



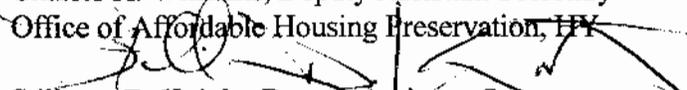
MAY 5 2005

OFFICE OF HOUSING

MEMORANDUM FOR: All Office of Affordable Housing Preservation Staff
All Multifamily Hub/Program Center Directors

FROM:


Charles H. Williams, Deputy Assistant Secretary
Office of Affordable Housing Preservation, HPY


Stillman D. Knight, Deputy Assistant Secretary
Multifamily Housing Programs, HM

SUBJECT: Section 8 HAP Renewal & OAHP Referrals

The Office of Multifamily Housing Assistance Restructuring (OMHAR) has transitioned to the Office of Affordable Housing Preservation (OAHP), and the work of the Multifamily Assisted Housing Reform and Affordability (MAHRA) Act of 1997, as amended, and the Mark-to-Market (M2M) program continues. This memo clarifies some of the policies of the M2M program regarding property eligibility for OAHP, procedures for referral to OAHP, and the Housing Assistance Payments (HAP) Contract administration.

The Section 8 Renewal Guide and OAHP's Operating Procedures Guide are being updated. Until the revisions are issued, the following guidance is being provided. Current OAHP procedures are similar to those of the OMHAR, with these notable exceptions:

- ◆ Handling of out-year Original HAP Contracts (those that have not been previously renewed).
- ◆ Requiring 514 Contracts to be included in any submission packets beginning April 1, 2005.
- ◆ Allowing renewal 524 Contracts (except Mark-up-to-Market Contracts) to enter OAHP at any time during the Contract term.

Contract Types

There are some differences in policies depending upon whether the current HAP Contract is an Original HAP Contract or a Section 524 MAHRA Contract. The differences relate primarily to Out-Year Contracts coming into M2M early (at least six months prior to Contract expiration).

An **Original HAP Contract** is generally a Contract that was entered into prior to October 1, 1998, (for specific Contract types see Note #1). **Do not rely solely on the date of the Contract. To assure the type of HAP Contract, the HAP Contract should be reviewed.** Projects that receive HAP payments through a 524(c) Contract (renewed under MAHRA) are not Original HAP Contracts.

A Section **524 MAHRA Contract** is a Contract that the owner entered into after the Original HAP Contract expired. These Contracts may be of varying lengths. If generated by Multifamily without OMHAR/OAHP involvement they generally have Contract terms ranging from one-to-twenty years. OMHAR/OAHP Lite Contracts are also 524 Contracts, generally with five-year terms, but in some cases, the Contract term may be less. OAHP Full restructure Contracts are generally twenty years, although OAHP will process five-year Contracts if the owner so requests.

M2M Eligibility (applies to both Original and 524 Contracts):

In order to be eligible for the M2M program, a property must have:

1. An FHA-insured or HUD-held mortgage.
2. A subsidy through a project-based Section 8 Contract(s) (see Note #1).
3. Contract rents that are above comparable market rents (for the units receiving project-based assistance). Projects that meet this requirement include both those that (a) the Contract rents are above market at the time of the owner's election to enter the M2M program and/or (b) the property was previously in M2M and qualifies under the "Once Eligible Always Eligible" statute. "Once Eligible Always Eligible" refers to properties that entered OMHAR and have received a rent reduction either via an approved M2M Lite Transaction, or a Watch List Contract (also previously known as a Potentially Troubled Contract). Properties that had their rents reduced via a Rent Comp Study would also fall into this category.

Generally, any property that has Contract rents that are above market rents, meets the rent eligibility criteria under this paragraph.

4. An owner in good standing or willing to transfer the property.

Other Consideration

A property with State or local bond financing that can be defeased or where the trustee will provide written consent to redeem the bonds may also enter OAHP if otherwise so eligible. These projects must be submitted to OAHP (Bond Department) for a bond determination.

