

FHA Affordable 221(d)(4) Training Program

Course 3 HUD's Various Roles Lesson 1 HUD's Various Roles and Section 8 Renewals

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Course Objectives

Upon completion of this course, you will be able to:

- Recognize HUD's various role in financing affordable development loans
- Review Project Based Section 8 Contract renewal process and requirements



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Understanding HUD's Various Roles

HUD's Various Roles

Statutory versus Regulatory Policy

- Department of Housing and Urban Development (HUD)
 - Cabinet-level agency of the Federal Government
 - Governed by Congressional statutes



U.S. Department of
Housing and Urban Development

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HUD's Various Roles

Statutory Policy

- Congressional framework / laws – an act of congress to change the statutes
- Example: Congress will permit the FHA insurance programs to insure up to a maximum of 90 percent Loan to Value on multifamily properties.

Regulatory Policy

- HUD proposes and publishes refinements to the Federal Statutes (framework)
- Example: Congress will allow up to 90 percent Loan to Value on a loan; however, HUD will reduce the Loan to Value for market rate properties down to 85 percent to mitigate potential risk to the insurance fund.

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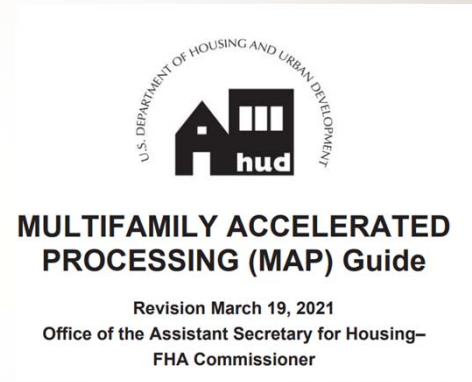
Instructor Notes

Congress will allow up to 90% LTV for statutory purposes (nothing higher). The MAP Guide regulatory requirements for a market rate deal requires an LTV no higher than 85%. You would ask for a regulatory waiver to allow a market rate deal LTV to increase to 90% but never more than 90% (due to statutory requirements).

HUD's Various Roles

Statutory versus Regulatory Policy

- Regulatory policy can be waived, if it falls within Statutory policy
- HUD's published regulations are incorporated into HUD Handbooks and the Multifamily Accelerated Processing Guide (MAP Guide)
 - more on the MAP Guide in Course 8



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Chat Question

How does HUD define Affordable Housing?

Type your response in the chat box below.



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HUD's Various Roles

MAP Guide Affordable Underwriting Definition (3.1.12)

A. Project meets either:

- Minimum affordability requirement for Low Income Housing Tax Credit (LIHTC)
- Requirement for Project-Based Section 8

B. To qualify under LIHTC affordability requirement rent and income restrictions must be imposed, monitored and enforced by a governmental agency for at least 15 years after Final Endorsement by means of a recorded Regulatory Agreement requiring the project to meet either of the LIHTC restrictions, including income average as applicable:

- 20% of units at 50% of area median income (AMI)
- 40% of units at 60% of area median income (AMI)



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HUD's Various Roles

MAP Guide Affordable Underwriting Definition (3.1.12) (cont.)

- C. Projects do not need to use LIHTCs to qualify for affordable underwriting if the project meets the requirements for LIHTC affordability

- D. To qualify an affordable based on project-based Section 8, the project must have a Housing Assistance Payment (HAP) contract covering 90% of the units with a minimum remaining term of 15 years.

*NOTE: Definition of Affordable in this section is separate and distinct from the definition of Affordable and Broadly Affordable used to determine eligibility for a reduced MIP (see Map Guide Section 3.1.10) or application fees for projects located in Opportunity Zones (see Section 3.1.36). **More on this in Course 8 Map Guide Requirements.***

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Chat Question

What role does HUD play with Affordable Housing?

Type your response in the chat box below.



