



# The CA Quarterly Review

Winter 2015 Edition

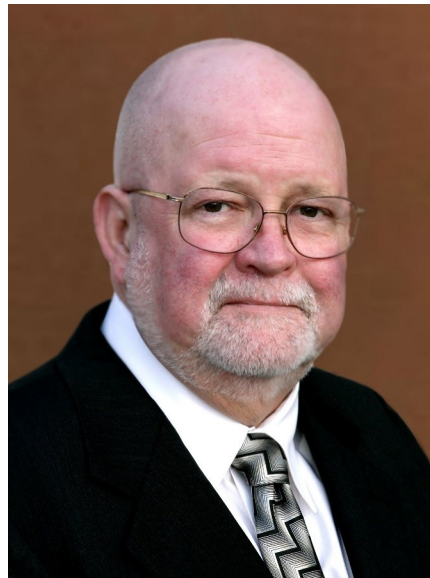
December 21, 2015

North Tampa Housing Development Corporation

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## From the Desk of Don Shea, NTHDC Director and Contract Administrator



*"If we had no winter, the spring would not be so pleasant: if we did not sometimes taste of adversity, prosperity would not be so welcome."* Anne Bradstreet, The Works of Anne Bradstreet

As we approach the end of the 2015, I am pleased to say that we can look back on another successful year. I would like to commend the Owners and Agents we have the pleasure of working with for the care and continued commitment dedicated to each of your properties. We all face challenges of varying degrees and overcoming them is what really makes what we do rewarding.

Maintaining compliance with all housing rules and regulations is certainly not an easy task and can be stressful. We as the PBCA also know that feeling. In October we completed our Annual HUD Compliance review. In this HUD staff review all facets of NTHDC's PBCA responsibilities. To give you an idea of what it is like, an MOR is a close comparison. I am extremely pleased to share that NTHDC received no findings and earned perfect scores for both the Florida and U.S. Virgin Islands contracts.

Regarding the PBCA Rebid, unfortunately we do not have any significant developments to announce. You could say the good news is that we have remained the PBCA and are expecting HUD to exercise the additional six month extensions currently in place. Those would extend the current contract through December 31, 2017. So we are looking forward to another great year as we partner with you. I would like to wish everyone a Happy Holidays and wonderful New Year from everyone here at NTHDC.

Don Shea,

NTHDC Director and Contract Administrator, Florida & U.S. Virgin Islands

# What's New on HUDClips



## *Posted Date*

11/30/2015	<a href="#"><u>HUD Form 27061</u></a>	Race and Ethnic Data Reporting form
11/20/2015	<a href="#"><u>HUD Notice H-2015-12</u></a>	Amendment to the Definition of Tuition
11/4/2015	<a href="#"><u>HUD Form 92456</u></a>	Semi-Annual Performance Report Multifamily Housing Service Coordinator Program
11/3/2015	<a href="#"><u>HUD Notice H-2015-10</u></a>	Guidance for Public Housing Agencies (PHAs and Owners of Federally-Assisted Housing on Excluding the Use of Arrest Records in Housing Decisions
10/13/2015	<a href="#"><u>FR-5883-N-01</u></a>	Notice of Certain Operating Cost Adjustment Factors for 2016
8/18/2015	<a href="#"><u>HUD Section 8 Renewal Policy Guidebook</u></a>	Revised HUD Section 8 Renewal Policy Guidebook
10/5/2015	<a href="#"><u>HUD Notice H-2015-09</u></a>	Implementation of Electronic Submission of Davis-Bacon Wage Rate Certifications
9/14/2015	<a href="#"><u>HUD Form 9642</u></a>	Project-Based Section 8 Housing Assistance Payments Full Mark-to-Market Renewal Contract

## Frequently Asked Questions: Methodology for Completing a Utility Allowance

On September 2, 2015, HUD released FAQs related to HUD Notice 2015-04: Methodology for Completing a Multifamily Housing Utility Analysis which was issued on June 22, 2015. [Click here to read the complete FAQ](#)  
The following is a summary of the most pertinent questions for our portfolio.

**Question:** What documentation will an O/A be required to submit with a utility analysis and request for approval of a U/A?

