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CHAPTER 1 Introduction

LEARNING OUTCOMES

Explain and apply HUD regulations and guidance for the process of renewing contracts both pre- and post-MAHRA to achieve long-term financial stability at project-based Section 8 properties administered under the Multifamily arm of HUD.

Upon completion of Multifamily Contract Renewals, you should be able to:

- Identify the key program elements, requirements, regulatory agencies, and documents used to renew expiring HAP contracts
- Identify important timeframes and deadlines for submission of documentation
- Recognize the options for renewal depending on the contract and each specific property
- Describe each option and the requirements for submission
- Identify the key program elements, requirements, and regulatory agencies and documents used to request annual rent increases for contracts still in their term
- Recognize the regulations for production and submission of rent comparability studies when required for contract renewal submission
- Describe requirements and timeframes for tenant notification
- Recognize the eligibility requirements, general requirements, and submission process for a request of transfer of budget authority under Section 8(bb) of the housing code
- Identify the different types of assistance provided to residents and programs that are tenant-based versus project-based
- Recall the process of converting HAP contracts for PRAC, 202/811

- Recognize the process for converting mod rehab properties through the RAD program to either project-based vouchers (PBV) or project-based rental assistance (PBRA)
- Describe HUD accounts, such as residual receipts and replacement reserves, and how they factor into the renewal and rent adjustment processes
- Recognize the options for rent setting above fair market rent (FMR) and any special considerations associated

ONLINE RESOURCES

Additional information and references for this course are available at NMAreferences.com. Click the specific program link at the top of the webpage to jump directly to the references you wish to access. No login information is required.

INTRODUCTION AND OVERVIEW

Since the mid-1990s, when long-term project-based Section 8 HAP contracts began expiring, Section 8 policy has evolved dramatically. At the beginning, for several years, HUD issued notices and other guidance in piecemeal fashion to implement new policy related to renewing expiring Section 8 HAP contracts and preserving affordable housing. However, in 2001, HUD published the first version of the Section 8 Renewal Guide. It has changed many times over the years, the most recent version updated June 2017.

The format of the guide provides the opportunity to accommodate changes through the revision process. When HUD makes a change to the guide, a transmittal is published outlining the changes to the text. Changes are noted in italics in the body of the text.

The guide is applicable to Contract Administrators, including Performance-Based Contract Administrators (PBCAs).

ROLE OF MAHRA

The enactment of the Multifamily Assisted Housing Reform and Affordability Act (MAHRA) in 1997 signaled an important shift in the Section 8 programs. In general, the introduction of MAHRA meant that Section 8 rents must be comparable to unsubsidized rents in the area where the project is located. In some cases, this requirement also meant that the rents could be adjusted upward. However, Congress recognized that the rents at some Section 8 projects needed to be reduced as well. In addition, for many projects, a rent comparability study (RCS) may be required to find out if a project's Section 8 rents are comparable to market levels.

Notes

CHAPTER 2 Common Types of Assistance

Managing a blended occupancy project with multiple types of funding and subsidy sources is complicated. Program regulations often conflict and at times it's difficult to navigate the confusing maze of regulations.

There are many combinations of funding and subsidy sources available today. For the purposes of this training, we will be focusing on the following common sources of funding/subsidy:

- Low-Income Housing Tax Credit (LIHTC)
- Section 8 Project-Based Rental Assistance (PBRA)
- Section 8 Housing Choice Voucher Project-Based (PBV)
- Public Housing
- HOME
- Rural Development (RD)
- Housing Choice Voucher (HCV)

TYPES AND SOURCES OF FUNDING

Funding for affordable housing programs can be provided by combining a variety of programs. The largest funder of affordable housing programs is the federal government through its various programs and government agencies. Funding by individual states and local government entities varies widely depending on their size and available resources. Blended occupancy projects may have a mix of funding/subsidy on the unit level and/or the project level. For example, a 100-unit project that consists of public housing and low-income housing tax credits may have 50 units that are LIHTC-only and 50 units that are public housing-only, or all 100 units may be both public housing and LIHTC. Both of these are examples of blended occupancy projects. In other words, subsidy/funding may be combined on the project level and/or the unit level.

A list of permissible program combinations within a unit is listed below.

Program	Permissible Combinations
Low-income housing tax credits (LIHTC)	PBRA PBV PH HOME HCV
Section 8 project-based rental assistance (PBRA)	LIHTC HOME
Project-based vouchers (PBV)	LIHTC HOME
Public housing (PH)	LIHTC
HOME	LIHTC PBRA PBV HCV

24 CFR 92.213;
HOME Final Rule Federal
Register July 24, 2013

The HOME final rule added new regulations to address the use of HOME funds with public housing funds. As a general rule, HOME funds may not be used for public housing units that receive Capital Fund or Operating Fund assistance under section 9 of the 1937 Act.

- The only exception is when HOME funds are used to develop a unit that also receives HOPE VI funds for development, provided no Capital Funds are used in the unit. If units are developed with HOME and HOPE VI funds, the separation of public housing units that receive HOME and HOPE VI funds from units receiving Capital Funds under section 9 of the 1937 Act must be accomplished through the cost allocation process for multi unit HOME projects at 24 CFR 92.205(d).

24 CFR 92.213(c)

HOME funds may be used in a project that contains a mix of public housing units and non-public housing units, provided the HOME funds are not used in the public housing units. In other words, the HOME units must be separately designated.

LOW-INCOME HOUSING TAX CREDIT (LIHTC) PROGRAM

The Low-Income Housing Tax Credit (LIHTC) program was created by Congress in 1986 via Section 42 of the Internal Revenue Service's Internal Revenue Code (IRC) to provide the private market with incentives for construction, rehabilitation, or acquisition of low-income affordable rental housing. State and local government agencies, known as housing finance agencies, allocate and monitor tax credits.

Low-income housing tax credits may be used for new construction, acquisition, and/or rehabilitation of affordable rental housing. Unlike many other affordable housing programs which provide an operating subsidy, the LIHTC program is a capital subsidy. Provided the property maintains compliance with program requirements, investors receive a dollar-for-dollar reduction in their federal tax liability each year over a period of 10 years. The LIHTC program has financed over 2.78 million affordable units between 1987 and 2014. The demand for low-income housing tax credits far exceeds the supply.

HOUSING FINANCE AGENCIES (HFAs)

Housing finance agencies or HFAs are state-chartered authorities established to help meet the affordable housing needs of the residents of their states. Although they vary widely in characteristics, such as their relationship to the state government, most HFAs are independent entities that operate under the direction of a board of directors appointed by each state's governor. They generally administer a wide range of affordable and community development programs including the Low-Income Housing Tax Credit (LIHTC) program.

- A list of state HFAs can be located on NCSHA's website at: **www.ncsha.org**.

In some areas, local governments may also be responsible for allocating and monitoring local tax credits in addition to the state HFA. As the administrator of the LIHTC program, the state HFA allocates the LIHTC and performs compliance activities throughout the entire compliance period. The HFA conducts tenant file reviews, unit inspections, and reports all noncompliance, even if corrected, to the IRS during the federal compliance period. In some states, state-specific requirements are identified in compliance manuals. If your state has one, it is essential that you obtain a current LIHTC compliance manual from your state HFA. Many state HFAs offer free or inexpensive training workshops that elaborate on state-specific compliance issues you need to understand and stay up-to-date on.

As the administrator of the LIHTC program for the IRS, the HFA is essentially the “eyes and ears” of the IRS as it relates to the project. The HFA relationship is one of the most important relationships your project has if the project has low-income housing tax credits.

HUD PROGRAMS

HOUSING AND URBAN DEVELOPMENT (HUD)

The Department of Housing and Urban Development (HUD) is charged by Congress as the department that administers subsidized housing activities. HUD Headquarters, located in Washington D.C., has the primary role of writing and establishing program regulations. Within HUD, program offices oversee the various assisted housing programs. The primary role of a program office is making payments and monitoring program compliance. HUD’s program offices include:

- The Office of Public and Indian Housing (PIH), which oversees public housing and the tenant-based and project-based housing choice voucher (HCV) programs.
- The Office of Community Planning and Development (CPD), which administers HOME.
- The Federal Housing Administration (FHA) Office of Multifamily Housing Programs, which administers the multifamily housing program.

Field offices are the local arm of HUD. Their primary role is the monitoring and guidance of program operations for PHAs who most often interact with their field offices rather than HUD Headquarters.

A listing of HUD's field offices may be found on HUD's website: **www.hud.gov/localoffices.cfm**

By itself, HUD cannot carry out all subsidized housing activities and must contract with entities that actually build, manage, and maintain the buildings and administer rent subsidy programs. There are two types of entities that contract with HUD to carry out the subsidized housing activities authorized by Congress:

- Public housing agencies (PHAs) in the public sector
- Owners in the private sector

PUBLIC HOUSING AUTHORITIES (PHAS)

PHAs are set up under state enabling legislation. They may be set up as a public corporation with a separate board of commissioners appointed by the mayor and/or city council (the traditional structure) or, with special legislation, they may be a department of a city, county, or state. Their jurisdiction could be city, county, multicounty or statewide, depending on the enabling legislation.

WHAT IS THE RENTAL ASSISTANCE DEMONSTRATION PROGRAM?

According to a 2011 HUD analysis, it would take about \$26 billion to repair public housing developments that provide shelter for over 2 million residents. Meanwhile the federal budget for housing assistance fell by over 6 percent or \$2.5 billion between 2010 and 2012. Given inflation, little financial improvement is expected in the near future. To deal with this crisis, HUD launched the rental assistance demonstration program, better known as RAD.

RAD is intended to assess the effectiveness of converting public housing, moderate rehabilitation properties, and units under the rent supplement and rental assistance payments programs to long-term, project-based Section 8 rental assistance. The program's objectives are to preserve and improve public and other assisted housing and promote operating efficiency by using a Section 8 project-based assistance model that has proven successful and effective for over 30 years. In other words, RAD aligns eligible properties more closely with other affordable housing programs. Through the use of this model, properties may be able to leverage private debt and equity to make capital repairs and residents will have increased housing choice.

Thus far, RAD has proved successful in raising private capital. As of October 2018, PHAs and their partners have converted 103,268 units and raised a total of \$12.6 billion to rehabilitate and in some cases replace affordable properties from the ground up with new construction. This is an average investment of \$121,747 per unit.

In order to participate in the RAD program, a PHA must submit an application to HUD. To be eligible, the PHA must not be classified as troubled under the Public Housing Assessment System (PHAS) or Section 8 Management Assessment Program (SEMAP). HUD may waive this requirement for troubled agencies that have demonstrated substantial progress under corrective action plans.

The submission of a RAD application is a significant change to the agency five-year plan. Therefore, a PHA must obtain input from the resident advisory board and take all other mandatory steps to meet agency plan amendment requirements. At the same time, a PHA must submit any required amendments to its administrative plan and admissions and continued occupancy policy.

The PHA can select one of two major sub-programs under RAD: project-based rental assistance (PBRA) or project-based vouchers (PBVs). HUD's Office of Multifamily Housing Programs administers the PBRA component, whereas HUD's Office of Public and Indian Housing administers the PBV component. As is true with many new programs, the details for RAD are evolving.

Important references for the RAD program include:

- Generally, public housing projects converting assistance under RAD are bound by the terms of the Notice in effect at the time of closing.
 - Notice PIH 2012-32 REV-3 is applicable to projects that close on or after January 19, 2017.
 - Notice PIH 2012-32 REV-2 is applicable to projects that closed prior to January 19, 2017.
- Notice PIH 2016-17, Rental Assistance Demonstration (RAD) Notice Regarding Fair Housing and Civil Rights Requirements and Relocation Requirements Applicable to RAD First Component - Public Housing Conversions.
 - This Notice applies to all projects that have applied for RAD conversion but have not yet converted as of November 10, 2016.
- Notice PIH 2014-17, Relocation Requirements under the RAD Program, Public Housing in the First Component.
 - This Notice may apply to projects that have converted to RAD prior to November 10, 2016, AND who have requested and received approval from HUD to be governed by this Notice. See PIH Notice 2016-17, Section 1, Paragraph 1.3 for applicability.
- Notice PIH 2016-17 RAD Notice Regarding Fair Housing and Civil Rights Requirements and Relocation Requirements Applicable to RAD First Component—Public Housing Conversions
 - Notice PIH 2019-23 and Notice H 2019-09 Rental Assistance Demonstration – Final Implementation, Revision 4. This revised notice provides program instructions for the Rental Assistance Demonstration (RAD), including eligibility and selection criteria
- RAD Conversion Guide for Public Housing Agencies
- RAD PBV Quick Reference Guide (June 2020)
- RAD Quick Reference Guide to Multifamily Housing Requirements (September 2020)
- RAD Welcome Guide for New Awardees RAD First Component (3/2015)
- RAD Resource Desk FAQs may be accessed at:
<http://www.radresource.net/search.cfm>

SECTION 8 PROJECT-BASED RENTAL ASSISTANCE PROGRAM (PBRA)

The Section 8 project-based rental assistance program falls under HUD's Office of Multifamily Housing. It was authorized by Congress in 1974 to provide rental subsidies for eligible resident families living in newly constructed ("New Construction"), rehabilitated ("Substantial Rehabilitation"), and existing rental and cooperative properties. HUD provides Section 8 rental assistance to certain mortgaged properties through the execution of a Housing Assistance Payment (HAP) contract. All rental assistance at these properties is project-based. This means subsidy is committed by HUD to specific assisted units for a fixed period of time based on the HAP contract and mortgage signed between the owner and HUD. This type of assistance differs from the tenant-based Section 8 program (referred to as the housing choice voucher (HCV) program) where subsidy is tied to the family and is portable. The HAP contract specifies how many units receive Section 8 assistance. HUD provides rental assistance to the owner/PHA for each subsidized unit which is the difference between the contract rent and the tenant's income-based rent. The Owner or Owner's Agent (O/A) bills HUD for the difference monthly. Most HAP contracts were initially signed for 20-40 years. At the end of the term, HAP contracts may be renewed, typically in one, five, or 20-year increments, or project owners may opt-out of the contracts.

In 1983 Congress repealed the statutory authority for the New Construction and Substantial Rehabilitation programs. As a result, no new projects may be completed or contracted under the program. However, current owners are able to renew their existing HAP contracts in specific increments through a contract renewal process as specified by HUD. The one exception to this is that new HAP contracts are being signed under HUD's Rental Assistance Demonstration (RAD) program. Under the first component of the RAD program, projects funded under the public housing program may convert assistance to long-term project-based Section 8 rental assistance contracts under the PBRA program.

RAD PBRA

Some rules for the standard PBRA program are different or do not apply to RAD PBRA. In particular, existing in-place tenants at the time of conversion from public housing to PBRA often follow different requirements. As such, owners of RAD PBRA properties should develop a system for identifying these households.

PERFORMANCE-BASED CONTRACT ADMINISTRATORS (PBCA) AND CONTRACT ADMINISTRATORS (CA)

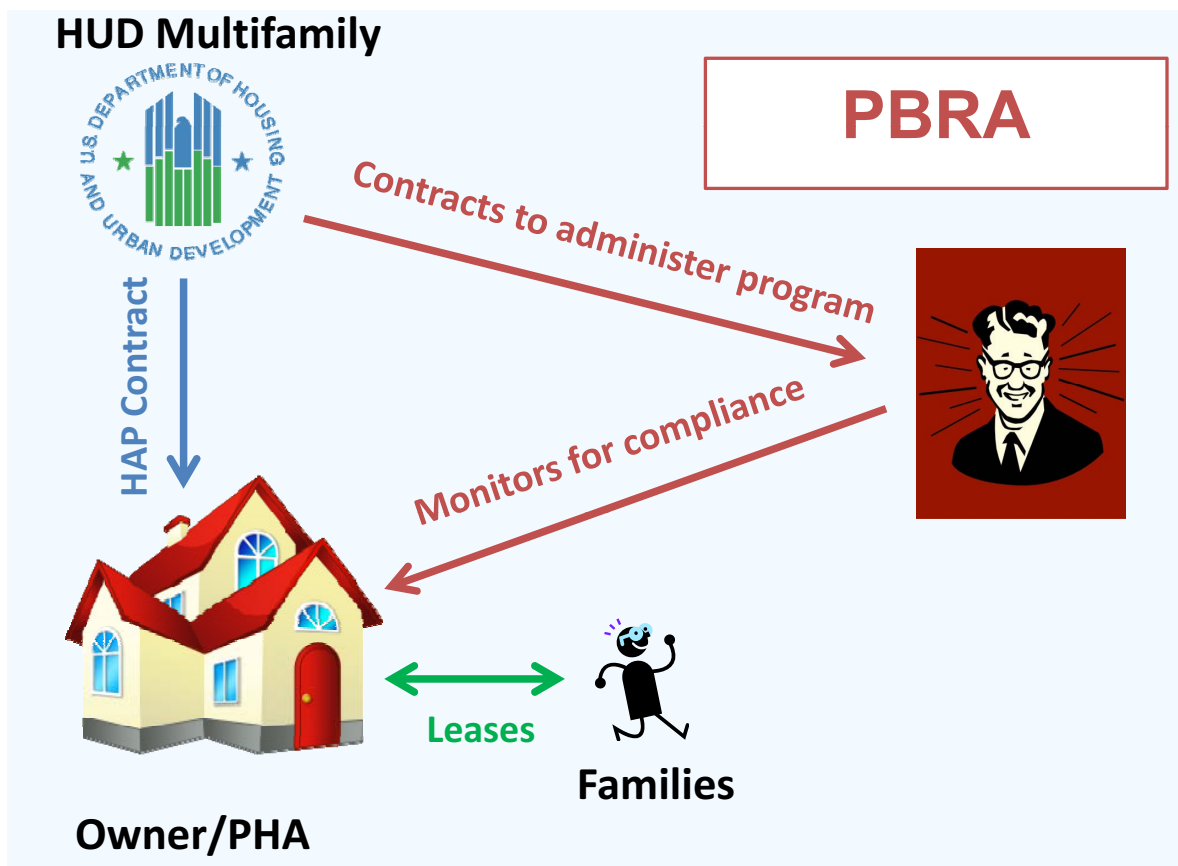
While HUD ultimately has the primary responsibility for contract administration for multifamily properties, Contract Administrators (CA) and Performance Based Contract Administrators (PBCAs) monitor program compliance through a contractual relationship with HUD. PBCAs/CAs are generally housing agencies that contract with HUD to oversee the multifamily programs. Entities that perform this function include:

- State financing agencies
- Local housing authorities
- Other agencies specializing in this type of work

There are two types of contract administrators that assist HUD in performing contract administration functions:

- **Traditional Contract Administrators (CAs):** These Contract Administrators have been used for over 30 years and have annual contributions contracts (ACCs) with HUD. Under their ACCs, traditional contract administrators are responsible for asset management functions in addition to HAP contract compliance and monitoring functions. They are paid a fee by the owner for their services.

- **Performance-Based Contract Administrators (PBCAs):**
The use of PBCAs began as an initiative in 2000. Under a performance-based ACC, the scope of responsibilities of a contract administrator is more limited than that of a traditional contract administrator. A PBCA's responsibilities focus on the day-to-day monitoring and servicing of Section 8 HAP contracts. PBCAs are generally required to administer contracts on a statewide basis and have strict performance and reporting requirements as outlined in their ACCs.



IMPORTANT REFERENCES

Code of Federal Regulations

- 24 CFR Part 880 (for new construction)
- 24 CFR Part 881 (for substantial rehabilitation)
- State housing finance agencies
 - 24 CFR Part 883
- Rural Development (Farmer's Home, 515)
 - 24 CFR Part 884

HUD Handbook 4350.3 REV-1, CHG-4 *Occupancy*

Requirements of Multifamily Housing Programs describes the occupancy requirements and procedures governing the PBRA program. The handbook also addresses the procedures by which households apply for housing and the rights and responsibilities of in-place tenants and property owners.

- Please note that not all references or requirements apply to all properties or all residents. Some properties are assisted under multiple programs. It should also be noted that some properties may be subject to federal, state, and local laws. These additional requirements may conflict with HUD regulatory requirements. Owner/agents (O/As) should ensure that when a property is new to their portfolio, all contracts, loan agreements, and associated documents are reviewed thoroughly to confirm the requirements of each individual property in the portfolio. If there is a conflict discovered, the O/A should seek guidance from the local HUD field office or the Contract Administrator/Performance Based Contract Administrator (CA/PBCA).
- The laws that govern HUD-assisted Multifamily Housing change frequently. HUD issues changes to handbooks from time to time, on an as needed basis. When these changes are made, HUD will issue the change accompanied by a transmittal letter. This transmittal will outline the exact changes that were made as well as state the effective date of the change(s). HUD uses their Multifamily List Serve to publish applicable changes to the program.

- Occasionally, HUD will make full revisions/replacements of entire handbooks. For example: the HUD Handbook 4350.3 is currently on Revision 1 (which occurred in 2003), Change 4 (which was effective August 2013). The current version of the handbook will have the most recent changes designated by before or after and “8/13” at the bottom of each affected page. In the body of the text, changes will be noted with *.

Example

4. *Household members must disclose and provide verification of their complete and accurate SSN except for those individuals who do not contend eligible immigration status, and tenants age 62 or older as of January 31, 2010, whose initial determination of eligibility was begun before January 31, 2010. See Paragraphs 3-9 and 3-31 for SSN disclosure and verification requirements.*

5. The owner must handle any information obtained to verify eligibility or income in accordance with the Privacy Act.

HUD Occupancy Handbook 5-52 8/13
Chapter 5: Determining Income & Calculating Rent

- The 4350.3 is organized by program function in the following sections:
 - Relevant citations
 - Key requirements and procedures
 - Examples
 - Figures
 - Exhibits
 - Appendices
 - Glossary
- It is approximately 900 pages long but is organized in chapter and topic. HUD understands that finding answers at times can be cumbersome. It is suggested that users and other handbook implement highlighting and tabbing of materials for easier use. HUD also has an electronic version of the handbook that can be searched as an entire book or by chapter. It is suggested that this link be kept in the favorites section of O/A search engines for ease of access.

