

II. OWNER THAT HAS NOT COMPLIED WITH THE DOCUMENTATION OR TIMEFRAME REQUIREMENTS OF NOTICE 98-34.

Q1. How does the local Hub or Program Center Office handle an owner that gives HUD the documentation required by Notice 98-34 for contract renewal before contract expiration but not within the required timeframe? The contract expires before any action can be taken with regard to renewal of the contract.

A1. *Immediately review the owner's comparability study to confirm possible eligibility in the mark-up to market emergency initiative. Contact an owner and*

- a. *Give an overview of the emergency initiative including the project profile. If the owner is interested, it should submit a revised Owner's Checklist For Use at Contract Expiration, Attachment 4.*

Offer a 3 month short term renewal at current rents upon receipt of the owner's written expression of interest.

Order a comparability study to be prepared from an approved contract appraiser. Use this study to establish eligibility for the emergency initiative.

Determine the new rent levels and make an offer to the owner. The owner will either accept or reject the offer.

If the owner is not interested in the emergency initiative, renew its contract for one year using either a 524(a)(1) or (a)(2) contract.

- b. *Explain that if the owner is not interested in the emergency initiative or the project does not meet the profile, you cannot offer the owner a short term contract. Therefore, during the time between contract expiration and contract renewal no subsidy will be paid to the project and the owner is prohibited from raising the tenant's portion of rent.*

- ◊ *In the interim, explain that you are willing to authorize the use of project reserves to avoid financial problems provided the owner is willing to refund the account(s) once the contract funds start to flow provided the owner is taking or will take reasonable steps to process its renewal; and*
- ◊ *Explain that you will review the documentation and process the renewal request as promptly as possible. The contract will be renewed retroactively to the date of expiration of the immediately prior contract.*

Q2. *How does the local Hub or Program Center Office work with an owner that fails to provide HUD with the required documentation before contract expiration and the contract expires? Owner submits the documentation late.*

A2. *Immediately review the owner's comparability study to confirm possible eligibility in the mark-up to market emergency initiative. Contact the owner and*

- a. *If the project is eligible, give an overview of the emergency initiative including the project profile.*

If the owner is interested, it should submit a revised Owner's Checklist For Use at Contract Expiration, Attachment 4.

Offer a 3 month short term renewal at current rents upon receipt of the owner's written expression of interest and

Order a comparability study to be prepared from an approved contract appraiser. Use this study to establish eligibility for the emergency initiative.

Determine the new rent levels and make an offer to the owner. The owner will either accept or reject the offer.

If the owner is not interested in the emergency initiative, renew its contract for one year using either a 524(a)(1) or (a)(2) contract.

- b. If the project is not eligible, explain that if the owner and project does not meet the emergency initiative profile you cannot offer the owner a short term contract. Therefore, during the time between contract expiration and contract renewal no subsidy will be paid to the project and the owner is prohibited from raising the tenant's portion of rent.

◊ In the interim, explain that you are willing to authorize the use of project reserves to avoid financial problems provided the owner is willing to refund the account(s) once the contract funds start to flow; and

◊ Explain that you will review the documentation and process the renewal request as promptly as possible. The contract will be renewed retroactively.

III. OWNER THAT HAS NOT COMPLIED WITH ANY OF THE REQUIREMENTS ON NOTICE H98-34.

Q1. How does the local Hub or Program Center Office work with an owner that fails to submit the required documentation?

A1. *Contact the owner and ask its intentions.*

a. *Give an overview of the mark-up to market emergency initiative including the project profile.*

If the owner is interested, it should submit an Owner's Checklist For Use at Contract Expiration, Attachment 4 and a comparability study that establishes eligibility. [Note the comparability study does not need to conform strictly to Notice 98-34.] The Owner is still required to submit as soon as possible a comparability study that complies with Notice H98-34 otherwise the process cannot be completed.

