

NAHMA Update: HUD Issues Proposed Rule Requiring Broadband Technology Installation During Construction of Most HUD-Financed Multifamily Housing

Dear NAHMA Members-

Today, HUD issued the attached [proposed rule](#) that requires the installation of broadband infrastructure into most HUD-financed multifamily housing developments during their construction or substantial rehabilitation. HUD states, “this rulemaking does not require a HUD-funded grantee to undertake new construction or substantial rehabilitation, but when a grantee does choose to pursue such activity for multifamily rental housing with HUD funding, this proposed rule would require installation of broadband infrastructure.” This proposed rule builds on HUD’s [ConnectHome](#) Initiative, which aims to extend affordable broadband access to families living in HUD-assisted housing.

*****Please submit comments on this proposed rule to Scott Mcmillen or Larry Keys by [July 8, 2016](#).*****

Summary

This proposed rule would require installation of broadband infrastructure at the time of new construction or substantial rehabilitation of multifamily rental units funded by the following programs:

1. Choice Neighborhoods Implementation Grant program;
2. Community Development Block Grant (CDBG) program, including the CDBG Disaster Recovery program;
3. Continuum of Care program;
4. HOME Investment Partnerships program;
5. Housing Opportunities for Persons With AIDS program;
6. Housing Trust Fund program;
7. Project-Based Voucher program;
8. Public Housing Capital Fund program;
9. Section 8 project-based housing assistance payments programs, including, but not limited to, the Section 8 New Construction, Substantial Rehabilitation, Loan Management Set Aside, and Property Disposition programs; and
10. Supportive Housing for the Elderly and Persons with Disabilities program.

The requirements of the proposed rule would not apply to multifamily rental housing that only has a mortgage insured by HUD’s Federal Housing Administration or with a loan guaranteed under a HUD loan guarantee program.

HUD is proposing to define broadband infrastructure as cables, fiber optics, wiring, or other permanent infrastructure, including wireless infrastructure, as long as the installation results in broadband infrastructure in each dwelling unit meeting the definition created by the Federal Communications Commission (FCC), which currently

is 25 Megabits per second (Mbps) download, 3 Mbps upload. In addition, HUD is proposing that, for programs that do not already have a definition of substantial rehabilitation, substantial rehabilitation be defined as work on the electrical system that is equal to or greater than 75 percent of the cost of replacing the entire electrical system, or when the cost of the rehabilitation is equal to or greater than 75 percent of the total estimated cost of replacing the multifamily rental housing after the rehabilitation is complete.

Comments

In addition to the proposed rule, at large, HUD is specifically seeking comments on the following questions:

1. In light of the policy objectives discussed in the preamble, should this proposed rule be applied to other HUD programs, particularly additional multifamily housing programs (such as Rental Supplement (RS), Rental Assistance Payment (RAP), Moderate Rehabilitation Programs (Mod Rehab), etc.) or programs addressing single-family housing? Should any programs covered by this proposed rule be removed?
2. Given that the definition of the term “substantial rehabilitation” will determine which projects (other than new construction) are affected by this rulemaking, should the definition be changed in any way?
3. How much does it cost to add the installation of broadband infrastructure to a preplanned new construction or rehabilitation project? Are HUD’s estimates for the labor and materials costs for installing broadband infrastructure accurate? What data can the public share with HUD about the most cost-effective way for broadband infrastructure to be installed during a new construction or rehabilitation project?
4. The proposed rule provides exceptions to the requirements if compliance would be infeasible due to cost, location, or structural concerns. Are these exceptions too broad or too narrow? What is the best way for grantees to demonstrate to HUD that installation of broadband infrastructure is infeasible, and what would appropriate sanctions be if grantees do not comply even if it was feasible? Do any grantees have experience with a project in which installing broadband infrastructure was physically or economically infeasible, and under what circumstances was it infeasible?
5. When evaluating whether the rehabilitation being done meets the threshold in the definition of substantial rehabilitation, should HUD use the pre-rehabilitation estimates for the project alone, or should HUD include increases in rehabilitation costs that arise in the process of rehabilitation?

NAHMA is the leading voice for affordable housing management, advocating on behalf of multifamily property managers and owners whose mission is to provide quality affordable housing.