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HUD's Various Roles

HUD's Various Roles

**Housing Assistance
Payment (HAP)**

**Project Based
Section 8 Contract
Renewals**

**Rental Assistance
Demonstration
(RAD)**

**Section 202
Supportive
Housing for the
Elderly**

Section 221(d)(4), Section
220 New Construction &
Sub Rehab Multifamily
Projects w/ LIHTC Pilot
Program

**Community
Development
Block Grants**

HOME Funds

**Section 108 Loan
Guarantee**

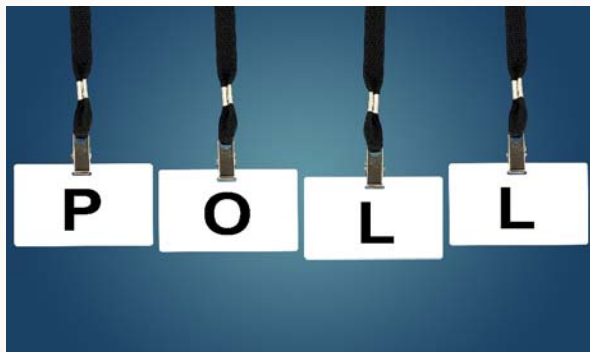
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Poll Question



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Project-Based Section 8 Contract Renewals

Project-Based Section 8 Contract Renewal

Contract Extension or Termination?

- HAP Contracts can no longer be extended.
- Instead, the Section 8 Renewal Policy Guide (S8RPG) permits the Owner to terminate their existing contract and renew for 20 years under a qualifying renewal option.



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Project-Based Section 8 Contract Renewal

20 Year Contract Renewal

- The Borrower/Owner is responsible for determining whether a new Housing Assistance Payments (HAP) Contract will be requested, yet the Underwriter may need to provide advice regarding how to obtain the lowest Mortgage Insurance Premium (MIP) rate available.
- With the lower MIP rate, and the possibility of higher rents, the Owner will likely renew the HAP Contract for 20 years.

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Project-Based Section 8 Contract Renewal

Twenty-year HAP Contract Decision Factors:

- Low MIP rate
- Property's current rents verses potential rents
- Type of Current Contract
- Effective date of the Original HAP Contract (old or new regulation)
- Owner Distributions verses Residual Receipts account deposits (original HAP Contract language & effective date; and the new contract type are factors)
- Extended Use Agreement

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Project-Based Section 8 Contract Renewal

Strategy and Timing for the 20-Year Contract Renewal

- Finalize Scope of Work (SOW) - required for Chapter 15 transaction
- Borrower will determine the Renewal Option and whether a Rent Comparability Study (RCS) is needed for the renewal option
 - As applicable, the Owner or Lender will order the RCS
 - RCS takes approximately 4-6 weeks to be prepared from the date it is ordered
- Owner or Developer will prepare & submit the Contract Renewal package
 - Most renewal options require an RCS
 - Package should be sent at least 60 days before the loan application
 - New FHA number is needed on Renewal form HUD-9624

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Project-Based Section 8 Contract Renewal

Option 1A & 1B

- Mark-Up-To-Market
- Rents are set at the market level, "as is" condition of the property
- Rent Comparability Study required
- Capital Repairs and/or Transfer Program following Chapter 15 of the S8RPG: "as is" market rents determine eligibility; when eligible, rents are set at the "after rehab" condition of the property
- Increased distributions for profit-motivated Owners in many cases (S8RPG 2-12)
- Option 1A only: Comparable Market Rents cannot exceed 150% of FMR

Option 2

- Rents At or Below Market
- Rents are set by the Operating Cost Adjustment Factors or Budget
- Rent Comparability Study required
- Capital Repairs and/or Transfer Program following Chapter 15 of the S8RPG: "as is" market rents determine eligibility; when eligible, rents are capped at the "after rehab" condition of the property
- Increased Distributions for profit-motivated Owners who renew the HAP
- Contract for 20 years in many cases (S8RPG 2-12)

Option 3

- Mark-To-Market (HUD office of Recapitalization)
- Rents are marked down to market
- Rent Comparability Study required

