



# Questions and Answers for Office of Multifamily Housing Stakeholders<sup>1</sup>

## Coronavirus (COVID-19)

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<sup>1</sup> Office of Multifamily Housing Stakeholders include tenants; property managers, owners, and agents; lenders and their partners; residential service coordinators; contract administrators; and other participants in FHA Multifamily mortgage insurance and Office of Housing rental assistance programs.

## **Emergency Preparedness**

**Q1: Who is coordinating COVID-19 efforts for Multifamily Housing (MFH)? Who will be the point of contact for housing providers?**

A: Owners and agents should contact their field MFH Account Executive or Resolution Specialist for property specific inquiries. Jeff Little, the Associate Deputy Assistant Secretary for MFH Programs, is the main point of contact for Multifamily stakeholders.

(Added on 3/12/20)

**Q2: Have MFH Field Offices been given guidance on how housing providers should prepare and respond to COVID-19?**

A: The Office of MFH provides regular direction to field staff. On March 3, the Office sent an email message to external stakeholders that encouraged stakeholders to share information from the Centers for Disease Control and Prevention (CDC) on the Coronavirus with residents, stakeholders, and others. Please see the following information regarding Emergency Preparedness, Planning, Identification and Messaging for Aging and Disabled Networks: <https://www.naccho.org/uploads/downloadable-resources/Capacity-Building-Toolkit-for-Aging-and-Disability-Networks-2-5-19.pdf>

(Updated on 3/16/20)

**Q3: What emergency preparedness steps does HUD recommend or require property owners and agents take?**

A: Owners and agents should generally follow CDC guidelines and the directions given by local health officials for emergency preparedness. Chapter 38 of [Handbook 4350.1](#), Emergency and Disaster Guidance, should also be consulted.

The CDC provides guidance for [communities, businesses and schools](#) that can assist housing providers. The CDC has also provided specific guidance [for retirement communities and independent living facilities](#), including federally assisted independent housing with support services for older adults. Please see the following information as well regarding Emergency Preparedness, Planning, Identification and Messaging for Aging and Disabled Networks: <https://www.naccho.org/uploads/downloadable-resources/Capacity-Building-Toolkit-for-Aging-and-Disability-Networks-2-5-19.pdf>

(Updated on 4/2/20)

## **Resident Health**

**Q1: How does a HUD-assisted property learn about a positive COVID-19 case impacting its residents, staff, or the community?**

A: Owners/agents will learn about COVID-19 cases and activities in the community from their local health departments. They should communicate with their local health department if they are concerned that residents or staff might have COVID-19.

(Added on 3/24/20)

**Q2: In the event of a confirmed COVID-19 case at a HUD-assisted property, what steps should property owners and managers take to protect residents, staff, and the community? How should the owner/agent share this information?**

A: MFH suggests property owners and agents follow Center for Disease Control (CDC) guidelines and the direction of local health officials, especially in the event of property quarantine.

HUD recommends that owners/agents create communication plans for distributing timely and accurate information during an outbreak. First, they should identify everyone in their chain of communication (for example, staff, volunteers, key community partners and stakeholders, and clients) and establish systems for sharing information. After identifying this information, they should maintain up-to-date contact information for everyone in the chain of communication as well as identify platforms, such as a hotline, automated text messaging, and a website to help disseminate information to those inside and outside of their organizations.

Owners/agents can provide notification of positive COVID-19 cases without giving the name/apartment number/other personally-identifiable information to their residents and staff. HUD reminds them that they continue to remain subject to HIPAA and other privacy laws.

(Updated on 3/24/20)

**Q3: How would a HUD-assisted property owner/agent message to residents and staff when there is a positive COVID-19 case among their community?**

A: CDC COVID-19 communication resources in both print and digital form are available at: <https://www.cdc.gov/coronavirus/2019-ncov/communication/index.html>

(Added on 3/24/20)

**Q4: How should housing providers assist residents in accessing continued critical services from home- and community-based providers in the event of a quarantine or if community service providers close temporarily?**

A: HUD encourages property owners and agents follow Centers for Disease Control guidelines and the direction of local health officials in all cases, including within the context of home and community-based service providers.

(Added on 3/12/20)

**Q5: What steps is HUD taking to make sure that Fair Housing obligations will still be met in the event of an emergency?**

A: Stakeholders are reminded to ensure that their responses remain faithful to obligations under the Constitution, Fair Housing Act and related regulations. Exigencies associated with important and timely response to issues surrounding COVID-19 are not the basis for unlawful discrimination based on race, color, religion, national origin, sex, disability or familial status.

(Added on 3/12/20)

**Q6: It is thought that many seniors and people with disabilities are particularly susceptible to illness. What kind of communication and resources is HUD providing to communities to reassure residents and property management staff, and prepare them in the event of a confirmed COVID-19 case on site?**

A: We encourage all parties to access information about the health impacts and proper handling of COVID-19 cases from the CDC, and/or state or local health officials.

We intend to provide regular updates to stakeholders and will continue to send written updated communications via email to national stakeholder groups for forwarding to their members, and to HUD Multifamily Field Offices for distribution to stakeholders in their jurisdiction. Where applicable, we will encourage stakeholders to forward COVID-19 communications from HUD to communities and residents.

(Added on 3/12/20)

**Q7: Does HUD have guidance available on infectious disease preparation and response?**

A: See information on the Coronavirus from the CDC's [Coronavirus web site](#).

(Added on 3/12/20)

**Q8: If a person under quarantine has additional family members who need to be kept separate what are a property manager's options for meeting those needs? What if managers are being asked to use vacant units for quarantine?**

A: Resident requests to occupy vacant units or temporarily relocate should be verified before being granted. Verification could include written communication from a medical health professional or through communication with the local health department. Managers may use electronic and telephonic communication to perform verification.

(Added on 3/12/20)

**Q9: Does HUD have guidance on disinfecting common spaces and units, including how to protect our staff?**

A: See these links from the CDC for recommendations on cleaning and disinfecting:

- *Environmental Cleaning and Disinfection Recommendations*, which provides recommendations on the cleaning and disinfection of rooms or areas of those with suspected or with confirmed COVID-19 have visited:  
(<https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/cleaning-disinfection.html>)
- *Disinfecting Your Facility if Someone is Sick*, which provides concise information on how to clean and disinfect facilities, from surfaces to electronics to laundry, in order to protect individuals from COVID-19.  
(<https://www.cdc.gov/coronavirus/2019-ncov/prepare/disinfecting-building-facility.html>, which provides

(Updated on 3/24/20)

**Q10: Does HUD have recommendations on where we can direct our residents for health checks?**

A: See the link below to find a health center through the Health Resources and Services Administration. <https://findahealthcenter.hrsa.gov/>

(Added on 3/13/20)

## **Policy and Operations**

### *General MFH*

**Q1: Does HUD plan to issue guidance on quarantine procedures for HUD-assisted housing that serves predominantly older adults?**

A: HUD encourages property owners and agents to follow CDC guidelines on quarantine procedures and the direction of local health officials. Stakeholders should reference Chapter 38 of [Handbook 4350.1](#), *Multifamily Asset Management and Project Servicing*, which covers Multifamily emergency and disaster guidance.

(Added on 3/12/20)

**Q2: Is HUD planning to update their Chapter 38 on emergency preparedness to include infectious disease protocol?**

A: Multifamily plans to use lessons learned from the COVID-19 response in the update to Chapter 38. The Chapter is in the process of being redrafted. Stakeholders will be able to comment when the draft chapter is posted to the Multifamily Drafting Table.

