



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
Office of Housing

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**SPECIAL ATTENTION OF:**

Hub and Program Center  
Directors; Project Managers;  
PBCAs; Owners; and Management  
Agents

**TRANSMITTAL**

**Section 8 Renewal Policy  
Guide Book  
Issued: \_\_\_/\_\_\_/2010**

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1. **This Transmits.** Page changes to the Section 8 Renewal Policy Guide Book dated 1/15/08 (revised as of 12/12/06). These changes are effective immediately.

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2. **Explanation of Changes.** Since complete chapters have been revised there is no light grey shading. Beyond grammatical revisions major changes:

13  
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16

A. Remove repetitive language that applies to more than one option and incorporates that text into an expanded Chapter Two.

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B. Reaffirm that an Owner may request to see a HUD purchased rent comparability study (RCS) and that HUD will provide the RCS to the Owner at no charge. (Section 2-5.D.)

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25

C. Discuss the term of the Section contracts and the ability to use 20 year contracts. (Section 2-7)

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29

D. Discuss the issue of combining contracts and specifically which contracts cannot be combined. (Section 2-10)

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E. Provide for a regulatory waiver of the prohibition on distributions for nonprofit Owners. (Section 2-12.C.)

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F. Revise the language to allow for-profit Owners access to additional distributions only during the term of the renewal contract under Option One. (Section 2-12.D.1.a.1))

38  
39

G. Add language that allows for-profit and non-profit owners renewing under Option Two access to increased

- 1 distributions if the owner signs a 20 year HAP  
2 contract. (Section 2-12.D.1.a.2)  
3
- 4 H. Provide modifications to Chapter 7 of Handbook 4350.1  
5 concerning budget-based rent increases for MAHRA  
6 contracts. (Section 2-15)  
7
- 8 i. No longer allow a 2 percent contingency reserve for  
9 projects owned by nonprofits or those projects once  
10 owned by nonprofits but which have been sold to  
11 limited dividend partnerships (Section 2-15 A 1).  
12
- 13 ii. Allow nonprofit owned projects with 100 percent  
14 Section 8 to include a vacancy rate of 5 percent in  
15 the budget. (Section 2-15.A.2)  
16
- 17 iii. Allow nonprofit owners of old regulation or LMSA  
18 contracts to include a 6 percent return on initial  
19 equity in the budget. (Section 2-15.A.3.a.2))  
20
- 21 iv. Allow projects with low income housing tax credits  
22 to include in their budget the cost of the annual  
23 compliance reports that must be submitted to the  
24 tax credit allocation entity. (Section 2-15.C)  
25
- 26 v. Allow new debt service in an Owner's budget  
27 regardless of the renewal option selected.  
28 (Section 2-15.B.1.)  
29
- 30 I. Add new section that reminds the PM/CA that they must  
31 verify that owners are not suspended or debarred.  
32 (Section 2-16 A. 2. B.)  
33
- 34 J. Incorporate previously published language indicating  
35 that if a contract or amended rents record expires on  
36 September 30, the last day of the fiscal year, the  
37 effective date of the new contract or amend rents  
38 record is October 1, the first day of the new fiscal  
39 year. (Section 2-16.A.2.i.4)  
40
- 41 K. Clarify that Section 245 Tenant Notifications are not  
42 required for OCAF rent adjustments but is required for  
43 budget based rent adjustments. (Section 2-16.B.3.)  
44
- 45 L. Revise language that requires retroactive rent  
46 adjustments for all options. Previously owners who  
47 submitted their requests on time could only obtain a

1 retroactive rent adjustment only in Option One. These  
2 instructions provide retroactive adjustments for all  
3 options. (Section 2-16.C.1.)  
4

- 5 M. Add language that reminds Project Managers that Owners  
6 of Section 8 projects must have a Data Universal  
7 Numbering System (DUNS) Number by December 31, 2009.  
8 (Section 2-17)  
9
- 10 N. Provide information on processing of regulatory and  
11 directive waivers. (Section 2-18)  
12
- 13 O. Discuss the Auto-OCAF Pilot program where the owner  
14 will no longer be required to submit the OCAF Rent  
15 Adjustment Work Sheet but will respond to an  
16 automatically generated letter from HUD as to what the  
17 new OCAF adjusted rents will be. (Appendix 2-1)  
18
- 19 P. Remove language for Option One B renewals that rents  
20 on projects with use restrictions be limited to the  
21 use restricted rents. (Chapter 3)  
22
- 23 Q. Clarify that the "vulnerable population" criteria for  
24 Option One B applies only to the assisted units not  
25 the entire project. (Section 3-6.B.1.)  
26
- 27 R. Clarify that the 150 percent of FRM cap only applies  
28 to Option One-A. To exceed the 150 percent cap, the  
29 property must meet the criteria found in Section 3-  
30 6.B. (Section 3-5)  
31
- 32 S. Add language that should a property not qualify for  
33 Option One A that the owner has the option to switch  
34 to Option One B  
35
- 36 T. Add language that should a property not qualify for  
37 Option One A or B that the Owner has the option to  
38 switch to any other option for which it qualifies and  
39 the Owner's and HUD's RCSs will be used to establish  
40 rents. (Section 3-8.B.)  
41
- 42 U. Clarify that the PM/CA must perform a substantive  
43 review of the HUD purchased RCS using the criteria in  
44 Section 9-20 of the Guide. (Section 3-8.C.1.b.)  
45
- 46 V. Remove the requirement that comparable rents should be  
47 reduced by the Interest Subsidy Adjustment Factor for

1 Section 236, 221(d)(3) and 515 properties (Chapter 3).  
2 Few of these projects remain and the subsidy provided  
3 on the remaining projects makes little difference in  
4 the calculation.

5  
6 W. Revise the Worksheet For Mark-up-to-Market to  
7 eliminate the reduction in the comparable rents by the  
8 Interest Subsidy Adjustment Factor. (Chapter 3)  
9

10 X. Clarify that a project may renew under Option Four if  
11 the project is exempt for debt-restructuring or does  
12 not meet the definition of an "eligible multifamily  
13 housing project." (Section 6-1)  
14

15 Y. Add projects financed under Section 542(c) risk-  
16 sharing with qualified State and local housing finance  
17 agencies to the list of projects exempt from OAHF.  
18 (Section 6-1.B.1.)  
19

20 Z. Only permit the rent adjustments in a multiyear  
21 contract using a budget basis if the proposed rents do  
22 not exceed comparable market rents. (Section 6-3.B.)  
23

24 AA. Update Owner Submissions for Demonstrations Projects  
25 under Option 5. The rent adjustment instructions  
26 issued on December 12, 2006 contain an error.  
27 Demonstration projects that have a recorded Mortgage  
28 Restructuring Demo Use Agreement are not required to  
29 submit a rent comparability study. (Section 7-3.C.1.)  
30

31 BB. Clarify that even though the ELIHPA Use Agreement ends  
32 on the first day of the month and the Section 8  
33 contract ends on the last day of the previous month  
34 that HUD considers them as ending coterminous and  
35 therefore the owner may select any renewal option for  
36 which the property is eligible except Option Five.  
37 (Section 7-8.B.)  
38

39 CC. Add language detailing the notification requirements  
40 when an owner desires to prepay an FHA mortgage in the  
41 Preservation Program. (Section 11-4.H.)  
42

43 DD. Add language to the sample "One-Year Notification  
44 Letter Owner Intends to Renew" informing tenants that  
45 they will receive a one year notification should the  
46 owner decide not to renew the Section 8 contract.  
47 (Appendix 11-2)

- 1  
2 EE. Add a 150 day notification of Prepayment letter for  
3 LIPHRA and ELIHPA projects. (Appendix 11-3)  
4  
5 FF. Add an OAHP second notice of Opt-Out 120 day notice to  
6 tenants. (Appendix 11-4)  
7 GG. Add language that if a property has a REAC score below  
8 60, then the PM/CA will follow the instructions in  
9 Notice H 2010-04, or current instructions. (Section  
10 12-2 B. 3.)  
11  
12 HH. Add language that HUD may refuse to renew a contract if  
13 the poor condition of the project cannot be remedied  
14 in a cost effective manner. (Section 13-1.A.4.)  
15  
16 II. Add language that requires the Program Center or the  
17 Property Disposition Center to provide notice to  
18 tenants receiving Section 8 assistance if HUD refuses  
19 to renew a contract. (Section 13-4)  
20  
21 JJ. Change the scope of Chapter 15 to permit both for-  
22 profit and nonprofit preservation transactions.  
23  
24 KK. Revise language to allow Option Four MAHRA contracts  
25 to terminate early in order to participate in Chapter  
26 15 transactions. (Section 15-3.C.1.)  
27  
28 LL. Add language that instructs project managers or  
29 contract administrators to notify the owner/purchaser  
30 of the new post rehabilitation rents after receipt of  
31 the owner submission. (Section 15-10)  
32  
33 MM. Eliminate the requirement formerly found in Section  
34 15-13.A. that property have at least a 30 REAC score  
35 to participate in Capital Repairs under Chapter 15.  
36 (Section 15-9)  
37  
38 NN. Eliminate language that restricts rents to a use  
39 restricted level formerly found in Section 15-8.  
40  
41 OO. Clarify that the Transfer program can be used for a  
42 transfer from one for-profit Owner to another for-  
43 profit Owner, non-profit to a for-profit, a non-profit  
44 to another non-profit, as well as a for-profit to a  
45 non-profit. (Section 15-3.A.)  
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- PP. Remove the requirement that an Owner accept a 20-year Use Agreement formerly found in Section 15-5.A.1. and Appendix 15-1, Sample Use Agreement.
- QQ. Remove Chapter 16 "Other Issues" and transfers appropriate information to other chapters.
- RR. Revise the Glossary to include several new terms.
- SS. Revise the list of Acronyms.

Filing Instructions:

Remove:	Insert:
Table of Contents dated 1/15/08	Table of Contents dated [redacted]/2010
Chapter 2 dated 1/15/08	Chapter 2 dated [redacted]/2010
Chapter 3 dated 01/15/08	Appendix 2-1 dated [redacted]/2010
Chapter 4 dated 01/15/08	Appendix 2-2 dated [redacted]/2010
Chapter 6 dated 01/15/08	Chapter 3 dated [redacted]/2010
Chapter 7 dated 01/15/08	Chapter 4 dated [redacted]/2010
Chapter 8 dated 01/15/08	Chapter 6 dated [redacted]/2010
Chapter 11 dated 01/15/08	Chapter 7 dated [redacted]/2010
Appendix 11-1 dated 01/15/08	Chapter 8 dated [redacted]/2010
Appendix 11-2 dated 01/15/08	Chapter 11 dated [redacted]/2010
Chapter 12 dated 01/15/08	Appendix 11-1 [redacted]/2010
Chapter 13 dated 01/15/08	Appendix 11-2 [redacted]/2010
Chapter 15 dated 01/15/08	Appendix 11-3 [redacted]/2010
Appendix 15-1 dated 01/15/08	Appendix 11-4 [redacted]/2010
Chapter 16 dated 01/15/08	Chapter 12 dated [redacted]/2010
Attachment 1 Acronyms Used in This Guide dated 4/17/2009	Chapter 13 dated [redacted]/2010
Attachment 2 Glossary of Terms dated 01/15/08	Chapter 15 dated [redacted]/2010
	Attachment 1 Acronyms Used in This Guide dated [redacted]/2010
	Attachment 2 Glossary of Terms dated [redacted]/2010

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Assistant Secretary for Housing -  
Federal Housing Commissioner

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4	Overview of Conversion Procedure
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6	Operating Cost Adjustment Factors (OCAF) for Rent Adjustments at Section 8 Contract Renewal (FY 2008)
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15*	Interim (Lite) Mark-To-Market Renewal Contract, Form HUD-9641
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- 21\*\* Consent to Assignment of HAP Contract as Security for Financing
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- 24\*\* Consent to Assignment of HAP Contract to FNMA as Security for FNMA Credit Enhancement

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\*These documents can be found at  
<http://www.hud.gov/offices/hsg/mfh/exp/guide/s8guideatt.cfm>

\*\* These documents can be found at:  
<http://www.hud.gov/offices/hsg/mfh/mfhsec8.cfm>

## Section 8 Renewals

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### 42-1. INTRODUCTION.

The passage of the Multifamily Assisted Housing Reform and Affordability Act OF 1997 (MAHRA) by Congress signaled an important shift in the Section 8 program: In general, section 8 rents must be comparable to unsubsidized rents in the area where the project is located. In some cases, this meant the rents can be adjusted upward. With the establishment of OAHF, formerly known as OMHAR, Congress also recognized that the rents at some Section 8 projects needed to be reduced. For many projects, MAHRA requires the preparation of a rent comparability study (RCS), to find out if a project's Section 8 rents are relative to market rent levels.

In instances where an Owner elects not to renew but instead chooses to opt out of a project-based Section 8 contract, eligible tenants living in the Section 8 project based assisted units at the property are provided with enhanced vouchers (see Chapter Eleven).

### 252-2. OWNER OPTIONS.

At the time of renewal, an Owner must choose among any of the following renewal options for which the project is eligible.

#### A. Six Owner Options.

1. Option One is Mark-Up-To-Market (mu2m).
2. Option Two is the renewal of contracts with existing rents adjusted by an operating cost adjustment factor (OCAF) or on the basis of a budget:
  - a) When rents under the expiring contract are at or below market; or

1 b) Where the Owner of an exception project,  
2 described in 2-2A.4 below, with rents in  
3 excess of the market requests to have the  
4 project's rents reduced to market.  
5

6 3. Option Three is referral to OAHF for processing  
7 because the contract rents are greater than market  
8 rents and the project has a HUD-insured or HUD-held  
9 mortgage.  
10

11 4. Option Four is renewal of contracts for "exception"  
12 projects under 524(b)(1) of MAHRA. These projects  
13 are exempt from debt-restructuring pursuant to  
14 514(h) of MAHRA or are not an "eligible multifamily  
15 housing project" as defined in section 512(2) of  
16 MAHRA;  
17

18 5. Option Five is the renewal of contracts for:  
19

20 a. Portfolio Reengineering Demonstration projects  
21 with a:  
22

- 23 • Mortgage Restructuring Demo Program Use  
24 Agreement; or
- 25 • Budget-Based Without Mortgage Restructuring  
26 Demo Program Use Agreement.  
27

28 b. Preservation projects under either:  
29

- 30 • Title II, Emergency Low Income Housing  
31 Preservation Act of 1987 (ELIHPA); or
- 32 • Title VI, Low-Income Housing Preservation  
33 and Resident Homeownership Act of 1990  
34 (LIHPRHA).  
35

36 6. Option Six is to opt-out of the Section 8 contract.  
37

38 B. Determining Option.  
39

40 When determining which option to select, Owners should  
41 be aware that the contract renewal options are  
42 determined by the project's eligibility at the  
43 expiration date of the existing Section 8 contract.  
44

45 **452-3. TYPES OF RENEWALS.**  
46

47 When requesting a renewal, an Owner must submit the Contract  
48 Renewal Request Form, Form HUD-9624, available on HUDCLIPS,

1 and any required supporting documentation to the HUD Project  
2 Manager or the Contract Administrator/Performance Based  
3 Contract Administrator (PM/CA) for processing. (See Section  
4 2-22 for detailed processing instructions.) The HUDCLIPS web  
5 address is:

6  
7 <http://www.hud.gov/offices/adm/hudclips/index.cfm>  
8

9 A. Initial Renewal.

- 10  
11 1. Generally, the first renewal of a project's Section  
12 8 contract or contract stage processed under  
13 MAHRA's rules is the initial renewal of the  
14 contract.  
15  
16 2. The **exception** to this rule involves projects that  
17 enter OAHF using either the Interim-Lite or  
18 Interim-Full contract.  
19  
20 a. The Interim-Lite and Interim Full-contracts  
21 are not considered to be the initial or  
22 subsequent renewal of a MAHRA contract.  
23  
24 b. The initial renewal is the contract that is  
25 executed upon completion of OAHF processing,  
26 either a:  
27  
28 1) Watch List Contract (Attachment 17 for  
29 one year);  
30  
31 2) Basic contract under Option 2 (Attachment  
32 11-1 for one year or Attachment 11-2 for  
33 multiple years); or  
34  
35 3) OAHF-Full using the full mark-to-market  
36 (m2m) contract (Attachment 16 for  
37 generally up to twenty-years).  
38

39 B. Subsequent Renewal.

40  
41 The renewal of a MAHRA contract **after** the initial  
42 renewal is considered the subsequent renewal of the  
43 contract.  
44  
45  
46  
47  
48

1 C. Renewal Options.

- 2
- 3 1. As a general rule, the Owner may renew the contract
- 4 under any option the project is eligible for at the
- 5 time of renewal.
- 6
- 7 2. **Exceptions** to the general rule include:
- 8
- 9 a. Projects with Watch List Contracts can only be
- 10 renewed under Option Three, Re-entry Into
- 11 OAHP, for three consecutive one-year renewals.
- 12 At the end of the third one-year renewal, if
- 13 the project has demonstrated physical,
- 14 financial and managerial improvement, the
- 15 project can renew under any option that the
- 16 project is eligible for at the time of
- 17 renewal.
- 18
- 19 b. Projects with contracts that are renewed under
- 20 section 515 (OAHP-Full) must renew under
- 21 Option Three during the life of the OAHP Use
- 22 Agreement.
- 23
- 24 c. Preservation (LIPHRA and ELIHPA) projects and
- 25 Portfolio Reengineering Demonstration projects
- 26 must renew under Option Five during the life
- 27 of their Use Agreements.
- 28

29 **292-4. EARLY TERMINATION OF A CONTRACT.**

30

31 A. Non-MAHRA Contracts.

32

33 HUD will permit the early termination of a non-MAHRA

34 contract that is expiring in the current fiscal year

35 (FY) for an Owner wanting to enter into a MAHRA contract

36 **only** if:

- 37
- 38 1. The Owner renews the Section 8 contract under
- 39 Option One, Two, Three, or Four; and
- 40
- 41 2. The minimum term of the new contract will be the
- 42 remaining term of the non-MAHRA contract, in whole
- 43 months, plus any minimum term required by the
- 44 renewal option selected.
- 45
- 46
- 47
- 48

1 B. MAHRA Contracts.

2  
3 Owners may request the early termination of an existing  
4 non-mu2m MAHRA contract for the following reasons:

- 5  
6 1. A for-profit Owner can renew the contract under  
7 Option One, mu2m. See Chapter 3.  
8  
9 2. Any Owner can renew the contract under Option Two,  
10 Mark-Up-To-Budget (mu2b), in the pursuit of  
11 preserving long term affordability. See Chapter  
12 15.  
13  
14 3. Under Option Three:  
15  
16 a. An Interim-Lite or Interim-Full m2m contract  
17 and OAHP has completed processing before the  
18 expiration date of the interim contract.  
19  
20 b. An Owner with a Watch List contract is  
21 requesting a return to OAHP.  
22  
23 c. The contract was previously renewed as an  
24 OAHP-Lite contract and the Owner wishes to  
25 complete a full OAHP debt restructuring.  
26  
27 d. The Owner requests referral to OAHP because  
28 rents are above market and supplies a RCS  
29 showing that the current rents are above  
30 market.  
31  
32 4. To combine multiple contracts or stages. (See  
33 Section 2-10.C.2 below.)  
34

35 **2-5. RENT COMPARABILITY STUDY.**

36  
37 Certain renewal options under MAHRA require a RCS.

- 38  
39 A. A RCS is prepared following the instructions found in  
40 Chapter Nine of this Guide. In addition, Section 9-4 of  
41 the Renewal Guide does provide acceptable alternatives  
42 to the RCS.  
43  
44 B. The RCS:  
45  
46 1. By statute, it is valid for 5 years from the date  
47 the Owner's Appraiser signs the HUD-92273-S8, Rent  
48 Comparability Grid.

1  
2 Integrated Real Estate Management System (iREMS)  
3 automatically generates an event notice to the  
4 PM/CA that the RCS is coming to the end of its  
5 five-year life cycle. The PM/CA will remind  
6 affected Owners in writing that a new RCS is  
7 required at the end of the fifth year to receive a  
8 rent adjustment and/or a renewal of the Section 8  
9 Contract.

- 10  
11 2. Must include all of the Section 8 units in the  
12 project.  
13  
14 3. Establishes the market rent for renewals of staged  
15 contracts and can be used for the initial renewal  
16 of expiring contracts or stages that were not  
17 combined (see Section 2-7 below) that will expire  
18 during the five-year life cycle of the RCS.  
19

20 C. Reviewing the RCS.  
21

22 Upon receipt of the RCS, the PM/CA along with a staff  
23 appraiser will review the RCS based on the instructions  
24 found in Sections 9-17 through 9-20 of this Guide and  
25 determine whether the comparable market rent conclusions  
26 are reasonable. The PM/CA records the finding in iREMS.  
27

28 D. Adjusting the RCS.  
29

- 30 1. During the five-year life of the RCS, the PM/CA may  
31 need to adjust the comparable market rent to  
32 reflect the effects of time.  
33  
34 a. The PM/CA only adjusts the comparable market  
35 rent following the instructions in 2 below  
36 when:  
37  
38 1) There are multiple Section 8 contracts  
39 expiring in different years; or  
40  
41 2) The Owner requests a budget-based rent  
42 increase in later years.  
43  
44 b. An adjustment to the comparable market rent  
45 will not be needed if the project has a single  
46 Section 8 contract and the Owner only accepts  
47 annual OCAF adjusted rent increases.  
48

- 1           2.    The PM/CA adjusts the comparable market rent by the  
2           OCAF using the OCAF Rent Adjustment Worksheet, Form  
3           HUD-9625.  
4  
5           a.    Use the subject project's current debt service  
6           in the formula.  
7  
8           b.    If more than one year has passed since the  
9           submission of the RCS, the PM/CA will have to  
10          reprocess the worksheet for each additional  
11          year that has passed.

12  
13           ***Note: As the automatic OCAF procedure, discussed***  
14           ***in Appendix 2-1, is rolled out one of the features***  
15           ***will be that iREMS will automatically adjust the***  
16           ***RCS every year.***

17  
18    E.    HUD Required RCS.

19  
20          The Program Center/Hub Director may require one  
21          additional rent comparability study during the 5-year  
22          period, if s/he:

- 23  
24          1.    Believes the OCAF adjusted comparable market rent  
25          is not an accurate reflection of the market; or  
26  
27          2.    Needs a new RCS to comply with the five-year life  
28          cycle required by a multiyear contract.  
29

30    F.    Owner Submitted RCS.

31  
32          The Owner may also submit a RCS during the normal five-  
33          year life cycle of the required RCS if the Owner wants  
34          to terminate an existing contract and either:

- 35  
36          1.    Enter into an Option One mu2m discussed in Chapter  
37          3; or  
38  
39          2.    Enter into an Option Two mu2b discussed in Chapter  
40          15; or  
41  
42          3.    Request to be sent to OAHP for processing.  
43

44    G.    The Cost of the RCS.

- 45  
46          1.    The cost of conducting the RCS is an eligible  
47          project expense anytime:  
48

- 1 a. The Owner submits a RCS because HUD requested  
2 it; or  
3  
4 b. It is required by a renewal option: or  
5  
6 c. The Owner submits a RCS under Item F above.  
7  
8 2. The cost of any unsolicited RCS, not covered by F  
9 above, **is not** an eligible project expense.

10  
11 H. HUD Purchased RCS.