Tenant Selection Plan

- The tenant selection plan (TSP) describes the owner's policies and procedures for determining applicant eligibility. The **Tenant Selection Plan (TSP)** must include all HUD-required topics and may include HUD recommended topics which are listed in Chapter 4 of the HUD Handbook 4350.3 REV-1.

HUD Handbook 4350.1, *Multifamily Asset Management and Project Servicing*. This handbook is the primary handbook used by Field Office Loan Management Multifamily staff in carrying out their asset management and loan servicing responsibilities in monitoring and assisting OAs to maintain projects in good physical and financial condition. Even though this is written for HUD staff, there are some important reference chapters and forms for Multifamily OAs:

- Chapter 4 – Reserve Fund for Replacements
- Chapter 6 – Project Monitoring
- Appendix 1– Form HUD-9834 Management Review
- Chapter 7 – Processing Budgeted Rent Increases
- Chapter 13 – Changes in Ownership - Transfer of Physical Assets
- Chapter 17 – Tax Credit and Subsidy layering
- Chapter 25 – Residual Receipts

HUD Handbook 4381.5, *The Management Agent Handbook*. This handbook provides guidance regarding most aspects of HUD’s relationship and interaction with owners and management agents of HUD-insured and HUD-assisted properties. It also includes guidance regarding the involvement of residents and their representative organizations in key decisions concerning their projects and the importance of supporting resident efforts to organize. The handbook is organized by chapter and topic as follows:

- Chapter 1: Introduction
- Chapter 2: Approval of Management Agents
- Chapter 3: Allowable Management Fees from Project Funds
- Chapter 4: Working with Residents
- Chapter 5: Encouraging Training and Employment Opportunities
- Chapter 6: Program Monitoring
- Chapter 7: Program Compliance
- Chapter 8: Service Coordinators
- Chapter 9: Neighborhood Networks

Section 8 Renewal Policy Guidebook. 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 several changes. As a living document, over time this guide is expected to contain nearly all the information related to the renewal of expiring Section 8 HAP contracts. The most recent version of the guide was effective July 28, 2017. It is organized in 16 chapters by topic.

This guide outlines all the options for renewal as well as which properties are eligible for each option, based in their original HAP contract. In addition, it covers rent comparability studies, the requirements for conducting/submitting, residual receipt accounts, and tenant issues. This guide will be the focus of this class.

RAD PBRA

For public housing conversion to PBRA under RAD, regulations governing the program are found at 24 CFR Part 880, as amended for RAD requirements in Notice PIH 2012-32, REV-2 and REV-3. Future changes to Part 880 apply to RAD PBRA as long as they are not provisions that have been stricken by HUD in PIH 2012-32, REV-2 and REV-3. Other important PBRA RAD references are the RAD Quick Reference Guide to Multifamily Housing Requirements (revised 10/15) and RAD Welcome Guide for New Awardees: RAD 1st Component (revised 3/13/15).

PROGRAM ASSESSMENT

Compliance with the terms and conditions of the HAP Contract is the responsibility of the project owner. Under contract with HUD, Contract Administrators (CA) or Performance Based Contract Administrators (PBCA) perform regular assessments of program compliance, called Management & Occupancy Reviews (MORs) using HUD Form 9834. The MOR must evaluate, analyze, and assess the owner's operating policies, procedures, and practices related to compliance with the HAP Contract. The PBCA/CA assigns a score based on the results of the MOR.

In addition to regular MORs, REAC inspectors also perform on-site inspections of the project to ensure compliance with UPCS.

PROPERTY INSPECTIONS

Projects receiving PBRA assistance are subject to inspections by HUD's Real Estate Assessment Center (REAC) utilizing HUD's Uniform Physical Condition Standards (UPCS). REAC inspections are performed by contractors who have been trained in UPCS. These inspections assure HUD that owners are fulfilling their obligations under the HAP contract and/or regulatory agreement, and that tenants are provided with decent, safe, sanitary housing that is in good repair.

Owners must conduct move-in and move-out inspections and document the condition of the assisted unit. In addition, owners perform unit inspections on at least an annual basis to determine whether the appliances and equipment in the unit are functioning properly, and to assess whether a component needs to be repaired or replaced. This is also an opportunity to determine any damage to the unit caused by the tenant's abuse or negligence, and if so, make the necessary repairs and bill the tenant for the cost of the repairs.

HUD Notice H 2011-20 provides owners of PBRA projects with important guidelines on bed bug control and prevention in multifamily housing. During a REAC inspection, REAC inspectors are required to ask the project owner if bedbugs have been observed in the project. If they have, REAC inspectors are required to notify the hub or program center director, who will send a letter to the project owner stating that within five days of the date of the letter, the owner must provide HUD with actions taken to date or actions that will be taken to eradicate the bugs.

PROJECT-BASED (PBV) PROGRAM

24 CFR 982.6
Notice PIH 2017-10

In 1998 Congress authorized a provision to the Section 8 voucher program allowing PHAs to project-base a portion of their budget authority for the HCV program and created the Project-Based Voucher (PBV) program, which is operated under HUD's Office of Public and Indian Housing (PIH). The PBV program is discretionary and allows PHAs that administer a tenant-based voucher program under an annual contributions contract (ACC) with HUD to attach a percentage of their authorized units to specific units or projects. PHAs may only operate a PBV program if doing so is consistent with the PHA's annual plan and the goal of deconcentrating poverty and expanding housing and economic opportunities. HUD does not allocate any additional funding to the PHA for standard PBV. Instead, funding for standard PBV comes from funds already obligated by HUD to a PHA under its HCV annual contributions contract (ACC).

24 CFR 983.52

Assistance in PBV units is project-based, not tenant-based like in the HCV program. The PHA attaches rental assistance through a PBV HAP contract with a project owner for specific housing units in properties that are determined to be decent, safe, and sanitary through the Housing Quality Standards (HQS) inspection process. PBV assistance may be attached to existing, newly constructed or rehabilitated housing. Properties must be on the same or contiguous parcels of land, but scattered sites are permissible for single-family properties with one to four units. Once a PHA selects units for project-based assistance, either under an agreement to enter into a HAP contract (agreement) or a HAP contract, the PHA is not required to reduce the number of PBV units if the amount of budget authority for the HCV program is subsequently reduced.

RAD PBV

Under the RAD PBV program, Congress authorized HUD to waive certain statutory and regulatory provisions governing the standard PBV program and to specify alternative requirements. The RAD PBV program's rules follow most of the standard PBV rules; however there are some major differences.

The most significant differences include:

- Exemption from the PBV proposal selection process
- Conversion units and their associated authorized units are exempt from the authorized units cap.
- Increase in the cap on the number of units from 25 to 50 percent for projects covered under Notice PIH 2012-32, REV-2 and no cap on the number of PBV units in a project for projects under Notice PIH 2012-32, REV-3.
- Contract terms of 15 to 20 years for public housing and moderate rehabilitation (first component) conversions, and mandatory contract renewals
- Different initial and ongoing rent setting procedures.

AUTHORIZED UNITS CAP IN STANDARD PBV

*FR Notice 1/18/17
Notice PIH 2017-21*

A PHA may allocate up to 20 percent of its housing choice voucher (HCV) program authorized units for the standard PBV program.

The following units do not count toward the 20 percent limitation:

- PBV units under the RAD program and HUD-VASH PBV set-aside;
- Units that were previously subject to certain federal rent restrictions or were receiving another type of long-term housing subsidy provided by HUD are not subject to the cap. In order to be excepted, the unit must meet the following conditions:
 - The unit must be covered under a PBV HAP contract that first became effective on or after 4/18/17; and
 - In the five years prior to the date the PHA either issued the RFP or selected the project, the unit either:
 - Received Public Housing Capital or Operating Funds, Project-Based Rental Assistance, Housing for Elderly (Section 202), Housing for Persons with Disabilities (section 811), Rent Supplement (Rent Supp), or Rental Assistance Program (RAP) or Flexible Subsidy Program (Section 201); or
 - The unit was subject to a rent restriction through a loan or insurance program as a result of Section 236, Section 221(d)(3) or (d)(4) BMIR, Housing for Elderly Persons (Section 202), or Housing for Persons with Disabilities (Section 811), or Flexible Subsidy Program (Section 201).
- Units that have previously received either PBV or HCV assistance are not covered under the exception.

- The PHA may project-base an additional 10 percent of its units above the 20 percent program limit, if the units:
 - Are specifically made available to house individuals and families that meet the definition of homeless under section 103 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11302) and contained in the Continuum of Care Interim Rule at 24 CFR 578.3 (See Notice PIH 2017-21).
 - Are specifically made available to house families that are comprised of or include a veteran.
 - Veteran means an individual who has served in the United States Armed Forces.
 - PHAs may further define veteran in the administrative plan (e.g., to include an individual with “other than dishonorable” discharge status.
 - Provide supportive housing to persons with disabilities or elderly persons as defined in 24 CFR 5.403.
 - See Notice PIH 2017-21 for details.
 - Are located in a census tract with a poverty rate of 20 percent or less, as determined in the most recent American Community Survey Five-Year Estimates.
 - The project would continue to qualify for the length of the contract regardless of subsequent changes in the poverty rate for that census tract.

RAD PBV

Under RAD there is no cap. RAD conversion units are exempt from the authorized units cap.

PROJECT SELECTION IN STANDARD PBV

The PHA may either select a project through a competitive process through:

- The issuance of a request for proposals (RFP) or
- A non-competitive process where a property was competitively selected through a governmental process within three years of the PBV proposal selection date and the earlier competitive selection did not involve consideration the project would receive PBV assistance.

The PHA's administrative plan describes the procedures for owner submission of PBV proposals and for the PHA selection of proposals.

No later than 14 calendar days prior to the date that the PHA intends to issue the RFP or makes the selection based on a previous competition or noncompetitively, the PHA must submit information to a HUD field office for review as outlined in FR Notice 1/18/17 and Notice PIH 2017-21.

Further, for certain public housing projects where the PHA has an ownership interest or control and is engaged in an initiative to improve, develop, or replace a public housing property or site, the PHA may select a project without following one of the two standard selection processes. See Notice PIH 2017-21 for more details.

24 CFR 983.52

A PHA may project-base HUD-VASH and FUP vouchers without additional HUD approval. For VASH, the PHA must consult with their partner Veterans Association Medical Center (VAMC) to ensure VAMC will continue to provide supportive services. For FUP, the PHA may limit to one category of FUP-eligible families.

RAD PBV

In accordance with Notice PIH 2017-21, the definition of control/ownership provided under the RAD notice (PIH 2012-32, REV-3) is used specifically to determine whether a PHA retains sufficient control over a project for purposes of HUD's requirement for ownership or control of the Covered Project by a public or non-profit entity for RAD conversions.

For purposes of determining whether the PHA will be required to use an independent entity to perform certain functions concerning the project, the above definition of PHA-owned which applies to the standard PBV program also applies to RAD PBV conversions.

This means that, under certain circumstances (such as when the PHA holds only a fee interest as ground lessor in the property in which the unit is situated), a project may meet the RAD definition of ownership or control, but may not be considered to be PHA-owned. In such a circumstance, the PHA would not be required to use an independent entity.

MAXIMUM ASSISTANCE

In general, as of April 18, 2017, the PHA may not provide PBV assistance for units in a project if the number of dwellings in the project that will receive PBV assistance is more than the greater of 25 units or 25 percent of the total number of units in the project. PHAs with HAP contracts executed prior to April 18, 2017 (pre-HOTMA) were subject to a 25 percent limitation. At any time, these HAP contracts may be amended, at the discretion of the PHA, to add additional PBV units in the same project where applying the new project cap definition results in more PBV units.

Example

Total units in the project: 60

Pre-HOTMA project cap (25 percent of units) = 15 units

Post-HOTMA project cap (greater of 25 units or 25 percent of units) = 25 units

RAD PBV

Under RAD PBV, HUD increased in the cap on the number of units from 25 to 50 percent for projects covered under Notice PIH 2012-32, REV-2.

There is no cap on the number of PBV units in a project for projects under Notice PIH 2012-32, REV-3

EXCEPTIONS TO THE PROJECT CAPS

Certain units are not counted against the 25 percent or 25-unit project cap. These are known as excepted units. The definition of excepted unit differs depending on when the HAP contract was executed.

Contracts executed prior to 4/18/17 follow “old” statutory PBV requirements for excepted units. Under the “old” statutory regulations, the project cap does not apply to units for:

- Elderly and/or disabled families
- Families receiving supportive services
 - The family must have at least one member receiving at least one qualifying supportive service
 - The PHA may not require participation in medical or disability-related services other than drug and alcohol treatment

Projects where the HAP contract was executed on or after 4/18/17 follow the new requirements that were implemented as a result of the HOTMA. Under the new HOTMA provisions, units that are not subject to the project cap include:

- Units that are exclusively for elderly families
- Units that are for households eligible for supportive services available to all families receiving PBV assistance in the project, although the family is not required to accept or receive such services.
 - The services do not need to be provided at the project, but must be reasonably available to families receiving PBV assistance at the project and designed to help families in the project achieve self-sufficiency or live in the community as independently as possible.

Units where the project is located in a census tract with a poverty rate of 20 percent or less, as determined in the most recent American Community Survey Five-Year estimates are subject to a higher 40 percent cap.

HOTMA eliminated the exception for disabled families and modified the supportive services component to make it optional. Projects under the “old” regulations continue to use the former exceptions to the cap, unless the PHA and owner mutually agree to change the HAP contract. The change can only be made if it would not jeopardize an assisted family’s eligibility for continued assistance. For example, the PHA and owner could agree to make supportive services that were previously mandatory at a project optional.

Example: Exceptions to Project Cap

ABC Project has a total of 60 units. Twenty of the 60 units are PBV units specifically for elderly families. The project cap for ABC Project is 25 units (greater of 25 units or 15 units). A total of 45 units may be project-based in ABC project (project cap of 25 plus the 20 excepted units).

RAD PBV

For RAD projects, since projects that closed on or after 1/19/17 fall under REV-3 of PIH 2012-32, and therefore may project-base 100 percent of units, excepted unit considerations do not apply. However, for projects that closed prior to 1/19/17, the PHA may project-base up to 50 percent cap or may have decided to include excepted units in order to exceed the cap. These excepted units would fall under “old” rules. However, since the “new” HOTMA rules allow the PHA and owner to mutually agree to make changes, these projects may subsequently adopt the “new” rules.

- RAD closing before 1/19/17
 - 50% cap on RAD PBV units in the project
 - Pre-HOTMA excepted unit categories apply (PHA and owner may mutually agree to adopt HOTMA provisions as of 4/18/17)
- RAD closing on or after 1/19/17
 - No cap on RAD PBV units in the project
 - Excepted units do not apply

RAD PBV

The HAP contract is executed after the financial closing for the property. Typically, the effective date of the contract is the first day of the month following the closing, whether or not all PBV units meet HQS.

The initial contract term is for 15 or 20 years. Upon expiration of the initial contract and each renewal contract, the administering voucher agency must offer, and the owner must accept, renewal of the contract subject to the terms and conditions applicable at the time of renewal and the availability of appropriations.

HUD released a new HAP contract for RAD PBV programs on 11/17/17 that incorporates the changes made by the RAD rider directly to the standard PBV HAP contract for new construction or rehabilitation. PHAs must use this version for any closing packages submitted on or after January 1, 2018 or for any closings that occur on or after February 1, 2018. It may be accessed online at the RAD Resource Desk.

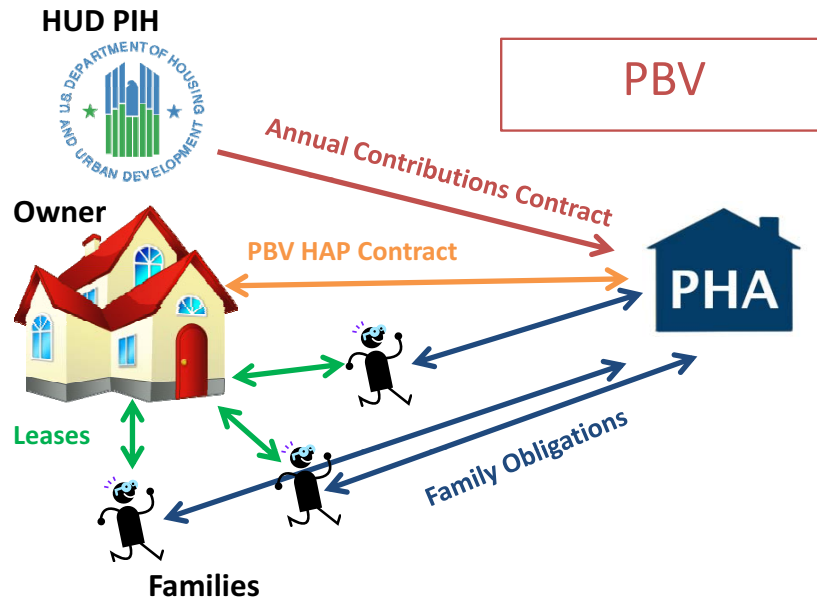
Example of Initial HAP Contract Term and Extensions During Initial Term

Revised Term	Term	Start Date	End Date	Comments
Initial Term	20 years	1/1/16	12/31/35	Because the HAP contract is still in the initial term, the initial term may be adjusted. It is now the maximum of 20 years.
Extension	20 years	1/1/36	12/31/55	PHA and owner also revised the length of the existing extension to the 20 year maximum.
Total Term	40 years	1/1/16	12/31/55	Contract is all post-HOTMA maximum term of 40 years. PHA may consider further extension, but not until 12/31/53.

Example of Initial HAP Contract Term and Extensions After Initial Term

Revised Term	Term	Start Date	End Date	Comments
Initial Term	10 years	1/1/05	12/31/14	No change - the initial term is already over and may not be extended.
Extension	20 years	1/1/15	12/31/34	After April 18, 2017, the PHA and owner have now increased the extension from 15 years to the maximum of 20 years beyond the end of the initial term.
Total Term	30 years	1/1/05	12/31/34	Contract has a maximum term of 30 years.
Future Extension	May not exceed 20 years	1/1/35	TBD	PHA may consider further extension no earlier than 12/31/32 (24 month requirement)

PBV OVERVIEW EXAMPLE



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INCOME LIMITS IN PBV

The income limits used in PBV are the same as the ones used for the public housing authority's (PHA's) Housing Choice Voucher (HCV) program. Generally, this is the 50 percent of the Area Median Income (AMI), or the very low-income limit. The income and program eligibility are established by the PHA, not the owner of the property. The owner will then determine property suitability according to their standards.

RENTS IN STANDARD PBV

The contract rent in the PBV program is the maximum that the owner is entitled to collect. The contract rent is established by the PHA and is listed on the HAP contract. Generally, rents are set based upon market comparables and may not exceed 110 percent of the published existing housing fair market rents.

Families living in PBV units pay an income-based rent which is called tenant rent and is the amount payable by the family to the owner. The PHA pays the difference between tenant rent and the contract rent to owner as a housing assistance payment (HAP). While the contract rents will be the same for units of the same size, the amount of HAP differs from unit to unit since families pay income-based rent. This information is reported by the PHA to PIC via the 50058, Section 11.

RAD PBV

HUD provides estimated initial rents for each public housing project based on current funding. Current funding includes the prior year's public housing subsidy, including operating funds, capital funds, replacement housing funds, and tenant rent. These rents provide a benchmark for determining whether the converted public housing funding is sufficient to support the proposed conversion.

IMPORTANT DOCUMENTS

The project-based voucher program is governed by the following parts of the Code of Federal Regulations (CFR):

- Part 1
- Part 5
- Part 8
- Part 100
- Part 108
- Part 146

PBV regulations are located principally in:

- 24 CFR Part 983 (PBV)
- 24 CFR Part 982 (HCV)
- 24 CFR Part 5

The 24 CFR Part 982 applies to the PBV program with the exception of the sections that are not applicable as described in 24 CFR Part 983.

The Housing Opportunity Through Modernization Act of 2016 (HOTMA) made significant changes to the PBV program which have not yet been included in the program regulations at 24 CFR 983. HOTMA provisions were implemented through a Federal Register Notice that was published January 18, 2017 (a technical correction notice was published July 14, 2017). On October 30, 2017 HUD published a PIH Notice containing implementation guidance for the January notice.

In addition to complying with the Code of Federal Regulations, to meet program compliance requirements agencies must be aware of a host of other references that govern the program. HUD writes and prints program handbooks, guidebooks, notices, memoranda, and forms.

The HUD 52530.c which is the **Tenancy Addendum for the Section 8 Project-based Voucher Program** has two parts. Part A has information on the tenant, contract unit, household, term of the lease, rent to owner, initial HAP payment amount, and utility responsibilities for the unit. Part B is attached to the tenant's lease and includes requirements for the family and the owner under the program.

The **Project-Based Voucher Housing Assistance Payment Contract (PBV-HAP Contract)** is the contract between the PHA and the owners of PHA-assisted PBV projects. The HAP contract outlines the owner's responsibilities and establishes the legal relationship between the owner and the PHA.

The **HUD Form 50058** is submitted via the PIH Inventory Management System (IMS-PIC) to report information on family composition, income and allowances for each family assisted under the program.

The following are considered optional references that provide safe harbor guidance to the PHA in the PBV program:

- Guidebooks
- Notices that have expired (unless canceled by a new mandatory reference)
- Recommendations from individual HUD staff

HUD Guidebook 7420.10g (The Housing Choice Voucher Guidebook) applies to the majority of the administration of the PBV program.