(Added on 3/12/20)

*Asset Management*

**Q3: Can HUD provide guidance on who is an "essential" employee in states/localities that have strict stay-at-home or shelter-in-place requirements for all persons not deemed "essential"?**

A: Quarantine and travel restrictions are being set by state and local governments, with many variations and daily revisions. Many of these rules provide exceptions for staff supporting operations at residential properties. On March 28, 2020, the Department of Homeland Security Cybersecurity & Infrastructure Security Agency (CISA) published an [Advisory Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response](#). State, local, tribal, and territorial governments are responsible for implementing and executing response activities, including decisions about access and reentry in their communities. Therefore, HUD recommends that building owners consult with their local counsel to determine whether building employees are considered "essential."

(Added on 4/2/20)

**Q4: What emergency funds can owners and agents access for outbreak preparedness and response (including extra supplies, additional administrative hours, and staff overtime), and what kind of approval do housing providers need from HUD in order to access the funds?**

A: Multifamily property owners and agents can access property operating accounts for all reasonable and necessary COVID-19 related preparedness and response actions, including supplies, staff hours, and overtime. No advance HUD approval is required to access operating account funds.

To the extent that owner advances are required, owners should receive HUD approval in advance, especially if the owner expects repayment before the distribution of annual (or semi-annual) surplus cash. For those properties with reserve for replacement accounts and residual receipts accounts, funds should be accessed according to current policy in Handbook 4350.1, Chapter 4 (for reserve for replacement accounts) and Chapter 25 (for residual receipts), for eligible items. If the owner is seeking to use reserve for replacement and residual receipt funds for non-eligible uses, approval must be received from HUD field staff and Headquarters, as necessary, in advance.

(Updated on 3/16/20)

**Q5: Will HUD be making COVID-19 prevention training available for property management and resident services coordinator staff? Will HUD be providing technical assistance for housing providers and residents?**

A: HUD recommends that property managers and service coordinators avail themselves of all relevant training and supplies at the local, state, and federal level.

(Added on 3/12/20)

**Q6: Is testing for the COVID-19 virus for property staff an eligible cost, and if so, under what source of funding? How about residents?**

A: No, these are not eligible costs.

(Added on 3/12/20)

**Q7: Will impacted residents still have to complete annual recertification and interim certification for lost income?**

HUD statute and regulations require family income to be reviewed at least annually to determine the amount paid by the family for the assisted unit. Owners must continue to perform annual and interim recertifications, as requested by tenants, within the required timeframes and using current/anticipated data. Annual recertifications must not use previous year's income to determine rent and assistance, except in instances when using streamlined income determinations.

Considering the current COVID-19 emergency, there may be extenuating circumstances that impede owners and tenants from complying with interim and annual recertification requirements. When the use of traditional procedures is not possible, the extenuating circumstance instructions provided in this document, HUD Handbook 4350.3, REV-1, and the TRACS MAT Guide should be used. HUD considers the CDC's recommendations for controlling the spread of the virus as well as shelter-in-place and similar orders as qualifying as an extenuating circumstance.

It is recommended the owner begin, and if possible, complete, the recertification actions within 90 days of being advised of the extenuating circumstance. When an extenuating circumstance is present, there is no change to the tenant's recertification anniversary date. The Total Tenant Payment/Tenant Rent and the assistance payment are effective retroactively to the recertification anniversary date.

#### Use of Tenant Self-Certifications for Interim and Annual Recertifications

HUD will allow assisted tenants that may have lost income due to COVID-19 to self-certify for annual or interim recertifications. Acceptable methods of verification of income for all recertifications, in order of acceptability, are provided in HUD Handbook 4350.3, paragraph 5-13, B and Appendix 3.

Family certification can be used if the information cannot be verified by another acceptable verification method. When family certification is used, owners must document the tenant file to explain why third-party verification was not available. During the COVID-19 National emergency, this certification can be provided to the owner by other means such as mail or email. The owner may consider collecting the original documents from the family at a later date.

### Signatures

For owners or tenants impacted by the COVID-19 virus, HUD will allow alternate signatures (e.g. copies or images of signatures sent by email, fax, or other electronic means) as long as original, “wet” signatures are obtained at a later date. Forms that will require original, “wet” signatures to be obtained at a later date include, but are not limited to, form HUD-9887/9887-A (“Applicant's/Tenant's Consent to the Release of Information”), form HUD-50059 (“Owner’s Certification of Compliance with HUD’s Tenant Eligibility and Rent Procedures”), lease agreements/addendums, family certifications of income (unemployment, zero income, etc.), and state lifetime sex offender forms.

### Form HUD-9887/9887-A and Form HUD-50059

When a tenant’s “wet” signature cannot be obtained on form HUD-9887/9887-A or on form HUD-50059, due to extenuating circumstances, the forms, and HUD Handbook 4350.3, REV-1, paragraph 5-21.C (for HUD-9887/9887-A) and paragraph 5-31.F (for HUD-50059) , instruct the owner to document the tenant file with the reason for the delay and the specific plans to obtain the signature(s) as soon as possible. Please note that form HUD-9887/9887-A remains in effect for 15 months after signature.

### Documentation for Certifications

Tenants experiencing extenuating circumstances due to the COVID-19 virus can provide the owner with documentation for the recertification by email or other electronic delivery at the owner’s discretion. Documentation includes, but is not limited to, paystubs, (Social Security) SS/Supplemental Social Security (SSI)/State Supplemental Program (SSP) awards, bank statements, and public assistance documents. If electronic documentation is received by the owner, and original documents are required by HUD Handbook 4350.3, REV-1, the owner must collect the original documents from the tenant at a later date.

### Tenant Rental Assistance Certification System (TRACS)

When an extenuating circumstance is present due to the COVID-19 virus, the owner must submit the Interim Recertification (IR) or Annual Recertification (AR) to the TRACS (via the Contract Administrator or directly to TRACS, as appropriate) using one of the following three (3) extenuating circumstances codes:

- 1 = Medical (medical staff have quarantined the tenant)
- 2 = Late annual certification due to accommodation or extenuating circumstances.
- 10 = Other

A correction certification to remove the extenuating circumstance code must be submitted to TRACS once the appropriate signature(s) is obtained on form HUD-50059.

Owners are reminded to maintain at least 90% of their certifications in an active status in TRACS to maintain subsidy payments. TRACS users experiencing technical issues can continue to submit requests through the system’s [Help Desk](#).



*Please note that this guidance updates earlier guidance on interim and annual recertifications as published on 3/16/20 and 3/24/20.*

(Updated on 4/2/20)

**Q8: Maintenance employees who need to enter resident units for service calls are concerned that residents may be ill with COVID-19. Can they ask tenants if they have COVID-19 symptoms before entering a unit? Can non-essential repairs be postponed?**

A: Maintenance employees and other staff can ask a resident if it is safe to enter a unit before entering. Owner/management staff who do not feel safe should not enter a tenant's unit.

Residents suspected of having an unreported illness should be referred to a medical provider and/or local health officials.

The deferral of non-essential or non-health and safety repairs should be made on a unit-by-unit basis. If the repair is necessary for health and safety of residents and the staff person is not comfortable entering the unit as a result of a potential COVID-19 exposure, owner/management should consult local health guidance regarding the appropriate precautions to take.

(Added on 3/24/20)

**Q9: Are costs directly related to safety or preventative equipment for staff use in response to COVID-19, including maintenance staff, eligible costs of residual receipts funds for PBRA projects?**

Yes, costs directly related to the safety or preventative equipment for staff in response to COVID-19 are considered project expenses and are eligible costs with prior HUD approval.

(Updated on 4/2/20)

**Q10: What if property owners or managing agents either close rental offices or only offer limited hours/access? Would these actions result in any penalty?**

A: Owners and agents should make decisions on limiting access to their rental offices on a case-by-case basis based on guidance from their local or state jurisdiction and the particular circumstances at their property. HUD defers to them to determine the best course of action, accounting for the importance of ensuring the safety of residents, staff, and the property.