Option 4

- For projects that are not required to be reviewed by Recap for debt restructuring when current rents exceed market
- Rents are set at the lesser of OCAF or Budget, and can exceed market
- No Rent Comparability Study

Option 5 A & B

- Portfolio Reengineering or Preservation (LIHPRHA or ELIHPA) properties
- No Rent Comparability Study Option 5B
- Rent Comparability Study Required for Option 5A subsequent renewals

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Project-Based Section 8 Contract Renewal

Capital Repairs or Transfer Program - Chapter 15 of the Section 8 Renewal Policy Guide (S8RPG):

HUD Objective – Preserve Affordable Housing

- Capital Repairs Program permits the Owner to request market rents at the “after rehab” condition of the property which often provides a significant boost in rents.
 - When this occurs, the new 20-year contract can often be issued with rents set at or near) the “after rehab” market level (Option 2 does not guarantee rents will be set at the market level).
- The Transfer Program facilitates the change of Ownership at the property.
- The borrower will want to consider renewing their contract under one or both programs when they meet qualifications and eligibility requirements. The Underwriter will use these rents in their proforma for the loan.



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Project-Based Section 8 Contract Renewal

Basic Requirements (Chapter 15 of the Section 8 Renewal Policy Guide (S8RPG))

- Rent Comparability Study (RCS) with “as is” and “after rehab” market rent levels identified
- 20-year HAP Contract
- 20-year Use Agreement (HUD-90055)
- Extension of Existing Use Agreement (UA) – (202 UA extension is not required)
- Non-S8 units – the tenant portion of the rent cannot increase more than 10%
- The lender’s Project Capital Needs Assessment (PCNA) will determine the new Reserve for Replacement (RFR) account deposit
- Part 50 Environmental
- Relocation Plan
- Above 60 REAC Score
- Satisfactory or above Management and Occupancy Review (MOR) score

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Project-Based Section 8 Contract Renewal

Basic Requirements (cont.)

Contracts that cannot be terminated to participate in the program:

- Portfolio Reengineering Demonstration Contract Preservation Contract (Option 5B)
- Preservation Contracts
 - Emergency Low Income Housing and Preservation Act (ELIHPA)
 - Low Income Housing and Preservation and Resident Homeowner Act (LIHPRHA)
- Rental Assistance Demonstration (RAD)
- Single Room Occupancy (SRO) Moderate Rehabilitation
- HAP Contracts with current rents that are above market

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Project-Based Section 8 Contract Renewal

Highlights of Chapter 15

- Rents should be approved in advance to align with underwriting levels
- Post-rehab rents go into effect:
 - 223(f) - The first of the month after the loan closes
 - 221(d)(4) - After the construction period has ended at the project
 - “As Is” rent level is effective the first of the month after the loan closes

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Project-Based Section 8 Contract Renewal

Rent Comparability Study (RCS)

- The purpose is to estimate “market” rents for each Section 8-unit type.
- The market rent is the rent that a knowledgeable tenant would most likely pay to rent Section 8 units as of the date of the appraiser’s report, if the tenants were not receiving rental subsidies and rents were not restricted by HUD or other government agencies.



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Instructor Notes

Walk students through a rent comparable study example

Project-Based Section 8 Contract Renewal

Rent Comparability Study (Cont.)

- Most project owners must submit an RCS at initial and subsequent renewals to demonstrate that current rents are at or below comparable market rents.
- The RCS is valid for five years, and the market rents are adjusted annually by the published Operating Cost Adjustment Factor (OCAF).

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Instructor Notes

Walk students through a rent comparable study example

Project-Based Section 8 Contract Renewal

Rent Comparability Study (cont.)

- The lender may order the RCS on behalf of the Owner.
- The appraisal firm that prepares the RCS can be a different than the firm who prepares the MAP Appraisal for the FHA insured loan.

Note – Some HUD offices believe that the appraisers preparing the RCS and appraisal should be different firms in the event the RCS's market rents are higher than 140% of the median gross rent by zip code.

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Project-Based Section 8 Contract Renewal

Rent Comparability Study (cont.)