RAD PBV

The RAD PBV program follows references for the tenant-based housing choice voucher (HCV) program, the standard PBV program, and notices and regulations specific to RAD PBV. In addition to the references listed above, the RAD PBV program also uses the following references:

- Either REV-2 or REV-3 of Notice PIH 2012-32. Generally, public housing projects converting assistance under RAD are bound by the terms of the Notice in effect at the time of closing.
 - Notice PIH 2012-32 REV-3 is applicable to projects that close on or after January 19, 2017.
 - Notice PIH 2012-32 REV-2 is applicable to projects that closed prior to January 19, 2017.
- Notice PIH 2016-17, Rental Assistance Demonstration (RAD) Notice Regarding Fair Housing and Civil Rights Requirements and Relocation Requirements Applicable to RAD First Component - Public Housing Conversions.
 - This Notice applies to all projects that have applied for RAD conversion but had not yet converted as of November 10, 2016.
- Notice PIH 2014-17, Relocation Requirements under the RAD Program, Public Housing in the First Component.
 - This Notice may apply to projects that have converted to RAD prior to November 10, 2016, AND who have requested and received approval from HUD to be governed by this Notice. See PIH Notice 2016-17, Section 1, Paragraph 1.3 for applicability.
- RAD Conversion Guide for Public Housing Agencies
- RAD PBV Quick Reference Guide (10/2014)
- RAD Welcome Guide for New Awardees RAD First Component (3/2015)
- RAD Resource Desk FAQs may be accessed at: <http://www.radresource.net/search.cfm>

Other important documents for the RAD program include:

- RAD Conversion Commitment (RCC)
- The RAD Use Agreement (Form HUD-52625)
- Commitment to Enter into a HAP (CHAP)
- HAP Contract for Public Housing Conversions to RAD PBV (Form HUD 52530A and 52621).

PROGRAM ASSESSMENT

The Section Eight Management Assessment Program (SEMAP) measures the performance of PHAs that administer the Housing Choice Voucher (HCV) program in 14 areas. Since PBV is part of an agency's HCV program, some aspects of the PBV program will affect the PHA's SEMAP score, however, all 14 indicators do not apply. For example, indicator 10 Correct Tenant Rent Calculations includes PBV while indicator 12, Annual HQS Inspections, does not since PBV inspection requirements are different than those for an agency's tenant-based program. SEMAP is monitored both remotely through reporting to HUD databases and information from auditors. PHAs are assigned a performance rating annually of troubled, standard, or high and corrective action may be required by HUD depending on an agency's rating.

PROPERTY INSPECTIONS

PBV projects must be suitable for occupancy. Projects must be in decent, safe, and sanitary condition and in good repair, in accordance with HUD Housing Quality Standards (HQS) and any additional standards adopted by the PHA and described in the administrative plan. The HQS standards can be found at 24 CFR 982.401.

PUBLIC HOUSING

The United States Housing Act of 1937 is responsible for the birth of federal housing program initiatives known as public housing. The act was intended to provide financial assistance to states and cities for public works projects, slum clearance, and the development of affordable housing for low-income residents.

The Housing Act of 1965 established the availability of federal assistance, administered through local public agencies, to provide rehabilitation grants for home repairs and rehabilitation. This act also created the federal Department of Housing and Urban Development (HUD).

The Housing Act of 1969 created an operating subsidy for the public housing program for the first time. Until that time, public housing was a self-sustaining program.

In 1998, the Quality Housing and Work Responsibility Act (QHWRA), also known as the Public Housing Reform Act or Housing Act of 1998, was signed into law. Its purpose was to provide more private sector management guidelines to the public housing program and provide residents with greater choices. It also allowed PHAs more remedies to replace or revitalize severely distressed public housing developments. Highlights of the Reform Act include:

- The establishment of flat rents; the requirement for PHAs to develop five-year and annual plans
- Income targeting, a requirement that 40 percent of all new admissions in public housing during any given fiscal year be reserved for extremely low-income families
- Resident self-sufficiency incentives

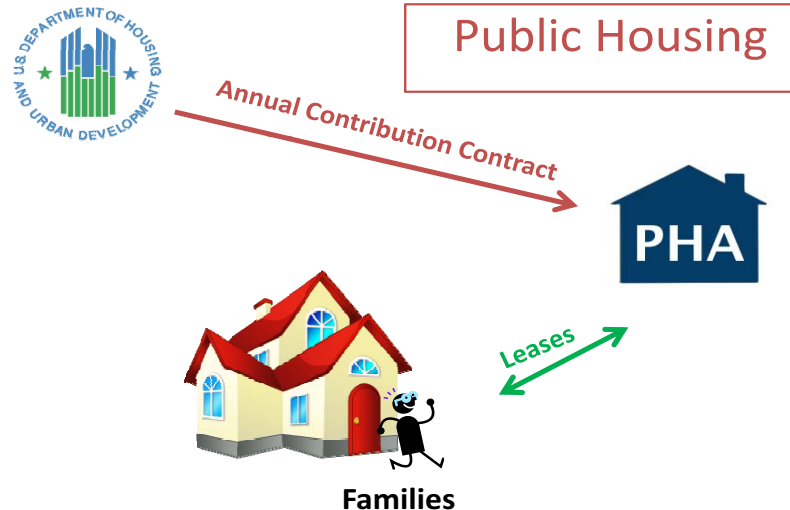
The HOPE VI program was developed as a result of recommendations by the National Commission on Severely Distressed Public Housing, which was charged with proposing a national action plan to eradicate severely distressed public housing. The commission recommended revitalization in three general areas: physical improvements, management improvements, and social and community services to address resident needs. HOPE VI Revitalization grants fund:

- Capital costs of major rehabilitation, new construction and other physical improvements
- Demolition of severely distressed public housing
- Acquisition of sites for off-site construction
- Community and supportive service programs for residents, including those relocated as a result of revitalization efforts

HOPE VI Main Street grants provide assistance to smaller communities in the development of affordable housing that is undertaken in connection with a Main Street revitalization effort.

From 1993-2011, there have been 260 HOPE VI revitalization grants awarded to housing authorities. Any PHA that had severely distressed public housing units in its inventory was eligible to apply.

HUD PIH



PUBLIC HOUSING AUTHORITIES (PHAs)

PHAs (housing agencies) are set up under state enabling legislation. They may be set up as a public corporation with a separate board of commissioners appointed by the mayor and/or city council (the traditional structure) or, with special legislation, they may be a department of a city, county, or state. Their jurisdiction could be city, county, multicounty or statewide, depending on the enabling legislation.

The PHA's primary role is to provide decent, safe, and sanitary housing to low-income families at an affordable rent. In the public housing program, since the project is owned and operated by the PHA, the PHA functions as both the owner and manager of the housing.

RENTS

In the public housing program, tenant rent is the amount payable each month by the family as rent to the PHA. Tenant rent is either income-based or flat.

Income-based rents are typically based on a percentage of the family's income minus any applicable utility allowance for the unit. Families generally pay 30 percent of their monthly adjusted income toward rent and utilities. Income-based rents fluctuate with changes in a family's income or allowances.

PHAs must also establish a flat rent for each unit. Flat rents are not based on a family's income. They are designed to avoid creating a disincentive for continued residence by families that are attempting to become economically self-sufficient.

Since most families pay an income-based rent, this does not generate enough money to operate and maintain the housing. Because Congress sets limitations on what the family may pay, the PHA cannot raise rents to obtain more money, like an owner in the private market might. Therefore, HUD executes an Annual Contributions Contract (ACC) with the PHA to provide an operating subsidy to the PHA to assist in covering operational expenses.

IMPORTANT DOCUMENTS

The public housing program is governed by the following parts under Title 24 of the Code of Federal Regulations (CFR):

- Part 1: Title VI of the Civil Rights Act of 1964
- Part 5: General Program Requirements
- Part 8: Nondiscrimination
- Parts 100 and 108: Fair Housing Act (Title VIII of the Civil Rights Act of 1968)
- Part 146: Age Discrimination Act of 1975
- Part 902: Public Housing Assessment System
- Part 903: Public Housing Agency Plans
- Part 945: Designated Housing
- Part 960: Admission and Occupancy Policies
- Part 965: PHA-Owned or Leased Projects - General Provisions
- Part 966: Lease and Grievance Procedures

PROGRAM ASSESSMENT

PIH-REAC assesses and scores PHAs under the Public Housing Assessment System (PHAS) which defines acceptable standards for key areas of public housing management. There are four indicators under which PHAs are scored, which are in turn scored under four performance designations. The PHA's performance designation then determines what level of scrutiny the agency receives. Troubled PHAs are referred to HUD which provides technical assistance. PHAs have two years to remove this troubled status. If they do not adequately respond, they risk being sent to the enforcement division of HUD, which may place them in judicial receivership, replace some or all staff, or issue criminal or civil sanctions.

PROPERTY INSPECTIONS

Public housing units are inspected in accordance with Uniform Physical Condition Standards (UPCS) and any higher PHA standards. UPCS does not supersede or preempt state and local building and maintenance codes. The PHA has the discretion to adopt alternative policies for individual unit inspections. The PHA conducts move-in, move-out, annual, and special inspections. Further, HUD-contracted inspectors inspect a statistically valid sample of all public housing units to determine the PHA's PHAS score under Indicator #1 (for more information, see Federal Register Notice 8/9/12).

HOME

The HOME program was authorized under Title II of the Cranston Gonzalez National Affordable Housing Act of 1990. The program has been amended several times by subsequent legislation. The HOME program provides formula grants to states and localities (known as participating jurisdictions) that use these grants to fund a wide range of activities that build, buy, and/or rehabilitate affordable housing for rent or homeownership, or provide direct rental assistance to low-income households. These funds are awarded to participating jurisdictions as formula grants annually by HUD. The HOME program provides the largest Federal block grant to states and local governments designed exclusively to create affordable housing for low-income families.

Participating jurisdictions (commonly referred to as PJs) may choose among a broad range of eligible activities for using the HOME funds. Uses include:

- Home purchase or rehabilitation financing assistance to eligible homeowners and new home buyers
- Building or rehabilitation of housing for rental housing or ownership
- Other reasonable and necessary expenses related to the development of non-luxury housing
- Tenant-based rental assistance contracts

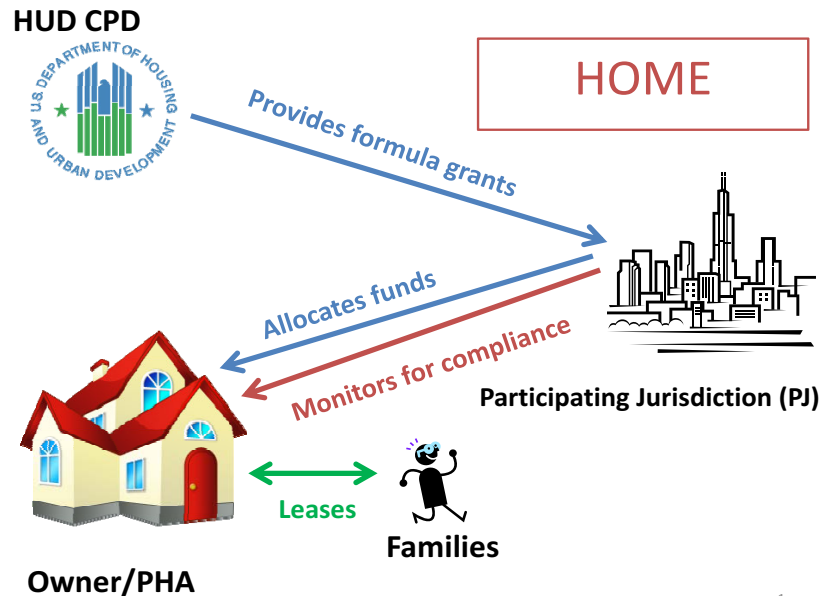
For the purposes of this class, we will focus on the HOME assisted rental housing eligible activity.

Each project that receives HOME funds must have a minimum number of rental units designated as HOME-assisted. This number is based on the share of HOME funds to the total eligible costs invested in the project. The PJ can, however, designate a higher number of HOME units.

PARTICIPATING JURISDICTIONS (PJs)

A participating jurisdiction, or PJ, is any state or local government that HUD has designated to administer a HOME program. HUD may designate a state or local government as a PJ if it meets the funding thresholds, notifies HUD that it intends to participate in the program, and obtains HUD approval for its consolidated plan. PJs must match the HOME funds they spend with their own 25 percent permanent contribution to affordable housing activities. They also must submit a Consolidated Plan to HUD that identifies the community's housing needs and describes in detail how HOME and other HUD block grant funds will be used to meet those needs. Participating jurisdictions can administer HOME funds themselves, or they can designate public agencies or nonprofit organizations to administer all or part of the HOME program on their behalf.

The PJ allocates HOME funds and conducts compliance activities throughout the project's affordability period.



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AFFORDABILITY PERIOD

24 CFR 92.252(e)

Projects that receive HOME funds must be kept affordable for a certain period of time. The project's affordability period should be clearly identified in the project's written agreement and is the length of time during which all HOME requirements apply to the HOME units at the property.

The affordability period can be 5, 10, 15, or 20 years, depending on the HOME investment and the type of HOME project.

During the affordability period, HOME units must comply with all HOME requirements, including rent and income limits, lease protections, affirmative marketing activities and property standards.

Activity	Average Per-Unit HOME \$	Minimum Affordability Period
Rehabilitation or Acquisition of Existing Housing	<\$15,000/unit	5 years
	\$15,000 - \$40,000/unit	10 years
	>\$40,000	15 years
Refinance if Rehabilitation Project	Any \$ Amount	15 years
New Construction or Acquisition of New Housing	Any \$ Amount	20 years

If your blended occupancy project has an allocation of LIHTCs, do not assume that the HOME affordability period is the same period as the LIHTC federal compliance period. Check the governing documents.

RENT LIMITS

24 CFR 92.252(d)

On an annual basis, HUD publishes two HOME rent limits: High HOME rent limits and Low HOME rent limits. Based on these numbers, the PJ must establish maximum monthly rents and utility allowances for each HOME-assisted unit in the project. The maximum rent for each unit cannot exceed the established HOME rent limits and must include a utility allowance for any tenant-paid utilities. In other words, the HUD-published HOME rent limits are gross rent limits.

High HOME rents are the maximum rents that can be charged to low-income household. These are based on the lesser of:

- The Section 8 Fair Market rents for existing housing; or
- The HUD-issued High HOME rent - 80 percent of AMI
 - 30 percent of the adjusted income of a family whose annual income equals 65 percent of median income

The PJ tells the owner what High HOME rents apply to the property. Most PJs based the High HOME rent on 80 percent of AMI.

24 CFR 92.252(b)

Low HOME rents are the maximum that can be charged to Low HOME rent units that are occupied by very low-income households. Low HOME rents are based on one of the following:

- 30 percent of the tenant's monthly adjusted income, or
- The HUD-issued Low HOME rent – 50 percent of AMI
 - 30 percent of the annual income of a family whose income equals 50 percent of median income

If the property has a federal or state project-based rental subsidy and the tenant pays no more than 30 percent of their adjusted income toward rent, the maximum rent may be the rent allowable under the project-based subsidy program. This will be discussed in a later chapter.

24 CFR 92.252(f)

The PJ tells the owner what Low HOME rents apply to the property. Most PJs base Low HOME rents on the HUD-published Low HOME rent. It is uncommon for PJs to base rent on 30 percent of a tenant's income.

The project owner must continuously maintain this mix of High and Low HOME Rent units for the entire affordability period. The unit mix is specified by the PJ.

IMPORTANT DOCUMENTS

The HOME program is authorized under Title II of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12701 et seq.). HOME regulations are located at 24 CFR Part 92. On July 24, 2013 HUD published a Final Rule that significantly amended the HOME program regulations found in Part 92. The HOME program is also governed by the following parts of the Code of Federal Regulations (CFR):

- Part 1: Title VI of the Civil Rights Act of 1964
- Part 5: General Program Requirements
- Part 8: Nondiscrimination
- Parts 100 and 108: Fair Housing Act (Title VIII of the Civil Rights Act of 1968)
- Part 146: Age Discrimination Act of 1975

There are also several key documents that govern a HOME project's day-to-day operation of the HOME program.

- The legally binding agreement executed between a Participating Jurisdiction (PJ) and a project owner is called the **Written Agreement**. The written agreement must be executed before HOME funds can be provided to a project. The PJ is responsible for ensuring that all written agreements include the required HOME provisions found at 24 CFR 92.504. The written agreement between the PJ and the owner specifies the number of HOME-assisted units that must be maintained throughout the affordability period, which units are designated as High HOME and which are designated as Low HOME, and whether HOME units are fixed or floating.
- Additional governing documents include a **Deed Restriction/Regulatory Agreements** or comparable mechanism that run with the land and remain in effect even if the property is sold to a new owner or the HOME loan is repaid to the PJ.
- The **HOME Loan Agreement** specifies the terms of the financing provided and formalizes the requirement to repay the HOME subsidy according to the terms of the financial commitment made by the PJ.
- Compliance in **HOME Rental Projects: A Guide for Property Owners**, located at www.HUDexchange.info, is targeted to owners and property managers who must understand and comply with HOME regulations.
- The **Technical Guide for Determining Income and Allowances for the HOME Program** was published in January 2005 and provides the most current information on calculating income and assets in the HOME program.
- **Building HOME: A HOME Program Primer—Training Manual and Slides** is available on CPD's website. The information provided has not been updated for the 2013 HOME Final Rule.
- Many PJs also have a compliance manual for HOME rental units. Check with your PJ to see if they provide a manual.

PROGRAM ASSESSMENT

24 CFR 92.504(d)(2)

Compliance with the HOME income limits, HOME rent limits, property standards, tenant selection, tenant income verification and recertification, affirmative marketing, tenant leases and protections, and unit mix is the responsibility of the owner. The Participating Jurisdiction (PJ) who allocated the HOME funds to the project is responsible for program assessment. The PJ must monitor every rental project in its portfolio during the period of affordability to determine if HOME-assisted properties comply with HOME rent and occupancy requirements. In addition, HUD now requires that during the period of affordability at least annually the PJ must examine the financial condition of HOME-assisted rental projects with 10 units or more to determine the continued financial viability of the housing and must take actions to correct problems, to the extent feasible.

PROPERTY INSPECTIONS

HOME projects must meet all applicable state and local code requirements. In the absence of state and local code, the project may comply with either HQS (for projects committed on or before January 24, 2015 or UPCS for projects committed on or after January 24, 2015). PJ procedures must address inspector qualifications, applicable standards and the forms and checklists to be used for inspections. Annually, owners must certify that units are suitable for occupancy and in compliance with both state and local codes as well as HOME standards.

The minimum property standards requirements for HOME-assisted units varies depending on the HOME activity. There are separate requirements for:

- New construction
- Rehabilitation
- Acquisition of standard housing
- TBRA
- Manufactured housing

NEW CONSTRUCTION

24 CFR 92.251(a)

New construction projects are required to meet State and local codes, ordinances, and zoning requirements. In the absence of applicable State or local codes, new construction projects must meet the International Code Council's (ICC's) International Residential Code or International Building Code, whichever is applicable to the housing being developed.

Accessibility requirements in accordance with Section 504, the ADA, and the Fair Housing Act apply to new construction.

Where relevant, the housing must be constructed to mitigate the impact of potential disasters (e.g., earthquakes, hurricanes, flooding, and wildfires), in accordance with State and local codes, ordinances, or other State and local requirements, or such other requirements as HUD may establish.

The PJs standards must ensure that once rehabilitated, the project will be decent, safe, sanitary, and in good repair according to HUD's Uniform Physical Conditions Standards (UPCS).

TBRA (TENANT-BASED RENTAL ASSISTANCE)

24 CFR 92.251(d)

Housing occupied by tenants receiving HOME tenant-based rental assistance must meet HUD's Housing Quality Standards (HQS).

INSPECTION FREQUENCY

24 CFR 92.504(d)

The property owner must annually certify to the PJ that each HOME-assisted unit is suitable for occupancy according to State and local health, safety, and other applicable codes, ordinances, and requirements including the PJs written inspection standards. It is highly recommended that regular inspections be conducted annually throughout the project's affordability period.

The PJ is required to conduct regular, onsite inspections throughout the project's affordability period in accordance with PJs inspection procedures. On-site inspections must occur within 12 months after project completion. Onsite inspections must occur once every three years thereafter.

If the PJ identifies any conditions that do not meet ongoing property standards during the inspection, they must follow up. The PJ may establish a list of non-hazardous deficiencies for which verification of correction may happen through third-party documentation rather than reinspection. For all other deficiencies, a follow-up inspection is required within 12 months. Any health and safety deficiencies must be corrected immediately.

For projects with one to four HOME units, the PJ must inspect all units. For projects with five or more HOME units, a statistically valid sample must be inspected. A follow up inspection must be conducted within 12 months if deficiencies were identified.

HOUSING CHOICE VOUCHER

The housing choice voucher program is the federal government's major program for assisting very low-income families, the elderly, and the disabled to afford decent, safe, and sanitary housing in the private market. Since housing assistance is provided on behalf of the family or individual, participants are able to find their own housing, including single-family homes, townhouses and apartments.

The participant is free to choose any housing that meets the requirements of the program and is not limited to units located in subsidized housing projects.

Housing choice vouchers are administered locally by public housing agencies (PHAs). The PHAs receive federal funds from the U.S. Department of Housing and Urban Development (HUD) to administer the voucher program.

A family that is issued a housing voucher is responsible for finding a suitable housing unit of the family's choice where the owner agrees to rent under the program. This unit may include the family's present residence. Rental units must meet minimum standards of health and safety, as determined by the PHA.

A housing subsidy is paid to the landlord directly by the PHA on behalf of the participating family. The family then pays the difference between the actual rent charged by the landlord and the amount subsidized by the program. Under certain circumstances, if authorized by the PHA, a family may use its voucher to purchase a modest home.

RENTS

Negotiating Rent to Owner

CFR 982.506

The owner and the family negotiate the rent to owner. At the family's request the PHA must help the family negotiate the rent to owner.