(Added on 3/24/20)

**Q11: Can property owners with FHA-insured mortgages with reserve for replacement accounts access those funds to pay debt service?**

A: Owners should request any reserve for replacement account releases from their Account Executive and local field office using the form HUD-9250. The request should include evidence of the causes of the cash shortfall and a promise to repay the funds to the reserve for replacement account. HUD field staff will expeditiously review such requests and consider the cash flow of the property, the amount in the reserve account, and the borrower's current compliance with HUD's business agreements.

(Added on 4/2/20)

**Q12: Is Handbook 4350.1 Multifamily Asset Management and Project Servicing, Chapter 38 Multifamily Emergency/Disaster Guidance applicable with the FEMA Declarations for COVID-19?**

A: Yes, MFH authorizes the use of guidance in this chapter for program participants under the Emergency Declaration for COVID-19. Note, however, the statutory and regulatory displaced person/family occupancy preference for properties with insured mortgages under Sections 221(d) and 236 and the refinance of Sections 221(d) and 236 mortgages under Section 223(a)7 of the National Housing Act as amended, only applies to states that are subject to a presidential Major Disaster declaration.

(Added on 4/2/20)

**Q13: Is MFH collecting potential resource information, which tracks vacant units in multifamily properties, at this time?**

A: MFH is not currently collecting potential resource information nationally as it has done in the past in response to disaster events. However, Regional Directors may request potential resource information for specific jurisdictions at their discretion.

(Added on 4/2/20)

*Multifamily Production*

**Q14: What impact does the COVID-19 emergency have on owner-architect agreements, owner-general contractor (GC) agreements and similar contracts associated with FHA insured loans?**

A: There is no impact on the validity or enforceability of contracts among parties to a HUD insured loan and any associated construction except insofar as any provisions that the contracts may provide in the event of emergencies. HUD cannot change any provision of existing agreements or alter the mutual obligations of any of the parties. In the present COVID-19 emergency situation, each party must endeavor to perform its obligations under these existing agreements, and if unable to do so, they must follow all contract notice and hold harmless

provisions. Communication between the parties, and with HUD, is important as is the need for all parties to mitigate adverse consequences to health and property.

(Added on 4/2/20)

**Q15: What should owners, general contractors and subcontractors do if the State or local government issues a shelter-in-place or similar order that prevents essential workers and materials reaching the job or a stop-work order that forces cessation of work as a result of COVID-19?**

A: All parties to the transaction and construction should stay engaged and provide regular updates to the lender and to HUD. If a job site is shut down, the general contractor (or in the absence of the general contractor, the owner) must ensure that the site is properly secured and that all completed work and stored materials are protected. If limited work continues, workplace safety procedures and CDC advisories for “social distancing” should be observed.

(Added on 4/2/20)

**Q16: What happens to Surety Bond coverage and Builder’s Risk insurance during a work shut-down or slow-down caused by the COVID-19 emergency?**

A: Owners, general contractors, and lenders should proactively assure that Surety Bonds and Builder’s Risk insurance policies will remain in place and will not be impaired by any job slow-down, temporary cessation of work, or any failure to report or communicate emergency conditions or consequences.

(Added on 4/2/20)

**Q17: Since the COVID-19 emergency likely will cause numerous delays, if not complete cessation of construction work, how should work progress be managed?**

A: HUD requests that general contractors, owners and supervising architects report construction work status on a monthly basis in connection with their monthly requests for reimbursement of costs and associated inspection trip report. Unlike the typical process where change orders are submitted on a more frequent basis, during the current emergency, requests for change orders for time extensions should be documented to identify delays resulting from the COVID-19 emergency, and single, time-extension change orders should be submitted on a monthly basis.

While HUD does not normally allow time extensions of Repair Escrows for projects under Sections 223[f] and 223[a][7], it will consider amending the Repair Escrow Agreement in those cases where owners and lenders have documented COVID-19 related delays. Owners/lenders should use a change order request for time extension to report delays due to COVID-19 and

request extensions. Such requests must be submitted in the first report period following the delay.

(Added on 4/2/20)

**Q18: For new construction or substantial rehabilitation jobs, will requests for reimbursement of the cost of work completed be approved even if the supervising architect and/or the HUD Inspector are not able to conduct an onsite inspection?**

A: Yes. In most cases, reimbursement requests for work completed in the prior period will be approved even when either the supervising architect or the HUD inspector, or both, are unable to conduct an on-site inspection of the property due to the COVID-19 emergency. HUD will accept the supervising architect's verification of the work completed based on a recorded virtual inspection and virtual site meeting if the supervising architect and/or the HUD inspector are not able to be present onsite.

Enabling virtual inspections and site meetings will require extra initiative and coordination among the supervising architect, HUD Inspector, general contractor and owner's representative. Notwithstanding this additional flexibility, the contractual responsibility and liability for checking the work and signing off on the reimbursement request remains with the supervising architect. Normally, both the architect and the HUD Inspector must sign a draw request, but HUD will approve a draw without the HUD Inspector's signature as a one-time event, provided any work claimed but later disallowed by the HUD Inspector will be subtracted from the draw request for the following month. The general contractor will bear full responsibility for any costs and delays caused by any reconstruction work required to correct errors in work that is later disallowed.

HUD's working assumption is that if neither the supervising architect nor the HUD Inspector can inspect the completed work, the most likely cause is that the construction site has been shut down. In the event of a site shutdown, the parties should endeavor to arrange a virtual inspection as soon as possible in order to establish and verify the extent and amount of work completed but not yet paid.

(Added on 4/2/20)

**Q19: If a construction job is shut down as a result of the COVID-19 emergency, but the owner and/or the general contractor have ongoing soft costs or general requirements, will they be reimbursed for these?**

A: Yes. Again, monthly job reports and requests for reimbursements should continue even if little or no work has been completed. Of course, owners and general contractors should proactively mitigate or reduce such costs whenever possible. Question #17 above further describes change order requests for time related to COVID-19. Owners will be expected to fund change orders that increase costs.

(Added on 4/2/20)

**Q20: Will HUD reduce or eliminate the requirements for job site inspections by HUD inspectors during the COVID-19 emergency?**

A: No. HUD will not reduce or eliminate its general requirements for job site inspections by HUD Inspectors. However, as noted in the answer to Question #18 in this section, HUD will accept the signature of the supervising architect alone as sufficient for draw requests when the HUD Inspector is unable to sign the request. HUD will only allow this flexibility for a single month, or for rehab loans that do not have monthly inspections, for a single reporting period. Additionally, the signature of the HUD Inspector is still required for the last or final request for disbursement.

HUD will accept recorded virtual inspections if and when the parties are able use this option.

(Added on 4/2/20)

**Q21: What about Section 223(f) and 223(a)(7) Repair Escrows? Will HUD waive inspection requirements? What if tenant units are involved?**

A: The construction supervision and inspection requirements for Repair Escrows vary by the substance and cost of the repairs and alterations. Regardless, owners currently obligated to complete repairs that require entry to tenant units should delay beginning any such new work. In addition, owners with any current work-in-progress in tenant units should bring it to a prompt conclusion, even if it is not fully completed. They should ensure that they do not leave unfinished work that inhibits tenants' full and safe use of their units, and communicate to tenants that remaining work, if any, will be completed when feasible to do so based on state and local guidance and guidance from the CDC.

