
CHAPTER 3. CONTRACT ADMINISTRATION

3-1. OWNER RESPONSIBILITIES DURING THE CONTRACT PERIOD

Owners must comply with requirements imposed by the applicable Regulatory Agreement and the HAP Contract. Specific requirements related to the receipt of Section 8 assistance are highlighted below.

A. Occupancy Functions

Detailed instructions for occupancy functions for LMSA projects are provided in HUD Handbook 4350.3. In summary the owner must comply with the following requirements:

1. **Marketing and Leasing Units:** Owners must comply with the HUD approved Affirmative Fair Housing Marketing Plan and use an approved lease with each Section 8 tenant. Appendix 15 of Handbook 4350.3 provides a model lease form.
2. **Maintenance and Inspection:** The owner must maintain and operate units and related facilities to provide decent, safe and sanitary housing that meets Section 8 Housing Quality Standards. Prior to occupancy of any unit, both the owner and the family must inspect the unit. The owner must certify that the unit meets Section 8 Housing Quality Standards. The owner may use the Inspection Form in Appendix 13 or another form that provides the same information to conduct the move-in inspection.
3. **Requests for HAP Payments and Other Claims:** The Housing Owner's Certification and Housing Assistance Payments form ([HUD-52670](#)) should be used to request assistance payments and special claims for unpaid rent, tenant damages and vacancy loss. Guidance on completing this form is found in Chapter 6 of

4. Tenant Certifications and Recertifications: The owner must recertify annually family income and other circumstances that affect the amount of assistance the family may receive. In addition, under certain circumstances owners must process interim recertifications. Chapter 5 of Handbook 4350.3 provides detailed guidance on the recertification process.
5. Overcrowded and Underutilized Units: If a unit becomes overcrowded or underused because of changes in household composition, the owner should usually require the family to move to a unit of appropriate size when one becomes available within the project. The Field Office may abate housing assistance payments if the owner fails to offer the family a suitable unit as soon as one becomes available. In making this determination, the Field Office should be guided by paragraph 5-9 of Handbook HUD-4350.3 which discusses when unit transfers are appropriate.

B. Ongoing Reporting Requirements

Owners must determine whether disclosure statements regarding government assistance to the project and lobbying activities need to be updated. Owners must also inform the Field Office of any changes in the status of the project's tax credits.

3-2. FIELD OFFICE MONITORING RESPONSIBILITIES

The Loan Management staff is responsible for assuring that owners comply with applicable Regulatory Agreements and the Section 8 HAP contract. Monitoring instructions for the insured programs are contained in Handbook 4350.1, and HUD Handbook 4350.5, Subsidy Contract Administration and Field Office Monitoring provides guidance in administering subsidy contracts. Routine monitoring responsibilities include:

conducting management reviews and annual physical inspections, processing annual and special rent adjustments, reviewing annual financial statements, investigating resident complaints, and processing requests for transfers of physical assets (TPA).

3-3. RENT ADJUSTMENTS

A. Projects Subject to Budgeted Rent Increase.
Provisions

Owners may request unit rent increases in accordance with Chapter 7 of Handbook 4350.1. The Field Office will adjust the Contract Rent based on the amount of any HUD-approved increase in unit rents.

B. Projects Subject to Annual Adjustment Factor Rent Increase Provisions

Contract rents are adjusted annually on the anniversary date of the HAP Contract by using the annual adjustment factors most recently published in the Federal Register.

C. Maximum Assistance Payments

The Loan Management staff must assure that the total maximum assistance payments for any fiscal year do not exceed the available funds. The amount available in any given fiscal year is the sum of:

- o the maximum annual contract commitment (Paragraph 6.a. of the HAP Contract), and
- o any unused contract authority from previous years available in the HAP Reserve.

Should the Loan Management staff determine that contract funds are insufficient to cover the approved rent increase, the Regional Director of Housing should be requested to provide funds to amend the contract.

D. Notification to owners

The Loan Management staff should prepare a revised Schedule of Units, Rents, Equipment, Utilities and Services (Exhibit B to the HAP Contract) which is used to amend the HAP Contract.