- 12  
13 1. An Owner may request a copy of a HUD purchased RCS  
14 for its property. A Freedom of Information Act  
15 (FOIA) request is not required.  
16  
17 2. HUD will give the Owner, at no charge, a copy of  
18 the HUD purchased RCS.  
19

20 **202-6. CONTRACTS.**

- 21  
22 A. Copies of MAHRA contracts are found at:  
23 **<http://www.hud.gov/offices/hsg/mfh/exp/guide/s8guideatt.cfm>.**

24  
25 Option One uses:

- 26  
27 • Attachment 12 - Renewal HAP Contract for Section 8  
28 Mark-Up-To-Market Project, Form HUD-9638  
29

30 Option Two uses:

- 31  
32 • Attachment 11-1 - Basic Renewal Contract - One  
33 Year, Form HUD-9636  
34 • Attachment 11-2 - Basic Renewal Contract - Multi-  
35 Year Term, Form HUD-9637  
36

37 Option Three uses:

- 38  
39 • Attachment 11-1 - Basic Renewal Contract - One  
40 Year, Form HUD-9636  
41 • Attachment 11-2 - Basic Renewal Contract - Multi-  
42 Year Term, Form HUD-9637  
43 • Attachment 14 - Interim (Full) Mark-To-Market  
44 Renewal Contract, Form HUD-9640  
45 • Attachment 15 - Interim (Lite) Mark-To-Market  
46 Renewal Contract, Form HUD-9641  
47 • Attachment 16 - Full Mark-To-Market Renewal  
48 Contract, Form HUD-9642

- Attachment 17 - Watch List Renewal Contract, Form HUD-9643

Option Four uses:

- Attachment 11-1 - Basic Renewal Contract - One Year, Form HUD-9636
- Attachment 11-2 - Basic Renewal Contract - Multi-Year Term, Form HUD-9637
- Attachment 18 - Previous Mod Rehab Projects, Form HUD-9644

Option Five uses:

- Attachment 11-2 - Basic Renewal Contract - Multi-Year Term (For DEMO Projects) , Form HUD-9637
- Attachment 13 - Preservation Renewal Contract, Form HUD-9639

B. Expiring Contract Provisions Renewed.

Except as specifically modified by the MAHRA Renewal Contract, all provisions of the expiring contract are renewed.

262-7. **CONTRACT TERMS.**

A. General Contract Terms. The term of the contract is one or more years. The Department believes long-term, multiyear contracts assist in preserving affordable housing.

1. **Generally** the maximum term of the contract is 20 years.
2. The **exception** to the maximum term of the contract is made where there is a Use Agreement that controls the renewal options available to the Owner. In this case, the maximum term of the contract may be coterminous with the Use Agreement and may be less than or more than 20 years. For example:

- The maximum term of the contract for a Title II preservation project with a Use Agreement having a remaining life of 10 years is 10 years.

- The maximum term of the contract for a Title VI preservation project with a Use Agreement having a remaining life of 30 years is 30 years.

3. If an Owner chooses a contract term of more than one year, the contract will be funded for one year, or increments thereof, with the remaining years, or increments thereof, subject to sufficient appropriations.
4. The effective date of a contract renewal is the day after the contract expires.
  - a. For renewals of OAHP-Lites, the original contract is terminated at the end of the month following the month in which the Owner is offered a new contract at the market rents.
  - b. For renewals in conjunction with a OAHP-full debt restructuring, the new contract will become effective on the earlier of the expiration of the interim contract or the first day of the month following closing.
5. The expiration date of a contract will be the last day of the month.
6. The term of a multiyear contract does not mean that the contract must be in whole years. There may be occasions where the last rental adjustment period may be less than 12 months; for example a property has an existing Use Agreement with a remaining life of 2 years and 7 months. In this example, the last rental adjustment is for the remaining term of the contract, 7 months. Therefore, the Owner would receive a prorated OCAF adjustment for the 7 months. See Section 2-9C below for instructions on calculating a pro-rated OCAF.

- B. Aligning Contracts. The PM/CA should make every effort to align contract renewal terms with the five-year life cycle of the RCS.

For example, if an Owner renews the contract in FY 2010 under Option Two for a one-year term, and in FY 2011 the Owner wishes to renew the contract for a five-year term, the Owner has two options:

- 1            1.    The Owner may renew the contract for four years,  
2                    using the RCS submitted at initial renewal (the  
3                    Option Two renewal in FY 2010), or  
4
- 5            2.    The Owner may submit a new RCS and renew the  
6                    contract for a five-year term.  
7

82-8.        **SHORT-TERM CONTRACTS.**

- 9
- 10           A.    Short-term contracts are for less than one year. The  
11                phrase "short-term" refers to the term of the contract,  
12                not the "type" of contract. The PM/CA should use short-  
13                term renewals:  
14
- 15                1.    To protect the residents (see Chapter Eleven). For  
16                    example: to allow additional time to cover a delay  
17                    in providing tenant-based assistance:  
18
  - 19                        • In cases of Owner opt-outs, or
  - 20
  - 21                        • In cases where the project is subject to  
22                            enforcement actions.
  - 23
- 24                2.    To align multiple contracts or stages in a project.  
25
- 26                3.    To provide the PM/CA with adequate time to process  
27                    an Owner's request to renew under either the mu2m  
28                    or mu2b procedures.  
29
- 30                4.    To extend the contract, at current rents, of a  
31                    project that has been referred to OAHP for debt  
32                    restructuring but has yet to close under a  
33                    Restructuring Plan after a year. To receive a  
34                    short-term renewal beyond a year under these  
35                    conditions at current rents, the Owner must request  
36                    and receive approval from OAHP.  
37
- 38                5.    To align the Section 8 contract with the project's  
39                    physical year end.  
40
- 41           B.    Renewal. Hub/Program Center Directors and CAs should  
42                use their discretion when determining whether or not to  
43                grant a short-term renewal.  
44
- 45           C.    Short-term Contract Execution.  
46
- 47                1.    The contract is renewed in increments of months,  
48                    not days.

- 1  
2           2.     The PM/CA must document the need for the short-term  
3                   renewal in the project file.

4  
52-9.     **CALCULATING RENTS FOR SHORT-TERM RENEWALS.**

6  
7     A.     In cases where HUD/CA/Participating Administrative  
8           Entity (PAE) makes a determination as to market rents  
9           for the project, the short-term renewal rents will be  
10           capped at market.

11  
12     B.     Section 524 contracts.

13  
14           If the project is eligible for an OCAF rent adjustment,  
15           apply a pro-rated OCAF to the short term contract  
16           instead of a full OCAF.

17  
18           1.     The law does not permit the project to receive more  
19           than one full OCAF increase within a 12-month  
20           period.

21  
22           2.     Because the project is entitled to a full OCAF  
23           increase at the first anniversary date of a multi-  
24           year contract, the OCAF increase for the short-term  
25           initial renewal must be pro-rated.

26  
27           3.     Budget-based rent adjustments prorated or  
28           otherwise, are not permitted for a short-term  
29           renewal.

30  
31     C     Calculating a pro-rated OCAF. Divide the full OCAF by  
32           12 and multiply that number by the number of months  
33           needed for the short-term renewal.

34  
35           Example:

36  
37           Full OCAF:                   2.5%  
38           Months in Year:            12  
39           Term of Short-term contract: 8 months

40  
41           2.5 divided by 12 = .21 x 8 = 1.68

42  
43           The pro-rated OCAF to apply to the short-term renewal is  
44           1.68%.

45  
46           After determining the pro-rated OCAF, follow the  
47           instructions in the OCAF Worksheet, Form HUD-9625, for

1 applying the OCAF to the contract rents for the  
2 Section 8 units being renewed.

3  
4 D. Applicability.

5  
6 Do not use the proration of OCAF for calculating the  
7 rents for short-term renewals for Section 514(c)  
8 contracts which are used for projects that must be  
9 processed by OAHF. The short term renewal is at current  
10 rent. (See Chapter Five.)  
11

122-10. COMBINING CONTRACTS.

13  
14 A. Goal.

15  
16 The Office of Multifamily Housing believes that a  
17 desirable goal is to have only one Section 8 contract  
18 per project.

- 19  
20 1. Owners **are encouraged** to combine multiple contracts  
21 or stages.  
22  
23 2. The PM/CA:  
24  
25 a. Should point out to an Owner the benefits of  
26 combining multiple contracts or stages.  
27  
28 b. Cannot require an Owner to combine contracts  
29 or stages.  
30

31 B. Requesting Combination. The Contract Renewal Request  
32 Form, Form HUD-9624, includes a checklist format which  
33 an Owner must use to request a contract renewal. The  
34 cover sheet of this format has a space for the Owner to  
35 designate its choice regarding the combination of  
36 multiple contracts or stages.  
37

38 C. Combining. At the Owner's request, multiple contracts  
39 or stages that are expiring in the same fiscal year may  
40 be combined at HUD's discretion into one contract. This  
41 combination can be achieved in one of two ways:  
42

- 43 1. Short-term renewals. At the time of renewal of the  
44 first stage or contract, the Owner may request a  
45 short-term renewal to bring the earliest expiring  
46 contract/stage in line with the latest expiring  
47 contract/stage. If the Owner elects to do so, s/he  
48 must meet the appropriate renewal requirements.

1 (See Section 2-8 above.) Only contracts/stages  
2 with rents that are at or below market or that are  
3 exempt from OAHP may take a short-term renewal to  
4 align contracts/stages.  
5

6 a. Renew the first contract/stage for the period  
7 of time necessary to bring it coterminous with  
8 the later expiring contract/stage (remember,  
9 only contracts/stages expiring in the same FY  
10 may be combined). The rent for the early  
11 expiration will be adjusted following the  
12 option selected by the Owner and if  
13 applicable, supported by a RCS. If the OCAF  
14 is appropriate for the first contract/stage,  
15 the rent will be adjusted by prorating the  
16 OCAF. (See Section 2.9.C above.)  
17

18 b. Apply the pro-rated OCAF to rents of the early  
19 terminating contract/stage and if applicable,  
20 to the RCS. When the contracts/stages expire,  
21 they will be combined and renewed for the  
22 minimum term of one year. If an OCAF  
23 adjustment is appropriate, the full OCAF  
24 should be applied to the rents for all of the  
25 renewing units.  
26

27 2. Early Termination. The Owner's second option would  
28 be to terminate the later expiring contract/stage  
29 early, roll those units into the earlier expiring  
30 contract and renew all of the units for a one or  
31 multi-year term.  
32

33 **Note: Option Four exception projects must use this**  
34 **methodology when combining contracts.**  
35

36 3. Refer questions concerning combining or splitting  
37 contracts in tenant rental assistance certification  
38 system (TRACS) to the Director of the Office of  
39 Housing Assistance Contract Administration  
40 Oversight, HUD Headquarters, Washington, DC.  
41

42 D. Not Combining. If an Owner has multiple stages or  
43 contracts that s/he does not want to combine, s/he may  
44 continue to use current RCS during its five-year life  
45 cycle for renewing later expiring contract/stages during  
46 this period. The RCS must be adjusted using the  
47 instructions in Section 2-5.D above.  
48

1 If the Owner believes that the rents have changed since  
2 the initial renewal, he/she may submit an updated RCS  
3 for the later expiring contract(s)/stage(s). **The cost**  
4 **of the updated RCS is not an eligible project expense.**  
5

6 E. Different Fiscal Years.  
7

- 8 1. The PM/CA **cannot** combine contracts/stages that  
9 expire in different fiscal years.
- 10  
11 2. However, HUD will permit a contract renewal to  
12 bring multiple contracts/stages in line so that  
13 they may be combined more easily in future years.  
14 An example would be a property which has a contract  
15 that expires on January 31, 2010 and another that  
16 expires on March 31, 2011. The Owner may request a  
17 14-month renewal for the January 2010 contract to  
18 bring it coterminous with the March 31, 2011,  
19 expiration.  
20

21 F. Exception.  
22

23 There are **exceptions** to HUD's preference to combine  
24 Section 8 contracts.  
25

- 26 1. Pre- and post-1980 contracts cannot be combined due  
27 to conflicting income eligibility requirements.  
28
  - 29 • The old regulation Section 8 contracts can admit  
30 up to 25% low income and the balance has to be  
31 75% very-low income.
  - 32 • The new regulation Section 8 contracts can admit  
33 only 15% low income with HUD's permission (see  
34 HUD Handbook 4350.3 Sections 3-7.A and B) and the  
35 balance has to be 85% very-low income.  
36
- 37 2. Loan management set aside (LMSA) contracts cannot  
38 be combined with pre- and post-1980 contracts.  
39
- 40 3. Pre-October 1, 1981, LMSA contracts cannot be  
41 combined with LSMA contracts issued on or after  
42 October 1, 1981, because of conflicting income  
43 eligibility requirements.  
44  
45  
46  
47  
48

12-11. REQUEST FOR A CONTRACT EXTENSION.

A. Owners who have existing 524 MAHRA contracts renewed under Options One, Two, Three or Five of this Guide may request a contract extension.

1. The Department **will** permit extension of the existing contract term if:

a. There is no resetting of contract rents upon execution of the contract extension; and

b. Annual rent adjustments and, if applicable, the RCS updates, adhere to the original contract anniversary date.

2. Only the term of the existing MAHRA contract is affected by the extension.

3. If the PM/CA approves the request, the Owner, HUD and, if applicable, the CA will sign the HAP Extension form, Attachment 20, of this Guide.

[www.hud.gov/officies/hsg/mfh/mfhsec8/cfm](http://www.hud.gov/officies/hsg/mfh/mfhsec8/cfm)

4. The extension must be for a term:

a. Equal to or greater than one month; and

b. When combined with the remaining term of the existing contract cannot exceed the greater of 240 months (20 years) or the remaining term of a recorded Use Agreement that restricts which renewal option an Owner may select.

To assist Program Centers the following formula was developed: **S - R = E**

**S** represents the new remaining term after the contract is extended. **R** equals the remaining term of the existing contract in whole months. **E** equals the extension term which must be for a period equal to or greater than 12 months.

For example, an Option Two contract has a remaining term of 23 months. The Owner wants to extend the contract to provide for a new remaining term of 20 years.

1                    **S** (240 Months) - **R** (23 Months) = **E** (217 months (18  
2                    years and one month))  
3

- 4            B.    Owners who have existing 524 MAHRA contracts renewed  
5            under Option Four or non-MAHRA contracts are not  
6            eligible for a contract extension. However, the Program  
7            Center Director may provide these Owners with comfort  
8            letters indicating that HUD intends to renew their  
9            Section 8 contracts when they expire to the extent that  
10           the law, at that time, authorizes their renewal and, if  
11           so, under the terms and conditions provided at that time  
12           by law, regulation or other requirements.  
13

14 **142-12.    DISTRIBUTIONS.**

15  
16            A.    Limitations on Distributions.  
17

- 18            1.    The old regulation Section 8 contracts and LMSA  
19            Section 8 contracts have no limitations on  
20            distributions. If applicable, any limitation on  
21            distributions is based on a current HUD Regulatory  
22            Agreement or a similar controlling document imposed  
23            by the Housing Finance Agency or other interested  
24            parties.  
25  
26            2.    The new regulation Section 8 contracts for new  
27            construction or substantial rehabilitation limits  
28            an Owner's right to distributions.  
29  
30            a.    A nonprofit Owner is not entitled to  
31            distributions of excess project funds unless  
32            the Department approves the nonprofit Owner's  
33            request for a waiver. See sections 2-12.C and  
34            2-12.D below.  
35  
36            b.    A profit-motivated Owner may receive  
37            distributions of excess project funds:  
38  
39            1)    For projects for elderly families, 6  
40            percent of the initial equity investment  
41            established when the project was  
42            initially built or substantially  
43            rehabilitated; or  
44  
45            2)    For projects for non-elderly families, 10  
46            percent of the initial equity investment  
47            established when the project was

1 initially built or substantially  
2 rehabilitated.

3  
4 c. Profit-motivated Owners of "Partially-assisted  
5 Projects" and "Small Projects," which are  
6 limited by regulatory definition to nonelderly  
7 pprojects, are exempt from the limitations on  
8 distributions.

9  
10 1) A small project consists of 50 or fewer  
11 assisted and unassisted units.

12  
13 2) A partially-assisted project consists of  
14 more than 50 units of which 20 percent or  
15 fewer are assisted.

16  
17 d. If the form of Ownership changes so does the  
18 right to receive distributions under the  
19 Section 8 contract.

20  
21 3. Nothing in this Chapter limits a nonprofit owner's  
22 entitlement to excess project funds generated by  
23 non-Section 8-assisted units in a partially  
24 assisted project.

25  
26 B. For-profit Owners.

27  
28 A for-profit Owner with a new regulation Section 8  
29 contract may qualify for increased distributions. (See  
30 Section 2-12.D. below.)

31  
32 C. Waiver of the Prohibition on Distributions For Nonprofit  
33 Owners.

34  
35 1. Individual Waivers.

36  
37 The waiver is provided for an individual project  
38 and is designed to further the preservation of the  
39 low-income housing stock, as determined by HUD.  
40 The waiver survives a conveyance to another  
41 nonprofit Owner.

42  
43 2. Waiver Requests.

44  
45 Nonprofit entities are not allowed to distribute  
46 profits to individuals or entities comprised of the  
47 nonprofit Owner or to others. By regulation (24  
48 CFR 880.205(a), 881.205(a), and 883.306(a))

1 nonprofit Owners are not allowed to receive  
2 distributions from the project. To receive a  
3 distribution, the nonprofit Owner must request a  
4 waiver of the regulations prohibiting such  
5 distributions. Waivers will be granted on a case-  
6 by-case basis. Requests are submitted to the  
7 Director, Office of Housing Assistance and Grant  
8 Administration (HAGA), Headquarters.  
9

10 The nonprofit Owner may request either:

- 11
- 12 a. A 6 percent return for elderly family project  
13 or a 10 percent return for non-elderly family  
14 project based on the project's original  
15 initial equity investment; or  
16
- 17 b. Unlimited distributions for preserving long  
18 term affordability with a 20 year contract  
19 under Option 2 as discusses in either Chapter  
20 4 or Chapter 15 of this Guide.  
21

22 3. Establishing "good cause."  
23

24 In the waiver request, the Owner must establish  
25 good cause by discussing specifically how the Owner  
26 will utilize the distribution to further its  
27 nonprofit mission and specifically how its mission  
28 would benefit the tenants in the property or HUD  
29 (increasing neighborhood services, developing more  
30 affordable housing). For example, the funds may be  
31 retained:  
32

- 33 a. To cover operating costs to maintain  
34 competitiveness in the local affordable  
35 housing market;  
36
- 37 b. For non-project uses established in the  
38 organization's articles of incorporation,  
39 charter, etc; or  
40
- 41 c. Pledged to the repayment of surplus cash or  
42 residual receipts notes given in favor of  
43 secondary financing.  
44

45 D Increased For-Profit Owner Distributions.  
46

- 47 1. In an effort to encourage Owners to preserve  
48 affordable housing, the Department will increase

1 distributions for Owners with Section 8 project-  
2 based assistance that are currently subject to  
3 limited distributions (i.e. the post-1980 new  
4 construction and substantial rehabilitation new  
5 regulation contracts), to take increased  
6 distributions if:

7  
8 a. In accordance with 24 CFR 880.205(h),  
9 881.205(h) or 883.306(g) the project's rents  
10 are below market; and either:

11  
12 1) Under Option One, the Owner will only  
13 receive the unlimited distribution for  
14 the term of the renewal contract; or

15  
16 ***Note: Before the publication of this***  
17 ***change on XXX XX, 2010, Owners who went***  
18 ***through Option One mu2m were told they***  
19 ***could continue to receive unlimited***  
20 ***distributions even if they later renewed***  
21 ***under another Option. The Department***  
22 ***will honor its promise to these Owners.***  
23 ***The PM/CA should note in iREMS those***  
24 ***projects that qualify for this exemption.***

25  
26 2) Under Option Two, the Owner must enter  
27 into a 20-year Section 8 contract may  
28 receive increased distributions, for the  
29 term of the renewal contract.

30  
31 b. Owners with Section 8 contracts currently  
32 renewed under Option Two may receive increased  
33 distributions, for the term of the renewal  
34 contract, by extending the contract to provide  
35 a new remaining term of 20 years if the  
36 project rents are currently below comparable  
37 market rents. See Section 2-11 above.

38  
39 ***Note: The PM/CA must check the existing***  
40 ***contract to make sure it contains Exhibit B,***  
41 ***Distributions Limitation. If Exhibit B is***  
42 ***missing, modify the contract by adding the***  
43 ***exhibit which is found in the current Multi-***  
44 ***Year Basic Renewal Contract.***

45  
46 2. Owner Distributions for 100 percent Section 8  
47 Assisted Properties.  
48

- 1 a. Owners should follow existing guidance in  
2 Handbook 4370.2 REV-1, paragraph 2-8 for  
3 computing surplus cash.  
4  
5 b Owners may keep all surplus cash available  
6 each year for distribution during the term of  
7 the contract.  
8

9 3. Owner Distributions for Partially-assisted  
10 Properties.  
11

- 12 a. Partially-assisted properties that are not  
13 insured under Section 236, or 221(d)(3) BMIR,  
14 or have mortgages under Rural Housing  
15 Service's (RHS) Section 515/8:  
16

- 17 1) Owners of these properties may keep  
18 surplus cash generated on all units.  
19  
20 2) The Section 8 rents must not exceed the  
21 non-Section 8 rents.  
22

- 23 b. Section 221(d)(3) BMIR, 236, and RHS Section  
24 515/8 properties:  
25

- 26 1) Owners of these properties are eligible  
27 for an increased distribution on the  
28 Section 8 units.  
29  
30 2) This amount will be added to the current  
31 limited distribution on the unassisted  
32 units to reach the total distribution.  
33

- 34 4. The above statements reflect the normal policy on  
35 increased distributions. However, an Owner may  
36 have agreed to waive payment of distributions and  
37 to use all surplus cash to repay flexible subsidy  
38 grants/loans. Nearly all flexible subsidy  
39 contracts contain such clauses. Even if the  
40 project did not receive flexible subsidy, the Owner  
41 may still have agreed to waive payment of  
42 distributions in return for HUD's approval of other  
43 forms of mortgage relief (e.g. provisional workout,  
44 modification, partial payment of claim, etc.).  
45

46 If this is the case, the amount of increased  
47 distributions may be reduced by the Owner's  
48 repayment obligation to HUD.

1  
2 E. Access to Increased Owner Distributions.  
3

- 4 1. The Owner may continue to receive the increased  
5 distributions during the term of the Section 8  
6 contract provided:  
7
- 8 a. If applicable, all Financial Assistance  
9 Subsystem (FASS) findings are closed or under  
10 a HUD-approved corrective action plan;  
11
- 12 b. The Owner maintains the property in good  
13 condition, as demonstrated by a REAC score of  
14 60 or higher on the property's most recent  
15 inspection, with no uncorrected Exigent Health  
16 and Safety (EHS) violations;  
17
- 18 c. The Owner is not suspended or debarred.  
19
- 20 d. The Owner must have no open or unresolved  
21 items on the most recent:  
22
- 23 • Physical Inspection Report; and/or
  - 24 • Management Occupancy Review (MOR);  
25
- 26 e. The project has not been sent to OAHF for  
27 restructuring;  
28
- 29 f. The Owner is in compliance with the terms of  
30 the Regulatory Agreement, Note, and Mortgage  
31 and is current in debt service and all escrow  
32 payments, including the reserve for  
33 replacement account (RFR); and  
34
- 35 g. The current statutory and/or regulatory  
36 authority remains unchanged.  
37
- 38 2. If an Owner ceases to be eligible for unlimited  
39 distributions, it will be restored once the items  
40 in 1.a through 1.g above are corrected.  
41
- 42 3. The eligibility to receive increased distributions  
43 will automatically transfer upon sale of the  
44 project.  
45
- 46 4. The PM/CA is charged with annual compliance  
47 monitoring of the Owner's eligibility to receive  
48 continued distributions.

1 F. Preemption of state laws limiting Owner distributions.

2  
3 For consistency in administering the program as it  
4 relates to Owner distributions, Section 524(f) of MAHRA  
5 preempts State and local laws and regulations that limit  
6 or restrict Owner distributions to an amount less than  
7 that provided for under regulations of the Secretary.

8  
9 This preemption is now available to all projects which  
10 have Section 8 contracts renewed under any section of  
11 524 of MAHRA and which have distributions of surplus  
12 funds accruing after October 20, 1999.

13  
14 Preemption does not apply to State-financed projects.  
15 In addition, an Owner may elect to waive the preemption.  
16

17 **12-13. RENT ADJUSTMENTS.**

18  
19 A. Annual adjustments to contract rents that occur during  
20 the term of a multi-year contract are called rent  
21 adjustments. These adjustments may be by application of  
22 the published OCAF or, if applicable, on a budget-basis  
23 upon request of the Owner and subject to approval by  
24 HUD.

