

Transmittal
Section 8 Renewal Policy Guide Book

This Transmits:

Page changes to the Section 8 Renewal Policy Guide Book.

Explanation of Changes.

All changes have light grey shading to denote what has changed on the page unless a section was completely removed. The major changes are:

1. Removes previous guidance, found at Sections 2-1E, 4-1 and 6-1B that stated once the owner of an exception project renewed under either Option One or Option Two they were prohibited from reverting back to an exception status. OGC reexamined this policy and found that the Multifamily Assisted Housing Reform Act ("MAHRA") did not support this position. A clarification to the MAHRA regulations was published January 12, 2006. Therefore, at any renewal the owner of an exception project may elect to renewal under any option that the contract is eligible for at the time of renewal.
2. Authorized Program Centers to approve Discretionary Mark-Up-To Market requests without first obtaining Headquarters approval.
3. The Multifamily Assisted Housing Reform and Affordability Act of 1997 ("MAHRA") statute originally limited the renewal of Section 8 contracts associated with preservation projects to a term of one year. MAHRA was amended and removed the one-year limitation. Therefore preservation projects are now permitted to use multiyear Section 8 contracts. The maximum term of the multiyear contract will be based on the lesser of 20 years or the remaining term of the Use Agreement.
4. MAHRA limits the owner of a preservation project to renewing his/her Section 8 contract using Option Five. We have emphasized this requirement.

Filing Instructions:

Remove:	Insert:
Chapter 2 Page 2	Chapter 2 Page 2 dated 05-05-2006
Chapter 3 Pages 4-6 dated 3/22/01	Chapter 3 Pages 4-6 dated 05-05-2006
Chapter 4 Page 1	Chapter 4 Page 1 dated 05-05-2006
Chapter 6 Page 2	Chapter 6 Page 2 dated 05-05-2006
Chapter 7 Pages 4 and 5 dated 4/11/01	Chapter 7 Pages 4 and 5 dated 05-05-2006

MAHRA, will, at subsequent renewal, be renewed under any option that the contract is eligible for at the time of renewal. The Owner should follow procedures in place at time of renewal and submit the contract Renewal Request Form and OCAF Rent Adjustment Worksheet, Form HUD 9625, found at Attachment 3 of this guide to the PM/CA for processing.

- C. Rent Adjustments. Annual adjustments to contract rents that occur during the term of a multi-year Section 524 contract are called rent adjustments. These adjustments may be by application of the published OCAF or, if applicable, by a budget-basis subject to HUD's approval.
- D. The RCS. A RCS that is submitted at initial renewal will be considered valid for five years. It establishes the market rent for renewals of staged contracts and can be used for the initial renewal of any expiring contracts that were not combined (see Section 2-5 below) that will expire during the five year life cycle of the RCS. In order to take advantage of this opportunity, the original RCS must include all of the Section 8 units in the project. The cost of this RCS is an eligible project expense.

Owner Options

Section 2-2

- A. Six Owner Options. At the time of the initial renewal, Owners may choose among any of the following renewal options for which the project is eligible:
1. Option One is Mark-Up-To-Market;
 2. Option Two is renewal with existing rents adjusted by OCAF or on the basis of a budget when rents under the expiring contract are at or below market;
 3. Option Three is referral to OMHAR for processing because the contract has rents greater than market and is subject to an FHA-insured or HUD-held mortgage;
 4. Option Four is renewal of contracts for "exception" projects, which are exempt from debt-restructuring pursuant to 514(h) of MAHRA or are an "eligible multifamily housing project" as defined in section 512(2) of MAHRA;
 5. Option Five is the renewal of contracts for Portfolio Reengineering Demonstration or Preservation projects; and
 6. Option Six is to opt-out of the Section 8 contract.

percent is considered a low vacancy area. Confirm the vacancy rate with HUD EMAS staff/CA staff; or

3. **Community Support.** The property is a high priority for the local community as demonstrated by a contribution of State or local funds to the property. This matching requirement may be in the form of tax abatements, capital improvement funds etc.

C. Discretionary Mark-Up-To-Market requests are processed and approved by the Program Center with jurisdiction over the project.

Initial Renewals

Section 3-4

At least 120 days before the expiration of the contract, the Owner submits a Contract Renewal Request Form, Form HUD 9624 and a Rent Comparability Study (“RCS”). The RCS is to be prepared based on the instructions in Chapter Nine of this Guide.

Annual Adjustments in Years 2 through 5

Section 3-5

At least 120 days before the anniversary date of the contract, the Owner submits the OCAF Rent Adjustment Worksheet, Form HUD 9625, Attachment 3. In years two through five, rents are adjusted by the published OCAF. No budget-based rent increases shall be approved for contracts that Mark-Up-To-Market.

After receiving and processing of the OCAF renewal worksheet, the PM/CA shall provide the Owner with a revised rent schedule, i.e., Exhibit A. The revised Exhibit A will amend the existing section 524 contract, and the revised rents will go into effect on the day following the anniversary date of the contract.

Subsequent Renewals

Section 3-6

Upon expiration of the contract, Owners may elect to renew under any renewal options available at that time for which the project is eligible. Owners are encouraged to enter into another multi-year contract but are not required to do so.

Processing Instructions

Section 3-7

- A. Initially Eligible. For either Option One-A or One-B, if the property meets the eligibility criteria, the PM/CA orders a rent comparability study from the Department's independent third-party contractor to find out that rents under the expiring contract are less than comparable market rents for the market area.

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

HUD/CA and an Owner may enter into a short-term renewal contract using a prorated OCAF adjustment, if needed, to afford the Owner and HUD time to complete the eligibility analysis.

- B. Not Eligible. If the property is not eligible for Option One-A, but meets the eligibility criteria for Option One-B, rents may be marked up to market.
- C. HUD has 120 days to process an Owner's renewal request and is not obligated to complete the process any sooner. If the rent increase process is not completed within the 120 days, through no fault of the Owner, the Owner is due a retroactive rent increase for the period of time beyond the 120 days that it takes HUD to process the renewal request. If however, the Owner submits the request less than 120 days prior to expiration of the contract (e.g., 30 days late) HUD has 120 days from the date of submission of the paperwork to process the request. ***In all cases the effective date of the contract will be the day following expiration of the last expiring contract. An Owner who submits a renewal request less than 120 days before contract expiration, however, will not receive a retroactive rent increase.***

Example: An Owner submits a renewal request 90 days prior to contract expiration, HUD has the full 120 days to process the request. If HUD's processing is timely, the renewal rents shall take effect 30 days after the expiration date with no retroactive rent increase permitted. If HUD takes 150 days to process the request, the renewal rents shall take place 60 days after the expiration date with the Owner due retroactive rent increase for only 30 days. The net effect of this policy is that, in all cases, owners who fail to submit their renewal request to HUD at least 120 days before contract expiration will not receive increased rents for the period of time that it takes HUD to process the renewal

request. The effective date of the renewal contract, however, will always be the day immediately following the expiration date of the expiring contract. **NOTE: This policy applies only to contracts renewing under Option One, Mark-Up-To-Market.**

- D. Contract Term. An Owner must accept, at a minimum, a five-year contract, subject to annual appropriations. During the term of the MU2M five-year contract, the Owner of a Section 236 or a 221(d)(3) BMIR project agrees not to prepay any FHA-insured mortgage on this project, except where HUD, in its sole discretion, approves the prepayment as a component of a transaction where the project is preserved as affordable housing.

Note: Request for prepayments should be forwarded to the attention of the Director, Office of Portfolio Management, Headquarters.

- E. Notification. Upon signing a multi-year contract renewal, Owners must notify tenants in writing that they have agreed to a multi-year contract renewal agreement with the Department. This letter must also state that the contract is subject to the availability of annual appropriations. The letter shall advise the tenants that they will receive a one-year written notification prior to expiration of the Section 8 contract.
- F. Comparability Studies. Along with a request to Mark-Up-To-Market, the Owner must submit a Rent Comparability Study (“RCS”) prepared following the guidelines detailed in Chapter Nine of this Guide.

1. **Accurate Comparable Market Rents.** Immediately upon receipt of the Owner’s request for renewal use the following process to establish comparable market rents:

- a. The PM/CA uses the Owner’s study as an initial determining factor for participation. HUD will accept the Owner’s study without analysis. This initial study is only for determining initial eligibility.
- b. If the Owner’s comparable gross rent potential is below 100% of the FMR potential, the Owner is not eligible for participation in Option One-A.
- c. If the Owner’s comparable gross rent potential is at or above 100% of the FMR potential, the PM/CA immediately orders a HUD comparability study (not applicable for Option One-B).
- d. HUD will hire an independent third-party appraiser through its Contracting Officer. Since the RCSs will be done for both insured and uninsured properties, contract funds to pay for the studies will come from the sources below. The PM/CA will rely, without an in-depth review, upon the information contained in the third-party appraisal in implementing Mark-Up-To-Market.

