

# NOW & NEXT

## Affordable Housing Alert

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### Updated guidance for HUD Rent Comparability Studies takes effect May 1

By Nathaniel S. Cushman

Owners, managers, purchasers, and developers of projects assisted by HAP contracts should prepare now to account for these new requirements in any upcoming renewal and rent adjustment submissions.



#### What's the Impact?

- / This new guidance affects the threshold for the HUD third-party RCS requirement; affects the valuation of non-shelter services and amenities; and adds requirements relating to renewal processing and closing for early terminations.
- / The new requirements impact renewal and rent adjustment submissions made on or after May 1, 2023—submissions already in process or made through April 30, 2023, will be processed under the existing Chapter 9.

The Department of Housing and Urban Development (HUD) recently published an updated version of Chapter 9 of the Section 8 Renewal Guide (the Guide). This chapter of the Guide details requirements for any HUD Rent Comparability Study (RCS), whether submitted as part of a request for renewal of a project-based Section 8 HAP contract or as part of a five-year comparability adjustment under a long-term Option 1 or Option 2 contract. [This important](#)

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guidance will affect owners, managers, purchasers, and developers of projects assisted by Housing Assistance Payment (HAP) contracts. Here is a summary of key highlights from the new Chapter 9.

## Second RCS threshold has been updated

For some requests, HUD requires review of a third-party RCS commissioned by the owner/agent and a third-party RCS commissioned by HUD. In those situations, rents are set at the lesser of the rent conclusion of the RCS commissioned by the owner/agent or 105% of the rent conclusion in the RCS commissioned by HUD.

Currently, HUD requires a HUD-commissioned RCS when the requested rent for the subject property's median unit exceeds 140% of the Median Gross Rent by Zip Code Tabulation Area (GRZCTA) for the property's zip code. HUD publishes the GRZCTA statistic for all zip codes on its website on an annual basis.

The new Chapter 9 replaces this threshold test. Now, a HUD-commissioned RCS will be required when the requested gross rent for the full property exceeds the hypothetical gross rent if all units were rented at 150% of the Small Area Fair Market Rent (SAFMR).

Under this new test, the comparison no longer focuses on the project's median unit; instead, the comparison takes into account the project's full unit mix. We, therefore, expect that some properties with smaller bedroom sizes—such as elderly properties with studios and/or one-bedroom units—may be subject to the third-party RCS requirement when historically they were not. Conversely, some properties with larger bedroom sizes may not be subject to a third-party RCS when historically they were.

## Non-shelter services and amenities

*The new chapter updates provisions on adjustments for non-shelter services and amenities. These new provisions include guidance for HAP renewals under Chapter 15 rehab transactions with plans for new services.*

The new Chapter 9 draws a distinction between services “included in rent”—those services a tenant may reliably access for no additional charge—and those that are “incidental.” The RCS should include a valuation for non-shelter services, and the Guide in effect, requires an owner to either have a proven track record and commitment to taking all reasonable steps to continue providing the service for the coming five-year period or to have a written agreement with a credible service provider that specifies certain details of the service provision. Applicable services must be listed each year on the project's Rent Schedule. If services are interrupted or discontinued, HUD plans to track this through a required change to the annual Rent Schedule.

Where new services are added as part of a Chapter 15 transaction, those services may be included in the RCS subject to HUD approval. The owner's submission must include detailed information about the services to be introduced, including who will provide the services, which facilities will

be used to provide services, and other details. The owner must then implement the proposed services or risk a reduction in HAP rents under the terms of the Chapter 15 addendum.

This new Chapter 9 also addresses adjustments for Internet access, such as project-wide WiFi. In recent years there has been some confusion about whether an RCS should make an adjustment where tenants are provided with Internet access for no additional fee. This new Chapter 9 confirms that an adjustment should be made based on actual comparable data from the surrounding market area.

## Timing requirements

*The Guide imposes new timing requirements for transactions involving an early termination of an existing HAP renewal in favor of a new renewal.*

For those transactions, if closing occurs more than one hundred and eighty (180) days (approximately six (6) months) after the date of submission, HUD will require a letter from the appraiser confirming that current rents are not lower than in the original study. Also, if closing occurs more than eighteen (18) months after the original submission, the owner must submit a fully updated RCS.

## Process updates

*Process updates both for identifying factual errors in third-party RCS and appealing HUD review of owner's studies.*

The Guide incorporates updates to the review process for the owner's RCS and clarifies the process for identifying factual errors in a third-party RCS ordered by HUD. Of note, the draft Chapter 9 released last year stated that an owner could not supply a revised owner-commissioned RCS as part of an appeal. In an apparent response to industry comment on the draft Chapter 9, the final guidance permits the owner to supply a revised owner-commissioned RCS within this process.

## Effective date

These new requirements are effective for any renewal and rent adjustment submission made on or after May 1, 2023. Therefore, submissions already in process or being made before the end of April 2023 will be processed under the existing Chapter 9. All other upcoming submissions must account for these new requirements.

For more information on the content of this alert, please contact your Nixon Peabody attorney or:

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