25  
26 B. The **exception** to A. above involves Title II and Title VI  
27 preservation projects discussed in Chapter 7, Option  
28 Five - Renewal of Portfolio Reengineering Demonstration  
29 or Preservation Projects. The rent adjustment mechanism  
30 is spelled out in the individual project's Plan of  
31 Action (POA) and/or Use Agreement. These documents may  
32 permit other rent adjustment mechanisms.  
33

34 **12-14. OPERATING COST ADJUSTMENT FACTOR.**

35  
36 HUD publishes the new OCAF in the Federal Register annually.

37  
38 A. The application of an OCAF shall not result in a  
39 negative rent adjustment.

40  
41 B. Apply a proportionate amount of any OCAF-adjustment to  
42 the project's RFR if:

43  
44 1. The project is HUD insured or HUD-held; or

45  
46 2. The Section 8 contract is a post-1980 contract that  
47 requires a RFR be maintained during the life of the  
48 Section 8 contract.

1           3.    The Section 8 contract is a pre-1980 contract and  
2                    HUD is requiring a RFR must be maintained during  
3                    the life of the Section 8 contract.

4  
5       C.    Calculate the increased deposit amount as follows:

6  
7           Current Annual Deposit to RFR:  \$ \_\_\_\_\_  
8           X Rent Increase Factor (from line R of the OCAF  
9            Worksheet, Form HUD-9625):  \_\_\_\_\_ /12  
10          = Adjusted Annual Deposit to RFR:  \$ \_\_\_\_\_ /12  
11          = Adjusted Monthly Deposit to the RFR:  
12            \$ \_\_\_\_\_

13  
14       **Example:   Current Annual Deposit to RFR:   \$2,400**  
15       **X 1.02% (Line R from OCAF Worksheet)**  
16       **= Adjusted Annual Deposit to RFR: \$2,448/12**  
17       **= Adjusted Monthly Deposit to RFR**

18  
19       **The annual increase to the RFR is \$48.00**  
20       **The monthly increase to the RFR is \$4.00**

21  
22-15.   BUDGET-BASED RENT INCREASE REQUESTS.

23  
24       An Owner may prepare a budget-based request in connection  
25       with certain MAHRA contract renewal options and annual rent  
26       adjustments.

27  
28       A.    Follow the requirements of Chapter 7 of HUD Handbook  
29            4350.1, as modified below.

- 30  
31           1.    Disregard paragraph 7-30.M of HUD Handbook 4350.1.  
32                    For Section 8 projects, the budget will no longer  
33                    include a 2 percent contingency reserve for  
34                    projects owned by nonprofits and those projects  
35                    once owned by nonprofits but which have been sold  
36                    to limited dividend partnerships.  
37  
38           2.    For-profit and nonprofit owned projects with 100  
39                    percent Section 8 may include a vacancy loss rate  
40                    of 3 percent in the budget.  Partially-assisted  
41                    projects will use the vacancy rate allowance in  
42                    effect at final endorsement.  Normally this will be  
43                    7 percent or 5 percent, whichever is applicable.  
44  
45           3.    When establishing budgets, the Owner can include:  
46

- 1 a. For old regulation or Loan Management Set  
2 Aside (LMSA) Section 8 Contracts HUD will  
3 permit:  
4  
5 1) For a for-profit Owner an appropriate  
6 return of 6 percent, 8 percent or 10  
7 percent return on the initial equity  
8 investment.  
9  
10 2) For a nonprofit Owner a 6 percent return  
11 on initial equity investment.  
12

13 This limit does not affect the Owner's rights  
14 of unlimited distributions on all surplus cash  
15 of the original old regulation or LMSA Section  
16 8 Contracts.  
17

- 18 b. For projects with new regulation Section 8  
19 contracts, HUD will permit:  
20  
21 1) For a for-profit Owner a return on the  
22 initial equity investment based on the  
23 following:  
24  
25 Elderly family projects 6%  
26 Non-elderly family projects 10%  
27  
28 2) For a nonprofit Owner there is no return  
29 on initial equity investment unless HUD  
30 grants a waiver until the regulation is  
31 changed. If a waiver is granted, the  
32 Owner may include either 6 or 10 percent  
33 return on the project's initial equity  
34 investment. See Sections 2-12.C. and D.  
35 above.  
36

37 This limit does not affect the Owner's rights  
38 of unlimited distributions on all surplus cash  
39 under Section 2-16.  
40

- 41 c. The distributions in a. and b. above are not  
42 guaranteed and the distribution amount is for  
43 budgeting purposes only.  
44

- 45 B. Section 22-16 of Chapter 22 of HUD Handbook 4350.1, will  
46 not apply.  
47

- 1           1.    The budget should reflect the project's current  
2            debt service requirement. This does not include  
3            the payment of any secondary notes for purchase or  
4            capital repairs to be paid from residual receipts  
5            or surplus cash.

6  
7                    ***Note: This is the amount the mortgage requires the***  
8                    ***mortgagor to pay. For properties with a subsidized***  
9                    ***FHA loan the debt service does not include the***  
10                   ***interest reduction payments made by HUD to the***  
11                   ***mortgagee.***

- 12  
13           2.    ***Exception*** to the general rule occurs in Section 202  
14            refinancing transactions under Section 811 of the  
15            American Homeownership and Economic Opportunity Act  
16            of 2000. Under this scenario the budget must  
17            reflect the original debt service. See Section 6-  
18            4.C of this Guide.

- 19  
20           C.    Projects with low income housing tax credits may include  
21            in their budget the cost of the annual compliance  
22            reports that must be submitted to the tax credit  
23            allocation entity.

- 24  
25           D.    For projects that have not previously prepared and  
26            submitted a budget-based rent increase, the request must  
27            include Attachment 5 (HUD-9635), Projects Preparing a  
28            Budget-Based Rent Increase, of this Guide.

29  
30 **2-16.    PROCESSING INSTRUCTIONS.**

31  
32           A.    Renewals

- 33  
34            1.    At least 120 days before expiration of the Section  
35            8 contract the Owner submits:

36  
37              a.    Contract Renewal Request Form, Form HUD-9624;  
38              and

39  
40              b.    If applicable:

41  
42                  1)    The OCAF Rent Adjustment Worksheet, Form  
43                  HUD-9625;

44  
45                  2)    Rent Schedule Low Income Housing, Form  
46                  HUD-92458 and

47  
48                  3)    A RCS; and/or

- 1  
2 4) A budget-based rent increase request  
3 prepared in accordance with the  
4 requirements of Section 2-15 above or a  
5 RHS approved budget.  
6

7 ***Note: If the project has a budget approved by***  
8 ***HUD less than one year before processing the***  
9 ***initial renewal, a copy of that budget may be***  
10 ***submitted in lieu of a new budget, unless the***  
11 ***Owner refinanced the project.***  
12

- 13 2. PM/CA should complete the review of an Owner's  
14 submission within 45 days.

- 15 a. The PM/CA checks to see if the Owner:  
16

- 17 1) Is eligible to renew the Section 8  
18 project-based contract under the Option  
19 selected.  
20  
21 2) Has provided all required documentation  
22 discussed in A.1. above.  
23  
24 3) Specified on the Cover Sheet of Form HUD-  
25 9624 whether it wants any multiple stages  
26 or contracts combined at this time. See  
27 Section 2-7.B above.  
28  
29

- 30 b. Under renewal Options One through Five, review  
31 the Owner's certification regarding suspension  
32 or debarment on the Contract Renewal Request,  
33 Form HUD-92624. If the Owner checked that  
34 they are not suspended or debarred, verify  
35 that information by using [www.epls.gov](http://www.epls.gov).  
36

- 37 1) If the PM/CA determines that the Owner is  
38 suspended or debarred, HUD may permit the  
39 Owner to renew the Section 8 contract if  
40 the project(s) in question is adequately  
41 managed and maintained, and activities  
42 there were not the cause of the  
43 administrative actions against the Owner.  
44 However, the PM/CA should document their  
45 assessment and reasons for permitting  
46 renewal in iREMS.  
47

1                   2)    Where there are material violations and  
2                            the enforcement process has progressed to  
3                            the point that the PM has decided to  
4                            terminate the existing contract or refuse  
5                            to renew the contract, the PM should deny  
6                            the renewal request.

7  
8                   c.    The PM/CA must check the DUNS Number to assure  
9                            the Owner is in good standing. See Section 2-  
10                           25 below.

11  
12                   d.    Log the Owner's request as indicated on the  
13                            Renewal Worksheet, Form HUD-9624 and any other  
14                            relevant information in the iREMS system.

15  
16                   e.    Non-renewal determination:

17  
18                            1)    If the PM determines that the contract  
19                                    should not be renewed, the PM should  
20                                    refer to Chapter 13, of this Guidebook.

21  
22                            2)    If the CA determines that the contract  
23                                    should not be renewed, the CA should  
24                                    follow the procedures in Section 2-4 of  
25                                    the Section 8 Contract Administrators  
26                                    Guide.

27  
28                   f.    If applicable, review the RCS to make sure  
29                            that the study was done in accordance with the  
30                            requirements included in Chapter Nine of this  
31                            Guide and determine that the comparable market  
32                            rent conclusions are reasonable. Instructions  
33                            for conducting the review are found in  
34                            Sections 9-17 through and 9-22. The PM/CA  
35                            must record the findings in iREMS.

36  
37                   g.    If applicable, review the OCAF Rent Adjustment  
38                            Worksheet, Form HUD-9625 to verify that the  
39                            calculations provided include only those  
40                            Section 8 units in the expiring contract and  
41                            the accuracy of the computations.

42  
43                            If the worksheet shows that the current  
44                            contract rent potential of the project is  
45                            greater than the market rent potential of the  
46                            comparable rents, the project may be eligible  
47                            for OAHP processing. (See Chapter Five,  
48                            Option Three Referral to OAHP.)

1 h. If applicable, review the Owner's budget based  
2 request including any tenant comments received  
3 in connection with the request. In the case  
4 of a 515 project, accept the RHS approved  
5 budget without review.

6  
7 i. Prepare a contract renewal.

8  
9 1) Establish the renewal rent according to  
10 requirements for the renewal option  
11 selected.

12  
13 2) For the appropriate term:

14 a) Less than one year;

15 b) One year; or

16 c) Multiyear.

17  
18  
19 3) For the expiration date of the contract:

20  
21 The contract expiration date must be on  
22 the last day of the month.

23  
24 4) For the effective fiscal year for records  
25 effective October 1 in iREMS:

26  
27 If a contract or amend rents record  
28 expires on September 30, the last day of  
29 the fiscal year, the effective date of  
30 the new contract or amends rent record is  
31 October 1, the first day of the new HUD  
32 fiscal year.

33  
34 5) Affix the DUNS Number to the contract.  
35

36  
37  
38 B. Annual Rent Adjustments for Multiyear Contracts

39  
40 1. At least 120 days before the anniversary date of  
41 the contract, the Owner submits:

42 a. OCAF Rent Adjustment Worksheet, Form HUD-9625;

43 b. Rent Schedule Low Income Housing, Form HUD-  
44 92458; and

45 c. If applicable:  
46  
47  
48

- 1) A RCS; and/or
  - 2) A budget-based adjustment, prepared in accordance with paragraph 2-15 of this Guide or a RHS approved budget.
2. The PM/CA should complete the review of an Owner's submission within 45 days.
- a. If applicable, review the RCS and the charts on the worksheet to verify that the calculations provided include only those Section 8 units in the expiring contract and the accuracy of the computations.
  - b. Prepare an amended Exhibit A, Rent Schedule, for the MAHRA contract to be issued to the Owner and update iREMS. If applicable:
    - 1) The resulting rents cannot exceed the OCAF-adjusted RCS.
    - 2) The OCAF-adjusted RCS serves as the market cap.
    - 3) If the rents are above the OCAF adjusted RCS, HUD will not approve the budget-based request. This is not applicable when processing Option Four exception projects and Option Five preservation projects.
3. Tenant Notification under 24 CFR Part 245 is not required for OCAF rent adjustments but is required for budget-based rent adjustments. (See 24 CFR §245.15)
4. Under Option One, Mark-Up-To-Market, Option Two, Contract Renewals for Other Projects with Current Rents at or Below Comparable Market Rents, and in the case of Option Five for certain projects with a Recorded Budget-Based Without Mortgage Restructuring Demo Program Use Agreement, if the contract is for a period greater than five years:
- a. The Owner submits a new RCS at the end of each 5-year cycle.
  - b. If rents are:

- 1) Above market, the PM/CA will reduce the rent to the comparable market rent.
- 2) Below market, the PM/CA will increase the rents to comparable market rents.

***Note: In some cases the 5-year life cycle of the current RCS is not synchronized with the 5-year cycle required in the Section 8 contract. Therefore, the Owner must submit a new RCS to align with the requirements of the Section 8 contract.***

C. Late Submission/Retroactivity.

1. If the Owner fails to submit its renewal request or its annual rent adjustment request on time, it is entitled to a retroactive rent adjustment.
2. If applicable, use the OCAF that was in effect on the anniversary date of the contract or rent adjustment to calculate the new rent.

232-17. **DUNS NUMBER.**

- A. All project owners and parent entities receiving monthly rental assistance were required to register with Dun & Bradstreet and obtain a Data Universal Numbering System (DUNS) Number by December 31, 2009.
- B. To obtain a DUNS number from Dun & Bradstreet go to:  
<http://fedgov.dnb.com/webform> - Dun & Bradstreet
- C. The Owner must place the DUNS Number on:
  1. The Section 8 Contract;
  2. Form HUD-9624 when selecting a renewal option; and
  3. The monthly payment vouchers.
- D. The PM/CA must record the DUNS Number in iREMS.

2-18. **WAIVERS.**

- A. Regulatory Waivers.

1 Many of HUD's regulations are based on statutory  
2 requirements and cannot be waived. Only non-statutory  
3 regulatory requirements may be waived.  
4

- 5 1. The Sponsor/Owner submits to the HUD Program  
6 Center/CA a request for a regulatory waiver along  
7 with any supporting documentation.  
8
- 9 2. The HUD Program Center/CA may reject the proposal  
10 or forward the request to the Director of HAGA in  
11 Headquarters, specifying the grounds for granting  
12 the waiver **and** recommending its approval. In  
13 addition, where the CA is processing the waiver  
14 request, it will provide a courtesy copy of the  
15 waiver request to the local Multifamily Program  
16 Center with jurisdiction.  
17
- 18 3. HAGA reviews the waiver request and either rejects  
19 the request or prepares a recommendation for  
20 approval for the Assistant Secretary for Housing-  
21 FHA Housing Commissioner.  
22
- 23 4. The Assistant Secretary for Housing-FHA Housing  
24 Commissioner or his/her designee will either  
25 approve or disapprove the waiver request.  
26
- 27 5. Headquarters notifies the HUD Program Center/CA of  
28 the approval or rejection of the waiver request.  
29
- 30 6. Regulatory waivers granted by HUD are published in  
31 the Federal Register on a quarterly basis.  
32
- 33 7. HAGA retains any approved regulatory waivers and  
34 related documentation for five-years from the date  
35 the waiver is granted.  
36

37 B. Directive Waivers.  
38

39 The term "Directive" includes handbooks, guidelines,  
40 notices, interim notices and special directives such as  
41 Mortgage Letters.  
42

- 43 1. The Owner submits to the PM/CA, a request for a  
44 waiver of the Section 8 Renewal Guide along with  
45 any supporting documentation.  
46

- 1           2.    Upon receipt of the request, the PM/CA will prepare  
2                    Form HUD-2, Request for Waiver of Housing  
3                    Directive, for the CA's signature.  
4
- 5           3.    The Program Center/CA's legal counsel is required  
6                    to review and sign Form HUD-2 before the CA can  
7                    determine if the proposed waiver request conflicts  
8                    with any statutory or regulatory provisions.  
9
- 10           a.    If the waiver request conflicts with statutory  
11                    provisions, the request must be denied; or  
12
- 13           b.    If the waiver request conflicts with  
14                    regulatory provisions, the PM/CA must request  
15                    a regulatory waiver using the procedures in  
16                    paragraph A, above.  
17
- 18           4.    The PM/CA's Director, or his/her designee, will  
19                    either approve or disapprove the waiver request.  
20
- 21           5.    The PM/CA will:  
22
- 23           a.    Notify the Sponsor/Owner in writing of the  
24                    approval or disapproval of the waiver request;  
25
- 26           b.    Retain the original Form HUD-2 and related  
27                    documentation for 3 years from the date the  
28                    waiver is granted;  
29
- 30           c.    Make the Form HUD-2 available for public  
31                    inspection; and  
32
- 33           d.    Distribute copies of the Form HUD-2:  
34
- 35                    1)    Following the instructions on the form,  
36                            and  
37
- 38                    2)    If applicable, the CA will send a copy  
39                            for the form to the local Multifamily  
40                            Program Center with jurisdiction.  
41  
42  
43

1  
22-19.  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14

**FOR FURTHER INFORMATION.**

A. Section 8 Renewal Help Desks have been set up in each Hub and certain Program Centers to provide technical assistance to Project Owners, managers and CAs who have questions regarding the Section 8 contract renewal process.

B. A list of Section 8 Renewal Help Desk Officers is available on the Multifamily Business Page for Section 8 Expiring Contracts web page at:

<http://www.hud.gov/offices/hsg/mfh/exp/helpdesk.cfm>

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**Automatic OCAF Rent Adjustments (Auto OCAF)**

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Currently in the Pilot stage with several HUD field offices and contract administrators, an Auto OCAF rent adjustment initiative has been implemented to automate the process of the OCAF rent increase for Section 8 contracts in Amend Rents years. iREMS calculates the new OCAF rent increase and rents are sent to Owners. This initiative does not affect Section 8 contracts in their year of contract renewal.

Owners of projects that meet certain criteria will no longer be required to submit a package containing the Contract Renewal Request Form, Form HUD-9624 and the OCAF Rent Adjustment Worksheet, Form HUD-9625, to obtain an annual OCAF rent adjustment on their Amend Rents anniversary date. iREMS will prompt HUD/CA staff 150 days prior to Amend Rents renewal of an eligible project that its rents have been adjusted, a letter and Exhibit A has been completed, and is ready to be printed and sent to the Owner advising of the new rents. At that time, the Owner may accept the new rents or request a budget-based rent adjustment if eligible. Other options may be available depending upon the HAP contract.

Once fully implemented, the Automatic OCAF Process will significantly streamline rent increase processing, eliminate duplication of rent calculations, and substantially reduce errors and paper processing.

### Typical Amend Rents Scenarios

<b>Option 1</b>	<ul style="list-style-type: none"> <li>• Assuming a 5 year contract, automatically adjust by OCAF in years 2 through 5. At the end of the 5 year contract, the owner may renew under any option the project is eligible for.</li> <li>• Assuming a multi-year contract, example 20 years, year 6 requires a RCS. No OCAF increase. Rents are raised or lowered to comparable market rents.</li> <li>• No budget-based rent increases are permitted in Option 1.</li> </ul>
<b>Option 2</b>	<ul style="list-style-type: none"> <li>• Assuming a 5 year contract, automatically adjust by OCAF in years 2 through 5.</li> <li>• At the owner's request, and subject to HUD approval, process a BBA.</li> <li>• If HUD grants a BBA, rents <u>cannot exceed</u> Auto OCAF adjusted RCS.</li> <li>• Assuming a multi-year contract, example 20 years, Year 6 requires a RCS. No OCAF increase. Rents are raised or lowered to comparable market rents.</li> </ul>
<b>Option 3</b>	<p>OAHP Fulls - once out of OAHP and in a Mark-to-Market Contract:</p> <ul style="list-style-type: none"> <li>• Enter Amend Rents records in iREMS under Option 3.</li> <li>• After OAHP, process automatic OCAF.</li> <li>• A RCS is not required during for Life of Use Agreement.</li> <li>• For a multi-term contract, process all rent increases by OCAF.</li> <li>• Assuming a 5 year contract and a 20 year Use Agreement, all renewals and amend rents completed during the Life of the Use Agreement must be entered in iREMS as an Option 3.</li> <li>• No budget-based rent increases are permitted in Option 3.</li> </ul> <p>OAHP Lites - once out of OAHP and in a Basic Renewal Contract:</p> <ul style="list-style-type: none"> <li>• Enter Amend Rents records in iREMS under Option 2.</li> <li>• Assuming a 5 year contract, automatically adjust by OCAF in years 2 through 5.</li> </ul>

	<ul style="list-style-type: none"> <li>• At the owner's request, and subject to HUD approval, process a BBA.</li> <li>• If HUD grants a BBA, rents <u>cannot exceed</u> Auto OCAF adjusted RCS.</li> <li>• Assuming a multi-year contract, example 20 years, Year 6 requires a RCS. No OCAF increase. Rents are raised or lowered to comparable market rents.</li> </ul>
<b>Option 4</b>	<ul style="list-style-type: none"> <li>• Assuming a 5 year contract, automatically adjust by OCAF in years 2 through 5.</li> <li>• At all initial and subsequent renewals, must apply lesser of OCAF/BBA test.</li> <li>• At the owner's request, and subject to HUD approval, process a BBA.</li> </ul>
<b>Option 5</b>	<ul style="list-style-type: none"> <li>• 5A. Demos with restructured loans and Recorded Use Agreements, process automatic OCAF for Life of Use Agreement. No RCS is required. (All Demos with restructured loans <i>must</i> have a Recorded Use Agreement).</li> </ul> <p>Not Included in Auto OCAF (process as previously):</p> <ul style="list-style-type: none"> <li>• 5A. Demos without restructured loans are not included in the Auto OCAF Pilot, but may be eligible for an OCAF rent increase. You must refer to the contract and other governing documents to determine the type of rent increase the project is eligible for. (Note: Demos without restructured loans and without Recorded Use Agreements <b>are not eligible</b> to renew under Option 5. They renew under any other Option for which they are eligible.)</li> <li>• 5B. Preservation Projects are not included in the Auto OCAF Pilot, but may be eligible for an OCAF rent increase. You must refer to the contract and other governing documents, Approved Plan of Action (POA) and Use Agreement to determine the type of rent increase the project is eligible for.</li> </ul>

1 Note: Reference to the HAP Contract and governing documents should be  
2 made to ensure correct processing requirements.

3

## Option One - Mark-Up-To-Market

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### 43-1. OVERVIEW.

- A. The Mark-Up-To-Market (mu2m) Option was introduced as an emergency initiative in June 1999 to provide Owners of certain properties with rents below market and located in strong markets to mark rents up to market as an incentive to renew the Section 8 contract and continue providing affordable housing. Because the cost of marking all below-market Section 8 properties up to market would likely have exceeded available resources, mu2m was made available to only a limited universe of properties. Section 524(a)(4)(A) of MAHRA made mu2m a permanent program and required the Department to mark rents up to market on properties meeting specific eligibility criteria as described in Section 3-3. Contract renewals under this authority are referred to as Option One-A, Entitlement Mark-Up-To-Market.
- B. To protect those most vulnerable and in an effort to further preserve affordable housing, Section 524(a)(4)(C) of MAHRA gives the Department authority to extend the option of marking rents up to market for properties not meeting the eligibility criteria under Option One-A but are still considered an important affordable housing resource. The eligibility criteria for marking rents up to market under Section 524(a)(4)(C) of MAHRA are described in Section 3-6. Contract renewals under this authority are referred to as Option One-B, Discretionary Mark-Up-To-Market.

### 343-2. GENERAL ELIGIBILITY CRITERIA.

- A. Rents. Current rent levels under the expiring or terminating contract must be less than comparable market rents.