Offer a 3 month short term renewal at current rents based on:

- ∅ Receipt of the owner's written expression of interest and comparability study; and*
- ∅ Your review of the comparability study to confirm possible eligibility.*

Order a comparability study to be prepared from an approved contract appraiser. Use this study to establish eligibility for the emergency initiative.

Determine the new rent levels and make an offer to the owner. The owner will either accept or reject the offer.

If the owner is not interested in the emergency initiative, renew its contract for one year using either a 524(a)(1) or (a)(2) contract.

- b. Offer reasonable assistance to give the owner a better understanding of the renewal process and the required documentation. The goal is to fully inform the owner of the options available under the Emergency Initiative.

Explain to the owner that you cannot offer the owner a short term contract. Therefore, during the time between contract expiration and contract renewal no subsidy will be paid to the project and the owner is prohibited from raising the tenant's portion of rent.

◊ In the interim, explain that you are willing to authorize the use of project reserves to avoid financial problems provided the owner is willing to refund the account(s) once the contract funds start to flow provided the owner is taking or will take reasonable steps to process its renewal; and

◊ Explain that you will review the documentation and process the renewal request as promptly as possible. The contract will be renewed retroactively to the date of expiration of the immediately prior contract.

- c. If the owner is intent on opting out of the contract

Check project files to confirm that owner has or has not given the required one year notification of its intention to opt out the Section 8 contract to the tenants and HUD consistent with the guidelines described below.

Inform the owner that HUD will give a short term [stub] contract to cover any remaining tenant notification period. Where the owner is fully cooperating with the local housing agency, extensions may also be granted until the process of providing certificates or vouchers to all eligible tenants is completed. In these instances, the subsidies

should be computed at existing rent levels, but not exceeding 120 percent of the FMR. You may refuse subsequent extensions where owners are unwilling or unable to cooperate with tenant protection efforts on a timely basis.

Four months [120 days] before expiration of the contract, the Hub or Emergency initiative Office should contact the Community Builder and Public Housing, PH. The Community Builder should meet with the tenants to coordinate HUD's efforts to protect their rights. PH will ask the local public housing authority to start qualifying the tenants for certificates or vouchers. If the owner changes its mind during this process, HUD will renew the Section 8 contract.

IV. OWNER INTENDS TO OPT OUT OF THE SECTION 8 CONTRACT.

Q1. How does the local Hub or Program Center Office work with an owner that declares its intention to opt out of the Section 8 contract (See Notice H 98-34 Option 3) and its contract has not yet expired?

A1. Contact the owner and ask its intentions.

- a. Give an overview of the mark up to market emergency initiative including project profile.

If the owner is interested, it should submit a revised Owner's Checklist For Use at Contract Expiration, Attachment 4, and a comparability study that establishes eligibility. [Note the comparability study does not need to conform strictly to Notice H98-34.] In this case only, the Owner has the option of either later submitting a comparability study that complies with Notice H98-34, or of accepting the Final Comparable Market Rents as determined by HUD's comparability study.

Offer a 3 month short term renewal at current rents based on:

- ◊ Receipt of the owner's written expression of interest and comparability study; and
- ◊ Your review of its comparability study to confirm possible eligibility.

Order a comparability study to be prepared from an approved contract appraiser. Use this study to establish eligibility for the emergency initiative.

Make an offer to the owner. The owner will either accept or reject the offer.

If the owner is not interested in the emergency initiative it may proceed with opting out of the contract.

- b. Offer reasonable assistance to give the owner a better understanding of the renewal process and the required documentation. The goal is to fully inform the owner of the options available under the Emergency Initiative.
- c. If the owner is intent on opting out of the contract

Check project files to confirm that owner has or has not given the required one year notification of its intention to opt out the Section 8 contract to the tenants and HUD.

Inform the owner that HUD will give a short term contract to cover any remaining tenant notification period. Where the owner is fully cooperating with the local housing agency, extensions may also be granted until the process of providing certificates or vouchers to all eligible tenants is completed. In these instances, the subsidies should be computed at existing rent levels, but not exceeding 120 percent of the FMR. You may refuse subsequent extensions where owners are unwilling or unable to cooperate with tenant protection efforts on a timely basis.