The MAP Guide organizes varied supervision and inspection requirements for repairs and alterations based on the level and extent of these activities as follows:

- 1) *Routine Maintenance* (e.g. repairs and replacements of limited extent and cost, no accessibility deficiencies unless they can be easily verified by photography, e.g. accessibility signage)-the owner can self-certify that the work is complete.
- 2) *Repairs and alterations that are accessibility remedies*- A supervising architect or HUD Construction Inspector will be assigned, and a single inspection after completion of all remedies will be sufficient barring a re-inspection for work not found to be acceptable on the initial inspection.
- 3) *Repairs and Level 1 alterations up to \$15,000/unit with no accessibility repairs* -HUD Construction Inspector may be assigned at HUD discretion and if not, then owner may self-certify. If a HUD inspector has been assigned to a job in this category but is thereafter unable to sign a disbursement request, then the owner may self-certify each request other than the last or final.

- 4) *Repairs and Alterations requiring a Project Architect, i.e. >\$15k per unit or Level 2 or Level 3 alterations*- HUD Construction Inspector and Supervising Architect must be assigned with the architect's signature needed for each request for reimbursement and the HUD Construction Inspector normally required to complete at least three inspections. If the HUD Inspector is not able to sign a disbursement request following any but the last required inspection, the signature of the supervising architect alone will be accepted. If the supervising architect is unable to sign a single disbursement request (other than the final) then the owner may self-certify for that one request.

In the case of numbers 3 and 4 above, there are normally three HUD inspections during the work. These inspections occur at construction completion intervals measured in thirds. When a supervising architect is engaged, the architect typically inspects and signs disbursement requests on a monthly basis with the HUD Inspector participating every third or fourth month. In all cases a documented, i.e., a recorded, virtual inspection will be acceptable.

(Added on 4/2/20)

**Q22: If an owner has assurance of completion funds or a surplus cash hold-back held in escrow pending completion of repairs and alterations and such completion is delayed due to the COVID 19 emergency, will HUD release or reduce these escrows?**

A: In cases where HUD inspection is needed but is delayed indefinitely by the COVID-19 emergency, HUD will consider release of surplus cash held back pending completion of repairs, provided that available evidence is sufficient to establish that all repairs and alterations have been satisfactorily completed. However, HUD will not release the assurance of completion funds until all required HUD inspections are completed.

(Added on 4/2/20)

### *Recapitalization and Rental Assistance Demonstration*

**Q23: Public Housing Authorities (PHAs) and their development teams are currently implementing renovations and tenant moves to facilitate construction. How should property owners reconcile the construction schedule with COVID-19 concerns?**

A: PHAs and their Rental Assistance Demonstration (RAD) development partners should consider the health and well-being of the residents and the public as the first priority and use CDC guidance and guidance from state and local health officials. In doing so, RAD development teams should consider the impact of their renovation activities on the potential to exacerbate or mitigate exposure to the virus, particularly among vulnerable populations. Every construction project is different - in the vulnerability of the residents, the extent of tenant relocation, the extent of construction, the timing of construction and the deadlines created by natural conditions or financing sources. In all cases, development teams

should follow the instructions of applicable governmental authorities (such as a government-issued shelter-in-place or similar order).

(Added on 4/2/20)

**Q24: How will HUD handle delays in the completion of construction required by the RAD Conversion Commitment (RCC), including increases in costs, modification of resident relocation? How will it approve periods for rehab assistance payments?**

A: HUD will approve extensions to the rehab period and rehab assistance payments. Such requests can be made through the RAD Resource Desk. Note that the RAD construction deadlines do not supersede other parties' requirements, so development teams should also consult with their lenders, investors, and other stakeholders as applicable when modifying the construction schedule. Increases in costs should be reflected on the sources and uses log on the RAD Resource Desk. HUD encourages PHAs to maintain routine communication with residents whose length of relocation may be impacted and to alert HUD if relocation plans change such that resident relocation will exceed 12 months.

(Added on 4/2/20)

**Q25: Where can a PHA or owner find guidance regarding PBRA or PBV program requirements that customarily involve in-person meetings?**

A: Guidance is available and will be continually updated [at www.hud.gov/coronavirus](http://www.hud.gov/coronavirus). Guidance for PBRA can be found within this FAQ document ("FAQ for Multifamily Housing Providers"). For PBV, please see "FAQs for Public Housing, Housing Choice Voucher, Project-based Voucher Program, and Native American Programs."

(Added on 4/2/20)

**Q26: How should PHAs communicate with residents about the RAD conversion process, respond to resident questions, and solicit feedback when in-person resident meetings are not possible due to the recent COVID-19 outbreak?**

A: The health and safety of residents, PHA and Owner staff, and other program partners is paramount. PHAs that continue with public meetings should follow the latest CDC, state, or local health department guidance relative to holding public meetings. However, it is still critical for PHAs and owners to keep residents informed about any changes to their housing, their rights, and the timing of key events related to the conversion and for residents to have the opportunity to provide comments as required at different stages of a RAD conversion.

Required resident meetings. The RAD Notice requires PHAs and owners to hold resident meetings and to receive and provide response to comments during those meetings. In lieu of

community meetings held in common areas, PHAs and owners may hold meetings remotely using videoconferencing or teleconferencing technology provided that they can:

- Accept and respond to answers to questions submitted during the meeting;
- Maintain an attendance log in order to track if residents are able to participate successfully;
- Accommodate the needs of persons with disabilities or with limited English proficiency (LEP) through the meeting format. In selecting the host technology, PHAs must ensure they can comply with Section 504 of the Americans with Disability Act; and
- Provide residents with a follow-up notice after the meeting with a summary or reproduction of presented information and a means to ask additional questions related to the conversion.

In selecting among alternative meeting methodologies, PHAs and owners should be attentive to the nature of technology which residents are likely to have in their homes. When submitting their Financing Plan or Conversion Plan and (for public housing conversions) their RAD application, PHAs and owners must provide the date(s) of any remote resident meetings and a record of the responses (written or oral, or in subsequent actions) to resident comments on the proposed conversion and scope of work that were received in connection with such meetings. HUD may request follow-up measures on a case-by-case basis.

Effectively communicating during this period may take more time than previously and PHAs and owners may determine that additional meetings are necessary in order to ensure that you are reaching all residents. Please keep your RAD point of contact updated in the event that an extension to existing deadlines is needed.

Ongoing resident engagement. Beyond the required resident meeting and comment period, HUD recommends that PHAs and owners develop an alternative communication plan that is sustainable for at least 8 weeks or more and that achieves the goals of providing residents relevant information about the RAD conversion, particularly more complex transactions with significant construction and/or relocation. PHAs may develop a process that includes various forms of alternative communication methods so that all residents can receive information and participate in the process regardless of their individual circumstances. Below are some suggested methods by which to share information with residents:

- ✓ Set up teleconference calls in the place of in-person meetings, ensuring that residents have enough prior notice and receive clear directions (particularly those with limited technological access/abilities).
- ✓ Provide flyers/notices to residents at each unit with updates about how information can be obtained regarding the RAD process.
- ✓ Post notices in common areas of the property.
- ✓ Provide letter updates in resident mailboxes.
- ✓ Provide text and/or email updates to residents.
- ✓ Share a sign-up sheet with residents to meet 1-on-1 with office staff or by phone.



- ✓ Create online materials (video or other) available to all residents.
- ✓ Create and distribute a survey for residents to gather information about their questions, experience, and preferences.
- ✓ Ensure that all residents have contact information (phone and email) for PHA staff should they have questions.