- 1 B. Property Condition. The property must have:  
2  
3 1. Management satisfactory to the Department; and  
4  
5 2. A physical inspection score, from the Real Estate  
6 Assessment Center (REAC), of 60 or above with no  
7 uncorrected Exigent Health and Safety (EH&S)  
8 violations.  
9
- 10 C. FASS Findings. If applicable, all Financial Assistance  
11 Subsystem (FASS) findings need to be closed or under a  
12 HUD-approved corrective action plan.  
13
- 14 D. Ownership. The property owner must be a profit-  
15 motivated entity.  
16

17 **3-3. OPTION ONE-A ENTITLEMENT MARK-UP-TO-MARKET ELIGIBILITY.**

18 Properties that meet the criteria listed in Section 3-2 and  
19 this Section are eligible for a Section 8 contract renewal  
20 under Option One-A.  
21

- 22
- 23 A. Market Rents. The Rent Comparability Study (RCS) must  
24 demonstrate that the comparable market rents are at or  
25 above 100 percent of the fair market rent (FMR)  
26 potential. Use the FMR figures calculated for the  
27 fiscal year in which the project is entering mu2m to  
28 demonstrate eligibility.  
29
- 30 1. Excel Worksheets. Fillable worksheets are  
31 available on the Internet at  
32 <http://www.hud.gov/offices/hsg/mfh/exp/workshet.cfm>  
33 under Worksheets for Mark-Up-To-Market (Option 1).  
34
- 35 2. iREMS. The PM/CA should use the Integrated Real  
36 Estate Management System (iREMS) to establish  
37 initial eligibility. Owners and Contract  
38 Administrators can use the fillable worksheets at  
39 the website listed above in A.1.  
40
- 41 B. Use Restrictions. The project does not have a low- and  
42 moderate- income use restriction that cannot be  
43 eliminated by unilateral action by the owner. Examples  
44 of such a use restriction would be the existence of a  
45 prior or present Flexible Subsidy assistance, Low-Income  
46 Housing Tax Credits, or OAHP's Green Retrofit Program.  
47 If the project is subject to any use restriction at the  
48 time of the renewal request, the PM/CA must determine

1 whether it is the type of use restriction that makes a  
2 project ineligible for Option One-A.

3  
43-4. **150 PERCENT RENT CAP FOR OPTION ONE-A.**

5  
6 A. Section 8 Rents. Under Option One-A, the renewal rent  
7 levels equal the lesser of comparable market rents for  
8 the market area or 150 percent of the FMR. If the Final  
9 Comparable Gross Rent Potential is:

- 10  
11 1. Greater than 150 percent of the FMR Potential, set  
12 the New Section 8 Gross Rents at 150 percent of the  
13 FMRs.
- 14  
15 2. Equal to or less than 150 percent of the FMR  
16 Potential, set the New Section 8 Gross Rents at the  
17 Final Comparable Gross Rents.

18  
19 Owners and Contract Administrators can use the fillable  
20 worksheets at the website listed above.

21  
22 B. Non-Section 8 and not expiring contract rents. Mu2m has  
23 no effect on the rents of the non-Section 8 units or the  
24 Section 8 units in a Section 8 contract/stage that is  
25 not currently expiring.

26  
273-5. **EXCEEDING THE 150 PERCENT OF FMR CAP.**

28  
29 The 150 percent of FMR cap only applies to mu2m under Option  
30 One-A and only in cases where the lesser of the two measures  
31 identified in Section 3-4.A. (i.e., comparable market rents  
32 for the market area and 150 percent of FMR) is 150 percent of  
33 FMR. In such cases, to exceed the 150 percent cap, the  
34 property must meet one of the three criteria found in Section  
35 3-6.B below. If it does, then the renewal rents are to equal  
36 the comparable market rents for the market area.

37  
383-6. **OPTION ONE-B DISCRETIONARY MARK-UP-TO-MARKET  
39 ELIGIBILITY.**

40  
41 Under Section 524(a)(4)(C) of MAHRA the Secretary may mark  
42 rents up to market for for-profit projects that are not  
43 eligible for mu2m under Section 524(a)(4)(A), Option One-A,  
44 but meet certain criteria.

45  
46 A. To further preserve the affordable housing stock, the  
47 Secretary has the authority under Section 524(a)(4)(C)  
48 of MAHRA to mark rents up to market for projects that  
49 meet certain criteria. Since enactment of Section

1 524(a)(4)(C), HUD's practice has been and continues to  
2 be to mark rents to market for eligible projects that  
3 meet only one of the three criteria identified in  
4 Section 3-5.B. However, if there is an expectation that  
5 rent increases will exceed the amount of appropriations  
6 available for any fiscal year, HUD may use the  
7 discretion that Section 524(a)(4)(C) provides to mark  
8 rents up to market based on the number of criteria  
9 identified in Section 3-5.B. that the project meets.

10  
11 B. The project meets at least one of the following three  
12 characteristics:

13  
14 1. Vulnerable Populations.

15  
16 The tenants of the property are a particularly  
17 vulnerable population, demonstrated by a high  
18 percentage (at least 50 percent) of the assisted  
19 units rented to elderly families, disabled  
20 families, or large families (large family is  
21 defined as a family of five or more persons). The  
22 50 percent can be inclusive of all categories or  
23 the individual referenced populations;

24  
25 2. Vacancy Rates.

26  
27 The property is located in a low-vacancy market  
28 area (or in a rural area with no comparable rental  
29 housing) where there is a lack of affordable  
30 housing and where Housing Choice vouchers would be  
31 difficult to use.

32  
33 The determination of a low vacancy area should be  
34 made using the most recent available data on the  
35 rental inventory, renter households, rental vacancy  
36 rates and other factors as appropriate. A market  
37 with a rental vacancy rate of less than 3 percent  
38 is considered a low vacancy area. Confirm the  
39 vacancy rate with HUD Economic and Market Analysis  
40 Staff/CA staff or local government; or

41  
42 3. Community Support.

43  
44 The property is a high priority for the local  
45 community as demonstrated by a contribution of  
46 State and/or local funds to the property. This  
47 matching requirement may be in the form of tax  
48 credits, tax abatements, capital improvement funds,  
49 etc.

13-7. **RENEWAL REQUESTS.**

2  
3 At least 120 days before the expiration or termination of the  
4 contract, the Owner submits a Contract Renewal Request Form,  
5 Form HUD-9624, a detailed description of any proposed repairs  
6 and related costs, and a RCS. The RCS is to be prepared  
7 based on the instructions found in Chapter Nine of this  
8 Guide. The Owner:

- 9  
10 A. May request to enter into mu2m at:
- 11 1. Any renewal under Section 524 of MAHRA; or
  - 12 2. Any time during the life of a Section 524 MAHRA  
13 contract. If the request is approved, the Owner  
14 will be allowed to terminate the existing contract  
15 early.  
16
- 17  
18 B. Must submit the required information to the PM/CA with  
19 jurisdiction over the project for processing.  
20
- 21  
22 C. May request to terminate early a non-MAHRA contract that  
23 is expiring in the current fiscal year to renew under  
24 the mu2m option.  
25
- 26  
27 D. Cannot request to terminate a Mark-to-Market contract  
28 early to renew under the mu2m option.

293-8. **PROCESSING INSTRUCTIONS.**

30 See Section 2-16 as modified below.

- 31  
32  
33 A. Initially Eligible. For either Option One-A or One-B,  
34 if the property meets the eligibility criteria, the  
35 PM/CA orders a RCS from the Department's independent  
36 third-party contractor to find out whether rents under  
37 the expiring contract are less than comparable market  
38 rents for the market area. (See item C.1.b. below.)  
39

40 **Note: CAs must go through the PM to order the third**  
41 **party RCS.**

42  
43 The PM/CA and an Owner may enter into a short-term  
44 renewal contract using a prorated OCAF adjustment, if  
45 needed, to afford the Owner and HUD time to complete the  
46 eligibility analysis.  
47  
48  
49

1 B. Not Eligible.

2  
3 1. If the property is not eligible for Option One-A,  
4 but meets the eligibility criteria for Option One-  
5 B, the PM/CA will notify the Owner and request the  
6 Owner to modified its renewal request.

7  
8 2. If a property is not eligible for Option One-A or  
9 One-B, the Owner may switch to any other renewal  
10 option the project is eligible for. If the Option  
11 requires a RCS, the PM/CA will use the existing two  
12 RCSs following the instructions in C.2. below.

13  
14 C. Comparability Studies. Along with a request to mu2m,  
15 the Owner must submit a RCS prepared following the  
16 guidelines detailed in Chapter Nine of this Guide.

17  
18 1. Immediately upon receipt of the Owner's request for  
19 renewal use the following process to establish  
20 comparable market rents:

21  
22 a. The PM/CA uses the Owner's study as an initial  
23 determining factor for participation in either  
24 Option One A or Option One B. At this point  
25 in the process, the PM/CA accepts the Owner's  
26 study without analysis. This initial study is  
27 only for initially establishing eligibility.  
28 The PM/CA must make a determination that  
29 Section 8 rents are, in fact below market  
30 based on HUD's RCS.

31  
32 b. HUD will hire an independent third-party  
33 appraiser through its Contracting Officer.  
34 Since the RCSs will be completed for both  
35 insured and uninsured properties, contract  
36 funds to pay for the studies will come from  
37 the sources below. The PM/CA will perform a  
38 substantive review on the study HUD purchases  
39 in accord with the criteria in Section 9-18 of  
40 the Guide in implementing mu2m.

41  
42 1) FHA Insured: Technical Discipline  
43 Contract PAS Code: MTF.

44  
45 2) Noninsured: Section 8 program funds.  
46 PAS Code: CRE

1           2.   Differences in Comparability Studies. There are no  
2           negotiations allowed nor is there an appeal process  
3           when there are differences between comparability  
4           studies.

5  
6           a.   When the HUD comparable gross rent potential  
7           is greater than the Owner's comparable gross  
8           rent potential, the final comparable market  
9           rents will be the Owner's comparable market  
10          rents.

11  
12          b.   When the HUD comparable gross rent potential  
13          is less than the Owner's comparable gross rent  
14          potential, if the Owner's comparable rent  
15          potential is:

16  
17               1)   less than 105% of the HUD comparable rent  
18               potential, the final comparable market  
19               rents will be the Owner comparable market  
20               rents;

21  
22               2)   greater than or equal to 105% of the HUD  
23               comparable rent potential, the final  
24               comparable market rents will be 105% of  
25               the HUD comparable market rents.

26  
27          3.   FMRs are housing market-wide estimates of the rent  
28          plus the cost of utilities (excluding telephone).  
29          Therefore, where contracts have separately  
30          calculated Utility Allowances, add the Utility  
31          Allowance amount to the comparable market rents to  
32          reach the comparable gross rents to compare them to  
33          the FMRs. Rents arrived at in the comparability  
34          studies use the same assumptions about payment of  
35          utilities as the Section 8 contract rents.  
36

37          4.   The PM/CA should use iREMS to compare the Owner's  
38          and HUD's comparability studies to determine the  
39          final comparable market rents and determine final  
40          eligibility.

41  
42          D.   Contract Term. An Owner must accept, at a minimum, a  
43          five-year MAHRA contract, subject to annual  
44          appropriations. The Department strongly encourages the  
45          use of 20 year contracts when renewing Section 8  
46          contracts under Option One-A or One-B.  
47  
48  
49

13-9. ANNUAL RENT ADJUSTMENTS DURING A MULTIYEAR CONTRACT.

2  
3 **No** budget-based rent increases **are** permitted for mu2m  
4 contracts. In years two through five, the PM/CA adjusts  
5 rents by the published OCAF. See Section 2-26.B. for  
6 processing details.  
7

# Chapter Four

## Option Two – Contract Renewals for Other Projects with Current Rents At or Below Comparable Market Rents

---

### 4-1. ELIGIBILITY.

Option Two is for Owners who request a renewal of their Section 8 contract where the RCS indicates that:

1. The contract's current rents are at or below comparable market rents; or
2. The contract's current rents exceed comparable market rents, but the project is exempt from OAHP restructuring and the Owner is willing to cut the rents to comparable market rents.

### 4-2. INITIAL/SUBSEQUENT RENEWAL.

At least 120 days before expiration of the Section 8 contract, the Owner submits:

- A. Owner's Contract Renewal Request Form, Form HUD-9624;
- B. The OCAF Rent Adjustment Worksheet, Form HUD-9625;
- C. A RCS prepared following the instructions found in Chapter Nine of this Guide; and
- D. If applicable, a budget-based rent increase request prepared in accordance with Section 2-15 on the Section 8 Renewal Guide.

1

2 **4-3. PROCESSING INSTRUCTIONS.**

3

4 Follow the instructions in Section 2-22.A.

5

6 **4-4. RENT ADJUSTMENTS.**

7

8 Follow the instructions in Sections 2-19 and 2-22.B.

9

## Option Four - Renewal of Projects Exempt from or not Eligible for Debt- Restructuring

---

### 66-1. ELIGIBILITY.

At the time of contract expiration or termination a project may renew under Option Four at "exception rents" if:

- The project is exempt from debt-restructuring under section 514(h) of MAHRA: or
- The project does not meet the definition of an "eligible multifamily housing project" under section 512(2) of MAHRA.

A. The following categories of projects are exempt from debt-restructuring under section 514(h) of MAHRA:

1. State or Local Government Financing. Projects for which the primary financing or mortgage insurance was provided by a unit of State government or a unit of general local government (or an agency or instrumentality of either) and is not insured under the National Housing Act.

However, if the primary financing or mortgage insurance is provided by a State government or a unit of general local government, and the financing involves mortgage insurance under the National Housing Act, a determination must be made by OAHF as to whether or not implementation of a Mark-to-Market Restructuring Plan is in conflict with applicable law, or agreements governing such financing. In these cases, the contract and

1 supporting documentation of the potential conflict  
2 must be referred to OAHP for review. The Owner (or  
3 lender) must submit an opinion of counsel in a form  
4 acceptable to HUD, along with copies of the  
5 relevant financing documents or applicable local or  
6 State legal authority.  
7

8 Upon receipt of the Owner's documentation, OAHP  
9 will complete its review and notify the PM/CA of  
10 its determination generally within 5 business days.

11  
12 In cases where OAHP determines that the contract is  
13 eligible for debt restructuring, the PM/CA will  
14 notify the Owner that a RCS is required. If the  
15 RCS demonstrates that the rents are above market,  
16 the project will be renewed for six months using  
17 the Contract for Entry Into OAHP and OAHP will  
18 process the renewal.  
19

20 **Note: In cases where referral to OAHP is**  
21 **necessary, CAs must return the contract to the PM**  
22 **with the recommendation that the PM forward the**  
23 **contract to OAHP for review.**  
24

25 In cases where OAHP determines that the  
26 Restructuring Plan would be in conflict with  
27 applicable laws and/or agreements, OAHP will return  
28 the case to the Project Manager or Contract  
29 Administrator for a renewal under the Option Four  
30 provisions.  
31

- 32 2. Section 202/8 and Section 515/8 Projects. Projects  
33 currently financed under Section 202 of the Housing  
34 Act of 1959 or Section 515 of the Housing Act of  
35 1949. However, these projects can be eligible for  
36 restructuring if refinanced with FHA mortgage  
37 insurance.  
38

39 **Note: Section 202 and 811 Capital Advance projects**  
40 **are not eligible because they do not have Section 8**  
41 **contracts.**  
42

- 43 3. Refinanced Section 202 project. The project was  
44 refinanced pursuant to section 811 of the American  
45 Home Ownership and Economic Opportunity Act of  
46 2000. See Section 6-4 below.  
47

1 4. SRO Mod Rehab. Projects that have an expiring  
2 contract under Section 8 of the United States  
3 Housing Act of 1937 pursuant to Section 441 of the  
4 Stewart B. McKinney Homeless Assistance Act.  
5

6 B. The following projects are not eligible for debt-  
7 restructuring on the basis that they do not meet the  
8 definition of "eligible multifamily housing project"  
9 under section 512(2) of MAHRA:

10  
11 1. Projects that are not subject to an FHA-insured or  
12 HUD-held mortgage; and,  
13

14 **Note: Projects financed under the risk-sharing**  
15 **loan programs under Section 542(b) and (c) of the**  
16 **Housing and Community Development Act of 1992, are**  
17 **eligible for renewal under Option Four.**  
18

19 2. Projects with rents at or below comparable market  
20 rents (regardless of whether any mortgage to which  
21 the project is subject is HUD-held or FHA-insured).

22  
23 **Note: An owner must obtain an RCS to establish**  
24 **eligibility under B2.**  
25

26 **6-2. RENEWALS.**

27  
28 A. The "lesser of" test is required at both initial and  
29 subsequent renewal. (See 24 CFR §402.5(b).) The rents  
30 are to be set at the lesser of:

- 31  
32 1. Current rents as adjusted by OCAF; or  
33  
34 2. Budget-based rent level.  
35

36 **Note: This means the project rents may be reduced.**  
37

38 B. See Section 2-16.A for processing instructions.  
39

40 **6-3. RENT ADJUSTMENTS FOR MULTI-YEAR CONTRACTS.**

41  
42 A. Rents may be adjusted by either:

- 43  
44 1. OCAF adjustment; or  
45  
46 2. Budget-based adjustment.  
47 |

1 | B. A budget based rent adjustment is only permitted if:

2 |

3 | 1. The Owner submits or has previously submitted a RCS

4 | prepared following the instructions found in

5 | Chapter Nine of this Guide. A RCS is good for 5

6 | years.

7 |

8 | 2. The proposed rents do not exceed comparable market

9 | rents as established by the RCS.

10 |

11 | CB. See Section 2-16.B for processing instructions.

12 |

13 **6-4.** **SECTION 202 REFINANCINGS.**

14 |

15 | If a project owner complies with the provisions of Section

16 | 811 of the American Home Ownership and Economic Opportunity

17 | Act of 2000 then it remains exempt from debt-restructuring

18 | regardless of whether the project is refinanced with an FHA-

19 | insured mortgage. If the project owner does not comply with

20 | the provisions of Section 811, then the project will remain

21 | exempt from debt-restructuring unless the 202 loan is

22 | refinanced with a FHA-insured mortgage and the HAP contract

23 | comes up for renewal.

24 |

25 | B. Section 811 requires that:

26 |

27 | 1. The Owner agrees to operate the project until the

28 | maturity date of the original loan under terms at

29 | least as advantageous to existing and future

30 | tenants as the terms required by the original loan

31 | agreement or any rental assistance payments

32 | contract under Section 8 (or any other rental

33 | assistance programs of HUD including the rental

34 | supplement program) relating to the project.

35 | Evidence of the commitment will be in the form of a

36 | recorded use agreement.

37 |

38 | 2. The prepayment may involve refinancing of the loan

39 | if such refinancing results in a lower interest

40 | rate on the principal of the loan and in a

41 | reduction in debt service related to such loan. In

42 | computing the debt service savings, do not include

43 | MIP in the calculation because the original Section

44 | 202 debt service did not include MIP.

45 |

46 | 3. The Owner and HUD execute an agreement for the

47 | annual savings that details the amount of the

48 | savings and how the money will be used in a manner

1                    advantageous to current and future tenants. The  
2 savings may be used as follows:  
3

4                    a.    Not more than 15 percent of the cost of  
5                           increasing the availability or provision of  
6                           supportive services, which may include the  
7                           financing of service coordinators and  
8                           congregate services;  
9

10                   b.    Rehabilitation, modernization or retrofitting  
11                          of structures, common areas or individual  
12                          dwelling units;  
13

14                   c.    Construction of an addition or other facility  
15                          in the project, including an assisted living  
16                          facility (or, upon the approval of HUD,  
17                          facilities located in the community where the  
18                          Owner refinances a project under Section 811,  
19                          or pools shared resources from more than one  
20                          such project); or  
21

22                   d.    Rent reduction of unassisted tenants residing  
23                          in the project according to a pro rata  
24                          allocation of shared savings resulting from  
25                          the refinancing.  
26

27                   C.    In processing a budget-based rent request for a project  
28                          under B.2.a. above, use the original debt service. This  
29                          automatically makes sure the Section 811 annual savings  
30                          resulting from the refinance transaction is included in the  
31                          rent.  
32

# Chapter Seven

## Option Five - Renewal of Portfolio Reengineering Demonstration or Preservation Projects

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### 67-1. ELIGIBILITY.

Preservation projects primarily consist of Section 236 and 221(d)(3) BMIR projects whose Owners entered into long-term Use Agreements with HUD under either Title II, Emergency Low Income Housing Preservation Act of 1987 (ELIHPA) or Title VI, Low-Income Housing Preservation and Resident Homeownership Act of 1990 (LIHPRHA) (the Preservation Programs).

A Portfolio Reengineering Demonstration ("Demo") Program Project is any project that completed the Demo Program, as evidenced by a recorded Demo Program Use Agreement. If the Owner entered into the Demo Program but did not execute and record a Demo Program Use Agreement, it is not eligible for renewal under Option Five.

### **PORTFOLIO REENGINEERING DEMONSTRATION PROGRAM PROJECTS**

### 247-2. RENEWAL OF PORTFOLIO REENGINEERING DEMONSTRATION PROJECTS.

- A. If the project has either a recorded Mortgage Restructuring Demo Program Use Agreement or a recorded Budget-Based Without Mortgage Restructuring Demo Program Use Agreement:
1. The DEMO contract must be renewed under Option Five.
  2. The Owner is required to accept offers from the Department to renew the Section 8 contract

1 throughout the term of the Demo Use Agreement.  
2 Therefore, an Owner cannot opt-out of its contract.

- 3  
4 B. If the project went through the Demo Program but does  
5 not have a recorded Demo Program Use Agreement, it does  
6 not qualify as a Demo project. The Owner:  
7  
8 1. Cannot renew its contract under Option Five.  
9  
10 2. May renew its contract under any other Option it  
11 qualifies for.  
12

137-3. **OWNER SUBMISSION FOR DEMONSTRATION PROJECTS UNDER OPTION**  
14 **FIVE.**

- 15  
16 A. Initial Renewal.  
17  
18 HUD is no longer conducting initial renewals under the  
19 Portfolio Reengineering Demonstration Program.  
20  
21 B. Subsequent Renewal under Option Five.  
22  
23 The HAP contract for the subsequent renewal of a  
24 Demonstration Project may be a multiyear contract but  
25 may not exceed the number of years remaining at that  
26 time under the project's Demo Program Use Agreement.  
27  
28 C. Rent adjustments for projects with a recorded Mortgage  
29 Restructuring Demo Program Use Agreement.  
30  
31 1. A RCS is not required.  
32  
33 2. Rents are adjusted annually by the published OCAF  
34 using Form HUD-9625, OCAF Adjustment Worksheet.  
35  
36 D. Rent adjustments for projects with a recorded Budget-  
37 Based Without Mortgage Restructuring Demo Program Use  
38 Agreement.  
39  
40 1. The Owner has two options:  
41  
42 a. Follow the instructions in C. above; or  
43  
44 b. Submit a written request to the PM/CA to  
45 participate in an alternative rent adjustment  
46 procedure for the remaining life of the Use  
47 Agreement.  
48

- 1) The Owner must either extend its current Section 8 Contract or renew the Section 8 contract for the remaining term of the Use Agreement.
- 2) At the end of each 5-year period of the multiyear contract, the Owner will obtain a RCS and permit the PM/CA to adjust project rents as follows:
- a) If the rents are below comparable market rents adjust the rents to equal the comparable market rents.
  - b) If the rents are above comparable market rents reduce the rents to the comparable market rents.
- 3) In the intervening years the rents will be adjusted annually by the published OCAF.

237-4. **PROCESSING INSTRUCTIONS FOR DEMONSTRATION PROJECTS.**

- A. Portfolio Reengineering Demonstration Section 8 contracts are not eligible for OAHF processing.
- B. See Section 2-16 for detailed processing instructions.

**PRESERVATION PROJECTS**

327-5. **PRESERVATION PROJECTS (LIHPRHA AND ELIHPA).**

When Owners entered into long-term Use Agreements with HUD under the Preservation Program, HUD agreed to certain items which were outlined in the Preservation property's approved Plan of Action (POA).

In a majority of Preservation contracts, the POA allows for either a budget-based rent adjustment or an Annual Adjustment Factor (AAF) rent adjustment. Initially, MAHRA limited rent adjustments to OCAF for all preservation projects and in many cases required a renewal under 524(a) that would have resulted in rent reductions for the contract. As a result, some Preservation Owners would have been denied the benefits called for in the POA. Legislation in FY2000 provided a means for rectifying this situation.

