

# **Section 8 Renewal Policy Guidebook**

## **Guidance for the Renewal of Project-Based Section 8 HAP Contracts**



Office of Multifamily Housing

The information collection requirements contained in this document are pending approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB control number 2502-0507 and 2502-0587. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

May 1, 2023  
Effective Date

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## Introduction

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Since the mid-1990s, when long-term project-based Section 8 HAP contracts began expiring, Section 8 policy has evolved dramatically. For several years, HUD issued notices and other guidance in a piecemeal fashion to implement new policy related to renewing expiring Section 8 HAP contracts and preserving affordable housing.

To make Section 8 policy more effective and accessible for HUD's partners, this Guide provides comprehensive guidance for renewing expiring Section 8 HAP contracts. It incorporates the procedures contained in previous Section 8 expiring contract Housing Notices, along with a number of changes. As a living document, over time this Guide is expected to contain nearly all of the information related to the renewal of expiring Section 8 HAP contracts.

To respond to the evolving nature of Section 8 renewal legislation and policy, the format of this Guide provides the opportunity to accommodate changes through revisions of one or more sections without a complete revision of the entire document. As is the case with HUD Handbooks, when legislation or policy decisions warrant modifications to this Guide, HUD will issue the revisions and make them available to all users. Only those portions of the Guide that are affected by the change will be modified. This Guide is on the web at:

[https://www.hud.gov/program\\_offices/administration/hudclips](https://www.hud.gov/program_offices/administration/hudclips) and  
[https://www.hud.gov/program\\_offices/housing/mfh/mfhsec8](https://www.hud.gov/program_offices/housing/mfh/mfhsec8)

The instructions in this Guide apply to all Contract Administrators who are responsible for overseeing Section 8 HAP contracts. This includes Contract Administrators who have performance based contracts with HUD. Contract Administrators with performance based contracts are also required to follow the Guidebook for the Section 8 Contract Administration Initiative.

To assist users, this Guide includes a List of Acronyms Used in this Guide (Attachment 1) and a Glossary of Terms Used in this Guide (Attachment 2).

This *Section 8 Renewal Policy Guidebook* is being published on March 27, 2023. This guidance will apply to renewal and amend rent packages received by the Department (or post-marked) on or after May 1, 2023.

## **1-1. CONTENTS OF THIS GUIDE**

### **Chapter 1: Introduction**

This Chapter provides the legislative history of the Multifamily Assisted Housing Reform and Affordability Act (MAHRA). It also provides a chronological list of HUD’s rule-making and administrative policies for implementing statutory and regulatory requirements associated with Section 8 expiring contract renewals.

### **Chapter 2: Section 8 Renewals**

This Chapter outlines the various ways a contract can be renewed and provides six options available to owners with expiring Section 8 HAP contracts. It discusses early contract termination, rent comparability studies and which contracts to use by chosen option. This Chapter also provides instructions for processing either OCAF or budget based rent adjustment requests. In addition, HUD has included information on how to calculate waivers to various provisions in the Guide.

### **Chapter 3: Option One: Mark-Up-To-Market**

This Chapter provides instructions for renewing a contract under the Mark-Up-To-Market (MUTM) option. It identifies who is eligible for renewal under this option and how to process the renewal request. Owners must meet certain eligibility criteria which are outlined in the chapter.

### **Chapter 4: Option Two: Contract Renewals For Other Projects with Current Rents At or Below Comparable Market Rents**

This Chapter provides instructions for renewing a contract in cases where a contract’s current rents are at or below comparable market rents but the contract is not being renewed using the MUTM option. It outlines projects eligible to renew under this option and documentation to be submitted by the owner to HUD/Contract Administrators for review.

### **Chapter 5: Option Three: Referral to Recap**

This Chapter discusses the procedures by which a project with rents above comparable market rents is referred to the Office of Recapitalization (Recap) (formerly known as the Affordable Housing Preservation (OAHP)) for processing and renewal. The Chapter identifies items an owner must submit with its renewal request and it outlines what steps Recap will take if a restructuring agreement is not reached between the owner and Recap.

### **Chapter 6: Option Four: Renewal of Projects Exempt from or not Eligible for Debt-Restructuring**

This Chapter identifies “exception” projects. Exception projects are exempted from or ineligible for Recap and as such, generally they are exempt from having to conduct rent comparability studies (RCS) and lower rents to comparable market rents. However, owners of projects subject to certain HUD-held and FHA insured mortgages must obtain a RCS when renewing under this Option. In addition, annual budget-based rent adjustments will require a RCS. This Chapter outlines the owner’s renewal submission requirements and provides instructions for initial and subsequent renewals.

## **Chapter 7: Option Five: Renewal of Portfolio Reengineering Demonstration or Preservation Projects**

This Chapter details how to renew a contract that has been through the Demonstration program. It provides instructions for renewal in cases where the project had its rents reduced and/or had its mortgage restructured. It also provides guidance for renewing Preservation contracts according to the approved Plan of Action (POA).

## **Chapter 8: Option Six: Opt-Outs**

This Chapter provides instructions for processing owner opt-outs. Opt-outs are expiring Section 8 project-based contracts whose owners elect not to renew the contract. This Chapter identifies the owner's responsibilities to the tenants and provides processing instructions.

## **Chapter 9: Rent Comparability Studies**

This Chapter provides instructions for conducting and reviewing a rent comparability study (RCS).

## **Chapter 10: Residual Receipts**

This Chapter presents an introduction to the treatment of Residual Receipts and refers users to the most current Notice regarding the subject.

## **Chapter 11: Tenant Issues**

This Chapter outlines all the steps that must be followed to assure that tenants are protected during the renewal process. This Chapter defines housing conversion actions and identifies tenant notification requirements an owner must meet in a housing conversion action. It also describes the difference between a regular voucher and an enhanced voucher.

## **Chapter 12: Physical Condition of the Project**

This Chapter discusses how a project's physical condition impacts the contract renewal process.

## **Chapter 13: HUD's Refusal to Renew Section 8 Contracts**

This Chapter outlines the circumstances under which HUD may refuse to renew an expiring Section 8 contract, and it provides owners with an appeal process to follow in cases where their request to renew is rejected.

## **Chapter 14: Rural Housing Service (RHS) Section 515/8**

This Chapter outlines how to renew a Section 8 contract for a Rural Housing Service (formally Farmers Home) Section 515 project.

## **Chapter 15: Section 8 Preservation Efforts**

This Chapter outlines the procedure for providing budget-based rent increases to owners who renew under the Capital Repairs Program or the Transfer Program. The Chapter identifies eligibility requirements for "marking up to budget" and provides instructions for future rent adjustments.

## **Chapter 16: “Old Regulation” State Housing Finance Agency Projects — Owner Options upon Full Prepayment of Original, Permanent Financing**

This Chapter provides guidance for owners of Section 8 projects that are subject to the “old regulation” State Housing Finance Agency (“HFA”) form of HAP contract for New Construction or Substantial Rehabilitation projects, *i.e.*, the November 1975 version of HUD-52645A (“1975 HAP Form”), for which the original, permanent financing provided by an HFA (“Financing”) was or will be prepaid in full.

### **1-2. LEGISLATIVE HISTORY**

- A. The Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA), Title V of the HUD Fiscal Year 1998 Appropriations Act, Pub. L. 105-65, was enacted on October 27, 1997. MAHRA established new policies for the renewal of Section 8 project-based contracts based on market rents instead of the Fair Market Rent (FMR) standard. For most insured projects with rents above market, the Act transferred Section 8 processing functions from the Multifamily Regional Centers and Satellite Offices Centers to Recap. For further information on renewals by Recap, see Chapter Five.

In general, MAHRA originally required that expiring Section 8 project-based contracts be renewed under Section 524(a)(1) or 524(a)(2).

1. Section 524(a)(1) renewals required a RCS. If the RCS indicated rents were at or below comparable market rents, the contract was renewed at current rents adjusted by OCAF, unless the owner submitted documentation justifying a budget-based rent increase or participation in MUTM. In no case could renewal rents exceed comparable market rents. If the RCS indicated rents above comparable market rents, the contract was referred to Recap for debt restructuring and/or rent reduction.
  2. Section 524(a)(2) renewals were for projects identified as “exception” projects that were not eligible for Recap. In some cases, these projects had rents greater than market. Examples of projects that do not qualify as eligible multifamily housing projects pursuant to Section 512(2) of MAHRA include a project that is not subject to a HUD-held or insured mortgage; or, a project that has FHA mortgage insurance or is HUD-held with rents at or below comparable market rents.
- B. The Preserving Affordable Housing for Senior Citizens and Families Into the 21<sup>st</sup> Century Act of 1999, Titles II and V of the HUD Fiscal Year 2000 Appropriations Act, Pub. L. 106-74, was enacted on October 20, 1999. This legislation made modifications to the previous Section 8 renewal policies and established specific provisions for rent adjustments in subsequent years after an initial renewal under MAHRA. On December 29, 1999, Notice H99-36 was issued to implement these changes. Specifically, the Act
1. Modified Sections 524(a)(1) and 524(a)(2) of the original MAHRA. Projects that previously fell under section 524(a)(1), are now covered under section 524(a), and projects that previously fell under section 524(a)(2), are now covered by section 524(b).

2. Specifically addressed Preservation projects and Portfolio Reengineering Demonstration projects in sections 524(e)(1) and 524(e)(2) of MAHRA.
  3. Was the impetus for Notice H 1999–36 which created six options for owners to choose from when their Section 8 contracts expire. These options are detailed throughout this Guide.
- C. The Quality Housing and Work Responsibility Act (QHWRA) of 1998, Title V of HUD’s Fiscal Year 1999 Appropriations Act, enacted on October 21, 1998, made only minor modifications to the tenant notification requirements stated in MAHRA. On May 27, 1999, HUD issued Notice H 99-08 implementing these changes. Specifically, QHWRA:
1. Required owners who intended to renew their expiring Section 8 contract to notify their tenants of their intent to do so. This requirement was amended by subsequent legislation (see Chapter Eleven for tenant notification requirements).
  2. QHWRA changed the tenant notification requirement from one year to six months for contracts that were renewed for five year terms. The six-month notification was to be provided to the tenants by the owners six months before expiration of the five-year contract. This requirement was changed back to a one-year notification by subsequent legislation.
- D. The FY 2001 Military Construction and FY 2000 Emergency Supplemental Appropriations Act amended the enhanced voucher statute at Section 8(t) of the United States Housing Act to grant enhanced voucher families the right to remain.

### **1-3. RULEMAKING**

- A. Interim Rule. An Interim Rule implementing the Multifamily Housing Mortgage and Housing Assistance Restructuring Program (Mark-to-Market), was published in the *Federal Register* on September 11, 1998, at 63 FR 48925. This Rule discussed the 524 requirements and governed the renewal or restructuring of expiring Section 8 project-based contracts. At the Final Rule stage, the sections of the Interim Rule that governed the renewal of Section 8 that were not participating in the (m2m) program and the sections addressing the m2m program are separated into two Final Rules, Part 401 and Part 402.
1. 24 CFR Part 401. The Final Rule implementing the (m2m) program was published on March 22, 2000. This Rule details how the Section 8 rents for eligible multifamily projects with HUD-insured or HUD-held mortgages will be reduced. The Mark-to-Market Program Operating Procedures Guide is available on the Recap Webpage at <http://www.hud.gov/offices/hsg/omhar>. The Guide may also be obtained by contacting the Multifamily Housing Clearinghouse at 1-800-685-8470.
  2. 24 CFR Part 402. The Final Rule for Part 402 authorizes the renewal of expiring Section 8 project-based assistance contracts for projects without Restructuring Plans under the m2m program, including projects that are not eligible for Restructuring Plans and eligible projects for which the owners require contract renewals without Restructuring Plans.

#### **1-4. ADMINISTRATIVE POLICY**

Since the enactment of MAHRA HUD has issued several Housing Notices which established Section 8 renewal policies. With the publication of this Guide, these Notices are no longer in effect.

- **H98–34.** On October 16, 1998, HUD published Notice H 98–34, which provided instructions for renewing Section 8 contracts expiring in FY 1999.
- **H99–08.** On May 27, 1999, HUD published Notice H 99–08, which made several modifications to H 98–34.
- **H99–15.** On June 16, 1999, HUD published Notice H 99–15, which implemented the Mark-Up-To-Market MUTM Option for Owners of projects with expiring Section 8 contracts.
- **H99–25.** This Notice, published on September 22, 1999, extended Notices H 98–34 and H 99–08.
- **H99–32.** This Notice, published December 1, 1999, clarified existing renewal policies.
- **H99–36.** On December 29, 1999, HUD issued Notice H 99–36 to implement changes to Section 8 renewal policies pursuant to the HUD fiscal year 2000 Appropriations Act.
- **H00–12.** On June 29, 2000, HUD published Notice H 00–12, which provided policies and procedures for preparing, submitting, and reviewing RCSes associated with renewals of expiring Section 8 contracts.
- **H00–21.** On October 13, 2000, HUD published Notice H 00–21, which provided Guidelines for MUTM Nonprofit Transfers and Budget-Based Rent Increase for Capital Repairs by Nonprofit Owners.

#### **1-5. APPLICABILITY**

This document applies to all Multifamily Housing Projects with expiring non-MAHRA and MAHRA project-based Section 8 assistance contracts, unless otherwise noted. It does not apply to Moderate Rehabilitation projects (except to the extent that the project is eligible for Option Three), Section 8 project-based certificate contracts, Section 8 project based voucher contracts or former Section 23 projects administered by the Office of Public and Indian Housing (PIH) or to any projects administered by the Office of Community Planning and Development (CPD). Regional Centers/Satellite Offices cannot waive sections of the Guide unless approved in advance by Headquarters.

#### **1-6. PAPERWORK REDUCTION ACT**

The information collection requirements contained in this Guide book have been submitted to the Office of Management and Budget (OMB) for review and approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3520). An OMB approval number has been assigned. The OMB Control Number is 2502–0587.



## Section 8 Renewals

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### 2-1. INTRODUCTION

The enactment 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 requirement meant the rents could be adjusted upward. 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 comparable to market rent levels.

When 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 project are provided with enhanced vouchers (see Chapter Eleven).

### 2-2. OWNER OPTIONS

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

#### A. Six Owner Options.

1. Option One is Mark-Up-To-Market(MUTM)
2. Option Two is the renewal of contracts with existing rents adjusted by an operating cost adjustment factor (OCAF) or based on a budget:
  - a. When rents under the expiring contract are at or below market; or
  - b. Where the owner of a project has a contract that contains language that allows a discretionary comparability adjustment within the 5-year term and the project is exempt from Recap restructuring with above market rents requests to have the project's rents reduced to market.
3. Option Three is referral to Recap for processing because the contract rents are greater than market rents and the project has a HUD-insured or HUD-held mortgage.

**Note: FHA-insured projects that have a Section 8 moderate rehabilitation contract other than a moderate rehabilitation contract under Section 441 of the Stewart B. McKinney Homeless Assistance Act are eligible for referral to Recap.**

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

5. Option Five is the renewal of contracts for:
  - a. Portfolio Reengineering Demonstration projects with a:
    - 1) Mortgage Restructuring Demo Program Use Agreement; or
    - 2) Budget-Based Without Mortgage Restructuring Demo Program Use Agreement.
  - b. Preservation projects under either:
    - 1) Title II, Emergency Low Income Housing Preservation Act of 1987 (ELIHPA); or
    - 2) Title VI, Low-Income Housing Preservation and Resident Homeownership Act of 1990 (LIHPRHA).
6. Option Six is to opt-out of the Section 8 contract.

B. Determining Option.

When determining which option to select, owners should be aware that the contract renewal options are determined by the project's eligibility at the expiration date of the existing Section 8 HAP contract. If the HAP contract is being terminated by mutual agreement of the parties, the project eligibility is determined at the time of termination of the HAP contract by mutual agreement.

### **2-3. TYPES OF RENEWALS**

When requesting a renewal, an owner must submit the Contract Renewal Request Form, Form HUD-9624, available on HUDCLIPS, and any required supporting documentation to the HUD Account Executive or the Contract Administrator/Performance Based Contract Administrator (AE/CA) for processing. (See Section 2-22 for detailed processing instructions.) The HUDCLIPS web address is:

[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/administration/hudclips](http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips)

A. Initial Renewal.

Generally, the first renewal of a project's Section 8 contract or contract stage processed under MAHRA's rules is the initial renewal of the contract.

B. Subsequent Renewal.

The renewal of a MAHRA contract **after** the initial renewal is considered the subsequent renewal of the contract.

C. Renewal Options.

1. Generally, an owner may renew the contract under any option in which the project is eligible at the time of renewal (i.e., the expiration date of the existing contract or, if applicable, the date of termination by mutual agreement of the existing contract).

2. **Exceptions** to the general rule include:
  - a. Projects with Watch List Contracts can only be renewed under Option Three, Re-entry into Recap, for three consecutive one-year renewals, using the Watch List Contract. At the end of the third one-year renewal, if the project has demonstrated physical, financial and managerial improvement to HUD's satisfaction, the project can renew under any option in which the project is eligible at the time of renewal.

**Note: Certain housing finance agency HAP contracts may terminate at the prepayment of the original financing (See Chapter 16 for more information. An owner who wishes to terminate early any HFA contract that does not terminate at the prepayment of the original financing must obtain HFA approval prior to the termination of the contract.**

- b. Projects with contracts that are renewed under Section 515 of MAHRA (Full Mark-to-Market Renewal Contract) must renew under Option Three during the life of the MTM Use Agreement. (See Section 5-5.C for more information)
- c. Owners of Preservation projects and Owners of Portfolio Reengineering Demonstration projects must renew under Option Five during the life of the LIHPHRA or ELIPHRA Use Agreements or of the Demo Use Agreement, except that the owner of a Preservation Project may request Mark-to-Market debt-restructuring any time prior to Sunset if the project is being transferred or sold. (See section 5-1. D)

#### **2-4. EARLY TERMINATION OF A CONTRACT**

##### **A. Non-MAHRA Contracts.**

HUD will permit the early termination of a non-MAHRA contract (i.e., a contract that has not yet been renewed under MAHRA) for an owner wanting to enter into a MAHRA contract **only** if the owner:

1. Renews the Section 8 contract for 20 years under Option One, Two, Three or Four; and
2. Agrees to:
  - a. The Preservation Exhibit, as contained in HUD Notice 2013-17 which provides for the renewal of the HAP contract at the end of the 20 years for a term that is at least equal to the term of the original terminated contract.

**Note: In determining the amount of time to put on the Preservation Exhibit, the AE should round down to the whole year for any term less than six months and up for any term six months or greater. For a contract with less than six months remaining, no Preservation Exhibit is required.**

- b. Sign the HUD-93184 "Rider to Original Section 8 Housing Assistance Payments Contract."

B. MAHRA Contracts.

Owners may request the early termination of an existing non-MUTM MAHRA contract only for the following reasons:

1. A for profit owner or a housing authority occupying the status of a “public body corporate and politic” under the state legislation under which it was created, wishes to renew the contract under Option One, MUTM.
2. Any owner wishes to renew the contract under Option Two and preserve long term affordability by signing a 20-year contract.
3. Under Option Three:
  - a. An owner has an Interim-Lite or Interim-Full M2M contract and Recap has completed processing before the expiration date of the interim contract.
  - b. An owner with a Watch List contract that meets one of the requirements listed in Section 5-6. B.4. of this Guide.
  - c. The contract was previously renewed as a Lite contract and the owner wishes to complete a full MTM debt restructuring.
  - d. An owner requests referral to Recap based on a RCS that demonstrates that current rents are above market.
  - e. An owner wishes to refinance the project and wishes to renew the contract for 20 years or the remaining term of the use agreement, whichever is less.
4. An owner with an Option Four contract who wishes to subsequently renew the contract under Option Four using a 20-year contract to preserve long-term affordability if the project is still eligible for renewal under Option Four at the time of the request for subsequent renewal.
5. An owner with an Option Five contract who wishes to renew the contract under Option Five using a 20-year contract to preserve long-term affordability. (See Sections 7.3 and 7.4 for more information.)
6. To combine multiple contracts or stages. (See Section 2-10.C.2 below.)

**Note: An owner with a MUTM contract that has fulfilled the minimum five-year term, can terminate the contract early and renew the contract under any option for which the project is eligible for 20 years. An owner with a MUTM contract that has not fulfilled the minimum five-year term may terminate the contract early but only if the owner agrees to renew the contract under MUTM for 20 years, assuming the project is eligible for MUTM when the first contract is terminated.**

- C. The owner’s request for early termination under A or B above must be in writing and submitted to the AE/CA.
- D. The owner agrees to the terms of the Preservation Exhibit, as contained in HUD Notice 2013-17 which provides for the renewal of the HAP contract at the end of the 20 years for a term that is at least equal to the term of the original terminated contract. If an owner of a project with an existing Preservation Exhibit wishes to terminate the contract and renew

early, the new Preservation Exhibit will replace the existing Preservation Exhibit and include only the number of years remaining on the contract being terminated.

**Note: In determining the amount of time to put on the Preservation Exhibit, the AE should round down to the whole year for any term less than six months and up for any term six months or greater. For a contract with less than six months remaining, no Preservation Exhibit is required.**

- E. An owner is not allowed to terminate a contract early to Opt Out of the Section 8 program.

**Note: The AE/CA should document the project file by including a note that reads: “By mutual agreement, the owner and the CA have determined to terminate the Renewal Contract that runs from \_\_\_\_ to \_\_\_\_ and, instead, to enter into a 20-year contract, which will run from \_\_\_\_ to \_\_\_\_\_. The owner has also agreed to the terms of the Preservation Exhibit.**

## **2-5. RENT COMPARABILITY STUDY (RCS)**

Certain renewal options under MAHRA require a RCS.

- A. A RCS is prepared following the instructions found in Chapter Nine of this Guide. In addition, Section 9-4 of this Guide provides acceptable alternatives to the RCS.
- B. The RCS:
  - 1. Is valid for 5 years from the date the owner’s Appraiser signs the HUD-92273-S8, Rent Comparability Grid. HUD’s Integrated Real Estate Management System (iREMS) automatically generates an event notice to the AE/CA that the RCS is coming to the end of its five-year life cycle. The AE/CA must remind affected owners in writing that a new RCS is required at the end of the fifth year to receive a rent adjustment or a renewal of the Section 8 Contract.
  - 2. Must include all the Section 8 unit types in the project.
  - 3. Establishes the market rent for renewal of expiring contracts or stages that were not combined and will expire during the five-year life cycle of the RCS. (See Section 2-10. C. below for a discussion of combining contracts.)
- C. Reviewing the RCS.

Upon receipt of the RCS, the AE/CA, along with a qualified appraiser, will review the RCS based on the instructions found in Sections 9-17 through 9-20 of this Guide and determine whether the comparable market rent conclusions are reasonable. If the conclusions are deemed reasonable, the AE/CA records the RCS data in iREMS.

**Note: The AE/CA shall not lower the comparable market rents in the RCS to reflect any use agreement restriction on the rents that can be charged; (e.g. tax credit restricted rents).**

- D. Adjusting the RCS.

Contracts eligible for the Auto OCAF will have the RCS adjusted automatically to reflect the increased operating costs, as recognized by HUD in the Notice of Certain Operating Cost Adjustment Factors published annually in the Federal Register. Those not eligible

for the Auto OCAF (i.e. EPC contracts) must be adjusted manually using the annual OCAF. Further details on adjusting the RCS are found in the iREMS Guide.

E. HUD Required RCS.

1. The Satellite Office/Regional Center Director may require one additional rent comparability study during each 5-year period of an Option One or Two contract renewal, if s/he believes the OCAF adjusted comparable market rent is not an accurate reflection of the market.
2. Under Option One and Two the owner is required to submit a new RCS every five-years. However, in cases where the five-year life cycle of the RCS does not currently align with a multiyear contract's five-year life cycle an owner does not need to obtain another RCS until the time when the multiyear contract reaches the end of its five-year life cycle. In such cases, any rent adjustment during the years when a project has an aged RCS will be limited to the OCAF. The owner must obtain a new RCS at the end of the contract's five-year life cycle.
3. Notwithstanding any other renewal instructions, an owner seeking to terminate a Section 8 HAP contract early and renew that contract under the same or a different option, or renew an existing contract for more than 5 years must submit a new RCS. This is true even if a previous RCS is less than 5 years old.

**Note: A RCS is NOT required at initial or subsequent renewal of an Option Four contract unless the project is renewing using the criteria in Section 6-1. B.2.**

**Note: A RCS is not required at any subsequent renewal of a MTM "Full" contract during the term of the MTM use agreement.**

**Note: A RCS is not required at any subsequent renewal of an ELIHPA or LIHPHRA project unless the POA indicates otherwise.**

4. Under Option Four, if the owner requests an annual budget based rent adjustment, the owner will be required to submit a current RCS unless one has been submitted within the preceding five years.

F. The Cost of the RCS.

1. The cost of the RCS is an eligible project expense when:
  - a. The owner submits a RCS because HUD requested it under E above;
  - b. It is required by a renewal option; or
  - c. The owner submits a RCS under F above.
2. The cost of any unsolicited RCS, not covered by E above, **is not** an eligible project expense.

## **2-6. CONTRACTS**

A. Copies of MAHRA renewal contracts are found on HUDCLIPS:

1. Option One uses:
  - Renewal HAP Contract for Section 8 Mark-Up-To-Market Project, Form HUD-9638
2. Option Two may result in the use of the:
  - Basic Renewal Contract — One Year, Form HUD-9636, or
  - Basic Renewal Contract — Multi-Year Term, Form HUD-9637
3. Option Three may result in the use of one or more of the following:
  - Basic Renewal Contract — One Year, Form HUD-9636,
  - Basic Renewal Contract — Multi-Year Term, Form HUD-9637,
  - Interim (Full) Mark-To-Market Renewal Contract, Form HUD-9640,
  - Interim (Lite) Mark-To-Market Renewal Contract, Form HUD-9641,
  - Previous Mod Rehab Projects, Form HUD-9644,
  - Full Mark-To-Market Renewal Contract, Form HUD-9642, or
  - Watch List Renewal Contract, Form HUD-9643
4. Option Four may result in the use of the following:
  - Basic Renewal Contract — One Year, Form HUD-9636,
  - Basic Renewal Contract — Multi-Year Term, Form HUD-9637
5. Option Five uses:
  - Basic Renewal Contract - One Year, Form HUD-9636,
  - Basic Renewal Contract – Multi-Year Term (For DEMO Projects) , Form HUD-9637, or
  - 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.

## **2-7. CONTRACT TERMS**

A. General Contract Terms. The term of the contract is one or more years. HUD believes long-term, multiyear contracts assist in preserving affordable housing and, therefore, the Regional Center Director's approval is not required when the owner requests a renewal for a multiyear term.

1. The maximum term of the contract is 20 years. A CA can renew a Section 8 HAP contract for up to five years. If an owner wishes to renew the contract for more than five years, the CA must refer the contract to the AE for final approval.
2. The minimum term for a contract is one year except in the case of a MUTM contract which requires a minimum five-year term.
3. In cases where there is a Use Agreement that mandates a particular renewal option, the maximum term of the Renewal Contract must be coterminous with the Use Agreement. For example, if six years remain on a Use Agreement, the maximum term of the Renewal Contract cannot exceed six years. However, owners can ask that a Use Agreement be extended to facilitate a preservation transaction.
4. 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.
5. The effective date of a renewal contract is the day after the Expiring Contract expires.
  - a. For renewals of 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 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.
6. The AE/CA must ensure that the expiration date of all new renewal contracts is the last day of the month.
7. The term of a multiyear contract need not be in whole years. There may be occasions where the last rental adjustment period may be less than 12 months. For example, a project 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 2-9.B.2. below for instructions on calculating a pro-rated OCAF.

## **2-8. SHORT-TERM CONTRACT RENEWALS**

- A. Short-term contract renewals are for less than one year. The phrase “short-term” refers to the term of the contract, not the “type” of contract. The AE/CA should use short-term renewals:
  1. To protect the residents (see Chapter Eleven). For example: in the case of an opt-out when an owner provides the required one-year notice when less than one year remains before the contract expires (e.g., when 8 months remain before contract expiration). In this example, the Contract Administrator and the owner may enter into a short-term contract, not to exceed a term of one year, at current contract rents. In these circumstances the AE/CA must use the Basic Renewal Contract (HUD-9636).



2. To extend the contract, at current rents, of a project that has been referred to Recap for debt restructuring but has yet to close under a Restructuring Plan after a year. To receive a short-term renewal beyond a year under these conditions at current rents, the owner must request and receive approval from Recap (see 24 CFR Part 401.600).
  3. To align the Section 8 contract with the project's fiscal year end.
  4. To align the Section 8 contract with a Use Agreement that expires in less than 12 months.
  5. To provide additional time to secure a HUD RCS when one is required.
  6. To combine contracts when the later expiring contract is the most restrictive.
- B. Renewal. Regional Center/Satellite Office Directors and CA Directors should use their discretion when determining whether to grant a short-term renewal for the reasons listed in Section 2-8. A. above.
- C. Short-term Contract Execution.
1. The contract is renewed in increments of months, not days.
  2. The AE/CA must document the need for the short-term renewal in the project file and in iREMS.
- D. The effective date of the new Section 8 contract is the day after the short-term contract expires.

## **2-9. CALCULATING RENTS FOR SHORT-TERM RENEWALS**

- A. In cases where the AE/CA/Participating Administrative Entity (PAE) decides as to market rents for the project, the short-term renewal rents will be capped at market.
- B. Section 524 contracts.
1. If the project is eligible for an OCAF rent adjustment, apply a pro-rated OCAF to the short-term contract instead of a full OCAF.
    - a. The law does not permit the project to receive more than one full OCAF increase within a 12-month period. However, projects entering into MUTM or MUTB in the same year are not receiving an additional OCAF adjustment and, therefore, are exempted from this restriction. However, the preceding statement does not preclude the owner of a project that received a rent adjustment from (1) agreeing to terminate the Renewal Contract within 12 months of the date of the rent adjustment to renew under Option One or Two (assuming eligibility), and (2) receiving a rent increase based on the rent-setting provisions under those options.
    - b. Because the project is entitled to a full OCAF increase at the first anniversary date of a multi-year contract, the OCAF increase for the short-term initial renewal must be pro-rated.
    - c. Budget-based rent adjustments are not permitted for a short-term renewal.

2. Calculating a pro-rated OCAF. Divide the rent increase factor (line (R) from HUD Form 9625 by 12 and multiply that number by the number of months needed for the short-term renewal. Example:

<b>Rent increase factor (line R from form HUD-9625)</b>	2.5 percent
<b>Months in year</b>	12
<b>Term of short-term contract:</b>	8 months
<b>Increase factor divided by 12</b>	0.208
<b>0.208 x term of short term contract</b>	1.67

The pro-rated rent increase factor to apply to the short-term renewal is 1.67 percent.

After determining the pro-rated rent increase factor, follow the instructions in the OCAF Worksheet, Form HUD-9625, for applying the OCAF to the contract rents for the Section 8 units being renewed.

C. Exceptions.

Do not use the proration of OCAF for calculating the rents for:

1. Short-term renewals for Section 514(c) contracts (Option Three) which are used for projects that must be processed by Recap. The short-term renewal is at current rent. (See Chapter Five.)
2. Section 524 contract, if used for a project that is subject to an enforcement action. Any short-term renewal is at current rent not to exceed market.
3. Short-term renewals under Option One or Two. The AE/CA will renew the contract at current rents and provide retroactive rents upon completion of the processing.

**2-10. COMBINING CONTRACTS**

Guidance on combining Section 8 contracts is found in Chapter 4.1 of Handbook 4350.1. Until Chapter 4.1 of Handbook 4350.1 is published, please continue to use the Guidance issued on September 18, 2014, except that no combinations will be allowed that include projects in two different Fair Market Rent areas.

**2-11. REQUEST FOR A CONTRACT EXTENSION**

HUD no longer allows Section 8 contract “extensions.” If there is a need for a long-term contract on the Section 8 assisted project and the project qualifies for early termination under Section 2-4. A or B of this Guide, the Regional Center Director or designee may allow the early termination of the existing contract with a 20-year renewal under any option for which the project qualifies at the time.

For projects subject to a Full Mark-to-Market Renewal Contract (i.e., issued pursuant to section 515 of MAHRA), the only subsequent renewal option for which the project is eligible is Option 3. Under such circumstances, a new Full Mark-to-Market Renewal Contract (i.e., HUD-9642) is to be prepared for a term that is equal to the number of years remaining on the

MTM Use Agreement. In addition, as previously stated, the Preservation Exhibit is to be attached to the contract. (See Section 2-4 for additional guidance.)

## **2-12. DISTRIBUTIONS**

### **A. Limitations on Distributions.**

1. The old regulation, LMSA, Pension Fund, and Property Disposition (PD) Section 8 contracts typically have no limitations on distributions. If applicable, any limitation on distributions is based on a current HUD Regulatory Agreement or a similar controlling document imposed by the Housing Finance Agency or another interested lender.
2. The new regulation Section 8 contracts for new construction or substantial rehabilitation limits an owner's right to distributions.
  - a. A nonprofit owner is not entitled to distributions of excess project funds unless HUD approves the nonprofit owner's request for a waiver. See sections 2-12.C and 2-18. A below.
  - b. A profit-motivated owner may receive distributions from surplus cash in the amounts as follows:
    - 1) For projects for elderly families: 6 percent of the initial equity investment established when the project was newly constructed or substantially rehabilitated;
    - 2) For projects for non-elderly families: 10 percent of the initial equity investment established when the project was newly constructed or substantially rehabilitated.
  - c. Owners of "small projects" and owners of "partially-assisted projects," as defined in 24 CFR Part 880.201, 881.201 and 883.302, are exempt from any section 8 limitation on distributions. 24 CFR Parts 880.205(f), 881.205(f), and 883.306(f).
  - d. Owner Distributions for Partially-assisted Projects that qualify for increased distributions under Section 2-12 D.
    - 1) For partially-assisted projects that are not insured under Section 236, 221(d)(3) BMIR, or do not have mortgages under Rural Housing Service's (RHS) Section 515/8:
      - a) For profit owners of these projects may keep surplus cash generated on all units.
      - b) The Section 8 rents must not exceed the rents on the unassisted units.
    - 2) For partially-assisted projects that are insured under Section 221(d)(3) BMIR, 236, or have mortgages under and RHS Section 515/8:
      - a) For profit owners of these projects are eligible for an increased distribution on the Section 8 units.

- b) This amount will be added to the current limited distribution in the FHA regulatory agreement on the unassisted units to reach the total distribution.
    - e. If the form of ownership changes so does the right to receive distributions under the Section 8 contract. For example, if a nonprofit owner, who is prohibited by regulation and under the HAP contract from receiving distributions, sells the project to a for profit entity, the for profit buyer may receive distributions, provided that all administrative conditions are met.
  - 3. Nothing in this Chapter limits a nonprofit owner's entitlement to excess project funds generated by non-Section 8 assisted units in a partially assisted project.
- B. For profit Owners.
- A for profit owner with a new regulation Section 8 contract may qualify for increased distributions. (See Section 2-12.D.)
- C. Distribution for Nonprofit Owners
- By regulation (24 CFR Parts 880.205(a), 881.205(a), and 883.306(a)) nonprofit owners who have New Regulation Section 8 HAP contracts are not allowed to receive distributions of project funds.
- D. Increased For Profit Owner Distributions.
- 1. To encourage owners to preserve affordable housing, HUD will allow increased distributions for owners with Section 8 project-based assistance that are currently subject to limited distributions (i.e., the new construction and substantial rehabilitation new regulation contracts), if:
    - a. In accordance with 24 CFR Parts 880.205(h), 881.205(h) or 883.306(g) the project's rents are below market, or at or below market for an Option Two project, before the Section 8 contract is renewed; and either:
      - 1) Under Option One, the owner will receive access to increased distributions, even if the term of the contract is less than 20 years; or
      - 2) Under Option Two, the owner enters into a 20-year Section 8 contract can receive access to increased distributions.
    - b. Owners with Section 8 contracts currently renewed under Option Two may receive increased distributions, for the term of the renewal contract if:
      - 1) The owner terminates the existing contract and renews the Section 8 contract for 20 years; and
      - 2) The project's current rents are below comparable market rents.

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

2. Owner Distributions for 100 percent Section 8 Assisted Properties.
  - a. Owners should follow existing guidance in paragraph 2-8 of Handbook 4370.2 REV-1, Financial Operations and Accounting for Insured Multifamily Projects, for computing surplus cash.
  - b. Owners may keep all surplus cash available each year for distribution during the term of the contract.
3. The above statements reflect the normal policy on increased distributions. However, an owner may have agreed to waive payment of distributions and to use all surplus cash to repay flexible subsidy grants/loans. Nearly all flexible subsidy contracts contain such clauses. Even if the project did not receive flexible subsidy, the owner may still have agreed to waive payment of distributions in return for HUD's approval of other forms of mortgage relief (e.g. provisional workout, modification, partial payment of claim, etc.).

If these scenarios exist, the amount of increased distributions may be reduced by the owner's repayment obligation to HUD.

E. Access to Increased Owner Distributions.

1. The owner may continue to receive the increased distributions during the term of the Section 8 Renewal Contract provided:
  - a. If applicable, all material Financial Assistance Subsystem (FASS) findings are closed or under a HUD-approved corrective action plan;
  - b. The owner maintains the project in good condition, as demonstrated by a REAC score of 60 or higher on the project's most recent inspection, with no uncorrected Exigent Health and Safety (EHS) violations;
  - c. The owner is not suspended or debarred.
  - d. The owner has no open or unresolved items on the most recent:
    - Physical Inspection Report; or
    - Management & Occupancy Review (MOR);
  - e. The project has not been referred to Recap for restructuring; and
  - f. The owner is complying with the terms of the FHA Regulatory Agreement, Note, and Mortgage and is current in debt service and all escrow payments, including the reserve for replacement account (RFR).
2. If an owner ceases to be eligible for increased distributions, the AE should follow existing instructions in HUD Handbook 4370.2, Chapter 2, concerning eventual release to the owner if the owner becomes eligible to resume receiving access to increased distributions when compliant with all the conditions listed immediately above.

**Note: The conditions listed above for receiving access to increased distributions apply to all contracts, not just to those renewed after August 2015.**

3. The eligibility to receive increased distributions will automatically transfer upon sale of the project. However, in the case of a sale from a for profit owner to a nonprofit owner of a new regulation Section 8 contract, the nonprofit owner will be required to obtain a regulatory waiver to permit distributions.
  4. The AE is charged with annual compliance monitoring of the owner's eligibility to receive continued distributions.
- F. Preemption of state laws limiting Owner distributions.

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

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

Preemption does not apply to State-financed projects. In addition, an owner may elect to waive the preemption.

### **2-13. RENT ADJUSTMENTS**

- A. Annual adjustments to contract rents that occur during the term of a multi-year contract are called rent adjustments. These adjustments may be by application of the published OCAF or, if applicable, a budget-based request of the owner and subject to approval by HUD.
- B. **Exception** processes to A. above:
  1. See Section 2-17.C.4. for additional instructions for Option One, and Option Two.
  2. Title II and Title VI preservation projects discussed in Chapter 7, Option Five – Renewal of Portfolio Reengineering Demonstration or Preservation Projects. The rent adjustment mechanism is spelled out in the individual project's Plan of Action (POA) and/or Use Agreement. These documents may permit other rent adjustment mechanisms.

### **2-14. OPERATING COST ADJUSTMENT FACTOR (OCAF)**

Each year HUD publishes the new OCAF in the Federal Register. The application of an OCAF shall not result in a negative rent adjustment.

### **2-15. BUDGET-BASED RENT ADJUSTMENT REQUESTS**

An owner may prepare a budget-based adjustment request in connection with certain MAHRA contract renewal options and annual rent adjustments.

- A. Follow the requirements of Chapter 7 of HUD Handbook 4350.1, Multifamily Asset Management and Project Servicing, as modified below.
  1. Paragraph 7-30. P. of HUD Handbook 4350.1 does not apply. For Section 8 projects, the budget will no longer include a 2 percent contingency reserve for projects owned by nonprofits and those projects once owned by nonprofits but which have been sold to limited dividend partnerships.

2. Projects with 100 percent Section 8 must include a vacancy loss rate of 3 percent in the budget unless as part of a refinancing, the lender requires a different vacancy rate. Exceptions to the policy are:
  - a. Projects with 50 or fewer (which includes both assisted and unassisted units) units, 20 percent or more of which are assisted with Section 8, must include a vacancy loss rate of 5 percent in the budget;
  - b. Projects where the assisted units account for 20 percent or less of the total units, no matter the total number of units in the project, must use a vacancy loss rate of 7 percent in the budget.
  - c. Projects where the assisted units account for between 21 and 99 percent of the total units and have more than 50 units, must use a vacancy loss rate of 5 percent in the budget.

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

The budget must reflect the project's current debt service and debt service coverage requirement. The maximum debt service coverage ratio allowed in the budget is 1.2. In the context of a refinancing transaction and a renewal of the Section 8 contract to preserve the project, "current debt service" is that which will take effect when the new loan closes. If the debt service associated with the refinancing changes before the contract renewal, HUD retains the right to revise the budget.