(Added on 4/2/20)

### **Property Reviews, Inspections, and Appraisals**

#### *Asset Management*

#### **Q1: In light of concerns about site visits to HUD properties, what is the status of REAC inspections on MFH properties?**

A: Until further notice, Multifamily is postponing all REAC property inspections for all Multifamily properties. Where there is an exigent circumstance or reason to believe that there is a threat to life or property at a specific location, inspections will be conducted by HUD quality assurance inspectors in compliance with CDC guidelines. *Please note, this answer supersedes the initial guidance offered in the first version of this document on 3/12/20.*

(Updated on 3/16/20)

#### **Q2: In light of concerns about site visits to HUD properties, what is the status of Management and Occupancy Reviews (MORs) performed by Performance-Based Contract Administrators (PBCAs)?**

A: HUD recognizes that the President's March 13, 2020, emergency determination related to COVID-19 constitutes a significant administrative action that could disrupt performance under the Annual Contributions Contracts (ACC). HUD is hereby relieving PBCAs operating under both ACCs from notifying HUD that the Presidential emergency determination either limits, or in some cases, prevents, PBCAs from carrying out MORs and related activities. HUD is therefore suspending standard MORs until the PBCA determines that local conditions no longer limit or prevent the PBCA from performing MORs safely.

HUD is looking into a flexible model that would allow PBCAs to adapt to local conditions in a way that allows them to continue MORs on a modified basis to ensure acceptable conditions in HUD properties. Additional guidance and specifications will be forthcoming.

*Please note, this answer supersedes the initial guidance offered in an earlier version of this document on 3/13/20.*

(Updated on 3/16/20)

**Q3: What should owners/property managers do if tenants refuse entry to inspectors, citing fears of COVID-19?**

A: Until federal, state, or local public health officials counsel otherwise, owners and agents should follow published guidance covering apartment inspections. In this case, Paragraph 20 of the [HUD Model Lease](#) covers the rules governing the landlord's access to a tenant's apartment.

(Updated: on 3/12/20)

**Q4: An owner's Rent Comparability Study (RCS) has triggered the need for a HUD RCS, but concerns from owners, tenants, and HUD contract appraisers are making it difficult to execute the HUD-sponsored RCS. How will this be addressed?**

A: HUD RCSs are suspended in areas that are under a state or nationally declared emergency or where public health officials have imposed limited travel. HUD is rescinding guidance provided on 3/13/20 on how it will respond to an owner's previously submitted RCS and will be providing new guidance on this topic in the upcoming weeks.

(Updated on 3/24/20)

*Recapitalization and Rental Assistance Demonstration***Q5: Will HUD relax its RAD Capital Needs Assessment inspection requirements for RAD conversions?**

A: The Capital Needs Assessments are a core part of the RAD review process, as they are used to establish a basis on which to project the property's 20-year capital needs. As such, unless constructed within the past ten years, all properties will require a complete inspection in compliance with the MAP Guide. For properties built within the last ten years, HUD may approve the inspection of only vacant or model units. The Office of Recapitalization will extend milestones and deadlines on a case-by-case basis if the capital needs inspection cannot be completed at this time due to COVID-19. Recap is also considering other approaches to avoid delays caused by inspectors having more limited access to sites at this time.

(Updated on 4/2/20)

*Multifamily Production***Q6: Will MFH Production relax its site visit requirements for third parties and lenders?**

A: If a third-party capital needs inspector cannot physically inspect the required sample of units due to COVID-19 concerns, the Regional Production Director may waive the sampling requirements in favor of inspecting only vacant and model units on a case-by-case basis for recently built insured properties (within 10 years of submission) or non-insured properties built

within the past five years. All other properties will require a complete inspection prior to issuance of the firm commitment.

(Updated on 4/2/20)

**Q7: What if the lender is unable to visit the site to verify the inspection report's findings?**

If the lender's travel is restricted (thereby limiting the lender from inspecting the site), the capital needs inspection report may be accepted for underwriting purposes on the condition that the lender inspects the property prior to the issuance of the insurance commitment. Therefore, to the extent that a lender is not able to physically inspect the property due to COVID-19 concerns, the conclusions of the report must be included without modification as part of the application.

HUD's appraisers and market analysts, as necessary, must inspect the property and subject comparables in accordance with Multifamily Accelerated Processing (MAP) requirements to insure a credible valuation conclusion.

(Added on 3/13/20)

**Q8: Will MFH Production relax its site visit requirements for FHA lenders performing lease audits?**

A: Yes. Lenders may perform lease audits electronically if the information is available and verifiable.

(Added on 3/13/20)

**Q9: Given current travel restrictions, must appraisers conduct both an on-site visit and unit inspections to complete the appraisal report?**

A: HUD requires that lender or third-party appraisers inspect the property and the subject comparables in accordance with MAP Guide requirements to insure the credibility of the resulting valuation conclusion. To the extent that the contracted appraiser cannot physically inspect the site, the appraiser should contract with a local, appropriately credentialed appraiser to perform the site inspection in his/her stead. In this situation, the report must identify the appraiser conducting the site visit, their credentials, and a certification regarding the limit of their inspection, if any.

When appraisers are unable to inspect units on-site due to COVID-19 concerns, they should consider the following options:

- Conduct inspections of vacant units. If vacant units are the only ones inspected, the appraiser should make an extraordinary assumption that the sample units viewed are

representative of all the units. The inspector should provide a detailed review of the differences between these units and the others considered for the valuation.

- Use of construction drawings and other available documentation to supplement their physical inspections
- Use of information from CoStar or other reporting services and other available documentation to supplement their physical inspections.
- Note any previous inspections, if applicable.

Any/all sources of information used for valuation purposes must be documented, and multiple sources of information on interior site conditions are preferable to enhance the reliability and credibility of the valuation, in lieu of an actual physical inspection.

Appraisers and lenders should contact the HUD field office that will be processing the application for additional guidance.

(Updated on 4/2/20)

### **Environmental Review**

#### *General MFH*

**Q1: Will MFH allow any additional flexibility, specifically around requirements for on-site surveys or testing related to asbestos, lead-based paint, and radon considering the COVID-19 emergency?**

*A: Production:* For MF FHA-insured lending, in situations where interior access to the subject property is limited, and the asbestos surveys, lead-based paint hazard evaluations, and/or radon testing cannot be completed prior to application submittal, MFH Production will allow lenders to submit applications without these reports. However, MFH Production will require these reports before issuing a Firm Commitment. For new construction and substantial rehabilitation properties where asbestos clearance sampling, lead clearance examinations, or radon testing takes place after construction, all mitigation reports, including follow-up sampling, examinations, or testing, must be submitted to HUD staff at the final completion inspection, before occupancy.

*Recapitalization:* For RAD conversions, MFH Recapitalization (Recap) is developing instructions for the completion of asbestos surveys, lead-based paint surveys, and/or radon testing in situations where COVID-19 considerations impact site visits. Recap is also developing instructions regarding Section 106 consultation in light of the closure of some State Historic Preservation (SHPO) and Tribal Historic Preservation (THPO) offices. However, MFH Recap will require these reports before issuing a RAD Conversion Commitment. These instructions will be available in a future Q&A supplement.

(Added on 4/2/20)

*Multifamily Production***Q2: Will MFH Production relax its site visit requirements for FHA site inspections as part of the environmental review process?**

A: HUD currently requires a site inspection for all environmental reviews. Each Regional Production Director can waive this requirement on a case-by-case basis for currently insured or non-insured applications (for refinance or new construction) for which an environmental report has been submitted in HEROS with no significant issues. Examples of significant issues include but are not limited to Underground Storage Tanks (UST); site contamination, onsite or adjacent floodplain or floodways, above-ground tanks within the acceptable separation distance, and noise levels greater than 65db that would require mitigation.

If a property meets the criteria for a significant issue, HUD will continue processing the application without a site visit, but must have a HUD site inspection prior to the issuance of the firm commitment. In the event that a property is not able to be accessed for a prolonged period due to COVID-19 concerns, HUD may consider alternatives to site inspections on a case-by-case basis.