1 A. Renew a Preservation contract according to the  
2 provisions outlined in the project's POA. Preservation  
3 contracts **cannot** be renewed under any option other than  
4 Option Five.  
5

6 B. Corrections. There are instances where some contracts  
7 of Preservation projects were renewed under terms  
8 different than the terms in the approved POA. In these  
9 cases the PM/CA should calculate the rent as it would  
10 have been if the contract(s) had been renewed under  
11 terms consistent with the POA. This is the "current  
12 rent" that should be used as the basis for determining  
13 the renewal rent. There is no reimbursement for income  
14 lost due to past renewals.  
15

16 C. Opt-Outs. In general, POAs do not permit the Owner to  
17 opt-out of the Section 8 contract. However, if a  
18 Preservation project Owner believes they have the  
19 authority to opt-out of the Section 8 contract:  
20

21 1. **Plan**. The Owner must submit a detailed plan to the  
22 PM/CA that indicates how it intends to honor its  
23 obligations under the Use Agreement to maintain the  
24 project as affordable housing.  
25

26 a. This plan should detail how the Owner intends  
27 to maintain the appropriate income mix.  
28

29 b. Owners must be made aware that should they  
30 elect to opt-out; they are not released from  
31 their obligations set forth under the long-  
32 term Use Agreement to provide affordable  
33 housing.  
34

35 2. **Role of the Local HUD Office**. The Hub or Program  
36 Center (or CA) should take the following steps:  
37

38 a. The PM/CA should review the POA to determine  
39 if it provides for the right of the Owner to  
40 opt-out of the Section 8 contract. In  
41 general, opt-outs were precluded, but each  
42 Preservation POA was structured differently  
43 and as a result the PM/CA must review each POA  
44 and Use Agreement to determine whether or not  
45 the project is eligible to opt-out of the  
46 Section 8 contract.  
47

1 b. If the POA does not allow the Owner to opt-  
2 out, the PM/CA should advise the Owner that it  
3 must renew the Section 8 contract.  
4

5 c. If the POA allows the Owner to opt-out, the  
6 Owner must provide the standard one year  
7 notification of termination of the Section 8  
8 contract(s) to the tenants. Eligible families  
9 will be issued enhanced vouchers to permit the  
10 families to remain in their units.  
11

12 3. **Plan Submission to HQ:** If after review of the  
13 Owner's plan, the PM/CA agrees that the Owner is  
14 allowed to opt-out, the PM/CA forwards a copy of  
15 the plan to the Director of the Office of Housing  
16 Assistance and Grant Administration, Headquarters  
17 for review and either approval or rejection.  
18

19 D. Conflicting Documents. The Use Agreement was recorded  
20 to implement the terms of the POA. However, there may  
21 be instances where the terms of the POA and the Use  
22 Agreement conflict.  
23

24 1. Since the Use Agreement is a recorded instrument,  
25 binding on all third parties, if a discrepancy  
26 exists between the Use Agreement and the POA, the  
27 Use Agreement prevails, and is binding on all third  
28 parties.  
29

30 2. POAs are far more extensive and cover many more  
31 items than are covered in a Use Agreement. As a  
32 result, in cases where there are items contained in  
33 the POA that are not addressed in the Use  
34 Agreement, the terms of the POA, as they relate to  
35 the specific item, are binding on all parties.  
36

37 **7-6. OWNER'S SUBMISSION FOR PRESERVATION PROJECTS.**  
38

39 A. A multiyear contract **cannot** exceed the remaining term of  
40 the recorded Use Agreement.  
41

42 B. The only renewal option available to an Owner of a  
43 preservation project is Option 5.  
44

45 C. Rents are adjusted in accordance the POA and Use  
46 Agreement.  
47

48 D. See Section 2-16 for more detailed information.  
49

17-7. **PROCESSING INSTRUCTIONS FOR PRESERVATION PROJECTS.**

- 2  
3 A. Preservation Section 8 contracts are ineligible for OAHF  
4 processing.  
5  
6 B. See Section 2-16 for detailed processing instructions.  
7

87-8. **PRESERVATION UPDATES.**

- 9  
10 A. Shallow Rent Subsidy.  
11  
12 1. The Fiscal Year 1995 Appropriations Act enacted  
13 September 28, 1994, contained modifications to the  
14 Low-Income Housing Preservation and Homeownership  
15 Act (LIHPRHA). All LIHPRHA Plans of Action  
16 approved on or after September 28, 1994, and  
17 through September 30, 1995, would have to meet the  
18 Shallow Rent Subsidy requirements set forth in the  
19 law. This includes LIHPRHA properties that  
20 received final approval prior to September 28,  
21 1994, but for which a Use Agreement was not  
22 executed until after that date.  
23  
24 2. HUD issued two Notices dealing with processing  
25 Shallow Rental Subsidy for LIHPRHA properties. The  
26 first Notice, H95-26, was issued March 30, 1995.  
27 The second Notice, H95-54, was issued on June 15,  
28 1995, and among other things cancelled and replaced  
29 the first Notice. Both Notices stated in the  
30 background discussion that the Shallow Rent Subsidy  
31 requirements were a result of the FY 1995  
32 Appropriations Act that would be in effect until  
33 September 30, 1995. The second Notice goes on to  
34 state that the rent modifications will remain in  
35 effect for the life of the Use Agreement, unless  
36 modified by law.  
37  
38 3. The law did in fact change, in that the 1995  
39 Appropriations Act language establishing the  
40 Shallow Rent Subsidy was not made permanent.  
41 Therefore, the Shallow Rent Subsidy is no longer  
42 applicable.  
43  
44 B. ELIHPA Use Agreement and Section 8 Contract.  
45  
46 There has been some confusion when the term of the  
47 ELIHPA Use Agreement runs until the maturity date of the  
48 mortgage. The mortgage and Use Agreement end on the  
49 first of the month. The Section 8 contract will end on

1 the last day of the previous month. Both the Section 8  
2 contract and the Use Agreement are considered  
3 coterminous since the Section 8 contracts terminates at  
4 midnight on the first day of the month, the terms and  
5 conditions of the POA and the ELIHPA Use Agreement are  
6 considered fulfilled. Therefore, the Owner may select  
7 any renewal option for which the property is eligible  
8 except Option Five.  
9

# Chapter Eight

## Option Six - Opt-Outs

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### 68-1. OVERVIEW.

HUD is committed to preserving affordable housing. Local offices should make every effort to inform Owners of all available options, including Mark-Up-To-Market. However, if an Owner ultimately chooses to opt-out of the Section 8 contract, and has satisfied the relevant requirements, the Owner may request to opt-out of the Section 8 program by providing the Contract Renewal Request Form, Form HUD-9624 and electing Option Six. Owners should be aware of their obligation to honor the right of tenants to remain and all notification requirements.

HUD will renew the contract up until the day the contract expires should the Owner change its mind on opting out. It is important to note that HUD has no authority to enter into a new contract after the Owner has opted-out of the Section 8 contract.

### 268-2. OWNER REQUIREMENTS.

#### A. Tenant Notification Requirements.

1. **Generally** the Owner **must** provide a one-year notification to the tenants and the PM/CA of the intent to opt-out of the Section 8 project-based contract. (See Attachment 11-1.)
2. OAHP projects are the **exception** to the general rule. The Owner must provide two tenant notifications.
  - a. The regular one-year notification to the tenants and the PM/CA of the intent to opt-out of the Section 8 project-based contract; and

1                   b.    A second notification 120 days before  
2                   the contract expiration date.

3  
4           B.    Four months (120 days) before the contract  
5           expiration date:

- 6  
7           1.    The Owner submits the Contract Renewal  
8           Request Form (Form HUD-9624) showing its  
9           intent to opt-out of the Section 8 contract  
10           and the supporting documentation.  
11  
12           2.    HUD uses this time to obtain enhanced  
13           vouchers for the eligible families living in  
14           the assisted units.

15  
16 **168-3.    PROCESSING INSTRUCTIONS.**

17  
18           A.    PM/CA Review. The PM/CA must complete the review  
19           in a timely fashion to provide enough time to  
20           obtain tenant-based assistance and to make sure  
21           tenants have adequate search time to locate  
22           another unit should they desire to relocate. The  
23           PM/CA should:

- 24  
25           1.    Check to see that the Owner elected to opt-  
26           out under Option Six;  
27  
28           2.    Make sure that the Owner has provided all  
29           required documentation (Contract Renewal  
30           Request Form, certification);  
31  
32           3.    Make sure that the Owner is eligible to opt-  
33           out of the Section 8 contract.  
34  
35           a.    Are there any restrictions stated in  
36           the Section 8 HAP contract or Use  
37           Agreement that prohibit the Owner from  
38           opting-out?  
39  
40           b.    Did the Owner provide an acceptable  
41           one-year notification to the tenants  
42           and PM/CA that they intended to opt-out  
43           of the Section 8 project-based  
44           contract? Does the letter state that  
45           the Owner will honor the right of  
46           tenants to remain?  
47

1 ***If proper notification was not***  
2 ***provided, the Owner must provide***  
3 ***acceptable one-year written***  
4 ***notification to tenants and the PM/CA.***  
5

6 During this one-year period:  
7

8 1) The families' contribution to the  
9 rent cannot be increased for the  
10 period of time necessary to  
11 fulfill the full notification time  
12 frame.

13  
14 2) The PM/CA will offer the Owner a  
15 short-term contract. See Chapter  
16 Two for information on rent  
17 setting for the short-term  
18 renewal.

19  
20 a) If the Owner renews the  
21 contract when it ends in the  
22 middle of the month, and the  
23 Owner has submitted a voucher  
24 for the full month, nothing  
25 further is needed.

26  
27 b) If the Owner does not renew  
28 the contract when it ends in  
29 the middle of the month, and  
30 the Owner has submitted a  
31 voucher for the full month,  
32 the Owner is required to pay  
33 back the funds for the period  
34 not covered by the contract.

35  
36 c. Does the Owner certify that it will  
37 honor the tenant's right to remain at  
38 the property as long as it continues to  
39 be offered for rental housing if the  
40 PHA approves a rent equal to the new  
41 rent charged for the unit, unless the  
42 Owner has grounds for eviction under  
43 State or local law?  
44

45 4. Log the Owner's request as indicated on the  
46 Contract Renewal Request Form (Form HUD-

1                   9624) and any other relevant information in  
2                   iREMS.  
3

4           B.     Four months (120 days) prior to the contract  
5                   expiration date, and upon receipt of the written  
6                   notice provided by the Owner, the PM/CA should  
7                   again contact the Owner to explore alternatives  
8                   to opting out, particularly mark-up-to-market.  
9

10          C.     It is imperative that the PM/CA coordinate this  
11                   effort with Public and Indian Housing (PIH)  
12                   staff. If there is a delay in the provision of  
13                   tenant-based assistance, the Owner should be  
14                   offered a short-term contract. Refer to PIH  
15                   Notice 2001-41(HA) for detailed guidance on the  
16                   conversion process.  
17

18          D.     OAHP Projects. If an Owner has decided to opt-  
19                   out while the project is assigned to OAHP for a  
20                   rent reduction or debt restructuring, see Section  
21                   5-4D of this Guide for detailed processing  
22                   instructions.

# Chapter Eleven

## Tenant Issues

---

### 611-1. Definitions.

A. Regular Housing Choice Voucher. Section 8 tenant-based assistance is provided to eligible families to assist them in obtaining affordable housing in the private market.

1. The voucher is provided on behalf of the family or individual and generally allows the holder to choose any housing that meets the program requirements.
2. The vouchers are administered by local Public Housing Agencies (PHAs). The local PHA establishes the payment standard for the vouchers, determines tenant eligibility, certifies tenant income, and calculates the tenant's share of the rent. The payment standard for these vouchers is based on the established Fair Market Rents (FMR) for the area.
3. The payment standard determines the maximum amount of subsidy that may be paid on behalf of an assisted family. The monthly housing assistance payment on behalf of the family is the lesser of the PHA payment standard minus the family total tenant payment (TTP), or the gross rent of the unit minus the family TTP.

The family TTP is the greater of:

- 30 percent of adjusted monthly income;
- 10 percent of gross monthly income;
- the welfare rent in as-paid states; or
- the PHA minimum rent (\$0 - \$50).

1 In cases where the gross rent exceeds the  
2 payment standard, the family is responsible  
3 for paying the difference out-of-pocket, in  
4 addition to the TTP.  
5

6 B. Enhanced Voucher. Tenant-based housing  
7 assistance used to assist eligible families  
8 affected by certain types of housing conversion  
9 actions, called "eligibility events."

10  
11 1. Unlike a regular voucher, the subsidy is  
12 "enhanced" to cover the difference between  
13 the normally applicable payment standard and  
14 the possibly higher proposed rent of the  
15 unit that is going through the housing  
16 conversion action. The payment standard for  
17 enhanced vouchers is the gross rent of the  
18 unit, provided the PHA determines the gross  
19 rent is reasonable in comparison to similar  
20 unassisted units in the market area.  
21

22 2. Enhanced vouchers have a special minimum  
23 rent requirement. The family must continue  
24 to contribute towards rent at least the same  
25 amount they were paying for rent on the date  
26 of the housing conversion action unless the  
27 family suffers a decrease in gross family  
28 income of at least 15 percent from gross  
29 family income on the date of eligibility  
30 event. See PIH Notice 2001-41(HA), Part II  
31 C(3)(c) ("Significant Decline in Family  
32 Income - Effect on Enhanced Voucher Minimum  
33 Rent").  
34

35 3. The enhanced feature of a voucher is tied to  
36 the project in which the housing conversion  
37 action took place. If the tenant moves from  
38 the project, the enhanced feature is lost  
39 and the voucher will have the features of a  
40 regular voucher issued by the PHA.  
41

42 C. Housing Conversion Actions. Upon the occurrence  
43 of housing conversion actions that constitute an  
44 "eligible event," HUD is required to offer  
45 enhanced voucher assistance to eligible families.  
46 Tenants in other types of housing conversion  
47 actions are offered regular housing choice

1 voucher assistance. Housing conversion actions  
2 include project-based Section 8 opt-out,  
3 preservation prepayment, HUD enforcement actions  
4 and HUD property disposition (PD). On November  
5 14, 2001, HUD issued Notice PIH 2001-41(HA)  
6 "Section 8 Tenant-Based Assistance (Enhanced and  
7 Regular Choice Vouchers) For Housing Conversion  
8 Actions - Policy and Processing Guidance". This  
9 Notice outlines policies and processing  
10 guidelines for administering vouchers in cases of  
11 Housing Conversion Actions. For more information  
12 contact the local PIH Office.

13  
14 A copy of PIH Notice 2001-41(HA) is available on  
15 HUDCLIPS.

16  
17 <http://www.hud.gov/offices/adm/hudclips/>  
18

19 **1911-2. HOUSING CONVERSION ACTIONS.**

- 20  
21 A. Opt-outs. This term refers to a conversion  
22 action where an Owner chooses to opt-out of the  
23 project-based Section 8 program by not renewing  
24 an expiring Section 8 project-based HAP contract.  
25  
26 1. For an Owner to opt-out of the project-based  
27 Section 8 program, it must satisfy all  
28 notification requirements, including the  
29 provision of notice of the HAP contract  
30 termination to the tenants and the contract  
31 administrator at least one year before  
32 termination, and submit the request and  
33 certification to the local HUD  
34 Office/Contract Administrator (CA) not less  
35 than 120 days before the expiration of the  
36 contract.  
37  
38 2. The Department is committed to protecting  
39 families living in assisted units,  
40 regardless of the actions a project Owner  
41 may take. To protect families living in  
42 assisted units, section 524(d) of MAHRA  
43 requires the Department, subject to  
44 appropriations, to make enhanced vouchers  
45 available to low-income families who, on the  
46 date of expiration of the HAP contract, are  
47 living in an assisted unit.

1 B. HUD enforcement actions. In these cases (or in  
2 conjunction with a HUD Property Disposition (PD)  
3 action), HUD is either terminating the project-  
4 based Section 8 HAP contract or not offering the  
5 Owner the option to renew an expiring contract  
6 due to an Owner's failure to comply with the  
7 terms of the HAP contract or other HUD  
8 requirements.

9  
10 HUD enforcement actions may result from material  
11 adverse financial or managerial actions or  
12 omissions which lead to either Owner default  
13 under a FHA-insured mortgage (monetary or  
14 technical) or a documented material violation of  
15 one or more of the obligations under the  
16 project's Regulatory Agreement. Regular housing  
17 choice vouchers will normally be provided in  
18 these circumstances to assist eligible families  
19 affected by the enforcement action because  
20 property condition or other issues will not allow  
21 tenants to remain in the property.

22  
23 **11-3. TENANT PROTECTIONS.**

24  
25 A. Importance of the Process. The process of  
26 converting from project-based assistance to  
27 tenant-based assistance can produce worry and  
28 fear for many families. Therefore, care must be  
29 taken to make sure the process is completed  
30 correctly and information is made clear and  
31 available for all families, Owners, and PHAs.

32  
33 B. Right to Remain. Tenants who receive an enhanced  
34 voucher have the right to remain in their units  
35 as long as the units are offered as rental  
36 housing. The tenant must have been issued an  
37 enhanced voucher sufficient to pay the rent  
38 charged for the unit, provided that the rent is  
39 reasonable. Owners may not terminate the tenancy  
40 of a tenant who exercises this right to remain  
41 except for cause under Federal, State or local  
42 law. To receive the full rent charged for the  
43 unit, the Owner must agree to enter into a  
44 contract with the local PHA on behalf of each  
45 covered family. If an Owner refuses to honor the  
46 tenants right to remain, the tenant's remedy will  
47 depend on State and local law.

- 1           1.    The FY 2001 Military Construction and FY  
2           2000 Emergency Supplemental Appropriations  
3           law, Pub. L. No. 106-246, Section 2801 (July  
4           13, 2000) amended the enhanced voucher  
5           statute passed in the FY 2000 Appropriations  
6           Act (USHA Section 8(t), 42 USC Sec.  
7           1437f(t)) and reads: "**...the assisted family  
8           may elect to remain in the same project in  
9           which the family was residing on the date of  
10          the eligibility event for the project ...**".  
11
- 12          2.    This protection continues as long as the  
13          property is offered as rental housing,  
14          absent good cause to terminate tenancy under  
15          Federal, State or local law and provided the  
16          PHA continues to find the rent reasonable,  
17          Owners must continually renew the lease of  
18          an enhanced voucher family.  
19

20    C.    Tenant-Based Eligibility. Only eligible families  
21    will receive enhanced vouchers at the time of an  
22    opt-out. While a family may be income eligible,  
23    they are not automatically eligible for admission  
24    to the tenant-based program.  
25

- 26          1.    The tenant-based assistance program is  
27          administered through the Office of Public  
28          and Indian Housing (PIH). Some of the  
29          eligibility and admissions standards for PIH  
30          programs differ from those of project-based  
31          Section 8 programs. In some cases, a tenant  
32          may be denied assistance under the tenant-  
33          based assistance program.  
34
- 35                a.    The PHA will re-certify and screen  
36                potentially eligible families and may  
37                deny them access to the tenant-based  
38                assistance program based on the grounds  
39                outlined in the Regulations (24 CFR  
40                §982.552 and 24 CFR §982.553). The  
41                Department encourages PHAs to use  
42                maximum flexibility during this  
43                process, such as setting up repayment  
44                agreements for tenants who owe funds to  
45                the PHA. However, if a family is  
46                ultimately denied assistance, the PHA  
47                must give them prompt notice of this

1 decision which includes a brief  
2 statement of the reasons for the  
3 decision. An informal review can be  
4 requested by the family (the process is  
5 described in the Regulations, 24 CFR  
6 §982.554).

7  
8 b. Provided that the Owner's current  
9 income certification for a tenant is no  
10 more than six months old and the PHA  
11 determines it is acceptable (through  
12 reviewing a small sampling), the PHA  
13 may use the Owner's most recent tenant  
14 income certification in determining  
15 eligibility for enhanced vouchers.

16  
17 2. In general, to be eligible to receive an  
18 enhanced voucher in the case of a regular  
19 opt-out (not proceeded by a prepayment) the  
20 family must be low-income (including very  
21 low-income) and residing in a unit covered  
22 by the expiring Section 8 contract. This  
23 includes families who may have moved into a  
24 vacated unit during the term of the one-year  
25 notification period.

26  
27 a. Unlike in a preservation prepayment  
28 situation, a family with an income  
29 above 80 percent of area median income  
30 (AMI) is not eligible for tenant-based  
31 assistance as a result of the opt-out.

32  
33 b. In cases of preservation prepayments,  
34 families living in the property on the  
35 date of the prepayment may be income  
36 eligible by virtue of the different  
37 eligibility standards which apply to  
38 prepayment vouchers (namely, moderate  
39 income elderly and disabled families  
40 and moderate income families residing  
41 in low vacancy areas are eligible for  
42 such assistance). A family which is  
43 not income eligible may reach an  
44 agreement with the Owner to remain in  
45 the unit and pay the rent set by the  
46 Owner, even though no Section 8 tenant-  
47 based assistance is being provided by

1 HUD. The tenant rent is based on what  
2 the tenant was paying at the time of  
3 prepayment.  
4

5 3. In instances when a new tenant, i.e., a  
6 tenant who was not residing in the project  
7 when the one-year notification was properly  
8 provided, moves into a unit during the one-  
9 year tenant notification period, Owners are  
10 encouraged to add the following provisions,  
11 in the form of a lease addendum, to the  
12 required model lease: (1) "If the HAP  
13 contract terminates for any reason, the  
14 lease terminates automatically"; and (2)  
15 "tenants who move into a vacated unit during  
16 the one-year notification period **are not**  
17 entitled to one-year notice of contract  
18 expiration or termination".  
19

20 4. Tenants admitted to a PHA's tenant-based  
21 voucher program as a result of a housing  
22 conversion action are not subject to the  
23 income targeting requirements of the tenant-  
24 based Section 8 program.  
25

26 D. Mobility. While tenants have the choice of using  
27 their voucher in a different property, once the  
28 family moves from the project, the enhanced  
29 feature is no longer in effect. The voucher  
30 reverts to a regular housing choice voucher and  
31 is subject to those payment standards.  
32

33 E. Processing Delays. If there is any delay in  
34 processing the tenant-based assistance, the  
35 Department may ask the Owner to consider a short-  
36 term renewal of the contract to provide the  
37 Department with enough time to get the vouchers  
38 in place.  
39

4011-4. **OWNER NOTIFICATION REQUIREMENTS.**

41  
42 A. Law. Section 8(c)(8) of the United States  
43 Housing Act requires that Owners give a one-year  
44 written notice to tenants and HUD of the  
45 contract's termination or expiration. The one-  
46 year notification must state the Owner's

1 intentions (i.e., to renew or not renew) at the  
2 time of the contract's expiration.

3  
4 B. Format. The Notice must be:

- 5  
6 1. On the Owner's or duly authorized  
7 representative's letterhead and signed.  
8  
9 2. The notice must be served by delivery  
10 directly to each unit in the project or  
11 mailed to each tenant (the head of household  
12 of a unit).

13  
14 **Note: Taping the Notice to the outside of  
15 each unit is not acceptable.**

- 16  
17 3. If the population of the property speaks a  
18 language other than English, Owners are  
19 encouraged to provide the notification  
20 letters in the appropriate language(s). The  
21 cost of the translation of the letter is an  
22 eligible project expense.  
23

24 C. Content of Notification Letter. Owners must  
25 include certain information in a notification  
26 letter. To meet the legal requirements for  
27 notification, this Guide provides Owners with a  
28 sample one-year notification letter for use when  
29 an Owner intends to opt-out of the project-based  
30 Section 8 contract. The sample is Appendix 11-2.  
31

- 32 1. Owners must use a letter that contains the  
33 language included in the sample letters  
34 provided in this Guide.  
35  
36 2. While Owners are not required to specify the  
37 reasons for opting out, Owners are  
38 encouraged to provide as much information as  
39 possible to the tenants and HUD.  
40  
41 3. Owners must state that they will honor the  
42 tenants' right to remain and will  
43 continually renew leases as long as:  
44  
45 • The property is offered as rental housing;  
46 • The PHA continues to find the rent  
47 reasonable; and

- There is no cause for eviction under Federal, State or local law.