**Note: Any amount designated in the budget for debt service coverage may be drawn upon by the owner at year's end to pay allowable annual distributions, or deferred Developer Fee (from surplus cash, using the required form of Residual Receipts Note (form HUD-91710M, Residual Receipts Note for Nonprofit Borrowers) or Promissory Note)). All remaining surplus cash must be deposited in the Residual Receipts account. If there is no Residual Receipts account in place, this requirement does not apply.**

**Note: See the note after Section 6-3. A.2.d. for information on how to treat debt service savings on 202 projects that have been refinanced.**

- C. Projects with low-income housing tax credits may include in their budgets only the following fees and expenses for operating a tax credit project, including payment of the equity syndicator's asset management fees; state allocating agency's compliance and asset monitoring fees; mandatory interest payments that do not exceed one percent due on subordinate debt provided by a governmental lender; and deferred developer's fees, plus interest accrued at the applicable federal rate, which may be deferred for no more than 12 years. The deferred developer fee and interest payments on government loans can only be paid from surplus cash.
- D. Owners may request a zero-dollar budget-based rent adjustment by marking the appropriate box on the "**Amend Rents Auto OCAF- Part A (HUD - 9626) or Part B (HUD - 9627)**". Owners do not need to submit a budget when the appropriate box on the "Amend Rents" form is checked.

- E. For projects that have not previously prepared and submitted a budget-based rent increase, only the first request must include Attachment 5 (HUD-9635), Projects Preparing a Budget-Based Rent Increase, of this Guide.
- F. Owners of projects with an Option Four contract must submit a RCS when requesting an annual budget-based rent adjustment. This requirement does not apply at renewal. Owners requesting a zero budget-based rent adjustment do not have to submit a RCS. Owners of Section 515/8 projects who are required to submit budgets to Rural Housing do not have to submit a RCS if the rents resulting from the budget-based rent adjustment request do not exceed rents the project would have received based on the OCAF adjustment for that year.
- G. Owners submitting a budget-based rent adjustment request must comply with the notification requirements of 24 CFR Part 245 Subpart D.

## **2-16. INCREASES IN DEPOSITS TO THE RESERVE FOR REPLACEMENT**

The owner or lender may request increases in the monthly deposit to the RFR account.

Either the owner or Lender will be required to submit a Project Capital Needs Assessment (PCNA) or its equivalent.

**Note: A project that is partially-assisted with a new regulation Section 8 contract under 24 CFR Parts 880 or §881 is exempt from the requirement to establish and maintain a RFR account. (See 24 CFR Part 880.602(a)(1)(v).) A project that is partially-assisted with a new regulation Section 8 contract under 24 CFR Part 883 may be exempt from the requirement to establish and maintain a RFR account. (See 24 CFR Part 880.602(a)(2)(v).) The term “partially-assisted” has the meaning set forth in 24 CFR Part 880.201, 881.201, and 883.302.**

**Note: The deposits to the reserve for replacement account must be increased by the most recent published “Regional AAF with Highest Utility Excluded,” Table 2 for the region in which the project is located. Example: The current annual deposits are \$2,400 and the most recently published AAF is 1.02, then the RFR deposits would increase by \$48 or \$2,400 x 1.02 percent.**

## **2-17. PROCESSING INSTRUCTIONS**

- A. Renewals
  - 1. Before submitting a renewal request under A.2. below, the Owner must follow the tenant notification procedures in 24 CFR Part 245 Subpart D unless the rent increase is an OCAF rent adjustment. For example, a budget-based rent increase or a MUTM increase would require the owner and the AE/CA to comply with the requirements of 24 CFR Part 245 Subpart D.
  - 2. At least 120 calendar days but no earlier than 180 calendar days before expiration of the Section 8 contract, the owner submits:
    - a. Contract Renewal Request Form, Form HUD-9624;
    - b. An analysis of the project’s Utility Allowances (see Housing Notice 2015-04); and



- c. If applicable:
  - 1) The OCAF Rent Adjustment Worksheet, Form HUD-9625;
  - 2) A RCS; and/or
  - 3) A budget-based rent increase request prepared in accordance with the requirements of Section 2-15 above or a RHS approved budget.

**Note: If the project has a budget approved by the AE/CA less than one year before processing the initial renewal under MAHRA, a copy of that budget may be submitted in lieu of a new budget, unless the owner refinanced the project.**

- 3. AE/CA should complete the review of an owner's submission within 30 calendar days.
  - a. The AE/CA checks to see if the owner:
    - 1) Is eligible to renew the Section 8 project-based contract under the Option selected.
    - 2) Has provided all required documentation discussed in A.1. and A.2. above.
    - 3) Specified on the Cover Sheet of Form HUD-9624 whether it wants any multiple stages or contracts combined now. See Section 2-10 above.
  - b. Under renewal Options One through Five, the AE/CA reviews the owner's certification regarding suspension or debarment on the Contract Renewal Request, Form HUD-92624. If the owner checked that they are not suspended or debarred, verify that information by using [www.sam.gov](http://www.sam.gov).
    - 1) If the AE/CA determines that the owner is suspended or debarred, HUD may permit the owner to renew the Section 8 contract if the project(s) in question is adequately managed and maintained, and activities there were not the cause of the administrative actions against the owner. However, the AE/CA should document his/her assessment and reasons for permitting renewal in iREMS.
    - 2) Where there are material violations and the enforcement process has progressed to the point that HUD has decided to terminate the existing contract, then HUD should deny the renewal request.
  - c. The AE/CA logs the owner's request as indicated on the Renewal Worksheet, Form HUD-9624 and any other relevant information in iREMS.

- d. Non-renewal determination:
  - 1) If the AE determines that the contract should not be renewed, the AE should follow the procedures in Chapter 13, of this Guidebook.
  - 2) If the CA determines that the contract should not be renewed, the CA should follow the procedures in the Section 8 Contract Administrators Guide.
- e. If applicable, the AE/CA reviews the RCS to make sure that the study was done in accordance with the requirements included in Chapter Nine of this Guide and determines that the comparable market rent conclusions are reasonable. Instructions for conducting the review are found in Sections 9-17 through 9-22. The AE/CA must record the data in iREMS.
- f. If applicable, review the OCAF Rent Adjustment Worksheet, Form HUD-9625 to verify that the calculations provided include only those Section 8 units in the expiring contract and the accuracy of the computations.
 

If the worksheet shows that the current contract rent potential of the project is greater than the market rent potential of the comparable rents, the project may be eligible for Recap processing. (See Chapter Five, Option Three Referral to Recap.)
- g. If applicable, the AE/CA reviews the owner's budget based request including any tenant comments received about the request. In the case of a 515 project, the AE/CA must accept the RHS approved budget that does not exceed comparable market rents without review.

**Note: HUD does not accept the RHS utility analysis. The owner must submit a utility analysis based on the instructions in Housing Notice 2015-04 or its successor.**

- h. Prepare a contract renewal.
  - 1) The AE/CA establishes the renewal rent per requirements for the renewal option selected.
  - 2) For the appropriate term:
    - a) Less than one year;
    - b) One year; or
    - c) Multiyear.
  - 3) For the expiration date of the contract:
 

The contract expiration date must be on the last day of the month.
  - 4) For the effective fiscal year for records effective October 1 in iREMS:
 

If a contract or amend rents record expires on September 30, the last day of the fiscal year, the effective date of the new contract or

Amend Rents record is October 1, the first day of the new HUD fiscal year.

- 5) For all Option One Renewal Contracts and for Option Two Renewal Contract where the term of the Renewal Contract is 20 years, insure that Exhibit B of the Basic Renewal Contract is attached to allow access to increased distributions.
- 6) For contracts which are renewed following an early termination insure that the Preservation Exhibit is attached to the Renewal Contract and for any contract renewed following the early termination of a non-MAHRA contract insure that HUD-93184 “Rider to Original Section 8 Housing Assistance Payments Contract” is attached to the Renewal Contract.

**B. Annual Rent Adjustments for Multiyear Contracts for Projects Participating In and Eligible for Auto OCAF in years of Amend Rents**

Projects eligible for Auto OCAF rent adjustments are projects with contracts in years of Amend Rents and at the fifth-year adjustment to comparables. Projects may have renewed under any of the following Options:

- Option One
  - Option Two — Project renewed under a Multi-Year Term Contract
  - Option Three
  - Option Four — Projects renewed under a Multi-Term Contract
  - Option Five — Demos with restructured loans only, for life of Use Agreement.
1. For projects that have tenant paid utilities, the owner must submit an analysis of the project’s Utility Allowance (see Housing Notice 2015-04) so that processing may be completed and any resulting change be effective on the date of the contract anniversary. To utilize the Auto OCAF process to its maximum benefit, owners are encouraged to submit their analysis prior to 150 days from contract anniversary, but should not submit more than 180 days. In the event the owner’s utility analysis results in a possible decrease in the utility allowance(s) to the tenants, owners must follow the tenant notification procedures in 24 CFR Part 245.
  2. At 150 calendar days before the anniversary date of the contract, the AE/CA will receive a system notification to process an Auto OCAF. The AE/CA will:
    - a. Access the Amend Rents record in iREMS and review the calculation of contracts rents performed by iREMS. Make any adjustments necessary based on current documentation.
    - b. Generate the Auto OCAF letter to the owner/agent (O/A) (Form HUD-9626 for Options One and Three, Form HUD-9627 for Options Two and Four), and the Exhibit A Rent Schedule. Review documents for accuracy.
    - c. Send letter and Exhibit A to O/A.

3. Upon receipt of the letter and the Exhibit A, the owner will review the OCAF adjusted rents and calculations and:
    - a. Elect to receive the Auto OCAF rent adjustment, or
    - b. Request a budget-based rent adjustment (if permitted under the terms of the renewal contract governing contract rent adjustment). An O/A may request a zero budget-based rent adjustment to maintain current rents. By checking the appropriate box on HUD 9626 or HUD-9627 an owner does not need to submit a budget if requesting a “\$0” budget based rent increase.
  4. Should the O/A select the Auto OCAF rent adjustment, the O/A must complete and return to AE/CA a signed HUD-Form 9626 or HUD-Form 9627.
  5. Should the O/A select a budget-based adjustment, the O/A must return to AE/CA:
    - a. Signed HUD-Form 9626 or HUD-Form 9627.
    - b. All documentation required for a budget-based rent adjustment as defined in HUD Handbook 4350.1, Chapter 7.
  6. Upon receipt of the O/As submission, AE/CA:
    - a. Should review O/As rent adjustment documentation.
    - b. If acceptable, update iREMS.
    - c. If the rent increase does not exceed five percent, then the CA processes the increase. If the rent increase equals or exceeds five percent, then the CA should forward the request to the AE for review.
    - d. Execute Rent Schedule Low Income Housing, Form HUD-92458, and return to O/A.
- C. Annual Rent Adjustments for Multiyear Contracts for Projects not Participating in Auto OCAF
1. Before submitting the annual rent adjustment request under 2. Below, the owner must follow the tenant notification procedures in 24 CFR Part 245 Subpart D if the rent increase is not an OCAF rent adjustment. Whenever an owner’s utility analysis results in a possible decrease in the utility allowance(s) to the project tenant notification procedures in 24 CFR Part 245 must also be followed even if the rent adjustment was made by the OCAF. Should a notice need to be issued for both a rent increase and a utility allowance decrease, a single notice is sufficient if the owner clearly identifies both items in the notice.
  2. At least 120 days but no earlier than 180 days before the anniversary date of the contract, the owner submits:
    - a. OCAF Rent Adjustment Worksheet, Form HUD-9625;
    - b. An analysis of the project’s Utility Allowances (See Housing Notice 2015-04 or subsequent notices); and
    - c. If applicable:
      - 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 that does not exceed comparable market rents.
3. The AE/CA should complete the review of an owner’s submission within 30 calendar days.
    - a. If applicable, review the RCS and the charts on the worksheet (HUD-9625) to verify that the calculations provided include only those Section 8 units in the expiring contract and ascertain 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 rents or market rents determined by an alternative method (See Chapter 9), HUD will not approve the budget-based request. The owner would receive the OCAF adjustment or could resubmit the budget that is limited to market. This requirement is not applicable when processing Option Five preservation projects.
      - 4) If a budget-based rent increase does not exceed five percent then the CA processes the increase. If a budget-based rent increase equals or exceeds five percent, then the CA should forward the request to the AE for review.
  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 Option Five, Portfolio Re-engineering Demonstration Program (Demo) contracts, 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 life cycle of the RCS. The new RCS must be reviewed in accordance with the instructions in Chapter 9 of this Guide.
    - b. If rents are:
      - 1) Above market, the AE/CA will reduce the rent to the comparable market rent.
      - 2) Below market, the AE/CA will increase the rents to comparable market rents.

## **2-18. WAIVERS**

### **A. Regulatory Waivers.**

HUD’s policy on regulatory waivers appears in HUD’s regulations at 24 CFR Part 5.110. Generally, a waiver requires a “good cause” determination. The waiver should state the specific provision or provisions to be modified and must be of limited duration. Many of

HUD's regulations are based on statutory requirements and cannot be waived. Only non-statutory regulatory requirements may be waived upon a determination by the Office of Housing for good cause. Also, certain statutes, including appropriations acts, prohibit waivers of requirements in the areas of fair housing, nondiscrimination, environmental protection, and/or labor standards. To determine if a civil rights related program requirement may be waived, the HUD Satellite Office should consult with the FHEO Regional Office or Program Center that serves the area where the project is located. To determine if an environmental protection requirement may be waived, the HUD Satellite Office should consult with the appropriate HUD Environmental Officer. To determine if a labor standard may be waived, the HUD Satellite Office should consult with the Office of Labor Standards in the Office of Field Policy and Management.

1. The owner submits to the HUD Satellite Office a request for a regulatory waiver along with any supporting documentation.
2. The HUD Multifamily Satellite Office may reject the proposal or forward the request to the Director of OAMPO in Headquarters, specifying the grounds for granting the waiver **and** recommending its approval.
3. OAMPO reviews the waiver request and either rejects the request or prepares a recommendation for approval for the Assistant Secretary for Housing-FHA Housing Commissioner.
4. The Assistant Secretary for Housing-FHA Housing Commissioner will either approve or disapprove the waiver request.
5. Headquarters notifies the HUD Satellite Office of the approval or rejection of the waiver request.
6. Regulatory waivers granted by HUD are published in the Federal Register on a quarterly basis.
7. OAMPO retains any approved regulatory waivers and related documentation for five years from the date the waiver is granted.

B. Directive Waivers.

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

1. The owner submits to the AE, a request for a waiver of the Section 8 Renewal Guide along with any supporting documentation.
2. The HUD Regional Office may reject the proposal or forward the request to the Director of OAMPO in Headquarters, specifying the grounds for granting the waiver **and** recommending its approval.
3. OAMPO, in Headquarters, reviews the waiver request and either approves or rejects the request. OAMPO will:
  - a. Notify the HUD Regional Office, in writing, of the approval or rejection of the waiver request.

- b. Retain a copy of the approval or rejection memorandum and related documentation for 3 years from the date the waiver is granted; and
  - c. Retain approved waivers of the Section 8 Renewal Guide for three years and will make the waivers available for public inspection upon request.
4. The AE will notify the Sponsor/owner in writing of the approval or disapproval of the waiver request;

**2-19. DUNS NUMBER**

All project owners receiving monthly rental assistance are required to register with Dun & Bradstreet and obtain a Data Universal Numbering System (DUNS) Number. See Notice H 2011-01, issued January 5, 2011, and HUD 2012-06, dated April 25, 2012, for detailed instruction concerning the deadline for and the process for obtaining a DUNS Number and Registering in System for Award Management (SAM).

# Chapter Three

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

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### **3-1. OVERVIEW**

- A. The Mark-Up-To-Market (MUTM) 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, MUTM was made available to only a limited universe of properties. Section 524(a)(4)(A) of MAHRA made MUTM a permanent program and required HUD 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 MUTM.
- B. To protect those most vulnerable and to further preserve affordable housing, Section 524(a)(4)(C) of MAHRA gives HUD 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.

### **3-2. GENERAL ELIGIBILITY CRITERIA FOR OPTIONS ONE A AND B**

- A. Rents. Aggregate current rent levels under the expiring or terminating contract must be less than comparable market rents.
- B. Project Condition. The project must have:
  - 1. Management’s most recent Management and Occupancy Review (MOR) rating is “Satisfactory” or above; and
  - 2. A physical inspection score, from the Real Estate Assessment Center (REAC), of 60 or above with no uncorrected Exigent Health and Safety (EH&S) violations.
- C. FASS Findings. If applicable, all Financial Assistance Subsystem (FASS) findings need to be closed or under a HUD-approved corrective action plan.



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

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

- A. Market Rents. The owner’s Rent Comparability Study (RCS) must demonstrate that the comparable market rents are at or above 100 percent of the fair market rent (FMR) potential. Use the FMR figures calculated for the fiscal year in which the project is entering MUTM to demonstrate eligibility.
  1. Excel Worksheets. Fillable worksheets are available on the Internet at [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/housing/mfh/mfhsec8](http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/mfhsec8) under “Forms Associated with Section 8 Renewals.”
  2. iREMS. The AE/CA should use the Integrated Real Estate Management System (iREMS) to establish initial eligibility. Owners and Contract Administrators can use the fillable worksheets at the website listed above in A.1.
- B. Use Restrictions. The project does not have a low- and moderate- income use restriction that cannot be eliminated by unilateral action by the owner. Examples of such a use restriction would be the existence of Flexible Subsidy assistance, Low-Income Housing Tax Credits, or Recap’s Green Retrofit Program. If the project is subject to any use restriction at the time of the renewal request, the AE/CA must determine whether it is the type of use restriction that makes a project ineligible for Option One-A.
- C. The project is not subject to a contract for moderate rehabilitation assistance under section 8(e)(2) of the United States Housing Act of 1937, as in effect before October 1, 1991.
- D. The project is not one for which a public housing agency provided voucher assistance to one or more of the tenants after the Owner has provided notice of termination of the contract covering the tenant’s unit.
- E. Ownership.
  1. The project owner must be:
    - a. A profit-motivated entity (including a limited distribution entity);
    - b. A housing authority occupying the status of a “public body corporate and politic” under the state legislation under which it was created, or
    - c. A limited partnership with one or more nonprofit general partners or a sole general partner that is wholly owned and controlled by one of more nonprofit entities.; or
    - d. A limited liability company with one or more nonprofit managers or nonprofit managing members or a sole manager or managing member that is wholly owned or controlled by one or more nonprofit entities.

**Note: Nonprofit controlled for profit entities as described in Section 3-2. D.1.c and d. can renew under Option One or Option Two.**
  2. In the case of a proposed sale, this requirement must be met by the purchaser.

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

- A. Section 8 Rents. Under Option One-A, the renewal rent levels equal the lesser of comparable market rents for the market area or 150 percent of the FMR. If the Final Comparable Gross Rent Potential is:
1. Greater than 150 percent of the FMR Potential, set the New Section 8 Gross Rents at 150 percent of the FMRs.
  2. Equal to or less than 150 percent of the FMR Potential, set the New Section 8 Gross Rents at the Final Comparable Gross Rents.

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

- B. Non-Section 8 and not expiring contract rents. MUTM has no effect on the rents of the non-Section 8 units or the Section 8 units in a Section 8 contract/stage that is not currently expiring.

### **3-5. EXCEEDING THE 150 PERCENT OF FMR CAP**

The 150 percent of FMR cap only applies to MUTM under Option One-A and only in cases where the lesser of the two measures identified in Section 3-4.A. (i.e., comparable market rents for the market area and 150 percent of FMR) is 150 percent of FMR. If the project meets one of the three criteria found in Section 3-6. B. below the renewal rents are equal the comparable market rents for the market area.

### **3-6. OPTION ONE-B DISCRETIONARY MUTM ELIGIBILITY**

Under Section 524(a)(4)(C) of MAHRA, the Secretary may mark rents up to market for projects that are not eligible for MUTM under Section 524(a)(4)(A), Option One-A, but that meet criteria listed in Section 3-2 and subsections A. and B. below. These projects are eligible for a Section 8 contract renewal under Option One-B.

- A. To further preserve the affordable housing stock, the Secretary has the authority under Section 524(a)(4)(C) of MAHRA to mark rents up to market for projects that meet certain criteria. Since enactment of Section 524(a)(4)(C), HUD's practice has been and continues to be to mark rents to market for eligible projects that meet only one of the three criteria identified in Section 3-6.B. However, if HUD determines that there is or may be a shortage of section 8 appropriations available for any fiscal year, HUD may use the discretion that Section 524(a)(4)(C) provides to mark rents up to market based on the number of criteria identified in Section 3-6.B. that the project meets.

**Note: Non-profit owned projects that meet one of the three criteria below can qualify for Option One B and have the projects' rents marked up to market, assuming they otherwise qualify.**

- B. The project meets at least one of the following three characteristics:
1. Vulnerable Populations.

The tenants of the project are a particularly vulnerable population, demonstrated by a high percentage (at least 50 percent) of the assisted units rented to elderly families, disabled families, or large families (large family is defined as a family of

five or more persons). The 50 percent can be inclusive of all categories or the individual referenced populations; or

2. Vacancy Rates.

The project is in a low-vacancy market area (or in a rural area with no comparable rental housing) where there is a lack of affordable housing and where Housing Choice vouchers would be difficult to use.

The determination of a low vacancy area should be made using the most recent available data on the rental inventory, renter households, rental vacancy rates and other factors as appropriate. A market with a rental vacancy rate of 3 percent or less is considered a low vacancy area. The AE/CA must confirm the vacancy rate with HUD Economic and Market Analysis Section (EMAS); or

3. Community Support.

The project is a high priority for the local community as demonstrated by a contribution of State and/or local funds to the project. Evidence of community support may be in the form of tax credits, tax abatements, capital improvement funds, etc. that have been provided to the project within the last five years.

### **3-7. RENEWAL REQUESTS**

See Section 2-17. A.2 as modified below. The owner:

- A. May request to enter into MUTM (Option One A or B) at any time
  - 1. During the life of a Section 524 MAHRA contract. **If the request is approved**, the owner will be allowed to terminate the existing contract early if the new contract equals 20 years and the owner agrees to the terms of the Preservation Exhibit to renew the contract at the end of the 20 years for a term that equals the remaining term of the original terminated contract in whole months.
  - 2. During the life of a non-MAHRA contract if the new contract equals 20 years, the owner agrees to the terms of the Preservation Exhibit to renew the contract at the end of the 20 years for a term that equals the remaining term of the original terminated contract and, for non-MAHRA contracts, the owner agrees to sign the HUD-93184 “Rider to Original Section 8 Housing Assistance Payments Contract”.
- B. Cannot request to terminate a “DEMO” or Preservation contract early to renew under MUTM.
- C. Cannot request to terminate a “Full” Mark-to-Market contract (HUD-9642) early to renew under MUTM.
- D. Cannot request to terminate a Rental Assistance Demonstration contract early to renew under MUTM.

### **3-8. PROCESSING INSTRUCTIONS**

See Section 2-17 as modified below.

- A. Initially Eligible. The AE/CA must use the owner’s RCS to determine if the project is eligible for renewal under either Option One-A or One-B. The AE/CA, along with a

qualified appraiser, will also review the RCS based on the instructions found in Sections 9-17 through 9-20 of this Guide and determine whether the comparable market rent conclusions are reasonable. For transactions that include a RCS that has “as is” and “after rehab” market rent determinations as part of a Chapter 15 transaction, the AE/CA must use the “as is” market rents to determine initial eligibility.

B. Not Eligible.

1. If the project is not eligible for Option One-A, but meets the eligibility criteria for Option One-B, the AE/CA will notify the owner and request the owner to modify its renewal request.
2. If a project is not eligible for Option One-A or One-B,
  - a. In the case of a request for the early termination of an existing contract, the owner may be permitted to withdraw its renewal request entirely, in which case the existing contract would remain in place.
  - b. In all other cases the owner must switch to any other renewal option the project is eligible for including Option Six, Opt-Out. If an owner selects an option, other than Option One, then the owner’s RCS, subject to review described in Chapter 9 of this Guide, shall be used to determine the market rents for the project.
3. In the case where an existing contract has expired, the AE/CA may provide short-term Renewal Contract at current rents to the owner while the owner determines the other renewal options for which the project may be eligible.

C. Comparability Studies. Along with a request to Mark-Up-To-Market, the owner must submit a RCS prepared following the guidelines detailed in Chapter Nine of this Guide.

**3-9. ANNUAL RENT ADJUSTMENTS DURING A MULTIYEAR CONTRACT**

- A. No budget-based rent increases are permitted under the terms of MUTM contracts. In years two through five, the AE/CA adjusts rents by the published OCAF. (See Section 2-17.B. or 2-17.C. for processing details.)
- B. For projects with a contract term that exceeds five years, the AE/CA should follow the instructions in Section 2-17. C.4. concerning fifth year adjustments.

# Chapter Four

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

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### 4-1. ELIGIBILITY

- A. Option Two is for owners who request a renewal of their Section 8 contract where the RCS indicates that:
1. The contract's aggregate current rents are at or below comparable market rents, or
  2. The contract's aggregate current rents exceed comparable market rents, but the project is exempt from MTM restructuring and the owner is willing to cut the rents to comparable market rents prior to renewal of the contract.

**Note: Projects currently renewed under either Option Two or Option Four can reduce rents to market to renew under Option Two if they meet the conditions in Section 2-4. B.**

- B. Owners can include both nonprofit and for profit entities. In cases where a transfer is involved in a transaction, the purchaser must meet the definition of owner.

### 4-2. CONTRACT RENEWAL

- A. Owners must follow the instructions in Section 2-17 when submitting the necessary information to renew the Section 8 HAP contract.
- B. Rents may be adjusted by either:
1. An OCAF, or
  2. At the discretion of HUD, a budget-based rent adjustment limited by the market.

### 4-3. ANNUAL RENT ADJUSTMENTS DURING A MULTIYEAR CONTRACT

- A. In years two through five, the AE/CA adjusts rents by the published OCAF, or at the discretion of HUD a budget based rent request. (See Section 2-17.B. or 2-17.C. for processing details.)
- B. For a project with a contract term that exceeds five years, the AE/CA should follow the instructions in Section 2-17. C.4. concerning fifth year adjustments.

**4-4. PROCESSING INSTRUCTIONS**

- A. For renewals follow the instructions in Section 2-17.A.
- B. For rent adjustments follow the instructions in Section 2-17.B. or 2-17.C.

## Option 3: Referral to Recap

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### 5-1. ELIGIBILITY

#### **Note: WAIVERS TO CHAPTER FIVE WILL BE IN ACCORDANCE WITH RECAP POLICIES**

- A. Expiration of Statutory Authority: The statutory authority for the Mark-to-Market restructuring tools under MAHRA used by the Office of Recapitalization (Recap) (formerly known as OAHF expires on **October 1, 2017** (“Sunset”), unless extended by statute. Prior to Sunset, owners of projects subject to an expiring Section 8 HAP contract with above-market rents and that are subject to an FHA-insured or a Secretary-held mortgage, unless exempt from Mark-to-Market debt-restructuring under section 514(h) of MAHRA, must be referred to Recap.
- B. Once Eligible, Always Eligible: Per section 512(2)(C) of MAHRA, as amended, prior to Sunset, FHA-insured projects or projects with Secretary-held mortgages that had above-market Section 8 contract rents at the time of initial renewal under section 524 of MAHRA (on or after October 1, 1998), are eligible for referral to Recap, and the owner may request debt restructuring, even though the HAP contract was previously renewed under section 524 of MAHRA and even if current rents under the initial or subsequent MAHRA renewal contract are now at or below market. Projects must have a current, project-based Section 8 HAP contract, and an FHA-insured or HUD-held mortgage, to be eligible for Mark-to-Market.
- C. Projects Previously Renewed under Section 524: FHA-insured projects and projects subject to Secretary-held mortgages previously renewed under Section 524 which did not have rents above market at the time of renewal, but which now have above market rents, are eligible for referral to Recap prior to Sunset.
- D. “Preservation Projects”: The owner of a Preservation Project may request Mark-to-Market debt-restructuring any time prior to Sunset, only if the project is being transferred or sold. Upon such a request, Recap will determine whether to accept the project for M2M debt-restructuring.
- E. “Exception Projects”: Exception projects, as defined in Chapter Six, (which includes Section 542(c) Risk Sharing projects), are ineligible for referral to Recap, and once identified, will not be retained by Recap for renewal. However, once the condition(s) qualifying a project as an Exception Project no longer exists, the project is eligible for referral to Recap for restructuring.

**Note: Risk Sharing Projects do not meet the definition of “eligible multifamily housing project” in section 512(2) of MAHRA, and, on this basis, are eligible for renewal as an exception project under Option Four.**

- F. **Ineligible Project Determinations:** A project owner who is suspended or debarred is ineligible for a full debt restructuring (“Full”). However, even if the project is ineligible for a Full, the project may remain eligible as a project that is financially viable without a debt restructuring after the rents are reduced to comparable market rents (“Lite”). This kind of project should be referred to Recap for a rent determination. Eligibility for a Lite will be determined on a case by case basis by Recap after a review of the project’s underwriting, which will include the results of the RCS and an analysis of the project’s expenses. If the project is determined to be ineligible for a Lite and the owner or project has been rejected, Recap will return the HAP Contract to the AE. If the HAP Contract is renewed even though the project is ineligible for a Lite, the AE/CA must renew the HAP Contract using a Watch List Contract (HUD-9643) at Recap-determined comparable Market Rents. The project should be designated, monitored and entered into the Integrated Real Estate Management System (IREMS) as a project subject to a Watch List Contract, and defined in IREMS as a project with a loan that failed M2M restructuring and is therefore operating under a Watch List Contract. Follow OAMPO guidance on monitoring of projects subject to a Watch List Contract.
- G. **Mod Rehab Projects:** Projects with Mod Rehab HAP contracts are eligible for Recap restructuring before Sunset if the projects meet the requirements in Section B, above. The Interim (Full) Mark-to-Market Renewal Contract (HUD-9640) is used for entry into Recap for a Mark-to-Market restructuring.
- H. **Section 202 Projects Refinanced for a Second time:** Projects financed under Section 202 Elderly and Disabled Housing Direct Loan Program (Section 202) are eligible for restructuring if; 1) the project has been refinanced at least two times if the second refinance using a loan insured under the National Housing Act, 2) the project refinanced with a FHA insured loan at the time of the 202 refinancing but did not refinance under the terms in Notice 13-17. All other projects refinanced under Section 202 are ineligible for restructuring under Mark-to-Market.

## **5-2. BINDING COMMITMENT**

Binding Commitment: Processing may continue after Sunset if, prior to Sunset, there is a binding commitment to restructure. The Renewal Worksheet for Option Three, which is part of form HUD 9624, Contract Renewal Request Form, contains language which constitutes a binding commitment for purposes of MAHRA. The execution of the Renewal Worksheet for Option Three by the owner and an authorized HUD representative thus allows debt restructuring to continue after Sunset, as does a fully executed Interim (Full) Mark-to-Market Contract. Such restructuring may continue so long as the owner and/or project remains eligible for debt restructuring under MAHRA always, and shall be subject to MAHRA, the regulations promulgated under MAHRA (“Regulations”), and the Operating Procedures Guide (OPG).

## **5-3. ENTRY INTO RECAP**

- A. **Above-Market Projects:** Prior to Sunset, an owner of an eligible project may request:
  - 1. **Option 3A (Lite):** A renewal of the contract without debt restructuring, with the rents reduced to comparable market rents. Use the Interim (Lite) Mark-to-Market Renewal Contract (HUD-9641), for entry into Recap as a Lite. An Interim (Lite) Mark-to-Market Renewal Contract has a term determined by Recap, not to exceed



12 months. Rent adjustments are prohibited during the term of the Interim (Lite) Mark-to-Market Renewal Contract.

2. Option 3B (Full): A debt restructuring and contract renewal (with a term of up to 20 years), with the rents reduced to comparable market rents. Use the Interim (Full) Mark-to-Market Renewal Contract, for entry into Recap as a Full. Rent adjustments are prohibited during the term of the Interim (Full) Mark-to-Market Renewal Contract.

**Note: If HUD determines that contract rents exceed comparable market rents and the project is otherwise eligible for referral to Recap for debt restructuring and/or rent reduction, the AE must forward the project to Recap for processing.**

**Note: In cases where a CA makes the determination that contract rents exceed comparable market rents and that the project should be referred to Recap, the CA must return the contract to the AE with the recommendation that the project be referred to Recap for debt restructuring and/or rent reduction.**

- B. Currently At-Market Projects: Prior to Sunset, any project that had above-market rents at the time of the initial renewal on or after October 1, 1998, may be eligible for a full debt restructuring even if the current rents are at-or below-market. An owner of such project can request a debt restructuring as follows:

1. Owners with Watch List contracts may request re-entry into Recap for restructuring, but must have a binding commitment as set forth in Section 5-2, above, prior to Sunset, for any restructuring to occur after Sunset. If approved by Recap for re-entry, terminate the Watch List Renewal Contract and issue the Interim (Full) Mark-to-Market Renewal Contract.
2. Owners who were originally eligible for Recap, but whose rents were reduced without the benefit of debt restructuring may request entry into Recap prior to Sunset. Generally, this group includes any project, including previously approved Lite projects, that had above market rents at the time of the initial renewal and are otherwise eligible. Use the Interim (Full) Mark-to-Market Renewal Contract.

- C. Required Owner Submissions:

1. For Lite Rent Restructuring: The owner submits a Contract Renewal Request Form (HUD-9624), including a certification that project rents exceed comparable market rents (or exceeded comparable rents on or after October 1, 1998), and neither the owner nor any affiliate is suspended nor debarred. If the owner or any affiliate is suspended or debarred, the project may continue to be eligible for a Lite. (Refer to Chapter 6, “Approvals, Ineligibility and Appeals”, of the Recap Operating Procedures Guide.) The AE/CA executes the Interim (Lite) Mark-to-Market Renewal Contract for a term determined by Recap, not to exceed 12 months.

An owner requesting a Lite is also required to submit:

- a. A physical inspection report,
- b. A copy of the most recent audited financial statements (all financial statements must be official electronic submissions to HUD); and

- c. A RCS.
  2. For Full Debt Restructuring: The owner submits a Contract Renewal Request Form, including a certification that project rents exceed comparable market rents (or exceeded comparable rents at a renewal on or after October 1, 1998), and that neither the owner nor any affiliate is suspended nor debarred. If the owner is suspended nor debarred, a request for a debt restructuring may be rejected by the Secretary, unless the debt restructuring includes a transfer of the project to a HUD-approved purchaser. If any affiliate is suspended or debarred, the project may continue to be eligible for contract renewal with restructuring at the Secretary's discretion. (Refer to Chapter 6, "Approvals, Ineligibility and Appeals" of the Recap Operating Procedures Guide.)
- D. The AE/CA:
1. If the project is entering Recap for a debt restructuring, the AE/CA executes the Interim (Full) Mark-to-Market Renewal Contract and forwards it to Recap for processing. The Interim (Full) Mark-to-Market Renewal Contract expires by its terms upon the earlier of: 1) twelve (12) months; 2) last day of the month of closing under the Restructuring Commitment; 3) upon a final determination as defined in MAHRA and the Regulations ("Final Determination") that results in the discontinuance of the Restructuring process or that the owner is in default under the renewal contract.
  2. If a project subject to a Watch List Renewal Contract (HUD-9643) is re-entering Recap, the AE/CA terminates the Watch List Renewal Contract and replaces it with the Interim (Full) Mark-to-Market Renewal Contract for a specific period determined by Recap to complete the processing.
  3. If a completed Lite project wants to return to Recap for a debt restructuring, the AE/CA executes the contract for a specific period (12 months or less) determined by Recap to complete the processing. Use the Interim (Full) Mark-to-Market Renewal Contract to complete the processing.
- E. Extensions of Interim Contracts:
1. Recap/Participating Administrative Entity (PAE)/HUD Delays: The AE, Recap or the PAE may request an extension of the Interim Contract at above market rents for any project that has exceeded the one year period. Extensions at above market rents may not exceed the approved expiration date. Recap projects with approved extensions must use the appropriate interim contract.
  2. Owner Delays: There will be no extension at above-market rents when HUD determines that the owner is the cause of the delay. In these cases, where additional time is required, the AE/CA will extend the Interim Full Renewal contract at market rents. Recap will direct the AE/CA to extend the contract for a sufficient period required to bring the project to closing.

#### **5-4. CONTRACT RENEWALS — RENT OR DEBT RESTRUCTURING**

- A. General Policy: Once Recap processing is completed, Lites and Fulls are renewed as follows:

1. Lites: Lites are renewed under Section 524 of MAHRA. For multiyear contracts, contract rents are adjusted annually, per the renewal contract, by application of an OCAF or, if HUD approves, on a budget basis.
  2. Fulls: Upon the closing of a debt restructuring, Fulls are renewed under Section 515 of MAHRA, generally for a term no greater than 20 years. Budget-based rent adjustments are not permitted during the term of a Full Mark-to-Market Renewal Contract or any renewal thereof, and under no circumstances may a Full Mark-to-Market Renewal Contract be terminated prematurely to permit the owner to participate in any other renewal option, including Mark-up-to-Market. Owners are required to combine contracts (including those that expire in later fiscal years) under a Full Mark-to-Market Renewal Contract.
- B. Once Recap (and the PAE) complete processing, the Section 8 contracts for Lites and Fulls will be executed as follows:
1. Recap Lites: Upon notifying the PAE and owner of Recap's approval of the Lite, Recap contacts the OAMPO's Assisted Housing Division Director via email, requesting funding for the HAP Contract. A copy of Exhibit A, which includes a breakdown of unit number and type, rents, utility allowances and monthly totals, is provided in the email.
 

Once a notification of funding (in the form of an email, or a Notice of Funding Authorization, from OAMPO's Assisted Housing Division Director, has been received by Recap, Recap completes the one-year Basic Renewal Contract (HUD-9636) or the multi-year Basic Renewal Contract (HUD-9637) and forwards the contract to the PAE for the owner's signature. An electronic copy is also provided to the AE. The PAE will forward the contract to the owner for signature with instructions to return the contract to the AE/CA, for HUD execution and processing.
  2. Recap Fulls: Upon notification to the PAE and owner of Recap's approval of the Full transaction, Recap contacts OAMPO's Assisted Housing Division Director via email, to provide early notification that the restructuring plan has been approved by Recap and a Restructuring Commitment is being issued to the owner. A copy of Exhibit A, which includes a breakdown of unit number and type, rents, utility allowances and monthly totals, is provided in the email (this is for early notice only, OAMPO's Assisted Housing Division Director may choose to process the request at this point, or wait for official funding request from Recap). When Recap is notified by the PAE that the Restructuring Commitment has been signed by the owner, an official funding request is sent to OAMPO's Assisted Housing Division Director, requesting the amount needed and the tentative closing date. An updated copy of Exhibit A, (in the case that rents have changed) is provided with this email. If the funding request was not processed by OAMPO's Assisted Housing Division Director upon early notification, it must be processed now. Once a notification of funding (in the form of an email, or a Notice of Funding Authorization, from OAMPO's Assisted Housing Division Director), has been received by Recap, Recap completes the Full Mark-to-Market Contract and forwards the contract to the

PAE. The PAE will forward the contract to the owner for signature with instructions to return the contract to the AE/CA, for HUD execution and processing, prior to Mark-to-Market closing. An electronic copy is also provided to the AE, OAMPO's Assisted Housing Division Director, and HQ Closing Coordinator.

- C. **Post-Closing:** After closing, the Recap Regional Preservation Office will provide a "Closing Docket Transmission Memorandum" to the Multifamily Regional Center summarizing the details of the debt restructuring. Most of the information included in the Transmission Memorandum is also available through the Recap Management Information System database system. Refer to Chapter Seven, Closing, and Chapter Eight, Post-Closing Document Distribution of the Recap Operating Procedures Guide (OPG) for further information.
- D. **Owner Opt Outs:** If an owner has decided to opt out of the project-based Section 8 contract while assigned to Recap for a rent or debt restructuring, and the Multifamily Regional Center has confirmed that the owner has decided to opt out, Recap will complete the rent determination, inform the AE of the rent determination, and cease processing. If additional time is required to either process tenant vouchers or to complete the tenant notification period, the AE/CA will prepare a one-year Basic Renewal Contract, (HUD 9636), at comparable market rents using Recap's rent determination.
- E. **Owner Prepayments:** If an owner decides to prepay the FHA-insured mortgage after submitting a Contract Renewal Request Form, and the Multifamily Regional Center has confirmed that prepayment has occurred, Recap will complete the rent determination, inform the AE of the rent determination, and cease processing. Under these circumstances, the project is not eligible for renewal under Option Four (i.e., as an Exception Project) and would not be eligible for renewal under Option Four in the future except as provided for in Section 6-4 (Section 202 Refinancings). The AE will prepare a Basic Renewal Contract at comparable market rents using Recap's rent determination.
- F. **Interim Section 8 Processing Guidance for Recap Projects:** Processing Section 8 contracts for Lites, Fulls and Watch List properties should be done in accordance with the Multifamily policies and procedures regarding renewals of Project-Based Section 8 Housing Assistance Payments Contracts.
- G. **Performance-Based Contract Administrator:** The Financial Management Center (FMC) will execute the Annual Contributions Contract (ACC) as well as complete the fund reservation process.
- H. **Contract Types:** Please refer to Section 2-6 A of this Guide for a list of appropriate contracts to use when renewing a MTM contract.