CFR 982.509

OTHER FEES AND CHARGES

CFR 982.510(a)

The cost and value of meals and supportive services may not be included in the calculation of rent to owner.

CFR 982.510(b)

The lease may not require the family members to pay charges for meals and supportive services, and non-payment of such charges is not grounds for termination of tenancy.

CFR 982.510(c)

The owner may not charge the tenant extra amounts for items customarily included in rent in the locality, or provided at no additional cost to unsubsidized tenants in the premises.

RENT CONTROLLED UNITS

In addition to the rent reasonableness limits set by HUD, the amount of rent to owner may also be subject to rent control limits under State or local law.

LIHTC UNITS WITH HCV

FR Notice 6/25/14

In low-income housing tax credit (LIHTC) units, if the rent requested by the owner exceeds the rents for non-voucher families in the project, the PHA must perform a rent reasonable determination. In addition, the PHA must cap the rent at the payment standard for that bedroom size. In other words, in these projects rent to owner is the lesser of the reasonable rent or the PHA's payment standard.

- For example, if the LIHTC rent is \$600 for comparable, unassisted units in the project, the PHA determined reasonable rent is \$625 and the PHA payment standard for that bedroom size is \$650, the rent would be \$625 since that is the lesser of the reasonable rent or the payment standard.

If the rent to owner does not exceed the rent for other comparable, unassisted units in the project, a rent reasonableness determination is not required; however, the PHA may elect to conduct an analysis anyway. Further, there is no payment standard limitation on these units.

- For example, if the LIHTC rent is \$600 for comparable, unassisted units in the project, the owner request a rent of \$600, and the PHA payment standard for that bedroom size is \$550, the rent would be \$600 since the payment standard limitation does not apply.

HOME UNITS WITH HCV

A rent reasonableness determination is not required for HOME units provided that the rent to owner does not exceed the rent for other LIHTC or HOME units in the project that are not occupied by families with HCV assistance.

Notice PIH 96-63

UNITS LEASED IN HOME-ASSISTED PROJECTS

The HOME program provides grants to states and localities (participating jurisdictions) that use these grants to fund a wide range of activities that build, buy and/or rehabilitate affordable housing for rent or homeownership, or provide direct rental assistance to low-income households.

CFR 92.252(a)

There is no regulatory prohibition against HCV families leasing units in HOME-assisted projects

- The maximum allowable rent for a HCV family in a HOME-assisted unit cannot exceed the applicable HUD-published HOME rent limit (Low/High)

CFR 92.252(b)(2)

The HOME program requires that the rents charged for HOME-assisted units be affordable to low and very low income households. There are two HOME rent limits:

- **High HOME Rents** are the maximum rents that can be charged to low-income households. These are based on the lesser of:
 - The Section 8 Fair Market Rents (FMRs) for existing housing; or
 - Thirty percent of the adjusted income of a family whose annual income equals 65 percent of median income.

OTHER SUBSIDIZED PROJECTS

CFR 982.521

The rent to owner for a program and tenancy in an insured or noninsured Section 236 project, a Section 515 project of the Rural Development Administration, a Section 202 or a Section 221(d)(3) below market interest rate (BMIR) project is the basic rental charge minus any utility allowance for tenant-paid utilities.

PROGRAM ASSESSMENT

The Section Eight Management Assessment Program (SEMAP) measures the performance of PHAs that administer the Housing Choice Voucher (HCV) program in 14 areas. SEMAP is monitored both remotely through reporting to HUD databases and information from auditors. PHAs are assigned a performance rating annually of troubled, standard, or high and corrective action may be required by HUD depending on an agency's rating.

PROPERTY INSPECTIONS

CFR 982.4

The housing quality standards (HQS) are minimum nationwide standards applying to all units assisted under the housing choice voucher program.

CFR 982.305

Before the beginning of the initial term of the lease for a unit, the PHA must have completed an inspection of the unit and determined that the unit satisfies HQS, unless the PHA has adopted an alternative policy.

The PHA must inspect the unit, determine whether the unit satisfies HQS, and notify the family and owner of the determination:

- In the case of a PHA with up to 1250 budgeted units in its tenant-based program, within fifteen days after the family and the owner submit a request for approval of the tenancy.

- In the case of a PHA with more than 1250 budgeted units in its tenant-based program, within a “reasonable time” after the family submits a request for approval of the tenancy.
 - To the extent practicable, inspection and determination must be completed within fifteen days after the family and the owner submit a request for approval of the tenancy.
- The fifteen day clock is suspended during any period the unit is not available for inspection.

Failed items must be verified as corrected before the beginning of the initial lease term and prior to HAP contract execution.

OPTIONAL INSPECTION CHANGES UNDER HOTMA

Under the Housing Opportunity through Modernization Act of 2016 (HOTMA), PHAs have options regarding approving tenancy prior to passing HQS. These involve approving tenancy if HQS reveals only non-life-threatening fails, and for approval prior to HQS inspection if the unit passed an alternative type inspection within the past 24 months. Details of these options can be found under Continued Learning at the end of this chapter.

IMPORTANT DOCUMENTS

Code of Federal Regulations (CFR)

- Part 1: Nondiscrimination in Federally Assisted Programs
- Part 5: General HUD Program Requirements
- Part 8: Nondiscrimination Based on Handicap
- Part 35: Lead-Based Paint
- Part 100: Fair Housing Act
- Part 146: Nondiscrimination on the Basis of Age
- Part 908: Electronic Transmission
- Part 982: Section 8 Tenant-Based Assistance: Housing Choice Voucher Program
- Part 985: Section 8 Management Assessment Program (SEMAP)

Notices

- Have a shelf life

HUD forms and instructions

PHA Administrative Plan

The **HUD Form 50058** is submitted via the PIH Inventory Management System (IMS-PIC) to report information on family composition, income and allowances for each family assisted under the program.

Housing Choice Voucher Guidebook

- If instructions are supported by federal law, CFR, notices or forms, then the instructions are mandatory.
- If not supported by federal law, CFR, notices or forms, then instructions are discretionary.
- Expired guidance may be used if not replaced by a mandated requirement.

CHAPTER 2 POST TEST

1. HOME can be combined with: (check all that apply)
 - a. LIHTC
 - b. PBRA
 - c. PBV
 - d. PH
2. The state allocation agency is responsible for compliance monitoring in which program?
 - a. LIHTC
 - b. PBRA
 - c. PBV
 - d. PH
3. Under the Rental Assistance Demonstration program, PHA's and owners can choose to convert their properties to:
 - a. PBRA or PBV
 - b. POME
 - c. LIHTC or PBRA
 - d. HCV or Pr PBV
4. The PBRA program falls under which arm of HUD?
 - a. Public and Indian Housing
 - b. Multifamily Housing
 - c. Community Planning and Development
 - d. State Allocation Agency
5. A HAP contract is used in which of the following programs?
 - a. PBV, PBRA, and HOME
 - b. PBV and PBRA
 - c. LIHTC, HOME, PBV, and PBRA
 - d. LIHTC and HOME

6. In the PBRA program, a Management and Occupancy Review (MOR) is used to:
 - a. Monitor resident compliance with the lease
 - b. Set contract rents
 - c. Assess owner compliance
 - d. Renew HAP contracts
7. In PBV, income limits used are the same as the PHA's HCV program. Generally, this is ____% of the AMI.:
 - a. 50%
 - b. 80%
 - c. 30%
 - d. 40%
8. In the PBV program, a PHA may allocate up to ____% of its housing choice voucher program authorized units for the standard PBV program.
 - a. 10
 - b. 15
 - c. 20
 - d. 30
9. In PBV, projects must be in decent, safe, and sanitary condition using the Housing Quality Standards (HQS).
 - a. True
 - b. False
10. Which of the following is true regarding rents in the public housing program?
 - a. They are always based on 30% of a family's monthly adjusted income
 - b. They are either income-based or flat
 - c. They are always based on 10% of a family's monthly income
 - d. They are always income-based

11. In public housing, units are inspected in accordance with what standard?
 - a. HQS
 - b. UPCS
 - c. State and local code
12. In a combined funding project with LIHTC and HOME, the affordability period is always the same.
 - a. True
 - b. False
13. Rents in the HCV are negotiated between the family and the owner.
 - a. True
 - b. False

Notes

CHAPTER 3 Overview of the Renewal Process

RENEWAL OPTIONS

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

- **Option One:** Mark-Up-To-Market (MUTM)
- **Option Two:** Renewal of contracts with existing rents adjusted by operating cost adjustment factor (OCAF) or based on a budget
 - When rents under the expiring contract are at or below market; or
 - Where the owner of a project has a contract that contains language allowing a discretionary comparability adjustment within the five-year term and the project is exempt from Recap restructuring with above market rent requests to have the project's rents reduced to market
- **Option Three:** 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:** Mod rehab projects are eligible for referral to Recap
- **Option Four:** Renewal of contracts for exception projects
 - These projects are exempt from debt restructuring or are not "eligible multifamily housing projects"
- **Option Five:** Renewal of contracts for:
 - Portfolio reengineering projects with a use agreement; or
 - Preservation projects that are either Emergency Low-Income Housing and Preservation Act (ELIHPA) or Low-Income Housing Preservation and Resident Homeownership Act (LIHPRHA) projects
- **Option Six:** Opt out of the Section 8 contract

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's eligibility is determined at the time of termination of the HAP contract.

TYPES OF RENEWALS

When requesting a renewal, an owner must submit the Contract Renewal Request Form and any required supporting documentation to the HUD Account Executive (AE) or the Contract Administrator (CA) for processing. Ensure that you check with each individual office, as the requirements and specific documents can vary from state to state and office to office.

INITIAL RENEWAL

Generally, the first renewal of a project's Section 8 contract or stage processed under MAHRA's rules is the initial renewal of the contract. To date, most of the current Section 8 contracts have already been through this process, but there are still some properties that will not renew under MAHRA as late as 2029.

SUBSEQUENT RENEWAL

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

RENEWAL OPTIONS

Generally, an owner may renew the contract under any option in which the project is eligible at the time of renewal.

The exceptions to this general rule are:

1. Projects on the watch list. These projects can only be renewed under Option Three, for three consecutive one-year terms. At the end of the third year, if the projects can demonstrate physical, financial and managerial improvement, they can then renew under any other option they are eligible for.

2. Projects with contracts that are renewed under Section 515 of MAHRA must renew under Option Three during the life of the use agreement.
3. Owners of preservation and demo projects must renew under Option Five during the life of their use agreement, except that preservation projects may request Mark-Up-To-Market any time prior to “sunset” if the project is being transferred or sold.

EARLY TERMINATION

NON-MAHRA CONTRACTS

HUD will permit the early termination of a non-MAHRA contract (that has not yet gone through MAHRA) for an owner wanting to enter onto a MAHRA contract only if the owner:

- Renews for 20 years under Options One, Two, Three, or Four and
- Agrees to:
 - a. The Preservation Exhibit (Notice H 2013-17) agreeing to adopt the remaining term onto the end of the 20-year renewal term

Example: The owner chooses to early terminate a contract with two years and seven months left on the initial contract term. If HUD approved, the owners would sign a 20-year renewal contract and a preservation exhibit adding an additional three years (round to the nearest six months for timeframes not equal to a full year) for a total renewal term of 23 years.
 - b. Sign the HUD-93184, Rider to Original Section 8 Housing Assistance Payment Contract

MAHRA CONTRACTS

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

- A for-profit owner or a housing authority wishes to renew the contract under Option One, MUTM.
- Any owner wishes to renew the contract under Option Two and sign a 20-year contract.
- Under Option Three:
 - An owner has completed processing before the expiration date of the interim contract
 - An owner has a Watch List contract that meets one of the requirements listed in the renewal guide (Section 5-6, B.4).
 - The contract was previously renewed as a Lite contract and the owner wishes to complete a full MTM debt restructuring.
 - An owner requests Referral to Recap based on an RCS that demonstrates current rents are above market.
 - An owner wishes to refinance the project and renew for 20 years or the remaining term of the Use Agreement, whichever is less.
- An owner under Option Four who wishes to sign a new 20-year contract if the project is still eligible for renewal under Option Four at the time of the request for subsequent renewal.
- An owner under Option Five who wishes to renew the contract under Option Five using a 20-year contract.
- To combine multiple contracts or stages.

Note: An owner with a MUTM contract that has fulfilled the five-year term, can terminate the contract early and renew under any option for which they are eligible for 20 years. If the five-year term has not been fulfilled, the owner can still early terminate only if they agree to renew under MUTM for 20 years, assuming the project is eligible for MUTM when the original contract terminated.

EARLY TERMINATION PROCESS

Regardless of whether the contract is pre- or post-MAHRA, to request early termination of the contract, the owner must:

- Request the termination in writing and submit to the Account Executive (AE) or Contract Administrator (CA)
- Agree to the preservation exhibit
- Understand that an owner is not allowed to early terminate a contract to opt out of the Section 8 program

RENT COMPARABILITY STUDIES

Certain renewal options under MAHRA require a Rent Comparability Study (RCS).

An RCS is prepared following the instructions in Chapter 9 of the renewal guide. This chapter of the renewal guide was updated in March 2023 to include new alternatives to the RCS for Option One and Two renewals (to be discussed in a later chapter).

The RCS:

- Is valid for five years for the date the owner's appraiser signed From HUD-92273-S8.
- Must include all of the Section 8 unit types in the project
- Establishes the market rent for renewal of expiring contracts

Upon receipt of the RCS, the AE or CA, along with a qualified appraiser, will review the RCS based on the instructions in Chapter 9 of the renewal guide to determine if the conclusions are reasonable.

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

Contracts eligible for auto-OCAF will have the RCS adjusted automatically to reflect the increased operating costs per the OCAF published by HUD annually.

HUD may require one additional RCS during the five-year period of an Option One or Two contract renewal, if they believe the OCAF-adjusted rent is not an accurate reflection of the market.

- If the owner is seeking to early terminate a contract and renew under the same or different option or renew for longer than a five -year period, a new RCS is required. This is true even if the previous RCS is less than five years old.
- **Note:** An RCS is not required for Option Four unless the project is renewing using the Section 6-1, B.2 criteria (budget-based option discussed in a later chapter)
- An RCS is not required at subsequent renewal of a full MTM during the term of the use agreement.
- An RCS is not required at subsequent renewal of demo projects unless the POA specifically requires.
- Under Option Four, if the owner requests an annual budget-based rent adjustment, the RCS will be required every fifth year.

The cost of the RCS is an eligible project expense when:

- The owner submits an RCS because HUD requested it
- It is required by a renewal option

The cost of any unsolicited RCS is not an eligible project expense.

CONTRACTS

Copies of MAHRA renewal contracts are found on HUDCLIPS:

- **Option One**—Mark-Up-To-Market, form HUD-9638
- **Option Two**—Basic Renewal, One-Year form HUD-9636, or
 - Basic Renewal, Multi-Year form HUD-9637
- **Option Three**—Basic Renewal, One-Year form HUD-9636, or
 - Basic Renewal, Multi-Year form HUD-9637
 - Interim (full) Mark-Up-To-Market form HUD-9640
 - Interim (lite) Mark-Up-To-Market form HUD- 9641
 - Previous MOD Rehab projects form HUD-9644
 - Full Mark-to-Market form HUD-9642
 - Watch List Renewal Contract form HUD-9643

- **Option Four**—Basic Renewal, One-Year form HUD-9636, or
 - Basic Renewal, Multi-Year form HUD-9637
- **Option Five**—Basic Renewal, One-Year form HUD-9636, or
 - Basic Renewal, Multi-Year form HUD-9637
 - Preservation Renewal Contract form HUD-9639

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

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, HUD approval is not required when the owner requests a renewal for a multiyear term.

The maximum term of the contract is 20 years. A CA can renew a Section 8 contract for up to five years. If an owner wishes to renew for a longer term, the CA must refer the contract to the AE for final approval.

The minimum term for a contract is one year, except in the case of an MUTM contract, which requires a minimum of five years.

In cases where the Use Agreement mandates a renewal option, the maximum term must be conterminous with the Use Agreement.

- Example: if six years remain on a use agreement, the maximum term of the renewal contract cannot exceed six years. However, owners can request a Use Agreement to be extended to facilitate preservation.

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 subject to appropriations.

The effective date of the renewal contract is the day after the expiring contract expires.

For renewal “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.

For renewals in conjunction with a full debt service 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.

The AE/CA must ensure that the expiration date of all renewal contracts is the last day of the month.

The term of the multiyear contract does not need to consist of full years. There may be an occasion where the last rental adjustment period is less than 12 months.

- Example: A project has an existing use agreement with a remaining life of two years and seven months, and the last rental adjustment is for the remaining term of the contract, seven months. In this case the owner would receive a prorated OCAF adjustment for the seven months.

SHORT TERM RENEWAL

Short term contract renewals are for less than one year.

Short-term renewals are used:

1. To protect residents.
 - Example: In the case of opt-out, an owner must give residents a one-year notice of intent to not renew. If the owner fails to provide a full one-year notice to the residents, the contract can be extended, and the owner can enter into a short-term contract, not to exceed one year, at the current rents (using the Basic renewal contract form HUD-9636).
2. To extend the contract for those referred to Recap for restructuring, but that have not yet closed under the plan after a year. This must be done only with the approval from Recap.
3. To align contracts with the project's fiscal year.
4. To align contracts with the 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.

It is at the discretion of the AE/CA when determining whether to grant a short-term renewal.

Short term renewals are done in months, not days. The AE/CA must document the need for the short-term renewal in the project file as well as HUD's Integrated Real Estate Management System (iREMS). The effective date of the new contract is the day after the short-term contract expires.

CALCULATING RENTS FOR SHORT-TERM CONTRACTS

In cases where the AE/CA decides as to market rents for the project, the short-term renewal rents will be capped at market.

For 524 contracts, if the project is eligible for an OCAF rent adjustment, apply the prorated OCAF to the short-term contract instead of the full OCAF. The project cannot 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 are exempted from this restriction. In these cases, the owner still must agree to terminate the contract within 12 months of the date of the rent adjustment to renew under Option One or Two and agree to the rent increase based on the provisions of the applicable option.

Because the project is entitled to the full OCAF increase at the first anniversary date of a multiyear contract, the OCAF increase for the short-term initial renewal must be prorated. Budget-based rent adjustments are not permitted for a short-term renewal.

CALCULATING PRORATED OCAF

Divide the rent increase factor by 12 and multiply that number by the number of months needed for the short-term renewal.

Example:

Rent increase factor: 2.5%

Months in the year: 12

Term in short-term contract: 8 months

$2.5 / 12 = 0.208 \times 8 = 1.67$

The prorated rent increase factor to apply to the short-term contract is 1.67%

After determining the prorated 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.

There are exceptions to this rule. Do not calculate prorated OCAF for:

1. Short-term 514 contracts (Option Three). These short-term renewals are at current rents.
2. Section 524 contracts, if used for a project that is subject to an enforcement action. These short-term renewals are at current rents, not to exceed market.
3. Option One or 2. The AE/CA will renew at current rents and provide retroactive rents upon completion of processing.

CONTRACT EXTENSIONS

HUD no longer allows Section 8 contract “extensions.” If there is a need for a long-term contract on the assisted project and the project qualifies for early termination, HUD 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.

DISTRIBUTIONS

LIMITATIONS ON DISTRIBUTIONS

The old regulation (LMSA, Pension Fund, and Property Disposition (PD) Section 8 contracts) typically has 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.

The new regulation (Section 8 contracts for new construction or substantial rehabilitation) limits an owner's right to distributions.

- A nonprofit owner is not entitled to distributions of excess project funds unless HUD approves the nonprofit owner’s request for a waiver.

- A profit-motivated owner may receive distributions from surplus cash in the amounts as follows:
 - For projects for elderly families: Six percent of the initial equity investment established when the project was newly constructed or substantially rehabilitated
 - For projects for non-elderly families: Ten percent of the initial equity investment established when the project was newly constructed or substantially rehabilitated
- Owners of “small projects” and owners of “partially-assisted projects” are exempt from any Section 8 limitation on distributions.
- Regarding owner distributions for partially-assisted projects that qualify for increased distributions under Section 2-12 D:
 - 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:
 - For-profit owners of these projects may keep surplus cash generated on all units.
 - The Section 8 rents must not exceed the rents on the unassisted units.
 - For partially-assisted projects that are insured under Section 221(d)(3) BMIR, 236, or have mortgages under and RHS Section 515/8:
 - For-profit owners of these projects are eligible for an increased distribution on the Section 8 units.
 - This amount will be added to the current limited distribution in the FHA regulatory agreement on the unassisted units to reach the total distribution.
- If the form of ownership changes, so does the right to receive distributions under the contract.
 - 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 conditions are met.

Nothing limits a nonprofit owner's entitlement to excess project funds generated by non-Section 8 assisted units in a partially assisted project.

A for-profit owner with a new regulation Section 8 contract may qualify for increased distributions.

Nonprofit owners who have New Regulation Section 8 HAP contracts are not allowed to receive distributions of project funds.

INCREASED DISTRIBUTIONS

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:

- 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:
 - Under Option One, the owner will receive access to increased distributions, even if the term of the contract is less than 20 years; or
 - Under Option Two, the owner enters into a 20-year Section 8 contract and can receive access to increased distributions.
- Generally, the increased distribution equals the difference between the current rents and the new marked up rents. For 100 percent properties, HUD allows 100 percent distribution of surplus cash at year end.
- Owners with Section 8 contracts currently renewed under Option Two may receive increased distributions, for the term of the renewal contract if:
 - The owner terminates the existing contract and renews the Section 8 contract for 20 years; and
 - The project's current rents are below comparable market rents.
- For 100 percent-assisted properties, owner distribution is based on the surplus cash calculation.

- Owners may keep all surplus cash available each year for distribution during the term of the contract.

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.

The owner may continue to receive the increased distributions during the term of the Section 8 Renewal Contract provided:

- If applicable, all material Financial Assistance Subsystem (FASS) findings are closed or under a HUD-approved corrective action plan;
- 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;
- The owner is not suspended or debarred;
- The owner has no open or unresolved items on the most recent:
 - Physical Inspection Report; or
 - Management & Occupancy Review (MOR)
- The project has not been referred to Recap for restructuring; and
- 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).

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

If an owner ceases to be eligible for increased distributions, the AE should follow existing instructions 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.

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.

The AE is charged with annual compliance monitoring of the owner's eligibility to receive continued distributions.

For consistency in administering the program as it relates to owner distributions, 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.

RENT ADJUSTMENTS

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.

The exception to this process is 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

OPERATING COST ADJUSTMENT FACTOR

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

BUDGET-BASED RENTS

An owner may prepare a budget-based adjustment request in connection with certain MAHRA contract renewal options and annual rent adjustments. Budgets must be prepared in accordance with HUD Handbook 4350.1, Chapter 7, with certain modifications:

- Paragraph 7-30. P. of HUD Handbook 4350.1 does not apply. For Section 8 projects, the budget will no longer include a two percent contingency reserve for projects owned by nonprofits and those projects once owned by nonprofits, but which have been sold to limited dividend partnerships.
- Projects with 100 percent Section 8 must include a vacancy loss rate of three percent in the budget, unless as part of a refinancing, the lender requires a different vacancy rate. Exceptions to the policy are:
 - 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 five percent in the budget;
 - 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 seven percent in the budget.
 - 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 five percent in the budget.
- HUD Handbook 4350.1, Chapter 22, Section 22-16 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.

- 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 a deferred developer fee. 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:** information on how to treat debt service savings on 202 projects that have been refinanced is covered in a later chapter.

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
- The 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
- 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.

Owners may request a zero-dollar budget-based rent adjustment by marking the appropriate box. Owners do not need to submit a budget when the appropriate box on the "Amend Rents" form is checked.

For projects that have not previously prepared and submitted a budget-based rent increase, only the first request must include Attachment 5 (HUD-9635).

Owners of projects with an Option Four contract must submit an 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 an RCS.

Owners of Section 515/8 projects who are required to submit budgets to Rural Housing do not have to submit an 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.

INCREASE IN DEPOSITS TO THE RESERVE FOR REPLACEMENT

The owner or lender may request increases in the monthly deposit to the RFR account. They will be required to submit a Project Capital Needs Assessment (PCNA).

- **Note:** A project that is partially-assisted with a new regulation contract may be exempt from the requirement to establish and maintain an RFR account. Deposits into the RFR account are increased by the most recently published AAF.
- **Example:** The current annual deposits into the RFR account are \$2400. The most recently published AAF is 1.02. The RFR deposits would increase by \$48 or $\$2400 \times 1.02\%$.

PROCESSING RENEWALS

Before submitting a renewal request, the owner must follow the tenant notification procedures, unless the rent increase is an OCAF rent adjustment.

- **Example:** A budget-based rent increase would require the owner and the AE/CA to comply with the requirements of 24 CFR Part 245, Subpart D.

At least 120 calendar days but no earlier than 180 calendar days before expiration of the Section 8 contract, the owner submits:

- The Contract Renewal Request form HUD-9624;
- An analysis of the project's utility allowances (see Notice H 2015-04); and
- If applicable:
 - The OCAF Rent Adjustment Worksheet, form HUD-9625;
 - An RCS; and/or
 - A budget-based rent increase request or an 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.

The AE/CA should complete the review of an owner's submission within 30 calendar days.

- The AE/CA checks to see if the owner:
 - Is eligible to renew the Section 8 project-based contract under the option selected
 - Has provided all required documentation
 - Specified on the Cover Sheet of Form HUD-9624 whether it wants any multiple stages or contracts combined

- 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, they verify that information by using www.sam.gov.
 - 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.
 - 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.
- If applicable, the AE/CA reviews the RCS to make sure that the study was done in accordance with the requirements included in Chapter 9 of this Guide and determines that the comparable market rent conclusions are reasonable.
- 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.
- 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 Notice H 2015-04 or its successor.

- Once the review is complete and it is determined that the project is eligible, the AE/CA will prepare the renewal documents as follows:
 - The AE/CA establishes the renewal rent per requirements for the renewal option selected.
 - For the appropriate term:
 - Less than one year;
 - One year; or
 - Multiyear
 - For the expiration date of the contract: The contract expiration date must be on the last day of the month.
 - 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.
 - For all Option One renewal contracts and for Option Two renewal contracts where the term of the renewal contract is 20 years, ensure that Exhibit B of the Basic Renewal Contract is attached to allow access to increased distributions.
 - For contracts that are renewed following an early termination, ensure that the Preservation Exhibit is attached to the renewal contract, and for any contract renewed following the early termination of a non-MAHRA contract, ensure that HUD-93184, Rider to Original Section 8 Housing Assistance Payments Contract, is attached to the renewal contract.

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

For projects that have tenant-paid utilities, the owner must submit an analysis of the project's utility allowance 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 prior. In the event the owner's utility analysis results in a possible decrease in the tenants' utility allowances, owners must follow the tenant notification procedures in 24 CFR Part 245.

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:

- 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.
- 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.
- Send letter and Exhibit A to the O/A.

Upon receipt of the letter and the Exhibit A, the owner will review the OCAF adjusted rents and calculations and:

- Elect to receive the Auto OCAF rent adjustment; or
- 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 “zero dollar” budget-based rent increase.

Should the O/A select the auto OCAF rent adjustment, the O/A must complete and return to the AE/CA a signed form HUD-9626 or HUD-9627.

Should the O/A select a budget-based adjustment, the O/A must return to AE/CA:

- A signed form HUD-9626 or HUD-9627.
- All documentation required for a budget-based rent adjustment as defined in HUD Handbook 4350.1, Chapter 7

Upon receipt of the O/As submission, the AE/CA:

- Should review the O/A's rent adjustment documentation.
- 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.
- Executes the Rent Schedule, Low-Income Housing, form HUD-92458, and returns it to the O/A.

ANNUAL RENT ADJUSTMENTS FOR MULTI-YEAR CONTRACTS FOR PROJECTS NOT PARTICIPATING IN AUTO OCAF

Before submitting the annual rent adjustment request, the owner must follow the tenant notification procedures if the rent increase is not an OCAF rent adjustment. Whenever an owner's utility analysis results in a possible decrease in the utility allowances to the project's tenants, 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.

At least 120 days but no earlier than 180 days before the anniversary date of the contract, the owner submits:

- OCAF Rent Adjustment Worksheet, form HUD-9625;
- An analysis of the project's utility allowances; and
- If applicable:
 - An RCS; and/or
 - A budget-based adjustment, prepared in accordance with paragraph 2-15 of the contract renewal guide, or an RHS-approved budget that does not exceed comparable market rents.

The AE/CA should complete the review of an owner's submission within 30 calendar days.

- 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.
- Prepare an amended Exhibit A, Rent Schedule, for the MAHRA contract to be issued to the owner. If applicable:
 - The resulting rents cannot exceed the OCAF-adjusted RCS.
 - The OCAF-adjusted RCS serves as the market cap.
 - 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 for Option Five preservation projects.
 - 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.

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:

- The owner submits a new RCS at the end of each five-year life cycle of the RCS. The new RCS must be reviewed in accordance with the instructions in Chapter 9 of the contract renewal guide.
- If rents are:
 - Above market, the AE/CA will reduce the rent to the comparable market rent.
 - Below market, the AE/CA will increase the rents to comparable market rents.

WAIVERS

REGULATORY WAIVERS

HUD's policy on regulatory waivers appears in 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 labor standards.

To determine if a civil rights-related program requirement may be waived, the HUD 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 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 the Office of Asset Management and Program Oversight (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.

DIRECTIVE WAIVERS

The term *directive* includes handbooks, guidelines, notices, interim notices and special directives such as Mortgagee 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:
 - Notify the HUD Regional Office, in writing, of the approval or rejection of the waiver request.
 - Retain a copy of the approval or rejection memorandum and related documentation for three years from the date the waiver is granted; and
 - 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.

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 2012-06, for detailed instructions concerning the deadline and process for obtaining a DUNS number and registering in the System for Award Management (SAM).

Learning Activity 3-1: OCAF Worksheet Exercise

Reagan Meadows is a 40-unit project-based Section 8 property in Boise, ID and is due for its annual OCAF increase. There are 20 one-bedroom units with current contract rents of \$900 and 20 two-bedroom units with current contract rents of \$1,100.00. There are no additional units in the project. The current project annual debt service is \$70,000 and the original annual debt service was \$150,000. The current OCAF for Idaho is 2.4 percent. There is no current requirement for Reagan Meadows to perform an RCS. Using the HUD OCAF Worksheet Instructions, complete the following worksheet to calculate the rent for the coming year.

OCAF Worksheet Instructions

These instructions are for use by Owners of projects that require an Operating Cost Adjustment Factor (OCAF) calculation (rent adjustments, “lesser of” test, etc.). Each entry of the OCAF Worksheet is explained below.

NOTE:

- All calculations should be taken out to the second decimal point (1.02) except for row R, “Increase Factor” which should be taken out to the third decimal point (1.023).
- Rounding to the nearest dollar figure can take place in Step Three when the new rents are calculated with the Increase Factor.
- If using the electronic spreadsheet, there are three worksheets, each with a separate tab at the bottom of the page.

Step One

Calculate the current Section 8 rent potential for expiring contracts. Enter information only for the Section 8 units in the project that are expiring.

A

Enter the unit type (1-BR, 2-BR, etc.) with the contract/stage number. When entering information please distinguish between similar units with different rents. For example, if there is an expiring contract with one bedroom apartments that have different rents enter 1BR-a, 1BR-b, etc. If an Owner elects to combine the contracts into a single contract and there are units of the same bedroom type in the combined contracts, they should be combined into one rent level that will set the rent at an average that yields the same adjusted rent potential. For example: *total rent for combined contracts ÷ total # units = Average (# of units X rent = total rents)*

B

Enter the number of units that correspond to the unit type and contract/stage number.

C

Enter the current monthly Section 8 contract rent for the corresponding unit type.

D

Multiply the current Section 8 contract rent (C) by the number of units (B) to get the monthly current Section 8 rent potential for the unit type. (If using the electronic spreadsheet, these calculations will be made automatically.)

E

Add all of the sums of Column D to get the monthly expiring Section 8 contract rent potential for the contract(s)/stage(s). (If using the electronic spreadsheet, this calculation will be made automatically.)

F

Multiply the sum of the monthly expiring Section 8 contract rent potential in (E) x 12 to get the annual rent potential for the expiring contract(s). (If using the electronic spreadsheet, this calculation will be made automatically.)

Step Two

Calculating the Increase Factor adjusted by the OCAF for the Expiring Contract(s).

G

Enter the annual rent potential for those Section 8 contracts that are not being renewed if there are multiple Section 8 contracts at the property and some are not being renewed at this time.

H

Enter the annual rent potential for the non-Section 8 units in the property if the property is not 100% Section 8.

I

Add the annual Section 8 rent potential for the expiring Section 8 contract(s) (F), the total annual rent potential for non-expiring Section 8 units (G), and the total annual rent potential for non-Section 8 units in the property (H) to calculate the total annual rent potential at the property. (If using the electronic spreadsheet, this calculation will be made automatically.)

J

Divide the annual Section 8 rent potential for the expiring Section 8 contract(s) (F) by the total rent potential of the project (I) to find out what portion of the property's total annual rent potential is for the expiring Section 8 contract(s). (If using the electronic spreadsheet, this calculation will be made automatically.)

K

Enter the Debt Service, use the project's current debt service, including new debt service for loans made for capital needs and or transfers (See Chapter 15 of the Section 8 Renewal Policy Guide). The figure should, for any FHA loan, include the MIP. The Owner must provide this information. The HUD project manager may confirm this information by reviewing the project's file. For a project that receives Interest Reduction Payments, enter the Total Annual 1% Project Debt Service.

L

Multiply the debt service (K) by the portion of the overall rent potential for the expiring Section 8 contract (J) in order to subtract the correct amount of debt service from the rent potential. (If using the electronic spreadsheet, this calculation will be made automatically.)

M

Subtract the annual expiring Section 8 share of debt service (L) from the total annual rent potential for the expiring Section 8 contract(s) (F) in order to calculate the annual expiring Section 8 rent potential attributable to operations. The rent adjustment must be for the portion of the rent that is attributable to operations, there should be no rent increase on the portion of the rent that covers the debt service since this is a static figure. (If using the electronic spreadsheet, this calculation will be made automatically.)

N

Enter the currently published OCAF for your area. If the OCAF is 2.3%, enter 1.023.

O

Multiply the annual expiring Section 8 rent potential attributable to operations (M) by the currently published OCAF for the area (N). (If using the electronic spreadsheet, this calculation will be made automatically.)

P

Add the expiring Section 8 portion of the debt service (L) to the adjusted rent attributable to operations (O) to obtain the adjusted contract rent potential. (If using the electronic spreadsheet, this calculation will be made automatically.)

Q

If applicable, compare the adjusted contract rent potential with the Market Rent Potential (from the RCS and reflected in the Renewal Request Forms). Enter the lesser of the adjusted contract rent potential or the Market Rent Potential. **NOTE:** This step may not be applicable in all cases. If no RCS was required, enter the adjusted contract rent potential.

R

Divide the adjusted contract rent potential (or market rent potential, if applicable)(Q) by the total annual rent potential for the expiring Section 8 contract(s) (F) to adjust the adjusted OCAF. Due to the fact that the OCAF was applied only to the portion of the expiring Section 8 rent potential attributable to operations, the adjustment factor that will be applied to each of the rents will be slightly less than the published OCAF. (If using the electronic spreadsheet, this calculation will be made automatically.)

Step Three

Calculate the OCAF Adjusted Rent Potential for Expiring Section 8 Contract(s).

S

Enter the unit type(s) and contract/stage number (as in A). (If using the electronic spreadsheet, these will be entered automatically.)

T

Enter the number of units (as in B). (If using the electronic spreadsheet, these will be entered automatically.)

U

Enter the current Section 8 monthly contract rents (as in C). (If using the electronic spreadsheet, these will be entered automatically.)

V

Multiply the Increase Factor (R) by the monthly contract rent (U) to obtain the OCAF adjusted rent. (If using the electronic spreadsheet, these calculations will be made automatically.)

W

Multiply the OCAF adjusted monthly rent (V) by 12 to obtain the annual adjusted rent for each unit type. (If using the electronic spreadsheet, these calculations will be made automatically.)

X

Multiply the annual OCAF adjusted rent (W) by the number of units (T) to obtain the adjusted annual rent potential for each unit type in each contract/stage. (If using the electronic spreadsheet, these calculations will be made automatically.)

Y

Add the total of the adjusted annual rent potential for each unit type in each contract/stage to calculate the total annual adjusted rent potential for the expiring contract(s). (If using the electronic spreadsheet, this calculation will be made automatically.)

STEP 1:

Calculate the current Section 8 Rent Potential for EXPIRING contracts.

(A)	(B)	(C)	(D)
Unit Type and Contract and/or Stage	# of Units	Current Section 8 Contract Rents	Current Section 8 Rent Potential (B x C)
(E) Monthly Expiring Section 8 Contract Rent Potential (total of Column D)			
(F) Annual Section 8 Rent Potential for Expiring Contracts (E x 12)			

STEP 2:

Calculate Increase Factor Adjusted by OCAF for Expiring Contracts.

(G)	Total Annual Rent Potential For Non-Expiring Section 8 Contracts	
(H)	Total Annual Rent Potential For Non-Sec. 8 Units	
(I)	Total Annual Project Rent Potential (F + G + H)	
(J)	Expiring Section 8 Portion of Total Project Rent Potential (F ÷ I)	
(K)	Total Annual Project Debt Service	
(L)	Annual Expiring Section 8 Share of Debt Service (J x K)	
(M)	Annual Expiring Section 8 Potential Less Expiring Sec. 8 Share of Debt Service (F - L)	
(N)	Annual Expiring Section 8 Rent Potential Attributed to Operations Multiplied by Published OCAF (M x OCAF)	
(O)	Adjusted Contract Rent Potential (L + N)	
(P)	Lesser of (O) and Comparable Rent Potential from Rent Comparability Study	
(Q)	Increase Factor (P ÷ F)	

STEP 3:

Calculate OCAF Adjusted Contract Rent Potential for Expiring Section 8 Contracts ONLY.

(R)	(S)	(T)	(U)	(V)	(W)
Unit Type and Contract and/or Stage	# Units	Current Contract Rents	OCAF Adjusted Rent (Q x T)	Annual Adjusted Rent (U x 12)	Adjusted Annual Rent Potential (S x V)
(X) Annual Adjusted Rent Potential of the Expiring Contract(s) (Total column W):					

CHAPTER 3 POST TEST

1. The Multifamily Assisted Housing Reform and Affordability Act (MAHRA) was enacted in 1997 and was meant to ensure Section 8 rents were comparable to unsubsidized rents in the area.
 - a. True
 - b. False
2. At the time of renewal, owners must choose from one of five renewal options.
 - a. True
 - b. False
3. All options are available to all projects at the expiration of the existing Section 8 contract.
 - a. True
 - b. False
4. For the owner to request an early termination, all of the following statements are true except:
 - a. All owners must submit a request in writing to HUD or the CA
 - b. All owners must agree to a new 30-year contract
 - c. All owners must agree to a preservation exhibit
 - d. All owners must understand that they are not allowed to early terminate to opt out of the Section 8 program.
5. Some, but not all renewal options require a Rent Comparability Study be submitted with the renewal request.
 - a. True
 - b. False

6. Project-based Section 8 contracts can be renewed for the following terms:
 - a. 1 year
 - b. 2 years
 - c. 20 years
 - d. All of the above
7. Short term renewals are for less than one year, and are used to:
 - a. Align contracts with the use agreement
 - b. Provide additional time to secure an RCS
 - c. Give the owner time to find a buyer
 - d. Both a and b
8. For properties that obtain low income housing tax credits, the owner can include these fees in the budget:
 - a. State agency compliance monitoring fees
 - b. Deferred developer fee in year 13
 - c. Discretionary interest payments that do not exceed 1%
 - d. All of the above
9. Projects eligible for Auto OCAF rent adjustments may have renewed under any of the available options, exception Option 6.
 - a. True
 - b. False

Notes

CHAPTER 4 Renewal Options

OPTION ONE

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 number 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. Contract renewals under this authority are referred to as Option One-A, Entitlement MUTM.

To protect those most vulnerable and to further preserve affordable housing, Section 524(a)(4)(C) of MAHRA gives HUD the authority to extend the option of marking rents up to market for properties not meeting the eligibility criteria under Option One-A, but that are still considered an important affordable housing resource. Contract renewals under this authority are referred to as Option One-B, Discretionary Mark-Up-To-Market.

There are benefits to choosing Option one for renewal. As a rule, owners will receive increased distributions annually, based on the property's net operating income. There is no requirement to submit a budget to HUD for review or approval. This decreases the processing time for renewal documents. It is an opportunity to recapitalize and preserve the affordable housing to the benefit of the owner, residents, and HUD. In years two through five, it is a simply an OCAF renewal process, as rent comparability studies are only required every five years. However, there is a risk to rents in year six, when a new rent comparability study is required.

Generally, the increased distribution equals the difference between the current rents and the new marked up rents. For 100 percent properties, HUD allows 100 percent distribution of surplus cash at year end

In order to be eligible for Option One A or B:

- Aggregate current rent levels under the expiring or terminating contract must be less than comparable market rents.
- The project must have:
 - Management's most recent Management and Occupancy Review (MOR) rating be "Satisfactory" or above; and
 - 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.
- FASS Findings - If applicable, all Financial Assistance Subsystem (FASS) findings need to be closed or under a HUD-approved corrective action plan.

OPTION ONE-A

In order to be eligible for contract renewal under Option One-A, the following criteria must be met:

- 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.
 - Excel Worksheets—Fillable worksheets are available at: http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/mfhsec8 under Forms Associated with Section 8 Renewals

- Use Restrictions. The project does not have a low- and moderate-income use restriction that cannot be eliminated by unilateral action by the owner.
 - Example: 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.
- The project is not subject to a contract for moderate rehabilitation assistance.
- 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.
- The project owner must be:
 - A profit-motivated entity (including a limited distribution entity);
 - A housing authority occupying the status of a "public body corporate and politic" under the state legislation under which it was created;
 - A limited partnership with one or more nonprofit general partners or a sole general partner that is wholly owned and controlled by one or more nonprofit entities; or
 - 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 can renew under Option One or Option Two.

In the case of a proposed sale, this requirement must be met by the purchaser.

Option One-A 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:

- Greater than 150 percent of the FMR potential, set the new Section 8 gross rents at 150 percent of the FMR
- Equal to or less than 150 percent of the FMR potential, set the new Section 8 gross rents at the final comparable gross 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.

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 discussed under Option 1B, the renewal rents are equal to the comparable market rents for the market area.

OPTION ONE-B

Under Section 524(a)(4)(C) of MAHRA, HUD may mark rents up to market for projects that are not eligible for Option One-A, but that meet criteria listed below. These projects are eligible for a contract renewal under Option One-B.

To further preserve the affordable housing stock, HUD has the authority to mark rents up to market for projects that meet certain criteria. HUD's practice is to mark rents to market for eligible projects that meet only one of the three criteria below. However, if HUD determines that there is or may be a shortage of Section 8 appropriations available for any fiscal year, HUD may use its discretion to mark rents up to market based on the number of criteria identified below.

- **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.

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.
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 three 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).
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.

REQUIREMENTS UNDER BOTH OPTIONS ONE-A AND ONE-B

The owner may request to enter into MUTM (Option One A or B) at any time:

- During the life of a 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.

- 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.

The owner cannot request to terminate a “Demo” or Preservation contract early to renew under MUTM.

The owner cannot request to terminate a “Full” Mark-to-Market contract (HUD-9642) early to renew under MUTM.

The owner cannot request to terminate a Rental Assistance Demonstration (RAD) contract early to renew under MUTM.

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 and determine whether the comparable market rent conclusions are reasonable. For transactions that include an RCS that has “as is” and “after rehab” market rent determinations, the AE/CA must use the “as is” market rents to determine initial eligibility.

- 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.
- If a project is not eligible for Option One-A or One-B:
 - 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.
 - 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, will be used to determine the market rents for the project.

- In the case where an existing contract has expired, the AE/CA may provide a 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.

COMPARABILITY STUDIES

Along with a request to Mark-Up-To-Market, the owner must submit an RCS.

- 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.
- For projects with a contract term that exceeds five years, the AE/CA should follow Section 2-17, C.4 of the renewal guide for fifth year adjustments.

OPTION TWO

Option Two, Contract Renewals for Other Projects with Current Rents at or Below Comparable Market Rents, is for owners who request a renewal of their Section 8 contract where the RCS indicates that:

- The contract's aggregate current rents are at or below comparable market rents; or
- 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 required conditions. 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.

OPTION TWO RENTS

Rents may be adjusted by either:

- An OCAF; or
- At the discretion of HUD, a budget-based rent adjustment limited by the market

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. For a project with a contract term that exceeds five years, the AE/CA should follow the instructions concerning fifth year adjustments.

OPTION THREE

EXPIRATION OF STATUTORY AUTHORITY

The statutory authority for the Mark-to-Market (MTM) restructuring tools under MAHRA used by the Office of Recapitalization (Recap) (formerly known as OAHP) expired 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.

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 MTM.

PROJECTS PREVIOUSLY RENEWED UNDER SECTION 524

FHA-insured projects and projects subject to Secretary-held mortgages previously renewed under Section 524 that did not have rents above market at the time of renewal, but that now have above-market rents, are eligible for referral to Recap prior to Sunset.

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 MTM debt-restructuring.

EXCEPTION PROJECTS

Exception projects, as defined in Chapter 6 of the Contract Renewal Guide, (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 conditions qualifying a project as an “exception project” no longer exist, 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.

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 iREMS as a project subject to a Watch List Contract, and defined in iREMS as a project with a loan that failed MTM restructuring and is therefore operating under a Watch List Contract. Follow OAMPO guidance on the monitoring of projects subject to a Watch List Contract.

MOD REHAB PROJECTS

Projects with Mod Rehab HAP contracts are eligible for Recap restructuring before Sunset if the projects meet the requirements in discussed under Once Eligible, Always Eligible, above. The Interim (Full) Mark-to-Market Renewal Contract (HUD-9640) is used for entry into Recap for a Mark-to-Market restructuring.

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:

- The project has been refinanced at least two times if the second refinance is using a loan insured under the National Housing Act
- The project refinanced with an 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

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 that 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 will be subject to MAHRA, the regulations arising from MAHRA, and the Operating Procedures Guide (OPG).

ABOVE-MARKET PROJECTS

Prior to Sunset, an owner of an eligible project may request:

- 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.
- 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.

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:

- 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 of the Contract Renewal Guide 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.
- 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.

REQUIRED OWNER SUBMISSIONS

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 of the Recap Operating Procedures Guide, Approvals, Ineligibility and Appeals.) 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 physical inspection report;
- A copy of the most recent audited financial statements (all financial statements must be official electronic submissions to HUD); and
- An RCS

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 or 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 of the Recap Operating Procedures Guide, Approvals, Ineligibility and Appeals.)

ROLE OF THE AE/CA

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:

- 12 months;
- The last day of the month of closing under the Restructuring Commitment; or
- 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

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.

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.

EXTENSIONS OF INTERIM CONTRACTS

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.

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.

CONTRACT RENEWALS - RENT AND DEBT RESTRUCTURING

Once Recap processing is completed, Lites and Fulls are renewed as follows:

- 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.
- 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.

Once Recap (and the PAE) complete processing, the Section 8 contracts for Lites and Fulls will be executed as follows:

- **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.
- **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.

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. Refer to Chapters 7 and 8 of the Recap Operating Procedures Guide (OPG), Closing and Post-Closing Document Distribution, for further information.

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 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.

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) of the Contract Renewal Guide. The AE will prepare a Basic Renewal Contract at comparable market rents using Recap's rent determination.

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.

PERFORMANCE-BASED CONTRACT ADMINISTRATOR

The Financial Management Center (FMC) will execute the Annual Contributions Contract (ACC) as well as complete the fund reservation process.

CONTRACT TYPES

Please refer to Section 2-6 A of the Contract Renewal Guide for a list of appropriate contracts to use when renewing a MTM contract.

SUBSEQUENT RENEWALS

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.

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 or offers for subsequent renewal from the Secretary do not exceed the remaining term of the Use Agreement, an owner is obligated to accept such offers to renew the Full Mark-To-Market Renewal Contract during the term of the Use Agreement, if such offers 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 Full Mark-to-Market Renewal 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).

Early Contract Termination and Renewal

Non-Exception Rent (Exception Rents are discussed in the following section). 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. 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 five-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 (the original 20-year Full Mark-to-Market Renewal Contract, plus the second Renewal Contract, which had run five 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.

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 five 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. HUD would reject the owner's request 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.

Renewal After Expiration of the Use Agreement

Except for certain transactions with qualified nonprofits that 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) in the Contract Renewal Guide) will be under then applicable statutes and regulations, using any renewal option for which the project is eligible at that time.

WATCH LIST CONTRACTS

Watch List Contracts are used when:

- Recap decides of ineligibility under Section 516(a) of MAHRA;
- 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;
- An owner refuses to execute a Restructuring Commitment or close on a Full; or
- Recap concludes that the restructuring process will not result in an economically or financially feasible project.

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).

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.

- **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 MTM restructuring. Therefore it is operating under a Watch List Section 8 HAP Contract, to be monitored by a designated Account Resolution Specialist.
- **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.
- **Continued Mark-to-Market Eligibility:** If after the effective date of the Watch List Contract the owner chooses a full debt restructuring, the owner 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 for processing to continue after Sunset (See Section 5-2 of the Contract Renewal Guide).

- Removal from the Watch List: A project can only be removed from the Watch List if any one of the following is satisfied:
 - The owner requests to return to Recap, and Recap approves;
 - 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;
 - The owner has prepaid the mortgage; or
 - The owner has opted out of the Section 8 Program
 - The Multifamily Regional Center may request removal of a project from the Watch List by submitting written justification to Recap Headquarters.

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.

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:

- The monitoring category and the reasons why (i.e., defined as loans that failed MTM restructuring and are therefore operating under a Watch List Renewal Section 8 HAP Contract; and
- Any other relevant information provided by the PAE/ Recap process that indicate the physical, financial, and management problems that should be closely monitored over the term of the contract.

Deterioration

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 13 of this the Contract Renewal Guide if it is determined that the housing assistance payments should be abated).

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.

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/pres_mfh

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 HUD Headquarters at (202) 708-0001.

OPTION FOUR

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

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

- 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, Recap must determine 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 five business days.
 - 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 Section 6-1, B.2. of the Contract Renewal Guide 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.
 - 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.

- 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 are exempt. 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.
- 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 of the Contract Renewal Guide.
- SRO Mod Rehab. This refers to 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.

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:

- 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.
- 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. of the Contract Renewal Guide.

RENEWALS

The “lesser of” test is required at both initial and subsequent renewal. The rents are to be set at the lesser of:

- Current rents as adjusted by OCAF; or
- The 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 that will take effect when the new loan closes.

RENT ADJUSTMENTS

Rents may be adjusted by either:

- An OCAF adjustment; or
- 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:

- The owner must submit or have submitted within the preceding five years an RCS prepared following the instructions found in Chapter 9 of the Contract Renewal Guide. This requirement does not apply if the owner is seeking a “zero” budget-based rent adjustment.
- Previously submitted RCSs are valid for five years and will be adjusted annually by OCAF.
- 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 zero-dollar budget-based rent adjustment) and the owner will only receive an OCAF rent adjustment.

- 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 an RCS if the resulting rents exceed the rents the project would have received from an OCAF adjustment.
 - **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.

There is no “lesser of” test required at the time of the annual rent adjustment for a multi-year HAP contract.

SECTION 202 REFINANCING

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.

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 an FHA-insured mortgage when the HAP contract comes up for renewal.

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 refinances with conventional (non-FHA) financing, the project retains eligibility to renew under Option Four 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 Four 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.

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

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 were 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 an 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.

RESTRUCTURING OF PORTFOLIO REENGINEERING DEMONSTRATION PROJECTS

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:

- The Demo contract must be renewed under Option Five.
- 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.

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:

- Cannot renew its contract under Option Five.
- May renew its contract under any other option for which it qualifies.

INITIAL RENEWAL

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

SUBSEQUENT RENEWAL

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.

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

RENT ADJUSTMENTS

In the case of a renewal contract with a term more than five years, at the end of each five-year period, the owner must obtain an RCS to permit HUD/CA to adjust project rents to the extent that they have risen above or fallen below market during such five-year period.

- If the rents are below comparable market rents, the AE/CA will adjust the rents to equal the comparable market rents.
- If the rents are above comparable market rents, the AE/CA will reduce the rents to the comparable market rents.

In years two through five, rents may be adjusted by either:

- The published OCAF; or
- A budget-based rent adjustment

PRESERVATION PROJECTS (LIHPRHA AND ELIHPA)

When owners entered into long-term Use Agreements with HUD under the Preservation Programs, HUD agreed to certain items that 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.

Renewal

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 of the Contract Renewal Guide.

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 contracts 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.

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:

- **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.
 - This plan should detail how the owner intends to maintain the appropriate income mix.
 - 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.
- **Role of the Local HUD Office.** The Regional Center or Satellite Office (or CA) should take the following steps:
 - 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. 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 the project is eligible to opt out of the Section 8 contract.
 - 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.

- 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 to the tenants. Eligible families will be issued enhanced vouchers to permit the families to remain in their units.
- 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 at Headquarters for review and either approval or rejection.

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.

- 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.
- 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.
 - A multi-year 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.
 - The only renewal option available to an owner of a preservation project is 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. of the Contract Renewal Guide.

- Rents are adjusted in accordance with the approved POA and the recorded Preservation Use Agreement.

PROJECT-SPECIFIC RENTS

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.

Where applicable, PSRs will be maintained and updated annually during the annual rent increase process. Notices H 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 (TTP). 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>

BUDGET-BASED RENT INCREASE

Instructions for processing a budget-based rent increase for LIHPRHA and ELIHPA projects are found in Chapter 11 of HUD Handbook 4350.6.

Section 11-7, C.3. of the Contract Renewal Guide 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.

If a budget-based rent increase is deemed reasonable for the project, it will not be rolled back in a subsequent year.

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

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 (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.

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.

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:

- Determine that the owner elected to opt-out under Option Six
- Make sure that the owner has provided all required documentation, including the Contract Renewal Request Form (HUD-9624)

- Make sure that the owner is eligible to opt out of the Section 8 contract
 - Are there any restrictions stated in the Section 8 HAP Contract or Use Agreement that prohibit the owner from opting out?
 - 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 of the Contract Renewal Guide for additional tenant notification requirements. 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:
 - 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 or changes resulting from an annual income recertification.
 - The AE/CA will offer the owner a short-term contract. See Section 2-8 of the Contract Renewal Guide for information on rent-setting for the short-term renewal.
 - 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.
 - 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.

- 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?
- Log the owner's request as indicated on the Contract Renewal Request Form (HUD-9624) and any other relevant information in iREMS.

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.

It is imperative that the AE coordinate this effort with Public and Indian Housing (PIH) staff in the Regional Center or 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 Notices PIH 2001-41 and PIH 2019-12 for detailed guidance on the conversion process.

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 the Contract Renewal Guide for detailed processing instructions.

CHAPTER 4 POST TEST

1. To renew under Option One, current aggregate rents must be above market.
 - a. True
 - b. False
2. Under Option One-A, renewal rents equal the lesser of: (check all that apply)
 - a. Comparable Market rents for the areas
 - b. 170% of FMR
 - c. 150% FMR
 - d. Current rents after OCAF applied
3. Under Option One-B, HUD marks rents to market for properties that meet these criteria except:
 - a. Tenants that are considered a vulnerable population
 - b. Properties that are in a low vacancy market and lack affordable housing
 - c. Projects most recent REAC score at 50 or above
 - d. Project is a high priority for the community
4. To renew under Option Two, current rents must be at or below comparable market rents, or if rents exceed comparable market rents, the owner must be willing to reduce rents or exempt from MTM restructuring.
 - a. True
 - b. False
5. Under Option two, rents may be adjusted by:
 - a. OCAF
 - b. Budget based rent adjustments
 - c. AAF
 - d. Both a and b

6. The statutory authority for Mark to Market under MAHRA expired, or “sunset” October 1, 2017.
 - a. True
 - b. False
7. A project can renew under Option four at exception rents if:
 - a. The project meets the definition of an eligible multifamily housing project under section 512(2) of MAHRA
 - b. The project is exempt from debt restructuring under section 514(h) of MAHRA
 - c. Both a and b
 - d. None of the above
8. Option four rents are renewed at the lesser of:
 - a. OCAF or Budget based rents
 - b. OCAF or AAF
 - c. AAF or Budget based rents
 - d. None of the above
9. Preservation projects primarily consist of all of the following except:
 - a. Section 236 and 221 (d)(3) BMIR
 - b. ELIHPA
 - c. Section 202
 - d. LIHPRHA
10. If a project has a Demo Program Use Agreement, the project must be renewed under:
 - a. Option 2
 - b. Option 3
 - c. Option 4
 - d. Option 5

11. Under Option 5, the owner cannot opt out of the contract throughout the term of the Demo Use Agreement.
 - a. True
 - b. False
12. The owner must provide a two-year notification to the residents and HUD of their intent to either renew, or not renew the contract.
 - a. True
 - b. False
13. If the owner chooses Option six, on the day of the expiration of the contract, the current residents will be provided:
 - a. Project-based assistance
 - b. Tenant-based assistance

CHAPTER 5 **Rent Comparability Studies**

OVERVIEW

The purpose of a Rent Comparability Study (RCS) is to estimate “market” rents for each Section 8 unit type. *Market rent* is the rent that a knowledgeable tenant would most probably pay for Section 8 units, as of the date of the appraiser’s report, if the tenants were not receiving rental subsidies and rents were not restricted by HUD or other government agencies.

As a requirement for renewal under Section 524(a) of MAHRA, most project owners with expiring Section 8 project-based contracts must submit an RCS at initial renewal to demonstrate that current rents are at or below comparable “market” rents. Beginning with the date of the initial renewal of the expiring Section 8 project-based contract, the RCSs start a maximum five-year “life cycle,” after which a new RCS is required.

The table below provides a road map to the various stakeholders—owners, RCS appraisers, and reviewers—comprising 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 RCSs review the entire Chapter 9 and appendices of the Contract Renewal Guide to ensure compliance with all requirements for the respective Section 8 contract renewal.

Managing Multifamily HAP Contracts

Rent Comparability Studies

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 FMRs or Using Non-Section 8 Units)	✓		✓
9-7	Preparing RCSs	✓	✓	
9-8	Appraiser's Qualifications	✓	✓	
9-9 – 9-13	Analyzing Subject Project Selecting Comparable Units Collecting Data on Comps Computing Adjusted Rents Deriving Market Rents		✓	
9-14	Procedure for Mandatory Market Rent Threshold	✓	✓	✓
9-15 – 9-16	HUD/CA Reviews of RCS Initial and Substantive Review			✓
9-17 – 9-18	Communicating Results Owner Appeals	✓		✓
9-19	Imposing Sanctions on RCS Appraisers			✓
Appendix	Topic			
9-1	Guidance to RCS Appraisers		✓	
9-2	Guidance to Owners	✓		
9-3	Request to Renew Using FMRs as Market Ceiling	✓		✓
9-4	Request to Renew Using Non-Section 8 Units in the Section 8 Project	✓		✓
9-5	Guidance to Reviewers			✓
9-6	Special Project Types		✓	✓
Attachment 1 and 2	Acronyms and Definitions	✓	✓	✓

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

RCS METHODS

Owners are given three methods of demonstrating how the Section 8 rents proposed at renewal compare to rents charged for other units. The first two methods listed below (One and Two) are available to owners only under Option Two for renewal of Section 8 contracts (i.e., renewal with existing rents adjusted by an OCAF or based on a budget). Method One can also be used under Option Two for use in establishing fifth-year comparability adjustment rent ceiling. Methods A and B are rarely used, but when facts strongly suggest that the proposed rents would be under rents computed in an RCS, Methods A and B are provided under Option Two to avoid the costs and processing time that may be associated with RCSs.

- Method A: Comparing proposed Section 8 rents to fair market rents (FMRs)
- Method B: Comparing Section 8 rents to rents charged for other units in that Section 8 project.
- Method C: Purchasing and submitting an RCS

WHEN ELECTING ALTERNATIVES TO AN RCS

If the owner elects Methods One or Two, and HUD approves such election, the SAFMRs or FMRs or rents for non-Section 8 units in the Section 8 project act as a cap or ceiling on rents computed using an OCAF or budget approach. Rents are not automatically set at SAFMRs or FMRs or rent levels charged for other units in the Section 8 project. Under methods One and Two, there will be no RCS to update for budget-based adjustments or for renewals that occur within the next five years. At any subsequent renewal, the owner may choose one of the three methods allowed above. The eligibility requirements and process for using these three alternatives are described below.

USING SAFMRs OR FMRs

Small Area Fair Market Rents (SAFMRs) and Fair Market Rents (FMRs) represent the 40th percentile of an area's market rents in most cases and are published and updated annually by HUD. Under this approach, SAFMRs or FMRs create the market rent ceiling that is usually created using an RCS's rents. SAFMRs are published for metropolitan areas by zip code, non-metropolitan areas must use FMRs

Owners eligible to renew under Option Two may request to renew without an RCS if the current Section 8 gross rent potential and the proposed Section 8 gross rent potential at renewal are less than 90 percent of the FMR potential for the units being renewed. Since the FMRs are inclusive of utilities, Section 8 gross rent potential must include utilities in order to make the two figures comparable.

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:

- Request to Renew Using FMRs as Market Ceiling (form HUD-9630) showing a comparison of the current and proposed Section 8 gross rent potential with FMR rent potential
 - The proposed Section 8 gross rent potential used in the above comparison must be the current rent potential, adjusted by the OCAF or budget.
 - The potential must be the gross potential (contract rent + utilities) to make the figure comparable to FMRs, which include utilities
 - The Section 8 gross rent potential must be less than 90 percent of the FMR potential for the units being renewed under the request
- Cover Sheet of the Contract Renewal Request (form HUD-9624), showing the current rent potential and identifying all contracts at the project, as well as indicating which contracts will be renewed.
- Budget Worksheet (form HUD-92547-A), if seeking a budget-based adjustment, or Steps 1 and 2 of the OCAF calculation on form HUD-9625 if seeking an OCAF-driven adjustment.

HUD Account Executives must seek a state certified appraiser's input as to prevailing rent levels in the subject's market area. Besides verifying and validating the computations, the Account Executive must review the following factors in their approval decision:

- Are the subject project's units unusually small, have limited appeal, or offer substantially fewer amenities than typically offered in that market?
- Were there RCSs completed on other projects in the subject's area that often-produced market rents which were significantly lower than SAFMRs and FMRs?
- Does the project have a prior RCS that concluded that the project's Section 8 rents were above market?

Account Executives must approve the request unless, based on their own due diligence and the input of a state-certified appraiser, they have concluded that the proposed rents are above market levels, or if the comparison with SAFMR and FMR levels is erroneous. Staff must make a decision within 20 calendar days after receiving the owner's request. If HUD denies the owner's request, HUD may issue a short-term renewal to allow the owner a reasonable period to obtain an RCS prepared in accordance with HUD guidance. Owners may not appeal HUD's denial of their requests to use SAFMRs and FMRs in lieu of submitting an RCS.

RENTS FOR NON-SECTION 8

Under Method Two, rents paid by tenants not receiving rental subsidies serve as a market rent ceiling that is otherwise created using an RCS's rents.

If the criteria below are met, and the owner is choosing to renew the Section 8 contract using Option Two, the owner may request to use non-Section 8 units at that Section 8 project to set the market rent ceiling instead of purchasing and submitting an RCS. The project must meet these criteria for each unit type that will be included in the renewal contract.

- 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.

- At least 25 percent of each unit type being renewed is occupied by tenants who pay the full rent due the owner and receive no tenant rental assistance. Tenant rental assistance includes project-based Section 8, certificates and vouchers, PRAC/PAC in a 202/811 project, Rent Supplement, Rental Assistance (RAP), or any comparable federal, state, or other public subsidy. Tenant rental assistance does not include Section 236 interest reduction (IRP) subsidies, other construction or mortgage-based subsidies, or LIHTC or comparable state credits.
- For each unit type being renewed, the proposed Section 8 contract rent is no more than the average rent that tenants not receiving tenant rental assistance pay for that unit type.
- Tenants in units used to compute the average have been paying (without assistance and for three or more months) at least the rent levels used in computing the average. These tenants 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 effective rent must take all concessions into account.
- The Section 8 units and the units occupied by tenants not receiving tenant rental subsidies are nearly identical and would not require adjustments if the units without tenant rent subsidies were used as comparables in an RCS.
 - *Nearly identical* means the two sets of units have the same number of bedrooms and baths; are similar in condition, layout, and size; and have the same amenities and utilities included in the rent.
- Occupancy rates in the units occupied by tenants not receiving tenant rental subsidies are not significantly less than occupancy levels for those unit types in the project's market area, because a low occupancy rate for the subject's unassisted units would imply that the rents are above market. The occupancy levels should consider the overall market.
 - For instance, if the overall market is running well above 90 percent occupancy, while the subject's unassisted units are 20 percent vacant, then the occupancy level is considered significantly less than the market.

To request renewal using rents of non-Section 8 units for Section 8 Project, an owner must submit the following no later than 120 days before the expiration of the Section 8 contract:

- Request to Renew Using Non-Section 8 Units in the Section 8 Project as a Market Rent Ceiling (form HUD-9629).
- Rent table comparing current and proposed Section 8 rents with the rents paid by tenants not receiving tenant rental assistance.
- Cover sheet of the Contract Renewal Request (form HUD-9624), showing the current rent potential and identifying all contracts at the project, as well as indicating which contracts will be renewed.
- Budget Worksheet (form HUD-92547-A) if seeking a budget-based adjustment, or Steps 1 and 2 of the OCAF calculation on form HUD-9625 if seeking an OCAF-driven adjustment.

HUD staff must decide on the request within 20 calendar days after receiving the owner's request.

Account Executives who process these requests must be familiar with the project's condition and amenities. Account Executives must seek a state certified appraiser's input as to prevailing rent levels in the subject's market area. Staff must ensure that the project meets the eligibility conditions. Staff must also:

- Use iREMS/TRACS to check the data reported in the rent table attached to the owner's request.
- Use the owner's rent table to help assess compliance with the occupancy criterion noted above. A significant vacancy may indicate that the project is asking too much for these units.

Account Executives should deny the request only if they have concluded that the rents paid by non-Section 8 tenants in the project are significantly higher than rents in the surrounding area or that some of the eligibility conditions listed above are not met. HUD staff must make an approve/deny decision on the application within 20 calendar days after receiving the owner's request. If HUD denies the owner's request, HUD may issue a short-term renewal to allow the owner a reasonable period to obtain an RCS. Owners may not appeal HUD's denial of their requests to use projects' non-Section 8 units in lieu of submitting an RCS.

PREPARING THE RCS

If the owner decides to renew by purchasing and submitting an RCS, the owner must hire an RCS appraiser, and ensure that each RCS:

- Is prepared by, or under, the direction of an RCS appraiser that meets the requirements set forth in the renewal guide.
- Covers at least all unit types that have Section 8 assistance in the contracts being renewed now. Owners may also include other Section 8 unit types in other contracts the owner plans to renew during the next five years.
- Estimates market rents for each Section 8-unit type, by adjusting rents of comparable units to reflect the location, condition, appeal, amenities, and utilities of the Section 8 units.
 - **Note:** RCS Appraisers must estimate market rent without considering the market's ability to absorb all Section 8 units.
- Is concise but contains enough information that a person not familiar with the properties and market areas involved can understand how the RCS appraiser arrived at his/her adjustments and opinion of market rent. Owners and their RCS appraisers may consult the sample RCS provided by HUD in the renewal guide.

- Is submitted to HUD/CA no later than 120 days before the end of the five-year life cycle of the RCS or contract renewal in cases where the contract is being terminated early and renewed. Early submissions are allowed, but owners must not submit more than 180 days before the end of the RCS's life cycle or early contract termination. Additionally, no more than 90 calendar days must have elapsed between the date the owner submits the RCS to HUD and the date of the RCS.
- Includes at least all materials listed under the Owner's Checklist in the Section 8 renewal guide. Each submittal must include a cover letter from the owner. To expedite HUD review, the owners and their RCS appraisers must ensure that all materials are submitted in electronic copy reports in the same order as shown in the owner's checklist.
- Complies with Standard 1 and Standard 2 of Uniform Standards of Professional Appraisal Practice (USPAP). The RCS is a type of appraisal because it is for a specific subject project, and the problem to be solved in the assignment is a value opinion. The value type is market rent. Since an RCS is an appraisal, the RCS appraiser must comply with Standards 1 and 2.

APPRAISER QUALIFICATION

Owners and RCS appraisers must meet certain requirements in preparing an RCS. In order to meet the required qualifications, the RCS appraiser must:

- Be a Certified General Appraiser, licensed and in good standing in the state where the project is located. The license may be temporary or permanent. (Owners can obtain lists of RCS appraisers meeting this standard at www.asc.gov or from each state's appraiser regulatory agency.)
- Be currently active and regularly engaged in performing RCSs or appraisals of Multifamily housing and demonstrate continuing education relating to Multifamily housing, market studies, or advanced market analysis, or separating non-real property features within a property.

- Meet all the requirements of the current Competency Provision in USPAP and have read all Chapter 9 in the renewal guide and Appendices. (Additional or updated information on USPAP can be obtained at www.appraisalfoundation.org)
- Have no prospective or present financial interest in the Section 8 project, its ownership or management agent entity, or the principals of those entities.
- Not be an employee of the owner, the management agent, or the principals of those entities or have a business or close personal or family relationship with those parties that would commonly be perceived to create bias or a conflict-of-interest.
- 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 Program Center having jurisdiction over the Section 8 project.
- Be in compliance with all applicable civil rights laws and statutes.

In preparing the RCS, the RCS appraiser must:

- Sign and take full responsibility for the report. Appraisal assistants may contribute to any of the tasks if:
 - They are employed by the same firm as the RCS appraiser; and
 - The report identifies the roles the assistant RCS appraiser performed. There is no specific restriction on the role contributed by an assistant, including inspection of the subject property and comparables.

- Ensure compliance with this chapter and its appendices, and with USPAP.
 - If this chapter's requirements go beyond USPAP, RCS appraisers must consider the chapter's requirements to be supplemental standards and comply with them.
 - RCS appraisers must comply with the Fair Housing Act. RCS appraisers may not use or rely on unsupported conclusions related to the comparable or subject properties or their surrounding areas or upon any factors prohibited by the Fair Housing Act. RCS appraisers' opinions, conclusions and reports must be impartial and objective and not illegally discriminate or contribute to illegal discrimination through subjective or stereotypical assumptions. The Fair Housing act explicitly prohibits persons engaging in the business of furnishing real estate appraisals to take race, color, religion, national origin, sex, disability, or familial status into consideration.
- 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.
- Provide a descriptive analysis following the guidance provided in Sections 9-9 through 9-14 of the Section 8 Renewal Guide, and detailed instructions under Appendix 9-1. The RCS appraisers must download the electronic versions of Word or Excel files for any tables or grids in the RCS.

ANALYZING THE PROJECT

RCS appraisers must inspect and analyze the subject Section 8 project and its surrounding neighborhood in accordance with the contract renewal guide. The RCS appraiser must determine:

- Unit Breakdown
- The project's condition and appeal
- The project's amenities and services
- The scope of planned repairs
- Neighborhood characteristics

Unit Breakdown

RCS appraisers must identify the unit breakdown at the subject project as primary versus secondary. While RCS appraisers must estimate a market rent for each Section 8-unit type, a Rent Grid is required only for each of the primary unit types. For secondary unit types, RCS appraisers need not complete an entire Rent Grid. Instead, they may start with the market rent for a primary unit type and adjust for the minor differences. To identify primary and secondary unit types, the RCS appraisers must:

- Identify all unit types that will be included in the renewal contract and any other units the owner elected to include in this study. The RCS appraiser must recognize a unit type for each rent level that the owner is seeking renewal for.
- Label each unit type as a primary or secondary type using the guidance below.
 - The RCS appraiser should 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 as significant differences. While the RCS appraiser should be allowed some discretion regarding designation of primary and secondary units, certain categories of differences must be recognized as significant to renters and should always trigger the process of designating the more common unit type to be primary and the other unit type to be secondary. Categories of differences that would require the break-out of primary and secondary units include the same unit size threshold as used to compare the subject to the comparables, the number of bedrooms and bathrooms (including additional toilet or shower and bath fixtures), and unit configuration (e.g., stacked versus townhome, or walk-up versus elevator-served).
 - Example: A project has 100 three-bedroom, two-bath, 1,000 square foot units and 30 three-bedroom, one and a half bath, 900 square foot units. The owner is charging different rents for these two types. The RCS appraiser will label the most common type (the two bath, 1000 square foot unit) as primary and the other as secondary.

- If the units being renewed are located on scattered sites, the RCS appraiser must determine if separate unit types should 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 should generally create separate unit types for the sites that vary significantly. RCS appraisers should use their professional judgment to categorize the unit types as primary or secondary.

Project's 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:

- Inspect at least one unit of each primary unit type, project grounds, and the interior and exterior common areas (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.
- Determine or verify the size of each unit type. Estimate the rentable interior square footage of the unit. Do not count balconies, mechanical areas, or other non-living spaces.
- Take color photos of the items listed below. Take additional close-up photos as needed to show the project's condition.
 - Subject's exterior, showing location on the site, exterior design, site layout, and site amenities
 - Interior of typical units
 - Interior common areas (e.g., meeting rooms)
- Determine and document the project's design, age and structure. Assess the project's physical condition and overall appeal. Determine the extent of any major renovations made.

Project's Amenities and Services

The RCS appraiser must identify all amenities and services offered at the subject project, and whether they are included in the rent or charged for separately. The RCS appraiser must:

- Identify all unit and site amenities, and the type of utilities. The RCS appraiser must consider all characteristics listed on the Rent Grid, and any other characteristics that would affect the rent a tenant would be willing to pay.
- At projects providing non-shelter services (e.g., service coordination, neighborhood networks, and elderly services noted below), the RCS appraiser must ask the owner/agent to identify which services are included in the rent and which services require additional payments from tenants. A non-shelter service provided at the subject project for an additional charge may still warrant adjustment to the comparables if there is market evidence that availability of that service has value to tenants in that market. Conversely, a non-shelter service provided at the subject project for no additional charge may not necessarily warrant any adjustment to the comparables if the RCS appraiser does not find evidence of its value to tenants in that market. However, the RCS appraiser may consider the value provided to the tenants at the specific project within the context of the specific occupancy of that project. In that case—perhaps involving a service that is so specialized that it is not found elsewhere in the subject market—the RCS appraiser can cite market evidence from other multifamily markets.

- Consider the tenant profile at the subject project. For instance, when preparing an RCS for projects designed for the elderly/disabled, the RCS appraiser must identify all services provided for elderly/disabled. RCS appraisers must consider whether emergency call systems, transportation, social or educational activities, service coordination, meals, laundry, or housekeeping are offered. The foregoing list is not all-inclusive, as there could be other non-shelter services offered, such as health and wellness monitoring and mental health counseling. RCS appraisers must determine which services are provided by the project and which are just accessed through arrangements the project has established with outside agencies. The RCS appraiser must assess each of these services for its rental value and whether an equivalent service can be found at unassisted properties, regardless of whether the owner or another party is paying for or delivering the service to residents.

Scope of Planned Repairs

If the owner is anticipating an increase in rents based on repairs to begin in the following 12 months, the RCS appraiser must review the complete list of repairs to the subject property planned by the owner during the 12-month period following the as-of date of the rent study. Each item within the scope of planned repairs provided by the owner must be evaluated for the impact of that repair item on marketability and appeal of the subject property to prospective tenants. Typically, replacement of components that are worn or at the end of their useful lives will not impact marketability. On the other hand, installation of equipment or systems that represent upgrades may increase the appeal of the property.

- Examples would be installation within living units of features not formerly provided, such as air conditioning, or kitchen renovations that add features such as dishwashers.
- Examples of upgrades not directly impacting living units, but nevertheless having potential impact on marketability, would be improvements to the 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.

The RCS appraiser should take care to distinguish non-replacement outlays that increase marketability from those that will typically have no impact.

- An owner's plan to install a berm on the site to improve site drainage would be an example of a repair that is not a mere replacement of a worn-out component, but would not likely impact marketability.

If in the RCS appraiser's judgment, any of the items within the owner's scope of planned repairs would impact marketability, a separate set of form HUD-92273-S8 rent grids must be completed. The RCS would thus contain rent grids representing both pre-repair ("as-is") and post-repair ("as-repaired") assumptions of property condition and features. It is possible that "dual" rent grids will not be required for every type of living unit. For example, if kitchen renovations will be completed only for the two-bedroom units, "dual" rent grids would only be required for the two-bedroom plan. If the RCS appraiser receives a list of repairs to the subject property planned by the owner during the 12-month period following the as-of date of the rent study, but the appraiser determines that the listed repairs would not affect market rent, the RCS must contain an affirmative statement to that effect.

Neighborhood Characteristics

The RCS appraiser must assess and describe the project's location and surrounding neighborhood near the subject project. The RCS appraiser must:

- Evaluate and note factors that would impact 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), crime rates, and other factors affecting the perceived quality of the neighborhood.

- Identify the project's market area, such as the geographic area from which the subject project would draw most of its applicants. Identify street or other boundaries. Consider 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.
- If the appraiser cannot find five comparables other than rent-restricted or rent-controlled units that meet the required conditions:
 - The appraiser can use the rent-restricted units only when they reasonably represent the market and meet requirements of conditions 2 through 5 in paragraph 9-10.a. of the renewal guide.
 - Must clearly disclose the use of and nature of the rent restriction in the narrative description of the selection of comparables on the rent-comp grid.
 - In some cases, rent restricted units may represent the market, but in others they may be below market rent.
 - The appraiser may want to discuss using these units with the O/A and HUD appraisal staff before finalizing comparables.
- The appraiser may select units in rent-control properties if they were rented in the last six months and are therefore representative of market rents.
- If the units being renewed are located on scattered sites, the RCS appraiser must assess whether the sites vary significantly on condition, street appeal, services, neighborhood, or other factors.

Note: HUD provides more detailed guidance for the appraiser on all the requirements for conducting the RCS and computing the comparable rents. Reference Chapter 9 of the Section 8 contract renewal guide for additional guidance.

For every adjustment made to a line-item in the rent grid, appraisers must provide two separate and distinct explanations in the narrative.

1. Explain why the adjustment was made, including whether the adjustment is on a property-wide basis or a per unit comparison basis;
 - Example: Adjusted comparables A and B upward by \$20 for not providing a balcony.
2. Explain the rationale for the dollar amount of the adjustment:
 - Could be supported by comparable analysis, interviews with management or leasing agents, or prior experience in the market.
 - Example: Subject and comparables C, D, and E offer a balcony or patio, while comparables A and B do not offer that feature in any units. Units in this area with balconies commanded an average additional rent of \$20, providing the basis for the upward adj. to comparables A and B.
3. Appraisers must not just restate the entries in the data column.
 - Example: A negative adjustment was made to comparable A for location.
4. Instead, they must outline the data and logic used to arrive at the dollar amount of the adjustment.
 - Example: Comparable A was adjusted down to reflect its location is in a more desirable neighborhood with single-family homes, low crime, and good access to shopping. Adj. estimated based on comparing rents at comparable A with those of comparable D, which is in the subject neighborhood but otherwise very dissimilar part of the neighborhood. Average value of the superior location was estimated to be \$25.
5. 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 of the renewal guide), the appraiser must present market data to support each conclusion. The above are examples of a two-part explanation needed for adjustments exceeding a nominal amount. For minor adjustments, the appraiser may provide a subjective evaluation of why the differences would affect the rent.

RENTS EXCEEDING THE MAXIMUM CALCULATED AMOUNT

In March 2023, HUD published a change to Chapter 9, Section 9-14, clarifying the use of median gross rents for high-cost zip codes when determining HUD RCS requirements.

Each year the Census Bureau reports the actual median market rent value up to a maximum amount. If median rents for a zip code exceed that maximum amount, then the Census Bureau assigns such zip codes a value of \$x,xxx. If a project is in a zip code where the median gross rent exceeds the calculated range, the below guidance applies:

1. If the owner's RCS has a median rent that is less than 150 percent of the maximum amount, then no further action is required, and the final comparable market rent is determined by the owner's RCS.
2. If the RCS median rent is greater than or equal to 150 percent of the maximum amount, but less than 105 percent of the current Housing Assistance Payments (HAP) contract rent for the project, then the final comparable market rent is determined by the owner's RCS.
3. If the RCS median rent is greater than or equal to 150 percent of the maximum amount and greater than or equal to 105 percent of the current HAP contract rent for the project, then a HUD-commissioned RCS would be required.

EXAMPLE COMPARISON

Project in Zip code 76496; Owner's RCS Rent 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
Total Gross Renewal Rent				\$127,875

SAFMR Gross Rent Calculation

Unit Size	Number of Units	SAFMR Rent	Gross Rent Potential
1 Bedroom	50	\$610	\$36,600
2 Bedroom	75	\$800	\$60,000
Total Gross SAFMR Rent			\$96,600
150% of SAFMR Gross Rent			\$144,900

In this example, the Owner's RCS gross rent potential is less than 150 percent of the SAFMR gross rent potential, so the RCS does not exceed the mandatory threshold. Therefore, the rents for this property would be set at:

- \$800 for a one-bedroom with a \$40 utility allowance; and
- \$1,100 for a two-bedroom with a \$45 utility allowance.

HUD REVIEW OF RCS

All RCSs must be reviewed by staff members who possess the requisite knowledge needed for the level of review being performed.

- Initial Screening: An initial review for timeliness and completeness may be completed by the HUD/CA initial reviewer using the checklist provided. While completing this review, the HUD/CA initial reviewer must adhere to the policies and time frames set forth by HUD.
- 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, if HUD staffing does not permit that, a non-appraiser substantive reviewer from HUD staff must meet the following minimum qualifications to complete a substantive review:
 - 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, and Multifamily development. This background is necessary to effectively review the RCS facts, reasoning, and conclusions; and
 - Have read the Chapter 9 guidance in the contract renewal guide within the preceding 12 months of performing their first Substantive review.

The Regional Director at HUD's Multifamily Satellite Office, must authorize all non-appraiser substantive reviewers performing substantive reviews on RCSs.

An initial screening review using the checklist provided by HUD 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. The HUD/CA initial reviewer must follow up with the owner or RCS appraiser, by email or other forms of written correspondence, if:

- The owner's submission is incomplete. The RCS appraiser or the owner must submit the missing items within seven calendar days of the HUD/CA initial reviewer's request.
- More than 90 calendar days elapsed between the RCS appraiser's transmittal letter and the date the owner submitted the RCS to HUD. 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 HUD guidance.

All categories of reviewers must retain the RCS submission, subsequent correspondence with the owner, review materials, and documentation for a minimum of a three-year period. This includes review materials of RCSs that were previously submitted by RCS appraisers and deemed inadequate or incomplete.

RESULTS OF REVIEW

HUD/CA must convey the results of their substantive review within 30 calendar days after receiving a complete RCS package from the owner.

- 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 and notify the Account Executive that the market rents in the RCS are acceptable for use in further processing of the renewal.

- If aspects of the RCS are unclear or unconvincing, the HUD/CA substantive reviewer must ask the RCS appraiser for additional information or explanation, if the owner's cover letter permits HUD/CA to reach the RCS appraiser directly. If the issues are minor and HUD/CA expects easy resolution, the substantive reviewer may call the RCS appraiser. If concerns are many, more significant, or complicated, HUD/CA must send the RCS appraiser an email, fax, or hard copy of a letter stating the concerns highlighted in the Reviewer's Issues and give the RCS appraiser up to 10 calendar days to respond. (HUD/CA must copy the owner contact on any written correspondence.) The RCS appraiser must send the requested information to HUD/CA and copy the owner.

Within 10 calendar days after final information was due from the owner or RCS appraiser, HUD/CA must either:

- Accept the study and proceed as described in Section 9-17, A. of the contract renewal guide, as outlined above; or
- Draft a decision letter to the owner.

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 an RCS Review Appraiser and be consistent with renewal guide'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:

- Be signed by the Regional Office Director or designee;
- Clearly state the reasons the RCS is challenged;
- List the owner's options; and
- Provide a firm deadline for the owner to respond.

OWNER'S RESPONSE

The owner has 10 calendar days after the date of decision letter to advise HUD in writing if he or she chooses to accept HUD's alternate rents, resubmit a new study, or appeal HUD's decision.

If the owner chooses to appeal or resubmit an RCS, HUD/CA may 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. Submission of a new study restarts processing.

OWNER APPEAL

If the owner chooses to appeal HUD's decision letter, the owner must follow the steps provided below. There is no appeal process for HUD-commissioned RCSs. All appeals, when eligible, are reviewed and decided by HUD staff at the appropriate Regional Center, as opposed to HUD headquarters.

First Level Appeal

Subsequent to submitting the owner's letter indicating an appeal of HUD's decision, the owner must prepare and submit a written statement of his or her reasons for appeal and any data that supports his or 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 letter (or 10 calendar days after the date of owner's response).

In addition to the written statement, the owner may also 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 should consider if a field visit is needed to accurately process the appeal. 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.

The RCS Review Appraiser and the Regional Center or Satellite Office Asset Management Division Director will review the owner's appeal in conjunction with 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 or conference call conducted as discussed above; or
- The date by which owner submits additional information requested by HUD as also noted above.

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.

The owner may either accept or submit a second appeal.

Second Level Appeal

If the owner chooses to pursue a second level appeal, the owner must submit a written statement of his or her reasons for a second appeal and any data that supports his or 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. It must be addressed to the Regional Center Office Director and copy the Regional Center or Satellite Office Asset Management Division Director. The owner may also request a short-term renewal if the contract has expired or if expiration is imminent.

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. 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.

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.