514(c) Contract

The 514(c) Contract (sometimes called "Interim") is the HAP Contract provided for projects that are active in the M2M process. All properties entering into M2M must receive a 514(c) Contract upon entry to M2M, except for Out-Year, Original HAP Contracts (see discussion below) or properties with a FAF Contract connected to State or local bond financing. If an owner currently has a 524 Contract, it is considered void as of the effective date of the 514(c) Contract. The 514(c) Contract has been updated to clarify this policy.

A new 514(c) Contract (Interim) must be executed at current Contract rents. The Contract Administrator should prepare the 514(c) Contract and accompanying Notification form (see

additional discussion of 514(c) Contract term below). If the 514(c) is replacing an existing 524 Contract, a budget authority increase is necessary only to the extent that the 514(c) extends the Contract term. When a project is referred to the M2M program, a copy of the 514(c) Contract and accompanying Notification form must be forwarded to the HUD organization responsible for Contract accounting (either the Financial Management Center in Kansas City or the National Accounting Center in Fort Worth) and the Contract administrator, if not HUD. The Contract must also be forwarded to OAHP along with the Contract Renewal Request Form (see Section 8 Renewal Policy Guide, Attachment 3-A2).

The Multifamily Program Center should refer to instructions posted on the OAHP and HUD intranet (<http://hudweb.hud.gov/po/ya/sec8.htm>) on updating Housing systems to reflect the new Contract.

When the project completes the M2M process or if the project is determined ineligible for M2M due to market rents above Contract rents, or other eligibility issues, the property will be returned to Multifamily Housing for processing of a new 524 Contract to replace the interim 514(c) Contract.

Term of 514(c) Contracts

The M2M statute states that Interim 514(c) Contracts shall be for a period not to exceed twelve months. Only the Assistant Secretary for Housing-Federal Housing Commissioner may authorize an extension of a 514(c) Contract beyond the twelve-month period. The only exception to this policy is if the property was previously in M2M, the rents were reduced and the property qualifies under the "Once Eligible Always Eligible" rule. Waivers are requested once a month and are requested in three- to six-month increments. OAHP Headquarters coordinates waiver requests through OAHP Preservation Office Directors. Once approved by the Commissioner, OAHP, Hub and PC Directors are notified, via e-mail and the listing is posted to OAHP's web site.

If the original Contract has multiple stages, the expiration of the first stage is the expiration date for determining the need for a waiver.

Occasionally, Multifamily Housing staff may want to continue processing of a property even if over time the owner has not fully cooperated in the restructuring process. In those cases, OAHP will notify the Multifamily Project Manager that an extension of the 514(c) Contract can be made, but only at OAHP determined market rents. The Multifamily Housing Project Manager or Contract Administrator should update the rent schedule and extend the Contract for three-to-six months. No waiver is required in this instance as rents will be at market levels.

Watch List Contract

A Watch List Contract is prepared by OAHP after an owner refuses to convert to a Full Restructuring after being notified that the property is ineligible for Lite processing or is otherwise unable to close a Full Restructuring. Watch List Contracts should begin the month after a

determination that processing cannot continue, or at the conclusion of the current HAP Contract, whichever is earlier. The Multifamily Program Center must be notified immediately upon determination that a Watch List Contract will be issued. Once a Watch List Contract is prepared and submitted to the owner, a 514(c) Contract is considered void as of the date the Watch List Contract begins. **No HAP payments can be made to the owner after this date under the old Contract.**