#### **5-5. SUBSEQUENT RENEWALS**

- A. **Lite Contracts.** A project that receives a rent reduction and is renewed as a Lite using the Basic Renewal Contract, may, at subsequent renewal (generally five years), be renewed at the owner's request under any option that the project is eligible for at the time the contract expires.
- B. **Full Contracts (Full Mark-to-Market Renewal Contracts).** When a Mark-To-Market debt restructuring is completed, an initial Full Mark-to-Market Renewal Contract is executed

generally for a term of 20 years (the term may be 1 to 20 years), and is to be subsequently renewed under Option Three B up to the remaining term of the Use Agreement (which, by operation of section 514(e)(6) of MAHRA, must be at least 30 years). The term of the subsequent renewal (or sum of the subsequent renewals, if there is more than one), together with the term of the initial MTM contract, may not extend beyond the term of the Use Agreement. If the Use Agreement is in effect and the offer(s) for subsequent renewal from the Secretary does/do not exceed the remaining term of the Use Agreement, an owner is obligated to accept such offer(s) to renew the Full Mark-To-Market Renewal Contract during the term of the Use Agreement, if such offer(s) is/are on the same terms and conditions. Full Mark-To-Market Renewal Contracts must be subsequently renewed using the same Full Mark-to-Market Renewal Contract form (HUD-9642) used for the initial Full Mark-To-Market renewal. Note that Full Mark-to-Market Renewal Contracts permit only annual OCAF rent adjustments and the rents for renewal are set at the levels under the expiring contract.

Example 1: Project was restructured under Mark-to-Market and received a 20-year Full Mark-to-Market Contract at that time. After the expiration of this contract, HUD offered a 10 –year Full Mark-to-Market Renewal Contract (at the existing rents plus OCAF). The owner is required to accept the Renewal Contract because the term of the Use Agreement has not expired and the Renewal Contract term does not exceed the remaining term of the Use Agreement). The Renewal Full Mark-to-Market Contract would only allow OCAF rent increases.

During the term of the Use Agreement: No RCS is allowed or required; no budget-based rent adjustments are permitted; and, under no circumstances, may a Full Mark-to-Market Contract be terminated prematurely to permit the owner to participate in any other renewal option, including Mark-up-to-Market. All renewals must utilize the Full Mark-to-Market Renewal Contract form (HUD-9642).

- C. Early Contract Termination and Renewal: Non-Exception Rent (See Section D, below, for Exception Rents). To facilitate the refinancing of a debt-restructured project’s first mortgage loan and satisfy a typical lender condition for such refinancing, owners often request an extension of the term of the project’s Full Mark-to-Market Renewal Contract. [Note that a refinancing will generally trigger the due-on-sale or -refinance clause contained in all Mark-to-Market mortgages. Waivers of this clause are subject to separate HUD guidance, Notice H 2012-10 or its successor.] Extensions of the Full Mark-to-Market Renewal Contract are not permitted, but the contract may be terminated and then renewed.

HUD may grant such requests only if the owner agrees to an extension of the term of the Use Agreement, if necessary, to equal the term of the renewed Full Mark-to-Market Renewal Contract. Just as with the original Full Mark-to-Market Renewal Contract, rent adjustments would continue to be limited to OCAF only. In each instance that a Full Mark-to-Market Renewal Contract is terminated early and then immediately renewed again, the subsequent renewal must be perfected using the Full Mark-to-Market Renewal Contract form HUD-9642.

Example 2: Assume the facts of Example 1, above. Five years into the 10-year Full Mark-to-Market Renewal Contract, the owner now wishes to refinance the project and

one of the lender conditions for refinancing is that the remaining term of the Full Mark-to-Market Renewal Contract be at least 10 years. The owner may request approval from HUD for a 5-year extension of the term of the Project's Use Agreement (to 35 years) and early termination of the existing 10-year Renewal Contract. If HUD approves these requests, the owner would receive a third Renewal Contract which can now be 10 years (Original 20-year Full Mark-to-Market Renewal Contract, plus the second Renewal Contract which had run 5 years when terminated plus the 10-year term of the third Renewal Contract total 35 years, equal to the term of the extended Use Agreement). Rent increases would be limited to OCAF only for the entire 35 years.

The anniversary date of the Renewal Contract will be based on the starting date of that Renewal Contract. The annual OCAF rent adjustment date is therefore reset based on the new anniversary date. This example may have the effect of more than 12 months between OCAF adjustments between the last OCAF adjustment under the current Full Mark-to-Market Contract and the first OCAF adjustment under the Renewal Contract. HUD will agree to the early termination and renewal of a Full Mark-to-Market Renewal Contract only to the extent that the owner accepts the resulting effect (described above) on the otherwise annual rent adjustment scheme.

Example 3: A Full Mark-to-Market Contract has an anniversary date of January 1, and receives an OCAF rent adjustment on that date. At the owner's request, the contract is terminated and renewed effective July 1 of that same year to accommodate new financing. The initial rents on the Renewal Contract are the same as the then-contract rents on the terminated contract. The new anniversary date of the contract is July 1, with the next OCAF rent adjustment one year later on July 1. It will therefore be 18 months between OCAF rent adjustments.

- D. Early Contract Termination and Renewal: Exception Rents. In no event will a contract with MAHRA Section 514(g) "Exception Rents" be renewed with a term that extends beyond the original term of the Use Agreement; the term of the Use Agreement on such properties will not be extended beyond 30 years from the date of the Mark-to-Market restructuring. An early contract termination and subsequent renewal will be processed only if the combined terms of the contracts do not exceed 30 years.

Example 4: Assume the facts of Example 2 (the owner is 5 years into a 10-year Renewal Contract, year 25 post restructuring), but under this Example 4, the contract has Exception Rents and the owner requests a 10-year extension of its Renewal Contract with Exception Rents. The owner's request would be rejected by HUD because the 10-year term of a third Renewal Contract, combined with the terms of the prior Mark-to-Market Contracts, would exceed 30 years.

- E. Renewal After Expiration of the Use Agreement. Except for certain transactions with qualified nonprofits which are for more than 30 years, renewals for any period beyond 30 years from the date of the Mark-to-Market restructuring (if the Use Agreement has not been extended pursuant to Section 5-5 (C)) will be under then-applicable statutes and regulations, using any renewal option for which the project is eligible at that time.

## **5-6. "WATCH LIST" MTM PROJECTS**

- A. Watch List Contracts are used when:

1. Recap decides of ineligibility under Section 516(a) of MAHRA; or,
2. An owner refuses to change his/her election from a Lite to a Full after Recap has determined that a renewal without a debt restructuring would not be sufficient to maintain adequate debt service coverage and/or the physical integrity of the project; or,
3. An owner refuses to execute a Restructuring Commitment or close on a Full; or,
4. Recap concludes that the restructuring process will not result in an economically and/or financially feasible project.

See Chapter Six, “Approvals, Ineligibility, and Appeals” in the OPG for further information on ineligibility and discontinuance in Recap.

Use the Watch List Renewal Contract (HUD-9643). These contracts are limited to one year terms; multi-year contract terms are not permitted for projects placed on the Watch List. See HUD-9643, Section 4d (2).

B. Processing Watch List Contracts: Once the PAE completes the processing, Recap prepares a new one-year Watch List Renewal Contract HUD-9643 and forwards a copy of the contract to the AE/CA.

1. Market Rents and Term: The Watch List Contract reduces rents to market using Recap’s determination, and requires the owner to submit monthly accounting reports. The project is placed on the Watch List, and defined in IREMS as a project subject to a loan that failed M2M restructuring and is therefore operating under a Watch List Section 8 HAP Contract, to be monitored by a designated Account Resolution Specialist.
2. Term and Rent Adjustments: Unless the project meets the conditions listed below for removal, a project remains on the Watch List for three years and would receive three contracts, each of one year’s duration. No rent adjustments are allowed during the term of each contract, but OCAF adjustments are permitted between contracts. For example, there could be an OCAF adjustment for the rents established in the second Watch List contract and the third Watch List contract.
3. Continued Mark-to-Market Eligibility: If, after the effective date of the Watch List Contract, the owner chooses a full debt restructuring, he/she must submit a HUD 9624, Contract Renewal Request Form, to the AE/CA. Recap reserves the right to reassess the eligibility and suitability of the project and the owner. If approved for re-entry, the owner must execute an Interim (Full) Mark-to-Market Renewal Contract at current market rents. Prior to Sunset, the owner must have a binding commitment to restructure the debt in order for processing to continue after Sunset. See Section 5-2.
4. Removal from the Watch List: A project can only be removed from the Watch List if any one of the following is satisfied:
  - (a) The owner requests to return to Recap, and Recap approves;

- (b) The project has been on the Watch List for three years, and the Account Resolution Specialist has determined that the project is not experiencing physical, financial, or managerial signs of deterioration;
- (c) The owner has prepaid the mortgage; or
- (d) The owner has opted out of the Section 8 Program.

Multifamily Regional Center may request removal of a project from the Watch List by submitting written justification to Recap Headquarters.

- C. **Monitoring Watch List Contracts:** Projects on the “Watch List” list are considered to be at greater risk and have questionable long-term financial viability. As a result, these projects must be monitored closely. Refer to Handbook 4350.1 and other guidance for policies and procedures that must be applied to all projects on the Watch List.
- D. **File Return and IREMS Documentation:** The PAE will return project files to the appropriate AE who is responsible for entering the following information in the problem statement screen in IREMS:
  - 1. The monitoring category and the reason(s) why, i.e., defined as loans that failed M2M restructuring and are therefore operating under a Watch List Renewal Section 8 HAP Contract, and
  - 2. Any other relevant information provided by the PAE/ Recap process that indicate the physical, financial and/or management problems that should be closely monitored over the term of the contract.
- E. If, over the term of the contract, the project shows signs of deterioration, the AE/CA should take immediate actions that are consistent with Handbook 4350.1, Multifamily Asset Management and Project Servicing Guide (See Chapter Thirteen of this Guide if it is determined that the housing assistance payments should be abated).
- F. **Owner Prepayments:** If the owner prepays the mortgage while under a Watch List Contract, the AE will notify Recap, the project will be removed from the Watch List, and the AE will issue a Basic Renewal Contract at the comparable market rents established under the Watch List Contract.

## **5-7. GENERAL INFORMATION**

- A. **Recap Processing Information:** The OPG addresses program policies and procedures for Lites and Fulls, eligibility requirements, rent and debt restructurings, closing and post-closing procedures and PAE responsibilities. The OPG can be found at: [www.portal.hud.gov/hudportal/HUD?src=/program\\_offices/housing/mfh/presrv/presmfh](http://www.portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/presrv/presmfh)
- B. **MTM Contacts:** Contact your local Debt Restructuring Specialist (DRS) located in one of two Regional Preservation Recap Offices – Washington, D.C. or Chicago, or you may contact Headquarters at (202) 708-0001.



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

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### 6-1. 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 insured under the National Housing Act and the implementation of a Mark-to-Market Restructuring Plan would conflict with applicable law or agreements governing such financing.

**Note: State and local government financed projects that are not insured under the National Housing Act are not subject to Recap review.**

To confirm the exemption, a determination must be made by Recap as to whether implementation of a Mark-to-Market Restructuring Plan conflicts with applicable law, or agreements governing such financing. In these cases, the contract and supporting documentation of the potential conflict must be referred to Recap for review. The owner (or lender) must submit an opinion of counsel in a form acceptable to HUD, along with copies of the relevant financing documents or applicable local or State legal authority.

Upon receipt of the owner’s documentation, Recap will complete its review and notify the AE/CA of its determination generally within 5 business days.

- a. In cases where Recap determines that the project is not (or is no longer) exempt from debt restructuring, the AE/CA will notify the owner that the project may either be processed under B.2. below or the owner may select another renewal option.

**Note: In cases where referral to Recap is necessary, CAs must return the contract to the AE with the recommendation that the AE forward the contract to Recap for review.**

- b. In cases where Recap determines that the Restructuring Plan would conflict with applicable laws and/or agreements, Recap will return the case to the AE/CA for renewal under the Option Four provisions.
2. Section 202/8 and Section 515/8 Projects. Projects currently financed under Section 202 of the Housing Act of 1959 or Section 515 of the Housing Act of 1949. However, these projects can be eligible for restructuring if refinanced with FHA mortgage insurance.

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

3. Refinanced Section 202 project. The project was refinanced pursuant to Section 811 of the American Home Ownership and Economic Opportunity Act of 2000. See Section 6-4 below.
  4. SRO Mod Rehab. Projects that have an expiring contract under Section 8 of the United States Housing Act of 1937 pursuant to Section 441 of the Stewart B. McKinney Homeless Assistance Act.
- B. The following projects are not eligible for debt-restructuring on the basis that they do not meet the definition of “eligible multifamily housing project” under section 512(2) of MAHRA:
1. Projects that are not subject to an FHA-insured or HUD-held mortgage; and,  
**Note: Projects financed under the risk-sharing loan programs under Section 542(b) and (c) of the Housing and Community Development Act of 1992, are eligible for renewal under Option Four.**
  2. Projects that are subject to an FHA-insured or HUD-held mortgage with rents at or below comparable market rents.

**Note: An owner must obtain a RCS to establish eligibility under Section 6-1. B.2.**

## **6-2. RENEWALS**

- A. The “lesser of” test is required at both initial and subsequent renewal. (See section 524(b)(1) of MAHRA and 24 CFR Part 402.5(b).) The rents are to be set at the lesser of:
  1. Current rents as adjusted by OCAF; or
  2. Budget-based rent level.

**Note: Project rents may be reduced.**

**Reminder: For projects (including 202 projects) that are being refinanced, “current debt service” means the debt service which will take effect when the new loan closes (See Section 2-15. B for more details).**
- B. See Sections 2-15 and 2-17. A. for processing instructions.

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

- A. Rents may be adjusted by either:
1. An OCAF adjustment; or
  2. A budget-based rent adjustment. If requesting a budget-based rent adjustment, the rent level required to meet operating expenses based on the format required by HUD Handbook 4350.1, Chapter 7 and HUD-9635, must be submitted with the request. Notwithstanding the instructions in the Handbook, owners must use current debt service if an owner requests a budget-based rent adjustment. If requesting a budget-based rent adjustment:
    - a. The owner must submit or have submitted within the preceding 5 years a RCS prepared following the instructions found in Chapter Nine of the Section 8 Renewal Guide. This requirement does not apply if the owner is seeking a “0” budget based rent adjustment.
    - b. Previously submitted RCS’s are valid for 5 years and will be adjusted annually by OCAF.
    - c. If the RCS demonstrates that the current rents are above comparable market rents, the request for a budget-based rent adjustment will be denied (except any request for a \$0 budget-based rent adjustment) and owner will only receive an OCAF rent adjustment.
    - d. If the proposed rents as adjusted based on a budget, do not exceed comparable market rents as established by the RCS, the owner may, at HUD’s discretion, receive a budget-based rent increase, not to exceed comparable market rents.
- Note: In the case of a 515 project, accept the RHS approved budget without review; however, the owner will be required to submit a RCS if the resulting rents exceed the rents the project would have received from an OCAF adjustment (see chapter 14)**
- Note: In the case of a 202 project with a written and signed “Debt Service Savings Agreement,” HUD will allow the dollar amount listed in the agreement to be included in the budget.**
- B. There is no “lesser of” test required at the time of the annual rent adjustment for a multiyear HAP contract.

C. See Section 2-17.B for processing instructions.

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

- A. If a project owner complies with the provisions of Section 811 of the American Home Ownership and Economic Opportunity Act of 2000 then it remains exempt from debt-restructuring, notwithstanding above market rents and an FHA-insured mortgage.
- B. If the project owner does not comply with the provisions of Section 811, then the project will remain exempt from debt-restructuring unless the Section 202 Direct Loan is refinanced with a FHA-insured mortgage when the HAP contract comes up for renewal.

- C. Some properties that have prepaid the original Section 202 Direct Loan may now wish to “re-refinance” these former 202 projects. If the project owner re-refinances with conventional (non-FHA) financing, the project retains eligibility to renew under Option 4 of the Renewal Guide (“Renewal of Projects Exempt from or not Eligible for Debt- Restructuring”) at the next expiration date of the HAP contract. However, if the owner re-refinances with an FHA insured loan, the project will no longer be exempt from Mark-to-Market restructuring and will lose the ability to renew under Option 4 upon the next expiration of the HAP contract. Following the re-refinance, the former 202 project must continue to operate under the terms and conditions of the recorded Section 202 Use Agreement.
- D. For detailed information on refinancing of 202 properties, please refer to Notice H 2013-17 or subsequent notices that may amend or supersede this notice.

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

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### **7-1. ELIGIBILITY**

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.

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).

#### Portfolio Reengineering Demonstration Program Projects

The Demo Program was undertaken as an interim measure until a permanent debt-restructuring program could be adopted. The program was authorized for FY 1996, 1997, and 1998. There are 188 DEMO projects remaining in the program.

Properties participating in the Demo were subject to the rules of the program in force at the time of their entry into the program. When time limits for restructuring activities were not met, properties might:

- Leave the program;
- Receive extension in some circumstances; and/or
- Restructure under the authorization in force when the time limits were reached.

Restructurings were completed under the Demo program through 1999 and into the year 2000.

### **7-2. 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 HUD to renew the Section 8 contract throughout the term of the Demo Use Agreement. Therefore, an owner cannot opt-out of the contract.
- B. If the project went through the Demo Program but does not have a recorded Demo Program Use Agreement, it does not qualify as a Demo project. The owner:
1. Cannot renew its contract under Option Five.
  2. May renew its contract under any other Option for which it qualifies.

**7-3. OWNER SUBMISSION FOR DEMONSTRATION PROJECTS UNDER OPTION FIVE**

A. Initial Renewal.

The Portfolio Reengineering Demonstration Program (PRD) has been replaced by the M2M program and HUD is no longer processing initial renewals under the PRD program.

B. Subsequent Renewal

1. A Demonstration project will renew under Option Five, with a minimum term of one year and a maximum term not to exceed the lesser of 20 years or the remaining life of the project's Demo Program Use Agreement.

**Note: Owners can request that the existing Demo Program Use Agreement be extended to facilitate a preservation transaction.**

2. **An exception** is permitted for projects with a recorded Budget-Based Without Mortgage Restructuring Demo Program Use Agreement. The owner **may** renew under Option One or Two for a minimum term of the project's Use Agreement and a maximum term of 20 years.

C. Rent adjustments

1. In the case of a renewal contract with a term more than five years, at the end of each 5-year period, the owner must obtain a RCS to permit HUD/CA to adjust project rents to the extent that they have risen above or fallen below market during such 5-year period.
  - a. If the rents are below comparable market rents, the AE/CA shall adjust the rents to equal the comparable market rents.
  - b. If the rents are above comparable market rents, the AE/CA shall reduce the rents to the comparable market rents.
2. In years two through five, rents may be adjusted by either:
  - a. The published OCAF, or
  - b. A budget-based rent adjustment.

**7-4. PROCESSING INSTRUCTIONS FOR DEMONSTRATION PROJECTS**

- A. Portfolio Reengineering Demonstration Section 8 contracts are not eligible for Recap processing.
- B. See Section 2-17 for detailed processing instructions.

**Note: Owners can request that the existing Demo Program Use Agreement be extended to facilitate a refinancing transaction.**

#### **7-5. 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 project's approved Plan of Action (POA).

In most Preservation contracts, the POA allows for either a budget-based rent adjustment, an OCAF rent adjustment, or an Annual Adjustment Factor (AAF) rent adjustment.

- A. Renew the HAP Contract for a Preservation Project contract per the provisions outlined in the project's approved POA which includes the HUD approval letter and the recorded Preservation Use Agreement. The HAP Contract for Preservation Projects *cannot* be renewed under any option other than Option Five unless the project is being transferred or sold, in which case the owner may request Mark-to-Market debt-restructuring (Option Three) in accordance with section 5-1.D.
- B. Corrections. There are instances where some Section 8 contracts of Preservation projects were renewed under terms different than the terms in the approved POA. In these cases, the AE/CA should calculate the rent as it would have been if the contract(s) had been renewed under terms consistent with the approved POA. This is the "current rent" that should be used as the basis for determining the renewal rent. There is no reimbursement for income lost due to past renewals.
- C. Opt-Outs. In general, approved POAs do not permit the owner to opt-out of the Section 8 contract. However, if a Preservation project owner believes it has the authority to opt-out of the Section 8 contract:
  1. **Plan.** The owner must submit a detailed plan to the AE/CA that indicates how it intends to honor its obligations under the Use Agreement to maintain the project as affordable housing.
    - a. This plan should detail how the owner intends to maintain the appropriate income mix.
    - b. Owners must be made aware that should they elect to opt-out; they are not released from their obligations set forth under the long-term Use Agreement to provide affordable housing.
  2. **Role of the Local HUD Office.** The Regional Center or Satellite Office (or CA) should take the following steps:
    - a. The AE/CA should review the approved POA to determine if it provides for the right of the owner to opt-out of the Section 8 contract. In general, opt-outs were precluded, but each approved Preservation POA was structured differently, and as a result, the AE/CA must review each approved POA which includes the HUD approval letter and the recorded Preservation Use Agreement to determine whether or not the project is eligible to opt-out of the Section 8 contract.

- b. If the approved POA does not allow the owner to opt-out, the AE/CA should advise the owner that it must renew the Section 8 contract.
  - c. If the approved POA allows the owner to opt-out, the owner must provide the standard one-year notification of termination of the Section 8 contract(s) to the tenants. Eligible families will be issued enhanced vouchers to permit the families to remain in their units.
- 3. Plan Submission to HQ: If after review of the owner’s plan, the AE/CA agrees that the owner can opt-out, the AE/CA forwards a copy of the plan to the Director of the Office of Asset Management and Portfolio Oversight, Headquarters for review and either approval or rejection.
- D. Conflicting Documents. The Preservation Use Agreement was recorded to implement the terms of the approved POA. However, there may be instances where the terms of the approved POA and the Use Agreement conflict.
  - 1. Since the Use Agreement is a recorded instrument, binding on all third parties, if a discrepancy exists between the Preservation Use Agreement and the approved POA, the Preservation Use Agreement prevails and is binding on all parties.
  - 2. The approved POAs are far more extensive and cover many more items than are covered in a Preservation Use Agreement. In cases where there are items contained in the approved POA that are not addressed in the Preservation Use Agreement, the terms of the approved POA, as they relate to the specific item, are binding on all parties.

**7-6. OWNER’S SUBMISSION FOR PRESERVATION PROJECTS**

- A. A multiyear contract **cannot** exceed the lesser of 20 years or the remaining term of the recorded Use Agreement.
 

**Note: Owners can request that the existing Preservation Use Agreement be extended to facilitate a refinancing transaction.**
- B. The only renewal option available to an owner of a preservation project is Option 5 unless the project is being transferred or sold, in which case the owner may request Mark-to-Market debt-restructuring (Option Three) in accordance with section 5-1. D.
- C. Rents are adjusted in accordance the approved POA and the recorded Preservation Use Agreement.
- D. See Section 2-17 for more detailed information.

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

- A. Preservation Section 8 contracts are ineligible for Recap processing.
- B. See Section 2-17 for detailed processing instructions.

**7-8. PROJECT SPECIFIC RENTS (PSRS)**

PSRs are first discussed in Housing Notice 94-42, Mid-Course Correction II - For Low Income Housing Preservation and Resident Homeownership (LIHPRHA) and Emergency Low Income Housing Preservation Act (ELIHPA) Programs and are used in Title II and Title VI preservation projects. PSRs are also discussed in Revisions to Notice 94-42, MCCII - For Low



Income Housing Preservation and Resident Homeownership (LIHPRHA) and Emergency Low Income Housing Preservation Act (ELIHPA) Programs.

- A. The PSRs are the rents unsubsidized tenants would reasonably expect to pay in preservation properties for their subject unit based on actual project and conditions. PSRs are derived from a market comparability analysis but adjusted to the actual project characteristics, including any repairs that are to be completed.
- B. Where applicable, PSRs will be maintained and updated annually during the annual rent increase process. Housing Notices 94-42 and 95-56 failed to identify a methodology for making the annual adjustment. Therefore, the AE will adjust the PSRs using the annual OCAF. The owner **may** periodically submit a new PSR analysis at any time during the life of the Use Agreement if the PSRs affect the total tenant payment. The PSR analysis must be supported by market comparables adjusted to the actual project characteristics and condition. In turn, the Multifamily Regional Office valuation staff will review the analysis to assure the proper adjustments have been made.

**Note: Both Housing Notices are available on HUDCLIPS at <http://www.hud.gov/offices/adm/hudclips/index.cfm>**

## **7-9. PRESERVATION UPDATES**

- A. Shallow Rent Subsidy.

The 1995 Appropriations Act language establishing the Shallow Rent Subsidy was not made permanent. Therefore, the Shallow Rent Subsidy provision in approved Use Agreements is no longer applicable.

- B. Budget-Based Rent Increase.

- 1. Instructions for processing a budget-based rent increase for LIHPRHA and ELIHPA projects is found in Chapter 11 of HUD Handbook 4350.6.
- 2. Section 11-7. C.3. states: “if non-operating costs increase or decrease, e.g. a loan secured by the project is repaid, the budget will be adjusted for the change.” Therefore, HUD will recognize new debt in a budget-based rent increase request.
- 3. If a budget based rent increase is deemed reasonable for the project, it will not be rolled back in a subsequent year.

- C. ELIHPA Use Agreement and Section 8 Contract.

When both the mortgage and ELIHPA Use Agreement end on the first of the month or at midnight of the last day of the month, both the Section 8 contract and the Use Agreement are considered coterminous. Therefore, the owner may select any renewal option for which the project is eligible except Option Five.

## Option Six: Opt-Outs

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### **8-1. OVERVIEW**

HUD is committed to preserving affordable housing and the Regional Office should make every effort to inform owners of all available options. However, if an owner has satisfied the relevant requirements and ultimately chooses to opt-out of the Section 8 contract, it may request to opt-out of the Section 8 program by providing the Contract Renewal Request Form, (Form HUD-9624) and elect 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.

### **8-2. OWNER REQUIREMENTS FOR TENANT NOTIFICATION**

The owner **must** provide a one-year notification to the tenants and the AE/CA of the intent to opt-out of the Section 8 project-based contract (See Appendix 11-1.)

### **8-3. PROCESSING INSTRUCTIONS**

A. AE/CA Review. The AE/CA must complete the review to provide enough time to obtain tenant-based assistance and to make sure tenants have adequate search time to locate another unit should they desire to relocate. The AE/CA should:

1. Determine that the owner elected to opt-out under Option Six;
2. Make sure that the owner has provided all required documentation including the Contract Renewal Request Form (HUD-9624);
3. Make sure that the owner is eligible to opt-out of the Section 8 contract.
  - a. Are there any restrictions stated in the Section 8 HAP contract or Use Agreement that prohibit the owner from opting-out?
  - b. Did the owner provide an acceptable one-year notification to the tenants and AE/CA that it intended to opt-out of the Section 8 project-based contract? Does the letter state that the owner will honor the right of tenants to remain?

**Note: See Section 11-4 for additional tenant notification requirements.**

**Note: If proper notification was not provided, the owner must provide acceptable one-year written notification to tenants and the AE/CA.**

During this one-year period:

- 1) The families' contribution to the rent can only be increased during the period of time necessary to fulfill the full notification time frame for reasons of increases in household income and/or changes resulting from an annual income recertification.
  - 2) The AE/CA will offer the owner a short-term contract. See Section 2-8 for information on rent setting for the short-term renewal.
    - a) If the owner renews the contract when it ends in the middle of the month, and the owner has submitted a voucher for the full month, nothing further is needed.
    - b) If the owner does not renew the contract when it ends in the middle of the month, and the owner has submitted a voucher for the full month, the owner is required to pay back the funds for the period not covered by the contract. The CA will determine the amount to be repaid and HUD will process any recovery action.
    - c. Does the owner certify that it will honor the tenant's right to remain at the project as long as the project continues to be offered for rental housing (if the PHA approves a rent equal to the new rent charged for the unit), unless the owner has grounds for eviction under State or local law?
  4. Log the owner's request as indicated on the Contract Renewal Request Form (Form HUD-9624) and any other relevant information in iREMS.
- B. Four months (120 days) prior to the contract expiration date, and upon receipt of the written notice provided by the owner, the AE should again contact the owner to explore alternatives to opting out.
- C. It is imperative that the AE coordinate this effort with Public and Indian Housing (PIH) staff in the Regional Center/Satellite Office with jurisdiction. If there is a delay in the provision of tenant-based assistance, the CA and the owner may enter into a short-term contract, not to exceed a term of one year, at current contract rents using the Basic Renewal Contract (HUD-9636). Refer to PIH Notice 2001-41(HA) for detailed guidance on the conversion process.
- D. Recap Projects. If an owner has decided to opt-out while the project is assigned to Recap for a rent reduction or debt restructuring, see Section 5-4. D. of this Guide for detailed processing instructions.

## Rent Comparability Studies

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### **9-1. BACKGROUND**

- A. For HAP contracts renewed under Options One, Two, and Three, MAHRA requires that the renewal rents be based on the comparable market rents for the market area.<sup>1</sup> A RCS is used in determining the comparable market rents for each unit type covered under a HAP contract.
- B. Contract rents are estimated based on rents paid at comparable properties. The term “comparable properties” is defined in MAHRA as properties in the same market areas, where practicable, that (1) are similar “as to neighborhood (including risk of crime), type of location, access, street appeal, age, property size, apartment mix, physical configuration, property and unit amenities, utilities, and other relevant characteristics”; and (2) “not receiving project-based assistance.”<sup>2</sup>
- C. To prepare an RCS, an appraiser analyzes the subject property, identifies comparable properties, and determines the rents paid at such properties.<sup>3</sup> The appraiser then makes adjustments to these rents based on differences between the comparable properties and the subject property to arrive at estimated market rents.

### **9-2. APPLICABILITY OF CHAPTER NINE**

This Chapter provides guidance on HUD’s standards for preparing, submitting, and reviewing an RCS. More specifically:

- A. It provides guidance to Owners and RCS appraisers for preparing and submitting an RCS.
- B. It defines the limited circumstances under which an Owner may employ an alternative mechanism for setting contract rent levels instead of an RCS when requesting renewing under Option One or Two (see [Section 9-4](#)).
- C. It provides guidance to RCS reviewers, including HUD staff, Contract Administrators (CA), and the Office of Recapitalization (Recap). Recap has amended its Operating Guide and will apply the *Rent Comparability Grid* ([Form HUD-92273-S8](#)) and the guidelines in Sections 9-9 through 9-13 to Recap’s processes for reviewing an RCS.
- D. When *Section 8 Project-Based Rent Adjustments Using the Annual Adjustment Factor (AAF)* ([Notice H 02-10](#)) is applicable, and an Owner of a new construction/substantial rehabilitation project is required to submit *Estimates of Market Rent by Comparison* ([Form HUD-92273](#)), the Owner must use one of the following two methods

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<sup>1</sup> However, under Option Three-B, rents may be set at a level above market if approved by the PAE.

<sup>2</sup> Section 512(1) of MAHRA

<sup>3</sup> HUD uses the term “comparable market rents” to describe these rents.

instead of following the instructions in this Guide, determined by the project and transaction:

1. Submit the *Rent Comparability Grid, RCS Submittal Cover Letter, an Initial Screening Checklist, a Detailed Screening Checklist, a Rent Grid Analysis Checklist, and a Certification of Substantive Reviewer*. The Owner must require the RCS appraiser preparing the reports to do so in accordance with the guidance in Sections 9-8 through 9-13 and must follow the instructions provided in *Fiscal Year 1997 Annual Adjustment Factor (AAF) Requirements (Notice H 97-14)* to determine which units must be included in the RCS.
2. Submit the *Request to Renew Using Non-Section 8 Units in the Section 8 Project as a Market Rent Ceiling (Form HUD-9629)*, deleting references to renewals and instead referring to rent comparisons required by Notice H 97-14. In order to use this method, the project must meet all the conditions in paragraph 9-6.B of this Chapter for all unit types for which Notice H 97-14 requires the use of *Estimates of Market Rent by Comparison*, substituting references to renewals with references to rent comparisons when reading Section 9-6.

Other provisions of Notice H 97-14 (e.g., adding initial difference to the rent resulting from the analysis in paragraph 1 or 2 above), still apply, and Notice H 97-14 determines which units the RCS must cover. “Initial difference” means the dollar amount by which the initial Section 8 contract rents exceeded the original comparable rents (or the Fair Market Rents, if they were originally used instead of comparables). The Owner must submit evidence of the initial difference.

- E. This Chapter does not apply to market rent analyses required in the processing of applications for FHA insurance.

### **9-3. ROAD MAP TO CHAPTER NINE**

The table below provides a road map to Owners, RCS appraisers, and reviewers (both initial and substantive reviewers). Besides focusing on the relevant Sections and Appendices highlighted in the table below, HUD recommends that all preparers and users of Rent Comparability Studies review the entire Chapter Nine and its Appendices to ensure compliance with all requirements for the respective Section 8 contract renewal.

Sections	Topic	Primary Stakeholder(s)		
		Owner	RCS Appraiser	RCS Reviewer*
9-1 - 9-3	Background, Applicability, and Roadmap to Chapter Nine	✓	✓	✓
9-4 - 9-6	Alternatives to RCS (Using SAFMR or Using Non-Section 8 Units)	✓		✓
9-7	Preparing an RCS	✓	✓	
9-8	Appraiser's Qualifications	✓	✓	
9-9 - 9-13	Analyzing the Subject Project Selecting Comparable Units Collecting and Documenting Data on Comparable Units Computing Adjusted Rents for Comparable Units Deriving Estimated Market Rents		✓	
9-14	Procedure for Mandatory Market Rent Threshold	✓	✓	✓
9-15 - 9-16	HUD Reviews of RCS Initial and Substantive Review			✓
9-17 - 9-18	Communicating Results of HUD/CA Reviews Owner Appeals	✓		✓
9-19	Imposing Sanctions on Appraisers			✓
Appendix	Topic	Owner	RCS Appraiser	RCS Reviewer*
9-1	Guidance to RCS Appraisers		✓	
9-2	Guidance to Owners	✓		
9-3	Guidance to Reviewers	✓		✓
9-4	Forms Used in Preparation and Review of an RCS	✓	✓	✓

\*Reviewer includes initial reviewer and substantive reviewer as defined in Section 9-16

#### **9-4. ALTERNATIVES TO RENT COMPARABILITY STUDY**

In lieu of procuring an RCS to demonstrate that proposed Section 8 rents do not exceed comparable market rents, an Owner requesting renewal under the renewal options indicated below may, with prior written approval from HUD, rely on one of the following two alternative methods for establishing comparable market rent levels. These alternatives may also be available for fifth-year comparability adjustments, subject to a determination by the assigned AE that market conditions have not significantly changed since the prior comparability adjustment.

Method One: Available only to Owners requesting renewal or fifth-year comparability adjustment under Option Two, this method involves comparing the proposed Section 8 rents to Small Area Fair Market Rents (SAFMRs). (See Section 9-5.)

Method Two: Available only to Owners requesting renewal or fifth-year comparability adjustment under Options One or Two, this method involves comparing proposed Section 8 rents to rents charged for comparable unassisted units in the same project. (See Section 9-6.)

Both of these alternative methods are intended to provide additional flexibility and local market specificity, subject to the Owner's discretion, to avoid the cost and processing time associated with obtaining an RCS. Use is limited to a HUD determination that market indicators strongly suggest that the proposed Section 8 rents do not exceed comparable market rents, and an Owner must obtain HUD's prior written approval to use an alternative method. If such approval is granted, then SAFMR or unassisted comparable rent level establishes a comparable market rent for the Section 8 rents which is used in rent conclusions pursuant to the chosen renewal option.

#### **9-5. METHOD ONE: COMPARING PROPOSED SECTION 8 RENTS WITH SAFMRS**

- A. Small Area Fair Market Rents (SAFMRs). Under this method, the SAFMR rent level serves as the comparable market rent ceiling that is otherwise established by an RCS. The SAFMR is an estimate of rent plus the cost of utilities for a ZIP code area, set at the 40th percentile level (i.e., the dollar amount below which the rent for 40 percent of standard quality rental housing units within the ZIP code area falls). HUD publishes SAFMRs annually, by posting them to <https://www.huduser.gov/portal/datasets/fmr/smallarea/index.html>. SAFMRs are published for ZIP codes in metropolitan areas only; HUD does not calculate SAFMRs for ZIP codes in nonmetropolitan counties. For properties in nonmetropolitan areas, FMR should be used instead: <https://www.huduser.gov/portal/datasets/fmr.html>
- B. Eligibility. An Owner who requests renewal under Option Two or who wishes to use Method One to establish a fifth-year comparability adjustment rent ceiling may request HUD approval to establish a comparable market rent ceiling using Method One if the proposed Section 8 gross rent potential at renewal is less than 90 percent of the SAFMR potential for the units under the HAP contract being renewed. Since the SAFMRs are inclusive of utilities, the Section 8 gross rent potential must include utilities in order to make the two figures comparable.
- C. Owner's Request. To request renewal using this method, an Owner must submit the following no later than 120 days before the expiration of the Section 8 contract:
  1. *Request to Renew HAP Using FMRs as Market Ceiling* (Form HUD-9630).

- a. The proposed Section 8 gross rent potential used in the above comparison must be the current rent potential, adjusted by the OCAF or budget;
  - b. The potential must be the gross potential (contract rent plus utilities) to make the figure comparable to SAFMRs, which include utilities; and
  - c. The Section 8 gross rent potential must be less than 90 percent of the SAFMR potential for the units being renewed under the request.
2. *Cover Sheet (Form HUD-9624)*. The Owner must identify all HAP contracts to which the project is subject, including the HAP contract for which renewal is being requested.
  3. Either *Budget Worksheet: Income and Expense Projections (Form HUD-92547-A)*, if seeking a budget-based adjustment; or Steps 1 and 2 of the *Operating Cost Adjustment Factor (OCAF) Worksheet (Form HUD-9625)*, if seeking an OCAF-driven adjustment.
- D. HUD processing. The Account Executive (AE) will review the Owner's request to determine whether the use of SAFMRs is appropriate and will render a decision within 20 calendar days of receiving the request, documenting the decision on the *Request to Renew HAP Using FMRs as Market Ceiling*, as completed by the Owner, and in the Integrated Real Estate Management System (iREMS). The AE may consult the Production Technical Specialist Branch Chief to assist with this determination.
1. Due Diligence. The AE who processes the request must be familiar with the project's condition and amenities and must seek a state-certified appraiser's input as to prevailing rent levels in the subject's market area. In addition to verifying and validating the Owner's computations, the AE must consider the following questions:
    - a. Are the subject project's units unusually small or large? Are they substantially similar to or different from units typically offered in the market area?
    - b. Did an RCS completed on another project in the market area within the last three years produce market rents that were significantly lower than the SAFMRs?
    - c. Does the project's prior RCS show that the project's Section 8 rents exceeded rents in the market area?
  2. Approval/Denial. The AE must approve the Owner's request to use SAFMRs in lieu of an RCS unless, based on the AE's due diligence review and/or the input of a state-certified appraiser, the AE concludes that the proposed rents are above market.
    - a. If HUD denies the Owner's request, HUD may, upon the Owner's request, issue a short-term renewal contract to allow the Owner a reasonable period of time to obtain an RCS prepared in accordance with Sections 9-9 through 9-13. Chapter Two explains how to set rent levels for short-term renewal contracts.



- b. An Owner may not appeal HUD’s denial of their request to use SAFMRs in lieu of submitting an RCS.

**9-6. METHOD TWO: COMPARING PROPOSED SECTION 8 RENTS WITH RENTS FOR UNASSISTED UNITS IN THE PROJECT**

- A. Unassisted Units. Under this method, rents paid by families residing in unassisted units in the project serve as the comparable market rent conclusion. An unassisted unit is one for which a family who receives neither project-based nor tenant-based rental assistance of any kind pays the full rent due to the Owner.
- B. Eligibility. The following criteria must be met to qualify for Method Two:
  - 1. The contract must be eligible for renewal under Option One or Option Two, or currently subject to an Option One or Option Two renewal contract which is due for a fifth-year comparability adjustment.
  - 2. At least 25 percent of each unit type being renewed must be occupied by unassisted tenants.
  - 3. For each unit type in the contract, the proposed Section 8 contract rent must be no greater than the average rent paid by unassisted tenants who reside in the same type of unit. Such tenants must have been paying (without assistance and for 3 or more months) at least the rent levels used in computing the average. These tenants must have no business or family relationship with the project’s Ownership or management. If units are occupied pursuant to a lease providing for rent concessions, the rents used to calculate the average must take all such concessions into account.
  - 4. The Section 8 units and the units occupied by unassisted tenants must be nearly identical (i.e., no adjustments would be required if the units occupied by unassisted tenants were used as comparables in an RCS). “Nearly identical” means the two sets of units must have the same number of bedrooms and baths; be similar in condition, layout, and size; and have the same amenities and utilities included in the rent.
  - 5. Occupancy rates in the units available for occupancy by unassisted tenants must not be significantly lower than occupancy rates for the same unit types in the overall market area. A lower occupancy rate could imply that rents for such units are above market. For example, if occupancy rates in the overall market area exceed 90 percent, while the subject’s units available for occupancy by unassisted tenants are 20 percent vacant, then the occupancy rate for such units is considered to be significantly lower than that of the overall market area.
- 3. Owner’s Request. To request renewal or fifth-year comparability adjustment using this method, an Owner must submit the following no later than 120 days before the expiration of the Section 8 contract or fifth-year comparability adjustment effective date:
  - 1. *Request to Renew Using Non-Section 8 Units in the Section 8 Project as a Market Rent Ceiling.*
  - 2. *Rent Table.* A rent table comparing current and proposed Section 8 rents with the rents paid by unassisted tenants.

