD also provides guidance for Multifamily FHA deals and RAD conversions subject to Environmental Review under Part 50 that require consultations with certain State Historic Preservation Offices, Tribal Preservation Offices, and federally recognized tribes. HUD advises that Section 106 deadlines, which apply to historic properties (or that include historic properties), will be paused while these offices are closed or unable to carry out their duties due to COVID-19.

Until obligations under Section 106 have been satisfied, HUD will not issue:

- a Firm Commitment for FHA-insured loans,
- the RAD Conversion Commitment (for public housing conversions),
- RAD Conversion Agreement (for Project Rental Assistance Contract conversions), or
- RAD Approval Letter (for Section 8 Moderate rehabilitation/Single Room Occupancy conversions).

### **Additional Information/Other Resources**

HUD has been regularly updating its guidance related to the COVID-19 pandemic, and is maintaining a webpage with accumulated guidance, available [here](#).

On May 26, 2020, HUD published Notice H 20-4, available [here](#), providing guidance on the use of electronic signatures, electronic transmission, and electronic storage of documents and forms required by HUD’s Office of Asset Management and Portfolio Oversight (“OAMPO”), including Section 8 PBRA, Section 202 and 811 PRACs, Rent Supplement, Section 236, and Section 221(d)(3)/(d)(5) BMIR programs. The Notice generally allows, but does not require, the use of electronic signature, transmission, and storage of document in compliance with the guidance and so long as it allowed under local and state laws.

On May 28, 2020, OAMPO published a memorandum directed at owners and agents of Section 8 assisted, multifamily properties. The memorandum highlights that HUD will be releasing \$800 million of CARES Act supplemental appropriations to approximately 16,500 properties with Section 8 PBRA contracts. The memorandum is available [here](#).

Should you have any questions about this KH Housing Alert or require any further information, please contact Nuryllen Aguasvivas ([naguasvivas@kleinghornig.com](mailto:naguasvivas@kleinghornig.com) or 202.495.7211) or Adam Norlander ([anorlander@kleinghornig.com](mailto:anorlander@kleinghornig.com) or 202.495.7205).