Multiple Contracts

1. Generally multiple Contracts will be combined at closing of a Full Debt Restructuring and HUD will rescind all recaptured funds. However, the Contracts need not be combined if one or more of the Contracts expire *after* September 30, 2006, and a Recapture Agreement is executed (see Out-Year Contract discussion in the next Section). In the case of Lite transactions, owners are encouraged, but not required, to combine Contracts.
2. When a property has multiple Contracts, or stages within a Contract, the rents in an expiring Section 8 Contract(s) may differ from the rents for the other Section 8 Contracts or stages.
 - a. Project is Above-Market but the Expiring Section 8 Contract is At-or-Below-Market. If the Current Rent Potential (i.e., total of all Contract rents) for all the project-based Section 8 units in the project is equal to or greater than the total of market rents for such units, and the Contract rents in the expiring project-based Section 8 Contract(s) are below-market, the project will be renewed at existing rents. In these cases, the owner has the option of processing a debt restructuring (if needed) now.
 - b. Project is At-or-Below-Market but Expiring Section 8 Contract is Above-Market. If the Current Rent Potential (i.e., total of all Contract rents) for all project-based Section 8 units in the project is equal to or less than the total of market rents for such units, and the Contract rents in the expiring project-based Section 8 Contract(s) are above market, the project is not eligible for restructuring its mortgage debt. The Section 8 Contract renewal will be processed by the Multifamily Hub or Program Center.

Out-Year HAP Contracts

Out-Year HAP Contracts refers **only** to Original HAP Contracts that will expire 6 months or longer after an OAHP closing and result in project rent savings of greater than \$1,000 per month. For Out-Year Contracts that meet these guidelines, the Contracts may stay in place after closing through their expiration; however, the owner will have to deposit the excess rent proceeds over market rents to either the Reserve for Replacement (R4R) account or towards debt service. These terms will be spelled out in the Restructuring Commitment (RC) and a rider to the HAP Contract.

Out-Year Contracts that entered OMHAR or OAHP that do not close, **do not** retain automatic eligibility to re-enter OAHP. Eligibility will have to be re-determined when a new referral is requested.

Out-Year Contracts will not be accepted into M2M after June 30, 2005. Properties that are otherwise eligible for OAHP will have to accept a 514 Contract upon entry to M2M.

Other Matters

OAHP prepares a monthly listing of 514 Contracts that have been apparently extended without a HAP waiver in place, or where rents in TRACS under a 524 Contract are different than OAHP approved market rents and OAHP is unable to reconcile the differences. This list is provided to the Office of Housing Assistance Contract Administration Oversight for follow up.

Coordination of any questions regarding this guidance will be handled by Norman Dailey of OAHP. Telephone Number: 202-708-0614 extension 8371 or email Norman_Dailey@HUD.gov.

Note #1 – Types of Contracts Eligible for M2M

Section 512(2)

- (B) that is covered in whole or in part by a contract for project-based assistance under—**
- (i) the new construction or substantial rehabilitation program under section 8(b)(2) of the United States Housing Act of 1937 (as in effect before October 1, 1983);**
 - (ii) the property disposition program under section 8(b) of the United States Housing Act of 1937;**
 - (iii) the moderate rehabilitation program under section 8(e)(2) of the United States Housing Act of 1937;**
 - (iv) the loan management assistance program under section 8 of the United States Housing Act of 1937;**
 - (v) section 23 of the United States Housing Act of 1937 (as in effect before January 1, 1975);**
 - (vi) the rent supplement program under section 101 of the Housing and Urban Development Act of 1965;**
- or**
- (vii) section 8 of the United States Housing Act of 1937, following conversion from assistance under section 101 of the Housing and Urban Development Act of 1965; and**

524 Contracts that are derived from any of the above programs.

Instructions for Processing OAHP Interim Renewal Contracts

These instructions outline the high level steps required for processing OAHP Interim Renewal Contracts. The Interim Renewal Contract (also known as the 514c Contract) is the HAP contract provided for projects that are active in the Mark-to-Market (M2M) process.

Note that a Section 8 contract with an existing future expiration date may be replaced by an interim OAHP contract with a new earlier effective date. For example, a project entering the M2M process during an existing contract term of 1/1/2001 – 12/31/2005 may receive an interim OAHP contract for 12 months with a new earlier effective date, e.g., 4/1/2005 – 3/31/2006.

