



June 6, 2022

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451 7th Street SW
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RE: Proposed Revisions to Chapter 9, *Section 8 Renewal Policy Guidebook*

Thank you for the opportunity to provide feedback to the Office of Multifamily Housing Programs (MFH) on the proposed revisions to Chapter 9 of the Section 8 Renewal Policy Guidebook, which addresses Rent Comparability Studies. As the leading voice for aging, we value our ongoing partnership with HUD and with MFH to preserve and improve affordable, service-enriched housing options for older adults with low incomes.

LeadingAge views Rent Comparability Studies as a key tool to incentivize and preserve private owner participation in HUD-subsidized housing programs; like HUD, we envision a revised Chapter 9 of the Section 8 Renewal Policy Guidebook that leads to a stronger, clearer, and more consistent rent setting policy across HUD's project-based portfolio and a good use of HUD resources.

With staggering waitlists and growing housing cost burdens among older adults, preserving the affordable housing stock is critical to the Administration's goal of addressing housing unaffordability, and critical to allowing older adults to age in community.

About LeadingAge

LeadingAge represents more than 5,000 aging services providers, including non-profit owners and managers of federally-subsidized senior housing properties. Alongside our members and 38 state partners, we use applied research, advocacy, education, and community-building to make America a better place to grow old. Our membership encompasses the continuum of services for people as they age, including those with disabilities. We bring together the most inventive minds in the field to lead and innovate solutions that support older adults wherever they call home.

Rent Comparability Studies in Project-Based Section 8 Properties

Our nationwide membership of senior housing providers has been on the frontlines of COVID-19 and has witnessed the physical and mental health effects of the crisis on the more than 1.9 million older adults living in HUD-subsidized housing. The RCS process enables mission-driven housing providers to foster a culture of wellness and provide opportunities for older adults with very limited resources to age in community with dignity and health; revising Chapter 9 of the Renewal Guide is an important opportunity to safeguard and strengthen support for non-shelter services in Section 8 rents, which directly support resident wellbeing at affordable senior housing communities.

In adjusting HUD's policy for Rent Comparability Studies, we support MFH efforts to reduce administrative inefficiencies and clarify guardrails for fiscal stewardship; however, we urge the agency to reconsider proposed revisions that could limit HUD's financial support for services in senior housing and

reduce access to owner appeals. We also encourage the agency to implement more flexible language to allow internet service to be fully valued in comparability analyses.

Administrative Costs

Section A. of HUD's April Rent Comparability Studies memo describes two efforts to reduce administrative costs and processing time for owners. The intent, as described by the memo, is to provide more attractive and/or more viable options for owners to avoid an RCS, while still keeping rents market-competitive.

LeadingAge supports both of the proposed streamlining revisions described in Section A:

- Replacing the prior rent cap of 75% of FMR with a cap of 90% of Small Area FMR, with suggestions provided below.
- Extending to Option One renewals the opportunity to rely on rents charged for comparable unassisted units in the same projects.

Both of these proposed revisions could ease administrative costs and workloads, especially for smaller properties, as long as properties can adjust elections as needed (e.g., access an RCS instead of an opt-out at a future renewal cycle). Renewal Guidebook Chapter 9-4 outlines these alternatives for certain contract renewals; while we are supportive of the extension to Option One renewing properties to utilize rents charged for unassisted units at the property, we urge HUD to clearly extend these options to all contract renewals and to implement further streamlining.

In addition, stakeholders should have the chance to review HUD data on the impact of shifting to SAFMRs ahead of implementation, and we strongly urge HUD to make comparative data analyses available between FMRs and SAFMRs in the context of rent caps so that housing providers can consider their contract renewal options.

We also support the proposed revision described under Section B. of the HUD memo as a streamlining effort:

- Allowing owners to update an aged RCS via submission of a letter from the appraiser indicating that rents are not lower than in the original study.

An aged out RCS often results in unnecessary costs and contract renewal delays. Overall, the proposed language under Chapter 9-7.E, which describes the number of days between the conducted study and the contract termination date, provides helpful clarity and new flexibility on submission timing.

As with the other streamlining revisions, it should be preserved as an option and not a requirement (meaning owners should not be limited in the option to conduct an updated RCS as necessary).

Non-Shelter Services: Reliable vs. Incidental Services

One of the most critical components of the Rent Comparability Study process is to recognize, and financially incentivize, non-shelter services in HUD-assisted housing serving older adults with low incomes to improve resident wellbeing. Adjusting rents based on the value of both the shelter and non-shelter services at comparable market properties allows senior housing providers to operate service-enriched communities.