(Updated on 4/2/20)

**Q3: Will MFH Production allow any additional flexibility for compliance with the requirements for site reviews for Phase I ASTM Environment Site Assessments considering the COVID-19 emergency?**

A: Yes, HUD will provide some flexibility as outlined below, depending on the type of assessment.

Interior assessments: For Phase I Environmental Site Assessments (ESAs) performed on projects where the preparer is unable to access the interior of the building due to COVID-19, HUD will permit an exterior only inspection provided the ESA is conducted in accordance with ASTM E1527-13 (or most recent version) and the ESA preparer has another adequate means of viewing the interior (e.g. an onsite rep live streams a facility walk-through.)

Exterior assessments: If traveling to the site is not practicable (e.g. due to governmental restrictions on travel or shelter in place/quarantine orders), HUD will accept the ESA without a visit to the site for projects already in HUD's portfolio or new to HUD's portfolio with up to Level 3 repairs as long as the site is considered low risk based on current and historical uses. Sites with past, current or adjacent uses that include but are not limited to underground storage tanks, contaminated soil or groundwater, dumps, solid or hazardous waste landfills, brownfields or superfund sites require an in-person site visit by the ESA preparer. ESA reports without a physical site visit must:

- Explain the reason why a site visit did not take place,
- Meet the ASTM E1527-13 standard (or most recent version), and
- Include adequate means of viewing the interior and exterior (e.g. an onsite rep could live stream a walk-through of the facility and grounds, send photos and video of the site and grounds.)

For all new construction and substantial rehabilitation projects, and 223(f)s that do not meet the low risk criteria, the ESA preparer must conduct an in-person site visit. However, HUD will accept a draft ESA report that includes all information except the physical site visit (the preparer must view the interior and exterior by other means) for purposes of submitting the pre-application or application. The final ESA with the site visit must be submitted before HUD will issue a Firm commitment.

(Added on 4/2/20)

### **Waivers, Extensions, and Other Relief**

#### *General MFH*

#### **Q1: In the event of an outbreak in a locality with HUD-assisted housing, what regulatory waivers will apply for HUD housing?**

A: HUD will consider policy, Handbook, and regulatory waivers on a case-by-case basis with the intention of providing flexibility to owners and agents to respond to unique needs.

(Updated on 3/12/20)

#### **Q2: May FHA-insured borrowers as well as Section 202 and 811 property owners access their reserve for replacement accounts to cover items not consistent with Handbook 4350.1 Chapter 4 guidance, such as mortgage payments for delinquent mortgages?**

A: Owners may submit requests to HUD field staff for non-traditional uses of reserve for replacement accounts. Field staff will review such requests based on account balances and future needs, project needs, owner compliance and other criteria consistent with Chapter 4 of HB 4350.1. In addition, HUD field staff will need to see evidence of the loss of rental receipts.

(Added on 3/24/20)

#### **Q3: Is there new guidance for forbearance of FHA-insured or Risk Share multifamily loans?**

A: Lenders should use all available tools to work with borrowers facing payment challenges as a result of this emergency, just as they would in any other situation. Lenders should use HUD's existing systems and procedures to promptly report loans that are delinquent or in default and request extensions of the election to assign loans in default to FHA. Additional HUD MFH guidance related to the provisions on forbearance included in the Coronavirus Aid, Relief and

Economic Security (CARES) Act is forthcoming. Ginnie Mae recently published a blog post on forbearance as it relates to its issuers, which can be found here:

<https://ginniemae.gov/newsroom/GinnieInBrief/Pages/Post.aspx?PostID=40>

(Added on 4/2/20)

### *Asset Management*

**Q4: Will HUD make rent payment relief or additional assistance available for Project-Based Rental Assistance and Project Rental Assistance Contract units if tenants fall under adverse conditions due to COVID-19?**

A: Multifamily Housing encourages all owners to work with impacted residents and families to adjust rent payments, enter into forbearance agreements, and lessen the impact on affected residents. At this time, no additional subsidy funding has been made available.

(Added on 3/12/20)

**Q5: A multifamily owner's financial statements are complete, but their auditor is not comfortable coming into their office to conduct the audit. Can they get an extension?**

A: To provide relief for multifamily property owners, 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, and as otherwise provided by law. This waiver does not apply to the submission requirements for financial information that was delinquent as of March 23, 2020.

The Office of Multifamily Housing Programs will continue to monitor the situation and may provide additional extensions as warranted.

(Updated on 3/24/20)

### **Continuity of MFH Operations with Staff Working Remotely**

#### *General MFH*

**Q1: In the event of HUD office closures and/or staff working remotely, how will MFH handle "in person" meetings?**

A: All meetings that cannot be held in person will be held via conference call. If a meeting must be held in person, contact the field Branch Chief or Director to discuss options.

(Added on 3/13/20)

**Q2: In the event of HUD office closures and/or staff working remotely, what will be the process for subsidy contract renewals and funding actions?**

A: Multifamily field and headquarters staff will process subsidy contract renewals and related funding actions remotely. Contract renewals and funding actions should still be submitted electronically via the local or Regional office email box, with a copy to the assigned Account Executive/Resolution Specialist, the Funding Specialist, and Branch Chief. Hard copies should still be submitted to the field office.

(Updated on 3/16/20)

**Q3: Will MFH allow electronic signatures on its documents?**

A: Production: For FHA insured transactions, please see the section on *Office of General Counsel-MFH Closings* below for specific information.

Asset Management: Electronic signatures are allowed for all subsidy administration, including contract renewals, rent schedules, and HAP Assignments, and all other Multifamily Housing submissions. State and local law determines the requirements for leases and 50059s.

Recapitalization: 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 if electronic signatures are acceptable in the recording offices in their jurisdictions. Documents that will not be recorded may be signed electronically.

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

(Added on 3/24/20)

***Recapitalization and Rental Assistance Demonstration*****Q4: How will Rental Assistance Demonstration (RAD) transactions be processed?**

A: Applications, requests for concept calls, financing plan submissions, submissions of closing documents, and many other processes under the RAD program are already conducted on-line. We will continue to receive and review these materials and communicate with project teams by e-mail and phone. There is no change from current practice and teleworking employees will still be able to process submissions and requests.

(Added on 3/13/20)

**Q5: Will HUD office closures impact RAD closings?**



A: Office of Recapitalization closing coordinators and Office of General Counsel field counsel will continue to perform their standard duties. HUD anticipates arranging for execution and notarization of documents that need to be recorded in public records and distribution to escrow agents, subject to compliance with applicable governmental orders and the availability of overnight courier services. It is possible that there may be fewer signing dates per month as HUD works through logistical constraints. HUD is also aware that some recorders' offices around the country have closed. HUD will work with the transaction teams to maximize the ability of transactions to move forward consistent with applicable conditions. Documents that do not require notarization will be distributed electronically.

(Updated on 4/2/20)

### *Multifamily Production*

#### **Q6: In the event of office closures, how will concept meetings be handled?**

A: Continue to submit your electronic requests and packages as usual, and concept meetings will be handled remotely.

(Added on 3/13/20)

#### **Q7: In the event of office closures, how will MFH Production handle the submission of applications since typically HUD requires an original and two hard copies of the application along with a physical thumb drive for certain types of projects?**

A: HUD will permit applications and related documents to be submitted electronically, using a secure cloud storage service, as determined by the lender, instead of hard copies. HUD will arrange for architectural plans and specifications to be sent to the processing construction analyst identified at the concept meeting to be reviewed remotely.

(Updated on 3/16/20)

#### **Q8: Will office closures affect HUD's underwriting and issuance of firm commitments?**

A: No. HUD staff are equipped to perform underwriting functions and all other duties remotely; therefore, HUD does not anticipate a significant issue or delay in processing loans.