- The owner must submit the RCS to HUD and/or the Contract Administrator, no more than 90 calendar days after the date of the RCS's transmittal letter.
- If more than 90 days have elapsed, the RCS will be returned, and the owner will need to have the RCS appraiser update the data to comply with Section 9-8 of the S8RPG.

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Project-Based Section 8 Contract Renewal

RCS - Scope of Planned Repairs

- If the owner is anticipating an increase in rents based on repairs to be commenced in the following 12 months after the loan closes, the RCS appraiser must review the complete list of planned repairs to the subject property.
- Appraiser reviews each item within the scope of planned repairs provided by the owner and evaluates the impact of that repair item on marketability and appeal of the subject property to prospective tenants.
- In the appraiser's judgment if the planned repairs impact marketability, a separate set of Rent Grids (HUD-92273-S8) will be completed with the "after rehab" market rent conclusions.

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Project-Based Section 8 Contract Renewal

RCS - 140 percent of Median Gross Rent

- The RCS appraiser identifies the 140% Median Gross Rent threshold for the subject's zip code, then compares the market rent conclusions in the study to the 140% Median Gross Rent. The conclusions will be documented in the RCS.
- When the RCS indicates that the project's median market rent exceeds the 140 percent threshold, HUD will hire an independent third-party appraiser to prepare an additional RCS for the subject property.



Exception: The MAP Appraisal will be used in lieu of a third-party RCS (S8RPG 9-14) once the appraisal is submitted with the Firm Commitment Application.

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Chat Question

Who reviews the Owner's RCS?
Type your response in the Chat Box.



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Project-Based Section 8 Contract Renewal

Who reviews the Owner's RCS?

- The initial review of the RCS is done by either HUD or the Contract Administrator (CA).
- The substantive reviewer uses a HUD detailed checklist, Appendix 9-5-2., and when the review is conducted by the Contract Administrator
- Licensed appraiser performs the review

Note: The various HUD offices are inconsistent about who reviews the RCS when submitted with the Contract Renewal and an FHA insured loan application. The Capital Repairs and/or Transfer Program, S8RPG, 15-6.C. states, "...the AE undertakes the initial screening of the owner/purchaser's RCS. The CA is responsible for the substantive review of the RCS." Yet, some HUD offices conduct the substantive review of the RCS through their Production office when "after rehab" rents are requested as permitted by Chapter 15 of the S8RPG.

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Project-Based Section 8 Contract Renewal

The Ownership entity is changing coterminous with the closing of the FHA insured loan.

- When the project is being acquired by a new entity, or the ownership entity is restructured upon the closure of the loan, the 20-Year Contract Renewal paperwork will be completed in the new ownership's name and must be signed by the new owner's authorized representative.
- A HAP Assignment will be required, as the new ownership entity will assume the current HAP Contract on the date the loan closes.
- The new 20-year HAP Contract for a full debt restructuring will be effective on the first of the month after the loan closes and will be in the new ownership's name (S8RPG, 2-7.5.b)

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Project-Based Section 8 Contract Renewal

HUD Underwriting Tips

- The term and percentage of units covered by the Contract will dictate MIP.
- Section 8 revenue will continue during rehab even if residents are temporarily relocated.
 - Useful to offset working capital or initial operative deficit requirements and revenue collected during 221(d)(4) interest only period.
- Routinely check-in with the Owner/Borrower throughout the Contract Renewal process to inquire about any problems that are occurring that could impact the loan's processing and timeline.



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Project-Based Section 8 Contract Renewal

Resources

Section 8 Renewal Policy Guide

https://www.hud.gov/sites/documents/508FIN_CONSOL_GUIDE6_8_17.PDF

Fair Market Rents

https://www.huduser.gov/portal/pdrdatas_landing.html

Median Rent by Zip Code Table

https://www.hud.gov/program_offices/housing/mfh/mfhsec8

HUD Clips, Housing Forms

https://www.hud.gov/program_offices/administration/hudclips/forms/hud9#group2

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