However, HUD’s proposed revisions emphasize a distinction between reliably available and incidentally available services. Chapter 9-9.C.3.a describes a service as more reliable if:

- “an Owner has an agreement with a credible service provider that specifies the services offered, the hours or frequency of services, and provides continuity throughout the five-year term of the RCS.”

This definition of a reliable service is problematic on several counts. First, long-standing HUD policy, per Chapter 9 of the Section 8 Renewal Guidebook, has been to assign a value, based on appropriate comparables, to the presence of Service Coordination programs, meals services, transportation supports, community rooms, resident activities, and a general culture of wellness at HUD properties, regardless of the funding source. The new definition of a reliable service emphasizes agreements with third-party service providers that an owner can contract with, which does not reflect the nature of many of the services provided at these communities (i.e., ongoing series of social activities coordinated by the community or Service Coordination); this could result in a misclassification of the service as “at will” or otherwise result in the undervaluation of the service.

Second, the vast majority of services are not contracted by the housing provider on a five-year basis, and many are not contractually defined at all. This makes them no less “reliable” – or valuable – to the residents or to the project’s marketability.

HUD’s proposed revisions steer housing providers to establish contracts or update leases or house rules to reflect continuous service provision. This creates more work for housing providers, which on its own could be a disincentive for providers to react to resident needs as they develop.

In addition, HUD’s memo states:

- We welcome feedback about how best to verify that services are being reliably provided to tenants while ensuring that this verification is not overly burdensome.

HUD’s proposed revisions indicate an assumption that housing providers “oversell” services at communities in the appraisal in order to increase valuations in the appraisals. Not only are the vast majority of services offered at project-based Section 8 communities reasonable and appropriate, but they are a vital component of resident wellbeing and good asset management practices throughout the HUD Multifamily Housing portfolio.

We urge HUD to adjust the proposed language to allow other methods for assigning “reliability” to services provided; for example, appraisers could review schedules of activities, a written statement signed by the service provider, a past history of regular but ad hoc partnerships with community centers or community volunteers, and budgets expenses for meal or transportation support that may not be reflected in the lease or in a five-year third party contract. HUD could also utilize the existing MOR process to verify the provision of services as set forth in Supportive Services plans.

Non-Shelter Services: Market Value for Specialized Services

Section C.2 of the HUD memo states that the revisions:

- Clarify that the valuation of services and amenities must take into account whether similar services and amenities are available in the surrounding community.

Supporting resident wellbeing through rent setting requires a continued commitment from HUD to fund asset management beyond bricks and mortar; it also requires an acknowledgement by HUD of the

unique attributes of a portfolio serving overwhelmingly non-white older adults and families with low incomes and higher rates of chronic health conditions. Lastly, it requires consideration of the fact that the value of accessing a meal, a ride to the grocery store, free in-unit internet, or a call from a trusted service coordinator, when provided to the demographic served in HUD housing, is much higher than the value of these services when made available the demographic generally served by market rate housing.

In fact, many of these services are not available in market rate housing; the predictable lack of market comparables should not result in less HUD investment in these non-shelter services, but rather result in clearer HUD guidance for the appraisal process.

For example, Chapter 9-9.C.3.c allows an appraiser to cite data from other Multifamily markets if the service provided at a property is so specialized that it does not appear in the area's comparables. We strongly encourage HUD to strengthen this language to set an expectation that a service be included in the appraisal even if it is not found in the subject market. Further, HUD should clearly set out examples and alternatives for this predictable scenario, including Service Coordination, meal support, and free internet availability, and should clarify language in Chapter 9-9.C.2. indicating the value only based on services available in the subject market.

Selecting Rent-Controlled Properties as Comparables

While LeadingAge is aware of and concerned with the challenge of establishing market value in areas without adequate or appropriate comparables, we are concerned with this proposed Chapter revision, described in Section D. of the HUD memo:

- In selecting comparables, MFH proposes to allow RCS appraisers to use properties subject to rent control if such rent control is widespread in a given market.

Creating the opportunity for more comparables is only effective if the comparables create an accurate picture of market value; this may not be the case if the properties are rent controlled, i.e. have an artificial cap placed on especially the non-shelter components of the rent.

Chapter 9-10.B.6 discusses rent-restricted units that may “artificially depress” rents in a comparability analysis. However, HUD’s proposed revision allows the appraiser to select rent-restricted units as comparables if they were rented within three years of the study. We do not believe this will create an accurate reflection of the market because of longer-term impacts of rent-restriction on both the rents and the services/amenities provided at a property, regardless of the time of lease-up; further, HUD misses an opportunity in the guidance to elaborate more clearly on how an appraiser should “discuss” and “be careful” with rent-restricted comparables (Chpt 9-10.B.6.c).

We are also concerned with the effect this change will have on properties that have long-standing appraisals in markets with significant rent control, and urge HUD to implement a safe harbor for those properties or to outline an alternate mechanism that would protect higher valuations relative to non-rent controlled comparables.

Lastly, in an effort to minimize variation among appraisals, we urge HUD to more clearly define what constitutes rent control in a “widespread” area.

Appeals, Reviews, and Transparency

Transparent policies, and processes that allow for review and appeal, are important elements of Rent Comparability Studies. HUD's proposed revisions limit the appeals process and miss opportunities to strengthen reviews. We strongly urge the agency to reconsider the language outlined below.

Section F. of the memo describes significant changes to the appeals process:

- MFH proposes to revise the appeals process, stating that an Owner may not revise an RCS following the issuance of a decision letter.

Typically, owners are not able to request a HUD RCS until after the decision letter has been issued. In addition, the language in Section 9.14.F severely limits an owner's ability to appeal a HUD-commissioned RCS and assumes that there will be no need for review of the HUD-commissioned RCS.

Further, existing Chapter 9 policy excludes the selection of comparables from the appeals process, despite the choice of comparable being one of the most critical elements of the rent comparability analysis.

In line with this view, Chapter 9-14.C allows the HUD-commissioned review to be shared with the owner upon written request; however, sharing the RCS should be assumed and standard practice, without the need for written request.

Overall, we urge HUD to reconsider language that seeks to limit appeals and instead encourage transparency and review. Given the significant and potentially negative impact of the use of inappropriate comparables, we urge HUD to define parameters to allow owners to appeal the comparables selected in cases where they are clearly inappropriate (as to building type, population, or other primary attributes).

Internet Service

We strongly support HUD efforts to promote internet connectivity in HUD-assisted housing, including by allowing the inclusion of internet service in rent comparability analyses (described in Section G.). However, we urge HUD to adjust language used in the proposed revisions that would limit an appraiser's ability to properly value the availability or the provision of internet as an amenity.

Specifically, HUD proposes the following:

- To allow for the inclusion of internet service in the comparability analysis *if supported by actual comparables in the surrounding market area.*

Market-rate properties are less likely to provide free, building-wide internet service, once again setting up a predictable lack of comparables for internet valuation. To overcome this dilemma, HUD should more loosely describe the parameters of internet valuation, for example by allowing appraisers to cast a wider geographic net for comparables, to use the provision of other utilities at comparables to establish value, to allow for more flexible or alternative comparables in this limited scenario, or to categorize and value internet with other amenities, like social activities.

Alternately, in order to strongly support internet access at HUD-assisted properties, HUD could provide appraisers with a regularly-updated minimum benchmark or range for the value of internet access based on observed market trends.

In addition to supporting the provision of internet as the basis for a rent adjustment, we support the inclusion of internet infrastructure in rent analyses because of the significant impact this can have on improving resident connectivity.

Implementation

Section H. of the memo describes HUD's intention to apply the revised Chapter to Rent Comparability Studies initiated on or after the effective date, which will be 30 days from the date of publication. We encourage HUD to push the effective date to at least 120 days past Chapter publication to allow appraisers and owners to adjust to the new policy.

In particular, some of the proposed revisions to non-shelter services valuation may lead an owner to create a more contractual record of a service provided (in order to distinguish between HUD's new definition of "at-will" and continuously provided services). Contracts and lease addenda take time to draft and complete, especially when subject to HUD approval processes; in addition, owners may want to conduct analyses of the changes related to SMAFR rent caps, which could impact decisions on undergoing or opting out of an RCS. We therefore urge HUD to provide a delayed effective date for the Chapter revisions.

Again, thank you for your review and consideration of these comments. Overall, we urge the agency to use this as an opportunity to support the availability of resident services, as well as financial preservation and operations of HUD assets, at HUD-assisted housing communities.

We look forward to working together to advance affordable, service-enriched housing options for older adults. Please address any questions to Juliana Bilowich (jbilowich@leadingage.org).

Sincerely,

Juliana Bilowich
Director, Housing Operations and Policy

Attachment: worksheet