**Answer:** The O/A will submit all of the backup information required to demonstrate how s/he calculated the new utility allowances. Some examples of backup information include:

- ◆ Copies of the tenant data received from utility providers, this is typically in summary format; or
- ◆ Copies of the printouts indicating a summary of monthly data if the tenant was able to obtain data online from their utility provider for the previous 12 months, or 10 months if the case may be; or
- ◆ If the O/A obtained actual monthly utility bills from a tenant, the O/A may submit a spreadsheet summarizing the average of the monthly bills. The actual utility bills will not need to be submitted to the CA but will need to be retained in the tenant files for the term of tenancy plus 3 years and will be subject to CA review;
- ◆ There may be cases where a combination of the above will need to be performed.

**Question:** Does the data used in the analysis for each unit have to be from the same time period for each unit?

**Answer:** Yes, to the greatest extent possible.

**Question:** If an apartment is only occupied by a resident for 10 months, how do we handle the other 2 months and any partial months?

**Answer:** Get an average for the unit for the 10 months; do not use the partial months.

**Question:** When a resident vacates an apartment and another resident moves in, the utility company will only release the information for the current resident. Even if the apartment was vacant for only a few days, we may not have 10 months of usage for the new resident. How do we handle that?

**Answer:** In years when UA baseline calculations are anticipated, make every effort to collect information for the vacating resident prior to their departure. While you need 10 months of utility data for the same unit, the resident can change. In other words, you could have 5 months for one resident and 5 months for another resident. If you cannot obtain the information for at least 10 months, you should not use the unit in the sample.

**Question:** If the owner is unable to obtain the minimal sample size despite best efforts, will the analysis be accepted based on available data?

**Answer:** The owner must demonstrate that every effort has been made to obtain the required sample and to otherwise meet the requirements of the analysis. It is an owner's responsibility to provide an analysis that follows the protocol outlined in the notice as closely as possible, recognizing that the "perfect" sample may not always be available. It will be HUD's or the CA's responsibility, as appropriate, to make sure that the analysis justifies the resulting U/As, with whatever compromises in the sampling were necessary to achieve that analysis. The CA, in consultation with HUD, may require the owner to complete another baseline the following year.

## HUD Notice 2015-04: Methodology for Completing a Multifamily Housing Utility Allowance Continued...

**Question:** If the property has 20 or fewer apartments and information is not available for at least 10 months in any number of units, does the sample size get reduced? For example: Property has 15 units so all the units must be included in the sample. However, 2 units are vacant and 2 units have only been occupied by the current resident for 5 or 6 months.

**Answer:** Even if 100% sampling is required, owners must exclude units that have not been occupied for at least 10 months.

**Question:** Can you clarify the instruction on excluding units with less than 12 months of occupancy? The instructions indicate that a unit must be excluded if it has been vacant for 2 or more months, but then indicate that a unit with only 10 months of occupancy may be included.

**Answer:** The notice should have said to exclude units that have been vacant more than 2 months; units with only 10 months of occupancy may be included.

**Question:** Can you use the usage amount for residents paying a flat rate, especially if most residents are paying a flat rate?

**Answer:** Generally, you would exclude the units of residents paying a flat rate, but this rule assumes that those units are the minority of units. If most residents pay a flat rate, including them in the sampling will give you a sample more representative of the whole. If you do so, document your reasons for doing so to help the CA/HUD determine if your approach was reasonable. And if you include these units, calculate the average based on the flat rate, not on the usage.

**Question:** Please clarify the rounding to the nearest whole dollar – in some cases there have been differences due to rounding.

**Answer:** Collect the data and calculate the average in dollars and cents, and then round the resulting U/A to the nearest dollar ( $\geq .50$  round up,  $\leq .49$  round down)

**Question:** Is the UA Analysis for all units at the property or just Section 8 units?

**Answer:** The U/A analysis covers only those units that receive a U/A; only HUD-assisted units will be included in the analysis.

**Question:** Is the flat utility rate exclusion meant apply to any unit receiving any kind of subsidy or just units that receive a flat utility rate? We have a variety of low income assistance programs that are not rate-based but result in lower utility bill amounts and would skew the average.