(Added on 3/13/20)

#### **Q9: In the event of office closures, how will HUD conduct MFH Production loan closings?**

A: MFH Production is coordinating with HUD OGC to ensure continuity of closings in the event of office closures. Certain reviews that are routinely performed electronically, and closings that

are routinely conducted by mail, such as Section 223(f) and 233(a)(7) loans, will continue in the same manner.

OGC and MFH Production are working to expand the ability to conduct other types of reviews and closings, including for Section 221(d)(4) and other NC/SR programs, either electronically or by mail to the extent practicable. Additional guidance will be forthcoming as soon as it is available. Please see the additional information included in the section on OGC-MFH Loan Closings below.

(Added on 3/13/20)

**Q10: In the event of office closures or staff on telework, how will HUD conduct construction administration?**

A: Monthly draws, trip reports and change orders are routinely completed electronically; however, a site visit is required by the owner, architect and construction inspector (CI) to review progress and approve monthly draws. If the owner or architect can only attend remotely, exceptions can be made on condition that the CI is present. Should the CI be unable to attend, then the draw will need to be postponed. While HUD does not anticipate that the timeline for CI inspections to occur will extend past 60 calendar days, situations presented by prolonged unavailability of the principal participants should be raised with the Regional Production Director.

(Added on 3/13/20)

**Q11: In the event of office closures or staff on telework, how will HUD handle cost certification/ Final Endorsement?**

A: HUD anticipates no disruptions in the performance of these functions as they are routinely conducted electronically.

(Added on 3/13/20)

**Q12: Is MFH Production delaying endorsing loans that involve in-place rehabilitation and/or tenant relocation, as well as loans to properties that are located in areas have mandated shelter-in-place orders?**

A: HUD may temporarily pause initial endorsement of new construction and /or substantial rehabilitation loans that involve either tenant in-place rehabilitation and/or tenant relocation, as well as endorsement of loans for properties that are located in areas that have mandated shelter-in-place orders.

There have been multiple instances where construction/rehabilitation has been significantly delayed or completely stopped due to either an inability to enter units to conduct repairs, or

unavailability of construction staff due to state or local restrictions. HUD will issue a firm commitment and grant appropriate extensions until work can be resumed such that the loan may be closed and construction can be completed without unnecessary delay. For projects that have time sensitive restrictions or contractual obligations (e.g. delivery of Low Income Housing Tax Credits) that will expire if endorsement is delayed, HUD will close the loan on condition that mitigants are in place to offset unplanned construction delays.

(Updated on 4/2/20)

### **Office of General Counsel- MFH Closings**

#### **Q1: What is the Office of General Counsel (OGC) doing in response to the current COVID-19 Coronavirus outbreak and President's declaration of a national emergency?**

A: While the Department of Housing and Urban Development and its offices remain open for business at this time, many employees, including closing attorneys are now engaged in full-time telework. OGC, in collaboration with Multifamily and the Office of Healthcare Programs has established protocols, rules, and procedures to best ensure continuity of operations in the event of an extended closure of a specific division, regional or field office, or the determination that OGC in its entirety should work remotely.

(Added on 3/24/20)

#### **Q2: Will OGC continue to conduct in-person closings?**

A: OGC's first goal is ensuring the health and safety of its employees, clients, and stakeholders. To that end, OGC has adopted a policy of avoiding in-person attendance at gatherings, including all in-person closings, to the greatest extent possible. Limited in-person closings will continue only under special circumstances in which closing by mail or electronic submission is clearly not feasible. The number of attendees should be limited as much as possible with signatures, document collation, and other closing functions coordinated by the FHA lender's counsel and completed before arrival at the closing location. Rarely should it be necessary for the attendees to include individuals other than the FHA lender's counsel, HUD closing attorney, and paralegal support staff.

(Added on 3/24/20)

#### **Q3: How will OGC closing attorneys conduct reviews of closing packages?**

A: OGC closing attorneys will continue the usual practice of providing comments on closing submissions by e-mail or telephonically with the recognition there is no "business as usual" across the country at this time. Additional conference calls to address logistical and other pertinent issues will be arranged as needed to ensure free and open communication during the review and closing process.

(Added on 3/24/20)

**Q4: How will OGC closing attorneys receive and review packages electronically?**

A: OGC closing attorneys will rely on electronic transmission of closing documents in lieu of hard copies in performing their initial reviews. This approach will ensure the continuation of reviews even if our external partners are unable to physically transmit the volume of paper documents needed at this stage.

While providing increased flexibility to lenders in submitting closing documents, this protocol does not authorize any additional substantive modifications to the closing process without approval of the appropriate Regional Counsel and the Office of Insured Housing in Headquarters.

(Added on 3/24/20)

**Q5: Are there any standards for submission of draft closing packages?**

A: OGC closing attorneys will accept draft closing packages in fully electronic form. If a hard copy of the survey is available for submission, it should be provided by mail to the closing attorney. OGC closing attorneys will not delay review of a closing package if a hard copy of the survey is unavailable. Closing, however, will remain contingent on an adequate title and survey review and the appropriate resolution of any identified issues. FHA Lender's counsel will need to make arrangements with the OGC closing attorney for the delivery of a hard copy of the survey if electronic review is not feasible due to the survey's size and complexity.

Additionally, to ease the transition to an electronic review process, OGC has developed a series of "Best Practices" for electronic transmission, available for your closing attorney. This document can be found online at:

[https://www.hud.gov/sites/dfiles/Housing/documents/Best Practices for electronic submission for MF Closings during COVID-19 pandemic.pdf](https://www.hud.gov/sites/dfiles/Housing/documents/Best_Practices_for_electronic_submission_for_MF_Closings_during_COVID-19_pandemic.pdf).

(Added on 3/24/20)

**Q6: Is there a preferred method of electronic submission?**

A: OGC understands that the various lenders and their counsel have differing security protocols in place governing the transmission of electronic documents. OGC has not established any mandatory submission method, but will accept electronically transmitted documents in various means, provided the transmitter can provide assurances as to the security of the transmission. Additionally, the electronic submission must be accessible by all HUD reviewers and cannot be unnecessarily restricted to impede access from appropriate parties within the Department.

(Added on 3/24/20)

**Q7: How should I send in a supplemental submission?**

A: The OGC closing attorney will provide written comments to the FHA lender's counsel by e-mail or telephonically (depending on local field counsel practice). The FHA lender's counsel should submit the revisions and supplemental documents via email or in the same fashion as the original electronic submission. The documents submitted should include comparisons ("redlines") showing changes from the last version reviewed when specifically requested by the OGC closing attorney or otherwise appropriate.

(Added on 3/24/20)

**Q8: Can we expect to have different protocols being used in different field offices or by different closing attorneys?**

A: While the circumstances on the ground in any office or for any specific closing attorney may require flexibility in the closing process, the Regional Counsel will be working to ensure the temporary protocols established by the General Counsel are adopted and applied consistently across the regional and field offices within their purview.

(Added on 3/24/20)

**Q9: Will there be any changes in the attorney assignment process?**

A: Regional Counsel will continue to manage the attorney assignment process for closings, asset management requests, and other transactional work, as necessary. The Regional Counsel will consider staff availability, client deadlines, and the IT resources available to each employee in making assignments. OGC is working to ensure all closing attorneys have the necessary technology to perform electronic reviews at remote locations, where necessary.

The assigned OGC closing attorney will making prompt contact with the requesting program office and industry partners to establish mutual expectations, communication protocols, and shared goals for completion of the work matter, regardless of their physical working location. Should circumstances arise making closing by mail is impractical and the assigned Closing Attorney is unable to reasonably close the loan electronically, the appropriate Regional Counsel may reassign the transaction for closing.