4. If an Owner states that it intends to renew the contract, but at a later date decides to opt-out of the contract, the Owner must provide tenants, HUD, and the CA with a new one-year notification of this change of plans. Tenants, HUD, and the CA must receive a one-year notification of an Owner's decision to opt-out.
5. If an Owner elects to go to OAHP for a debt restructure and/or rent reduction, upon execution of the OAHP-Lite or OAHP-Full Contract, the Owner must provide a new one-year notification to the tenants.
6. Owners who elect to go to OAHP and who decide during the restructure process that they want to opt out of the project-based Section 8 contract, must provide tenants with a 120-day notice of their decision to opt-out. The 120-day notice is in addition to the one-year notice issued upon entry to OAHP and discussed in 5 above.

D. PM/CA Review. All tenant notification letters must be reviewed by the PM/CA to make sure they are consistent with the established requirements. In cases where HUD is not the CA, the Owner will send a copy of the notification letter to HUD. Although HUD does not require Owners to submit the notification letter for review before issuance, to avoid situations where a faulty notice is required to be corrected after it has been issued to the tenants, Owners are encouraged to submit their letters for review 30 days in advance of the one-year time period. Absent early submission to the PM/CA, Owners are required to submit the letter to the PM/CA and the tenants at the same time.

In cases where an Owner issues the "intend to renew" letter, no PM/CA action is required. However, if an Owner sends the "does not intend to renew" letter, the PM/CA must review the

1 letter within 30 days of receipt from the Owner.  
2 No HUD approval is required before the one-year  
3 clock starts; however, if the PM/CA review  
4 determines that the letter is not in compliance  
5 with HUD requirements, the Owner will be notified  
6 that a corrected notice must be issued. In these  
7 cases, the one-year clock does not begin until  
8 the proper notice is provided to HUD, the CA and  
9 the tenants.

- 11 • If the PM/CA review determines that the letter  
12 is acceptable, no action by the PM/CA is  
13 necessary.
- 14 • If the PM/CA review determines that the letter  
15 is unacceptable, the PM/CA will notice the  
16 Owner that it has failed to provide proper  
17 notification to HUD/CA and the tenants.

18  
19 E. Unacceptable Notice. If an Owner fails to  
20 provide proper one-year notification to HUD/CA  
21 and the tenants, legally, the Owner must permit  
22 the tenants to remain in their units without  
23 increasing their portion of the rent for whatever  
24 period of time is necessary to meet all of the  
25 notification requirements.

- 27 1. Section 524(d) (1) of MAHRA requires HUD to  
28 make enhanced voucher assistance available  
29 to low-income families residing in an  
30 assisted unit upon HAP expiration.
- 31  
32 2. When a HAP contract expires without the  
33 proper notice requirement being met, the PHA  
34 will still make a determination regarding  
35 family eligibility for enhanced voucher  
36 assistance.
  - 37  
38 a. If the family is eligible and wishes to  
39 move from the project, the PHA will  
40 immediately provide the family with a  
41 voucher in order to do so (the special  
42 enhanced provisions do not apply in the  
43 case where the family uses the  
44 voucher).
  - 45  
46 b. If the family is eligible and wishes to  
47 stay in the project, the PHA will

1 inform the family and the Owner that  
2 the assisted tenancy with enhanced  
3 voucher assistance will commence as  
4 soon as the Owner satisfies the proper  
5 one-year notice requirements. Since  
6 the law provides that the family can  
7 remain in the assisted unit with no  
8 increase in their portion of the rent  
9 until proper notice is given, there is  
10 no need for the enhanced voucher  
11 assistance to begin before that time.  
12

13 c. If the family is not eligible for  
14 enhanced voucher assistance, the family  
15 may likewise remain in the unit with no  
16 increase in their rent payment until  
17 the Owner satisfies the notice period.  
18

19 3. In instances where additional time is needed  
20 to meet the full one-year notice period,  
21 Owners are encouraged to enter into a short-  
22 term renewal contract (at rents that do not  
23 exceed market) with a term that is  
24 sufficiently long to allow the Owner to  
25 provide the full one-year notice of contract  
26 expiration. Unless the Owner enters into a  
27 short-term renewal contract, the Owner will  
28 receive only the tenant portion of the rent  
29 the families were paying under the expired  
30 contract until the full one-year notice  
31 period has been met, since the enhanced  
32 voucher assisted tenancy will not commence  
33 until that time.  
34

35 F. Short-term Contracts. In general, upon execution  
36 of a short-term contract, the Owner must provide  
37 a one-year notification to tenants and HUD/CA.  
38 Over the course of this one-year period, the  
39 Owner and HUD/CA may agree to additional short-  
40 term extensions. The Owner is not required to  
41 provide a new Notice each time a subsequent  
42 short-term extension is granted **within** the one  
43 year time-frame of the Notice. If the Owner  
44 accepts another short-term renewal after the 12-  
45 month notification period has expired, the Owner  
46 will be subject to another 12-month notification

1 requirement. Exceptions to this general policy  
2 are as follows:

- 3
- 4 1. Where the Owner has fulfilled his/her  
5 notification requirement, but agrees to  
6 execute a contract for less than one year  
7 solely to provide HUD with enough time to  
8 provide Section 8 tenant-based assistance,  
9 execution of a short-term contract does not  
10 require a new notice requirement because it  
11 is granted to protect the tenants.  
12
  - 13 2. Where an Owner provided tenants and HUD with  
14 the proper notification of its intent to  
15 opt-out and then accepts a short-term  
16 renewal to consider accepting a Section 8  
17 contract under the terms of Mark-Up-To-  
18 Market (mu2m), the Owner would not be  
19 subjected to another one-year notification  
20 requirement.  
21

22 G. Selection of Option at Contract Expiration. One  
23 hundred twenty (120) days before the contract  
24 expiration, Owners must notify HUD's local  
25 Hub/Program Center Director/CA (whichever is  
26 applicable) in writing that they are going to  
27 renew or opt-out of their Section 8 contract (as  
28 noted in earlier chapters). In cases of an opt-  
29 out, HUD needs this time to obtain enhanced  
30 vouchers for the eligible families living in the  
31 assisted units. At this time, the PM/CA should  
32 again contact the Owner to explore alternatives  
33 to opting out, particularly mu2m. HUD will renew  
34 the contract up until the day the contract  
35 expires should the Owner change its mind on  
36 opting out.  
37

38 H. Prepayment Notification Requirements for  
39 Preservation Eligible Properties. Owners often  
40 prepay their assisted mortgages and elect to opt-  
41 out of the project-based Section 8 contract on a  
42 closely coordinated schedule. Section 219 of the  
43 HUD FY 1999 Appropriations Act, mandates specific  
44 notification requirements for Owners of  
45 Preservation eligible properties who wish to  
46 prepay their mortgage or terminate the mortgage  
47 insurance contract. Prepayment of a mortgage or

1 termination of a mortgage insurance contract may  
2 be made only to the extent that the prepayment or  
3 termination is consistent with the terms and  
4 conditions of the mortgage or mortgage insurance  
5 contract for the project.  
6

7 Preservation eligible properties were eligible  
8 for the incentives provided by Title II,  
9 Emergency Low Income Housing Preservation Act of  
10 1987 (ELIHPA); or Title VI, Low-Income Housing  
11 Preservation and Resident Homeownership Act of  
12 1990 (LIHPRHA).  
13

14 **Note: The prepayment tenant notification**  
15 **requirements are independent of the project-based**  
16 **Section 8 contract tenant notification**  
17 **requirements.**  
18

19 At least 150 days but not more than 270 days  
20 before the date of prepayment or termination of a  
21 mortgage insurance contract, Owners are required  
22 to provide the following notices of their intent  
23 to prepay or terminate the mortgage insurance  
24 contract:  
25

- 26 1. A written notice to each tenant (the head of  
27 household of a unit) either by mail or hand  
28 delivered (taping of the notice to the  
29 outside of the unit door is not acceptable)  
30
- 31 2. A written notice to HUD (PM/CA).  
32

33 **NOTE: The notification letters must be**  
34 **provided to HUD and the tenants at the same**  
35 **time.**  
36

- 37 3. A written notice to the appropriate local  
38 government official (Mayor or Designee).  
39 Notices must be on official letterhead and  
40 signed and dated by the Owner or its duly  
41 authorized representative.  
42

43 In addition to the federal notification  
44 requirements, the Owner, or its duly authorized  
45 representative, is required to mail a signed and  
46 dated letter, on the Owner's letterhead, to the

1 PPHA most likely to administer Section 8  
2 vouchers, if applicable.  
3

4 When contacting the PM/CA, the Owner, or its duly  
5 authorized representative, should identify any  
6 conditions they are aware of that would restrict  
7 or impede the prepayment or termination of the  
8 FHA mortgage insurance. The Owner, or its duly  
9 authorized representative, is also required to  
10 submit a signed and dated letter to HUD verifying  
11 that all requirements were met. The Owner and  
12 the current mortgagee must establish the  
13 effective date of prepayment or termination of  
14 the insurance at least 150 days, but not more  
15 than 270 days from the date the notifications  
16 were given to HUD, the tenants and the  
17 appropriate local government official. As soon  
18 as this date is reasonably known, the Owner  
19 should contact the PM/CA and apprise him/her of  
20 the proposed date. ***If for any reason, the***  
21 ***prepayment does not occur within the specified***  
22 ***time frame, the law requires that the Owner, or***  
23 ***its duly authorized representative, must begin***  
24 ***the notification process again.***  
25

26 An Owner may not increase the rent charges for  
27 any dwelling unit in the project during the 60  
28 days following prepayment or termination of the  
29 mortgage.  
30

31 An Owner is not required to fulfill the  
32 notification requirements if a prepayment is  
33 necessary to effect conversion to ownership by a  
34 priority purchaser (as defined in section 231(a)  
35 of the Low-Income Housing Preservation and  
36 Resident Ownership Act of 1990 (12 U.S.C,  
37 4120(a)) or will otherwise ensure that the  
38 property will continue to operate, at least until  
39 the maturity date of the loan or mortgage, in a  
40 manner that will provide rental housing on terms  
41 at least as advantageous to existing and future  
42 tenants as the terms required by the program  
43 under which the loan or mortgage was made or  
44 insured prior to the proposed prepayment or  
45 termination. For example, a tax credit  
46 transaction that does not affect the tenants by  
47 virtue of a Use Agreement does not need a Notice.

1 A priority purchaser is defined as a tenant  
2 council organized to acquire housing in  
3 accordance with a tenant home ownership program  
4 or any nonprofit organization, State or local  
5 agency that agrees to maintain low-income  
6 affordability restrictions for the remaining  
7 useful life of the property.  
8

9 A sample notification letter is provided in  
10 Appendix 11-3.  
11

12 I. State and Local Requirements. In addition to  
13 meeting the above Federal notification  
14 requirements, Section 8 project Owners are  
15 reminded to comply with any State or local  
16 notification requirements. Owners should check  
17 with their appropriate local authorities to find  
18 out about such requirements.  
19

20 J. Long-Term Contracts. Upon signing a long-term  
21 contract renewal, Owners are encouraged to notify  
22 tenants in writing that they have agreed to a  
23 long-term contract renewal agreement with the  
24 Department. This letter should inform the  
25 tenants that they will receive a one-year written  
26 notification of the expiration of the long-term  
27 contract.

**ONE-YEAR NOTIFICATION LETTER - OWNER DOES NOT INTEND TO RENEW**

(Date)

Dear Tenant:

The Department of Housing and Urban Development subsidizes the rent of your apartment through the project-based Section 8 program. Federal law requires that owners provide tenants with a one-year notification before the expiration of a Section 8 contract. The Section 8 contract that pays the government's share of your apartment rent at \_\_\_\_\_ (*name of project*) \_\_\_\_\_ expires on \_\_\_\_\_ (*one year from date of this letter*).

Although there will be no immediate change in your rental assistance, we are required to inform you of our intended actions when the contract expires one year from now.

**This letter is to notify you that we do not intend to renew the current Section 8 contract when it expires.**

Since we do not intend to renew this project-based contract upon its expiration, it is our understanding that, if Congress makes funds available (which it has in the past and is expected to in the future), the Department of Housing and Urban Development will provide all eligible tenants currently residing in a Section 8 project-based assisted unit with tenant-based assistance. Unlike the current project-based Section 8 contract, Section 8 vouchers are issued to the tenants and allow them to choose the place they wish to rent. The Section 8 voucher program is administered by the local Public Housing Authority. Federal law allows you to elect to continue living at this property provided that the unit, the rent, and we, the Owners, meet the requirements of the Section 8 tenant-based assistance program. As an Owner, we will honor your right as a tenant to remain at the property on this basis as long as it continues to be offered as rental housing, provided that there is no cause for eviction under Federal, State or local law.

You will also have the opportunity to choose another development or single family house in which to move provided that the new landlord will accept the voucher and the owner and the unit meet Section 8 tenant-based program requirements.

Please remember that project-based Section 8 rental assistance will continue to be provided on your behalf for one year. In addition, we may agree to a renewal of the project-

1 based contract with HUD, thus avoiding contract termination  
2 altogether.

3  
4 Approximately four months (120 days) before the expiration  
5 of the Section 8 contract, HUD requires that we confirm our  
6 final decision to not renew this contract. Following this  
7 confirmation, you will be contacted by the local Public Housing  
8 Authority (PHA) to determine your household's eligibility for  
9 tenant-based assistance. If you intend to apply for Section 8  
10 tenant-based rental assistance you should not move from your  
11 current unit until you have consulted with the local PHA about  
12 your eligibility for tenant based assistance.

13  
14 If you have any questions or would like information on the  
15 Section 8 Program, the following sources may be of assistance:

16  
17 Contract Administrator (if applicable)

18  
19 Name: \_\_\_\_\_  
20 \_\_\_\_\_

21 Telephone Number: \_\_\_\_\_

22  
23 HUD Field Office

24  
25 Name: \_\_\_\_\_  
26 \_\_\_\_\_

27 Telephone Number: \_\_\_\_\_

28  
29 HUD Web

30  
31 <http://www.hud.gov> - click on "Topic Areas" and the on "Rental  
32 Assistance."

33  
34  
35 Sincerely,

36  
37  
38  
39 \_\_\_\_\_  
40 (Owner)

41 \_\_\_\_\_  
42 (contact info)

43 cc: Local HUD Office/ \_\_\_\_\_ (Contract Administrator)

**ONE-YEAR NOTIFICATION LETTER - OWNER INTENDS TO RENEW**

(Date) \_\_\_\_\_

Dear Tenant:

The Department of Housing and Urban Development subsidizes the rent of your apartment through the project-based Section 8 program. Federal law requires that Owners provide tenants with a one-year notification before the expiration of a Section 8 contract. The Section 8 contract that pays the government's share of your apartment rent at (name of project) expires on (one year from date of this letter).

While there will be no immediate change in your rental assistance, we are required to inform you of our intended actions when the contract expires one year from now.

**This letter is to notify you that we intend to renew the current Section 8 contract when it expires.**

If Congress makes funds available, which it has in the past and is expected to in the future, we will renew the Section 8 contract. However, in the unlikely circumstance that we cannot renew our contract, it is our understanding that, subject to the availability of funds, HUD will provide all eligible tenants currently residing in a Section 8 project-based assisted unit with tenant-based assistance. If we later decide not to renew the current Section 8 contract when it expires, we will provide you with at least one year of advance notification of this decision.

If you have any questions or would like information on the Section 8 Program, the following sources may be of assistance:

Contract Administrator (if applicable)

Name: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

HUD Field Office

Name: \_\_\_\_\_

1 Telephone Number: \_\_\_\_\_

2

3

4

HUD Web

5

6 <http://www.hud.gov> - click on "Topic Areas" and then on "Rental  
7 Assistance."

8

9

10

Sincerely,

11

12

13

14

\_\_\_\_\_  
(Owner)

15

16

\_\_\_\_\_  
(contact info)

17

18

cc: Local HUD Office/ \_\_\_\_\_ (Contract Administrator)

19

---

**150- DAY NOTIFICATION OF PRE-PAYMENT (LIHPRHA and ELIHPA)**

(Date)

---

Dear Tenant:

I/We the Owner(s) of (name of project) have decided to prepay (or terminate) the loan for this property which we received with the help of the Federal government. Section 219 of the Appropriations Act of 1999 requires that Owners provide at least a 150 day notice of their intent to prepay/terminate their mortgage to the Department of Housing and Urban Development (HUD), the State or local government and to each tenant of the housing. This letter meets that requirement by notifying you that we intend to prepay/terminate our mortgage held/insured by HUD effective on (date must be at least 150 days but not more than 270 days from the date of this letter).

Prepayment of the mortgage could result in an increase in rent collected but does **not** necessarily mean that your portion of the rent will go up.

The prepayment of the loan for this property does not have any effect on the Section 8 contract. If you live in a Section 8 project-based assisted unit under an existing Housing Assistance Payments (HAP) contract you may continue to reside in the project until the contract expires. You may be eligible to receive a Section 8 enhanced voucher when the HAP contract expires, subject to the availability of funds, and the tenant's eligibility.

If you are living in an ~~unassisted~~ non-Section 8 unit on the date upon which we prepay, you may be eligible to receive an enhanced voucher. An enhanced voucher will enable you to continue living here and to continue paying at your current rent by covering the difference between your current rent and the new market rent. In order to receive this enhanced voucher, you must be income eligible. Income eligibility requires you to be either:

- A low-income family; defined as a family whose annual income does not exceed 80 percent of the median income for the area as determined by HUD.
- A moderate-income elderly or disabled family; defined as an elderly or disabled family whose annual income is above 80 percent but does not

1 exceed 95 percent of the area median income as  
2 determined by HUD.

- 3 • A moderate-income family residing in a low vacancy  
4 area; defined as an area with a 3 percent or less  
5 vacancy rate.

6 If you choose to move from this property and are income  
7 eligible, you may be able to receive a regular rental  
8 voucher which can be used to rent another apartment  
9 elsewhere.

10

11 Please note that your rent cannot be raised for 60  
12 days after the actual date of prepayment/termination (at  
13 least 150 days from the date of this letter). After 60  
14 days, we have the right to raise the rent if it does not  
15 conflict with our current lease terms or Housing Assistance  
16 Contract. Remember, if you are already paying 30% or more  
17 of your income towards rent, the "enhanced" voucher will  
18 enable you to continue living here at your current rent  
19 level for at least one year.

20

21 I/We have notified HUD of our intent to  
22 prepay/terminate our mortgage. Within the next two (2)  
23 months you should receive an information packet from HUD  
24 detailing tenant protections and the options available to  
25 you. If you have any questions, please call **[local HUD**  
26 **office]** at **[office phone number]**.

27

28

Sincerely,

29

30

31

32

33

(Owner)

34

35 cc: HUD Hub Director

36

---

**OAHP SECOND NOTICE of OPT-OUT - 120- DAYS**

(Date)

Dear Tenant:

This letter is to notify you that we are continuing with our intent **not** to renew the current Section 8 contract when it expires as stated in the one-year notification letter provided to you on (insert date of one-year notification letter).

Since we do not intend to renew this project-based contract upon its expiration, it is our understanding that, if Congress makes funds available (which it has in the past and is expected to in the future), the Department of Housing and Urban Development will provide all eligible tenants currently residing in a Section 8 project-based assisted unit with tenant-based assistance. Unlike the current project-based Section 8 contract, Section 8 vouchers are issued to the tenants and allow them to choose the place they wish to rent. The Section 8 voucher program is administered by local Public Housing Authorities. Federal law allows you to elect to continue living at this property provided that the unit, the rent, and we, the Owners, meet the requirements of the Section 8 tenant-based assistance program. As an Owner, we will honor your right as a tenant to remain at the property on this basis as long as it continues to be offered as rental housing, provided that there is no cause for eviction under Federal, State or local law.

You will also have the opportunity to choose another development or single family house in which to move provided that the new landlord will accept the voucher and the owner and the unit meet Section 8 tenant-based program requirements.

Please remember that project-based Section 8 rental assistance will continue to be provided on your behalf until (one year from date of one-year notification letter). In addition, we may agree to a renewal of the contract with HUD, thus avoiding contract termination altogether. However, if we do not agree to a renewal, and if we continue with our intent not to renew the current Section 8 contract, as stated above, you will be contacted and provided with additional information.

If you have any questions or would like information on the Section 8 Program, the following sources may be of assistance:

1                                    Contract Administrator (if applicable)

2  
3 Name: \_\_\_\_\_

4 \_\_\_\_\_

5 Telephone Number: \_\_\_\_\_

6 \_\_\_\_\_

7                                    HUD Field Office

8  
9 Name: \_\_\_\_\_

10 \_\_\_\_\_

11 Telephone Number: \_\_\_\_\_

12 \_\_\_\_\_

13                                    HUD Web

14

15 <http://www.hud.gov> - click on "Topic Areas" and the on "Rental

16 Assistance."

17

18

19                                    Sincerely,

20

21                                    \_\_\_\_\_

22                                    \_\_\_\_\_

23                                    \_\_\_\_\_

24                                    \_\_\_\_\_

25                                    \_\_\_\_\_

26                                    \_\_\_\_\_

27

28 cc: Local HUD Office/Contract Administrator

29

30

## Physical Condition of the Property

---

### 512-1. PHYSICAL CONDITION.

The physical condition of a property and the history of a property's physical condition are important components in making the decision to renew a Section 8 contract.

The Real Estate Assessment Center (REAC) or the mortgagee performs an inspection using the REAC physical inspection protocol to determine the physical condition of a property every one to three years depending on the property's last physical inspection score.

Depending on the physical condition of a property, the contract may be renewed, abated, terminated or allowed to expire. The course of action that the PM/CA takes when deciding whether to renew the contract will depend on the score the property receives on a physical inspection report(s), and whether the Owner corrects and certifies that all of the deficiencies noted in the report and identified in the Owner's survey of the property have been corrected in an acceptable and timely manner.

### 2712-2. EXIGENT HEALTH AND SAFETY (EH&S) DEFICIENCY NOTICE AND PHYSICAL INSPECTION REPORT.

An EH&S deficiency notice or a REAC physical inspection report may affect the decision to renew, abate or terminate the contract. The PM/CA must determine if the property is in compliance with HUD's physical condition standards before renewing the contract. HUD usually does not abate a contract based on failing REAC scores unless Asset Management in Headquarters approves the action through the approval of a Compliance Disposition and Enforcement (CDE) Plan.

On November 1, 2002, the Department adopted the "Under 60 Physical Inspection Protocol". The protocol requires special action be taken should a property score under 60 on an inspection.

For information on REAC physical inspection standards and for scoring the physical condition of a property, consult the December 8, 2000, Federal Register posted on the REAC website

1 at: [www.hud.gov/offices/reac/pdf/uniform\\_stds.pdf](http://www.hud.gov/offices/reac/pdf/uniform_stds.pdf).  
2 Additional information issued establishing the protocol for  
3 oversight and treatment of properties based on physical  
4 inspection scores is posted at:  
5 <http://hudatwork.hud.gov/po/h/hm/fog/physinsp.cfm>.  
6

7 A. EH&S Deficiency Notice.

8  
9 The inspector conducting a REAC inspection may issue a  
10 Notification of Exigent Health and Safety Hazards  
11 Observed citation to the property Owner if serious  
12 deficiencies are identified that must be corrected  
13 immediately. These deficiencies are called EH&S  
14 violations.

15  
16 1. The Owner must:

- 17  
18 a. Immediately correct or mitigate EH&S  
19 deficiencies irrespective of a property's  
20 physical inspection score; and  
21  
22 b. Submit a written certification to the PM/CA  
23 within 3 business days of the date of the  
24 inspection certifying that **all** EH&S  
25 deficiencies at the project have been  
26 corrected or mitigated, not just the EH&S  
27 deficiencies cited in the Notification of EH&S  
28 report.