Four months [120 days] before expiration of the contract, the Hub or Emergency initiative Office should contact the Community Builder and PH. The Community Builder should meet with the tenants to coordinate HUD's efforts to protect their rights. PH will ask the local public housing authority to start qualifying the tenants for certificates or vouchers. If the owner changes its mind during this process, HUD will renew the Section 8 contract.

- Q2. Is the emergency initiative available for owners that are opting out of their Section 8 project based contracts and the Department is obtaining tenant based assistance in the form of vouchers for the residence?

A2. *The answer depends on where HUD is in the process of obtaining the tenant based assistance.*

- ◊ *If the process has been started but the vouchers have not been issued the owner may elect to enter the emergency initiative.*

Where funds have been reserved for conversion of project based assistance to tenant based assistance but the funds have not yet been placed under ACC, and the owner decides to participate in the emergency initiative, PIH - Headquarters will recall the money and return it to the proper account for future opt-outs. Additionally, there may be some cases where an ACC has been executed with a PHA, but vouchers have not yet been issued to families. In those instances, PIH will recapture the budget authority and use it for future opt-outs provided there are no congressional limitations on the re-use of recaptured funds to the contrary.

- ◊ *If the tenants have received their vouchers but the contract has not expired, the owner cannot elect to enter the emergency initiative. Note this is a major change in the way we do business. We always permitted the owner to change its mind at the last minute.*

Q3. *Is the emergency initiative available for owners that have opted out of their Section 8 project based contracts?*

A3. *Once an owner has met all tenant notification requirements and the Section 8 contract has terminated, the project is ineligible for the emergency initiative. HUD does not have the legal authority to reconstitute an expired Section 8 contract where the tenants have been provided tenant based assistance in the form of vouchers.*

V. SHORT TERM RENEWAL OF A SECTION 8 CONTRACT.

- Q1. What happens if the short term contract carries the project beyond the FY 1999?
- A1. *A project that accepts any short term renewal terminating in FY 2000 is still eligible for the emergency initiative. Of course if a permanent program is in place in FY 2000, the owner could choose between the emergency initiative and the new program.*
- Q2. Is there any underlying principle behind the length of a short term renewal?
- A2. *Various administrative guidelines provide basic instructions on the length of a short term renewal. However, the length of the contract is also determined by when it would expire. We do not want any short term contracts expiring in the months of October and November because of the uncertain nature of the annual appropriations process. Therefore, you may exceed the outstanding guidance to assure the short term contracts could expire in December 1999.*

VI. TENANT NOTIFICATION REQUIREMENTS IN THE EVENT OF AN OPT-OUT.

Q1. Exactly what are the tenant notification requirements owners must follow when they are opting out of the Section 8 contract?

A1. HUD's FY 99 Appropriations Act, signed October 21, 1998, amended the tenant notification requirements detailed in Notice H 98-34 (HUD) issued 10/16/98.

Section 549(a)(1) of the Quality Housing and Work Responsibility Act of 1998, Title V of HUD's FY 99 Appropriations Act, revised section 8(c)(8)(A) of the U.S. Housing Act of 1937, which required owners to provide a 180-day notice to tenants of the expiration or termination of the contract. Owners are now required to provide not less than one-year written notification to tenants and the Secretary of the expiration or termination of the contract.

Project owners with expiring contracts that gave the 180-day notice to tenants on or before October 20, 1998 are not required to implement the one-year notification for that contract. Project owners who did not give the 180-day notice before October 21, 1998 are subject to the new one-year requirement.

In cases where an owner has provided a 6 month notice after 10/20/98, he may fulfill the 12-month requirement by providing an additional 6 month notice. For example, if an owner provided a 6 month notice on 11/1/98, he could provide an additional 6 month notice which would cover the period from 5/1/99 to 11/1/99. This is covered in detail in the Memorandum of May 7, 1999, signed by Robert Reavis.

All project owners should immediately give the one year notice for any other contracts that are expiring within the next twelve months.