3. *Cover Sheet*. In addition to indicating which contract is being renewed or which is undergoing a fifth-year comparability adjustment, the Owner must identify all contracts at the project.
  4. If renewing under Option Two, either *Budget Worksheet: Income and Expense Projections*, if seeking a budget-based rent adjustment; or Steps 1 and 2 of the *OCAF Worksheet*, if seeking an OCAF-driven adjustment.
- C. HUD processing. The AE will review the *Request to Renew Using Non-Section 8 Units in the Section 8 Project as a Market Rent Ceiling*, as completed by the Owner, to determine whether the use of rents paid by unassisted tenants is appropriate and will render a decision within 20 calendar days of receiving the request, documenting the decision on the form and in iREMS.
1. Due Diligence. The AE who processes the request must be familiar with the project's condition and amenities and must seek a state-certified appraiser's input as to prevailing rent levels in the subject's market area. In addition to verifying that the project meets the eligibility conditions, the AE must:
    - a. Use iREMS/Tenant Rental Assistance Certification System (TRACS) to check the data reported in the rent table attached to the Owner's request.
    - b. Use the Owner's rent table to assess compliance with the occupancy criterion noted above.
  2. Approval/Denial. The AE must deny the request if the AE concludes that the rents paid by unassisted tenants in the project are significantly higher than rents in the surrounding area or that the eligibility conditions listed above are not met.
    - a. If HUD denies the Owner's request, HUD may, upon the Owner's request, issue a short-term renewal contract to allow the Owner a reasonable period of time to obtain an RCS prepared in accordance with Sections 9-9 through 9-13 of this Chapter. Chapter Two explains how to set rent levels for short-term renewal contracts.
    - b. An Owner may not appeal HUD's denial of their request to use rents paid by unassisted tenants in lieu of submitting an RCS.
    - c. If HUD approves the Owner's request, the rent conclusions in the *Request to Renew Using Non-Section 8 Units in the Section 8 Project as a Market Rent Ceiling* shall be used in the same manner as an RCS would. For Option One projects, these rents become the new contract rents at renewal. For Option Two, these rents become the rent ceiling for the budget-based rent increase.

## **9-7. PREPARING A RENT COMPARABILITY STUDY**

An Owner who is required or decides to procure an RCS must ensure that the RCS:

- A. Is prepared by, or under, the direction of an RCS appraiser who meets the requirements set forth in paragraph 9-8.A.

- B. Covers all unit types that receive Section 8 assistance in the contracts being renewed. The Owner may also include other Section 8 unit types in other contracts for which the Owner plans to request renewal within the next 5 years.
- C. Estimates comparable market rents for each Section 8 unit type by adjusting the rents of comparable units to reflect the location, condition, street appeal, amenities, and utilities of the Section 8 units. Note: The RCS appraiser must estimate market rent without considering the market's ability to absorb all Section 8 units.
- D. Is concise but contains enough information that a person unfamiliar with the subject property and market area can understand how the RCS appraiser arrived at the adjustments and opinion of the subject property's market rent. HUD provides a *Sample RCS* in Appendix 9-2-2.
- E. Is submitted to HUD/the CA no later than 120 days before the end of the 5-year life cycle of the RCS or contract renewal in cases where the contract is being terminated early and renewed.
  - 1. Not more than 90 calendar days may have elapsed between the date of the RCS and the date the Owner submits the RCS to HUD/the CA.
  - 2. Early submissions are allowed, but Owners must not submit more than 180 days before the end of the prior RCS's five-year life cycle or early contract termination.
  - 3. For transactions involving an early termination and renewal, if more than 180 days will have elapsed between the date of submission and the termination date, the Owner must, not more than 180 days prior to the termination date, submit a letter from an appraiser updating the RCS and confirming that current rents are no lower than in the original study. If more than 18 months will have elapsed between the original submission and the termination date, then the Owner must submit a fully updated study.
- F. Includes a cover letter from the Owner and all materials listed in Appendix 9-2-1 (*Template for Owner's Cover Letter & Owner's Checklist*). To expedite HUD review, the Owner and RCS appraiser must ensure that all materials are submitted in electronic format in the same order as shown in the *Owner's Checklist*.
- G. Complies with Standard 1 and Standard 2 of Uniform Standards of Professional Appraisal Practice (USPAP), which establish requirements for the development and reporting of a real property appraisal.

## **9-8. APPRAISER QUALIFICATIONS**

This section provides guidance to Owners and RCS appraisers regarding the required qualifications for an RCS appraiser. It also contains general instructions for preparing an RCS and identifies requirements that need to be followed.

A. In order to qualify, the RCS appraiser must:

1. Be a Certified General Appraiser, licensed and in good standing in the state in which the project is located. The license may be temporary or permanent. (An Owner can obtain a list of RCS appraisers meeting this standard at [www.asc.gov](http://www.asc.gov) or from each state's appraiser regulatory agency.)
2. Be currently active and regularly engaged in performing Rent Comparability Studies or appraisals of multifamily housing and demonstrate continuing education relating to multifamily housing, market studies, or advanced market analysis and/or separating non-real property features within a property.
3. Meet all the requirements of the current competency provision in USPAP and have read this Chapter and Appendices. (Additional or updated information on USPAP can be obtained at [www.appraisalfoundation.org](http://www.appraisalfoundation.org).)
4. Have no prospective or present financial interest in the subject Section 8 project, its Ownership or management agent entity, or the principals of those entities.
5. Not be an employee of the Owner, the management agent, or the principals of those entities or have a business or close personal/family relationship with those parties that would commonly be perceived to create bias or a conflict of interest.
6. Not be debarred or suspended from doing business with the Federal Government and not be under a Limited Denial of Participation (LDP) imposed by the Regional Center or Satellite Office having jurisdiction over the subject Section 8 project.
7. Be in compliance with all applicable civil rights laws and statutes and must not have a recent disciplinary citation or finding related to discrimination within the last three years.

B. In preparing the RCS, the RCS appraiser must:

1. Sign and take full responsibility for the report. Appraisal assistants may contribute to any of the tasks if:
  - a. They are employed by the same firm as the RCS appraiser;
  - b. Are in compliance with all applicable civil rights laws and statutes and not found to have a recent disciplinary citation or finding related to discrimination within the last three years; and
  - c. The report identifies the tasks(s) the assistant RCS appraiser performed. There is no specific restriction on the tasks an assistant may perform with respect to the subject property or comparables.

2. Ensure compliance with this Chapter and its appendices, and with USPAP.
  - a. If this Chapter's requirements go beyond USPAP, the RCS appraiser must consider the Chapter's requirements to be supplemental standards and must comply with them.
  - b. The RCS appraiser must comply with the Fair Housing Act and must not use or rely on unsupported conclusions related to the comparable or subject properties or their surrounding areas or issue a valuation influenced because of any characteristic protected by the Fair Housing Act. RCS appraisers' opinions, conclusions, and reports must be impartial and objective and must not illegally discriminate or contribute to illegal discrimination through subjective or stereotypical assumptions. The Fair Housing Act prohibits a person or entity engaged in the real estate appraisals business from discriminating because of race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, or familial status.
3. Collect, update, or verify all data within 90 calendar days before the date of the RCS appraiser's letter transmitting the RCS to the Owner (or to HUD, when HUD purchases the study pursuant to Section 9-14). If more than 90 days will have passed between the date of data collection and transmittal of the RCS, the appraiser may verify or update that data to meet this requirement.
4. Provide a descriptive analysis following the guidance provided in Sections 9-9 through 9-14 and the detailed instructions under Appendix 9-1. The RCS appraiser must download the electronic versions of Word or Excel files for any tables/grids in the RCS, as provided under Appendix 9-1.

## **9-9. ANALYZING THE SUBJECT PROJECT**

This section provides guidance to RCS appraisers for inspecting and analyzing the subject Section 8 project and its surrounding neighborhood.

- A. **Unit Breakdown.** The RCS appraiser must identify the unit breakdown at the subject project as primary versus secondary, as defined in paragraph 9-9.A.2, below. The RCS appraiser must estimate a market rent for each Section 8 unit type, but a *Rent Comparability Grid* is required only for each primary unit type. For secondary unit types, the RCS appraiser need not complete an entire *Rent Comparability Grid*. Instead, the RCS appraiser may start with the market rent for a primary unit type and adjust for the minor difference(s). The RCS appraiser must review paragraph 9-13.C regarding estimating market rents for primary and secondary unit types. To identify primary and secondary unit types, the RCS appraiser must:
  1. Identify all unit types that will be included in the renewal contract and any other units the Owner elected, per Section 9-7, to include in the study. The RCS appraiser must recognize a unit type for each rent level for which the Owner is seeking renewal.
  2. Label each unit type as a primary or secondary type using the guidance below. It is possible to have multiple primary unit types.

- a. The RCS appraiser must consider the number of bedrooms and baths, the unit size, the structure (e.g., townhouse, elevator, walk-up), and any other factors the market would consider to be significant differences. Units will be categorized as “primary” or “secondary” based on having similar unit size, the same number of bedrooms and bathrooms (including additional toilet or shower/bath fixtures), and the same unit configuration (e.g., stacked versus townhome, or walk-up versus elevator-served).

Example: Project has 100 3-bedroom, 2-bath, 1,000–square foot units and 30 3-bedroom, 1.5-bath, 900–square foot units. The Owner charges different rents for these two unit types. The RCS appraiser will label the most common unit type (the 2 bath, 1,000–square foot unit) as primary and the other as secondary.

- b. If the units being renewed are located on scattered sites, the RCS appraiser must determine if separate unit types will be designated for the different sites. The RCS appraiser must visit each site and assess the extent of any differences in neighborhood, condition, street appeal, services, or market area. If units are located in different market areas or other differences suggest that separate comparables are appropriate, the RCS appraiser must create separate unit types for each site if the sites vary significantly and must use professional judgment in categorizing the unit types at each site as primary or secondary.

B. Project Condition and Appeal. The RCS appraiser must conduct a visual inspection of the subject project to observe physical characteristics and assess the project’s condition. More specifically, the RCS appraiser must:

1. Inspect at least one unit of each primary unit type, the project grounds, and the interior and exterior common areas (e.g., lobby, laundry rooms, community or dining rooms, recreation rooms, parking areas, outdoor play areas). If the units being renewed are located on scattered sites, the RCS appraiser must visit each site.
2. Determine or verify the size of each unit type. Estimate the rentable interior square footage of the unit, excluding the square footage of balconies, mechanical areas, or other non-living spaces.
3. Take color photos of the items listed below and additional close-up photos as needed to show the project’s condition.
  - a. Subject’s exterior, showing location on the site, exterior design, site layout, and site amenities;
  - b. Interior of typical units; and
  - c. Interior common areas.
4. Determine and document the project’s design, age, and type of structure (e.g., walk-up, townhomes, low-rise, etc.). Assess the project’s physical condition and overall appeal. Determine the extent of any major renovations.

C. Project Amenities and Services. The RCS appraiser must identify all amenities and non-shelter services offered at the subject project and whether they are included in the rent or incidental. The RCS appraiser must:

1. Identify all unit and site amenities and the type of utilities. The RCS appraiser must consider all characteristics listed on the *Rent Comparability Grid* and any other characteristics that would affect the rent a tenant would be willing to pay.
2. Assign a value to the services and amenities available at the property. If a service is available to renters at other properties in the market area, it may carry market value at the subject property and should be considered in the valuation. The value of a service or amenity may be affected by the availability in the community of similar services or amenities. For example, if a project offers a small collection of books as a library, but it is located in close proximity to a municipal library that contains a much larger selection, then the value of that amenity may be diminished.

If a service is not available at comparable properties or otherwise observed in the local market, HUD may nonetheless allow an adjustment to RCS rents to reflect the market value of such a service to tenants of the subject property. HUD may limit such adjustments to those services that are appropriate to support low-income families or vulnerable populations in an independent setting and those services which are not already receiving funding support from HUD or another source aside from tenant fees. Examples of such services include after school programs for children of low-income households, a shuttle service to enable households to access social services in the community, cleaning services for elderly or disabled households, etc. In order to assign a valuation to these services, the appraiser should use data from similar markets where possible. The process for determining the valuation must be explained in the narratives accompanying the rent grid. If an owner or appraiser is unsure of whether a service qualifies under this provision, the assigned HUD AE can provide further information regarding inclusion in the RCS.

3. One factor in the appropriate valuation of a service is whether that service is included in the rent. A service is included in the rent if tenants may reliably access it for no additional charge, and if there is either a demonstrated record of providing the service or an agreement with a service provider. Conversely, a service is considered incidental and not included in the rent if there is no history of providing such service, no designated provider, no service plan, and no agreement between the Owner and the provider. The appraiser should make the determination of whether a service is included in the rent or incidental after evaluating evidence supplied by the Owner and agent.
  - a. Services included in the rent. A service is considered to be included in the rent if tenants do not need to pay an additional fee to access the service, it is not primarily funded by a third-party source, and if one of the following two criteria is met. All services that are included in the rent must be reflected annually in Part B of the Rent Schedule (form HUD-92458). If services are added, interrupted, or discontinued, those changes must appear on the next year's Rent Schedule.

1. An Owner has an agreement with a credible service provider that specifies the services offered, the hours or frequency of services, and is expected to provide continuity throughout the five-year term of the RCS (even if the term of the agreement is for less than five years). The services must be available on the date of the RCS.
  2. An Owner has a credible services plan, that Owner has demonstrated a successful record of providing the service, and that Owner commits to take all reasonable steps to maintain services for the five-year term of the RCS. The services must be available on the date of the RCS.
  3. Chapter 15 Capital Repairs Program. If an Owner plans to add new services to a property following a renewal under the Chapter 15 Capital Repairs program, those services may appear in an RCS subject to HUD approval if the includes a services plan with detailed information about the services that will be introduced. Such a plan should include an explanation of who will provide the services, which facilities will be used to provide the services, a full analysis of the impact of the service provision on the property’s budget, and explanation of who will be able to access the services, how they access such services, and how the users will be made aware of such services. This plan should ensure equitable access of new services to all persons, regardless of protected class (i.e. persons with disabilities, families with children, etc.). These new services must be related to the capital repairs and must be described in the Scope of Work submitted pursuant to a Chapter 15 Capital Repairs HAP renewal request. If an owner fails to implement the services as described in the Scope of Work, the project’s rents may be reduced pursuant to the contract’s *Addendum to Renewal Contract under Option One or Option Two for Capital Repairs and/or Acquisition*<sup>4</sup>.
- b. Incidental services. A service is incidental if one of the following criteria is met. Incidental services may still warrant a valuation or adjustment of a comparable if there is market evidence that the availability of that service has value to tenants in that market. Only the value of the convenience or availability of an incidental service may be included in an RCS.
1. Tenants are required to pay to use the service (fee-for-service).
  2. The service is provided on a sporadic or infrequent basis.
  3. The service does not qualify as a service included in the rent and is provided at will by the Owner or a third party, including a third party that has no service agreement with the property. These services may be terminated or altered at any time with no recourse, thus reducing their market value to potential tenants.
  4. The service is primarily funded by a third-party source, such as Medicaid or from the budget of a nonprofit organization. If the owner makes nominal or no financial contributions to provide the service, it is

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<sup>4</sup> Form HUD-93181 or HUD-93182, depending on the underlying financing.



considered incidental. For instance, if an owner works with a community organization to provide regular health screenings on-site to elderly tenants with minimal cost to the owner, the appraiser should determine the value of the convenience to a tenant who could access comparable health services through Medicare instead.

- D. Consider the tenant profile at the subject project. When preparing an RCS for a project designed for the elderly/disabled, the RCS appraiser's valuation of the available amenities and non-shelter services must consider the project's occupancy. For example, irrespective of the proximity to the project of a municipal library, the value of having a small collection of books at the project may be greater if the project's occupants are unable to access the library due to their status as elderly or disabled families. Scope of Planned Repairs. If the Owner anticipates an increase in rents based on repairs to be commenced within 12 months of HAP contract renewal (such as in the case of a Chapter 15 HAP renewal), then the RCS appraiser must review the complete list of planned repairs, evaluating each item on the list for its effect on marketability and appeal to prospective tenants.
1. Typically, the replacement of components that are worn or at the end of their useful lives will not affect marketability. On the other hand, the installation of equipment or systems that represent upgrades may increase the appeal of the property. Examples of upgrades include installing air conditioning or adding dishwashers. Examples of upgrades that do not directly affect living units but may improve marketability include improvements to on-site parking facilities (e.g., providing covered parking at a property formerly offering only open parking or adding additional parking spaces) or adding a non-shelter service such as an on-site childcare facility.
  2. The RCS appraiser must take care to distinguish between outlays that increase marketability and those that do not. For example, an Owner's plan to install a berm on the site to improve drainage would be unlikely to affect marketability.
  3. If in the RCS appraiser's judgment, any of the items within the Owner's scope of planned repairs will affect marketability, then the RCS appraiser must prepare two versions of the *Rent Comparability Grid*. One version will show pre-repair ("as-is") estimated market rents and the other will show post-repair ("as-repaired") estimated market rents. It is possible that "dual" *Rent Comparability Grids* will not be required for every type of living unit. For example, if kitchen renovations will be completed only for the 2-bedroom units, then "dual" *Rent Comparability Grids* will be required only for the 2-bedroom plan.
  4. If the RCS appraiser determines that none of the items on the Owner's list of planned repairs to the subject property will affect market rent, then the RCS must contain an affirmative statement to that effect.
- E. Neighborhood Characteristics. The RCS appraiser must assess and describe the project's location and surrounding neighborhood and must:
1. Evaluate and note factors that would affect market rent levels, such as access to schools, employment and medical centers, transportation, shopping, recreation,

and community services. The RCS appraiser must identify nuisances (e.g., street noise) and other factors that affect the perceived quality of the neighborhood.

**Note: Appraisers should not take into consideration demographic make-up of a neighborhood or other factors that may demonstrate impermissible bias.**

2. Identify the project's market area. This is the geographic area from which the subject project will likely draw most of its applicants, taking into account street or other boundaries and considering mobility patterns and natural or man-made barriers (rivers, freeways, rails, etc.).

**Note: Government boundaries like state or county lines often do not establish market area boundaries, as projects often draw from more than one town, county, or state.**

3. Consider the unique aspects of scattered-site projects. If the units under the HAP contract being renewed are located on scattered sites, the RCS appraiser must assess whether the sites vary significantly with respect to condition, street appeal, services, neighborhoods, or other factors.

## **9-10. SELECTING COMPARABLE UNITS**

This section provides guidance on the items an RCS appraiser must take into account to ensure that units and properties selected as comparables accurately represent the rental market for the subject project:

- A. Six Point Criteria. For each primary unit type identified pursuant to paragraph 9-9.A.2 above, the RCS appraiser must exert a good-faith effort to identify comparable units from 5 properties that meet all 6 of the criteria listed below and compete with the subject for tenants. Specifically, the comparable properties must:
  1. Be in the same market area as the subject project, considering rent levels, housing prices, job opportunities, and other relevant economic indicators.
  2. Be occupied by tenants without tenant-based assistance, residing in unassisted units as defined in paragraph 9-6.A.
  3. Have locations and neighborhood conditions (including crime rates and accessibility to services, employment, transportation, etc.) that are similar to those of the subject project.
  4. Be similar to the subject project in terms of project structure and layout, design, street appeal, age, unit size and mix, project amenities, and utilities.
  5. Have amenities and provide non-shelter services similar to those available at the subject project and do not have significant amenities or non-shelter services beyond those available at the property, taking into account if those services are included in the rent or incidental.
  6. Not be rent-restricted or rent-controlled by a federal, state, local, or other public program. This category includes Low Income Housing Tax Credit (LIHTC), HOME, HOPE VI, state/local rent controlled and rent stabilization units, and all unassisted units in 236, BMIR, 202/811, and Section 515 Rural Development projects.

If the RCS appraiser cannot find 5 properties that meet these 6 criteria, then the RCS appraiser may use the methods discussed in paragraph B, below.

- B. **Insufficient Comparables Meeting the Criteria.** HUD recognizes that finding 5 comparables meeting all 6 criteria in paragraph 9-10.A above will be difficult in some markets. When the RCS appraiser makes a good-faith effort to identify 5 comparables that meet all 6 criteria in paragraph 9-10.A but fails to do so, the RCS appraiser may adopt one or more of the following strategies. The RCS appraiser must use professional judgment to decide the pairing and ordering of the alternate strategies listed below, except that using rent-restricted units must be done only as a last resort.
1. **Units with No Restrictions.** If a project contains rent-restricted units or units with tenant subsidies but also has other units with no restrictions or subsidies, then the RCS appraiser may use as a comparable a unit that is both unrestricted and unassisted. Such mixes will often exist in LIHTC, tax-exempt, state-financed, HOPE VI, or Section 221(d)(3)/(d)(4) FHA-insured projects.
  2. **Identity-of-Interest Properties.** The RCS appraiser may select a comparable that has the same Ownership/management as the subject project, or is owned or managed by a company/individual having an identity-of-interest (as defined in Chapter 2, paragraph 3 of Handbook 4381.5) with the Owner or Management Agent of the subject project. In such a situation, the RCS appraiser must disclose the nature of the “identity-of-interest” under the section titled “Selection of Comparables” in the RCS report. The RCS appraiser must also take special care to verify the rent at which a unit in the comparable property is leased, preferably through an unrelated party. For example, the RCS appraiser might ask on-site management to provide a copy of a redacted, recently executed lease.
  3. **Comparables from Outside the Market Area.** If necessary to identify a comparable in a market area that is similar to the market area in which the subject project is located, the RCS appraiser may select a comparable that is in an alternate market area. If equally good comparables are available in more than one alternate market area, then the RCS appraiser must consider using the alternate market area that is nearest the subject project. For Section 8 projects in rural areas, HUD recognizes that it will often be necessary to go to distant, alternate market areas that are sometimes of a different character.
  4. **Dissimilar Comparables.** If similar comparables are unavailable in the subject’s neighborhood, the RCS appraiser may use comparables that differ from the subject in terms of vintage, construction type, layout, design, and/or services and amenities, but are in the same market. Alternatively, the RCS appraiser may use similar comparables from outside the subject’s market area when comparables in the same category are not available in the subject’s neighborhood. The RCS appraiser must provide market support for the comparable selection process.
  5. **Fewer Than Five Comparables.** If the above strategies do not produce 5 comparables for each unit type, then the RCS appraiser may use fewer than 5 comparables, provided no unit type has fewer than 3 comparables. Before proceeding with fewer than 5 comparables, the RCS appraiser may ask the Regional Center if it is aware of any comparables not identified by the RCS

appraiser. As described in 9-10.C.2, below, the RCS appraiser must discuss why fewer than 5 comparables were used.

6. Rent-Restricted Units. If the RCS appraiser cannot find comparables other than rent-restricted units that meet conditions 1 through 5 under paragraph 9-10.A, above, then the RCS appraiser may use the rent-restricted units. Adjustments that would need to be made in the *Rent Comparability Grid* for such comparables are inherently subjective. Rent-restricted units may be used as comparables only when they reasonably represent the market. The following guidelines apply:
    - a. If the RCS appraiser cannot find 5 unrestricted, similar units in the same market area as the subject project, the RCS appraiser may supplement the rental analysis with rent-restricted units that are available in a nearby, similar market area and meet the requirements of conditions 2 through 5 under paragraph 9-10.A.
    - b. The RCS appraiser must clearly disclose the use of rent-restricted comparables and the nature of the rent restriction in the part of the RCS where the appraiser provides a narrative description of the selection of comparables and on the *Rent Comparability Grid*. (Note: The RCS appraiser must not adjust rents simply to account for the fact that the comparable unit is rent restricted.)
    - c. While rent-restricted units may in some cases reflect market rent (e.g., when LIHTC units make up a large percent of the multifamily units in a neighborhood or nearly all units are rent-controlled), rent-restricted units can also be below market rent. Therefore, the RCS appraiser may want to discuss the use of rent-restricted units with the Owner and HUD appraisal staff before finalizing the selection of comparables. RCS appraisers hired by HUD/CAs to prepare studies pursuant to Section 9-14 must be especially careful to avoid selecting rent-restricted units that would artificially depress the RCS's rent conclusions.
    - d. An appraiser may select units within properties subject to rent control ordinances if they were rented recently (within 6 months of the date of the study) and are therefore representative of market rents.
  7. Special Project Types. Appendix 9-6 provides guidance on using comparables drawn from project categories that would not typically be suitable for use as comparables for multifamily rental housing. Project types discussed include cooperative housing, certain elderly/disabled project types, student housing, and congregate-care projects. Newly renovated/recently constructed housing is also cited in Appendix 9-6, because properties from that category are suitable comparables for the subject project only after the impact of any proposed rehabilitation to the subject project is considered.
- C. Comparables Search Procedure. The RCS appraiser must include a narrative in the RCS to describe the process used to identify the set of comparable properties for the subject project.

1. Document the Search Process. The RCS appraiser must note the means used for comparables selection, whether driving the market area, interviewing the AEs and Owner, consulting subscription databases, or a combination of these approaches.
2. Selected Comparables. For each selected comparable, considered separately, the RCS appraiser must describe the specific characteristics that the respective comparable shares with the subject project (e.g., same market area, similar design and layout) that justify the inclusion of the project in the RCS. The narrative must provide an overall assessment of the availability of comparables, describe the quality of the comparables selected, and state why they were selected.
3. Excluded Comparables. For potential comparables that were excluded, the RCS appraiser must document the reasons for such exclusion. If the unassisted units in the subject project have the same number of bedrooms and were not used as comparables, the RCS appraiser must explain why. If there are unassisted properties near the subject project that share the subject project's basic characteristics (e.g., number of bedrooms) but were not used as comparables, the RCS appraiser must explain why.

Example: The nearest 1-bedroom units to the subject are clustered just 1 mile away, along Oceanview Boulevard. However, these are mostly large, luxury units, with many amenities and ocean views. Rather than make numerous large adjustments to most of the property comparison features at those buildings, the RCS appraiser instead selected comparables more similar to the subject and located further away, but still within the geographic radius shopped by renters considering living in the subject neighborhood.

4. Insufficient Comparables. If fewer than 5 comparables were provided for any primary unit type, the RCS appraiser must explain why. If the RCS appraiser chooses to use comparables that are significantly different from the subject, the RCS appraiser must describe the research that was performed to determine that more similar comparables were not available. When comparables are outside the subject's market area, the RCS appraiser must discuss in the RCS what research was done that indicated that better comparables were not available in the subject's market area. In such instances, the RCS appraiser must also compare economic indicators in the alternate market area with those in the subject's market area. When using rent-restricted units, the RCS appraiser must discuss in the RCS what research was done that indicated that no other similar, non-rent restricted units were available for use as comparables. The RCS appraiser must also explain the type of restriction (e.g., LIHTC, local rent control, etc.) when using rent-restricted units as comparables.
5. Variety of Comparables. In identifying the 3 to 5 comparables, the RCS appraiser must try to select some comparables that are superior and some that are inferior to the subject project so that the subject is within the range of indicators.

## **9-11. COLLECTING AND DOCUMENTING DATA ON COMPARABLE UNITS**

This section provides guidance on collecting and reporting data on comparables.

- A. Collecting Data on Comparables. For each relevant unit type at the comparable project, the RCS appraiser must collect data on the elements listed in Parts A through E of the *Rent Comparability Grid (Form HUD-92273-S8)* and on any other characteristics that would affect the rent a tenant would pay. The RCS appraiser must also identify any services that are provided to tenants, and whether they are included in the rent or incidental (using the criteria in paragraph 9-2.C). If the comparable is located outside of the subject's market area, the RCS appraiser must provide the market data requested in Paragraph 2b, below. The RCS appraiser must verify and collect relevant data on comparables using the guidance below.
1. Verification of Data. The RCS appraiser must exercise due diligence to independently verify any information on a comparable pulled from existing files, Internet research, newspaper ads or apartment guides. The RCS appraiser may use multiple sources if needed to adequately verify a comparable's data.
  2. Data on a Comparable's Characteristics. The RCS appraiser must:
    - a. View each comparable's grounds and exterior common areas. If access is given, the RCS appraiser should also view interior common areas (e.g., lobby, laundry rooms, community or dining rooms, recreation/ fitness areas, business centers). The RCS appraiser must take color photos of each comparable's exterior, showing location on the site and exterior design and condition.
    - b. Collect market-based data to compare economic indicators and rent levels in the two markets if the comparable project is in a different market area than the subject.
    - c. Obtain the unit's rentable interior square footage, either through inspection or through other sources. The RCS appraiser must exclude balconies, mechanical areas, and other non-living spaces. If the square footage available represents an exterior measurement, the RCS appraiser must use professional judgment to convert the square footage to an interior measurement that can be compared with the interior measurements Section 9-9 requires on the subject. Square footage calculations should be verified with the project's management agent, when possible.

Note: The RCS appraiser is not required to inspect a comparable's unit interiors but should do so if a unit is available and access is given.
    - d. Talk with management of the comparable property to determine overall occupancy rates for that project, typical and current occupancy levels specific to the unit types used as a comparable, and whether any unit type is particularly difficult to rent. If the comparable's occupancy rate for a unit type included in the RCS is not typical of the comparable's market, the RCS appraiser must determine and document why. The RCS appraiser must consider if the rent is too high or if there are other factors causing the vacancy. Also, the RCS appraiser must confirm and quantify the existence/absence of any rent or use restrictions and tenant subsidies.

Note: If the contact person does not provide the unit size or other required information, the RCS appraiser must try to obtain the data from other sources. The RCS appraiser must use professional judgment to determine if the data is sufficient to justify using the unit as a comparable. (Section 9-11.B.3 requires disclosure of data limitations.)

3. Data on Comparable's Amenities. The RCS appraiser must identify services and amenities available at each comparable.
  - a. Non-Shelter Services. RCS appraisers must determine if the comparable provides non-shelter services (e.g., service coordination, neighborhood networks, the elderly services noted below), and, if so, the RCS appraisers must identify which services are included in the rent and which are incidental. If the comparable is incidental (i.e., the property offers the service for a fee, the service may be terminated at any time or the service is only provided on a sporadic basis), the RCS appraiser needs to value the availability of the service only. The value of availability is defined as the market value of the convenience of a non-shelter service if it were to be offered in the immediately surrounding community. For instance, if a nonprofit offers computer literacy classes at the property at an infrequent basis, the appraiser should consider how much value would be added if a nearby community center offered the exact same service. If the Owner offers a gym but charges a membership fee, the appraiser should consider how much value would be added if the property were in close proximity to a gym charging the same price and offering the same services. However, if the service is included in the rent at no additional cost, then the RCS appraiser must consider the full additional rent differential that tenants at comparable properties are paying for access to similar facilities without an additional usage fee.

Regardless of whether a service is included in the rent or incidental, the value of such services should be determined by the attractiveness of the services to tenants like those to whom the subject property is being marketed. If a service is not relevant to tenants like those at the subject property, its value should be diminished.
  - b. Elderly/Disabled. At projects for the elderly and/or disabled, RCS appraisers must determine if the project provides emergency call systems, transportation, social or education activities, service coordination, meals, laundry, housekeeping, or other services.

B. Reporting Comparable Data.

1. Comparable Project Profile. For each comparable used, the RCS appraiser must report the data collected in the Comparable Project Profile as required under Item K of Appendix 9-1-3 (Required Contents for an RCS). The Appendix 9-1-4 (Comparable Project Profile) provides a suggested format for reporting the data collected, but RCS appraisers may use their own formats if those formats include all the information listed in Item K of Appendix 9-1-3.
2. *Rent Comparability Grid*. For each primary unit type, the RCS appraiser must report the data collected by completing the data columns of the *Rent*

*Comparability Grid* (Form HUD-92273-S8). The RCS appraiser must complete all lines of the *Rent Comparability Grid*'s data columns (i.e., even lines/items for which the RCS appraiser will make no adjustment). All comparables for one subject unit type must be shown on one *Rent Comparability Grid*. RCS appraisers must review Appendix 9-1-1 for guidance on completing the *Rent Comparability Grid*.

3. Disclosure. In the Scope of Work Section of the RCS report, the RCS appraiser must identify any data on comparables that was unobtainable or estimated and must describe all efforts to obtain that data. RCS appraisers must review Appendix 9-1-3, item 2, for more detail on what the Scope of Work write-up must cover. It is considered best practice for the appraiser to maintain a work file including documentation of all research, documents, notes, etc. should investigation be needed on how particular data was obtained or why certain data was not obtained.

## **9-12. COMPUTING ADJUSTED RENTS FOR COMPARABLE UNITS**

This section provides guidance to RCS appraisers for deriving an adjusted rent for each comparable. RCS appraisers must review the instructions provided in this section and the line-by-line instructions provided in Appendix 9-1-1, before preparing the *Rent Comparability Grid* (Form HUD-92273-S8).

- A. Analyze for differences between subject and comparable. To compute the adjusted rent, the RCS appraiser must:
  1. Compute an effective rent by adjusting the most recently charged rent for factors (e.g., rent concessions) listed in Part A of the *Rent Comparability Grid*.
  2. Determine which differences between the subject and the comparable unit would affect the amount of rent a typical applicant would be willing to pay in the subject's market area.
  3. For each difference tenants would value, adjust the comparable's rent by the amount tenants in the subject's market area would typically pay for that difference. Adjustments must be displayed in dollar amounts.
- B. Adjust the comparable to the subject. Determine what rent the comparable would obtain if the comparable were nearly identical to the subject. For example, if the comparable is:
  1. Inferior to the subject on a characteristic, the RCS appraiser must adjust the comparable upward. The RCS appraiser must enter the adjustment as a positive value to indicate that residents of the comparable would pay more if the comparable had the subject's characteristic. For example, if the comparable unit size is 100 square feet smaller than the subject units, and the RCS appraiser estimates the value of incremental square feet to be \$0.50 per square foot, \$50 would be entered on Line 13 of the *Rent Comparability Grid* (Form HUD-92273-S8).
  2. Superior to the subject on a characteristic, the RCS appraiser must adjust the comparable downward. The RCS appraiser must enter the adjustment as a negative value to indicate that residents of the comparable would pay less if the comparable had the subject's characteristic. For example, if the comparable units include patios



or balconies and the subject does not, and the RCS appraiser's research shows that at a third project in this market that offers units both with and without balconies, units with balconies rent for \$15 more, -\$15 would be entered on Line 14 of the *Rent Comparability Grid* (Form HUD-92273-S8).

C. Provide narrative explanations. RCS appraisers must provide a concise but professionally complete explanation as to why each adjustment was made and how the dollar value was derived. The explanations must be clear and convincing to a person not familiar with the properties and market areas involved.

1. Every line item adjustment on the *Rent Comparability Grid* requires two separate and distinct explanations in the narrative.

a. First, RCS appraisers must explain why the adjustment was made. Specifically, RCS appraisers are required to state the reasons that justify an adjustment and explain whether the adjustment would be on a total dollar amount basis (generally used for qualitative adjustment characteristics such as “neighborhood” or “location”) or on a dollar amount per the comparison unit (generally used for adjusting unit size differences).

Example: “Comparables A and B were each adjusted upward by \$20 for not offering units with either a patio or balcony.”

b. Second, RCS appraisers must explain how the dollar value was derived. Specifically, RCS appraisers are required to explain the rationale for their adjustments. This could be supported through paired comparable analysis, interviews with management agents and leasing agents, or prior experience in the subject market. This second component (“how”) of the narrative is required for all adjustments where the amount of adjustment exceeds a nominal amount (a dollar amount or percent of unadjusted rent of the comparable, as defined in Appendix 9-1-1).

Example: “The subject and comparables C, D, and E offer either a balcony or a patio, while comparables A and B do not offer that feature in any of their units. The RCS appraiser recently appraised a project in this market that offered units both with and without balconies. Units with balconies commanded an average additional rent of approximately \$20, which provides the basis for the upward adjustment to comparables A and B”.

2. RCS appraisers shall not just reiterate the entries in the data column. It would be unacceptable for an RCS appraiser to state: “A negative adjustment was made to comparable A for location.” Instead, the RCS appraiser must outline the data and logic used to arrive at the adjustment amount.

Example: “Comparable A was adjusted downward to reflect its location in a more desirable neighborhood that consists primarily of single-family homes, has little crime, and has good access to shopping. The adjustment was estimated by comparing the rents at comparable A with those of comparable D, which is in the subject's neighborhood but otherwise very similar to comparable A. The average value of the superior location was estimated to be \$25.”

3. For all adjustments exceeding a nominal amount (a dollar amount or percent of unadjusted rent of the comparable, as defined in Appendix 9-1-1), the RCS appraiser must present market data to support each conclusion. Section 9-12.C.1 above shows an example of the two-part explanation needed for adjustments exceeding the nominal amount. For minor adjustments (adjustments not exceeding the nominal amount), the RCS appraiser may provide a subjective evaluation of why the observed differences would affect rent.
- D. Pay attention to Special Issues. The RCS appraiser must pay special attention to the detailed guidance for all line items in the *Rent Comparability Grid (Form HUD-92273-S8)* (see Appendix 9-1-1). In particular, there are a few line items that are discussed under “General Instructions” in Appendix 9-1-1 along with common errors associated with those line items. The RCS appraiser must pay special attention to the guidance before making adjustments for those respective line items.
- E. Follow the Guiding Principles when Quantifying Adjustments.
1. Not all differences between the subject and the comparable require an adjustment. An RCS appraiser must adjust only for differences that would affect how much rent a tenant is willing to pay. If a difference would appear to affect rental value and no adjustment is made, the RCS appraiser must explain why.
  2. An adjustment must reflect the local market. The RCS appraiser must make an adjustment based on what typical renters in the subject’s particular market area would pay. Additionally, tenants in different markets may value amenities and services differently, so the RCS appraiser must be aware of sometimes subtle differences in the value of some project features even within the same community.  
  
Example: Central air conditioning may be less valued by tenants in a beachfront project, compared to tenants at another project, perhaps not far away, but within a location with much warmer summertime temperatures.
  3. Adjustments often vary by unit type. Even in the same market, renters may value the same service differently among unit types.  
  
Example: A second bathroom may be more valuable in a 3-bedroom than in a 2-bedroom unit.
  4. An adjustment must reflect rental value, not construction cost or the cost of providing a service.  
  
Example: In adjusting for differences such as an elevator, amortizing the cost of the elevator over its useful life is not what a market renter would do. Any adjustment should reflect only what residents would typically pay for the convenience of using the elevator rather than climbing stairs. It is thus imperative that the value of the adjustment be market-derived, from sources such as paired-comparable analysis or direct interviews with project management personnel, rather than cost-based.
  5. Adjustments, whether positive or negative, must be applied consistently. For a given property feature, RCS appraisers must not make small negative adjustments to a comparable when it is the subject that lacks that respective feature, while

making large positive adjustments to a comparable when it is the subject, rather than the comparable, that includes that same feature.

6. Do not duplicate adjustments. RCS appraisers must be careful not to adjust for the same element in more than one place.

Example: If adjustments are made for “project appeal” (line 8) and “age” (line 7), the RCS appraiser must take care to ensure that the sum of those lines is not more than the value the tenant would place on all features covered by those line items.

### **9-13. DERIVING ESTIMATED MARKET RENTS**

This section provides guidance to RCS appraisers for deriving estimated market rents based on the *Rent Comparability Grid* (Form HUD-92273-S8) prepared for the subject project.

- A. Derive the estimated market rent. For each primary unit type, the RCS appraiser must analyze the adjusted rents of the comparables computed pursuant to Section 9-12 and the line-by-line instructions in Appendix 9-1-1. Then, using knowledge of the comparables, the RCS appraiser determines the rent the subject project could most probably obtain in the market. The RCS appraiser must consider: the type, size, and number of adjustments made; the quality of each comparable; whether a comparable’s data was estimated or incomplete; and how the adjusted rents for each unit type relate to each other. The comparables most like the subject should receive more weight. While RCS appraisers may compute and consider averages and other mathematical-based indices, those calculations do not allow for exercise of the RCS appraiser’s professional judgment and should not, by themselves, determine market rents. Instead, the RCS appraiser’s estimated market rent may be skewed toward the range of the adjusted rents for the best suited comparables to the subject project, as opposed to the mean, mode, or median values for the adjusted rents of all comparables.
- B. Derive secondary unit’s market rent, if applicable. If secondary unit types are included in the RCS, the RCS appraiser may adjust the market rent of the related primary unit type to arrive at the secondary unit type’s market rent. To do so, the RCS appraiser may adjust the primary’s market rent to reflect the slight differences (e.g., additional half bath) between the secondary and primary type and set the secondary’s market rent at the resulting amount.
- C. Explain the estimated market rent. The RCS appraiser must explain how the market rent (for primary and/or secondary unit types) was derived and why it was derived that way. The RCS appraiser must note which comparables were given the most weight and why, including which attributes of those respective comparables resulted in their being weighted more or less than others. If the estimated market rent is set at the high or low end of the range of adjusted rents, the RCS appraiser must explain why. Explanations should be concise, while at the same time clear and convincing.

Example: “Comparable A, although not as close in distance as the other four comparables, was given a higher weight than others because leasing agents have observed that prospective tenants often consider both properties (subject and comparable A) to be ‘family-friendly’ due to on-site day care facilities and similar services.”

## **9-14. PROCEDURE FOR MANDATORY MARKET RENT THRESHOLD**

In addition to submitting the rent comparability analysis and *Rent Comparability Grid* (Form HUD-92273-S8) , Owners and RCS appraisers are also required to follow special procedures for all contracts, as outlined in this section.