E. Special Adjustments

Owners whose rents are calculated by the annual adjustment factor may request special additional rent adjustments when required to support increases in the actual and necessary expenses of the project which have resulted from substantial general increases in real property taxes, utility rates or similar costs (i.e., assessments and utilities not covered by regulated rates) but only to the extent that the owner clearly demonstrates that such general increases have caused increases in operating costs which are not adequately compensated for by the automatic annual adjustments. The owner must submit financial statements and other information requested by HUD to support the increase. For additional guidance of processing of special rent increases see Handbook 4350.1.

3-4. CONTRACT EXPIRATIONS AND EXTENSIONS

Under federal law, owners are required to give notice of their intent not to continue LMSA assistance upon expiration of the current HAP contract. Loan Management staff should inform project owners of the notice requirements at least 18 months prior to the expiration of their HAP contract.

A. Owner Notice Requirements

1. Section 8(c)(9) of the United States Housing Act of 1937 requires project owners to give written notice to HUD and to project tenants of their intention to terminate the Section 8 LMSA contract. Owners must give notice at least one year prior to the termination date of the contract.
2. The termination date is either the end of the

next HAP option period or the date of the expiration of the entire contract. This provision applies to owners even if their contract is expiring and contains no further provisions for contract extension.

3. The owner's contract termination notice to tenants must include a statement that the owner and HUD may agree to an extension of the Section 8 LMSA contract.

4. The owner must submit the same notice to the Housing Management Division Director at the appropriate Field Office. The notice to the tenants and HUD must specify the reasons for terminating the contract so that HUD can determine whether the notice is lawful and whether additional actions can be taken by HUD to avoid the termination. Under Section 544 of the 1990 National Affordable Housing Act, HUD must make a determination of whether the notice was legally sufficient. The Director, Housing Management Division, should review the owner's notices assess whether the notification was adequate, and inform the owner of HUD's decision. The owner, upon receiving notice of the HUD's determination, must notify project tenants of the decision within 30 days.

B. Owner Failure to Provide Sufficient Notice

1. If the required one year notice is not given, or fails to meet the requirements for the notice, the Loan Management staff must document the project's file with the following statement:

This project owner has not provided the one year notice required by Section 8 (c) (9) of the United States Housing Act of 1937.

Loan Management staff entering the statement

must initial and date this entry.

2. Loan Management staff must notify owners in writing when they have not given adequate notice of their intent to terminate the LMSA contract. The notice should inform the owner that the contract that under options a. or b. below, HUD will extend the contract for the period of time necessary to allow the owner to provide the one year notice to terminate. The owner must operate the project for the one year notice period. The owner has three

alternatives under which to provide funds to carryover the contract to fulfill the one year notice requirement. They are as follows:

- a. Maintain provision of assistance using contract reserves from the project reserve account (if available),
 - b. Maintain provision of assistance by paying out of pocket, or
 - c. Obtain LMSA funds from HUD.
(Currently, the appropriated funds must be used pursuant to a contract or contract extension of no less than five years and may not be terminated before the term of the contract. This requirement may vary according to future Appropriation Acts).
3. If an owner refuses to execute the contract extension, the Field Office must send a letter informing the owner that failing to renew the contract is a violation of Section 8(c)(9) of the United States Housing Act of 1937 and HUD will pursue affirmative litigation for the protection of the tenants.

C. Owners Giving Notices of Termination

1. Loan Management staff must immediately inform owners who have given the required

termination notice of two options:

- a. Owner may accept 5-year extension of contract at contract rents in effect at the time of the extension, or
- b. Owner may submit to HUD documentation supporting the need for repairs, rehabilitation or under funded reserves which will serve as the basis for HUD considering increasing the contract rents to support such needs to a level not exceeding the Section 8 Existing Fair Market Rent (FMR).

2. After the owner declines both of the above options, HUD will give vouchers to eligible tenants upon the expiration of the Section 8 contract.

D. Owners Rejecting HUD Incentives to Renew Contract

If the owner declines this offer or fails to respond within the specified time, the Field Office shall begin contract close-out procedures described in Chapter 4. At this time, Loan Management staff must also document the project file with the following sentence:

The owner has provided timely expiration notice to HUD and to each tenant involved. The notice has met the legal requirements of Section 8(c)(9) of the United States Housing Act of 1937. The owner has been offered an inducement to continue in the program but has declined.

Loan Management staff must date and initial this entry into the project file.