(Added on 3/24/20)

**Q10: Will the closing process be delayed or disrupted if the Regional Counsel has to change the attorney assignment?**

A: OGC will strive to limit delays or disruptions to the closing process related to the reassignment of the closing. In particular, the attorney receiving the reassignment will generally be expected to rely on the legal work previously completed and continue with the closing as scheduled.

However, circumstances are in flux and all parties cautioned to anticipate delays. FHA lenders and their counsel should be cognizant that HUD closing attorneys may face significant workload challenges as they adapt to these new procedures and navigate local exigencies created by the pandemic (e.g. limited support staff and IT resources while working from home or other remote locations). Complete and well-prepared documents should be submitted as early as possible to ensure closing dates can be scheduled and accommodated well in advance of significant deadlines. The HUD Closing Attorney will strive to manage the expectations of all parties to a transaction and communicate developments as soon as it is reasonably possible in order to facilitate an orderly closing process.

(Added on 3/24/20)

**Q11: How will the Lender and Lender's counsel know how to submit documents pre-closing?**

A: Once HUD has provided written clearance to the Lender that the transaction is ready to close, the FHA lender's counsel is responsible for coordinating the submission of the final, executed documents by mail or electronic form, subject to specified limitations. The HUD closing attorney should hold a call with the Lender's counsel prior to the final submission to ensure that everyone is clear on the method of and requirements for submission. If closing by mail, the HUD closing attorney will advise the Lender's counsel as to the address for delivery of the closing dockets.

(Added on 3/24/20)

**Q12: With the status of recorders' offices around the country uncertain, what flexibilities is HUD able to provide?**

A: OGC prefers the pre-recording of the FHA security instrument, regulatory agreement, and other recorded documents where possible. OGC will accept Gap coverage (as has typically been offered in New York) when pre-recording is not feasible, provided the coverage clearly protects the status of the first lien through recordation, regardless of any unusual delay due to the closure of the recorder's office.

(Added on 3/24/20)

**Q13: How will OGC closing attorneys conduct the closing?**

A: OGC closing attorneys will conduct closings either by mail or through the use of electronic transmission of documents to ensure closing takes place as planned. The use of electronic

transmission methods will require additional submissions and certifications for this method to be utilized.

(Added on 3/24/20)

**Q14: Will HUD allow electronic signatures or the electronic transmission of a scanned document containing wet signatures on closing documents?**

A: OGC **cannot** authorize the execution of the FHA note, mortgage, regulatory agreement, or other loan documents using a digital signature or other means of fully electronic authentication. However, OGC closing attorneys will accept electronic copies (i.e. scanned PDFs) of manually executed documents and will rely on such documents for purposes of releasing the endorsed FHA note at closing. The closing opinion delivered by borrower's counsel may not be modified to include additional qualifications or limitations related to the use or reliance on scanned documents unless discussed and approved by the OGC closing attorney. Such changes will not be approved unless (i) clearly warranted by a duly cited state statute or local ordinance and (ii) the modification results in no additional risk to HUD.

(Added on 3/24/20)

**Q15: How will the documents requiring wet signatures be handled?**

A: The FHA Lender's counsel should arrange for delivery of the note, mortgage, regulatory agreement and any other transaction-specific recording documents to the authorized HUD signatory via an overnight courier. At times, HUD will need the Lender's counsel to provide a mobile notary to facilitate the execution process. The FHA Lender's counsel should also include prepaid mailing labels to ensure delivery of (i) the executed documents from the HUD signatory to the HUD Closing Attorney or other designated HUD official for safe-keeping until closing; (ii) all documents to be recorded to the appropriate recipient for recording; and (iii) the endorsed note to the FHA lender (or its designee) after endorsement.

(Added on 3/24/20)

**Q16: What will happen at a remote closing?**

A: As with a roundtable closing, the OGC closing attorney will ensure the documents, as executed, conform to the approved drafts.

(Added on 3/24/20)

**Q17: Is there a deadline for submission of the documents – whether by mail or electronically?**

A: The FHA Lender's Counsel and HUD Closing Attorney will need to discuss and establish a starting time for the closing that takes into account the submission method (electronic or hard

copy); the closing location (field office or remote); mail/courier delivery times; and, when special circumstances compel an in-person closing, the essential attendees. Generally, submissions should arrive no later than 10:00 a.m. the morning of closing unless all parties have agreed to an alternative time. In HUD offices where closings begin earlier than 10:00 a.m. as a standard practice, the HUD Closing Attorney may require submission by the usual starting time.

(Added on 3/24/20)

**Q18: What considerations are there for delivery of the Title policy?**

A: The FHA Lender's counsel should make every effort to ensure the title insurance policy and, if customary in the closing jurisdiction, the recorded documents are organized and included in the same submission as the other closing documents. However, the OGC closing attorney may permit a separate submission from the title company or outside counsel when warranted by jurisdictional requirements, local custom, or other good cause. Additionally, if the time-stamped recorded documents are not available, the title company's recording certification should be scanned as the first page. If delivered or signed electronically, the title insurance policy should contain an electronic signatures endorsement.

(Added on 3/24/20)

**Q19: What considerations are there for the electronic delivery of documents for closing?**

A: Where closing documents must be delivered by electronic means, the following is required:

- The submission must be organized for easy and efficient review on a computer monitor. Each submission should include a complete FHA closing checklist (identifying all standard and transaction-specific documents) to ensure efficiency of review and document location.
- If delivering via an electronic medium, the medium must be brand new, unencrypted, and contain no files other than the closing submission. Further, the drive may not be write-protected or otherwise secured in a manner that precludes the HUD staff from adding additional files.
- If alternative electronic delivery is arranged through a law firm's or title company's proprietary document storage site, or other such web-based arrangements, these sites may not impose use conditions on HUD staff (e.g. requiring an agreement to indemnify the firm or site host).
- The electronic submission should include signed certification evidencing the FHA lender's agreement (i) to provide an original, hard-copy set of the electronic documents once normal operations resume and (ii) to include a certification with the hard copy set that confirms the documents fully conform to the electronic versions accepted at closing.

(Added on 3/24/20)



**Q20: What if errors are discovered requiring revision at closing?**

A: In the event a need for revisions is discovered at closing, the FHA Lender's counsel will be responsible for transmitting, electronically or via courier, the complete corrected document(s) for the OGC closing attorney to consolidate with the full submission. Slip pages will generally not be accepted for electronic closings. The HUD Closing Attorney may suspend the closing, upon consultation with the client office and Regional Counsel, if the provided documents are determined to be materially deficient.

(Added on 3/24/20)

**Q21: Given the remote work scenarios that are likely, will HUD agree to release the endorsed note to Lender's counsel or a third party to hold in escrow until closing?**

A: At this time, HUD cannot release the FHA note prior to closing even if the Lender's counsel offers to hold the note in escrow or have the note escrowed by a third party. Arrangements will be made by OGC and Housing to ensure the note is endorsed prior to closing and held by the HUD closing attorney or other designated HUD official for safekeeping until the closing is completed. The OGC closing attorney or the closing coordinator will provide instructions in the event a mobile notary will be needed to complete the closing process.

(Added on 3/24/20)

**Q22: When will the endorsed note be released?**

A: Once all closing conditions are met, the OGC closing attorney will advise the Lender's counsel that the note is ready for release. FHA Lenders should be cognizant that a HUD Closing Attorney working remotely may be unable to accommodate requests to have the endorsed note scanned and circulated via e-mail on the day of closing. Upon request, it may be possible for the OGC closing attorney to have a photograph of the endorsed note transmitted.

(Added on 3/24/20)