- A. Mandatory market rent threshold. The following requirements will apply for all contracts where the Owner's RCS concludes that the project's gross rent for the assisted units, as derived from the RCS, exceeds 150 percent of the Small Area FMR gross rent for the property ZIP code as published annually by the Department. These requirements do not apply to studies undertaken as part of the Mark-To-Market (MTM) restructuring process or subsequent renewals of a full MTM HAP contract. All RCS submissions (other than those for the MTM process) to HUD/CA must include a distribution of RCS rents and subject project's gross rent (as explained in Step 1, below, under Section 9-14.B).
- B. Steps for Computing Gross Rent and Comparing it to the Threshold. The RCS appraiser will follow the steps outlined below for all RCS submissions (except for those undertaken as part of the MTM process):

Step 1: Compute Subject Project's gross renewal rent as determined by RCS. The RCS appraiser will compute the gross renewal rent for the subject project's assisted units by multiplying the RCS rent by the number of units for each renewal type, and by calculating a monthly total gross rent. If an RCS contains multiple rent schedules (such as in a Chapter Fifteen renewal with both as-is and post-rehabilitation rents), the higher gross renewal rent amount must be used in the analysis. Include the most recent Utility Allowance in the calculation as indicated. If the Utility Allowance is being adjusted concurrently with the HAP renewal, the new Utility Allowance amount should be used. If the property is renewing the HAP under the Chapter 15 Capital Repairs program, the RCS appraiser should compare both the as-is and as-renovated rents to the SAFMR rents.

Step 2: Identify the 150 percent SAFMR Rent Threshold by Subject Project's Zip Code. HUD publishes annually a list of SAFMR rents for each unit size within a ZIP code at <https://www.huduser.gov/portal/datasets/fmr/smallarea/index.html>. In those rare cases where the subject project to be evaluated lies within multiple ZIP codes either because of the scattered-site configuration of the property or simply because a ZIP code boundary happens to be separate living units within the same property due to its large size and straddling location, the gross rent estimate that is the larger of the figures for the two respective ZIP codes will apply to all assisted units within the subject project being evaluated. If HUD has not published a SAFMR for the project's ZIP code, the FMR rents for the project's market area shall be used instead (<https://www.huduser.gov/portal/datasets/fmr.html>).

Step 3: Compare Project's gross renewal rent to 150 percent of SAFMR Gross Rent. The RCS appraiser will then compare the gross renewal rent determined under Step 1, with the SAFMR gross rent for the relevant zip code as determined under Step 2. If the project's assisted units' estimated/median rent does not exceed 150 percent of the SAFMR gross rent, a HUD-commissioned RCS will not be required for the purposes of mandatory market rent threshold requirements. If the gross renewal rent exceeds this threshold, then HUD will use the process described below to establish comparable market

rents. An example comparison of a project’s RCS gross renewal rent to 150 percent of SAFMR gross rent is as follows:

**Example Project in ZIP code 76469**

**Owner’s Gross Renewal Rent Potential Calculation**

Unit Size	Number of Units	RCS Rent	Utility Allowance	Gross Rent Potential
1 Bedroom	50	\$800	\$40	\$42,000
2 Bedroom	75	\$1,100	\$45	\$85,875
		<b>Total Gross Renewal Rent</b>		<b>\$127,875</b>

**SAFMR Gross Rent Potential Calculation**

Unit Size	Number of Units	SAFMR Rent	Gross Rent Potential
1 Bedroom	50	\$610	\$30,500
2 Bedroom	75	\$800	\$60,000
		<b>Total Gross SAFMR Rent</b>	<b>\$96,600</b>
		<b>150% of SAFMR Gross Rent</b>	<b>\$144,900</b>

Owner’s gross renewal rent is less than 150 percent of SAFMR gross rent, so the RCS does not exceed the mandatory market rent threshold.

- C. When Project’s gross renewal rent exceeds the Threshold. If the RCS-based gross renewal rent for the subject project’s assisted units exceeds 150 percent of the SAFMR gross rent for the project’s ZIP code, then a HUD-commissioned RCS will be required. In such a scenario, HUD will use independent third-party appraisal services procured through its Contracting Officer to prepare an RCS for the subject project. For an RCS that includes both “as-is” and “post-rehabilitation” market rent estimates, if either the “as-is” estimate or the “post-rehabilitation” estimate exceeds the threshold, then a HUD-commissioned RCS will be required. If the “as-is” rents do not exceed the mandatory market rent threshold, then a HUD-commissioned RCS will be procured only for the “post-rehabilitation” condition of the property. HUD shall not commission a third-party RCS until the Owner’s RCS has been substantively reviewed and deemed acceptable, with no outstanding appeals. HUD is the only intended user of the HUD-commissioned RCS, however a copy will be shared with the Owner upon written request.
- D. Funding for HUD-Commissioned RCS. A HUD-commissioned RCS may be ordered for either an insured or an uninsured property. Contract funds to pay for the studies will come from the following respective sources:
  1. FHA Insured: Technical Discipline Contract PAS Code: MTF.
  2. Noninsured: Section 8 program funds. PAS Code: CRE.

- E. Differences in Comparability Studies. HUD is not required to perform a substantive review of the HUD-commissioned RCS but may perform such a review for the purpose of quality control of the contractor's work product. HUD will review each HUD-commissioned RCS using the *Initial Checklist* (included in Appendix 9-5) to determine if all the required material has been submitted. If so, HUD will compare the gross rent potential conclusions of the HUD-commissioned RCS and the Owner-contracted RCS (as reviewed by HUD and following any appeals or adjustments) and the final market rent for the subject project will be determined as follows:
1. When the HUD comparable gross rent potential is greater than the Owner's comparable gross rent potential, the final comparable market rents will be the Owner's comparable market rents.
  2. When the HUD comparable gross rent potential is less than the Owner's comparable gross rent potential, the final comparable market rents will be determined as follows:
    - a. If the Owner's comparable gross rent potential is less than 105 percent of the HUD comparable rent potential, then the final comparable market rents will be the Owner comparable market rents.
    - b. If the Owner's comparable gross rent potential is greater than or equal to 105 percent of the HUD comparable rent potential, then the final comparable market rents will be 105 percent of the market rents as determined by the HUD-commissioned RCS.
- F. Transparency of HUD-Commissioned RCS. The Owner may request a copy of the HUD-commissioned RCS for informational purposes only. There are no negotiations allowed, however the Owner may identify factual discrepancies regarding a mistake of square footage, a mistake regarding the presence/absence of a characteristic resulting in an adjustment, a mathematical miscalculation, or other material mistake of fact and HUD will review the discrepancy. These alleged discrepancies should be presented in a numbered list, and the HUD AE will indicate whether each item is a factual discrepancy, not a factual discrepancy, or a matter of professional discretion not subject to appeal. If such discrepancies are indeed errors in the RCS, HUD will work with the third-party appraiser to correct such errors and adjust the rent conclusions. For other issues of professional discretion, such as the choice of comparables, the amount of adjustments, or derivation of concluded rent, the HUD-commissioned RCS will prevail and cannot be appealed by the Owner. HUD reserves the right to correct or return a HUD-commissioned RCS to the contractor pursuant to quality control protocols.
- G. HUD allows the use of a lender ordered MAP appraisal to serve as a substitute for the required HUD-commissioned RCS if the following conditions are met.
1. The appraisal must be ordered, paid for, and underwritten by the lender in accordance with the requirements established in the MAP Guide. The MAP appraiser must follow the existing requirements as stated in Chapter 9 of this Guide to determine the rent. In cases where the property is participating in the Chapter 15 Capital Repairs program, comparable market rents must be estimated

both before and after repairs. The MAP Guide will be used for the remainder of the assignment.

2. The MAP appraiser must use the form HUD 92273-S8 in lieu of the form HUD 92273. The 92273-S8 form will be used in all Section 8 related appraisals. The 92273 form will continue to be used for non-Section 8 assignments.
3. Lender appraisers and HUD reviewers must follow the most current USPAP standards.
4. Any appeals regarding the MAP appraisal are to be made by the lender to the processing Regional Centers/Satellite Offices office. No direct appeals to Headquarters by the Owner will be accepted.
5. To set the Section 8 rents, HUD staff shall use the lender-supplied appraisal and the HUD 92273-S8 as they would have used the HUD-commissioned RCS and use Section 9-14(E) to determine the final comparable market rents for the project.
6. The appraiser must be in compliance with all applicable civil rights laws and statutes and must not have a disciplinary citation or finding related to discrimination within the last three years.

#### **9-15. HUD REVIEW OF RENT COMPARABILITY STUDY**

This Section provides guidance to HUD/CAs on how to review an Owner's RCS prepared and submitted in accordance with Sections 9-7 through 9-14. When referring to a particular staff position, this Section uses titles typically used at HUD. CAs should translate those to their own position titles.

This Section also defines categories of reviewers. Initial reviewers are HUD/CA staff. Substantive reviewers are required to be state-certified appraisers for all reviews conducted by CAs, or HUD appraisers for those completed by HUD's Multifamily Regional Centers and Satellite Offices (such substantive reviewers are also referred to as RCS review appraisers). For instance, where HUD's staffing does not permit the availability of a HUD appraiser, a non-appraiser HUD staff person can complete the substantive review, subject to the minimum requirements and process outlined below.

- A. Minimum qualifications for reviewers. Each RCS must be reviewed by staff members who possess the requisite knowledge needed for the level of review being performed. Section 9-16 provides guidance on the level of reviews.
  1. Initial Screening. An initial review for timeliness and completeness shall be completed by a HUD/CA initial reviewer using the checklist provided under Appendix 9-5. While completing this review, the HUD/CA initial reviewer must adhere to the policies and timeframes set forth in this Chapter's guidance. The HUD/CA initial reviewer must also have read this Chapter and Appendices within the preceding 12 months of performing their first initial screening review.
  2. Substantive Review. All substantive reviews conducted by CAs must be completed by a state-certified general appraiser. Substantive reviews completed by HUD staff should ideally be completed by HUD appraisers. However, a non-appraiser

substantive reviewer from HUD staff may complete the substantive review if they meet the following minimum qualifications:

- a. Have a minimum of two years' direct multifamily experience. Besides direct experience in HUD multifamily review, other acceptable qualifying experience would be two years' employment in multifamily project management or leasing, multifamily loan or acquisition underwriting, or multifamily development. This background is necessary to effectively review the RCS facts, reasoning, and conclusions; and
  - b. Have read this Chapter and Appendices within the preceding 12 months of performing their first substantive review.
- B. Process for approving non-appraiser substantive reviewers. The Regional Center Director must authorize all non-appraiser substantive reviewers performing substantive reviews on RCSs within their region.
- C. Timing requirements. An initial screening review using the checklist in Appendix 9-5 must be completed within 10 calendar days of the date of receipt of an RCS from the Owner. The HUD/CA initial reviewer may contact the RCS appraiser directly unless the Owner has specifically objected to that in the Owner's cover letter (as required under Section 9-7). The HUD/CA initial reviewer must follow up with the Owner or RCS appraiser, by email or other form of written correspondence, if:
1. The Owner's submission is incomplete. The RCS appraiser or the Owner must submit the missing items within 10 calendar days of the HUD/CA initial reviewer's request. If the materials are not submitted, the renewal process is considered abandoned and the Owner must make a complete submission to initiate the process again. The Owner may request an extension to this deadline in writing, and HUD shall grant it for good cause.
  2. More than 90 calendar days elapsed between the RCS appraiser's transmittal letter and the date the Owner first submitted the RCS to either HUD or the CA. Under this scenario, the HUD/CA initial reviewer must return the RCS and ask the Owner to have the RCS appraiser update the data to comply with Section 9-8.
- D. Recordkeeping. All categories of reviewers must retain the RCS submission, subsequent correspondence with the Owner, and all materials and documentation for 3 years from the date of the Owner's RCS submission. This retention requirement applies equally to RCS materials that were deemed inadequate and/or incomplete.

### **9-16. INITIAL AND SUBSTANTIVE REVIEW OF OWNER'S RCS**

This section provides guidance to initial and substantive reviewers for performing a comprehensive review of the Owner's RCS, covering the initial review, substantive review, and field visit.

- A. Initial Review. The HUD/CA initial reviewer performs an initial screening of the RCS for completeness and timeliness utilizing the "Initial Screening" checklist provided under Appendix 9-5. The HUD/CA initial reviewer must sign and retain the completed checklist, and a copy must be provided to the substantive reviewer informing them that the RCS is determined to be complete and ready for a substantive review. If the initial



reviewer finds the RCS to be incomplete, the initial reviewer must contact the Owner or the Owner's appraiser to obtain the missing material before the package is forwarded to the substantive reviewer.

- B. **Purpose of Substantive Review.** The purpose of a substantive review is to assess and evaluate whether the Owner's RCS appraiser's selection of comparables, adjustments, and rent conclusions are reasonable. The substantive reviewer may not agree with every detail of the RCS, but the substantive reviewer's approval of the RCS means that the substantive reviewer has concluded that the suggested market rents presented in the RCS are reasonably supported by market facts. The RCS must contain sufficient information to convince a person unfamiliar with the market areas or properties involved that the RCS conclusions are reasonable.
- C. **Compliance with USPAP.** The substantive reviewer should not focus on compliance with USPAP unless the substantive reviewer identifies significant problems in the research, facts, reasoning, or conclusions noted in the RCS report. Substantive reviewers are not required to check for compliance with USPAP when performing a substantive review.
- D. **Scope of a Substantive Review.** The key focus for a substantive reviewer is to ensure that the Owner's RCS is reasonable, consistent with facts and standard appraisal practice, and complies with the guidance provided in Sections 9-9 through 9-13. The tools and checklists provided in Appendix 9-5, and discussed in detail below, will facilitate the substantive review process.
  - 1. *Detailed Screening Checklist.* Appendix 9-5 provides a "Detailed Screening" checklist that incorporates key questions that a substantive reviewer must assess and evaluate when reviewing an RCS. These key questions incorporate requirements under Sections 9-9 through 9-11, with respect to analyzing the subject project, comparables selection and data collection. Substantive reviewers must document any concerns or conclusions in the checklist when reviewing the RCS.
  - 2. *Rent Grid Analysis Checklist.* The substantive reviewer must complete the *Rent Grid Analysis Checklist* (Appendix 9-5) using guidance provided under "Notes for Rent Grid Analysis and Triggers for Second Review" (Appendix 9-3-1). The purpose of these checklists is to ensure that the concluded market rent is appropriate and reasonable. Substantive reviewers are not expected to challenge minor differences in RCS adjustments, particularly if correcting those perceived flaws would not affect the rent an Owner will receive or the estimated market rent shown on the Rent Comparability Grid (Form HUD-92273-S8). For example, if the Owner is seeking a \$20 rent increase, and the market rent increase will exceed \$20 even if adjustments are revised, then it would not be cost effective to spend extensive time analyzing adjustments that are reasonably close.
  - 3. **Triggers for Second Review for Non-Appraiser Reviewers.** In cases where an RCS includes line-item adjustments that are identified as triggers under Appendix 9-3-1, and if the substantive reviewer is a non-appraiser HUD employee, HUD requires that a second reviewer also review and sign-off on the specific trigger items. The second reviewer must meet the minimum qualification requirements (as described under Section 9-15.A.) and is required to provide input on the appropriateness and

reasonableness of only the specific line item that triggered a second review, as opposed to the entire RCS. If the first and second reviewers do not reach consensus, then the trigger item will be reviewed by an RCS review appraiser, whose opinion will prevail as to what revisions, if applicable, need to be made to the RCS. Please note that seeking a second reviewer's input is not a requirement if the first or second substantive reviewer is an RCS review appraiser (state-certified).

4. Issues/Certification Memo. Once the substantive reviewer has completed the detailed screening and Rent Comparability Grid, the substantive reviewer must also complete a certification (Appendix 9-5). If the substantive reviewer has questions or needs additional clarification, they can prepare an issues memo for the Owner and/or RCS appraiser.
- E. Field Visits. While most RCS reviews usually require a desk review only, substantive reviewers may recommend a field review if they believe a site visit is needed to assess the RCS. If required, all field reviews must be conducted by an RCS review appraiser. A substantive reviewer must consider recommending a field visit when:
1. The desk review raises major questions;
  2. The substantive reviewer is largely unfamiliar with the market area, the subject project or the comparables; or
  3. The substantive reviewer is considering challenging adjustments for condition, appeal, neighborhood, or other factors that can change quickly.

Note: If not acting as the review appraiser, HUD staff may review the RCS and communicate concerns to the review appraiser. However, the review appraiser makes the final determination of market rents.

## **9-17. COMMUNICATING RESULTS OF HUD/CA REVIEWS**

The HUD/CA must convey the results of the substantive review of the Owner's RCS to the Owner within 30 calendar days after receiving a complete RCS package from the Owner.

- A. Approval. If the HUD/ CA substantive reviewer agrees with the RCS appraiser's market rent conclusions, they must document that agreement on the reviewer's certification (Appendix 9-5) and notify the HUD AE/CA that the market rents in the RCS are acceptable for use in further processing of the renewal.
- B. Questions and/or Clarifications. If aspects of the RCS are unclear or unsupported, the HUD/CA substantive reviewer must ask the RCS appraiser for additional information or explanation, if the Owner's cover letter permits the HUD/CA reviewer to reach the RCS appraiser directly. If the issues have a minimal effect on valuation and the HUD/CA reviewer expects easy resolution, the substantive reviewer may call the RCS appraiser. If concerns are many, more significant, or complicated, the HUD/CA reviewer must send the RCS appraiser an email/fax/hard copy of a letter stating the concerns highlighted in a Reviewer's Issues Memo and give the RCS appraiser up to 10 calendar days to respond. (The HUD/CA reviewer must copy the Owner on any written correspondence.) The RCS appraiser must send the requested information to the HUD/CA reviewer and copy the Owner.

Within 10 calendar days after final information was due from the Owner or RCS appraiser, the HUD/CA reviewer must either: accept the study and proceed as described in Section 9-17.A, above; submit a request for additional information or clarification from the RCS appraiser, which will be evaluated pursuant to this paragraph; or draft a Decision Letter to the Owner.

- C. Decision Letter. If the RCS appraiser's response does not resolve the substantive reviewer's concerns, the substantive reviewer will draft a Decision Letter challenging the RCS. If the substantive reviewer is a non-appraiser, an RCS review appraiser must also be engaged to review the subject's RCS prior to issuance of such a letter. If the RCS review appraiser also concludes that the rejection is warranted, then the substantive reviewer may issue the Decision Letter that either tells the Owner the study must be redone and resubmitted or challenges the study's rent conclusions and suggests an alternate rent. Any alternate rents must be developed by a RCS review appraiser and be consistent with this Chapter's procedures and USPAP. The Decision Letter must tell the Owner how the RCS review appraiser arrived at the suggested market rent. The Decision Letter must also:
1. Be signed by the Regional Office Director or designee;
  2. Clearly state the reasons the RCS is challenged or that alternate rents are offered;
  3. List the Owner's options; and
  4. Provide a firm deadline for the Owner to respond.
- D. Owner's Response. The Owner has 10 calendar days after the date of the Decision Letter to advise HUD in writing of their choice to accept HUD's alternate rents, submit a new study, or appeal HUD's decision.

If the Owner chooses to appeal or resubmit their RCS, HUD/CA may, upon the Owner's request, prepare a short-term renewal at the then-current rents to allow time for processing the appeal. Any rent increases because of the appeal will be retroactive to the date of execution of the short-term renewal contract. Submission of a new study restarts the processing timeline. If the Owner chooses to appeal, the Owner may submit one revised version of the study with the materials supporting the appeal. Further revisions of the study will not be considered.

### **9-18. OWNER APPEALS**

An Owner may appeal HUD's Decision Letter by following the steps provided below. The Owner may not make changes to an RCS following the issuance of a Decision Letter, as the purpose of an appeal is to provide support for the conclusions reached in the original study. The HUD-commissioned RCS is not appealable following the process set out in this section, but an Owner may bring factual discrepancies or errors to HUD's attention for possible correction as described under Section 9-14.F. All appeals of HUD's Decision Letter, when eligible, are reviewed and decided by HUD staff at the appropriate Regional Center rather than HUD headquarters. The appeal process is as follows:

- A. Owner prepares written statement. Subsequent to submitting the Owner's letter indicating an appeal of HUD's decision, the Owner must submit a written statement of his/her reasons for appeal and any data that supports his/her objections. This written

statement must be delivered via email to the Regional Center or Satellite Office Asset Management Division Director within 20 calendar days after the date of HUD/CA's initial decision as provided by Section 9-17 above. The Owner may submit one revised version of the RCS alongside the written statement.

- B. Owner may request meeting. In addition to providing a written statement, the Owner may request a meeting or a conference call with the RCS review appraiser. If such a request is made, a meeting or a conference call must be held within 15 calendar days of the date of the Owner's appeal. The Owner, the RCS appraiser, the RCS review appraiser, and the Regional Center or Satellite Office Asset Management Division Director/designee must participate. The Regional Center or Satellite Office Asset Management Division Director and RCS review appraiser must consider if a field visit is needed to process the appeal as discussed in Section 9-16-C, above. In some instances, the Regional Center or Satellite Office Asset Management Division Director and RCS review appraiser may ask for additional information from the Owner and the RCS appraiser. This information must be submitted by the Owner within 10 calendar days after the date of the meeting or conference call.
- C. HUD reviews Owner's request. The RCS review appraiser and the Regional Center or Satellite Office Asset Management Division Director will review the Owner's appeal, including any supplemental information submitted by the Owner, and issue a letter reporting the results of the review within 15 calendar days after the latest of the date the Owner submitted the basis for the first appeal; the date of any meeting/conference call conducted per paragraph B.; or the date by which the Owner submits additional information requested by HUD per paragraph B. HUD's letter in response to the Owner's first appeal must be signed by the Regional Center or Satellite Office Asset Management Division Director, and it may accept the RCS with supplemental information submitted by the Owner, reject the Owner's first appeal and require resubmission of a new RCS study, or propose HUD's alternate rents for the project.
- E. The Owner may either accept HUD's decision, submit a second level appeal, or withdraw the renewal request.
- D. Second Level Appeal. If the Owner chooses to pursue a second level appeal, the Owner must submit a written statement of his/her reasons for a second appeal and any data that supports his/her objections to the Regional Center or Satellite Office Asset Management Division Director's Decision Letter in response to the Owner's first appeal. The submission must be received within 15 calendar days after the date of the Regional Center or Satellite Office Asset Management Division Director's Decision Letter on the first appeal, and must be addressed to the Regional Center Office Director and must copy the Regional Center or Satellite Office Asset Management Division Director. The Owner may also request a short-term renewal at current rents if the contract has expired or if expiration is imminent.
  - 1. The Regional Center Director will determine if the appeal has potential merit and, if so, issue a short-term renewal at then-current rents, to allow time to process the appeal. Any rent increases as a result of the second appeal will be made retroactively.

2. The Regional Center or Satellite Office Director may contact the Owner, the RCS appraiser, or the Regional Center or Satellite Office Asset Management Division Director and/or the RCS review appraiser for clarification or additional information.
3. The Regional Center Director must issue a Decision Letter to the Owner within 15 calendar days after the date of the Owner's second appeal. The letter must clearly state the basis for HUD's decision.

### **9-19. IMPOSING SANCTIONS ON APPRAISERS**

If, after the substantive review and communication, discussion, or appeal pursuant to Section 9-17 or 9-18, a CA or Regional Director still concludes that the RCS appraiser's work is seriously deficient or is determined to have used discriminatory criteria in violation of civil rights laws, the CA/Regional Director may consider:

- A. Reporting material deficiencies in the appraiser's work product to the state's real estate appraisal regulatory authority; and
- B. Imposing or recommending imposition of HUD's administrative sanctions (LDP, suspension, or debarment)

### **APPENDICES**

- 9-1-1: Instructions for Completing the HUD Form 92273-S8
- 9-1-2: Required Contents of a Rent Comparability Study
- 9-1-3: Comparable Project Profile
- 9-1-4: RCS Appraiser Certification
- 9-1-5: Sample RCS Appraiser's Transmittal Letter
- 9-2-1: Sample Owner's Cover Letter
- 9-2-2: Sample Owner's Checklist
- 9-3-1: Notes for Rent Grid Analysis and Triggers for Secondary Review
- 9-3-2: Sample Issues Memo from Substantive Reviewer
- 9-4: Special Project Types
- 9-5: Forms Used in Preparation and Review of an RCS

## Appendix 9-1-1

### Instructions for Completing the HUD Form 92273-S8

RCS appraisers must use the Rent Comparability Grid (HUD 92273-S8) for preparing an RCS to estimate “market” rents for the subject project. A Rent Comparability Grid provides a tool for documenting the characteristics of the subject and the comparables, and the adjustments made for differences between a comparable and the subject. The Rent Comparability Grid is comprised of seven parts, and this Appendix includes “line-by-line instructions” for populating each data column under the forty-six line items on the Rent Comparability Grid.

RCS appraisers must review and comply with the guidance provided in Sections 9-8 through 9-13 of Chapter Nine, and the instructions provided below before preparing a Rent Comparability Grid.

#### A. General Instructions

1. Prepare a separate Rent Comparability Grid for each *primary* Section 8-unit type. The RCS appraiser should review Section 9-9. A for guidance on classifying unit types as primary or secondary. For any secondary unit types, RCS appraisers need not complete a separate rent comparability grid.
2. Complete all lines of the Rent Comparability Grid. The RCS appraiser must show all comparables for one unit type on one Rent Comparability Grid. The RCS appraiser must enter the comparable’s name and address at the top of each column, fill in all lines of the Grid’s data columns, even if no adjustment is made on a line. The RCS appraiser must use the specific letter codes listed in line items 8 and 9 under Section C of this Appendix. If a project has other characteristics that would affect the rent that the project could command in the subject’s market area, then the RCS appraiser may use blank lines (Lines 22 and 23) to capture these other characteristics.
3. Make adjustments to comparable’s rents. Not all of the characteristics will affect rents. Local market conditions will dictate if, when and how much of an impact each characteristic will have upon rent. The RCS appraiser is required to make adjustments only for differences in characteristics that would affect the amount of rent that prospective tenants in the subject’s market area are willing to pay. The RCS appraiser must display all adjustments in dollar amounts. The RCS appraiser may leave adjustment entries blank (not zero) if local tenants would not pay for the difference shown on that line.
4. Provide narrative explanations. The RCS appraiser must attach a narrative explaining *why* each adjustment was made and *how* the dollar value of the adjustment was derived for all adjustments exceeding a *nominal amount* (as defined in Section 9-12. C.2).
  - a. The RCS appraiser must prepare a separate set of explanations for each Grid. If an explanation applies to more than one comparable, the RCS appraiser may refer back to that explanation rather than repeating it each time. For example, the location adjustment for Comparable Y was estimated for the same reason and in the same way as for Comparable X.

- b. The RCS appraiser must include the following two additional narrative explanations, if applicable, for the estimated market rent (Line 46 of the instructions): 1) how the market rent was derived from the comparables' adjusted rents; and 2) how a primary unit type's market rent was adjusted to derive a market rent for a secondary unit type.
5. Pay attention to special issues. The following are some of the issues and errors that are commonly noted by substantive reviewers. RCS appraisers must pay special attention to the guidance in this Appendix when making adjustments for these line items. The issues listed below are not in any order of occurrence or importance.

<b>Line Item</b>	<b>Topic</b>	<b>Common RCS Review Issues</b>
#1	Rent Restricted	RCS shows dollar adjustment made for the fact that a rent is restricted.
#4	Occupancy percent	RCS shows adjustment made for occupancy differential due to factors other than the project's rent level.
#8-9	Condition/Street Appeal/Neighborhood	RCS shows large dollar adjustments for Lines 8 and 9, which makes the reviewer question if the respective comparable is similar enough. Also, RCS appraiser uses rating levels such as "G+" or "G-", as opposed to complying with the five-point scale provided in this Appendix.
#10	Comparables from outside the subject's market area	RCS shows adjustment for comparables in a different market area, when market evidence indicates that the difference in rent levels is not significant between the two market areas.
#13	Unit Interior Square Feet	RCS shows unit size adjustments for size differences of less than 10 square feet. Or, RCS shows adjustments for unit size differences without a corresponding narrative supporting the methodology used for deriving the adjustment amount.
#29-31	Non-Shelter Services	The total net adjustments for these line items exceeds the larger of \$50 or 5 percent of the comparable's unadjusted rent, without supporting market-based evidence regarding the value of these services.
#33-39	Utilities	The RCS shows an adjustment amount for these line items that exceeds the respective published housing authority allowance for that category.

## 2. Instructions for HUD’s Excel-Based Rent Comparability Grid

Before using HUD’s Excel-based Rent Comparability Grid, which can be downloaded at the link provided under Appendix 9-1-1, RCS appraisers must review the following instructions.

1. Worksheet is protected and locked. Formulas in the worksheet cannot be altered. If the RCS appraiser tries to enter data in a formula cell, the RCS appraiser will receive an error message stating that the cells are locked and cannot be changed.
2. Scrolling and entering data in the Worksheet. The RCS appraiser may use the tab key to move horizontally within the print area of the worksheet. This will allow the RCS appraiser to skip locked formula cells and stop only at cells designed to receive data. As the RCS appraiser enters adjustments, Excel will automatically compute counts, sums or percentages on the form.
  - a. The Tab Key will navigate as described only if the Excel settings are configured to: 1) not check the Transition Navigation Keys box; and 2) check the “Microsoft Excel Menus” button. The RCS appraiser may go to Tools-Options-Transition Tab to check settings.
  - b. As the RCS appraiser scrolls horizontally to the right, columns will shift left and be hidden behind Column C’s row labels. This keeps line labels next to the data cells, making it easier to accurately load data. To view the hidden columns, the RCS appraiser may scroll back to the left. Similarly, rows will move up and disappear under the column headings as the RCS appraiser scrolls down. To bring the rows back into view, the RCS appraiser may scroll up.
3. Creating a New Grid. The “Create New Grid” button allows the RCS appraiser to simultaneously add a new unit type worksheet, label the tab at the bottom of the worksheet, and fill in the Unit Type box at the top of the worksheet. The RCS appraiser may enter different names/ labels for the tab and the unit type box on top.

If the “Create New Grid” button is used, the resulting worksheet will contain all the data that was on the worksheet containing the button. The RCS appraiser may edit any data that is not appropriate for the new unit type. For example, the RCS appraiser could:

- a. Load just the project names and other identifying header data that will apply to most unit types and then use the “Create New Grid” button to create a worksheet for each unit type. The RCS appraiser could then load amenity and adjustment entries either individually on each sheet, by copying specific cells from one worksheet to another, or by clicking the control key and selecting multiple worksheets. When the control key option is used, data is entered simultaneously in the same cell location on all the selected worksheets.
- b. Fully complete one unit type worksheet, use the “Create New Grid” button to add another worksheet, and edit the resulting worksheet to change data that is not appropriate for the new unit type. The RCS appraiser must not forget to check any copied data.



4. Sign and Date the Form. After completing the Rent Comparability Grid, the RCS appraiser must sign and date the form. The RCS appraiser must also indicate whether the Grid was prepared in Excel (with the computer running the calculations using HUD’s formulas). If the RCS appraiser used another approach (such as manual entry of data, which is discouraged by HUD), the RCS appraiser must note that on the bottom of the grid or at the end of narrative comments.

C. Line-by-Line Instructions for Preparing a Rent Comparability Grid

The guidance below provides line by line instructions to RCS appraisers for completing a Rent Comparability Grid. This guidance is organized by the seven parts (A through G) of a Rent Comparability Grid, covering forty-six line items.

**Part A: Rents Charged (lines 1 through 5)**

Before the rents for comparable units can be adjusted for differences from the subject, they must be adjusted for conditions at the comparable project itself. This section makes adjustments that are primarily internal to each individual comparable and produces an effective rent. Subsequent sections adjust each comparable’s effective rent by comparing the comparable to the subject project.

Line 1. \$ Last Rent/Restricted? In the “data” column, the RCS appraiser must enter the rent at which this unit type was last leased. This must be a rent that was actually paid; the RCS appraiser must not enter an asking rent which has not yet been achieved. In the adjustments column, the RCS appraiser must enter “Y” if the unit is rent restricted and “N” if it is not. Rent restricted units include those that are subject to rent control, rent stabilization or other restrictions on the unit rent. (e.g., LIHTC, HOME, HOPE VI, and 236/BMIR/Rural Development Section 515 units). The RCS appraiser must identify the specific reason for a yes answer in the narrative explanation of adjustments. Using a comparable from an affordable/restricted project should be only a “last resort,” as adjustments that would need to be made to line items 2 through 39 for a restricted comparable are inherently subjective. However, rent restricted units could be used as comparables when they reasonably represent market rents. Units in market areas with rent control may reasonably represent a market if they were leased recently, and should not be excluded solely on the basis of the rent control. Using a comparable from other categories of project types, such as independent or assisted living facilities or master-planned retirement communities, for an age-restricted Section 8 project, may be difficult to justify because tenants at those types of projects choose them over conventional apartment projects due to the non-shelter services offered at such facilities. In particular, a comparable property that offers a daily meal or meals included in the monthly rent poses specific challenges with regard to determining appropriate rent adjustments.

Line 2. Date Last Leased. In the data column, the RCS appraiser must enter the date (month/ year) that unit type was most recently leased. This should be the date the most recent lease for the rent on Line 1 became effective. The RCS appraiser should make an adjustment here only if the rental market has changed significantly between the date on this line and the date of the RCS appraiser’s analysis. Adjustments here should be infrequent, as the RCS appraiser should be using only recent lease transactions to begin with. This adjustment may be needed when the comparable is at full occupancy and has had no turnover for an extended period. If market conditions have not changed, the RCS

appraiser should not adjust even if considerable time has elapsed since Line 1's rent became effective.

Line 3. Rent Concessions. The RCS appraiser should evaluate if the comparable is offering initial rent or renewal concessions. The RCS appraiser must enter "Y" or "N", and may enter a negative adjustment to reflect the value of the concession, as appropriate. The RCS appraiser must prorate the concession over the lease period. For example, the RCS appraiser would make a (\$33) adjustment for one month free on a 12-month lease (requiring 11 monthly rent payments), at \$400 /month. If the free month is instead offered as an add-on before or after 12 months of payments, the adjustment in this example would be less (\$31).

Line 4. Occupancy percent for Unit Type. The RCS appraiser must consider only the unit type represented by the comparable. The RCS appraiser should enter the approximate percent of units in that type that are occupied as of the data collection date. The RCS appraiser must not enter occupancy for all unit types at the comparable. If the comparable's occupancy rate for the unit type under consideration is not typical of the comparable's market, the RCS appraiser must determine if the occupancy differential is due to the rent being set too high/ too low, or due to other factors.

1. If the occupancy gap is due to factors other than Line 1's rent level (e.g. condition or location), the RCS appraiser must not make an adjustment. The RCS appraiser should adjust only if the occupancy gap is clearly due to the rent level used on Line 1. If the comparable's occupancy for the unit type being studied is significantly lower than the typical occupancy rate for that unit type, the RCS appraiser should adjust negatively to indicate that the rent is too high. If the comparable's occupancy for the unit type being studied is significantly higher than the typical occupancy rate for that unit type, the RCS appraiser should make a positive adjustment.
2. If the property manager/other contact for a comparable is unwilling or unable to provide occupancy rates by unit type, the RCS appraiser should report overall occupancy for the comparable and note in the explanation for Line Item #4 that the occupancy rate is project-wide. If only overall occupancy is reported, an occupancy adjustment may be made only if the unit mix is such that the RCS appraiser can still conclude that the occupancy for the unit type is significantly different than market occupancy levels for that unit type. *Example:* If a project has 99 percent occupancy and 100 units (50 one-bedrooms, 50 two-bedrooms), it could still be concluded that the two-bedroom units being studied are at least 98 percent occupied. The RCS appraiser must explain how he/she arrived at that conclusion.
3. The occupancy adjustment is subjective, and thus it is not expected to be frequently used. Often, unusually low occupancy may have other explanations. For example, a low occupancy project may still be in initial absorption, or may be re-absorbing after a renovation or other unusual event. Conversely, an unusually high occupancy rate may be due to factors such as a high proportion of long-term tenants at below-market rates or the presence of Section 8 voucher tenants, even if new rental transactions there are being done at market rates. The use of an occupancy adjustment should thus be reserved for the specific situation where

management is marketing units consistently at unusually low or high rental rates over a sustained period of time as a matter of policy, with measurable impacts on project occupancy.

Line 5. Effective Rent and Rent/Sq. Ft. The RCS appraiser must enter the sum of lines 2, 3, and 4. This yields an effective rent after age of the lease, occupancy, and rental concessions are taken into account. Excel-based Rent Comparability Grids will automatically calculate the total rent. After the RCS appraiser enters the unit size in Part C, the form will also display the effective rent per square foot.

### **Part B. Design, Location, Condition (lines 6 through 10)**

This section allows for comparison of the comparable to the subject in terms of design, materials, condition, location, and appeal. The total adjustments in this section should not exceed the value a typical tenant would place on these characteristics in the aggregate.

Line 6. Structure/ Stories. The RCS appraiser must enter the type of structure using recognized codes such as “E” for Elevator, “G” for Garden, “WU” for other walk-up, and “T” for townhouse. The RCS appraiser can select other categories as dictated by market conditions, but must explain the significance of other categories and codes, if different from the recognized codes. For example, in some markets, renters in low-rise buildings may value apartments with private exterior entrances over a shared entry/or shared stairway, even if the units are stacked. In such cases, the RCS appraiser must identify the categories and codes used in the adjustments. Codes such as “WU-Pvt” (private entrance) or “WU-Shrd” (shared entrance) could be used.

The RCS appraiser must follow the letters with a slant bar and the number of stories. For example, the RCS appraiser should enter “WU/3” for a three-story walk-up. The RCS appraiser should try to select comparables that have the same structure type as the subject. If the comparables have a different configuration than the subject, adjustment may be warranted based on market preferences. For instance, the RCS appraiser may make an adjustment for configuration differences such as townhome versus a stacked unit. The RCS appraiser must explain the basis for any adjustment exceeding the larger of \$10 or 2 percent of the comparable’s unadjusted rent.

Line 7. Year built/Year renovated. The RCS appraiser must enter the year the project was built. If it has been renovated, the RCS appraiser should follow with a slant bar and the year the project was renovated. For example, 1939/70 would indicate that the project was built in 1939 and renovated in 1970. The RCS appraiser must make adjustments on this line if the effective age (the age indicated by the utility, quality of the structure, and major equipment) affects rental value. The RCS appraiser must consider if basic structures and major equipment have been replaced and whether baths and kitchens have been renovated. Typically, the RCS appraiser should not make any adjustments for age differences of just a few years. When the RCS appraiser chooses to make an adjustment, the amount for each year of age difference should typically be less than \$5 per year or 1 percent of the unadjusted rent. Alternatively, the RCS appraiser could make one adjustment for multiples of a fixed number of years of age difference. For *example*, each multiple of three years of age difference between the subject and the comparable would be assigned a certain dollar amount of adjustment.

Line 8. Condition/Street Appeal. It is mandatory for the RCS appraiser to rate the subject and each comparable per a five-point scale: Excellent, Good, Average, Fair, or Poor. *No other classifications are acceptable.* For the subject, and every comparable, the RCS appraiser must enter “E” for excellent, “G” for good, “A” for average, “F” for fair, or “P” for poor. If the design of the building or the street appeal of the project would affect the rents it can command, the RCS appraiser must adjust appropriately. The RCS appraiser should consider the overall appearance of the project, such as whether the grounds are clean, whether the landscaping is well maintained, and whether or not the paint and siding are in good condition. Other considerations would be whether the architecture of the buildings and layout of the site are appealing (open space, shrubbery, etc.). In summary, the RCS appraiser must evaluate whether the comparable’s condition/street appeal could cause tenants to pay more or less than they would pay at the subject.

An adjustment of more than the larger of \$20 or 4 percent of unadjusted rent for each level of rating difference would require that the RCS appraiser provide specific explanation in the narrative to support the amount of adjustment. *Example:* a positive adjustment for an “Average” rated comparable versus an “Excellent” rated subject, should not exceed \$40, or 8 percent of the unadjusted comparable rent, whichever is larger.

Due to the potential for overlap between adjustment parameters, if the RCS appraiser has made an adjustment on Line 7 for Year Built/Renovated for a comparable, the RCS appraiser must explain if the adjustment exceeds \$15 or 3 percent of unadjusted rent, whichever is larger, for each level of rating difference for Line 8 for that same comparable.

Note: Take care not to duplicate adjustments made on line 7. Adjustments made on lines 7 and 8 should not add to more than the adjustment that would be made if the project characteristics referenced on Lines 7 and 8 were considered as a single adjustment.

Line 9. Neighborhood. The RCS appraiser must rate the subject and each comparable according to a five-point scale: Excellent, Good, Average, Fair, or Poor. No other classifications are acceptable. For the subject, and every comparable, the RCS appraiser must enter “E” for excellent, “G” for good, “A” for average, “F” for fair, or “P” for poor. The entry should reflect the market’s reaction to location features that affect rental values. For example, neighborhood desirability; nuisances such as street noise; nearby land uses; crime volume; and access (time/distance) to schools, transportation, shopping, recreation, and medical and employment centers. The Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA) specifically requires that neighborhood (including risk of crime), location and access be considered.

An adjustment of more than \$20 or 4 percent of unadjusted rent, whichever is larger, for each level of rating difference would require that the RCS appraiser provide specific explanation in the narrative to support the amount of adjustment. For example, a positive adjustment for an “Average” rated comparable versus an “Excellent” rated subject, should not exceed \$40, or 8 percent of the unadjusted comparable rate, whichever is larger.

The RCS appraiser must note that the Fair Housing Act prohibits appraisers from discriminating in appraisals, such as making adjustments because of the race, color, religion, sex (including sexual orientation and gender identity), disability, familial status, or national origin of the residents of projects or the surrounding areas. RCS appraiser's adjustments must be based on objective, quantifiable, and nondiscriminatory factors.