A. Systems Processing Steps for OAHP Interim Renewals of PBCA or HUD-Administered Contracts (paid through PAS/LOCCS):

For contracts assigned to a Performance Based Contract Administrator (PBCA) or HUD-administered, the steps in processing an OAHP interim renewal include entering an interim renewal in REMS, printing the interim contract, and temporarily executing the new interim contract in TRACS, until a system change makes the TRACS update more automatic. The signed contract goes to Accounting for updates to PAS/LOCCS.

A change from the current renewal systems process for PBCA/HUD contracts is temporarily in effect for Interim Renewal (or 514c) Contracts to ensure that the effective date of the interim term is recorded in TRACS and REMS accurately. The temporary change is for HUD to update TRACS directly using modified extension. The following steps reflect the temporary procedure for Interim Renewals. These instructions will be updated after the systems process is changed to automatically update TRACS with the correct interim effective date.

1. **Enter renewal information in REMS.** HUD or PBCA uses the REMS Short Term renewal module for any interim OAHP contract. The Short Term renewal can be for a period of less than or equal to 12 months.

In REMS, the user must select 'Renewal Type' = Short-term Renewal' and 'Short-term Renewal Contract' = Interim Full Renewal Contract or Interim Lite Contract, as appropriate.

A waiver is required from the FHA Commissioner to continue a 514c contract with above market rents in excess of 12 months. If a waiver is not approved, OAHP will provide HUD with market rents that must be used in processing a renewal. At renewal, information for another Short Term renewal is entered in REMS for the required period (generally 3-6 months).

2. **Use ARAMS to print the Interim Contract.** The HUD Field Office uses Obligate Only feature in ARAMS to create a pending renewal contract with Budget Authority greater than or equal to zero.
 - For HUD administered contract, print the Attachment 14 or 15 Interim M2M Renewal contract from pending status and send for owner signature per usual practice.
 - For PBCA contract, HUD prints the Transaction ACC Amendment as usual to send to the PBCA. The PBCA may create the contract document for signature at their site. (Or, see the next bullet if the HUD office creates the Interim HAP contract.)
 - For PBCA contract, where HUD field office creates the HAP contract for signature, HUD moves the contract from Pending to Offered status in ARAMS to print the Attachment 14 or 15 Interim contract document.
 - **Do NOT execute in ARAMS**, whether or not the Interim contract is created in the HUD office or the PBCA. Follow step 3 instead.
3. **Execute a Modified Extension in TRACS.** After the Interim OAHP Renewal is signed and a copy is in the HUD office, HUD executes a modified extension contract directly in TRACS to reflect the new effective date. See detailed instructions for executing in TRACS at URL:
<http://hudweb.hud.gov/po/h/hm/tracs/trxhome.htm>
4. **Send the signed Interim Renewal contract to Ft Worth Accounting.** Ft Worth Accounting will update PAS/LOCCS with the new effective date, and earlier expiration dates where appropriate, based on the paper contract document and accompanying Notification of Funding form. If the OAHP Interim Renewal will take effect before the existing contract expires, write "Date Change" at the top of the Funding Notification form before sending the contract documents to Accounting. A copy also needs to be sent to Department of HUD, OAHP, 451 7th Street, SW, Room 6222, Washington, DC 20410, Attention: Katonia Jackson.

B. Processing Steps for OAHP Interim Renewals of Traditional-CA Contracts Managed by the Kansas City Financial Management Center (paid through HUDCAPS):

Procedures for Interim Renewal contracts under Annual Contributions Contracts (ACCs) managed by the Kansas City Financial Management Center (FMC) are the same as current procedures, except that the FMC will change the term of an existing ACC to coincide with the Interim OAHP Renewal Contract where the effective date of the interim renewal is earlier than the expiration date of the current contract, and will apply the balance of any renewal budget authority obligations for the current renewal year to the Interim Renewal as designated funds from HAP reserves.

