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AFFORDABLE HOUSING ALERT | NIXON PEABODY LLP

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## Update: HUD issues updates to FAQs for owners of multifamily assisted housing on dealing with COVID-19 and legal guidance for closing transactions

*Announced moratorium on evictions and foreclosures is limited to single-family housing and does not affect multifamily properties.*

By Harry Kelly, Susanna Mitchell, Kathie Soroka, and Deborah VanAmerongen

Earlier this week, we issued an [Affordable Housing Alert](#) summarizing [FAQs for owners and managers of HUD assisted housing](#) issued by [HUD's Office of Multifamily Housing](#). As this is a fast-changing situation, HUD has updated that guidance with some key additional points extending deadlines and relaxing some requirements. The updated FAQs, as well as additional guidance from HUD's Office of General Counsel, also establish legal protocols for closing FHA-insured multifamily loans.

The White House and HUD also announced a 60-day moratorium on evictions and foreclosures this week, but that announcement is limited to government-backed single-family home mortgages and does not affect multifamily properties. Details are discussed in [this HUD press release](#).

HUD's updated guidance relating to multifamily properties includes:

- **REAC inspections and MORs** are being postponed until further notice. However, if there is an exigent circumstance or reason to believe there is a threat to life or property, inspections may be held.
- Property owners 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 90 days.
- **HUD RCSs** are being suspended in areas under a state or nationally declared emergency, which we believe is the entire country at this point. HUD will accept an owner's RCS up to 5% above current rent levels, and HUD has discretion to approve higher rents on a case-by-case basis.
- **Audited financial statements** due in March or April are given a 30-day extension.

- There is some additional operations-related guidance (disinfection/directing residents for “health checks”) but the guidance basically refers to CDC guidance.

In addition, a new section of the FAQ sets forth HUD protocols for conducting a variety of transactions under current circumstances, including loan closings, contract renewals, and RAD transactions. HUD commits to processing these transactions while staff work remotely, accepting electronic submissions whenever practicable. In particular:

- **HAP Contract renewals** should be submitted electronically via AMPS, with a copy sent to the assigned Account Executive or Resolution Specialist, Funding Specialist, and Branch Chief. However, hard copies should also be submitted to the field office.
- The majority of **RAD transaction** requests were already being handled through online requests, email, and phone calls, so no significant changes are anticipated. To the extent Capital Needs Assessments (CNAs) cannot be conducted because of coronavirus concerns, HUD will extend applicable milestone deadlines.
- **Multifamily program** staff will perform underwriting functions, hold concept meetings, and conduct other duties remotely. Applications and related materials can be submitted electronically. HUD will arrange for architectural plans and specifications to be sent to the construction analyst and reviewed remotely. Site visits will still be required, but if there are COVID-19 concerns, inspections of insured properties built in the last 10 years and uninsured properties built in the last five years can be limited to vacant or model units. Lenders can rely on the capital needs inspection in lieu of conducting the lender’s physical inspection. However, HUD appraisers and market analysts must still inspect the property and subject comparables for valuation purposes. The Regional Production Director may waive site inspection requirements for environmental reviews if the lender’s environmental consultant submits a review through HEROS, and HUD may consider other alternatives if the site cannot be accessed for a prolonged period of time. Monthly construction draws can largely be reviewed electronically, but the construction inspector must physically inspect progress to approve draws, or the draws will need to be postponed.

This guidance on conducting transactions also matches internal guidance provided by the Office of General Counsel (OGC) to field counsel for **FHA-insured loan closings**. The Office of General Counsel has discouraged in-person meetings and closings and has instructed field counsel to rely on electronic submissions, rather than hard copies. Documents can be manually executed by signatories and distributed electronically via pdf. OGC prefers documents be pre-recorded but will accept gap title coverage where available if pre-recording proves impracticable. Parties should allow extra time for closings; documents may need to be shipped to and from HUD signatories working remotely without access to scanners and/or printers. Anecdotally, one of the most challenging aspects of conducting closings remotely may be locating notaries and having documents properly notarized when necessary. To make review easier and faster for HUD staff, best practices include: (1) send drafts in Word format, so that HUD staff can comment directly in the document, (2) send redlines against prior transactions or previous drafts, and (3) make sure your electronic files are well-organized and labeled to match checklist entries and numbers.

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

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