Line 10. Same Market? Miles to Subject? The RCS appraiser must enter "Y" or "N", depending on whether the comparable is in the same market area as the subject. The RCS appraiser must follow the entry with a slant bar, and the distance between the comparable and the subject in miles. If the comparable is in a different market area, the RCS appraiser must collect quantitative data to compare the rent levels in the two market areas. The RCS appraiser must adjust for any significant difference in rental costs between the two market areas and explain how he/she computed the adjustment. If the comparable is in a different market area and the RCS appraiser chooses to not adjust it for the different market location, the RCS appraiser must explain *why*.

### **Part C. Unit Equipment/Amenities (lines 11 through 23)**

This section details specifics about the unit and its equipment and amenities. The RCS appraiser should use the blank line to add unit amenities or equipment that aren't listed but significantly affect the rent a tenant would pay. Total adjustments made for this Part should not exceed the value a typical tenant would place on all unit amenities.

Line 11. # Bedrooms. The RCS appraiser must enter the number of bedrooms in the unit. The RCS appraiser can use "0" for efficiencies. If a comparable and the subject have a different number of bedrooms, the RCS appraiser must explain in the narrative why he/she selected a comparable of a different bedroom type.

Line 12. # Baths. The RCS appraiser must enter the number of bathrooms in the unit. The RCS appraiser may use decimals to represent partial baths. *Example:* The RCS appraiser may enter 1.5 to indicate one full bath and one bath with a toilet and sink, but no tub or shower stall.

Line 13. Unit Interior Sq. Ft. The RCS appraiser must enter the rentable interior square footage of the unit. The RCS appraiser should not include balconies, mechanical areas or other non-living spaces, unless the comparable unit size measurements include those areas and it is not possible to adjust the comparables. The RCS appraiser must explain: a) how the square footage of the subject was derived and how it corresponds to the square footage of the comparables; and b) the method used to determine the size adjustment. The method used to determine the size adjustment must be market-based, the ideal being a property in that market that offers similar plans with regard to number of bedrooms and bathrooms, but differing with regard to square footage. Given the lack of precision and standardization in the way that unit sizes are measured, RCS appraisers should not adjust for size differences of less than 10 square feet. For example, a difference of 50 square feet in the case of a 500 square foot one-bedroom might be worth a different amount to prospective tenants than a 50 square foot difference in the case of an 800-square foot, two-bedroom unit.

Note: Even for size differences exceeding 10 square feet, the RCS appraiser should adjust only if, and to the extent, the subject's market values a size

difference. Some markets may not value small size differences and a difference in size may not increase the market value of a larger unit to the same degree that it might for a smaller unit.

Line 14. Balcony/Patio. The RCS appraiser should consider if the unit has a balcony or a patio, and enter “Y” or “N”, as appropriate. While an adjustment greater than a nominal amount may be justified in certain markets (e.g., resort area, warm climate), the RCS appraiser must explain the basis for any adjustment that exceeds \$10 or 2 percent of unadjusted rent of the comparable, whichever is larger.

Line 15. AC: Central/Wall. The RCS appraiser should use this line item to reflect the type of cooling equipment in the unit, using “C” for central, “W” for wall unit, or “N” for none. The RCS appraiser is required to adjust only for the value of having AC equipment and for differences in the type of equipment (wall, central, etc.). The RCS appraiser should not adjust for the cost of running the air conditioner, which should be captured under Line 34 below. Adjustment for type of AC will typically be nominal (not exceeding \$10 or 2 percent of unadjusted rent, whichever is larger). The RCS appraiser must explain the basis for dollar amount chosen that exceeds the nominal amount, in the underlying narrative, and whether the RCS appraiser utilized a paired comp analysis or interviewed knowledgeable sources.

Line 16. Range /Refrigerator. The RCS appraiser must enter “R” for range, “F” for refrigerator, or “RF” if the unit has both appliances. If neither is present, the RCS appraiser must enter “N”. It is not uncommon in some markets for tenants to need to provide their own refrigerator; the corresponding adjustment should not exceed the monthly cost of a rental.

Line 17. Microwave/ Dishwasher. The RCS appraiser must enter “M” for microwave, “D” for dishwasher, or “MD” if the unit has both appliances. If neither is present, the RCS appraiser must enter “N”. The adjustments here should be nominal, typically not exceeding the higher of \$10 or 2 percent of the unadjusted rent, for each item.

Line 18. Washer/Dryer. If there is a washer/dryer hookup in the unit but the Owner supplies neither appliance, the RCS appraiser must enter “HU.” If the appliances are provided in the unit, the RCS appraiser must enter “W” for washer, “D” for dryer or “WD” for both. If there is a common laundry area in the project, the RCS appraiser must enter “L”. If the project offers no laundry facilities, hookup, or appliances in the unit, the RCS appraiser must enter “N”. The adjustment for a unit where the Owner provides hookups, but not the washer-dryer machines, should not exceed the monthly cost of the machine rental.

Line 19. Floor Coverings. The RCS appraiser must indicate the predominant floor covering in the unit, using “V” for vinyl, “W” for wood, “WC” for wood composite product, and “C” for carpet. The RCS appraiser is required to only adjust for type of floor covering if there is market evidence, based on the experience of property managers and leasing agents, that one type of floor covering is more valued in the project’s market than other types.

Line 20. Window Coverings. If the unit is rented with window treatments, the RCS appraiser must enter “B” for blinds or “S” for shades or “D” for drapes. If the unit is

rented without window coverings of any kind, the RCS appraiser must enter “N” for none. RCS appraisers are required to only adjust for type of Owner-provided window covering, if there is market evidence, based on the experience of property managers and leasing agents, that one type of window covering is more valued in the project’s market than other types.

Line 21. Cable/Satellite/Internet. The RCS appraiser must enter “C” for cable TV, “S” for satellite TV, and “I” for Internet access. If the subject property has more than one of these amenities, the RCS appraiser must enter all of the corresponding letters. For example, “CSI” indicates a project that offers all three of these amenities. The RCS appraiser must consider whether the project merely offers infrastructure (i.e., broadband) to access the amenities or whether it offers the amenities itself as part of the rent. If only infrastructure is offered, then the RCS appraiser must adjust based on the market value attributable to the availability of that infrastructure. If the amenity is provided to the tenant without an additional fee, the RCS appraiser should reflect the value of both access to and provision of the amenity. Any valuation for provision of cable/satellite/internet must be based on actual comparable data from the surrounding market area (comparable properties that provide internet access to tenants without any additional fees) rather than post-market adjustments. Similar data speed and means of access (wireless, hard-wired) must be used to identify comparable market services.

Line 22. Special Features. The RCS appraiser should use this line to adjust for items that are valued in the project’s market, based on the experience of property managers and leasing agents, but not listed above. For example, views, fireplaces, vaulted ceiling, partial ceramic tile flooring (in entryway, kitchen, or bath). The RCS appraiser must enter “VW” for view, “F” for fireplace, “VC” for vaulted ceiling, or “CT” for ceramic tile. If the unit has safety bars, ramps, or other features to improve access for elderly or persons with disabilities, the RCS appraiser should enter “A”.

Lines 23. Blank line. The RCS appraiser should use this line to add a unit amenity that is not listed but significantly affects the rent a tenant would pay. The RCS appraiser must describe the amenity on the line provided and make dollar adjustments as appropriate.

#### **Part D. Site Equipment/Amenities (lines 24 through 32)**

This section details specifics about the project and its amenities. The RCS appraiser should use the blank line #32 to add site amenities that are not listed but affect the rent a tenant would pay. Total adjustments in this Part should not exceed the total value a typical tenant would place on all amenities in this Part.

Line 24. Parking (\$ Fee). The RCS appraiser must enter “L” for lot parking, “G” for garage, and “CP” for covered parking, followed by a slant bar and the amount of the additional charge, if any, the tenant pays for the service. Properties that offer choices for type of parking such as lot parking or garages, will show a code and dollar amount for each type of parking offered. If there is no charge, the RCS appraiser should enter “0”.

Next, the RCS appraiser must adjust for the magnitude of the difference between the parking ratio at each comparable versus the subject property. The impact of parking charges on the average base rental rate for living units at the respective property depends on the percentage of total tenant households that have parking available; the parking fee at

a property that has only one space for each ten apartments has much less impact on average rents than a property that has nine spaces for each ten apartments. The RCS appraiser should create a weighting factor by dividing the smaller parking ratio into the larger ratio. That figure should show the magnitude of the difference in parking availability between each comparable and the subject, so if the comparable has a ratio of 0.40 ratio of spaces to living units, and the subject property has a ratio of 0.80, the weight factor would be 50 percent.

Finally, the RCS appraiser must weigh the extra value of one type of parking over another. If it is determined that covered parking is worth \$20 more to tenants in this market than open lot parking, that cost must be weighted for the parking ratio at that respective property; if that property has 7 spaces for every ten living units, the weighted value of covered parking there is \$14 (note that the weighting factor to the type of parking is based on the parking ratio at that property only).

A graphic presentation of parking adjustments, using a chart or table, will typically be helpful if more than just a few simple adjustments are being made.

Example: The subject property charges \$25 for monthly parking and has twice as many apartments as parking spaces, thus indicating a 0.50 parking ratio. The only parking offered is in an open lot. Comparable A charges \$40 for monthly parking and has three apartments for every two parking spaces, indicating a 0.67 parking ratio. Comparable A likewise offers only open parking spaces. The weighting for parking availability between the subject property and Comparable A is  $0.50/0.67$ , or 75 percent. The net adjustment for Comparable A is  $0.75 \times \$15$ , or \$11; the adjustment is positive because the parking rate at the subject property is cheaper. Comparable B charges \$60 for monthly parking but has four apartments for every parking space, indicating a 0.25 parking ratio. The weight between the subject property and Comparable B is  $0.25/0.50$ , or 50 percent. The net adjustment for Comparable B is  $0.50 \times \$35$ , or \$18. The adjustment is once again positive because the parking rate at the subject property is cheaper. But an additional adjustment is needed for Comparable B because all the parking is covered, compared to only open lot parking at the subject property. The RCS appraiser also identified another apartment complex nearby that offers both open lot parking and covered parking. The difference in cost is \$15, which would be the incremental value of covered parking. The RCS appraiser further adjusts the \$15 by applying the 0.25 parking ratio, resulting in a “net” value of \$4 for covered parking.

Therefore, the final adjustment for Comparable B parking is \$14 (or \$18 less \$4).

Line 25. Extra Storage. The RCS appraiser must enter “Y” or “N” indicating whether tenants are provided with additional storage space. This may include extremely large or functional closets or outside storage. Before adjusting for any storage inside the unit, the RCS appraiser must ensure that any adjustment for unit size did not already capture that value. Also, when adjusting for this line item, RCS appraisers must distinguish between availability of storage versus cost of storage. An adjustment based on cost rather than availability would be the case where the subject project offers ancillary storage for no charge while the comparables charge for a similar sized storage unit. The RCS appraiser should indicate the cost of storage by inserting the cost after the letter code. For example,



a comparable that offers storage lockers for a \$20 fee can be represented by “Y/\$20, versus a comparable that offers free storage can be represented by “Y/\$0”.

Example: If the subject offers no ancillary storage while Comparable A offers storage units at market rents, then Comparable A needs to be adjusted downwards if tenants value the convenience of on-site storage.

Line 26. Security. The RCS appraiser must enter “Y” or “N”, and must describe and evaluate the subject’s security features, such as locked exterior doors with intercom, on-site security guards, secured site access, and exterior/corridor lighting. Only those features that tenants value and thus impact rent must be compared to the comparables and appropriately adjusted.

Line 27. Clubhouse/Meeting Rooms/Dining Rooms. The RCS appraiser must enter “C” for clubhouse, “MR” for meeting rooms, and “DR” for dining room. If the project has none, the RCS appraiser should enter “N”.

Line 28. Pool/Recreation Areas. The RCS appraiser must enter “P” for pool, “E” for exercise rooms, or “R” for other recreation facilities such as playgrounds, volleyball or basketball courts. The RCS appraiser must be sure to describe the type of recreation facilities in the underlying narrative description of adjustments. If any adjustment amount here exceeds the higher of \$10 or 2 percent of unadjusted rent of the comparable, which is possible in some resort or warm climate markets, the RCS appraiser must explain the basis for all adjustments made under this line item.

Important Note for Lines 29, 30, 31, and 32: Appraisers must assess the value of all non-shelter services that are available to tenants at the property and should note whether the services are included in the rent or incidental. More specifically, the RCS appraisers must note the following:

1. The primary determining factors of the value of a service at a property are the attractiveness of the service to potential renters like those to whom the property is being marketed, and whether those services are included in the rent. The cost to the Owner of providing a service has no bearing on its effect on the valuation of the property.
2. Services can be valued in two tiers depending on whether they are included in the rent or whether they are incidental. Services that are included in the rent are valued most highly, and an RCS should reflect the full value of provision of these services. Incidental services receive a reduced valuation, equivalent to the value of the convenience/availability of the service taking into account whether tenants must pay a fee to use the service.

Example: A comparable does not offer a shuttle service to tenants, while the subject property does provide this service.

- a. If the subject property includes the shuttle service in the rent at no charge and the service is funded by the owner, the comparable should be adjusted upward by the amount that tenants would pay to use such a shuttle service at comparable properties, on average.

- b. If the subject property provides the shuttle on an infrequent basis (thus as an incidental service) at no charge, the comparable should be adjusted upward by an amount equal to the convenience value of a local community organization that provides the same service free of charge.
  - c. If the subject property provides the shuttle and charges a fee (thus as an incidental service), the comparable should be adjusted upward by an amount equal to the convenience value of a local organization that provides a shuttle service at the same cost as that charged by the property.
  - d. If a local nonprofit fully funds and operates a shuttle service with a stop at the property (thus as an incidental service), the comparable should be adjusted upward by an amount to reflect the convenience of the arrangement, as opposed to a situation where the tenant would need to contact the nonprofit and organize the shuttle independently.
3. RCS appraisers must explain the basis and rationale for any adjustments made under Lines 29, 30, 31 and 32. This explanation should include evidence- and experience-based reasoning for arriving at a given adjustment amount. If the total net adjustments for Lines 29, 30, 31, and 32, exceeds the larger of \$50 or 5 percent of the comparable's unadjusted rent, the RCS appraiser must also support the overall adjustment with market-based evidence regarding the value of these services.
  4. In some cases, non-shelter services may be provided out of a single common area facility. A single space used to provide more than one service has no bearing on whether an adjustment is warranted or not; the consideration is exclusively based on the value of each respective service to residents.
  5. The lack of a fee at the subject property that is prohibited by other HUD regulation or guidance (such as an Application Fee) is not a service, and thus may not form the basis for a rent adjustment.
  6. If a service forms the basis for a valuation in an RCS, but that service is also funded by a grant from HUD, that grant may be reduced by an amount equal to the gross amount by which the service increases the RCS rent conclusion. RCS appraisers must identify which valuations are associated with a grant from HUD.
  7. RCS appraisers should indicate which property in the market area served as a comparable for deriving the valuation for each non-shelter service at the property. If a service is provided to support vulnerable populations but is not observed in the market area, appraisers should provide specific and evidence-based information that informed the service valuation conclusion.

Line 29. Business Center/Neighborhood Network. If the project has a business center offering office services such as copying and faxing, the RCS appraiser must enter "BC." If the project has a HUD sponsored Neighborhood Network, the RCS appraiser must enter "NNW", or "N" for neither. RCS appraisers must review the "Important Note" above pertaining to Lines 29, 30, 31, and 32.

Line 30. Service Coordination. The RCS appraiser must identify if the project has a service coordinator who helps residents access social services, health care or resources

for meeting other needs, and enter “Y” or “N” on this line item accordingly. RCS appraisers must review the “Important Note” above pertaining to Lines 29, 30, 31, and 32.

Line 31. Non-Shelter Services. The RCS appraiser must enter “M” for meals, “T” for transportation, “EC” for emergency call systems, “H” for housekeeping, and “L” for laundry service, “ED” for educational classes, “AS” for after school care, “SP” for summer programs, “O” for other, or “N” for none. The RCS appraiser must record and fully describe (in the accompanying narrative explanations) any other services provided at the property. RCS appraisers must review the “Important Note” above pertaining to Lines 29, 30, 31, and 32.

Lines 32. Neighborhood Networks (non-HUD). The RCS appraiser should populate this line to capture features such as Neighborhood Networks-type programs or other types of social support programs provided by sources other than HUD. RCS appraisers must review the “Important Note” above pertaining to Lines 29, 30, 31, and 32.

### **Part E. Utilities (lines 33 through 39)**

Lines 33 through 39. Since tenants make housing choices based upon total shelter cost (rent + utilities), estimated outlays for utilities reduce, dollar for dollar, the amount a prospective tenant is willing to pay for rent. If a utility is included in the subject’s rent, but not in the rent of the comparable (or vice versa), the RCS appraiser must estimate the rental value of that utility and adjust accordingly. For projects with typical utility costs, the ‘rental value’ is probably close to what prospective tenants would expect to pay. However, for projects with unusually low utility costs, prospective tenants initially may overestimate utility costs, putting rental value slightly above actual cost. For projects with unusually high utility costs, the reverse may be true. Prospective tenants initially may underestimate utility outlays, causing rental value to be less than utility costs they incur following move-in.

For lines 33 through 39, the RCS appraiser must enter “Y” if the service is included in the rent and “N” if it is not. The RCS appraiser must follow the Y or N entry with a slant bar and the energy source for the utility addressed on that line. If the project does not have a utility listed here, the RCS appraiser may leave the space blank. “Other Electric” on line 37 includes the cost of electricity for things not listed separately on the form (e.g., lights and outlets).

When making adjustments on lines 33 through 39, the RCS appraiser must consider if a utility is:

1. excluded from the comparable rent but included in the subject rent, the RCS appraiser must enter a positive adjustment that reflects the amount prospective tenants would reasonably expect to pay for that utility at the comparable.
2. included in the comparable rent but not the subject rent, the RCS appraiser must enter a negative adjustment that reflects what prospective tenants would reasonably expect to pay for that utility at the subject. Since tenants make housing choices based upon total shelter cost (i.e., rent + utilities), estimated outlays for utilities reduce the amount a prospective tenant is willing to pay for rent.

3. included in the rent at both the subject and the comparable, a prospective tenant would probably perceive these as equal choices even if the energy sources (gas, electric, or oil) differ, and no adjustment would usually be needed by the RCS appraiser. However, if the RCS appraiser has evidence that the type of utility affects tenant preferences and rents, then the RCS appraiser may consider adjustments for tenant preferences. Example: Tenants may prefer gas over electric heat in severely cold locations. Such adjustments, when applicable, should not exceed a nominal amount of \$10 or 2 percent of unadjusted rent of the comparable, whichever is larger; the RCS appraiser needs to explain any adjustment exceeding that nominal amount.

The RCS appraisers may use any reasonable method to value expected utility outlays, but must identify the method used and explain how the dollar adjustment was derived. Some data sources commonly used to value utility adjustments are listed below.

1. Regional Utility allowances published by independent public agencies. When using this source as the basis of adjustment in any utility item, RCS appraisers must be mindful that such published allowances typically represent the very high end of a reasonable range for each respective utility item.
2. Data gathered from utility providers.
3. Data gathered from tenants and landlords.
4. A HUD/CA approved utility allowance if the type of service and building attributes considered in developing the utility allowance are similar to the comparable being adjusted.

#### **Part F. Adjustments Recap (lines 40 through 43)**

This section calculates both the number and dollar value of adjustments, both before and after utility adjustments. HUD's Excel form automatically calculates these items.

Line 40. Number of Adjustments B through D. Excel calculates the total number of positive and, separately, negative adjustments made to each comparable for items in Parts B through D.

Line 41. Sum of Adjustments B through D. Excel calculates the total dollar amount of positive and, separately, negative adjustments made to each comparable for items in Parts B through D.

Line 42. Sum of Utility Adjustments. Excel calculates the total dollar amount of positive and, separately, negative adjustments made to each comparable for the utility items in Part E of the form.

Line 43 Net/Gross Adjustments B to E. Excel calculates the net adjustments, which is the addition of the four entries (positive and negative) on Lines 41 and 42. This line also shows the gross adjustments, which is obtained by adding the positive entries on Lines 41 and 42 to the absolute value of the negative entries on those lines.

#### **Part G. Adjusted Rents (lines 44 through 45)**

HUD's Excel form automatically calculates these items, except for Line 46. RCS appraisers do not need to compute entries for Lines 44 and 45 manually.

Line 44. Adjusted Rent. Excel computes this line by adding the net adjustments (Line 43) to the Effective Rent (Line 5) to derive an adjusted rent for each comparable.

Line 45. Adjusted Rent/Last Rent. Excel computes this line by dividing the Adjusted Rent (Line 44) by the Last Rent (Line 1) and expresses the answer as a percent. This shows the impact of all adjustments made for all Parts of the form. The totals in Part F do not include the adjustments in Part A.

Line 46. Estimated Market Rent. In this line, the RCS appraisers will determine, using their professional judgment, the point in the range of adjusted rents that best represents the rent a knowledgeable tenant would most probably pay for that unit type at the subject. HUD's Excel form will divide that rent by the square footage shown for the subject in Part C to compute estimated market rent per square foot. When entering the estimated market rent, the RCS appraiser must explain the points listed below. The RCS appraiser is required to present these explanations immediately after his/her comments on Item 46. RCSs without these explanations will be rejected by the substantive reviewer.

How the estimated market rent was derived from comparables' adjusted rents.

The RCS appraiser must explain how the estimated market rent was derived and why it was derived that way. He/she must note which comparables were given the most weight and why, including which attributes of those respective comparables resulted in their being weighted more or less than others. If the estimated market rent is set at the high or low end of the adjusted rents' range, the RCS appraiser must explain why. For example, the narrative may note that a comparable located within the same master-planned community deserves proportionately more weight than another comparable which is outside the master-planned community and only slightly farther from the subject, but is within walking distance to a neighborhood shopping district. Alternatively, the RCS appraiser may support his/her estimation by stating that comparable A that may not be as close in distance as other four comparables, was given a higher weight than others because leasing agents have observed that prospective tenants often consider both projects (subject and comparable A) "family-friendly" due to on-site day-care facilities and similar services.

How the estimated market rent was derived for a secondary unit type. When a subject has primary and secondary units, the RCS appraisers may start with the market rent for a primary type and adjust for the minor difference(s) between the secondary type and related primary type. RCS appraisers must explain why adjustments were made and how they were made in deriving rents for a secondary unit type.

## Appendix 9-1-2

### Required Contents of a Rent Comparability Study

A. Transmittal Letter signed by the RCS appraiser. The RCS appraiser must address the Transmittal Letter to the project Owner, and the letter must be dated as of the date it is submitted along with the RCS to the Owner. A sample transmittal letter is included under Appendix 9-1-6. This letter must include the following five components:

1. RCS appraiser's name, company name, address, telephone, fax number (optional), and email address.
2. Project name, FHA/other project number of the Section 8 project.
3. Table of estimated market rent for each unit type included in the study. The RCS appraiser should use table format shown below. In last column, the RCS appraiser should enter “Y” for yes if a Rent Comparability Grid was prepared for that unit type, or enter “N” for No, if a grid was not prepared for secondary unit types, but instead the RCS appraiser adjusted the primary type’s estimated rent. If the study reflects both pre-repair and post-repair rent conclusions, two tables should be provided reflecting each scenario.

			Estimated Market		
Unit Type	# Units	Size (Sq. Ft)	Rent	\$/ Sq. Ft	Prepared Grid?
					(Y/N)
	Total				

4. A statement that market rents were defined and estimated in accordance with Sections 9-9 through 9-13 of this Chapter and the RCS report was prepared in accordance with Sections 9-8 through 9-14 of this Chapter.
5. An acknowledgment of how his/her report will be used. Suggested language: “I understand that HUD/the Section 8 Contract Administrator (CA) and the project Owner will use my estimate of market rents to determine: 1) the Owner’s options for renewing the project’s Section 8 contracts; and 2) the maximum rents allowed under any renewal contract.”

B. Scope of Work. The RCS appraiser must acknowledge that all work was done in accordance with the requirements set forth in this notice, and provide a narrative describing:

1. Dates, number and types of inspections, and how unit sizes were verified.
  2. How rent, condition and amenity data were collected and verified. The RCS appraiser should also note all interviews completed, records reviewed, and internet sites used. The RCS appraiser should indicate the period during which data was collected.
  3. Any data that was unobtainable or estimated and all efforts to obtain that data.
  4. Any assistance from assistant RCS appraisers.
- C. Description of Subject Project. The RCS appraiser must address the items listed under this section by creating a chart or table like the template shown below. If the units being renewed are located on scattered sites and those sites differ significantly on condition, services, street appeal or other factors listed below, the RCS appraiser must need to create a separate chart for each site:
1. Project name and address (street, city, county, cross streets) and neighborhood name if applicable).
  2. Site characteristics and improvements: number of buildings and their design (construction material, structure type), number of units; topography and density; and access to site.
  3. Unit mix for all units in the project, not just the Section 8 units. The RCS appraiser should use the table format below, and ensure that he/she includes all revenue-producing units in the project & group them by major unit types (e.g., # bedrooms/# baths). The RCS appraisers should review Section 9-10 for a definition of rent restricted units.

Unit Type	# Units	Interior Size (SF)	#Project-Based Sec 8 units	# Other Rent-Restricted Units	# Units Not Rent Restricted
	Total		Total	Total	Total

4. Condition: age of project, state of repair, any recent/ planned rehab or refurbishing.
5. Schedule of charges collected in addition to rent.

6. 3 to 5 labeled, color photos of exterior and interior. The RCS appraiser must review Section 9-9 regarding requirements on photos, and insert the photos at the end of the RCS or in the body of RCS's description of the subject.)
  7. Population or occupancy group targeted for this project (e.g., elderly), if any.
  8. Summary of unit design and amenities.
  9. Summary of project service/ site amenities: parking, recreational facilities, community areas, security, service coordination, neighborhood networks, transportation, meal services, social or educational activities, emergency call systems, laundry or housekeeping, and any other amenities for elderly or disabled.
  10. Name and phone number of contact person. This would include the information for the individual who the RCS appraiser verified or collected information on the subject project.
- D. Owner's Scope of Repairs. As required under Section 9-9. D, the RCS appraiser must review the complete list of repairs to the subject project, and if needed prepare a separate set of HUD Form 92273-S8 Rent Comparability Grids to differentiate between pre-repair and post-repair conditions.
- E. Definition of the Subject's Market Area. The RCS appraiser must identify the geographic area from which the subject would normally draw its applicants, or the area where competitive alternative apartment buildings are located.
- F. Description of Neighborhood. Under this section, the RCS appraiser should provide a discussion of the project's location noting factors that would impact market rent level, as required under Section 9-9 of this Chapter.
- G. Narrative Describing Selection of Comparables. The RCS appraiser must provide an overall assessment of the availability of comparables and the quality of the comparables selected and state why the comparables used were selected, as required under Sections 9-10 and 9-11 of this Chapter. The RCS appraiser must document the search process in accordance with the Section 9-10.C requirements. If insufficient comparables or dissimilar comparables are utilized, the RCS appraiser must explain why in the narrative, and outline what research was performed to determine that more similar comparables were not available. If the comparables chosen have an identity-of-interest with the Owner, management agent of the subject project, the RCS appraiser must identify those and explain why such a comparable was selected.
- H. Locator Map for Subject and Comparables. The RCS appraiser must include a locator map identifying the subject project and each comparable. He/she must also clearly mark major roadways and natural or man-made barriers (e.g., rivers, freeways, railways, etc.) on the map.
- I. Rent Comparability Grid HUD-92273-S8. The RCS appraiser must complete one grid for each primary unit type using instructions in Appendix 9-1-1 and guidance in Section 9-9 through 9-13 of this Chapter.
- J. Explanation of Adjustments & Market Rent Conclusions. As required under Sections 9-9 through 9-13 and the line-by-line instructions in Appendix 9-1-1, the RCS appraiser must provide a narrative for each adjustment.



K. **Comparable Project Profiles.** The RCS appraiser must provide a one-page, table/grid profile of each comparable project used in the RCS. The RCS appraiser must profile each project only once, regardless of the number of unit types for which the project was used. The Sample RCS under Appendix 9-2-2 provides a sample profile that RCS appraisers may use, or they can create their own table/grid formats. The RCS appraisers must include at least the following items in their comparable project profiles:

1. Project name and address (street, city, county, cross streets) and neighborhood name.
2. Name and phone number of contact person with whom the RCS appraiser verified or collected information on the project and the date of verification.
3. A color photo (at least 3” by 5”) of the project’s exterior. (Interior photos may be included if available, but they are not required).
4. A rent and unit mix table. Showing all units in the project and grouped by major unit types (e.g., # bedrooms/# baths). The RCS appraiser must indicate which unit types are used as comparables in the RCS.

Unit Type	No. of Units	Used as Comp in RCS? (Y/N)	Average Rent	Interior Size (SF)	Any Rent Restrictions? (Y/N)
	Total				

5. Total number of units at the project and project-wide occupancy.
6. List of any charges tenants pay in addition to rent.
7. Description of any rent, income, and use restrictions or tenant rent subsidies (Section 8, certificates, vouchers, state/local payments on behalf of residents) in effect at the project. The RCS appraiser must provide this information even if the units covered by the restriction/subsidy were not the units studied in the RCS.

- L. RCS Appraiser’s Certification (Appendix 9-1-5). The RCS appraiser must fill in the blanks and sign and date the Certification. When entering names, the RCS appraiser must also give title (e.g., Sharon Jones, Assistant RCS Appraiser). The RCS appraiser may enter “*none*” in items 8 and 10 if there is nothing to disclose.
- M. Copy of any Temporary License the RCS appraiser is relying upon for this RCS. Any temporary license relied upon must be issued by the state where the project is located.

## Appendix 9-1-3

### Comparable Project Profile

**Project Name**

Address

City/Town, State, Zip Code

Management Agent:

County:

Contact:    Neighborhood:

Contact's Phone

Place Photo Below:

<b>Unit Type</b>	<b>No. of Units</b>	<b>Used as Comp in RCS? (Y/N)</b>	<b>Average Rent</b>	<b>Interior Size (SF)</b>	<b>Any Rent Restrictions? (Y/N)</b>

Total Units: \_\_\_\_

Project Occupancy: \_\_\_\_ percent

Charges in Addition to Rent:

Subsidies and Restrictions at Project:

Other Comments:

Date Information Verified: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

## Appendix 9-1-4

### RCS Appraiser Certification

**Project Name:   FHA Project No**

**By my/our signature below, I/We certify that, to the best of my knowledge and belief:**

1.     The statements of fact contained in this report are true and correct.
2.     The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.
3.     I/We have no present or prospective financial interest in the above project, its Ownership or management agent entity, or the principals of those entities. I/We am/are not an employee of those principals or entities and I/We have no business or close personal/family interest with those parties that commonly would be perceived to create bias or a conflict of interest. I/We have not performed any services, as an appraiser or in any other capacity, regarding the property that is the subject of this report within the three-year period immediately preceding acceptance of this assignment unless listed here:
4.     I/We have no bias with respect to the project that is the subject of this report or to the Ownership or management parties involved with this assignment.
5.     My/Our engagement in and compensation for this assignment were and are not contingent upon the reporting of a predetermined rent or direction in rent. My/Our fee is my/our only compensation for this rent study assignment. There are no other side agreements or considerations.
6.     My/Our analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice, the Fair Housing Act, and all applicable HUD procedures for performing Rent Comparability Studies for Section 8 contracts.
7.     \_\_\_\_\_ inspected the interior and exterior of the subject project.
8.     \_\_\_\_\_ inspected the exteriors of the projects used as comparables in this report.
9.     No one provided significant professional assistance to the person signing this report except the persons listed here: \_\_\_\_\_. If anyone is listed here, his/her contribution is identified in the Scope of Work section of this report.
10.    I/We am/are a certified general appraiser, licensed and in good standing with the state appraiser regulatory agency where the subject project is located and I meet all of the appraiser qualifications required in HUD's rent comparability procedures.
11.    I/We am/are not debarred or suspended from doing business with the Federal Government. I also am not under a Limited Denial of Participation (LDP) imposed by the HUD Multifamily Regional Center or Program Center having jurisdiction over the Section 8 project.

12. I/We, the undersigned, certify under penalty of perjury that the information provided above is true and correct. **WARNING:** Anyone who knowingly submits a false claim or makes a false statement is subject to criminal and/or civil penalties, including confinement for up to 5 years, fines, and civil and administrative penalties. (18 U.S.C. §§ 287, 1001, 1010, 1012; 31 U.S.C. §3729, 3802).

Appraiser's Name: \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Permanent License No: \_\_\_\_\_ Issuing State: \_\_\_\_\_ Expires: \_\_\_\_\_

Did you prepare the RCS under a temporary license? \_\_\_\_\_

If so, attach a copy of the temporary license.

## Appendix 9-1-5

### Sample RCS Appraiser's Transmittal Letter

[Date]

[Name & Address of Appraisal Firm]

[Phone, fax and email contact info for Appraiser]

[Owner's Name & Address]

**Re: Rent Comparability Study/[Project Name]**

Section 8 Contract Number:      FHA No.

Dear [Mr./Ms. Owner]:

Attached is the Rent Comparability Study (RCS) you requested for [Project Name].

The purpose of the study was to estimate the market rents for units that will be assisted under the renewed Section 8 contract. Market rent is the rent that a knowledgeable tenant would most probably pay for the Section 8 units as of the date of this report, if the tenants were not receiving rental subsidies and rents were not restricted by HUD or other government agencies. The following table lists the market rent I concluded for each Section 8-unit type.

			<b>Estimated Market</b>		
<b>Unit Type</b>	<b># of Units</b>	<b>Size (Sq. Ft)</b>	<b>Rent</b>	<b>\$ per Sq. Ft</b>	<b>Prepared Grid? (Y/N)</b>
<b>Total</b>					

The RCS was prepared in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP) and the requirements in Chapter Nine of HUD's Section 8 Renewal Guide. Market Rents were defined and estimated in accordance with the guidance in Sections 9-8 through 9-13 and Appendix 9-1-1 of Chapter Nine of HUD's Section 8 Renewal Guide, and the RCS report was prepared in accordance with the guidance in Chapter Nine. I understand that HUD/the Section 8 Contract Administrator (CA) and the project Owner will use my estimate of market rents to determine: 1) the Owner's options for renewing the project's Section 8 contracts; and 2) the maximum rents allowed under any renewal contract.

Additionally, as required by Section 9-14 of the Chapter Nine guidance, I compared the Project's gross renewal rent with HUD's threshold, as shown below:

**Mandatory Market Rent Threshold Test**

<b># of Bedrooms (For Section 8 Units)</b>	<b># of Units</b>	<b>RCS Rents</b>	<b>Gross Rent</b>
<b>Total Gross Comparable Rent</b>			

<b># of Bedrooms (For Section 8 Units)</b>	<b># of Units</b>	<b>SAFMR Rents</b>	<b>Gross Rent</b>
		<b>Total Gross SAFMR Rent</b>	
		<b>150% of Total Gross SAFMR Rent</b>	

Comparable gross rents are [greater than/less than] 150 percent of SAFMR rents. Therefore, the property [does/does not] exceed the mandatory market rent threshold.

Should you have any questions or require more information, please contact me directly at the phone number or e-mail address listed above.

Sincerely,

[RCS Appraiser Name]

ST Certified General Appraiser #

## **Appendix 9-2-1**

### **Sample Owner's Cover Letter**

[Date]

[Owner's Name]

[Owner's Address]

#### **RCS Submittal Cover Letter for [Project Name]**

1. I have reviewed the content of the RCS and concluded that the RCS includes all material required by Chapter Nine and the Owner's Checklist in Appendix 9-2-2.
2. The RCS appraiser's [insert appraiser's name] narratives and Rent Comparability Grid accurately describe the subject project and properly treat non-shelter services and their funding sources as required by Section 9-12 and Appendix 9-1-1.
3. There is no family relationship or identity-of-interest between the principals of the subject's Ownership or management agent entity and the principals that manage/ own the projects used as comparables. [Owners must identify and provide information if there is an identity-of-interest existing between principals. See Handbook 4381.5, Paragraph 2-3 for a definition of the term "identity-of-interest".]
4. I certify that: a) neither the selection of the RCS appraiser nor the RCS appraiser's compensation was/is contingent upon the RCS appraiser reporting a predetermined rent nor direction in rent; and b) to the best of the Owner's knowledge, the RCS appraiser meets Section 9-8. A.'s conditions regarding absence of financial, employment, and family relationships.
5. I certify that the fee paid for the RCS is the only compensation the RCS appraiser will receive for the RCS work and there is no side agreement or other consideration.
6. The following person is our point of contact for HUD/CA's Decision Letter, or to address any questions that the HUD/CA staff may have on the RCS:
7. [Provide a name, email and phone number for a point of contact at the agent/Owner's office]
8. HUD/CA may talk with the RCS appraiser directly and copy the RCS appraiser on written materials. The RCS appraiser's contact information is provided below  
[Insert RCS appraiser's name, address, email and phone number]
9. I certify that if I discontinue any service to tenants at this property which forms the basis of a rent adjustment in this RCS, I will inform HUD in writing within 30 days of the termination of that service.
10. I/We, the undersigned, certify under penalty of perjury that the information provided above is true and correct. **WARNING:** Anyone who knowingly submits a false claim or makes a false statement is subject to criminal and/or civil penalties, including confinement for up to 5 years, fines, and civil and



administrative penalties. (18 U.S.C. §§ 287, 1001, 1010, 1012; 31 U.S.C. §3729, 3802).

[Owner's Name & Signature] [Date]

Encl: Owner's Checklist

## **Appendix 9-2-2**

### **Sample Owner's Checklist**

#### **Owner's Materials**

Signed Cover Letter  
Signed Owner's Checklist  
Scope of Repair

#### **RCS Materials**

RCS Appraiser's Transmittal Letter  
Scope of Work  
Description of Subject Project (including color photographs)  
Identification of the Subject's Market Area  
Description of Neighborhood  
Narrative Describing Selection of Comparables  
Locator Map for Subject and Comparables  
Rent Comparability Grid for Each Primary Unit type  
Narrative Explaining Adjustments and Market Rent Conclusions (one set of explanations for each Rent Grid)  
Comparable Project Profiles (each including a color photo)  
RCS Appraiser's Certification  
Copy of RCS Appraiser's License (only if relying upon a temporary license)

#### **Mandatory Market Rent Threshold Materials**

Computation of the Project's gross rents and the SAFMR gross rents  
Comparison of Project's gross rents to the SAFMR gross rents

#### **Owner's Signature & Date**

## **Appendix 9-3-1**

### **Notes for Rent Grid Analysis and Triggers for Secondary Review**

All substantive reviewers must use the notes provided below when completing the Rent Grid Analysis checklist ([Excel-based version](#)). The following notes provide line-by-line guidance to substantive reviewers for identifying areas that may warrant a closer evaluation, or in some cases trigger a mandatory second review, as provided in Section 9-16 if the substantive reviewer is a non-appraiser HUD staff. The second reviewer would assess the appropriateness and reasonableness of the specific line item that triggered a second review, as opposed to the entire RCS. The minimum qualifications for performing a substantive review and/or a second review are provided in Section 9-15. A.2 (“Substantive Review”). If the first and second reviewers do not reach consensus, then the trigger item will be reviewed by an RCS review appraiser, whose opinion will prevail as to what revisions, if applicable, need to be made to the RCS. Seeking a second reviewer’s input is not a requirement if the rent grid analysis review is being performed by an RCS review appraiser.

**Line 1: \$ Last Rent/Restricted.** Using a comparable from an affordable/restricted project should only be a “last resort”. Adjustments that would need to be made to a restricted comparable are inherently subjective. Likewise, using a comparable from other categories of project types, such as independent or assisted living facilities or master-planned retirement communities, for an age-restricted Section 8 project, may be difficult to justify because tenants at those types of projects choose them over conventional apartment projects due to the non-shelter services offered at such facilities, and because non-shelter services offered in a Section 8-assisted project are valued differently. In particular, a comparable property that offers a daily meal or meals included in the monthly rent poses specific challenges with regard to determining appropriate rent adjustments. Accordingly, use of rent-restricted projects will trigger a second review. Using a rental comparable that offers one or more daily meals included in the monthly rent, whether that comparable is an independent or assisted living facility, or a master-planned retirement community, will also trigger a second review (the trigger will not apply if the RCS appraiser has used units that do not include daily food service in the rent, even if that comparable provides the option of taking daily food service; the trigger will only apply if paying for daily food service is mandatory at that comparable).

**Line 2: Date Last Leased.** Adjustments on this line item should be rare since the RCS appraiser should only be using recent lease transactions to begin with. Accordingly, an adjustment on this line exceeding \$15 or 3 percent of the comparable’s unadjusted rent, whichever is larger, would be unusual, and thus the substantive reviewer needs to carefully review the RCS appraiser’s explanation for that adjustment exceeding the threshold amount.

**Line 3: Rent Concessions.** Concession adjustments should be based on a simple mathematical formula for calculating effective rent (i.e., the total rent paid over the lease term divided by total months of occupancy, including rent-free periods). Difference between nominal rent and effective rent is then entered as the amount of the negative adjustment to the comparable. Use of an amount other than that indicated by the formula above should trigger a second review.

Line 4: Occupancy Rate. This line item is rarely adjusted. Should be only used if the RCS appraiser is confident that the comparable project consistently runs at unusually high or low occupancy rate because the asking rent is either too low or too high, respectively (See Appendix 9-1-1 under Line by Line instructions). Accordingly, an adjustment on this line exceeding \$15 or 3 percent of the comparable's unadjusted rent, whichever is larger, would be unusual, and thus the substantive reviewer needs to carefully review the appraiser's explanation for that adjustment exceeding the threshold amount.