Except under special circumstances, all Multifamily Housing renewal contracts administered under ACCs managed by the FMC are assigned back to the original ACC contract administrator at HAP contract renewal. These instructions for Interim OAHP renewals are consistent with procedures already in effect. As appropriate, the HUD office or contract administrator should:

1. **Enter renewal information in REMS.** The HUD office uses the REMS Short Term renewal module for any interim OAHP contract. The Short Term renewal can be for a period of less than or equal to 12 months.

In REMS, the user must select 'Renewal Type' = Short-term Renewal' and 'Short-term Renewal Contract' = Interim Full Renewal Contract or Interim Lite Contract, as appropriate.

If a waiver is required and issued at the end of 12 months in the M2M process, another Short Term renewal is entered in REMS for the required period (which may be less than 12 months).

2. **Execute the OAHP Interim Renewal Contract** between HUD and the project owner (without the Notification of Funding), and send original copies to the FMC, along with a completed assignment of the HAP to the old contract administrator on the attached form: "0731 Assignment of OMHAR HAP to PHA.doc." Note that budget authority is not required in the HAP contract.
3. **FMC prepares ACC renewal contract for period not to exceed 1 year, and forwards ACC renewal to the contract administrator, along with the underlying Interim HAP Renewal contract and Assignment of HAP to PHA.** Where appropriate, the effective date of the ACC renewal may be earlier than the expiration date of the current ACC.
4. **Contract Administrator executes ACC, and prepares Notification of Section 8 Funding form for the project owner, HUD office, and FMC.** The contract administrator also forwards other documents (budget/requisition) as necessary to the FMC.
5. **FMC executes ACC for HUD and establishes budget/requisition schedule in HUDCAPS with effective and expiration dates consistent with the OAHP Interim Renewal contract.** FMC sends executed copy of the ACC between HUD and the contract administrator back to the contract administrator and to the Multifamily HUD office.
6. **Multifamily HUD office executes a Modified Extension in TRACS.** After the Interim OAHP Renewal is signed and a copy is in the HUD office, HUD executes a modified extension contract directly in TRACS to reflect the new effective date. See detailed instructions for executing in TRACS at URL:
<http://hudweb.hud.gov/po/h/hm/tracs/trxhome.htm>

2. ASSIGNMENT

HUD hereby assigns to the PHA the duties and responsibilities of contract administration for the existing HAP contracts listed in Exhibit A of the Assignment. The effective date of this Assignment shall be:

_____, _____, 200____. [Insert first day of calendar month].

The PHA hereby accepts such assignment. On and after the effective date, and during the term of the ACC, the PHA shall immediately and automatically assume the contractual rights and responsibilities of HUD pursuant to such HAP contracts for covered units in accordance with the ACC and HUD requirements.

Assignment of the HAP contracts to the PHA shall terminate automatically at the earlier of the following: (i) expiration of the ACC term (including any extension of the ACC term), (ii) termination of the ACC; or (iii) if HUD withdrawal of the covered units from the ACC by HUD. Upon termination of the Assignment, all contractual rights and responsibilities of the PHA pursuant to such HAP contracts shall immediately and automatically return to HUD.

3 EXCLUSION OF THIRD PARTY RIGHTS

A family that is eligible for housing assistance under a HAP contract is not a party to or a third party beneficiary of the HAP contract, the ACC or the Assignment.

Nothing in this Assignment shall be construed as creating any right of any third party to enforce any provision of the HAP contract or the Assignment, or to assert any claim against HUD or the PHA.

Assignment executed by:

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD)

Signature of authorized representative

Name and official title (print)

Date

Name of Contract Administrator (Print)

By: _____
Signature of authorized contract administrator representative

Name and title (Print)

Date _____

ASSIGNMENT — EXHIBIT A

**RENEWAL HAP CONTRACT
ASSIGNED TO PHA**

Annual Contributions Contract Number: _____

Section 8 HAP Contract Number: _____

Section 8 Project Number: _____

Project Name: _____

Project Location:

