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Update 2.0: New HUD FAQ extends guidance on property management, recertification, and HUD closing issues

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As the legal, financial, and health whirlwinds spawned by COVID-19 continue to spin, HUD's Office of Multifamily Housing has updated its FAQ guidance — [Questions and Answers for Office of Multifamily Housing Stakeholders](#). Most of the guidance reflects extensions of advice given by HUD in the previous two versions of its FAQs, but this iteration includes extensive new information about HUD's plans to manage various transactional closings. While focused on HUD-assisted/insured housing, HUD's guidance is also useful to operators of market-rate multifamily housing. Interested people should refer to the two previous alerts in this series for additional information about dealing with management issues relating to COVID-19. Here's a summary of the new information from HUD.

Property management/emergency preparedness

General guidance on property management threats posed by COVID-19

In past editions of its FAQs, HUD referred housing providers to CDC information about COVID-19, even though at the time, CDC had not issued housing-related guidance. In its latest update, HUD urges housing providers to consult guidance from the National Association of County and City Health Officials ("NACCHO") about emergency planning and messaging for aging and disabled populations (Emergency Preparedness, FAQs 2 and 3).

While the guidance is helpful as a long-term planning tool, it is of limited use to housing providers trying to find urgent solutions to property management threats posed by COVID-19.

Although not mentioned in the latest FAQs, the CDC published [new guidance for operators of "housing for older persons"](#) earlier this week, as our last alert reported. While it focuses on the precautions needed to safely operate senior housing, it contains good guidance for anyone who owns or manages multifamily housing.

What to do if you learn someone in your property tests positive for COVID-19?

While some conflict remains, guidance is coalescing around a policy of notifying other residents if

someone on the property tests positive for COVID-19. Numerous medical authorities and the recent CDC guidance agree that information that someone on the property has a **confirmed** diagnosis of COVID-19 should be shared with other residents, to make sure that they have the same information the housing provider has and to encourage them to intensify their precautions. HUD's updated FAQs agree, saying that "[o]wners/agents can provide notification of positive [COVID-19] cases without giving the name/apartment number/other personally identifiable information to their residents and staff" (Resident Health, FAQ 2). However, we understand that some local health agencies, such as NYC Health, continue to advise that other renters should not be notified if someone in the building is sick. While housing providers should consult with local public health agencies to see if they are providing specific guidance, the guidance from HUD and CDC is weighty.

HUD warns that HIPAA and other privacy laws prevent disclosure of health-related information about individuals.

Disinfecting contaminated spaces

HUD has new references to CDC guidance concerning disinfecting spaces visited by someone with COVID-19 and how to clean and disinfect surfaces (electronics, laundry facilities, etc.) where the virus might be present (Resident Health, FAQ 9).

Updating HUD's emergency preparedness guidance

HUD reports it is updating its current emergency response guidance in Chapter 38 of *Handbook 4350.1 (Multifamily Asset Management)* to address infectious disease emergencies (Policy and Operations, FAQ 1). That's great news, but also means that while Chapter 38 contains useful information, it does not focus on specific information for handling infectious disease emergencies.

Recertification issues

In a previous FAQ, HUD had advised property owners that they may omit signatures on resident re-certifications and forego in-person interviews if COVID-19 concerns create an exigent circumstance for that resident. The reason for any missing signatures must be documented in the resident's file. HUD recommends obtaining any missing signatures within ninety (90) days. The updated FAQ provides further guidance and allows residents to submit documentation necessary for recertification, such as paystubs, bank statements, and public assistance documents, by email. HUD is also allowing documents that typically required live "wet" signatures, such as HUD-50059 form and lease agreements/addenda, to be executed electronically. In every case, HUD expects the owner/agent to obtain the wet signature at a later date.

HUD closing and transactional guidance

On our last update about the HUD FAQs, we included some information we had gathered regarding how HUD's Office of General Counsel was handling closings if HUD staff are working remotely. The latest HUD Multifamily FAQ now incorporates all relevant OGC guidance.

Electronic signatures

In the latest FAQ, HUD clarifies that electronic signatures are allowed for all asset management functions, including contract renewals, rent schedules, and HAP Assignments. For RAD and other real estate transactions, the recorded documents typically have wet signatures that are notarized. The HUD closing attorney will have to advise whether electronic signatures are acceptable in the recording offices in their jurisdictions. Documents that will not be recorded may be signed

electronically. In the OGC section of the FAQ, there is extensive guidance about electronic submission of documents and electronic signatures.

For all transactions, electronic signatures must conform to applicable federal, state, and local requirements.

Annual audited financial statements

Previously, HUD had provided a thirty- (30-) day extension for filing annual audited financial statements. Now HUD has extended the audited financial reporting deadlines until April 30. All entities required to submit financial information on or before April 30, 2020, are now required to submit their financial information no later than 120 days after the end of the fiscal year of the reporting period. This waiver does not apply to the submission requirements for financial information that was delinquent as of March 23, 2020.

Management and occupancy reviews

HUD recognizes that the emergency/disaster declaration limits, or in some cases, prevents, Performance-Based Contract Administrators (PBCAs) from carrying out management and occupancy reviews (MORs). HUD is, therefore, suspending standard MORs until the PBCA determines that local conditions no longer limit or prevent the PBCA from performing MORs safely.

Rent comparability studies

HUD rent comparability studies (RCSs) are suspended in areas that are under a state- or nationally declared emergency or where public health officials have imposed limited travel. HUD had previously stated that they would provisionally accept an owner's RCS up to 5 percent above current rent levels, although HUD or the Contract Administrator (CA) must still review an owner's RCS to make sure the rent conclusions are reasonable. HUD is now rescinding that guidance and stating that they will provide new guidance about this topic in the upcoming weeks.

Use of reserves and residual receipts

HUD has clarified that monies in a residual receipts account can be used for costs directly related to safety or preventive equipment for staff use. Owners of FHA-insured or Section 202 or 811 property owners may submit requests to HUD field staff for non-traditional uses of reserves for replacement monies, such as mortgage payments for delinquent mortgages. All of these requests are subject to the usual HUD approval processes.

For more information on the content of this alert, please contact our [Coronavirus Response team](#), your Nixon Peabody attorney, or:

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