**Answer:** For now, the exclusion applies only to units with flat utility rates. We will review this policy and determine the best treatment of units receiving varying forms of subsidies. We welcome your feedback on this issue.



## Fair Housing Spotlight

These eight Fair Housing news releases were originally distributed by the [U.S. Department of Housing and Urban Development \(HUD\) Office of Fair Housing and Equal Opportunity](#).

**HUD charged a Pennsylvania landlord with housing discrimination for allegedly refusing to rent apartments to families with children.** HUD's charge alleges that Michael DeRomo, who owns and manages rental properties and formerly owned a four-unit building in Coopersburg, posted an online classified ad for one of his Coopersburg units that discouraged families with children from applying. [Read HUD's charge.](#) Read the full [press release.](#)

**HUD charged Carrol Goodsell and his company, Goodsell General Contracting L.L.C., of Spearfish, South Dakota, with violating the Fair Housing Act by sexually harassing a woman who was renting a single family home managed by him.** Specifically, HUD's charge alleges that Goodsell subjected the woman, who occupied the house with her two children and her boyfriend, to repeated inappropriate sexual comments and physical contact. [Read HUD's charge.](#) Read the full [press release.](#)

**HUD charged a group of Colorado landlords with housing discrimination for allegedly relegating families with children to apartments in the rear building of an apartment complex.** HUD charged property owners and on-site manager after fair housing testing discovered illegal "steering" was taking place based upon the tenant's family status. [Read HUD's charge.](#) Read the full [press release.](#)

**HUD charged the owner and managers of an apartment complex in Cross Plains, Wisconsin with violating the Fair Housing Act for failing to take action to stop several tenants from harassing a neighbor, who has cerebral palsy, and her daughter with Down's syndrome.** [Read HUD's charge.](#) Read the full [press release.](#)

**HUD charged the owner and managers of Bramante's Apartments, a 120-unit complex in New Brighton, Minnesota, with violating the Fair Housing Act by refusing to allow a resident with disabilities to have a dedicated accessible parking spot.** HUD's charge alleges that Terry Persaud, Mary Huebner and Persaud Bramante Apartments LLC denied the woman's request for a reasonable accommodation, which resulted in the woman falling several times because of the distance she had to walk to her unit. [Read HUD's charge.](#) Read the full [press release.](#)

**HUD charged the owners and landlords of a high-rise complex in New York City with violating the Fair Housing Act by refusing to allow a resident with disabilities to have an emotional support animal.** HUD's charge alleges that Friedman Residence, LLC (formerly called the Aurora), Common Ground Management Corporation, and The Actors' Fund of America refused to accept that the resident required a dog to cope with the symptoms of his disability. [Read HUD's charge.](#) Read the full [press release.](#)

**HUD charged Blackacre, L.L.C. and Alishia Ritchkey, the former owner and manager of Pebble Beach Apartments, a 61-unit complex in Universal City, Texas, with violating the Fair Housing Act by imposing overly restrictive rules on children under 16 who lived there.** HUD also charged Implicity Management Company, the current management company, and Pebble Beach Apartments L.L.C, the current owner of the complex, with discriminating based on familial status. [Read HUD's charge.](#) Read the full [press release.](#)

## Fair Housing Spotlight Continued...

HUD is issuing a proposed rule that would formalize standards for victims of harassment in housing to bring claims under the Fair Housing Act. The proposed rule, "[Quid Pro Quo and Hostile Environment Harassment and Liability for Discriminatory Housing Practices under the Fair Housing Act](#)," was published in the Federal Register for public comment. Read the full [press release](#).

## Frequent Asked Questions: Section 8 Renewal Policy Guidebook

In August 2015 HUD issued a new Section 8 Renewal Policy Guide that outlined policy changes that were effective for all contract renewal or rent adjustment packages received for processing or post-marked after November 5, 2015. HUD offered further clarification on the changes made with the issuance of Frequently Asked Questions on the Section 8 Renewal Policy Guide dated October 30, 2015. The FAQ's that are highlighted below represent only a fraction of the HUD published FAQ's, therefore this list is not all encompassing.

### Chapter 2:

1. When completing HAP Contracts that expire on different dates, are extensions allowed?  
**Response: To combine HAP contracts that expire on different dates, you could either renew the earlier expiring contract with a Short Term Contract to align, or terminate the later expiring Contract to meet the earlier date. No contract extensions are allowed. (See Section 2-11)**
2. Can you please clarify that any contracts expiring after the effective date of the new Guide will have their contract expiration date moved to the end of the month? So for example we will if a contract expires on December 2, it would now expire December 31 and the contract will be renewed for the requested number of years and 29 days. **Response: That is correct. (See Section 2-7. A.6.)**
3. If a budget includes a debt service line item and the mortgage is not FHA insured, can the Debt Service Coverage of 1.2 be recognized? **Response: Yes**
4. Does the language in section 5.b(2)(c) of a MUTM contract fit the criteria of allowing a discretionary comparability adjustment as stated in 2-1.A.1.b? Said another way, can a property with an expiring Option 1 contract with an RCS that shows they are above comps, have their rents reduced to market to renew under Option 2 (assuming it is exempt from Recap)? **Response: No, owners cannot reduce rents at the project to below market just prior to renewal in order to qualify for MUTM. (See Section 2-1.A.1.b.)**

### Chapter 3:

1. Can a nonprofit qualify to renew under MUTM? **Response: If the project meets any of the three Discretionary criteria listed in Section 3-6 of the Guide, then they can qualify for MUTM. This section in chapter 3 and a corresponding section in Chapter 15 will be revised.**
2. If a project is planning on renewing under Option 1 and wants to use only the Owner's RCS and not a HUD RCS, and their current contract is going to expire before the new Section 8 Renewal Policy Guide's policies become effective, can they do so? **Response: Yes, but the Owner's RCS needs to be conducted in accordance with Section 9-23 of the Guide and demonstrate that the proposed rents are below 140% of the Median Rent by Zip Code.**



## Frequent Asked Questions: Section 8 Renewal Policy Guidebook Continued...

3. Is a letter from the City describing the project's significance to the community no longer acceptable when evaluating whether a project qualifies for Option 1-B? **Response: Correct. A letter from the city without some type of financial investment is not an acceptable form of showing community significance.**
4. What if a RCS is submitted during the 90-day period for Option Two that we know the rents are above 140 percent? **Response: The new guidance for RCSs does not go into effect until January 11, 2016, 150 days after publication. Until the new rule is effective, continue to process under the existing guidance.**
5. What if the owner submits the RCS early in order to benefit from not having to comply with the 140% trigger? **Response: Section 2-17.A.2. says cannot submit any earlier than 180 days before renewal.**
6. What if a package is not complete? **Response: The new RCS guidance goes into effect on January 11, 2016. If the complete package is not received by that day, the new guidance applies.**
7. A housing authority occupying the status of a "public body corporate and politic" under the state legislation under which it was created, or\*" Must the owner submit legal counsel's written verification with their Option 1 renewal packet to prove eligibility? **Response: Yes (See Section 3-2.D.1.b.)**

### Chapter 4:

1. For a project that renews under Option 2, we understand that at the 6<sup>th</sup> year, rents are adjusted to match comparables in the market. What if the market has faced economic obstacles and marking the rents to comps actually decreases the current rents? **Response: The rents must be reduced to market.**
2. Why has HUD added the phrase "at the discretion of HUD" to an owner's option to seek a budget based rent increase under Option 2 and Option 4? It is not clear from where this new HUD discretion originates and this conflicts with the terms of the renewal contract at Section 6(b)(1)(ii) which states that the owner has the discretion to request a budget based rent increase. **Response: HUD has the discretion to review and approve any budget based rent increase request. (See Section 4-2.B.2 and Chapter 6; Page 4; Section 6-3A.2.d)**

### Chapter 6:

1. Does a 202 property lose Option 4 eligibility if they refinance a second time using conventional financing? **Response: No. However, the 202 property would lose eligibility if they refinanced twice, both times using FHA insured financing (See Section 6-4.)**
2. Can an existing Option 4 contract (exception rents – above market) be early terminated and replaced with a 20 year Option 4 contract with above market rents. Until now the answer has been yes. The Guide suggests the answer has changed to no. **Response: Owners of such project can terminate the contract early and renew for 20 years as part of a preservation transaction. Language in the Section 2-4 of the Guide will be revised to clarify.**

### Chapter 8:

1. Are Opt-Outs allowed prior to the end term of the HAP contract? **Response: No. Owner cannot unilaterally end contract early. However, HUD may abate and terminate in instances where the physical condition of the property warrants such an action. By mutual consent, the Department can also terminate the contract to facilitate an 8bb transfer (See Chapter 12).**

## Frequent Asked Questions: Section 8 Renewal Policy Guidebook Continued...

### Chapter 9:

1. Do the provisions for a HUD RCS still only apply to Option One MUTM? **Response: No the requirement for a HUD RCS applies to any RCS where the project's median market rent exceeds 140 percent of the median gross rent for the project's zip code (See section 9-23).**
2. An owner is using 75 percent of the FMR as a substitute for a RCS. When the owner requests a budget-based rent increase adjustment, will the ceiling rents be set at 75% of FMRs in effect at the time of the adjustment? **Response: Yes. (See Section 9-5.A.4.)**
3. When the owner's appraiser concludes that the study's rents are above the 140% of median gross rent for the project's zip code, must the PBCA's appraiser conduct a substantive review of the owner's RCS? **Response: Yes. (See Section 9-23).**

### General Questions:

1. If a provision is not in the Use Agreement, but it is in the Plan of Action, what do we do? **Response: The Use Agreement prevails over the Plan of Action. However, if the information is not listed in the Use Agreement, the Plan of Action is the guiding document.**

## HUD Amends Definition of Tuition

On December 10, 2015, HUD released Notice 2015-12, announcing that HUD's definition of tuition has been amended to align with the Department of Education's definition of tuition. The intent of the notice is to promote consistency across HUD's programs and to provide Owner/Agents with a standard definition of tuition, which now includes tuition *and other required fees and charges*.

HUD recognizes that a growing number of institutions of higher education are shifting from a traditional tuition-only structure to a new tuition and fee structure. HUD believes that including some of these required fees and charges as eligible tuition costs will increase opportunities for participants to further their education. Previous guidance found in the "Eligibility of Students for Assisted Housing Under Section 8 of the U.S. Housing Act of 1937; Supplemental Guidance" required O/As to defer to the definition of tuition established by the institution of higher education in which the student is enrolled when determining an applicant's/tenant's income.

### **What Fees are Included and Excluded?**

The notice clarifies that required fees include "all fixed-sum charges that are required of a large proportion of all students. The student who does not pay the charge is an exception."

Required fees include but are not limited to:

- Student service fees
- Student association fees
- Student activity fees
- Lab fees
- Technology fees
- Fees specific to the student's major or program (e.g. nursing program)



Examples of expenses\* that must **not be included as tuition** include but are not limited to:

- Room and board
- Books
- Supplies
- Meal plans
- Transportation and parking
- Student health insurance plans
- Other non-fixed sum charges

### **Impact on the Income Determination**

When determining annual income, owners must include amounts of financial assistance an individual receives in excess of tuition and other required fees and charges, unless the student is over the age of 23 with dependent children or the student is living with his/her parents who are receiving Section 8 assistance. See the below comparison to understand how the amended definition of tuition impacts the income determination.

### **Example:**

Steven, a 21-year old, married, Section 8 participant attends college on a full-time basis. He receives \$9,000 in financial assistance to cover the \$7,600 annual cost of tuition and fees. The \$7,600 covers:

\$3,500 tuition per semester (\$7,000 total) **plus**

\$300 in lab fees that are charged to every student per semester (\$600 total)

Under the amended definition of tuition, the excess financial assistance received, \$1,400 (\$9,000 - \$7,600), will be included in Steven's annual income in accordance with 24 CFR 5.609(b) (9). Under previous guidance, the O/A likely would have considered Steven's financial assistance in excess of tuition to be \$2,000 (\$9,000 - \$7,000) because the tuition did not include the required lab fees.

### **Verification of Tuition and Fees**

HUD Notice 2015-12 also reminds owners of the requirement to verify amounts of tuition and fees charged by the school when determining annual income. Owners may use the student's bill or account statement (including online statements) as provided by the school's bursar's office, or by contacting the bursar's office directly. HUD also encourages owners to visit the school's website as many institutions of higher education provide an itemized list detailing tuition and fees that are charged to students..

Click [here](#) to read the notice in its entirety.

Those administering or participating in programs administered by the Office of Multifamily House should direct questions regarding the notice to [Michael.A.Sharkey@hud.gov](mailto:Michael.A.Sharkey@hud.gov).

## What are the Appraiser's Requirements for a Rent Comparability Study?

A Rent Comparability Study (RCS) is required at contract renewal for any property renewing under Option One, Two, Three (Lite), Five (Demonstration), and during the applicable fifth year contract rent adjustment.

### Appraiser's Qualifications

Requirements of the RCS are outlined in chapter 9 of the [Section 8 Renewal Policy Guidebook](#). Rent Comparability studies are conducted by a certified general appraiser licensed and in good standing in the state where the property is located and not debarred or suspended from doing business with the Federal Government including not being listed under a Limited Denial of Participation (LDP). Owners can obtain a list of appraisers meeting HUD standards at [www.asc.gov](http://www.asc.gov) or from the respective state's appraiser regulatory agency. In Florida the appropriate agency is the [Department of Business and Professional Regulation](#) and for USVI the agency is the [Department of Licensing and Consumer Affairs \(DLCA\)](#).

Qualified appraisers must be active and regularly engaged in performing RCSs or appraisals of multifamily housing. They must meet all requirements of the current Competency Provision in the Uniform Standards of Professional Appraisal Practice (USPAP) and have read all of the applicable HUD Regulations. Qualified appraisers must have no financial interest in the Section 8 property, its ownership or management agent entity or the principals of those entities. It is also forbidden that appraisers be employed by the owner, management agent, principals, or have a business or close personal/family relationship with those parties that would be perceived to create a bias or conflict of interest.

The Appraiser must sign and take full responsibility for the report; however appraisal assistants may contribute to any of the tasks so long as they are employed by the same firm as the appraiser and their responsibilities and roles are clearly identified in the report.

### Preparing Rent Comparability Studies

Each RCS must cover at least all unit types that have Section 8 Assistance in the contracts being renewed. Owners may also include other Section 8 unit types in other contracts that the owner plans to renew in the next five years.

The appraiser will estimate the market rents for each Section 8 unit type by adjusting rents of comparable units to reflect the location, condition, appeal, amenities and utilities of the Section 8 units. Market rent is defined as the rent that a knowledgeable tenant would most probably pay for the Section 8 units as of the date listed on the appraiser's report if the tenants were not receiving rental subsidies.

The report must be concise, but contain enough information that a lay person would understand how the appraiser arrived at their adjustments and opinion of market rent. The report must have collected, updated or verified all data within 90 calendar days before the date of the appraiser's letter transmitting the RCS to the owner.

In preparation of the RCS, the appraiser inspects and analyzes the Section 8 property and its surrounding neighborhood. The appraiser then selects comparable units, collects and document data on the comparable units on the rent grid (as shown in Appendix 9-2). Note: The rent grid on the RCS must be large enough so that the data is clear and decipherable.

## What are the Appraiser's Requirements for a Rent Comparability Study?

### Analyzing the Subject Property

The appraiser must identify all unit types that will be included in renewal contract. When analyzing the differences between the subject property and its comparable properties, the appraiser must consider the number of bedrooms, bathrooms, unit size, type of structure (i.e, walk-up, townhome, walk-up, high-rise etc.), and any other factors the market would consider a significant difference. If the two types of units have the same number of bedrooms and the same structure types, but have other differences such as square footage, the appraiser should consider the more common unit type to be primary and the other secondary. Appraisers should use their professional judgment to categorize the unit types as primary or secondary.

The appraiser must inspect and photograph at least one unit for each unit type, project grounds and the common areas for the subject property. Note: All photographs in the RCS must be in color and must be close-ups that show the project's condition.

A determination of the projects' characteristics, condition and appeal is then made. This determination must take into account all renovations made and amenities available. If the subject property is elderly/disabled, the appraiser must also note all services provided to residents, emergency call systems, transportation, social and educational activities, meals, laundry and housekeeping services that are provided.

The appraiser must take numerous factors into consideration when making adjustments to market rent. Those factors include crime, nuisance factors, schools, availability of employment and medical centers, access to transportation, and any other factor that would affect the overall perceived quality of the neighborhood.

When selecting the required five comparable properties, the appraiser must ensure that the properties are in the same market, the comparable properties are not receiving any tenant rental assistance, have locations and neighborhood conditions similar to the subject property, and are similar in terms of structure, layout, design, appeal, unit mix, amenities and utilities.

### Completing the Rent Grid

The appraiser must report the data for the primary unit types in the data columns of the rent grid (Appendix 9-2). All lines of the rent grid must be completed, even where no adjustments are made. All comparables for one unit type must be shown on one grid. The Scope of Work must outline any data that was unobtainable or estimated and all efforts to obtain the data.

A Rent Grid is required only for each primary unit type. For any secondary unit types, appraisers need not complete an entire grid. Instead, appraisers may start with the market rent for a primary type and adjust for the minor difference(s) between the secondary type and the related primary type. Appraisers must explain why adjustments were made and how they were made. The explanation should be presented immediately following the Line 46 explanation of how the market rent for the primary unit type was derived.

While appraisers may manually type entries onto a hard copy form, appraisers are encouraged to use the Excel file in Appendix 9-2 as it automates all calculations, and lets appraisers copy project-level data that stays constant across unit types. Note: The owner is responsible for the completeness of the RCS. The owner must

## Requirements for a Rent Comparability Study Continued...

ensure that the RCS includes all information required by Appendix 9-10. Section 9-14B1 requires owners to certify that they have checked the RCS for completeness.

### Content of the RCS

The RCS must contain all of the following materials and in the order prescribed below:

1. *Appraiser's Transmittal Letter;*
2. *Scope of Work;*
3. *Description of Subject Project (including color photographs);*
4. *Identification of the Subject's Market Area;*
5. *Description of Neighborhood;*
6. *Narrative Describing Selection of Comparables;*
7. *Locator Map for Subject and Comparables;*
8. *Rent Comparability Grid for Each Primary Unit Type;*
9. *Narrative Explaining Adjustments and Market Rent Conclusions (one set of explanations for each Rent Grid);*
10. *Comparable Project Profiles (each including a color photograph);*
11. *Appraiser's Certification; and a*
12. *Copy of Appraiser's License (only if relying upon a temporary license)*

All RCS submissions must be made within 120 days prior to the expiration of the HAP contract. Though early submissions are allowed, owners should not submit more than 180 days before the contract expiration date. For more information, please refer to Chapter 9 of the **Section 8 Renewal Policy Guidebook**.

## Excluding the Use of Arrest Records in Housing Decisions

On November 2, 2015, HUD published [Notice 2015-10](#) which discusses the use of arrest records when owners make decisions affecting an applicant's admission or a tenant's occupancy of a subsidized unit. For the past five years HUD has been an active member of the Federal Interagency Reentry Council. This Council, made up of more than 23 Federal Agencies, meets on a regular basis to act on issues that affect the lives of those released from incarceration. An important aspect of the Reentry Council's work has been to have each Federal Agency identify and address "collateral consequences" that individuals and their families may face because they or a family member has been incarcerated or has had any involvement with the criminal justice system.



If you are not already receiving this publication via e-mail or if you have ideas, suggestions or questions for future publications, we'd like to hear from you.

Please visit: [www.nthdc.org](http://www.nthdc.org) OR send an email to: [lay-la.hayavi@cgifederal.com](mailto:lay-la.hayavi@cgifederal.com)

## Excluding the Use of Arrest Records in Housing Decisions...continued

In 2011, former HUD Secretary Shaun Donovan issued a letter to public housing authorities (PHAs) across the country emphasizing the importance of providing "second chances" for formerly incarcerated individuals. Secretary Donovan urged PHAs to adopt admission policies that achieve a sensible and effective balance between allowing individuals with a criminal record to access HUD-subsidized housing and ensuring the safety of all residents of such housing. A year later, Secretary Donovan encouraged owners of HUD-assisted multi-family properties to do the same and reiterated HUD's goal of "helping ex-offenders gain access to one of the most fundamental building blocks of a stable life — a place to live." HUD has also previously stressed the troubling relationship between housing barriers for individuals with criminal records and homelessness, stating that "the difficulties in reintegrating into the community increase the risk of homelessness for released prisoners, and homelessness in turn increases the risk of subsequent re-incarceration."

HUD remains committed to the goal of providing second chances to formerly incarcerated individuals where appropriate and to ensuring that individuals are not denied access to HUD-subsidized housing on the basis of inaccurate, incomplete, or otherwise unreliable evidence of past criminal conduct.

The purpose of the Notice is to inform owners of other federally-assisted housing that:

- Arrest Records may not be the basis for denying admission, terminating assistance or evicting tenants,
- HUD does not require their adoption of "One Strike" policies,
- Reminds owners of their obligation to ensure that any admissions and occupancy requirements comply with requirements contained in the Fair Housing Act, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act, and Titles II and III of the Americans with Disabilities Act of 1990, and the other equal opportunity provisions listed in 24 CFR 5.105.
- Provides best practices and peer examples for PHAs and owners to review.

**HUD Does Not Require Owners to Adopt "One Strike" Policies** HUD does not require that owners adopt or enforce so-called "one-strike" rules that deny admission to anyone with a criminal record or that require automatic eviction any time a household member engages in criminal activity in violation of their lease. Instead, in most cases, owners have discretion to decide whether or not to deny admission to an applicant with certain types of criminal history, or terminate assistance or evict a household if a tenant, household member, or guest engages in certain drug-related or certain other criminal activity on or off the premises (in the case of public housing) or on or near the premises (in the case of Section 8 programs). Owners may consider all of the circumstances relevant to the particular admission or eviction decision, including but not limited to: the seriousness of the offending action; the effect that eviction of the entire household would have on family members not involved in the criminal activity; and the extent to which the leaseholder has taken all reasonable steps to prevent or mitigate the criminal activity. Additionally, an owner may consider whether the household member is participating in or has successfully completed a drug rehabilitation program, or has otherwise been rehabilitated successfully.

Subject to limitations imposed by the Fair Housing Act and other civil rights requirements, owners generally retain broad discretion in setting admission, termination of assistance, and eviction policies for their programs and properties. Policies must ensure that adverse housing decisions based upon criminal activity are

## Excluding the Use of Arrest Records in Housing Decisions Continued...

supported by sufficient evidence that the individual engaged in such activity. Specifically, the PHA or owner must determine that the relevant individual engaged in such activity. An arrest is not evidence that he or she has engaged in criminal activity. Therefore, an arrest for a crime is not a basis for concluding the relevant individual engaged in criminal activity warranting denial of admission, termination of assistance, or eviction. Further, arrest records may be incomplete or inaccurate and as such should not be relied upon for making decisions related to denying applicants housing or terminating assistance of tenants.

Although a record of arrest(s) may not be used to deny a housing opportunity, owners may make an adverse housing decision based on the conduct underlying an arrest if the conduct indicates that the individual is not suitable for tenancy and the owner has sufficient evidence other than the fact of arrest that the individual engaged in the conduct. The *conduct, not the arrest*, is what is relevant for admissions and tenancy decisions. Owners can utilize police reports detailing the circumstances of the arrest, witness statements, and other relevant documentation to assist them in making a determination that disqualifying conduct occurred. Reliable evidence of a conviction for criminal conduct that would disqualify an individual for tenancy may also be the basis for determining that the disqualifying conduct in fact occurred.

Owners are encouraged to adopt admissions and continuing occupancy policies based on the best practices highlighted in the notice to guard against unwarranted denial of assistance, termination from program participation, or eviction from federally assisted housing. These best practices incorporate clear standards for using information about criminal history in an admission or continuing participation decision. Owners are also encouraged to read the Shriver Report entitled ["When Discretion Means Denial: A National Perspective on Criminal Records Barriers to Federally Subsidized Housing."](#)