Line 6: Structure/Stories. Adjustment on this line item can be based on a variety of factors, such as walk-up versus elevator, or stacked flat versus townhome configuration. The appraiser should try to select comparables that have the same structure type as the subject project. Scale of adjustments should typically be modest. An adjustment on this line exceeding \$15 or 3 percent of comparable's unadjusted rent, whichever is larger, would be unusual, and thus the substantive reviewer needs to carefully review the RCS appraiser's explanation for that adjustment exceeding the threshold amount.

Line 7: Year Built/Yr. Renovated. This adjustment is inherently subjective and needs to be accompanied by a clear, comprehensive explanation by the RCS appraiser. Typically, adjustments should not be made at all for age differences of just a few years. An ideal approach is to adjust in multiples of a fixed number of years of age difference. For example, each multiple of three years of age difference between the subject and the comparable would be assigned a certain dollar amount of adjustment. An adjustment on this line exceeding \$5 or 1 percent of comparable's unadjusted rent, whichever is larger, for each year of age difference should be a trigger to for a second review.

Line 8: Condition/Street Appeal. This adjustment is often subjective and needs to be accompanied by a clear, comprehensive explanation by the RCS appraiser. Based on the mandatory five levels of ratings (Excellent, Good, Average, Fair and Poor), an adjustment of more than \$20 or 4 percent of comparable's unadjusted rent, whichever is larger, for each level of rating difference triggers a second review. For example, a positive adjustment for an "Average" rated comparable versus an "Excellent" rated subject, should not exceed \$40. Due to the potential for overlap between adjustment parameters, if the RCS appraiser has made an adjustment also on Line 7 for Year Built/Renovated, the trigger for a second review is \$15 or 3 percent of comparable's unadjusted rent, whichever is larger, for each level of rating difference for Line 8.

Line 9: Neighborhood. This adjustment is inherently subjective and needs to be accompanied by a clear, comprehensive explanation by the RCS appraiser. Based on the mandatory five levels of ratings (Excellent, Good, Average, Fair and Poor), an adjustment of more than \$20 or 4 percent of comparable's unadjusted rent, whichever is larger, for each level of rating difference triggers a second review. For example, a positive adjustment for an "Average" rated comparable versus an "Excellent" rated subject, should not exceed \$40 or 8 percent of comparable's unadjusted rent, whichever is larger.

Line 10. Same Market. Using a comparable from a different market should be rarely used, as adjustments that would need to be made to a comparable in a different market are inherently subjective. Accordingly, an adjustment on this line item should typically not exceed \$15, whether it is to account for a different market or for distance to the subject project. For adjustments exceeding \$15 or 3 percent of comparable's unadjusted rent, whichever is larger, the substantive

reviewer needs to carefully review the RCS appraiser's explanation for that adjustment exceeding the threshold amount.

Lines 11-13: Number Bedrooms/Bathrooms/Unit Interior Square Feet. The appraiser should be able to justify adjustments with specific market data, such as paired comparable analysis. A trigger for a second review would be if the RCS appraiser adjusts for a size difference less than 10 square feet. The RCS appraiser should be using comparables with units as close as possible in size to the subject units, so very large adjustments based on large differences in unit size are likewise discouraged. Total net adjustments for line items 11 through 13 exceeding \$100 or 20 percent of comparable's unadjusted rent, whichever is larger, would suggest that the comparable may not be suitable, and thus for an adjustment exceeding that threshold amount, the reviewer needs to carefully review the appraiser's explanation.

Line 14: Balcony/Patio. Adjustment for this line should typically be nominal, generally not exceeding \$10 (but for some special cases such as resort areas, warm climates, adjustments may be slightly higher). RCS appraiser must describe the basis for any dollar amount of adjustment that exceeds \$10 or 2 percent of comparable's unadjusted rent, whichever is larger.

Line 15: AC/Central/Wall. While adjustment for type of AC will rarely exceed \$10 or \$15, adjustment for lack of AC may be more substantial in some markets. RCS appraiser must describe the basis for any dollar amount of adjustment that exceeds \$10, or 2 percent of comparable's unadjusted rent, whichever is larger.

Line 16: Range/Refrigerator. It is not unusual in some markets for Owners to not provide a refrigerator. The amount of adjustment should typically not exceed the monthly cost of equipment rental.

Line 17: Microwave/Dishwasher. The substantive reviewer needs to carefully review the RCS appraiser's explanation for an adjustment on this line exceeding a total of \$20 or 4 percent of comparable's unadjusted rent, whichever is larger.

Line 18: Washer/Dryer. If the unit includes hookups but the equipment is not provided by the Owner, the amount of adjustment should typically not exceed the monthly cost of equipment rental.

Line 19: Floor Coverings. As floor coverings typically vary little within a given market (e.g., carpet, except vinyl in kitchens and baths), an adjustment on this line should rarely exceed \$10 to \$15, if made at all. For adjustment amount exceeding \$10 or 2 percent of comparable's unadjusted rent, whichever is larger, the RCS appraiser must discuss and provide market evidence. Adjustments for specialty coverings (e.g., ceramic tile in some areas of the living unit) should be in Line 22 ("Special Features") rather than in this line item.

Line 20: Window Coverings. While it is common to adjust for Owner-provided vs. tenant-provided window coverings, any adjustment at all for type of window covering is unusual, and thus would only be acceptable if RCS appraiser provides market evidence for adjustments exceeding \$10 or 2 percent of comparable's unadjusted rent, whichever is larger.

Line 21: Cable/Satellite/Internet. If the Owner provides connection but the tenant pays the monthly service fee, the amount of adjustment should not exceed the published monthly fees.

Line 22: Special Features. If the RCS adjusts more than \$10 or 2 percent of comparable's unadjusted rent, whichever is larger, for any individual item, market evidence must be cited in the RCS.

Lines 23. Blank line. The RCS appraiser should use this line to add a unit amenity that is not listed but significantly affects the rent a tenant would pay. The RCS appraiser must describe the amenity on the line provided and make dollar adjustments as appropriate.

Line 24: Parking. As described in Appendix 9-1-1 (Line-by-Line Instructions), there are three distinct types of adjustment may be included in this line. These are (a) availability of parking, (b) cost of parking, and (c) type of parking facility. Explanation provided in the RCS should be sufficiently clear for the substantive reviewer to follow just how the adjustments made fit into these respective categories. A chart is suggested if more than just a few simple adjustments are made.

Line 25: Extra Storage. As described in Appendix 9-1-1 (Line-by-Line Instructions), RCS appraiser must distinguish between adjustments for availability of storage versus cost of storage. The substantive reviewer needs to carefully review the RCS appraiser's explanation for a total adjustment on this line exceeding \$20 or 4 percent of comparable's unadjusted rent, whichever is larger.

Line 26: Security. The substantive reviewer needs to carefully review the RCS appraiser's explanation for an adjustment on this line exceeding \$15.

Line 27: Clubhouse/Meeting Rooms. The substantive reviewer needs to carefully review the appraiser's explanation for an adjustment on this line exceeding \$10.

Line 28: Pool/Recreation Areas. While generally nominal, adjustment on this line could be \$15 or more in some markets. RCS appraiser must provide market evidence to justify adjustments exceeding \$10 or 2 percent of the comparable's unadjusted rent, whichever is larger.

Lines 29-31: Business Center/Service Coordination/Non-shelter Services. RCS Appraiser should explain any adjustment within these categories. Since it is rare for a project to offer more than a few distinct categories of non-shelter services, total net adjustments to any comparable for these line items exceeding \$50 or 5 percent of the comparable's unadjusted rent, whichever is larger, should be a trigger for a second review.

Lines 33-39: Utilities. To account for Owner-paid versus tenant-paid items, the RCS appraiser should explain the criteria used. Typically, published housing authority utility allowances will represent an upper limit for any category. Use of adjustment amount for any utility category that exceeds the respective published allowance would be a trigger for a second review. The RCS appraiser may also choose to adjust for tenant preferences, when applicable, for type of utility (e.g., gas cooking versus electric, gas heat versus electric), but those adjustments will typically be small (see discussion in Appendix 9-1-1).

Line 46: Estimated Market Rent. As described in Section 9-13 and Appendix 9-1-1, the RCS must note which comparables were weighted over others for purposes of evaluating the adjusted rents, and also the reasons why those comparable were weighted over others.

## Appendix 9-3-2

### Sample Issues Memo from Substantive Reviewer

[Name of Regional Director at HUD (or equivalent)]

[Address of HUD/CA]

Name of Subject Project:

Section 8 Contract Number:

I have performed a Substantive Review of the Rent Comparability Study (RCS) of the aforementioned project. Based on my review, I have identified the following issues that need to be addressed by the RCS appraiser and/or Owner.

1. Type issue #1 here.....
2. Type issue #2 here.....
3. Type issue #3 here.....
4. Type issue #4 here.....

I am requesting for the RCS appraiser and/or Owner to provide additional information or explanations on the items noted above within 10 calendar days of date of HUD's/CA's request, as per HUD guidelines in Chapter Nine of the Section 8 Renewal Guide.

Please do not hesitate to contact me if you have questions concerning my findings.

[Insert substantive reviewer's name]

[Address, email and phone number]

## Appendix 9-4

### Special Project Types

If the RCS appraiser uses comparables from project categories that would not typically be suitable for use as comparables for multifamily rental housing, as outlined under Section 910. C.4, the RCS appraiser must consult the guidance provided below.

- A. **Cooperative Project (Co-Op):** A Co-Op is a multi-unit project in which those who own the project actually own shares in the Ownership of the overall project as a whole. For the purposes of an RCS, the fact that the project is a co-op doesn't significantly affect the market rental rate of the subject and/or the comparable project. Depending on the market evaluation that is performed by the RCS appraiser, an adjustment may be justified for the Ownership being a co-op but most likely it will have no effect on the concluded market rental rate.
- B. **Elderly/Disabled:** Housing designated for elderly families or families that include an individual with a disability are different from traditional market rate projects because these projects typically include services offered at no extra cost to the tenant. The mix of these services will vary widely among projects in each market as well as between different markets. Upon identification of housing designated for elderly families or families that include an individual with a disability, the RCS appraiser should determine what extra services are provided (and how they are funded) and during the comparable selection process attempt to identify projects that offer similar services with the same restrictions as well as being in the defined market area. The preference in selection would be to go outside the market area and find comparable projects offering the same or similar services, rather than locating projects within the defined market areas but offering different services. If the property designated for elderly families or families that include an individual with a disability project doesn't offer any services above and beyond a normal market rate project, then no adjustments would be required and the comparable selection could utilize traditional market rate projects for comparison. However, an adjustment would most likely be required due to the restriction of the tenant pool as compared to a traditional market rate project.
- C. **Student Housing:** Included as a Special Project due primarily to the growth of these projects, and the "by the bed" rental structure that they often offer. There are two types of projects that fall under the Student Housing category; (1) traditional apartment projects that are rented by the unit, but are restricted to students and (2) "by the bed" projects.
- D. **The first project type is one that is similar in operations and rentals to the traditional apartment project, and specifically similar to an elderly or age-restricted project. The tenant rents a studio or larger unit, containing a kitchen, bath, and sleeping quarters.**  
  
**The second project type is one that has become very popular over the last 10-20 years and that is a project that rents beds, rather than apartment units. Accordingly, there will be two or more tenants sharing a living unit. This concept is similar to a college dorm concept mixed with a traditional apartment project. Commonly, these projects will also offer services that cater to students and student-living and will be located on and very close to campus. As an RCS will in all cases involve estimating market rents for self-**



contained living units rather than bed rentals within shared apartment units, this second project type cannot under any circumstance be used as a rental comparable for the RCS.

- E. Congregate-Care Projects: Included as a Special Project Type due to the amount of extended services available, and the “by the bed” rental structure that they sometimes offer. There are several types of projects that fall under Congregate-Care Housing but all offer some level of home health care services to either the elderly or persons with special needs. The different types could include (1) Assisted-living facilities, (2) senior citizen housing, or (3) other age-restricted retirement communities. Congregate-care housing typically offers enhanced healthcare services for the elderly, whereas the typical elderly housing projects offer only limited services with no specific healthcare applications.

For some care facilities, residents lease a bed rather than a private unit. Typically, that kind of facility will offer skilled nursing, and will require payment on a daily rather than monthly basis. The RCS appraiser will not encounter this type of facility for purposes of estimating rent for a Section 8 project. Accordingly, there is no reason to use projects rented on a daily rather than monthly basis as rental comparables. As an RCS will, in all cases, involve estimating market rents for self-contained living units rented on a monthly basis, rather than daily bed rentals, this project type cannot under any circumstance be used as a rental comparable for the RCS.

- F. After-Rehabilitation: Included as a Special Property Type due to the hypothetical assumption that the proposed renovation has been completed. This requires a dual review of the subject project in its “as is” state, and a “projected” review as though all units and common areas that will be renovated have already been renovated, in accordance with the specifications provided in the renovation scope of work. This then requires the RCS appraiser to include comparables similar to the subject project in its post-renovation condition.

The RCS appraiser should review what if, any repairs are proposed for the subject project. Proposed changes to the subject project other than routine repairs for deferred maintenance may need to be reflected in Form 92273-S8 adjustments to rental comparables. Examples of adjustments that may need to be reflected in the RCS appraiser’s Form 92273-S8 analysis would include changes in utility configuration, such as installing separate living unit meters that effectively convert an Owner-paid utility service to a tenant-paid basis. Another example of possible adjustments would be additions or reductions in the scope of non-shelter services, such as would occur if management were proposing to eliminate an on-site day care facility or other amenity. Even if no specific change is proposed to utility configuration, available amenities, or available non-shelter services, the subject project’s overall condition and appeal may be enhanced by the proposed scope of work. Accordingly, the RCS appraiser needs to consider how adjustments for line items 7 and 8 of the form 92273-S8 (Year built/Yr. Renovated and Condition/Street Appeal) will be affected.

## Appendix 9-5

### Forms Used in Preparation and Review of an RCS

Form	HUD Form No.	Link
Initial Checklist	N/A	<a href="https://www.hud.gov/sites/dfiles/Housing/documents/App_9-5-1_Initial_Screening_Checklist.xlsx">https://www.hud.gov/sites/dfiles/Housing/documents/App_9-5-1_Initial_Screening_Checklist.xlsx</a>
Detailed Screening Checklist	N/A	<a href="https://www.hud.gov/sites/documents/Appendix-9-5-2.xlsx">https://www.hud.gov/sites/documents/Appendix-9-5-2.xlsx</a>
	N/A	<a href="https://www.hud.gov/sites/dfiles/Housing/documents/App_9-5-5_Certification.xlsx">https://www.hud.gov/sites/dfiles/Housing/documents/App_9-5-5_Certification.xlsx</a>
Rent Grid Analysis Checklist	N/A	<a href="https://www.hud.gov/sites/dfiles/Housing/documents/App_9-5-3_Rent_Grid_Analysis.xlsx">https://www.hud.gov/sites/dfiles/Housing/documents/App_9-5-3_Rent_Grid_Analysis.xlsx</a>
Rent Comparability Grid	HUD 92273-S8	<a href="https://www.hud.gov/sites/dfiles/OCHCO/documents/HUD-92273-S8.xls">https://www.hud.gov/sites/dfiles/OCHCO/documents/HUD-92273-S8.xls</a>
Rent Comparability Grid Instructions	HUD 92273-S8I	<a href="https://www.hud.gov/sites/documents/DOC_25382.doc">https://www.hud.gov/sites/documents/DOC_25382.doc</a>
Request to Renew Using SAFMR as Market Ceiling	HUD-9630	<a href="https://www.hud.gov/sites/documents/9630.pdf">https://www.hud.gov/sites/documents/9630.pdf</a>
Request to Renew Using Non-Section 8 Units in the Section 8 Project as a Market Rent Ceiling	HUD-9629	<a href="https://www.hud.gov/sites/documents/9629.pdf">https://www.hud.gov/sites/documents/9629.pdf</a>
Worksheets for Mark-up-to-Market (Option One)	N/A	<a href="https://www.hud.gov/sites/documents/mu2m.xlsx">https://www.hud.gov/sites/documents/mu2m.xlsx</a>

## Residual Receipts

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Owners of Section 8 projects that are subject to the revised 1980 regulations at 24 CFR Parts 880.205(e), 881.205(e), or 883.306(e) are reminded that at any time during a project's fiscal year, the AE may determine that project funds are more than are needed for project operations, reserve requirements, and permitted distributions. Upon such a determination, the AE may require that all or a portion of the funds in the project's residual receipts account be used to reduce the Housing Assistance Payments or for other project purposes.

Regional Centers/Satellite Offices and project owners/management agents should refer to Housing Notice H 2012-14 or subsequent Housing Notices for detailed guidance on the treatment of residual receipts.

# Chapter Eleven

## Tenant Issues

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### 11-1. DEFINITIONS

- A. Regular Housing Choice Voucher. Section 8 tenant-based assistance that is provided to eligible families and individuals to assist them in obtaining affordable housing in the private market.
1. The voucher is provided to 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 or individual. The monthly housing assistance payment on behalf of the family or individual 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).
- In cases where the gross rent exceeds the payment standard, the family is responsible for paying the difference out-of-pocket, in addition to the TTP.
- B. Enhanced Voucher. Tenant-based housing assistance used to assist eligible families affected by certain types of housing conversion actions, called "eligibility events."
1. Unlike a regular voucher, the subsidy is "enhanced" to cover the difference between the normally applicable payment standard and the possibly higher proposed rent of the unit that is going through the housing conversion action. The payment standard for enhanced vouchers is the gross rent of the unit, provided the PHA determines the gross rent is reasonable in comparison to similar unassisted units in the market area.

2. Enhanced vouchers have a special minimum rent requirement. The family must continue to contribute towards rent at least the same amount they were paying for rent on the date of the housing conversion action unless the family suffers a decrease in gross family income of at least 15 percent from gross family income on the date of eligibility event. See PIH Notice 2001-41(HA), Part II C (3) (c) (“Significant Decline in Family Income — Effect on Enhanced Voucher Minimum Rent”).
  3. The enhanced feature of a voucher is tied to the project in which the housing conversion action took place. If the tenant moves from the project, the enhanced feature is lost and the voucher will have the features of a regular housing choice voucher issued by the PHA.
- C. **Housing Conversion Actions.** Upon the occurrence of housing conversion actions that constitute an “eligibility event,” HUD is required to offer enhanced voucher assistance to eligible families. Tenants in other types of housing conversion actions are offered regular housing choice voucher assistance. Housing conversion actions include project-based Section 8 opt-out, preservation prepayment, HUD enforcement actions and HUD property disposition (PD). On November 14, 2001, HUD issued Notice PIH 2001-41(HA) “Section 8 Tenant-Based Assistance (Enhanced and Regular Choice Vouchers) For Housing Conversion Actions – Policy and Processing Guidance.” This Notice outlines policies and processing guidelines for administering vouchers in cases of Housing Conversion Actions. For more information contact the local PIH Office.

A copy of PIH Notice 2001-41(HA) is available on HUDCLIPS.  
<http://www.hud.gov/offices/adm/hudclips/>

## **11-2. HOUSING CONVERSION ACTIONS**

- A. **Opt-outs.** This term refers to a conversion action where an owner chooses to opt-out of the project-based Section 8 program by not renewing an expiring Section 8 project-based HAP contract.
1. To opt-out of the project-based Section 8 program, an owner must satisfy all notification requirements, including the provision of notice of the proposed HAP contract termination to the tenants and the contract administrator at least one year before termination, and submit the request and certification to the local HUD Office/Contract Administrator (CA) not less than 120 days before the expiration of the contract.
  2. HUD is committed to protecting families living in assisted units, regardless of the actions a project owner may take. To protect families living in assisted units, section 524(d) of MAHRA requires HUD, subject to appropriations, to make enhanced vouchers available to low-income families who, on the date of expiration of the HAP contract, are living in an assisted unit.
  3. Owners should refer to HUD Handbook 1378 for guidance regarding HUD real estate acquisition and relocation policy and procedures. Specifically, Chapter 3 contains guidance on planning for and providing appropriate access to relocation assistance and housing for persons with disabilities.

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

HUD enforcement actions may result from material adverse financial or managerial actions or omissions as described in Section 13-1. B. of this Guide, which lead to either owner default under a FHA-insured mortgage (monetary or technical) or a documented material violation of one or more of the obligations under the project's Regulatory Agreement. Regular housing choice vouchers will normally be provided in these circumstances to assist eligible families affected by the enforcement action because property condition or other issues will not allow tenants to remain in the project.

### **11-3. TENANT PROTECTIONS**

- A. Importance of the Process. The process of converting from project-based assistance to tenant-based assistance can produce worry and fear for many families. Therefore, care must be taken to make sure the process is completed correctly and information is made clear and available for all families, owners, and PHAs.
- B. Right to Remain. Tenants who receive an enhanced voucher have the right to remain in their units if the units are offered as rental housing. The tenant must have been issued an enhanced voucher sufficient to pay the rent charged for the unit, if the rent is reasonable. Owners may not terminate the tenancy of a tenant who exercises this right to remain except for cause under Federal, State or local law. To receive the full rent charged for the unit, the owner must agree to enter into a contract with the local PHA on behalf of each covered family. If an owner refuses to honor the tenants right to remain, the tenant's remedy will be determined by **the provision of Federal law that provides for the right to remain (i.e., 42 USC § 1437f(t)(1)) and** on State and local law.
  - 1. The FY 2001 Military Construction and FY 2000 Emergency Supplemental Appropriations law, Pub. L. No. 106-246, Section 2801 (July 13, 2000) amended the enhanced voucher statute passed in the FY 2000 Appropriations Act (USHA Section 8(t), 42 USC Sec. 1437f(t)) and reads: **"...the assisted family may elect to remain in the same project in which the family was residing on the date of the eligibility event for the project ..."**.
  - 2. This protection continues if the project is offered as rental housing, absent good cause to terminate tenancy under Federal, State or local law and provided the PHA continues to find the rent reasonable, Owners must continually renew the lease of an enhanced voucher family.
- C. Tenant-Based Eligibility. Only eligible families will receive enhanced vouchers at the time of an opt-out. While a family may be income eligible, they are not automatically eligible for admission to the tenant-based program.
  - 1. The tenant-based assistance program is administered through the Office of Public and Indian Housing (PIH). Some of the eligibility and admissions standards for PIH programs differ from those of project-based Section 8 programs. In some

cases, a tenant may be denied assistance under the tenant-based assistance program.

- a. The PHA will re-certify and screen potentially eligible families and may deny them access to the tenant-based assistance program based on the grounds outlined in the Regulations (24 CFR Part 982.552 and 24 CFR Part 982.553). HUD encourages PHAs to use maximum flexibility during this process, such as setting up repayment agreements for tenants who owe funds to the PHA. However, if a family is ultimately denied assistance, the PHA must give them prompt notice of this decision which includes a brief statement of the reasons for the decision. An informal review can be requested by the family (the process is described in the Regulations, 24 CFR Part 982.554).
  - b. If the owner's current income certification for a tenant is no more than six months old and the PHA determines it is acceptable (through reviewing a small sampling), the PHA may use the owner's most recent tenant income certification in determining eligibility for enhanced vouchers.
2. In general, to be eligible to receive an enhanced voucher in the case of a regular opt-out (not preceded by a prepayment) the family must be low-income (including very low-income) and residing in a unit covered by the expiring Section 8 contract. This includes families who may have moved into a vacated unit during the term of the one-year notification period.
    - a. Unlike in a preservation prepayment situation, a family with an income above 80 percent of area median income (AMI) is not eligible for tenant-based assistance because of the opt-out.
    - b. In cases of preservation prepayments, the user must follow the guidance in Notice 2004-17.
  3. In instances when a new tenant, i.e., a tenant who was not residing in the project when the one-year notification was properly provided, moves into a unit during the one-year tenant notification period, owners are encouraged to add the following provisions, in the form of a lease addendum, to the required model lease: (1) "If the HAP contract terminates for any reason, the lease terminates automatically"; and (2) "tenants who move into a vacated unit during the one-year notification period **are not** entitled to one-year notice of contract expiration or termination".
  4. Tenants admitted to a PHA's tenant-based voucher program because of a housing conversion action are not subject to the income targeting requirements of the tenant-based Section 8 program.
- D. Processing Delays. If there is any delay in processing the tenant-based assistance, HUD must ask the owner to consider a short-term renewal of the contract to provide HUD with enough time to get the vouchers in place.

#### **11-4. OWNER NOTIFICATION REQUIREMENTS**

- A. Law. Section 8(c)(8) of the United States Housing Act requires that owners give a one-year written notice to tenants and HUD of the contract's termination or expiration. The one-year notification must state the owner's intentions (i.e., to renew or not renew) at the time of the contract's expiration.

**Note: The one-year notification is not required when an owner is terminating a contract early to renew the contract for 20 years or the remaining life of the use agreement.**

- B. Format. The notification letter must be:

1. On the owner's or duly authorized representative's letterhead and signed.
2. The notice must be served by delivery directly to each unit in the project or mailed to each tenant (the head of household of a unit).

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

3. If the population of the project speaks a language other than English, owners must provide the notification letters in the appropriate language(s). The cost of the translation of the letter is an eligible project expense.
- C. Content of Notification Letter. Owners must include certain information in a notification letter. To meet the legal requirements for notification, this Guide provides owners with a sample one-year notification letter for use when an owner intends to opt-out of the project-based Section 8 contract. The sample is Appendix 11-1.
1. Owners must use a letter that contains the language included in the sample letters provided in this Guide.
  2. While owners are not required to specify the reasons for opting out, owners are encouraged to provide as much information as possible to the tenants and HUD.
  3. Owners must state that they will honor the tenants' right to remain and will continually renew leases if:
    - The project is offered as rental housing;
    - The PHA continues to find the rent 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 later 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 Recap for a debt restructure and/or rent reduction, upon execution of the Interim-Lite or Interim-Full Contract, the owner must provide a new one-year notification to the tenants.
  6. Owners who elect to go to Recap and who decide during the restructuring 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 (Sample found at



Appendix 11-3). The 120-day notice is in addition to the one-year notice issued upon entry to Recap and discussed in 5 above.

- D. AE/CA Review. All tenant notification letters must be reviewed by the AE/CA either before the letters are sent to the tenants or at the time the letters are sent to the tenants to confirm the letters are consistent with the established requirements. In cases where HUD is not the CA, the owner must 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 must be corrected after it has been given to the tenants, owners are encouraged to submit letters for review 30 days in advance of the one-year period. Absent early submission to the AE/CA, owners must submit the tenant notification letters to the AE/CA and the tenants at the same time.

In cases where an owner issues “intend to renew” letters, no AE/CA action beyond reviewing the letters for established requirements is required. However, if an owner sends “does not intend to renew” letters, the AE/CA must review the letter within 30 days of receipt from the owner. No HUD approval is required before the one-year clock starts; however, if the AE/CA review determines that the letter is not in compliance with HUD requirements, the owner will be notified that a corrected notice must be issued. In these cases, the one-year clock does not begin until the proper notice is provided to HUD, the CA and the tenants. (See Appendix 11-2 for a sample letter)

1. If the AE/CA review determines that the letter is acceptable, no action by the AE/CA is necessary.
  2. If the AE/CA review determines that the letter is unacceptable, the AE/CA will notify the owner that it has failed to provide proper notification to HUD/CA and the tenants.
- E. Unacceptable Notice. If an owner fails to provide proper one-year notification to HUD/CA and the tenants, the owner must permit the tenants to remain in their units without increasing their portion of the rent for whatever period is necessary to meet all the notification requirements.
1. Section 524(d)(1) of MAHRA requires HUD to make enhanced voucher assistance available to low-income families residing in an assisted unit in a project consisting of more than four dwelling units upon HAP expiration. Section 524(d)(1) makes no exception for cases in which the owner fails to issue a Notice or in which the Notice issued by the owner does not comport with HUD’s regulations.
  2. When a HAP contract expires without the proper notice requirement being met, the PHA will still decide regarding family eligibility for enhanced voucher assistance.
    - a. If the family is eligible and wishes to move from the project, the PHA will immediately provide the family with a voucher to do so (the special enhanced provisions do not apply in the case where the family uses the voucher).

- b. If the family is eligible and wishes to stay in the project, the PHA will inform the family and the owner that the assisted tenancy with enhanced voucher assistance will commence as soon as the owner satisfies the proper one-year notice requirements. Since the law provides that the family can remain in the assisted unit with no increase in their portion of the rent until proper notice is given, there is no need for the enhanced voucher assistance to begin before that time.
    - c. If the family is not eligible for enhanced voucher assistance, the family may remain in the unit with no increase in their rent payment until the owner satisfies the notice period.
  - 3. In instances where the owner intends to opt-out of the Section 8 contract and additional time is needed to meet the full one-year notice period, owners are encouraged to enter into a short-term renewal contract (at current rents) with a term that is sufficiently long to allow the owner to provide the full one-year notice of contract expiration. Unless the owner enters into a short-term renewal contract, the owner will receive only the tenant portion of the rent the families were paying under the expired contract until the full one-year notice period has been met, since the enhanced voucher assisted tenancy will not commence until that time.
- F. Short-term Contracts. In general, upon execution of a short-term contract, the owner must provide a one-year notification to tenants and HUD/CA. Over the course of this one-year period, the owner and HUD/CA may agree to additional short-term extensions. The owner is not required to provide a new Notice each time a subsequent short-term extension is granted **within** the one year time-frame of the Notice. If the owner accepts another short-term renewal after the 12-month notification period has expired, the owner will be subject to another 12-month notification requirement. Exceptions to this general policy are as follows:
  - 1. Where the owner has fulfilled his/her notification requirement, but agrees to execute a contract for less than one year solely to provide HUD with enough time to provide Section 8 tenant-based assistance, execution of a short-term contract does not require a new notice requirement because it is granted to protect the tenants.
  - 2. Where an owner provided tenants and HUD with the proper notification of its intent to opt-out and then accepts a short-term renewal to consider accepting a Section 8 contract under the terms of Mark-Up-To-Market (MUTM), the owner shall not be subjected to another one-year notification requirement.
- G. Selection of Option at Contract Expiration. One hundred twenty (120) days before the contract expiration, owners must notify HUD's local Regional Center/Satellite Office Director/CA (whichever is applicable) in writing that they are going to renew or opt-out of their Section 8 contract (as noted in earlier chapters). In cases of an opt-out, HUD needs this time to obtain enhanced vouchers for the eligible families living in the assisted units. At this time, the AE/CA should again contact the owner to explore alternatives to opting out, particularly MUTM. HUD will renew the contract up until the day the contract expires if the owner decides against opting out.

- H. Reserved
- I. State and Local Requirements. In addition to meeting the above Federal notification requirements, Section 8 project owners are reminded to comply with any State or local notification requirements. Owners should check with their appropriate local authorities to find out about such requirements.
- J. Long-Term Contracts. Upon signing a long-term contract renewal, owners are encouraged to notify tenants in writing that they have agreed to a long-term contract renewal agreement with HUD. This letter should inform the tenants that they will receive a one-year written notification of the expiration of the long-term contract.

#### **11-5. LIMITED ENGLISH PROFICIENCY ASSISTANCE**

Owners must make reasonable efforts to provide language assistance to ensure meaningful access for Limited English Proficiency (LEP) individuals. The housing provider is expected to comply with Executive Order 13166, **Improving Access to Services for Persons with Limited English Proficiency**. In providing owners with guidance on reasonable steps for providing language assistance to tenants, HUD issued on January 22, 2007, **Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons (See 72 CFR Part 2732)** <http://www.hud.gov/offices/fheo/promotingfh/FederalRegistepublishedguidance.pdf>.

#### **11-6. EFFECTIVE COMMUNICATIONS**

When owners provide written or verbal information to applicants or tenants, they must take steps to ensure effective communication with applicants, residents, and members of the public. HUD's regulation on effective communication with persons with disabilities is found at 24 CFR Part 8.6. Effective communications may include, but are not limited to, conducting outreach in a manner that will reach persons with disabilities, such as by working with State and local organizations that serve or represent persons with disabilities, and ensuring that information about their programs is disseminated in a manner that is accessible to persons with disabilities. For example, special communication systems (e.g., TTY for persons who are hearing or speech impaired, materials on tape or in Braille) can greatly increase the effectiveness of outreach and ongoing communication.

**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-based contract with HUD, thus avoiding contract termination altogether.

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

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 Regional Center

Name:

Telephone Number:

HUD Web

<http://www.hud.gov> - click on “I want to” and the on “Find Rental Assistance.”

Sincerely,

**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 Regional Center

Name:

Telephone Number:

HUD Web

<http://www.hud.gov> - click on “I want to” and the on “Find Rental Assistance.”

Sincerely,

**RECAP 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 project 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 project 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:

Contract Administrator (if applicable)

Name:

Telephone Number:

HUD Regional Center

Name:

Telephone Number:

HUD Web

<http://www.hud.gov> - click on “I want to” and the on “Find Rental Assistance.”

Sincerely,

(Owner)

(contact info)

cc: Local HUD Office/Contract Administrator

## Physical Condition of the Project

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### **12-1. PHYSICAL CONDITION**

The physical condition of a project and the history of a project'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 project every one to three years depending on the project's last physical inspection score.

Depending on the physical condition of a project, the contract may be renewed, abated, terminated or allowed to expire. The course of action that the AE takes when deciding whether to renew the contract, if requested by the owner, will depend on the score the project 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 project have been corrected in an acceptable and timely manner.

### **12-2. 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 AE must determine if the project is following HUD's physical condition standards before processing a request to renew the contract. HUD usually will not abate a contract based on failing REAC scores unless OAMPO in Headquarters approves the action.

On March 2, 2015, HUD issued Notice H 2015-02 "Required Actions for Multifamily Housing Projects Receiving Failing Scores from HUD's Real Estate Assessment Center (REAC)" which supersedes Notice H 2012-16, "Revised Protocol for Placing a Flag in the Active Partners Performance System (APPS). Notice H 2015-02 implements Section 230 of the Consolidated Appropriations Act of 2014 and Section 226 of HUD's Fiscal Year 2015 Appropriations Act, which require HUD to take certain steps in cases when a multifamily housing project receives a score of 59 or below on a Real Estate Assessment Center (REAC) physical inspection report.

Owners are reminded that they must comply with applicable physical accessibility requirements such as those under Titles II and III of Americans with Disabilities Act (1990), Section 504 of the Rehabilitation Act of 1973, the Architectural Barriers Act (1968), the Fair Housing Act, and state or local laws. Certain barriers to accessibility may constitute exigent health and safety deficiencies – for example, accessible routes from a dwelling unit to public transportation or parking impeded by elevators or automatic doors in disrepair; sidewalks encroached on by obstacles such as dumpsters; and curb cuts or sidewalks in disrepair. Such deficiencies may be readily identified during a visual inspection of the project. The inspection result should be referred to FHEO for further review.

For information on REAC physical inspection standards and for scoring the physical condition of a project, interested persons should consult the December 8, 2000, Federal Register posted on the REAC website at: [www.hud.gov/offices/reac/pdf/uniform\\_stds.pdf](http://www.hud.gov/offices/reac/pdf/uniform_stds.pdf). Interested persons should also consult the August 9, 2012 Federal Register Final Notice on physical condition scoring and a revised dictionary of deficiency definitions. For HUD staff, additional information issued establishing the protocol for oversight and treatment of properties based on physical inspection scores is posted at:

<http://hudatwork.hud.gov/po/h/hm/fog/physinsp.cfm>.

**Note: hud@work is an internal site with no access for the public. Those interested in accessing this information, should contact the Regional Center/Satellite Office for assistance.**

A. EH&S Deficiency Notice.

The inspector conducting a REAC inspection may issue a EH&S citation to the project owner if serious deficiencies are identified that must be corrected immediately. These deficiencies are called EH&S violations.

1. The owner must:
  - a. Immediately correct or mitigate EH&S deficiencies irrespective of a project's physical inspection score; and
  - b. Submit a written certification to the AE within 3 business days of the date of the inspection certifying that *all* EH&S deficiencies at the project have been corrected or mitigated, not just the EH&S deficiencies cited in the Notification of EH&S report.
2. The AE must:
  - a. Not act to abate a contract based solely upon the issuance of an EH&S Deficiency Notice but must take into consideration the action(s) taken by the owner to correct all the EH&S deficiencies at the project.
  - b. Flag the owner in the Active Partners Participation System (APPS) 2530 system if the owner does not correct or mitigate all EH&S deficiencies at the project.
  - c. Make an elective referral to the DEC or the Office of General Counsel, if at any time an owner is uncooperative and refuses to follow the protocol on correcting EH&S deficiencies.

B. Physical Inspection Report

1. The owner receives a copy of the physical inspection report via the internet. When a project's physical inspection score is below 60, the owner is responsible for conducting a survey of the entire project to determine, based on the REAC's physical inspection findings, similar problems in other units.
2. The physical inspection report(s) is available to the AE/CA in the Integrated Real Estate Management System (iREMS). The AE/CA must:



- a. Use the physical inspection report, owner's survey of the project, owner responses to the inspection, and any subsequent REAC inspection reports, to assess the physical condition of the project when determining whether to renew the contract.
  - b. Review the iREMS administrative record for the project in concert with the recent inspections when making the decision to renew the contract. The quality of management services provided and the owner's ability to meet all Departmental requirements must be considered. For example, a change of management could be a condition placed on the owner before renewing the contract.
3. For inspections where the score is above 60, the AE/CA will:
- a. Renew the contract, if the owner has corrected or mitigated the EH&S deficiencies, unless such citations were appealed.
  - b. Follow the procedures in Chapter 13, if the owner has not corrected or mitigated the EH&S deficiencies, unless such citations were appealed.
4. For inspections where the score is below 60, the AE will follow the instructions in Notice H 2015-02, or current instructions, to determine the owner's compliance with submission of the "Project Owner's Certification" within the specified timeframe and the results of re-inspection(s) of the project:
- a. Renew the contract if the owner is in compliance with current requirements.
  - b. Enter into a short term renewal of the contract if the owner is not in compliance with current requirements, until a Compliance Disposition and/or Enforcement (CDE) plan is approved by the OAMPO in Headquarters or other enforcement action is taken.

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

## HUD's Refusal to Renew Section 8 HAP Contracts

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### **13-1. HUD'S REFUSAL TO RENEW A SECTION 8 HAP CONTRACT**

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

- A. HUD may refuse to renew a Section 8 HAP 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 regarding such project;
  2. The owner or purchaser of the project has engaged in material adverse financial or managerial actions or omissions regarding 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.
- B. Material adverse financial or managerial actions or omissions include:
1. Materially violating any Federal, State, or local law or regulation regarding the project, or any other federally assisted project, after receipt of notice and an opportunity to cure, including, but not limited to, failure to adhere to a judicial or administrative order to comply with a requirement under a nondiscrimination or equal opportunity authority;
  2. Materially breaching a Section 8 HAP contract for assistance under Section 8 of the United States Housing Act of 1937, as amended, after receipt of notice and an opportunity to cure;
  3. Materially violating any applicable regulatory or other business agreement with the Secretary or a participating administrative entity, after receipt of notice and an opportunity to cure, including, but not limited to, failure to implement a provision of a voluntary compliance agreement to address a finding that the project violated a nondiscrimination or equal opportunity authority or failure to implement a provision of a conciliation agreement to address a charge of a violation of the Fair Housing Act;
  4. Repeatedly and materially violating any Federal, State, or local law or regulation regarding the project or any other federally assisted project;
  5. Repeatedly and materially breaching a Section 8 HAP contract for assistance under Section 8 of the United States Housing Act of 1937, as amended;

6. Repeatedly and materially violating any applicable regulatory or other agreement with the Secretary or a participating administrative entity;
7. Repeatedly failing to make mortgage payments at times when project income was sufficient to maintain and operate the project;
8. Materially failing to maintain the project according to The Uniform Physical Condition Standards (UPCS) of 24 CFR Part 5 Subpart G and 24 CFR Part 200 Subpart P after receipt of notice and a reasonable opportunity to cure; or
9. Committing any actions or omissions that would warrant suspension or debarment by the Secretary.

### **13-2. HUD'S DECISION NOT TO RENEW THE EXPIRING CONTRACT**

#### **A. Regional and Headquarters Roles.**

The Regional Center or Satellite Office must follow guidance issued by OAMPO in Headquarters when a decision is made by the Regional Center Director or Satellite Office Director to not renew the contract based on a REAC physical inspection before the contract can be abated or allowed to expire.

#### **B. Process.**

When OAMPO in Headquarters determines the contract should not be renewed, the following actions should be taken.

1. If more than 120 days remain on the contract the AE/CA must:
  - a. Notify the owner that because the EH&S deficiencies have not been corrected and the re-inspection score is less than 60, a Notice of Default has been issued and that HUD intends to abate or allow the contract to expire and, if possible transfer the project's budget authority to another project via the 8bb process. (See Housing Notice 2014-14 for details.)
  - b. Immediately begin the process for obtaining regular Housing Choice Vouchers (HCVs) following the instructions in Notice PIH 2001-41 (HA), Section 8 Tenant-Based Assistance (Enhanced and Regular Housing Choice Vouchers) For Housing Conversion Actions – Policy and Guidance, or current guidance, allowing up to 120 days for issuance of the HCVs. Notice PIH 2001-41 (HA) can be found at:  
<http://www.hud.gov/offices/adm/hudclips/notices/pih/01pihnotices .cfm>.
  - c. Monitor the processing of the vouchers with the assigned Public Housing Agency (PHA), the Office of Public and Indian Housing (PIH), and the owner, until the vouchers have been issued.
2. If less than 120 days remain on the contract the AE/CA must:
  - a. Notify the owner that because the EH&S deficiencies have not been corrected and the re-inspection score is less than 60, a Notice of Default has been issued and that HUD intends to abate the contract and, if possible transfer the project's budget authority to another project via the 8bb process. (See Housing Notice 2014-14 for details.)