29  
30 2. The PM/CA must:

- 31  
32 a. Not take action to abate a contract based  
33 solely upon the issuance of an EH&S Deficiency  
34 Notice but must take into consideration the  
35 action(s) taken by the Owner to correct all of  
36 the EH&S deficiencies at the project.  
37  
38 b. Flag the Owner in the Active Partners  
39 Participation System (APPS) 2530 system if the  
40 owner does not correct or mitigate all EH&S  
41 deficiencies at the project.  
42  
43 c. Make an elective referral to the DEC or the  
44 Office of General Counsel, if at any time an  
45 Owner is uncooperative and refuses to follow  
46 the protocol on correcting EH&S deficiencies.  
47

48 B. Physical Inspection Report  
49

- 1           1.    The Owner receives a copy of the physical  
2           inspection report electronically via the internet.  
3           When a property's physical inspection score is  
4           below 60, the Owner is responsible for conducting a  
5           survey of the entire property to determine, based  
6           on the REAC's physical inspection findings, similar  
7           problems in other units.  
8
- 9           2.    The physical inspection report(s) is available to  
10          the PM/CA in the Integrated Real Estate Management  
11          System (iREMS). The PM/CA must:
  - 12           a.    Use the physical inspection report, Owner's  
13           survey of the property, Owner responses to the  
14           inspection, and any subsequent REAC inspection  
15           reports, to assess the physical condition of  
16           the property when determining whether to renew  
17           the contract.  
18
  - 19           b.    Review the iREMS administrative record for the  
20           property in concert with the recent  
21           inspections when making the decision to renew  
22           the contract. The quality of management  
23           services provided and the Owner's ability to  
24           meet all Departmental requirements must be  
25           considered. For example, a change of  
26           management could be a condition placed on the  
27           Owner before renewing the contract.  
28
- 29          3.    For inspections where the score is above 60, the  
30          PM/CA will:
  - 31           a.    Renew the contract, if the Owner has corrected  
32           or mitigated the EH&S deficiencies.  
33
  - 34           b.    Follow the procedures in Section 12-3 B,  
35           below, if the Owner has not corrected or  
36           mitigated the EH&S deficiencies.  
37
- 38          4.    For inspections where the score is below 60, the  
39          PM/CA will follow the instructions in Notice H  
40          2010-04, or current instructions, to determine the  
41          Owner's compliance with submission of the "Project  
42          Owner's Certification" within the specified  
43          timeframe and the results of re-inspection(s) of  
44          the property:
  - 45           a.    Renew the contract if the Owner is in  
46           compliance with current requirements.  
47
- 48
- 49

- 1  
2 b. Enter into a short term renewal of the  
3 contract if the Owner is not in compliance  
4 with current requirements, until a Compliance  
5 Disposition and/or Enforcement (CDE) plan is  
6 approved by the Office of Asset Management in  
7 Headquarters or other enforcement action is  
8 taken.  
9

10 ***NOTE: Short term renewals of the Section 8***  
11 ***contract may be necessary in cases where***  
12 ***enforcement action is anticipated and/or***  
13 ***consummated and until vouchers can be ordered.***  
14

15 **12-3. HUD's DECISION NOT TO RENEW THE EXPIRING CONTRACT.**  
16

- 17 A. The Hub or Program Center must follow guidance issued by  
18 Asset Management in Headquarters when a decision is made  
19 by the Hub Director or Program Center Director to not  
20 renew the contract based on a REAC physical inspection.  
21 Approval must be received from the Director, Office of  
22 Asset Management in Headquarters before the contract can  
23 be abated or allowed to expire.  
24
- 25 B. When Asset Management in Headquarters determines the  
26 contract should not be renewed, the following actions  
27 should be taken.  
28
- 29 1. If more than 120 days remain on the contract the  
30 PM/CA must:  
31
- 32 a. Notify the Owner that because the EH&S  
33 deficiencies have not been corrected and/or  
34 the inspection or re-inspection score is less  
35 than 60, a Notice of Default has been issued  
36 and that HUD intends to abate or allow the  
37 contract to expire.  
38
- 39 b. Immediately begin the process for obtaining  
40 regular Housing Choice Vouchers (HCVs)  
41 following the instructions in Notice PIH 2001-  
42 41 (HA), Section 8 Tenant-Based Assistance  
43 (Enhanced and Regular Housing Choice Vouchers)  
44 For Housing Conversion Actions - Policy and  
45 Guidance, or current guidance, allowing up to  
46 120 days for issuance of the HCVs. Notice PIH  
47 2001-41 (HA) can be found at:  
48 [http://www.hud.gov/offices/adm/hudclips/notice](http://www.hud.gov/offices/adm/hudclips/notice/s/pih/01pihnotices.cfm)  
49 [s/pih/01pihnotices.cfm](http://www.hud.gov/offices/adm/hudclips/notice/s/pih/01pihnotices.cfm).

1  
2 Attachment 4, Overview of Conversion  
3 Procedure, of this Guide also addresses the  
4 timeline for the conversion to tenant-based  
5 assistance.  
6

7 c. Monitor the processing of the vouchers with  
8 the assigned Public Housing Agency (PHA), the  
9 Office of Public and Indian Housing (PIH), and  
10 the Owner, until the vouchers have been  
11 issued.  
12

13 2. If less than 120 days remain on the contract the  
14 PM/CA must:

15  
16 a. Notify the Owner that because the EH&S  
17 deficiencies have not been corrected and/or  
18 the inspection or re-inspection score is less  
19 than 60, a Notice of Default has been issued  
20 and that HUD intends to abate the contract.  
21

22 b. Immediately begin the process for obtaining  
23 regular Housing Choice Vouchers (HCVs)  
24 following the instructions in Notice PIH 2001-  
25 41 (HA), Section 8 Tenant-Based Assistance  
26 (Enhanced and Regular Housing Choice Vouchers)  
27 *For Housing Conversion Actions - Policy and*  
28 *Guidance*, or current guidance.  
29

30 c. Enter into a short-term renewal of the  
31 contract at current rents with the Owner,  
32 using the Basic Renewal contract found in  
33 Attachment 11-1 of this Guide at current  
34 rents, or if a determination has been made as  
35 to market rents, renew at rents that do not  
36 exceed market rent.  
37

38 d. Monitor the processing of the vouchers with  
39 the assigned Public Housing Agency (PHA), PIH,  
40 and the Owner, until the vouchers have been  
41 issued.  
42

43 3. If the contract will be abated and HUD is going to  
44 relocate the tenants to other acceptable housing,  
45 the Hub/PC Director must obtain authority to  
46 conduct a relocation program from the Director of  
47 Asset Management in Headquarters. The PM should  
48 alert the appropriate Property Disposition Center

1 that a request to relocate the tenants will be  
2 submitted to the Office of Asset Management.

- 3
- 4 4. Make sure the Hub has a written disposition plan in  
5 place before abating a contract with an underlying  
6 insured or Secretary-held mortgage.
- 7
- 8 5. Terminate the contract after vouchers have been  
9 issued to eligible residents.
- 10
- 11 6. Flag the Owner in the APPS/2530 system.
- 12
- 13 7. Designate the property as troubled.
- 14

#### 15 C. Appeals

16  
17 If the Owner appeals HUD's decision to not renew the  
18 contract based on the physical inspection, or otherwise  
19 asks for relief from the physical inspection score,  
20 follow the instructions in Chapter 13, HUD's Refusal to  
21 Renew Section 8 Contract, of this Guide.

#### 22 D. iREMS Reporting Requirements.

23  
24 The PM/CA must record all activities related to bringing  
25 a property into regulatory and contractual compliance  
26 because of a REAC physical inspection in the Workload  
27 Management screen of iREMS.

- 28
- 29
- 30 1. Compliance with the EH&S and REAC physical  
31 inspection protocols must be entered as this may  
32 influence future decisions on renewal of the  
33 contract and because it is important to have a  
34 complete and accurate administrative record should  
35 HUD proceed with enforcement actions.
- 36
- 37 2. All closeout activities regarding physical  
38 inspections and any related matters must be  
39 recorded.
- 40
- 41 3. Record a project designated as troubled in the Risk  
42 Management screen, if applicable.

# Chapter Thirteen

## HUD's Refusal to Renew Section 8 Contracts

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### 513-1. HUD's REFUSAL TO RENEW A SECTION 8 CONTRACT.

Under Sections 516 and 524(a)(2) of MAHRA:

A. HUD may refuse to renew a Section 8 contract if it is determined that:

1. The Owner or Purchaser of the project has engaged in material adverse financial or managerial actions or omissions with regard to such project;
2. The Owner or Purchaser of the project has engaged in material adverse financial or managerial actions or omissions with regard to other projects of such owner or purchaser that are federally assisted or financed with a loan from, or mortgage insured or guaranteed by, an agency of the Federal Government;
3. The Owner or Purchaser of the project materially failed to follow the procedures and requirements of MAHRA after receipt of notice and opportunity to cure; or
4. The poor condition of the project cannot be remedied in a cost effective manner.

B. Material adverse financial or managerial actions or omissions include:

1. Materially violating any Federal, State, or local law or regulation with regard to the project, or any other federally assisted project, after receipt of notice and an opportunity to cure;

- 1           2.    Materially breaching a contract for assistance  
2                    under Section 8 of the United States Housing Act of  
3                    1937, as amended, after receipt of notice and an  
4                    opportunity to cure;
- 5  
6           3.    Materially violating any applicable regulatory or  
7                    other business agreement with the Secretary or a  
8                    participating administrative entity, after receipt  
9                    of notice and an opportunity to cure;
- 10  
11          4.    Repeatedly and materially violating any Federal,  
12                   State, or local law or regulation with regard to  
13                   the project or any other federally assisted  
14                   project;
- 15  
16          5.    Repeatedly and materially breaching a contract for  
17                   assistance under Section 8 of the United States  
18                   Housing Act of 1937, as amended;
- 19  
20          6.    Repeatedly and materially violating any applicable  
21                   regulatory or other agreement with the Secretary or  
22                   a participating administrative entity;
- 23  
24          7.    Repeatedly failing to make mortgage payments at  
25                   times when project income was sufficient to  
26                   maintain and operate the property;
- 27  
28          8.    Materially failing to maintain the property  
29                   according to The Uniform Physical Condition  
30                   Standards (UPCS) of 24 CFR Part 5 Subpart G and 24  
31                   CFR Part 200 Subpart P after receipt of notice and  
32                   a reasonable opportunity to cure; or
- 33  
34          9.    Committing any actions or omissions that would  
35                   warrant suspension or debarment by the Secretary.
- 36

37 **13-2.    HEADQUARTERS APPROVAL TO TERMINATE A SECTION 8 CONTRACT.**

38  
39           Any decision by the Hub Director or Program Center Director  
40           to terminate a Section 8 contract must receive approval from  
41           the Director, Office of Asset Management in Headquarters.  
42

43 **13-3.    OWNER'S APPEAL OF HUD'S REFUSAL TO RENEW A SECTION 8**  
44 **CONTRACT.**

45  
46           If HUD refuses to renew an Owner's Section 8 contract, the  
47           following appeal process shall be followed. In the case of  
48           an appeal, it is important to take all steps necessary to

1 protect the residents. This may include executing any short-  
2 term contract to complete the appeal process.

3  
4 A. The PM will:

5  
6 1. Provide a notice, in writing, to the Owner  
7 notifying them of the reason(s) for refusal to  
8 renew the Section 8 Contract.

9  
10 2. Provide a short-term renewal of the contract  
11 pending review of any appeal, if the contract is  
12 about to expire.

13  
14 B. The Owner has 30 calendar days from receipt of this  
15 notice to provide written objections to the Program  
16 Center Director or to cure the problems identified. If  
17 the Owner does not submit written objections or cure the  
18 problems identified during that period, the decision  
19 will become a final determination under Section 516(c)  
20 of MAHRA and is not subject to judicial review.

21  
22 C. If the Owner submits written objections or asserts that  
23 the problems identified have been cured, the PM will  
24 consider the matter, review the Owner's action, if any,  
25 and send the Owner a letter notifying it of the final  
26 decision to affirm, modify, or reverse the refusal to  
27 renew and setting forth the rationale for the final  
28 decision.

29  
30 D. Within 10 days of receiving the final decision, the  
31 Owner may submit a written appeal to the PM contesting  
32 the decision and requesting a conference with the Hub  
33 that has jurisdiction over the project to discuss the  
34 issues.

35  
36 E. A representative of the Hub will meet with the Owner at  
37 a mutually agreeable time, but no later than 10 calendar  
38 days after the Owner requests the meeting.

39  
40 F. If the Owner wants to provide additional information, a  
41 short but mutually agreeable deadline will be  
42 established for submission of the material.

43  
44 G. Within 20 days after the conference with the Hub, or 20  
45 days after any agreed upon extension of time for  
46 submission of additional materials, the Hub will send  
47 the Owner a letter advising it of the decision to  
48 reverse, modify or affirm the original decision.

1  
2 H. The Hub Director or his/her designee will review any  
3 appeal, conduct the conference, and issue the written  
4 decision. The official designated will be one who was  
5 not directly involved in making the decision being  
6 appealed. The reviewing official's decision is a final  
7 determination and is not subject to judicial review.  
8

9 I. Based on the outcome of the appeal, the PM will:

10  
11 1. Renew the contract if the Owner subsequently  
12 becomes compliant or prevails with the appeal and  
13 the Hub or Program Center changes its decision to  
14 terminate the contract.  
15

16 2. Begin the process for obtaining regular Housing  
17 Choice Vouchers (HCVs) if the Owner does not  
18 prevail in their appeal and the Hub or Program  
19 Center upholds its decision to terminate the  
20 contract. The instructions in Notice PIH 2001-41  
21 (HA), *Section 8 Tenant-Based Assistance (Enhanced  
22 and Regular Housing Choice vouchers) for Housing  
23 conversion actions - Policy and Guidance, or any  
24 successor notice, must be followed. Notice PIH  
25 2001-41 (HA) can be found at:*

26 <http://www.hud.gov/offices/adm/hudclips/notices/pih/01pihnotices.cfm>.  
27  
28

29 3. Monitor the processing of the vouchers with the  
30 assigned PM/CA, PIH and the Owner, until the  
31 vouchers have been issued.  
32

33 4. Terminate the contract after vouchers have been  
34 issued to the eligible residents.  
35

36 **13-4. HUD's TENANT NOTIFICATION OF REFUSAL TO RENEW.**

37  
38 In accordance with sections 516(d) and 524(a)(2) of MAHRA, in  
39 cases where HUD elects not to renew the Section 8 contract  
40 due to any of the conditions noted in Section 13-1, above,  
41 the Program Center shall notify, in writing, all tenants in a  
42 project who are receiving Section 8 assistance, of HUD's  
43 decision not to renew the project's Section 8 contract.  
44

45 Subject to the availability of amounts provided in advance in  
46 Appropriation Acts, the Section 8 tenant shall be provided  
47 with regular Housing Choice Vouchers (HCV) tenant-based

1 assistance and reasonable moving expenses, as determined by  
2 the Secretary.

# Chapter Fifteen

## PRESERVATION OF AFFORDABLE HOUSING

---

### 415-1. OVERVIEW.

One of HUD's primary goals is the long-term preservation of affordable housing. This Chapter gives guidance on preservation efforts to save affordable housing by encouraging the repair/rehabilitation and/or the sale of multifamily Section 8 projects. Throughout this Chapter, the two will be referred to as the Capital Repair Program and the Transfer Program, respectively. This Chapter has been broken into four parts. Part One addresses the general criteria for both programs, Part Two addresses the Capital Repairs Program, Part Three addresses the Transfer Program and Part Four addresses Blended Transactions.

### **PART ONE: GENERAL CRITERIA FOR BOTH CAPITAL REPAIRS, TRANSFER AND BLENDED PROGRAMS**

### 15-2. APPLICABILITY.

- A. The Capital Repairs and the Transfer programs are available to most multifamily housing projects with either:
1. A non-MAHRA Section 8 contract that ends in HUD's current fiscal year; or
  2. A 524(a) or (b) MAHRA Section 8 contract.
- B. Owners with the following Section 8 contracts **cannot** apply:
1. Section 8 Moderate Rehabilitation projects with contracts administered by the Office of Public and Indian Housing.

2. Section 8 Moderate Rehabilitation Single Room Occupancy Projects with contracts administered by the Office of Community Planning and Development.
3. Section 514 and section 515 OAHF debt restructuring contracts.
4. Non-MAHRA Section 8 contracts expiring in another fiscal year.
5. Section 524 (e) (1) MAHRA Demo Contracts.
6. Section 524(e) (2) MAHRA Preservation Contracts.

1515-3. **BASIC REQUIREMENTS.**

- A. The for profit or nonprofit Owner/Purchaser **must** enter into an Option Two, Contract Renewal for Other Projects with Current Rents at or Below Comparable Market Rents. (See Chapter 4 for details.)
- B. The Owner/Purchaser agrees to accept an Option Two Section 8 contract with a term based on the greater of:
  1. Twenty years, plus, if applicable, the remaining term of any contract terminated under C.1. below; or
  2. The remaining term of an existing recorded Use Agreement plus twenty years, subject to annual appropriations.
- C. Terminating an existing Section 8 contract.
  1. HUD and an Owner may terminate, by mutual agreement, most existing Section 524 MAHRA Contracts to take advantage of these programs.
  2. The following contracts **cannot** be terminated early to take advantage of these programs:
    - Non-MAHRA contracts expiring in another fiscal year;
    - Section 8 Moderate Rehabilitation contracts;
    - Section 8 Moderate Rehabilitation Single Room Occupancy contracts;
    - Section 514 and section 515 MAHRA contracts;
    - Section 524(e) (1) MAHRA Demo contracts; or
    - Section 524(e) (2) MAHRA Preservation contracts

1 D. Combine Multiple Contracts or Stages.

- 2  
3 1. As a **general rule**, Owners **must** combine multiple  
4 contracts or stages.  
5  
6 2. **Exceptions** to the general rule are found in Section  
7 2-10.F of the Guide.  
8

9 E. The Owner/Purchaser **must** provide:

- 10  
11 1. A HUD-approved budget and the proposed budget-based  
12 rent increase not to exceed comparable market rents  
13 to pay for costs associated with the transaction  
14 including any proposed new debt.  
15

16 The budget must be prepared using the instructions  
17 in Section 2-15.  
18

- 19 2. A RCS that assumes all repair and/or rehabilitation  
20 work was completed as of the date of the RCS.  
21

22 The concept of prospective rents, forecasting rents  
23 into the future, is not acceptable.  
24

- 25 3. A detailed description of the proposed transaction  
26 including but not limited to:  
27

28 a. For the Transfer Program:  
29

- 30 1) A letter of intent to sell the project to  
31 an eligible entity;  
32  
33 2) Cost of recapitalizing the replacement  
34 reserve account, which is part of the  
35 Project Capital Needs Assessment (PCNA);  
36 and  
37  
38 3) Any proposed new financing.  
39

40 b. For the Capital Repairs Program the cost of:  
41

- 42 1) Rehabilitation (e.g., lead-based paint  
43 abatement, energy efficient equipment,  
44 repairs, etc.);  
45  
46 2) Replacement reserve escrow; or  
47 Substantial rehabilitation; and  
48  
49 3) Any proposed new financing.

1 c. Blended transaction combines components of  
2 both the transfer and the capital advance  
3 programs.  
4

5 4. A PCNA or Comprehensive Needs Assessment (CNA) as  
6 discussed in Section 15-6.  
7

8 5. A detailed sources and uses funding statement.  
9

10 F. Upon receiving the Owner/Purchaser's submission, the  
11 PM/CA:

12  
13 1. Checks the Owner/Purchaser's RCS for completeness  
14 and timeliness;

15  
16 2. Reviews the exhibits; for example, the proposed  
17 repairs and change of ownership issues, as part of  
18 PM/CA's underwriting determination of the proposed  
19 rent increase; and  
20

21 3. Informs the Owner of the new rents.  
22

23 **15-4. UNASSISTED UNITS IN A HUD PROJECT.**  
24

25 A. In for-profit transactions the increased Section 8 rents  
26 cannot cover the costs of repair or rehabilitation to  
27 the unassisted units.  
28

29 B. In nonprofit transactions the increased Section 8 rents  
30 can cover the costs of repair or rehabilitation to the  
31 unassisted units.  
32

33 C. To protect low and moderate income tenants who live in  
34 units that are subsidized through programs other than  
35 Section 8, including Rent Supplement, RAP, BMIR, and  
36 Section 236 properties (refer to Handbook 4350.3 REV-1,  
37 Occupancy Requirements of Subsidized Multifamily Housing  
38 Programs) rents may be increased by no more than 10  
39 percent as a result of the transaction.  
40

41 D. Owners who raise these rents are reminded that they must  
42 comply with the notification requirements in 24 CFR Part  
43 245.  
44  
45  
46  
47  
48

1 15-5. PROJECT NEEDS ASSESSMENT AND INCREASED DEPOSITS TO THE  
2 REPLACEMENT RESERVE ACCOUNT.  
3

4 A. The Owner/Purchaser's mortgagee must submit a PCNA  
5 prepared in accordance with Appendix 15-3. The PCNA  
6 includes:

7  
8 1. A Physical Inspection Report (PIR) containing  
9 detailed information about:

10  
11 a. The condition of the project.

12  
13 b. Identification of the project's immediate  
14 repair needs and expected repair, replacement,  
15 and major maintenance needs over various time  
16 periods:

- 17  
18 • The "near-term" from the transaction through  
19 the tenth year;  
20 • The "long-term" from the eleventh year  
21 through the twentieth year of the  
22 transaction; and  
23 • The "remainder" from the twenty-first year  
24 until some future point in time. For  
25 example: two years beyond the maturity date  
26 of a note and mortgage.

27  
28 c. An estimated cost, adjusted for inflation, to  
29 complete the needs identified.

30  
31 2. A Statement of Resources and Needs, which  
32 discusses:

33  
34 a. The Mortgagee's review of and possible  
35 adjustment to the PIR.

36  
37 b. All critical (health and safety) repairs must  
38 be completed before final loan closing.

39  
40 c. If applicable, non-critical repairs may be  
41 completed after final loan closing.

42  
43 Noncritical repairs are those that will not:

44  
45 1) Endanger the safety and well-being of  
46 tenants, visitors and passersby,

47  
48 2) Adversely affect ingress or egress, or

1 3) Prevent the project from reaching  
2 sustaining occupancy.

3  
4 d. Recommendations to HUD regarding:

5  
6 1) The amount of the initial and monthly  
7 deposits to the replacement reserve.

8  
9 2) How the monthly deposit to the  
10 replacement reserve will be funded and  
11 its impact on the long-term viability of  
12 the project. This should detail the  
13 level monthly payment.

14  
15 ***Note: Attachment 15-3 discusses the option of***  
16 ***alternative funding schedule for the***  
17 ***replacement reserve. This option is not***  
18 ***available for projects with Section 8***  
19 ***assistance.***

20  
21 B. If the transaction does not include new debt, the  
22 Owner/Purchaser assumes the role of the mortgagee  
23 discussed in Section A above.

24  
25 C. Those projects that are required to submit a CNA may  
26 submit a current CNA in lieu of a PCNA. The CNA must  
27 have been updated or resubmitted within the previous 12  
28 months.

29  
30 **15-6. HUD MORTGAGE INSURANCE PROGRAMS.**

31  
32 A. An Owner/Purchaser may use the Department's mortgage  
33 insurance programs with the Capital Repairs and Transfer  
34 Programs.

35  
36 B. Davis-Bacon prevailing wage rate requirements are  
37 applicable under certain HUD mortgage insurance  
38 programs.

39  
40 ***Note: Performance of rehabilitation under Appendix 15-***  
41 ***2, PROJECT-BASED SECTION 8 HOUSING ASSISTANCE PAYMENTS -***  
42 ***Addendum to RENEWAL CONTRACT, involving renewal of a***  
43 ***Section 8 contract along with conventional financing***  
44 ***does not trigger application of Davis-Bacon***  
45 ***requirements.***  
46

## PART TWO: CAPITAL REPAIRS PROGRAM

### 315-7. GENERAL.

The Capital Repairs Program is intended to cover the costs of:

- A. Rehabilitation (e.g., lead-based paint abatement, energy efficient improvements, repairs, etc.);
- B. Recapitalization of the replacement reserve escrow; and
- C. New financing (including related transactional and soft costs) needed to cover the cost of repairs and rehabilitation.

### 1715-8. ADDITIONAL ACCEPTABILITY REQUIREMENTS FOR THE OWNER.

The Owner must be:

- A. In good standing and not subject to administrative sanctions (i.e., debarment, suspension, unresolved adverse audit findings or has failed to correct material violations of HUD rules);
- B. In compliance with the terms of the current Regulatory Agreement, Note, and Mortgage; and
- C. Current in debt service and all payments, including the Reserve Fund for Replacement (or current under a workout agreement).

***Note: If the current Owner is subject to administrative sanctions, they may still participate in the Transfer Program. Such Owners may not receive funds from the transaction until all costs associated with bringing the project to an acceptable standard are covered.***

### 3915-9. PROJECT ELIBIGILITY.

The PM/CA checks that if applicable, a substantial rehabilitation proposal must:

- Be in compliance with HUD's environmental regulations at 24 CFR Part 50.
- Have a relocation plan for the residents during the rehabilitation acceptable to HUD.

115-10. **EFFECTIVE DATE OF THE NEW RENTS FOR THE CAPITAL REPAIRS PROGRAM.**

Upon completion of processing, the PM/CA will notify the Owner/Purchaser of the maximum new rent levels and when the Owner/Purchaser will receive the increased rents.

- A. Capital repairs that do not exceed \$6,500 per unit as adjusted by the local high cost factor, the finalized new rents will not be available until the PCNA is completed, financing is approved and, if applicable, the critical repairs are complete. (See Appendix 15-3, Project Capital Needs Assessment and Replacement Reserve Escrow.)
- B. Capital repairs that exceed \$6,500 per unit as adjusted by the local high cost factor, the final rents will not be available until all the work is completed and accepted. (See Appendix 15-2, PROJECT-BASED SECTION 8 HOUSING ASSISTANCE PAYMENTS - Addendum to RENEWAL CONTRACT.)

**PART THREE: TRANSFER PROGRAM**

2515-11. **GENERAL.**

Under the Transfer Program, HUD will permit a rent increase, provided the new rents do not exceed comparable market rent, to facilitate a change in ownership which may include but not be limited to:

- A. The recapitalization of the replacement reserve escrow; and
- B. The cost of any new financing that may be required.

3715-12. **ADDITIONAL ACCEPTABILITY REQUIREMENTS FOR THE PURCHASER.**

- A. The Purchaser must have managerial experience in owning and/or operating multifamily projects or significant activities related to the provision of decent housing that is affordable to very low-, low-, and/or moderate-income families.
- B. If the Purchaser is a nonprofit entity, it must have ties to the community. National or regional nonprofit organizations that are not active in the community may meet this requirement by:

- 1           1.    Entering into a joint venture with a local  
2                    nonprofit organization; or
- 3
- 4           2.    Obtaining the support of a majority of the  
5                    residents living in the project.
- 6

7 **715-13.   PROJECT ELIGIBILITY.**

8  
9           The Transfer Program without repair or rehabilitation  
10           requires that the project have a physical inspection  
11           performed using the Uniform Physical Condition Standards [24  
12           CFR Part 5] by the REAC with a score of 60 or above with no  
13           uncorrected Exigent Health and Safety (EH&S) violations.  
14           Additionally, the property must **not** be designated as a  
15           "troubled project."  
16

17 **715-14.   TRANSFER OF PHYSICAL ASSETS (TPA) FOR HUD INSURED TRANSACTION.**

18  
19           To encourage transfers that preserve long term affordability,  
20           HUD will waive the transfer fee.  Follow outstanding TPA  
21           instructions found in HUD Handbook 4350.1, Asset Management  
22           and Project Servicing.  
23

24 **715-15.   RESIDUAL RECEIPTS AND REPLACEMENT RESERVE ACCOUNTS.**

- 25
- 26           A.    With an old regulation Section 8 contract or a LMSA  
27                    Section 8 contract, the Seller may keep the funds in  
28                    both the residual receipts and reserve for replacement  
29                    accounts when the HUD-insured mortgage is prepaid or is  
30                    voluntarily terminated.  Therefore, the Purchaser must  
31                    replenish the reserve for replacement account.
- 32
- 33           B.    With a new regulation Section 8 Contract, the funds in  
34                    both the residual receipts and reserve for replacement  
35                    accounts **must** stay with the project.  Furthermore, the  
36                    Purchaser must establish the adequacy of the reserve for  
37                    replacement account.
- 38

39 **715-16.   EFFECTIVE DATE OF THE NEW RENTS FOR THE TRANSFER PROGRAM.**

40  
41           Upon completion of the processing, the PM/CA will notify the  
42           Owner/Purchaser of the maximum new rent levels and when the  
43           Owner/Purchaser will receive the increased rents.  
44

45           The final new rents will be effective once the transfer is  
46           approved and completed.  
47  
48

1 **PART FOUR: Blended Transaction Program**

2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12

315-17. WHAT IS A BLENDED TRANSACTION?

- A. A blended transaction contains components of both the Transfer and Capital Repairs programs.
- B. The rents will be adjusted after the strictest requirement found in either in Section 15-10 or 15-16 above has been met.

**ACRONYMS USED IN THIS GUIDE**

1		
2		
3	AAF	Annual Adjustment Factor
4		
5	ACC	Annual Contributions Contract
6		
7	AHAP	Agreement to Enter into a Housing Payments
8		Contract
9		
10	AMI	Area Median Income
11		
12	APPS	Active Partners Participation System
13		
14	BMIR	Below Market Interest Rate
15		
16	CA	Contract Administrator
17		
18	CDE	Compliance Disposition Enforcement Plan
19		
20	CFR	Code of Federal Regulations
21		
22	CNA	Comprehensive Needs Assessment
23		
24	CPD	Office of Community Planning and Development
25		
26	CRN	Contingent Repayment Note
27		
28	DEC	Departmental Enforcement Center
29		
30	DEMO	Portfolio Reengineering Demonstration Program
31		
32	DRS	Debt Restructuring Specialist
33		
34	EH&S	Exigent Health and Safety
35		
36	ELIHPA	Emergency Low-Income Housing Preservation Act
37		
38	EMAS	Economic and Marketing Analysis Section
39		
40	FHA	Federal Housing Administration
41		
42	FMR	Fair Market Rents
43		
44	FY	Fiscal Year
45		
46	HAP	Housing Assistance Payment
47		

---

1	HFA	Housing Finance Agency
2		
3	HCV	Housing Choice Vouchers
4		
5	LIHPRHA	Low-Income Housing Preservation and Resident
6		Homeownership Act
7		
8	LMSA	Loan Management Set Aside
9		
10	iREMS	Integrated Real Estate Management System
11		
12	MAHRA	Multifamily Assisted Housing Reform and
13		Affordability Act
14		
15	MFI	Median Family Income
16		
17	MIP	Mortgagee in Possession
18		
19	Mod Rehab	Moderate Rehabilitation
20		
21	MOR	Management Occupancy Review
22		
23	MRN	Mortgage Restructuring Note
24		
25	mu2b	Mark-up-to-budget
26		
27	mu2m	Mark-up-to-market
28		
29	OAHP	Office of Affordable Housing Preservation
30		
31	OCAF	Operating Cost Adjustments Factor
32		
33	OGC	Office of General Counsel
34		
35	OMHAR	Office of Multifamily Housing Assistance
36		Restructuring
37		
38	PAE	Participating Administrative Entity
39		
40	PBCA	Performance Based Contract Administrator
41		
42	PCNA	Project Capital Needs Assessment
43		

---

1	PD	Property Disposition
2		
3	PHA	Public Housing Agency (as defined in the United
4		States Housing Act of 1937. 42 U.S.C. 1437 et
5		seq.).
6		
7	PIH	Office of Public and Indian Housing
8		
9	PM	Housing Project Manager
10		
11	PMSA	Primary Metropolitan Statistical Area
12		
13	POA	Plan of Action
14		
15	QHWRA	Quality Housing and Work Responsibility Act of
16		1998
17		
18	RCS	Rent Comparability Study
19		
20	REAC	Real Estate Assessment Center
21		
22	RFR	Reserve for Replacement Account
23		
24	RHS	Rural Housing Service - 515/8 Projects
25		
26	SRO	Single Room Occupancy
27		
28	TPA	Transfer of Physical Asset
29		
30	TRACS	Tenant Rental Assistance Certification System
31		
32	TTP	Total tenant payment

**GLOSSARY OF TERMS**

1  
2  
3 **Adjusted Rents.** Existing rents under the expiring contract, as  
4 adjusted by an operating cost adjustment factor (OCAF) established  
5 by the Secretary (which shall not result in a negative adjustment)  
6 or adjusted by budget-based method.

7  
8 **Affiliate.** Any person or entity (including, but not limited to, a  
9 general partner or managing member, or an officer of either) that  
10 controls an Owner or purchaser, is controlled by an Owner or  
11 purchaser, or is under common control with the Owner or purchaser.

12  
13 **Annual Interest Subsidy.** For Section 236 properties, the Annual  
14 Interest Subsidy equals the current Annual Interest Reduction  
15 Payment Amount, as defined in 24 CFR 236.520. For other properties,  
16 the Annual Interest Subsidy equals the unpaid principal balance of  
17 the subsidized loan multiplied by the difference between the annual  
18 original interest rate (7% if original market note rate is not  
19 available) and the annual subsidized interest rate (1% for Section  
20 515, 3% for Section 221(d)(3) BMIR).

21  
22 **Annual Eligible Interest Subsidy.** The Annual Interest Subsidy  
23 multiplied by the percentage of the total units in the property that  
24 are in the Section 8 contract(s) eligible under the Mark-Up-To-  
25 Market Procedure.

26  
27 **Assignment as Security.** The creation of a security interest in the  
28 HAP Contract, and a transfer of such security interest to a  
29 successor secured party.

30  
31 **Assisted Dwelling Unit.** A unit that is in a covered project and  
32 receives project-based rental assistance.

33  
34 **Budget-Based Increase.** Rent increase used to promote the efficient  
35 management and continued financial viability of projects when  
36 current rent levels are not sufficient to cover operating costs.

37  
38 **Capped Comparable Gross Rents.** If the Final Comparable Gross Rent  
39 Potential is less than 150% of the FMR Potential, then the Capped  
40 Comparable Gross Rents are the Final Comparable Gross Rents. If the  
41 Final Comparable Gross Rent Potential is not less than 150% of the  
42 FMR Potential, then the Capped Comparable Gross Rents are 150% of  
43 the FMRs. The lesser of comparable rents or 150 percent of FMR test  
44 applies only to entitlement mu2m, i.e., under section 524(a)(4)(A)  
45 of MAHRA. It does not apply to discretionary mu2m, i.e., under  
46 section 524(a)(4)(C) of MAHRA.

1 **Capped Comparable Gross Rent Potential.** The lesser of the Final  
2 Comparable Gross Rent Potential or 150% of the FMR. The lesser of  
3 comparable rents or 150 percent of FMR test applies only to  
4 entitlement mu2m, i.e., under section 524(a)(4)(A) of MAHRA. It  
5 does not apply to discretionary mu2m, i.e., under section  
6 524(a)(4)(C) of MAHRA.

7  
8 **Comparable Market Rents.** Comparable market rents are the rents  
9 charged for properties determined to be comparable properties, which  
10 means, properties in the same market areas that are similar to the  
11 eligible multifamily housing project as to neighborhood (including  
12 risk of crime), type of location, access, street appeal, age,  
13 property size, apartment mix, physical configuration, property and  
14 unit amenities, utilities, and other relevant characteristics; and  
15 are not receiving project-based assistance.

16  
17 **Comparability Study.** Also known as a Rent Comparability Study  
18 (RCS). A method of estimating market rent for the Section 8 units  
19 in the subject property. The appraiser derives an indicated  
20 (market) rent by comparing the Section 8 units with similar, but  
21 unsubsidized properties, applying appropriate units of comparison  
22 and making adjustments as appropriate to the comparable rents. The  
23 results should then be correlated into an indicated market rent.  
24 The study must include all Section 8 units in the subject property.

25  
26 **Comparability Analysis.** This analysis summarizes the results of the  
27 Comparability Study, however, only those unit types in the expiring  
28 contract will be considered in this report. The report will include  
29 an estimate of income generated by the Section 8 unit types as  
30 though they were generating income as market units.

31  
32 **Community-based nonprofit organization.** A private nonprofit  
33 organization that 1) is organized under State or local laws, 2)  
34 provides no part of net income to anyone, and 3) has a long-term  
35 record of service in providing or financing quality affordable  
36 housing for low-income families through relationships with public  
37 entities.

38  
39 **Contract rent.** The total monthly rent to owner for a contract unit,  
40 including the tenant rent (the portion of rent to owner paid by the  
41 assisted family).

42  
43 **Contract units.** The units in the Project that are identified in  
44 **Exhibit A** by size and applicable contract rents.

45  
46 **Control.** Direct or indirect power (under contract, equity  
47 ownership, the right to vote or determine a vote, or otherwise) to

1 direct the financial, legal, beneficial or other interests of the  
2 Owner or purchaser.

3  
4 **Coterminous.** This term describes contracts terms or stages of  
5 contracts that are brought into alignment so that they expire on the  
6 same date.

7  
8 **Covered Project.** Any multifamily housing project that consists of  
9 more than 4 dwelling units and receives project-based assistance.

10  
11 **Current Section 8 Rents.** The rents specified by the Section 8  
12 contract(s).

13  
14 **Current Section 8 Rent Potential.** The sum of all current Section 8  
15 Rents for the units in the Section 8 contract(s).

16  
17 **Current Section 8 Gross Rents.** The Current Section 8 Rents plus the  
18 applicable Utility Allowances, if any.

19  
20 **Current Section 8 Gross Rent Potential.** The sum of all Current  
21 Section 8 Gross Rents under the Section 8 contract(s).\_

22  
23 **Eligible Multifamily Housing Project.** A property that consists of  
24 more than 4 dwelling units and receives project-based assistance(as  
25 distinguished from the definition of this term currently located in  
26 section 512(2) of MAHRA for purposes of mark-to-market debt  
27 restructuring).

28  
29 **Enhanced Vouchers.** Vouchers that are worth the market value of the  
30 unit, provided that the Local Housing Authority approves the rent as  
31 reasonable.

32  
33 **Expiring Contract.** Project-based assistance contract attached to an  
34 eligible multifamily housing project which, under the terms of the  
35 contract, will expire.

36  
37 **Fair Market Rent (FMR).** The rent, including the cost of utilities  
38 (except telephone), that would be required to be paid in the housing  
39 market area to obtain privately owned, existing, decent, safe and  
40 sanitary rental housing of modest (non-luxury) nature with suitable  
41 amenities. Fair Market Rents for existing housing are established  
42 by HUD for housing units of varying sizes (number of bedrooms), and  
43 are published in the Federal Register in accordance with 24 CFR part  
44 888.

45  
46 **Final Comparable Gross Rents.** The Final Comparable Market Rents  
47 plus the applicable Utility Allowances, if any.

1  
2 **Final Comparable Gross Rent Potential.** The sum of all Final  
3 Comparable Gross Rents for units in the Section 8 contract(s).

4  
5 **Final Comparable Market Rents.** The rents that will be used by HUD  
6 as the comparable market rents for determining rent increases under  
7 the Mark-Up-To-Market Procedure. The Final Comparable Market rents  
8 will be set based on the comparison of the Owner Comparable Market  
9 Rents and the HUD Comparable Market Rents.

10  
11 **Final Comparable Rent Potential.** The sum of all Final Comparable  
12 Market Rents for units in the Section 8 contract(s).

13  
14 **FMR Potential.** The sum of FMRs for all units in the Section 8  
15 contract(s).

16  
17 **Full Assignment.** An assignment of the HAP contract other than an  
18 assignment as security. "Full Assignment" includes a sale,  
19 conveyance or other transfer of the HAP Contract, voluntary or  
20 involuntary, to a successor in interest.

21  
22 **HAP Contract.** A housing assistance payments contract between HUD  
23 (or the Housing Agency) and the Owner. HUD (or the Housing Agency)  
24 pays housing assistance payments to the Owner in accordance with the  
25 HAP contract.

26  
27 **Housing Conversion Actions.** Housing conversion actions include  
28 Project-based Section 8 opt-out, preservation prepayment, HUD  
29 enforcement actions and HUD property disposition (PD).

30  
31 **HUD Comparable Gross Rents.** The HUD Comparable Market rents plus  
32 the applicable Utility Allowances, if any.

33  
34 **HUD Comparable Gross Rent Potential.** The sum of all HUD Comparable  
35 Gross Rents for the units in the Section 8 contract(s).

36  
37 **HUD Comparable Market Rents.** The rents specified by the  
38 comparability study performed by the HUD appraiser.

39  
40 **HUD Comparable Rent Potential.** The sum of all HUD Comparable Market  
41 Rents for the units in the Section 8 contract(s).

42  
43 **HUD Section 236 Fair Market Rental Charge.** The rental charge in a  
44 Section 236 project based upon operating it with payments to  
45 principal and interest under the actual mortgage interest rate, and  
46 also including payment of the mortgage insurance premium.

1 **Interest Subsidy Adjustment Factor.** The Interest Subsidy Adjustment  
2 Factor is the Annual Capped Comparable Gross Rent Potential minus  
3 the Annual Eligible Interest Subsidy, all divided by the annual  
4 Capped Comparable Gross Rent Potential.

5  
6 **Initial Renewal.** The first renewal of a project's contract or stage  
7 that is processed under Section 524 of MAHRA.

8  
9 **MAHRA.** Multifamily Assisted Housing Reform and Affordability Act of  
10 1997.

11  
12 **Market Rents.** Comparable market rents for the market area.

13  
14 **New Authorized Gross Rents.** The New Authorized Rents plus the  
15 applicable Utility Allowances, if any.

16  
17 **New Authorized Gross Rent Potential.** The sum of all New Authorized  
18 Gross Rents for the units in the Section 8 contract(s).

19  
20 **New Authorized Rents.** For Section 236, Section 221(d)(3) BMIR and  
21 Section 515 properties, the rents calculated by following the  
22 existing guidance under Handbook 4350.1 Chapter 7 using a budget  
23 submitted by the Owner, if any.

24  
25 **New Authorized Rent Potential.** The sum of all new Authorized Rents  
26 for the units in the Section 8 contract(s).

27  
28 **New Regulation Contracts:** Properties where HUD issued the  
29 "notification of selection" on or after November 5, 1979 for the  
30 Section 8 New Construction Program or on or after February 20, 1980  
31 for the Substantial Rehabilitation Program were intended to be new  
32 regulation projects and should have HAP contracts that contain  
33 restrictions as described in existing 24 CFR Parts 880 and 881.  
34 Properties that submitted an "initial application" on or after  
35 February 29, 1980 to a State Agency were intended to be new  
36 regulation projects and should have HAP contracts that contain  
37 restrictions as described in existing 24 CFR Part 883.

38  
39 **New Section 8 Gross Rents.** The new gross rents for the Section 8  
40 contract(s).

41  
42 **New Section 8 Gross Rent Potential.** The sum of all New Section 8  
43 Gross Rents for the units in the Section 8 contract(s).

44  
45 **New Section 8 Rents.** The New Section 8 Gross Rents minus the  
46 applicable Utility Allowances, if any.

1 **New Section 8 Rent Potential.** The sum of all New Section 8 for the  
2 units in the Section 8 contract(s).

3  
4 **Use Agreement.** A document governing use and that restricts a  
5 project's rents to a level that is less than market.

6  
7 **OCAF. Operating Cost Adjustment Factor.** A factor that is  
8 established by HUD, which may not be negative, that is applied to  
9 the existing contract rent (less the portion of the rent that is  
10 paid for debt service).

11  
12 **OAHP-lite/Haircut.** Request for contract renewal without  
13 restructuring, with rents marked down to market.

14  
15 **Old Regulation Contracts.** Properties where HUD issued the  
16 "notification of selection" before November 5, 1979 for the Section  
17 8 New Construction Program or before February 20, 1980 for the  
18 Substantial Rehabilitation Program are considered old regulation  
19 projects and should have HAP contracts that do not contain  
20 restrictions as described in existing 24 CFR Parts 880 and 881.  
21 Properties that submitted an "initial application" before February  
22 29, 1980 to a State Agency are considered old regulation projects  
23 and should have HAP contracts that do not contain restrictions as  
24 described in existing 24 CFR Part 883.

25  
26 **Owner.** Any private person or entity, including a cooperative, an  
27 agency of the Federal Government or a public housing agency, having  
28 the legal right to lease or sublease dwelling units.

29  
30 **Owner Comparable Gross Rents.** The Owner Comparable Market Rents  
31 plus the applicable Utility Allowances, if any.

32  
33 **Owner Comparable Gross Rent Potential.** The sum of all Owner  
34 Comparable Gross rents for units under the expiring Section 8  
35 contract(s).

36  
37 **Owner Comparable Market Rents.** The rents specified by the  
38 comparability study submitted by the Owner.

39  
40 **Owner Comparable Rent Potential.** The sum of all Owner Comparable  
41 Markets Rents for the units in the Section 8 contract(s).

42  
43 **Participating Administrative Entity.** A public agency (including  
44 State housing finance agency or a local housing agency), a nonprofit  
45 organization, or any other entity (including a law firm or an  
46 accounting firm) or a combination of such entities, that meets the  
47 requirements under Section 513(b) of MAHRA.

- 1  
2 **Preservation Project.** A project that is subject to a HUD-approved  
3 Plan of Action under the Emergency Low -Income Housing Preservation  
4 Act of 1987 (12 U.S.C. § 17151 note) or the Low-Income Housing  
5 Preservation and Resident Homeownership Act of 1990 (12 U.S.C. §  
6 4113).  
7
- 8 **Project-Based Assistance.** Rental assistance that is attached to a  
9 multifamily housing project.  
10
- 11 **Purchaser.** Any private person or entity, including a cooperative,  
12 an agency of the Federal Government, or a public housing agency,  
13 that, upon purchase of the project, would have the legal right to  
14 lease or sublease dwelling units in the project, and also means an  
15 affiliate of the purchaser.  
16
- 17 **Renewal.** Replacement of an expiring Federal rental contract with a  
18 new contract under Section 8 of the United States Housing Act of  
19 1937, consistent with the requirements of Subtitle A of MAHRA.  
20
- 21 **Rent Comparability Study (RCS).** See Comparability Study.  
22
- 23 **Secured Party.** A party, including the lender, and successors to the  
24 lender's security interest, that holds a security interest in the  
25 HAP contract.  
26
- 27 **Stub Contract.** Short-term renewals for less than 12 months, which  
28 is designed to protect the tenants and to align multiple contracts  
29 or stages in a project.  
30
- 31 **Subsequent Renewal.** The renewal of an expiring contract that was  
32 initially renewed under 524 of MAHRA.  
33
- 34 **Tenant-Based Assistance.** Rental assistance that is not project-  
35 based assistance and provides for eligible families to select  
36 suitable housing.  
37
- 38 **Termination.** Expiration of the Section 8 contract or an owner's  
39 refusal to renew the contract.









# Section 8 Units in Contracts Eligible for Mark-Up-To Market

<b>Property:</b>	<b>Blue Apartments</b>
<b>City/State:</b>	<b>Anytown USA</b>
<b>Section 8 #:</b>	<b>999-99999</b>
<b>Total Units in Property:</b>	<b>100</b>

**Inputs Worksheet    Enter data in shaded cells**

(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)	(I)	(J)
Unit Type	# of Units	Current Section 8 Rents	Utility Allowance	Current Section 8 Gross Rents (C + D)	Owner Comparable Market Rents	Owner Comparable Gross Rents (F + D)	HUD Comparable Market Rents	HUD Comparable Gross Rents (H + D)	Fair Market Rents
One Bedrooms	15	600	50	650	710	760	685	735	700
Two Bedrooms	30	650	75	725	775	850	720	795	750
Three Bedrooms	25	700	100	800	780	880	750	850	775
				0		0		0	
				0		0		0	
				0		0		0	
				0		0		0	
				0		0		0	
				0		0		0	
				0		0		0	
				0		0		0	
				0		0		0	
				0		0		0	
				0		0		0	
				0		0		0	
				0		0		0	
<b>Monthly Total</b>	70	46,000	5,500	51,500	53,400	58,900	50,625	56,125	52,375
<b>Annual Total</b>	70	552,000	66,000	618,000	640,800	706,800	607,500	673,500	628,500