Q2. What if the owner accepted a short term contract after October 21, 1998 and never gave a one year notification?

- A2. *The Owner has not complied with the law and HUD intends to hold these owners to the one-year requirement.*
- Q3. *Assume that an owner has given the required notice prior to expiration of his contract. He then executes a short-term renewal with HUD. Is the owner bound by the one-year notice requirement?*
- A3. *In most cases, the answer is yes. Upon execution of the short-term contract, the owner must provide a one-year notice to the tenants and HUD. Over the course of this one year period, the owner and HUD may agree to additional short-term extensions. The owner is not required to provide a new notice as each subsequent short-term extension is granted. Instead, he will have fulfilled his requirement if he provided the notice upon execution of the original short-term extension, and the 12-months have elapsed. 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, except for the circumstances discussed below.*

The clear purpose of the Section 8(c)(8)(A) notice requirement is to provide some degree of protection to Section 8 tenants in cases where the contract is expiring or terminating. This statutory purpose is clearly served in cases where the owner has fulfilled his notice 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 to eligible residents. Therefore, in this case, execution of a short term contract does not trigger the notice requirement. Similarly, in cases where HUD provides the owner with a short term contract to cover the remaining portion of the notification period (i.e., the owner has provided notice, but not for the full statutory period), execution of this short-term contract does not trigger an additional notice requirement. Also, where an owner had provided tenants and HUD with the proper notification and then accepts a short term renewal to consider accepting a

Section 8 contract under the terms of the mark-up to market emergency initiative, the owner would not be subject to another one-year notification requirement.

Finally, in cases where an owner is entering into the M2M program and executes a section 514(c) contract and the M2M HAP Rider, the relevant notice provision is section 514(d) of the MAHRA.

- Q4. What happens if an owner opts out of the Contract without adequate tenant notification?
- A4. *The owner cannot increase the tenant's portion of the rent until the notification requirements have been fulfilled. HUD will provide a short term generic contract at current rents not to exceed 120% of FMRs during this period.*

VII. DIFFERENCES OF OPINION ON THE COMPARABILITY STUDY.

- Q1. Who is responsible for reviewing the market rent comparability study submitted by the owner?
- A1. *HUD field office is responsible for review of rent comps on anything in which the owner says they are below market. If the owners' market study concludes the contract rents are above market (or if the HUD field office concludes the owners' study is flawed and they are actually above market), the renewal analysis is sent to OMHAR (who will engage a third party appraiser, either through a PAE or directly). If the HUD field office disagrees with the rent study, but concludes the contract rents are still below market, they process the request.*
- Q2. What should The Hub or Program Center do if there is a difference of opinion on the comparability study?
- A2. *See A1 above.*
- Q3. Can the comparability study be prepared by a junior appraiser.
- A3. *Yes. The study may be prepared by a junior appraiser but it must be signed by a licensed general certified appraiser.*
- Q4. May we accept an owner's comparability study that is higher the study prepared by HUD for establishing rent levels?
- A4. *Yes. You may adjust the rents in HUD's comparability study by up to 5 percent but never to exceed the rents in the owner's study.*

VIII. FIVE YEAR AGREEMENT.

Q1. Is an owner required to submit annual comparability study?

A1. *No. However, HUD does reserve the right to order a new comparability to assure the project rents do not exceed comparable market rents.*

Q2. Will the owner's contract rents be increased during the five year agreement?

A2. *The contract rents will be adjusted annually by OCAF applicable for the State in which the project is located.*

IX. UNITS OCCUPIED BY SECTION 8 CERTIFICATE OR VOUCHER HOLDERS

Q1. Will rents for Designated Units where tenants are receiving Certificates or Vouchers be adjusted due to an owner's decision to participate in this Initiative?

A1. No. Only units receiving project-based assistance are included in this Initiative. Units occupied by residents receiving tenant-based certificates or vouchers are not included in the Initiative. Rents for these units will not be affected by an owner's decision to participate in this Initiative.