- b. Immediately begin the process for obtaining regular Housing Choice Vouchers (HCVs) following the instructions in Notice PIH 2001-41 (HA), Section 8 Tenant-Based Assistance (Enhanced and Regular Housing Choice Vouchers) *For Housing Conversion Actions – Policy and Guidance*, or current guidance.
  - c. Enter into a short-term renewal of the contract at current rents with the owner, using the Basic Renewal One Year contract (HUD-9636) at current rents, or if a determination has been made as to market rents based on a RCS, renew at rents that do not exceed market rent.
  - d. Monitor the processing of the vouchers with the assigned Public Housing Agency (PHA), PIH, and the owner, until the vouchers have been issued.
3. If the contract will be abated and HUD is going to relocate the tenants to other acceptable housing, the Regional Center/PC Director must obtain authority to conduct a relocation program from the Director of OAMPO in Headquarters. The AE must alert the Property Disposition Center that a request to relocate the tenants will be submitted to the OAMPO.
  4. Make sure the Regional Center has a written disposition plan in place and shared with the owner before abating a contract with an underlying insured or Secretary-held mortgage.
  5. Terminate the contract after vouchers have been issued to eligible residents and, if possible transfer the project’s budget authority to another project via the 8bb process. (See Housing Notice 2014-14 for details.)
  6. Flag the owner in the APPS/2530 system.
  7. Designate the project as troubled.

C. Appeals

If the owner appeals HUD’s decision to not renew the Section 8 HAP contract based on the physical inspection, or otherwise asks for relief from the physical inspection score, follow the instructions in Chapter 13, HUD’s Refusal to Renew Section 8 HAP Contract, of this Guide.

D. iREMS Reporting Requirements.

The AE must record all activities related to bringing a project into regulatory and contractual compliance because of a REAC physical inspection in the Workload Management screen of iREMS.

1. Compliance with the EH&S and REAC physical inspection protocols must be entered as this may influence future decisions on renewal of the Section 8 HAP contract and because it is important to have a complete and accurate administrative record should HUD proceed with enforcement actions.
2. The AE must record all closeout activities regarding physical inspections and any related matters and must share them with the owner.

3. The AE must record a project designated as troubled in the Risk Management screen, if applicable.

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

If HUD refuses to renew an owner's Section 8 HAP contract, the following appeal process shall be followed. In the case of an appeal, it is important to take all steps necessary to protect the residents. This may include executing any short-term contract to complete the appeal process.

- A. The AE will:
  1. Provide a notice, in writing, to the owner notifying them of the reason(s) for refusal to renew the Section 8 HAP Contract.
  2. Provide a short-term renewal of the contract pending review of any appeal, if the contract is about to expire.
  3. Provide notice to tenants of the creation of a CDE Plan.
- B. The owner has 30 calendar days from receipt of this notice to provide written objections to the Satellite Office Director or to cure the problems identified. If the owner does not submit written objections or cure the problems identified during that period, the decision will become a final determination under Section 516(c) of MAHRA.
- C. If the owner submits written objections or asserts that the problems identified have been cured, the AE will consider the matter, review the owner's action, if any, and send the owner a letter notifying it of the final decision to affirm, modify, or reverse the refusal to renew and setting forth the rationale for the final decision.
- D. Within 10 days of receiving the final decision, the owner may submit a written appeal to the AE contesting the decision and requesting a conference with the Regional Center that has jurisdiction over the project to discuss the issues.
- E. A representative of the Regional Center will meet with the owner at a mutually agreeable time, but no later than 10 calendar days after the owner requests the meeting.
- F. If the owner wants to provide additional information, a short but mutually agreeable deadline will be established for submission of the material.
- G. Within 20 days after the conference with the Regional Center, or 20 days after any agreed upon extension of time for submission of additional materials, the Regional Center will send the owner a letter advising it of the decision to reverse, modify or affirm the original decision.
- H. The Regional Center Director or his/her designee will review any appeal, conduct the conference, and issue the written decision. The official designated will be one who was not directly involved in making the decision being appealed. The reviewing official's decision is a final determination.
- I. Based on the outcome of the appeal, the AE will:
  1. Renew the contract if the owner subsequently becomes compliant or prevails with the appeal and the Regional Center or Satellite Office changes its decision to terminate the contract.

2. Begin the process for obtaining regular Housing Choice Vouchers (HCVs) if the owner does not prevail in their appeal and the Regional Center or Satellite Office upholds its decision to terminate the contract. The instructions in Notice PIH 2001-41 (HA), Section 8 Tenant-Based Assistance (Enhanced and Regular Housing Choice vouchers) for Housing conversion actions – Policy and Guidance, or any successor notice, must be followed. Notice PIH 2001-41 (HA) can be found at:  
<http://www.hud.gov/offices/adm/hudclips/notices/pih/01pihnotices.cfm>.
3. Monitor the processing of the vouchers with the assigned AE/CA, PIH and the owner, until the vouchers have been issued.
4. Terminate the contract after vouchers have been issued to the eligible residents.

**13-4. HUD’S TENANT NOTIFICATION OF REFUSAL TO RENEW**

- A. In cases where HUD elects not to renew the Section 8 contract due to any of the conditions noted in Section 13-1, above, the Regional Center or Satellite Office shall notify, in writing, all tenants in a project who are receiving Section 8 assistance, of HUD’s decision not to renew the project’s Section 8 contract.
- B. As required by section 516(d) of MAHRA, subject to the availability of amounts provided in advance in Appropriation Acts, Section 8 tenant any other low-income tenants residing in the project shall be provided with regular Housing Choice Vouchers (HCV) tenant-based assistance and reasonable moving expenses, as determined by the Secretary.

## RHS Section 515/8

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### 14-1. OVERVIEW

Representing a significant share of the affordable housing in many rural communities, Rural Housing Service (RHS) housing projects with Section 8 are exempt from debt restructuring under MAHRA. These projects are eligible to renew under Option 4 but may request to renew under any option for which they are eligible at the time of the renewal. The information below provides additional guidance on the renewal process for these exception projects which is discussed in general in Chapter 6.

**Note: If a 515/8 project is subject to a use agreement that cannot be eliminated by unilateral action of the owner, the project is not eligible for Option 1A. (See Section 3-3. B.). However, the owner may still be able to renew the projects contract under Option 1B.**

### 14-2. PROCESSING

A. Owners of Section 515/8 projects who are requesting a contract renewal under Option 4 pursuant to 524(b)(1) of MAHRA must submit their project budget approved by RHS. The AE/CAs are not required to review and approve these budgets. As long as the budget has been approved by RHS, the budget-based rent will be accepted by HUD/CA's.

**Note: HUD does not accept the RHS utility analysis. The owner must submit a utility analysis based on HUD requirements.**

B. RHS agreed in November 2010, that any budget based rent adjustment request submitted at the time of the amend rents calculation cannot result in rents above market as determined by the RCS. If the rents resulting from the budget based rent adjustment submission result in a "0" increase or do not exceed the rents that would result from the application of the OCAF, the owner does not need to submit a Rent Comparability Study to show that the rents are below market.

C. AE/CA will accept RHS-approved budgets reflecting the appropriate 8 percent allowable owner's distribution on equity or any higher level as approved by RHS as an incentive to the owner to prevent prepayment. (This is explained in RHS's administrative Notice dated April 12, 1999.)

**Note: If the owner of the project is a for profit who is not restricted by RHS at the State level, HUD cannot and will not limit the owner distributions for the project.**

D. The AE/CA will notify **both** RHS and the owner of the new contract rents at renewal and annual rent adjustment periods.

E. An owner of a Section 515/8 project may receive a short-term renewal to align the project's accounting cycle with the anniversary date of the Section 8 HAP contract. The

AE/CA will issue a short-term contract covering the months between the end of the current HAP contract and the end of the current accounting cycle (December 31). Upon expiration of the short-term contract, the owner will be eligible for renewal under the provisions of MAHRA, as described above.

**Note: RHS projects are exempted from debt restructuring under 524(b). Like all other 524(b) projects, at initial and subsequent renewal, they are subject to the “lesser of” OCAF or budget-based test.**

- F. An owner who has executed a HAP contract expiring on December 31<sup>st</sup> is requested to submit its request for renewal to HUD/CA annually by September 1. The owner may submit a non-approved budget at this time. The owner should submit the RHS-approved budget to the local HUD Regional Center or Satellite Office/CA no later than November 15th.
- G. After the loan with RHS has been paid in full:
  - 1. If requesting a budget-based rent adjustment, the owner will submit their budget directly to AE/CA. The budget must be completed in accordance with Chapter 2 of this Guide.
  - 2. Upon expiration of the contract, the owner will submit a request for contract renewal directly to HUD/CA. The owner may elect to renew under any renewal option available at that time for which the project is eligible.



## Section 8 Preservation Efforts

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### **15-1. OVERVIEW**

One of HUD's primary goals is the long-term preservation of affordable housing. This chapter provides guidance on HUD's efforts to encourage the rehabilitation, known as "Capital Repairs" in this chapter, and acquisition, known as "Transfer" in this chapter, of affordable housing.

- Nonprofit owners or purchasers can use this chapter when renewing under Option Two "Contract Renewals for Other Projects with Current Rents at or Below Comparable Market Rents."
- Nonprofit owners or purchasers who meet one of the three criteria listed in Section 3-6 can use this chapter when renewing under Option One, "Mark Up To Market."
- For profit owners can use this chapter when renewing under Option One or Two.
- For profit entities who propose to acquire and rehabilitate a project can use this chapter but must renew under Option One, "MUTM".

This Chapter has been broken into four parts. Part One addresses the definition of Nonprofit Owner, Part Two addresses the general criteria for both programs, Part Three addresses the Capital Repairs Program and Part Four addresses the Transfer Program.

### **PART ONE: DEFINITION OF NONPROFIT OWNER**

### **15-2. NONPROFIT OWNER/PURCHASER**

- A. The AE must determine if the nonprofit owner/purchaser meets the following criteria must:
1. Be financially solvent with no open or unresolved audit findings or findings from analyses of the audited annual financial statements.
  2. Have a tax exemption ruling from the Internal Revenue Service under Section 501(c)(3) of the Internal Revenue Code of 1986.
    - a. If the nonprofit is applying for the tax exemption ruling, the entity is eligible. However, increased rents will be withheld until the entity provides HUD with evidence that the tax exempt ruling has been issued.
    - b. Exceptions:
      - 1) Any project where the nonprofit owner was not previously required to have a 501(c)(3) rating from the IRS to participate in HUD programs.
      - 2) Limited-Equity Cooperative entities that are not 501(c)(3) eligible.

- 3) Have a resolution from the organization’s Board of Directors that authorizes the additional debt to be incurred to purchase and/or rehabilitate the project.

B. An unacceptable nonprofit owner includes:

1. A public body or instrumentality of a public body, or,
2. An entity whose organizational documents permit any part of its net earnings to inure to the benefit of any private shareholder, contributor, or individual.

### **15-3. NONPROFIT CONTROLLED FOR PROFIT ENTITY (OWNER OR PURCHASER)**

A nonprofit may form a for profit entity for a specific project. For example, the nonprofit may want to obtain low income housing tax credits and raise capital through the sale of the tax credits. See Section 15-5. E.3. for renewal options for nonprofit controlled for profit entities.

A. For this Guide, the term “Nonprofit Owner” includes:

1. A limited partnership with one or more nonprofit general partners or a sole general partner that is wholly owned and controlled by one of more nonprofit entities; or
2. A limited liability company with one or more nonprofit managers or nonprofit managing members or a sole manager or managing member that is wholly owned or controlled by one or more nonprofit entities.

B. The nonprofit must meet the requirements of section 15-2. A. above.

## **PART TWO: GENERAL CRITERIA FOR BOTH CAPITAL REPAIRS AND TRANSFER PROGRAMS**

### **15-4. APPLICABILITY**

A. This section applies to most multifamily housing projects with either:

1. An original Section 8 HAP contract (i.e., one that has not yet been renewed under MAHRA), with rents at or below comparable market rents, or
2. A MAHRA Renewal Contract issued under section 524(a) or (b) with rents at or below comparable market rents.

B. If the owner/purchaser intends to renew the Section 8 HAP contract under

1. Option Two, the current rents must be at or below market at the time of the renewal.
2. Option One the current rents must be below market at the time of renewal.

C. Owners with the following Section 8 HAP contracts cannot apply:

1. Section 8 Moderate Rehabilitation projects administered by the Office of Public and Indian Housing.
2. Section 8 Moderate Rehabilitation Single Room Occupancy Projects administered by the Office of Community Planning and Development.

3. Section 8 contracts that have closed under Mark-to-Market and been renewed with a Full Mark-to-Market Renewal Contract issued under section 515 of MAHRA.
4. An original (non-MAHRA) Section 8 contract that is eligible to renew under MAHRA but has rents above comparable market rents.
5. A 524(a) or 524(b) Renewal Contract with rents above comparable market rents.

**Note: See Section 15-5. C.3. for guidance on allowing certain projects to reduce rents to market to enable them to participate in Chapter 15**

## **15-5. BASIC REQUIREMENTS**

### A. Use Agreement.

At renewal, the owner must agree to accept a 20-year recorded Use Agreement requiring the current and future owners to accept any Section 8 contract offered by HUD for the next 20 years. (See HUD-Form 90055)

**Note: If the project has an existing Use Agreement: The term must be extended for an additional 20 years. For example, if the current Use Agreement ends in 2015 the term will be extended to 2035. There are various conditions imposed by the use agreement, therefore the existing Use Agreement may have to be modified to include the conditions imposed by the Use Agreement.**

### B. 20-Year Contract:

The owner/purchaser must agree to accept a twenty-year Section 8 contract, subject to annual appropriations.

### C. Early Termination of an existing Section 8 contract.

1. HUD and the owner may terminate by mutual agreement most existing original HAP contracts and Section 524 MAHRA Contract(s) that have rents at or below market to take advantage of these programs as long as the new contract equals 20 years, the owner agrees to renew the contract at the end of the 20 years for a term that equals the remaining term of the original terminated contract and, for non-MAHRA contracts, the owner agrees to sign the HUD-93184 “Rider to Original Section 8 Housing Assistance Payments Contract”. (See 15-5 C.3.)
2. The following contracts cannot be terminated early to take advantage of these programs:
  - a. Section 514 or 515 MAHRA contract
  - b. Section 524 (e)(1) MAHRA Demo Contract
  - c. Section 524(e)(2) MAHRA Preservation Contract
  - d. Rental Assistance Demonstration (RAD) Contract
3. Owners of projects with rents above market that are currently subject to a HAP contract provision that allows for (i) a discretionary comparability adjustment within each five-year term or (ii) a fifth-year comparability adjustment, may request that project rents be reduced to market to participate in Chapter 15 and

renew under Option Two in accordance with the following requirements and procedures:

- a. At the time of the discretionary comparability adjustment or at the fifth year adjustment, at which point the AE/CA would reduce rents to market.
- b. The Section 8 HAP contract would then be terminated and renewed for 20 years under Option Two, in accordance with the procedures in Section 15-6.B.,
- c. The AE would attach HUD-93181 or HUD-93182 (formerly known as Appendix 15-2A and 15-2B respectively) to the contract which would provide a determination of the “as is” and “after rehab” rents for the project.

**Note: HUD lacks the authority to allow a project to reduce rents to below market to enable it to renew under MUTM.**

D. Combine Multiple Contracts or Stages.

If possible, owners **must** combine multiple contracts or stages. (See Section 2-10 for more information on combining contracts.)

E. Renewal Options.

1. The owner/purchaser renews under Option Two, “Contract Renewals for Other Projects with Current Rents At or Below Comparable Market Rents.”
2. Assuming eligibility for MUTM, a for profit entity participating in the Transfer or both the Transfer and Capital Repairs programs must renew under Option One.
3. A nonprofit controlled for profit entity, if eligible, may renew under Option One, MUTM. If renewing under Option One, the rent setting mechanism in Option One overrides the rent setting mechanism in Section 15-6 of this Guide.

**15-6. RENT INCREASES**

A. If the owner/purchaser intends to renew the Section 8 contract under Option One then they must submit:

1. A rent comparability study that contains a determination of the “as is” market rents and the “after rehab” market rents that assumes all repairs and/or rehabilitation work was completed as of the date of the rent comparability study.
2. A detailed description of the proposed transaction including but not limited to:
  - a. For the Transfer Program:
    - 1) A letter of intent to sell the project to an eligible nonprofit or eligible for profit; and
    - 2) Cost of recapitalizing the reserve for replacement account.

- b. For the Capital Repairs Program the cost of:
  - 1) Modest repairs and rehabilitation (e.g., lead-based paint, energy efficient equipment, repairs, etc.) and recapitalizing the reserve for replacement account, or
  - 2) Substantial rehabilitation (defined as hard costs exceeding \$6,500 (or subsequent threshold established by HUD) per unit times the High Cost Percentage for that area).
3. A Project Capital Needs Assessment (PCNA) or Comprehensive Needs Assessment (CNA) as discussed in Section 15-9.
4. A detailed sources and uses funding statement.
- B. If the owner/purchaser intends to renew the Section 8 contract under Option Two then the owner/purchaser must, in addition to all the items listed in Section 15-6A, submit a request for a budget-based rent increase not to exceed comparable market rents to pay for costs associated with the transaction including new debt and debt service coverage. (See Note after Section 2-15 B.)
- C. For either renewal option, upon receiving the owner/purchaser's submission, the AE undertakes the initial screening of the owner/purchaser's RCS. The CA is responsible for the substantive review of the RCS.
- D. The AE must notify the owner/purchaser of the maximum new rent levels when the AE completes processing the renewal request.
- E. Effective Date of the New Rents.
  1. For the Capital Repairs Program involving a loan program:
    - a. That does not require full debt service at closing, the final "after rehab" rents will not be effective until the PCNA is completed, financing is approved and, if applicable, the critical repairs are complete. The owner must agree to sign HUD-93181 Addendum to Renewal Contract under Option One or Option Two for Capital Repairs and/or Acquisition Costs.
    - b. That requires full debt service at closing (such as the Fannie Mae or Freddie Mac Mod Rehab Programs or the FHA 223(f) programs) the Regional Center/Satellite Office can allow the rents, that would otherwise not go into effect until after the rehabilitation is completed, to go into effect at closing. The owner must agree to sign HUD-93182 Addendum to Renewal Contract under Option One or Option Two for Capital Repairs and/or Acquisition-Post-Rehabilitation Rents at Closing.
  2. For the Transfer Program, the final new rents will be effective once the transfer is approved and completed.
  3. In the case of a blended transaction, involving both a transfer and capital repairs, the rents will be adjusted after the strictest requirement in 1 or 2 above has been met.

### **15-7. UNASSISTED UNITS IN A HUD PROJECT**

- A. To protect low and moderate income tenants who live in other HUD subsidized units, including Rent Supplement, RAP, BMIR, and Section 236 properties (refer to Handbook 4350.3 REV-1, Occupancy Requirements of Subsidized Multifamily Housing Programs) the tenant's portion of the rent may be increased by no more than 10 percent because of the transaction.
- B. Owners who raise these rents are reminded that they must comply with the notification requirements in 24 CFR Part 245.

### **15-8. CAP ON MARKET RENTS**

If applicable, the AE will not lower the comparable market rents in the RCS to reflect any use restriction on the level of rents that can be charged; for example tax credit restricted rents.

### **15-9. PROJECT CAPITAL NEEDS ASSESSMENT AND INCREASED DEPOSITS TO THE REPLACEMENT RESERVE ACCOUNT**

- A. For both HUD insured or conventionally financed projects, the owner/purchaser's mortgagee must submit a PCNA prepared in accordance Housing Notice 2012-27 or subsequent guidance. Those projects that are legally required to submit CNA may submit a current CNA in lieu of a PCNA. The CNA must have been updated or resubmitted within the previous 12 months.

**Note: For a non-insured project with an old regulation/LMSA/PD/ Pension Fund Section 8 contract or for a partially assisted project, no RFR account is required unless the existing or proposed financing requires that a RFR account be maintained during the life of the mortgage. Projects with new regulation contracts must maintain the RFR.**

- B. If the transaction does not include new debt, the owner/purchaser assumes the role of the mortgagee discussed in Section A above.
- C. For non-insured projects, the AE has the authority to review the PCNA to determine the adequacy of the recommendations and make recommendations for revisions to the PCNA.

### **15-10. RESERVED**

## **PART THREE: CAPITAL REPAIRS PROGRAM**

### **15-11. GENERAL**

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

- A. Modest repairs and rehabilitation (e.g., lead-based paint, energy efficient developments, repairs, etc.); and recapitalize the replacement reserve escrow; or
- B. Substantial rehabilitation.

## **15-12. ADDITIONAL ACCEPTABILITY REQUIREMENTS FOR THE OWNER**

- A. The owner must be:
1. In good standing and not subject to administrative sanctions (i.e., debarment, suspension, unresolved adverse audit findings or a letter of findings under any fair housing or civil rights authority has failed to correct material violations of HUD rules);
  2. In compliance with the terms of the current Regulatory Agreement, Note, and Mortgage; and
  3. Current in debt service and all payments, including the reserve for replacement account (or current under a workout agreement).
- Note: If the current owner is subject to administrative sanctions, they may still participate as the seller 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.**
- B. The owner must submit documentation with its Capital Repairs Program application to assist the AE in its review for compliance with the environmental regulations at 24 CFR Part 50. Details on the information required for the AE to conduct the environmental review are discussed at Section 15-13. A below. All repair or rehabilitation actions under the Capital Repairs Program will require environmental review. HUD environmental policy requires that there be a limitation of activities or actions by any direct or indirect parties to the transaction until HUD has completed the environmental review process.
- C. Owners are reminded also that their multifamily housing projects may be subject to physical accessibility requirements under HUD's regulations implementing Section 504 of the Rehabilitation Act and/or the Fair Housing Act. An owner must submit documentation with its Capital Repair Project application to assist the AE in its review for compliance with applicable accessibility requirements (which could be conducted by or in concert with the applicable Regional FHEO Office or FHEO Program Center).

## **15-13. PROJECT ELIGIBILITY**

The AE checks that, if applicable, the rehabilitation proposal is:

- A. Compliant with HUD's environmental regulations at 24 CFR Part 50, and.
1. All repair or rehabilitation actions under the Capital Repairs Program will require environmental review. HUD environmental policy requires that there be a limitation of activities or actions by any direct or indirect parties to the transaction until HUD has completed the environmental review process. As such, the environmental review must be completed before the AE approves capital repair plans.
  2. The AE will review documentation submitted by the owner. The AE should document compliance for the environmental review *on the HUD Environmental Review Online System (HEROS) – Form HUD 4128. Guidance for completing the HEROS – Form HUD 4128 can be found at the Multifamily Accelerated Processing (MAP) Guide, Chapter 9; in Handbook 1390.2, “Environmental*

*Assessment Guide for Housing;*” and at HUD’s environmental website:  
<https://www.hudexchange.info/programs/environmental-review/>

3. Field/Regional Environmental Clearance Officers and other appropriate HUD staff may be contacted to assist in the environmental review. Contact information for HUD’s environmental officers may be accessed through the above website.
4. In accordance with 24 CFR Part 50.20(a)(2), the following actions, activities and programs are categorically excluded from National Environmental Policy Act requirements. They are not excluded from the individual compliance requirements of the other environmental statutes, Executive orders and HUD standards cited in 24 CFR Part 50.4 and must complete a categorically excluded review in HEROS—Form HUD 4128:
  - a. Rehabilitation of buildings and improvements when the following conditions are met:
    - 1) Unit density is not changed more than 20 percent;
    - 2) The project does not involve changes in land use from residential to non-residential; and
    - 3) The estimated cost of rehabilitation is less than 75 percent of the total estimated cost of replacement after rehabilitation.
5. Any actions, activities and programs that do not meet the qualifications at 15-13.A.4., above, require an environmental review under the National Environmental Policy Act and in accordance with the laws and authorities listed at 24 CFR Part 50.4.
6. A new Phase I ESA in accordance with ASTM E 1527-05 (or the most recent edition), as well as a Vapor Encroachment Screen in accordance with ASTM E 2600-10 (or the most recent edition), will be required if the activity being approved involves:
  - a. Significant ground disturbance (digging) or construction not contemplated in the original application;
  - b. A change in land use not contemplated by the original risk-based mitigation conducted on the site;
  - c. Site expansion or addition;
  - d. Any other activities which may result in contaminant exposure pathways or activities not contemplated in the original application.
7. HUD’s lead based paint testing and abatement requirements for the management and removal of lead-based paint are applicable to housing built before 1978, and are found at 24 CFR Part 35.
8. Owners of HUD-insured properties are required to comply with Environmental Protection Agency (EPA) and the Department of Labor - Occupational Safety and Health Administration (OSHA) requirements concerning the management/abatement (e.g. maintenance, removal, disposal and encapsulation)



of asbestos when an owner takes an action, such as renovation or demolition, which involves the disturbance of asbestos or presence of damaged friable asbestos. Any abatement that is undertaken should only be done with EPA trained and accredited contractors who are experienced in working with asbestos and knowledgeable in federal, state and local requirements. All asbestos abatement must be done in accordance with EPA requirements for air pollution prevention pursuant to 40 CFR Subpart M, especially 40 CFR Part 61.145, and OSHA requirements for Worker Protection, pursuant to 29 CFR Part 1926.1101. Any local or state asbestos abatement and worker protection rules also apply.

9. HUD-insured properties are required to comply with the Toxic Substances Control Act, 15 U.S.C. 2605(e), and EPA regulations, 40 CFR Part 761, governing Polychlorinated Biphenyls (PCBs). PCBs are toxic substances formerly used in electrical equipment. The Toxic Substances Control Act and implementing EPA regulations require the registration, and in some cases, the removal and replacement of PCBs. In accordance with EPA regulations, owners of residential projects must have transformers inspected, and replaced if PCB is found. An employee of the utility company can inspect the transformers at the owner's request and inform the project owner/manager of any evidence of PCBs in the electrical system.
  10. When an application for the Section 8 Renewal Capital Repairs Program is submitted along with an application to the Office of Multifamily Programs for FHA multifamily mortgage insurance, the environmental review that is conducted by HUD staff under Chapter 9 of the MAP Guide as part of the multifamily mortgage insurance application process will satisfy the requirements of this section.
  11. Rehabilitation performed under Chapter 15 does not trigger Davis-bacon Prevailing Wage Rate requirements. Davis-Bacon requirements are applicable under certain HUD mortgage insurance programs.
- B. Has a relocation plan for the residents during the rehabilitation acceptable to HUD, including, but not limited to, arrangements to continue reasonable accommodations granted to persons with disabilities or otherwise plan for and accommodate the needs of persons with disabilities.
- C. Complies with physical accessibility requirements and standards – including, but not limited to, requirements for multifamily housing projects under HUD's regulations at 24 CFR Part 8.23 and for covered multifamily dwellings at 24 CFR Part 100. The AE/CA will review proposed activities for compliance with accessibility standards in consultation with FHEO.

## **Part Four: Transfer Program**

### **15-14. GENERAL**

Under the Transfer Program, HUD will permit a rent adjustment based on a budget-based rent request under Option Two, provided the new rents do not exceed comparable market rents, to facilitate a change in ownership from a for profit or limited-dividend owner to a nonprofit or a

nonprofit controlled entity; or from a nonprofit owner to another nonprofit or a nonprofit controlled entity.

HUD will also permit a rent adjustment under Option One, provided the new rents do not exceed comparable market rents, to facilitate a change in ownership from a for profit or limited-dividend owner to a for profit or limited-dividend owner; or from a nonprofit owner to a for profit or limited-dividend owner.

#### **15-15. ADDITIONAL PURCHASER REQUIREMENTS**

- 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. The purchaser must comply with all applicable nondiscrimination and equal opportunity requirements set forth at 24 CFR Part 5.105(a). Accordingly, purchasers must provide information regarding lawsuits, charges, cause determinations, or letters of findings related to discrimination that have been issued or filed against the owner and will be ineligible to participate in the Transfer Program if they have not resolved these matters to the satisfaction of HUD.
- C. The purchaser must be 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).

#### **15-16. PROJECT ELIGIBILITY**

The Transfer Program without repair or rehabilitation requires that the project have a physical inspection performed using the Uniform Physical Condition Standards [24 CFR Part 5] by the REAC with a score greater than 60 with no uncorrected Exigent Health and Safety (EHS) violations. Additionally, the project must *not* be designated as a “troubled project.”

#### **15-17. TRANSFER OF PHYSICAL ASSETS (TPA) FOR A HUD INSURED TRANSACTION**

To encourage nonprofit transfers, HUD will waive the transfer fee. Follow outstanding TPA instructions found in HUD Handbook 4350.1, Asset Management and Project Servicing.

## Chapter Sixteen

# “Old Regulation” State Housing Finance Agency Projects — Owner Options upon Full Prepayment of Original, Permanent Financing

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### **16-1. BACKGROUND, APPLICABILITY AND OVERVIEW**

This Chapter provides guidance for owners of Section 8 projects that are subject to the “old regulation” State Housing Finance Agency (“HFA”) form of HAP contract for New Construction or Substantial Rehabilitation projects, *i.e.*, the November 1975 version of HUD-52645A (“1975 HAP Form”), for which the original, permanent financing provided by an HFA (“Financing”) was prepaid in full or that will be prepaid in full.

There is a small number of HAP contracts issued by HFAs which lack the HUD-52645A form number, but have the key provisions of this form retyped in a different format. HAP contracts that contain the same key provisions but lack the HUD-52645A form number are also covered by the provisions of the this Chapter.

HUD has determined that the 1975 HAP Form contains language that causes it to terminate automatically upon full prepayment of the original, permanent financing (financing). Consequently, any project that is subject to the 1975 HAP Form for which the Financing has been fully prepaid has been operating since the date of prepayment with no written HAP contract in place. HUD has further determined, however, that where the owner and the HFA have continued, after prepayment, to discharge their respective contractual roles and responsibilities as if the written contract were still in place, their conduct gives rise to an implied contract, the terms of which are identical to those of the written but now expired HAP contract. Section 16-2 provides three options to owners for which the Financing has been fully prepaid. In issuing this guidance, HUD endeavors to establish an orderly process for the continuation of housing assistance payments to owners of affected projects who choose to continue participating in the Section 8 program.

### **16-2. OWNER OPTIONS**

In cases where the financing has been prepaid or will be prepaid, owners may select from the following options:

- A. Amend the Section 8 HAP contract. Amend the Section 8 HAP contract by extending the term to the originally scheduled maturity date of the Financing using Form HUD 9647, Extension Amendment to Old Regulation State Agency Housing Assistance Payments Contract” (“Extension Amendment”) *verbatim*. No variations in the contract

language are permitted without the prior written approval of the HUD Multifamily Regional Center Director with jurisdiction. Execution of the Extension Amendment by both owner and HFA will (1) be deemed to reinstate the 1975 HAP Form of contract, and (2) amend the HAP contract by extending the term through the originally scheduled maturity date of the Financing that was formerly prepaid.

- B. Renew the HAP contract under MAHRA. Regardless of when the financing was prepaid, the owner may renew the Section 8 HAP contract under MAHRA pursuant to any renewal option for which the project is eligible. For these renewals, the Preservation Exhibit and the HUD-93184 are not required. Owners are to complete Form HUD-9624, Contract Renewal Request Form indicating the renewal option of their choice, and the corresponding Renewal Worksheet for the selected option. Should the owner choose a renewal option that requires submission of a Rent Comparability Study (“RCS”), *i.e.*, Option One, Option Two, or Option Three, the RCS must be dated no more than 90 days before the owner submits Form HUD-9624. Project eligibility will be determined as of the “Date of Submission” on page 1 the Contract Renewal Request Form. The term of the MAHRA renewal contract is to begin on the first day of the month following the month in which the parties execute the renewal contract. Should the owner and HFA execute the contract during different months, the renewal term is to begin on the first day of the month following the month in which the last party to execute the contract does so. For prospective prepayments, the term of the contract must begin on the prepayment date.
- C. Opt out of the Section 8 program. Owners choosing to opt out of the Section 8 program may do so by selecting Option Six on the Contract Renewal Request Form. If additional time is needed to satisfy the one-year notification requirement, the HFA and the owner may enter into a short-term contract, not to exceed a term of one year, at current contract rents using the Basic Renewal Contract (HUD-9636).

### **16-3. TIMELINESS**

Owners of projects to which this Chapter applies are encouraged to submit a completed Extension Amendment or Contract Renewal Request Form and supporting documentation to the HFA within 120 days of the contract anniversary date.

## Attachment 1: List of Acronyms Used in this Guide

AAF	Annual Adjustment Factor
ACC	Annual Contributions Contract
AMI	Area Median Income
APPS	Active Partners Participation System
BMIR	Below Market Interest Rate
CA	Contract Administrator
CDE	Compliance Disposition Enforcement Plan
CFR	Code of Federal Regulations
CNA	Comprehensive Needs Assessment
CPD	Office of Community Planning and Development
CRN	Contingent Repayment Note
DEC	Departmental Enforcement Center
DEMO	Portfolio Reengineering Demonstration Program
DRS	Debt Restructuring Specialist
EH&S	Exigent Health and Safety
ELIHPA	Emergency Low-Income Housing Preservation Act
EMAS	Economic and Marketing Analysis Section
EPC	Energy Performance Contract
FHA	Federal Housing Administration
FMR	Fair Market Rents
FY	Fiscal Year
HAP	Housing Assistance Payment
HFA	Housing Finance Agency
HCV	Housing Choice Vouchers
iREMS	Integrated Real Estate Management System
LIHPRHA	Low-Income Housing Preservation and Resident Homeownership Act
LMSA	Loan Management Set Aside
MAHRA	Multifamily Assisted Housing Reform and Affordability Act
MFI	Median Family Income
Mod Rehab	Moderate Rehabilitation
MOR	Management Occupancy Review
Mu2B	Mark-up-to-budget

MUTM	Mark-up-to-Market
OAHP	Office of Affordable Housing Preservation now known as the Office of Recapitalization (Recap)
OAMPO	Office of Asset Management and Portfolio Oversight (Formerly Office of Asset Management)
OCAF	Operating Cost Adjustments Factor
OGC	Office of General Counsel
OMHAR	Office of Multifamily Housing Assistance Restructuring
PAE	Participating Administrative Entity
PBCA	Performance Based Contract Administrator
PCNA	Project Capital Needs Assessment
PD	Property Disposition
PHA	Public Housing Agency (as defined in the United States Housing Act of 1937. 42 U.S.C. 1437 et seq.).
PIH	Office of Public and Indian Housing
AE/CA	Housing Account Executive/Contract Administrator
POA	Plan of Action
QHWRA	Quality Housing and Work Responsibility Act of 1998
RAD	Rental Assistance Demonstration
RCS	Rent Comparability Study
REAC	Real Estate Assessment Center
RFR	Reserve for Replacement Account
RHS	Rural Housing Service - 515/8 Projects
SRO	Single Room Occupancy
TPA	Transfer of Physical Asset
TRACS	Tenant Rental Assistance Certification System
TTP	Total tenant payment

## Attachment 2: Glossary of Terms Used in this Guide

**Account Executive/Contract Administrator (AE/CA).** HUD staff in the case of a project manager or contract staff in the case of a contract administrator who are responsible for managing the relationship with individual projects, including the renewal of the Section 8 contract.

**Adjusted Rents.** Existing rents under the expiring contract, as adjusted by an operating cost adjustment factor (OCAF) established by the Secretary (which shall not result in a negative adjustment) or adjusted by budget-based method or by other means under the terms of the HAP contract..

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

**“After rehab” rents.** In the context of a transaction that anticipates an increase in rents to cover capital improvements and the transfer of a Section 8 project, the comparable market rents as determined by a rent comparability study comparing the subject project, with all planned capital repairs, with comparable properties.

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

**“As is” rents.** In the context of a transaction that anticipates an increase in rents to cover capital improvements and the transfer of a Section 8 project, the comparable market rents as determined by a rent comparability study comparing the subject project in its current condition with comparable properties.

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

**Budget-Based Rent Increase.** A rent increase on the basis of a budget used to promote the efficient management and continued financial viability of projects when current rent levels are not sufficient to cover operating costs.

**Capped Comparable Gross Rents.** If the Final Comparable Gross Rent Potential is less than 150% of the FMR Potential, then the Capped Comparable Gross Rents are the Final Comparable Gross Rents. If the Final Comparable Gross Rent Potential is not less than 150% of the FMR Potential, then the Capped Comparable Gross Rents are 150% of the FMRs.

**Capped Comparable Gross Rent Potential.** The lesser of the Final Comparable Gross Rent Potential or 150% of the FMR.

**Comparable Market Rents.** Comparable market rents are the rents charged for properties determined to be comparable properties, which means, properties in the same market areas

that are similar to the eligible multifamily housing project as to neighborhood (including risk of crime), type of location, access, street appeal, age, project size, apartment mix, physical configuration, project and unit amenities, utilities, and other relevant characteristics; and are not receiving project-based assistance.

**Comparability Study.** Also known as a Rent Comparability Study (RCS). A method of estimating market rent for the Section 8 units in the subject project. The appraiser derives an indicated (market) rent by comparing the Section 8 units with similar, but unsubsidized properties, applying appropriate units of comparison and making adjustments as appropriate to the comparable rents. The results should then be correlated into an indicated market rent. The study must include all Section 8 units in the subject project and must be conducted according to the requirements established in Chapter Nine of this Guide.

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

**Community-based nonprofit organization.** A private nonprofit organization 1) that is organized under State or local laws, 2) for which no part of net income inures to the benefit of any individual, and 3) that has a long-term record of service in providing or financing quality affordable housing for low-income families through relationships with public entities.

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

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

**Control.** Direct or indirect power (under contract, equity ownership, the right to vote or determine a vote, or otherwise) to direct the financial, legal, beneficial or other interests of the owner or purchaser.

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

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

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

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

**Current Section 8 Gross Rent Potential.** The sum of all Current Section 8 Gross Rents under the Section 8 contract(s).



**Debt Restructuring Specialist.** Staff at the Office of Affordable Housing Preservation who reviews Mark-To-Market transactions.

**Eligible Multifamily Housing Project.** A project as defined in section 512(2) of MAHRA.

**Enhanced Vouchers.** Vouchers that are provided to current residents of a Section 8 development undergoing an eligibility event. Section 8(o) of the United States Housing Act of 1937 provides the legal basis for providing such assistance.

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

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

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

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

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

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

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

**HAP Contract.** A housing assistance payments contract between HUD (or the Housing Agency) and the owner. HUD (or the Housing Agency) pays housing assistance payments to the owner in accordance with the HAP contract.

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

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

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

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

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

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

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

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

**iREMS.** The official source of data on Multifamily Housing's portfolio of insured and assisted properties. iREMS provides automated support to collect/maintain accurate data and enables Satellite Offices and Regional Centers, and Enforcement Center staff to perform servicing functions and implement enforcement actions where needed.

**MAHRA.** Multifamily Assisted Housing Reform and Affordability Act of 1997. **Market Rents.** Comparable market rents for the market area.

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

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

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

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

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

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

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

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

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

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

**Lite/Haircut.** Request for contract renewal without restructuring, with rents marked down to market.

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

**Original Section 8 HAP contract.** A contract that has not yet been renewed under MAHRA.

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

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

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

**Owner Comparable Market Rents.** The rents specified by the comparability study submitted by the owner.

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

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

**Preservation Project.** A project that is subject to a HUD-approved Plan of Action under the Emergency Low -Income Housing Preservation Act of 1987 (12 U.S.C. § 1715/ note) or the

Low-Income Housing Preservation and Resident Homeownership Act of 1990 (12 U.S.C. § 4113).

**Project-Based Assistance.** Rental assistance that is attached to a multifamily housing project.

**Purchaser.** Any private person or entity, including a cooperative, an agency of the Federal Government, or a public housing agency, that, upon purchase of the project, would have the legal right to lease or sublease dwelling units in the project, and also means an affiliate of the purchaser.

**Renewal.** Replacement of an expiring Federal rental contract with a new contract under Section 8 of the United States Housing Act of 1937, consistent with the requirements of Subtitle A of MAHRA.

**Renewal Contract.** A contract issued under MAHRA (including the applicable provisions of the Expiring Contract, as specified in the Renewal Contract) under which project-based section 8 rental assistance under the Expiring Contract is renewed.

**Rent Adjustment.** Adjustment of the existing Contract Rent at the contract anniversary based on an operating cost adjustment factor, a budget, a rent comparability study, or an annual adjustment factor, as appropriate, and as permitted under the terms of the HAP Contract or Renewal Contract.

**Rent Increase.** An increase in the Contract Rents under the Expiring Contract that occurs upon renewal of the HAP Contract (or Renewal Contract) and that is calculated based on the measure for renewal rents corresponding to the renewal option under which the HAP Contract (or Renewal Contract) was renewed.

**Rent Comparability Study (RCS).** See Comparability Study.

**Subsequent Renewal.** The renewal of an expiring contract that was initially renewed under 524 of MAHRA.

**Tenant-Based Assistance.** Rental assistance that is not project-based assistance and provides for eligible families to select suitable housing.

**Termination.** Expiration of the Section 8 contract or an owner's refusal to renew the contract.

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