Chapter Four

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

Eligibility

Section 4-1

Option Two is for Owners who request a renewal of their Section 8 contract where the RCS indicates that the contract's current rents are at or below comparable market rents, but who are not applying for Mark-Up-To-Market.

Initial Renewal

Section 4-2

- A. Owner Submission. At least 120 days before contract expiration, the Owner submits:
1. **Contract Renewal Request Form (Attachment 3A1)**. Owner's Contract Renewal Request Form, Form HUD 9624, (Attachment 3A2) and OCAF Rent Adjustment Worksheet, Form HUD 9625, (Attachment 3B);
 2. **RCS**. A RCS prepared following the instructions found in Chapter Nine of this Guide; and

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

In cases where OMHAR determines that the contract is eligible for **debt restructuring**, the PM/CA will notify the owner that a RCS is required. If the RCS demonstrates that the rents are above market, the project will be renewed for six months using the Contract for Entry Into OMHAR and OMHAR will process the renewal.

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

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

2. Section 202/8 and 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. Section 202 and 811 Capital Advance projects are not eligible because they do not have Section 8 contracts.
3. 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.
4. Section 512 (2) of MAHRA. Projects that do not qualify as eligible multifamily housing projects pursuant to Section 512(2) of MAHRA include:
 - a. a project that is not subject to a HUD-held or insured mortgage; or,
 - b. a project that has FHA mortgage insurance or is HUD-held with rents at or below comparable market rents.

For an Owner of an FHA-insured or HUD-held project to claim eligibility under 4b, they must obtain a RCS.

INITIAL AND SUBSEQUENT RENEWALS

Section 6-2

PRESERVATION PROJECTS (*LIPHRA and ELIHPA*)

Section 7-5

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

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

- A. Renew a Preservation contract according to the provisions outlined in the project's POA. Preservation contracts ***cannot*** be renewed under any option other than Option 5.
- B. Corrections. There are instances where some contracts of Preservation projects were renewed under terms different than the terms in the approved POA. In these cases PM/CA's should calculate the rent as it would have been if the contract(s) had been renewed under terms consistent with the 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/Prepayments. In general, POA's do not permit the Owner to opt-out of the Section 8 contract. However, if a Preservation project Owner believes they have the authority to opt-out of the Section 8 contract or prepay:
 1. **Plan.** The Owner must submit a detailed plan to the PM/CA that indicates how they intend to honor their 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 or prepay, they are not released from their obligations set forth under the long-term Use Agreement to provide affordable housing.
 2. **Local HUD.** The Hub or Program Center (or Contract Administrators) should take the following steps:
 - a. The PM/CA should review the POA to determine if it provides the right for the Owner to opt-out of the Section 8 contract. In general, opt-outs were precluded, but each Preservation POA was structured differently, and as a result,

the PM/CA must review each POA and Use Agreement to determine whether or not the project is eligible to opt-out of the Section 8 contract.

- b. If the POA does not allow the Owner to opt-out, the PM/CA should advise the Owner that they must renew the Section 8 contract.
 - c. If the POA allows the Owner to opt-out, the owner must provide the standard one year notification to the tenants. Eligible families will be issued enhanced vouchers.
3. **Plan Submission to HQ:** If after review of the Owner's plan, the PM/CA agrees that the Owner is allowed to prepay and opt-out, the PM/CA forwards a copy of the plan to Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Headquarters.
- D. Conflicting Documents. The Use Agreement was recorded to implement the terms of the POA. However, there may be instances where the terms of the POA and the Use Agreement conflict.
1. Since the Use Agreement is a recorded instrument, binding on all third parties, in the event of a discrepancy between the Use Agreement and the POA, the Use Agreement prevails, and is binding on all third parties.
 2. POAs are far more extensive and cover many more items than are covered in a Use Agreement. As a result, in cases where there are items contained in the POA that are not addressed in the Use Agreement, the terms of the POA, as they relate to the specific item, are binding on all parties.

Owner Submission for Preservation Projects

Section 7-7

- A. A multiyear contract, not to exceed the lesser of 20 years or the remaining term of the recorded Use Agreement are now available to Preservation projects.
- B. The only renewal option available to an Owner of a preservation project is Option 5.
- C. The Owner must submit, at least 120 days before contract expiration, the Contract Renewal Request Form and, if applicable, the OCAF Worksheet.