CHAPTER 5 POST TEST

1. All these methods are acceptable to demonstrate how proposed Section 8 rents compare to rents charged for other units except:
 - a. Comparing proposed rents to FMRs
 - b. Comparing rents to rents charged at other non-Section 8 units in the project
 - c. Conducting a market survey of properties in the area
 - d. Purchasing and submitting an RCS
2. Method One and Two are only available under Option two, in order to avoid the costs and processing time associated with and RCS.
 - a. True
 - b. False
3. Fair market rents represent the _____ percentile of an area's market rents in most cases and are published and updated annually by HUD.
 - a. 30th
 - b. 40th
 - c. 50th
 - d. 60th
4. To request renewal using rents of non-Section 8 units in the project, the owner must submit all of the following except:
 - a. Rent table comparing current and proposed rents with the rents paid by tenants not receiving tenant rental assistance
 - b. A rent comparability study
 - c. A cover sheet of the Contract Renewal Request
 - d. Budget worksheet, if seeking a budget adjustment

5. If the owner decides to renew by purchasing and submitting an RCS, it must be submitted to HUD/CA no earlier than _____ days before the end of the five-year life cycle.
 - a. 90
 - b. 120
 - c. 160
 - d. 180
6. RCS appraisers must have no financial interest in the project, its ownership, or management agent entity, or the principals of those entities.
 - a. True
 - b. False
7. HUD/CA must convey the results of their substantive review of the RCS within _____ calendar days after receiving a complete RCS package from the owner.
 - a. 30
 - b. 10
 - c. 15
 - d. 60
8. The owner has _____ calendar days after the date of decision letter to advise HUD in writing if they choose to accept HUD's alternate rents, resubmit a new study, or appeal.
 - a. 30
 - b. 10
 - c. 15
 - d. 60

CHAPTER 6 **Residual Receipts**

This chapter applies to all projects that are non-profit and limited dividend multifamily projects with HUD-insured and HUD-held mortgages, including the Section 202 Program projects. It does not apply to releases of residual receipts under an approved Plan of Action pursuant to the Emergency Low-Income Housing Preservation Act of 1987 (ELIHPA) or the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (LIHPRA).

During the life of the mortgage, residual receipts are an asset of the mortgagor held under HUD control. When a residual receipts account is required, the project's Regulatory Agreement provides an exact definition of residual receipts. For purposes of a "working definition" for this chapter, however, residual receipts may be thought of as including:

- All "surplus cash" for non-profit projects
- Cash remaining after all accrued distributions have been properly taken for limited dividend projects
- Under certain circumstances for Section 221(d)(3) BMIR projects, another source of residual receipts may exist. Rental collections due from over-income tenants not receiving Section 8 subsidy are normally greater than the BMIR "contract rent" as described in HUD Handbook 4350.3. Although accounted for separately, these surcharges are ordinary revenue for purposes of operations and surplus cash computations.

To calculate the amount to be deposited into residual receipts, owners use form HUD-93486, Computation of Surplus Cash, Distributions, and residual receipts. Project owners use this form to either semiannually or annually (depending on the executed Regulatory Agreement for the project) calculate allowable distributions and any amounts that may be due for deposit to the residual receipts account.

The project's Regulatory Agreement or Section 8 HAP contract specifies where residual receipts are to be deposited. Owners of Section 202 projects maintain their own separate bank accounts for residual receipts; all other project owners with insured or HUD-held mortgages, or state-financed projects are required to deposit residual receipts with their mortgagees.

The residual receipts of all projects with HUD-insured mortgages should be invested with interest accruing from the investments credited to the residual receipts account.

Investments of residual receipts account funds may be affected and are to be safeguarded by mortgagees and mortgagors.

For HUD-insured mortgages, monies held in the residual receipts account and the reserve fund for replacements account may be combined to purchase a single investment or combination of investments.

- Earned interest and the return of principal when the investment is liquidated must be prorated to the respective bookkeeping accounts.
- Care should be taken to preserve sufficient liquidity in these accounts. Some forms of investment, such as passbook savings accounts, are very liquid; others are increasingly less liquid, such as 30, 60, or 90-day certificates of deposit (CDs), etc.

If an insured mortgagee proposes to assess charges for investing the residual receipts account, the Field Office asset management staff are reminded to examine the Mortgagee's Certificate for the project to see if any fees or charges for making investments were disclosed or stated. If such fees are disclosed, no further review is necessary. If they are not shown, any fees so collected by the insured mortgagee may only be collected according to a written agreement between the insured mortgagee and the mortgagor.

HUD does not recognize special fees or charges that might be paid by project mortgagors to investment brokers or other parties (other than HUD) such as managing agents for providing investment advice or for making or brokering investments. The exception is when the nature of the investment itself requires that it be brokered (i.e., obligations of federal agencies such as GNMA). Such fees, other than those involving the above exception, are not considered to be necessary expenses of the project, should not be paid from project funds, and are not considered by HUD when calculating rental rates.

Projects fortunate enough to have funds in a residual receipts account have a versatile source of capital that may be used only with the approval of HUD for any number of purposes if the uses are fully consistent with the intent of the program under which the project was originally endorsed or approved. Except for projects subject to the 1979-1980 revised Section 8 regulations, withdrawals from the residual receipts account may be authorized by the Asset Management Branch Chief. Some of these uses include but are not limited to:

- Reduce operating deficits when legitimate cash flow deficits exist (i.e., offset increased operating expenses instead of increasing rental rates).
- Make mortgage payments when a mortgage default is actual or imminent.
- Make repairs to the property not covered by the reserve fund for replacements.
- Provide additional project amenities such as air conditioning, a sprinkler system, fire or smoke detectors, or energy saving devices, as well as office equipment such as computers and associated software. For Section 202 projects, the amenities must conform to the program's cost containment provisions.

- Pay accrued, allowable distributions where insufficient surplus cash is available provided:
 - There are no known violations of the Regulatory Agreement.
 - There are no major unresolved findings from management reviews or analyses of financial statements.
 - The project is in acceptable physical condition and the mortgagor has certified to the acceptability of the project's physical condition.
- Repay HUD-approved residual receipts notes if the project is financially solvent, well maintained, and in a stable market, if these residual receipts notes do not exist as a result of a “transfer of physical assets” (TPA). For projects with insured and HUD-held mortgages, authority for release of residual receipts for TPA-related transactions is reserved to the Director, Office of Multifamily Housing Management, in HUD Headquarters.
- Repay flexible subsidy operating assistance or capital improvement loans.
- Make enhancements to the project or retrofit units for Housing Accessibility under Section 504.
- Provide for testing or abatement of lead-based paint at the project.

For those projects subject to the revised 1979-1980 Section 8 regulations, requests for withdrawals will be considered if such requests are for the purposes stated above. Asset Management Branch Chiefs may approve requests for these two purposes. Requests for purposes other than those listed above will be disapproved by the Field Office.

For certain Section 8 projects, notably those subject to the 1979-1980 revised Section 8 regulations, the Assistant Secretary for Housing/Federal Housing Commissioner may direct that ***all or a portion of funds in a project's residual receipts account be used to reduce housing assistance payments*** or for other project purposes.

When a project's Section 8 contract expires, is terminated, or any extensions are terminated, HUD will request the project owner to return to HUD the unused balance of funds remaining in the residual receipts account at the time of the contract's termination. It is therefore reasonably possible that some portion of monies that have been deposited to the residual receipts account during the course of operations under a Section 8 contract will be transferred back to HUD. HUD staff may hear about so-called "phantom income" from project owners subject to this provision, where taxes might be paid on this portion of income without the taxpayer (mortgagor, in this case) having the benefit of the income. Although HUD employees are not responsible for providing tax advice to mortgagors, these amounts may represent a "loss contingency" as defined by the Financial Accounting Standards Board (FASB) Statement No. 5, Accounting for Contingencies. HUD staff may refer mortgagors to FASB Statement No. 5 if they become aware of questions on this issue.

Form FHA-1710, Residual Receipts Note (Non-Profit Mortgagors) and Form FHA-1712, Residual Receipts Note (Limited Distribution Mortgagors), may be used where such notes are necessary. The use of these residual receipts notes after final endorsement or closing should be relatively rare except for advances from owning persons or sponsors to cover unpaid construction costs after final endorsement or closing and reported in the Supplemental Cost Certification. However, use of these residual receipts notes may be permitted in order to recognize owning persons', sponsors', or management's advances made to cover operating expenses, taxes, or capital improvements after final endorsement and closing. Execution of residual receipts notes is often desired by sponsors or other third parties as a form of guarantee that such advances may be repaid if residual receipts are generated. The Field Office Housing Management Division Director, in association with the Field Office Counsel, is responsible for review, modification, and approval of these residual receipts notes after final endorsement. Copies of executed residual receipts notes and related correspondence are to be forwarded to the Operations Division, Office of Multifamily Housing Management, in Headquarters, for inclusion in the Washington Docket.

- To the extent that residual receipts are available at a new regulation project, owners are allowed an initial reserve (“retained balance”) in an amount equivalent to \$250 per unit to use for project purposes. HUD will consider approving requests for releases from the account in accordance with the outstanding procedures outlined above.
- To the extent residual receipts are available at a new regulation project, Owners may use residual receipts to fund a service coordinator program, subject to HUD approval. The \$250 per unit retained balance is net of the residual receipts necessary to fund a service coordinator program. That is, residual receipts funds in excess of the retained balance may be used to fund a service coordinator program prior to offsetting Section 8 HAP payments.
- Residual receipts account balances in excess of \$250 per unit must be applied on a monthly basis to offset Section 8 HAP payments up to the full amount of the monthly subsidy request, depending upon the amount of residual receipts available for the offset. Monthly offsets must continue until the residual receipts account reaches the retained balance level of \$250 per unit.
- Owners of projects with residual receipts account balances at or below the retained balance will voucher for full monthly HAP payments through the Tenant Rental Assistance Certification System (TRACS) in accordance with existing procedures.
- At the end of the project’s fiscal year, all surplus cash remaining after payment of any permissible distributions must be deposited into the project's residual receipts account.
- If, after all residual receipts have been applied to offset Section 8 HAP payments and the residual receipts account balance again exceeds the retained balance level of \$250 per unit due to an annual deposit of surplus cash, offsets of Section 8 HAP payments must be reinitiated.

- In order to accomplish the Offset Process, project Owners must submit a miscellaneous payment request through the Contract Administrator along with their electronic monthly HAP voucher. The request must include:
 - The amount of the offset, expressed as a negative amount; and
 - The text phrase “RR OFFSET” in the comment field, along with the actual offset amount inserted
 - The miscellaneous payment request must be sent to “Field Office Initiated Accounting Adjustment,” with a code of “FORQ.” TRACS will automatically deduct the offset amount from the total voucher amount approved, thus assuring that the proper amount will be paid via TRACS.
 - When making the miscellaneous payment request, Owners must simultaneously submit form HUD-9250, Funds Authorizations for Use of Reserve for Replacement or Residual Receipts, to the HUD Field Office as documentation of the offset.
 - Incomplete submissions will delay processing. Field Offices will return incomplete submissions to owners with a letter detailing the deficiencies.

Owners shall submit Annual Financial Statements, which include surplus cash computation sheets, in the form and to the entity currently required by the Department, within 90 days of the end of the annual fiscal period. Owners who are not required to file annual financial statements must submit a year-end certified statement to their local HUD Office, providing total disbursements as well as the beginning and year-end balance in the residual receipts account.

At the end of the project’s fiscal year, all surplus cash remaining after payment of any permissible distributions must be deposited into the project's residual receipts account and must be used to offset Section 8 HAP payments based on the requirements and procedures established in Notice H 2012-14.

HUD REVIEW

Hub or Program Center (Hub/PC) staff will date-stamp owners' submissions upon receipt and process them within 10 business days.

Hub/PC staff will return incomplete submissions to owners immediately with a formal letter listing the deficiencies in the submission.

Prior to the first required offset of residual receipts, the Hub/PC will notify the PBCA or TCA at least 45 days in advance of the proposed effective date of the offset. The effective date of the offset will be the first day of the month following the conclusion of the 45-day notification period.

- Example 1: If the Hub/PC notifies the PBCA or TCA that HUD has directed the offset on June 15, the offset will be made effective on August 1st.
- Example 2: If notification of offset is given on May 1, the offset may be made effective on July 1.

The Field Office Project Manager will review and assure that the offset amount is correct and notify the PBCA regarding the amount of the offset.

The Hub/PC Director or designee will sign the request.

The Hub/PC shall maintain copies of all approved releases in accordance with HUD document retention regulations.

The Hub/PC will submit form HUD-9250 authorizing releases to the project's Contract Administrator (if appropriate) and to the mortgagee or in the case of a Section 202/8 project, to the private bank that maintains the project's residual receipts account.

The Hub/Program Center will:

- Keep track of the remaining balance in the residual receipts account available for offsetting Section 8 HAP payments.
- Ensure that owners are using residual receipts to offset Section 8 HAP payments when the account is in excess of the retained balance.
- For those for which they are responsible, review owners' annual financial statements to assure proper accounting of withdrawals from the residual receipts account.

- After each release, enter comments into the “Servicing” screen of the Integrated Real Estate Management System (iREMS) stating the:
 - Date approval was given to use residual receipts to offset Section 8 HAP payments; and
 - The amount approved

The Office of Asset Management will process owners' appeals of decisions that cannot be resolved at the Hub or Program Center level. Owners must submit a letter describing the issue, along with supporting documentation, to the Hub or Program Center. The Hub in turn, will forward the owner's appeal to the Director of Asset Management for response.

CHAPTER 6 POST TEST

1. The requirement to maintain a residual receipt account, is only for properties that do not have HUD insured mortgages.
 - a. True
 - b. False
2. Owners must calculate the amount to be deposited into the residual receipt accounts:
 - a. Annually
 - b. Semiannually
 - c. Depending on the regulatory agreement, a or b
 - d. Quarterly
3. Monies in the residual receipt accounts can be used to purchase investments in some circumstances.
 - a. True
 - b. False
4. Use of the funds on the residual receipt account can only be used for specific items, but do not require HUD approval.
 - a. True
 - b. False
5. When a projects contract expires, the funds in the residual receipt accounts:
 - a. Can be deposited into the operating account
 - b. Can be used as unrestricted funds by the owner
 - c. Will be returned to HUD
 - d. None of the above

6. In a new regulation project, initial reserve deposits of \$_____ per unit are required.
 - a. 250
 - b. 300
 - c. 200
 - d. 500
7. In new regulation projects, funds in excess of the per unit minimum can be used to fund a service coordinator.
 - a. True
 - b. False
8. Annual Financial Statements must be submitted to HUD within _____ days of the end of the annual fiscal period.
 - a. 30
 - b. 60
 - c. 90
 - d. 120
9. HUD will review submitted financial statements within _____ days of the receipt.
 - a. 10
 - b. 15
 - c. 30
 - d. 60
10. If HUD notifies the CA that they have directed an offset of Residual Receipts on July 2, the offset will be made effective _____.
 - a. August 17
 - b. August 1
 - c. September 1
 - d. October 1

Notes

CHAPTER 7 Tenant Issues

REGULAR HOUSING CHOICE VOUCHERS

The regular housing choice voucher refers to Section 8 tenant-based assistance that is provided to eligible families and individuals to assist them in obtaining affordable housing in the private market.

- The voucher is provided to the family or individual and generally allows the holder to choose any housing that meets the program requirements.
- 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 (FMRs) for the area.
- 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.

ENHANCED VOUCHERS

The enhanced voucher refers to tenant-based housing assistance used to assist eligible families affected by certain types of housing conversion actions, called “eligibility events.” 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.

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 on the date of eligibility event.

- Details regarding the minimum rent calculation can be found in Notices PIH 2001-41 and PIH 2019-12.

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.

HOUSING CONVERSION ACTIONS

Upon the occurrence of a housing conversion action that constitutes 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).

Notices PIH 2001-41 and PIH 2019-12 outline policies and processing guidelines for administering vouchers in cases of housing conversion actions. For more information, contact the local PIH Office. Copies of these notices are available on HUDCLIPS:

- <http://www.hud.gov/offices/adm/hudclips/>

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.

- 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.
- 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.
- 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.

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, which lead to either owner default under an 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.

TENANT PROTECTIONS: 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.

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 good 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 tenant's right to remain, the tenant's remedy will be determined by federal law that provides for the right to remain, and on state and local law.

- The FY 2001 Military Construction and FY 2000 Emergency Supplemental Appropriations laws, (Public Law No. 106-246, Section 2801) amended the enhanced voucher statute passed in the FY 2000 Appropriations Act (USHA Section 8(t), 42 USC 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...."

- 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.

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.

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 project-based Section 8 programs. In some cases, a tenant may be denied assistance under the tenant-based assistance program.

24 CFR 982.552 and 982.553

- 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. 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 provide 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.
- 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.

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.

- 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.
- In cases of preservation prepayments, follow the guidance in Notice H 2004-17.

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:

- If the HAP contract terminates for any reason, the lease terminates automatically, and
- 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.

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.

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.

OWNER NOTIFICATION REQUIREMENTS

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.

FORMAT

The notification letter:

- Must be on the owner's or duly authorized representative's letterhead and signed.
- 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.
- If the population of the project speaks a language other than English, must provide the notification letters in the appropriate language or languages. The cost of the translation of the letter is an eligible project expense.

CONTENT OF NOTIFICATION LETTER

Owners must include certain information in a notification letter. To meet the legal requirements for notification, the Section 8 Renewal 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.

- Owners must use a letter that contains the language included in the sample letters provided in the Guide.
- 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.

- 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.

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.

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.

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. The 120-day notice is in addition to the one-year notice issued upon entry to Recap.

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.

- If the AE/CA review determines that the letter is acceptable, no action by the AE/CA is necessary.
- 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.

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.

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. There is no exception for cases in which the owner fails to issue a notice or in which the notice issued by the owner does not comply with HUD’s regulations.

When a HAP contract expires without the proper notice requirement being met, the PHA will still decide regarding family eligibility for enhanced voucher assistance.

- 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).
- 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.
- 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.

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.

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:

- Where the owner has fulfilled his or 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.
- 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.

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.

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.

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.

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/FederalRegisterpublishedguidance.pdf>

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 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, or materials on tape or in Braille) can greatly increase the effectiveness of outreach and ongoing communication.

CHAPTER 7 POST TEST

1. The _____ refers to the tenant-based housing assistance used to assist eligible families affected by certain types of housing conversion actions.
 - a. Housing Choice Voucher
 - b. Projected based assistance
 - c. Enhanced Voucher
 - d. Project Based Voucher
2. Tenants who receive an enhanced voucher do not have the right to remain in their units after the owner opts out, even if their units are offered as rental housing.
 - a. True
 - b. False
3. The tenant-based assistance program is administered through:
 - a. Public and Indian Housing
 - b. Multifamily Housing
 - c. Community Planning and Development
 - d. State Allocation Agencies
4. If the owner's current income certification for a tenant is no more than _____ old and the PHA determines it is acceptable, the PHA may use for determining eligibility for the enhanced voucher.
 - a. 3 months
 - b. 120 days
 - c. 5 months
 - d. 6 months

5. A family with income above ____ of area median income is not eligible for tenant-based assistance because of opt out.
 - a. 50
 - b. 60
 - c. 65
 - d. 80
6. The one-year notification letter must contain all of the following except:
 - a. Be on the owner/agent letterhead and signed
 - b. Be served directly to each unit or mailed to each unit
 - c. Be posted in the common areas at the property
 - d. Be available in other languages according to the site LEP plan
7. If the owner fails to provide proper notice to the residents, the owner must permit the residents to remain in the units without an increase in rent until the one-year notice period is met.
 - a. True
 - b. False
8. At least _____ before the contract expires, the owner must notify HUD in writing, of their intent to renew or opt out of the contract.
 - a. 60
 - b. 90
 - c. 120
 - d. 160

Notes

CHAPTER 8 Physical Condition of the Property

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 physical inspection reports, 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.

EXIGENT HEALTH AND SAFETY DEFICIENCIES

An exigent health and safety (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). The notice requires HUD to take certain steps in cases when a multifamily housing project receives a score of 59 or below on a 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.

EH&S DEFICIENCY NOTICE

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

The owner must:

- Immediately correct or mitigate EH&S deficiencies irrespective of a project's physical inspection score; and
- Submit a written certification to the AE within three 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.

The AE must:

- Not act to abate a contract based solely upon the issuance of an EH&S Deficiency Notice, but must take into consideration the actions taken by the owner to correct all the EH&S deficiencies at the project.
- Flag the owner in the Active Partners Participation System (APPS) 2530 if the owner does not correct or mitigate all EH&S deficiencies at the project.
- 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.

PHYSICAL INSPECTION REPORT

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.

The physical inspection report is available to the AE/CA in the Integrated Real Estate Management System (iREMS). The AE/CA must:

- 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.
- 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.

For inspections where the score is above 60, the AE/CA will:

- Renew the contract, if the owner has corrected or mitigated the EH&S deficiencies, unless such citations were appealed.
- Follow the procedures on refusal to renew Section 8 HAP contracts in Chapter 13 of the contract renewal guide, if the owner has not corrected or mitigated the EH&S deficiencies, unless such citations were appealed.

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 reinspections of the project:

- Renew the contract if the owner is in compliance with current requirements.
- Enter into a short-term renewal of the contract if the owner is not in compliance with current requirements, until a Compliance Disposition 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 or consummated and until vouchers can be ordered.

CHAPTER 8 POST TEST

1. REAC inspections are performed at a project every one to three years, depending on the projects last REAC score.
 - a. True
 - b. False
2. HUD must take certain steps in cases when a MF housing project receives a score of _____ or below on a REAC report.
 - a. 60
 - b. 59
 - c. 70
 - d. 69
3. If an owner receives an EH&S citation from a REAC inspector, they must provide a written certification to the HUD within _____ business days of the date of the inspection.
 - a. 1
 - b. 2
 - c. 3
 - d. 4

Notes

CHAPTER 9 Other Renewal Issues

HUD REFUSAL TO RENEW THE SECTION 8 CONTRACT

*Sections 516 and 524(a)(2) of
MAHRA*

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

- The owner or purchaser of the project has engaged in material adverse financial or managerial actions or omissions regarding the project.
- The owner or purchaser of the project has engaged in material adverse financial or managerial actions or omissions regarding their other projects that are federally assisted or financed with a loan from, or mortgage insured or guaranteed by, an agency of the federal government.
- 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.

Material adverse financial or managerial actions or omissions include:

- 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.
- 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.

- 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 (VCA) 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.
- Repeatedly and materially violating any federal, state, or local law or regulation regarding the project or any other federally assisted project.
- Repeatedly and materially breaching a Section 8 HAP contract for assistance under Section 8 of the 1937 Act.
- Repeatedly and materially violating any applicable regulatory or other agreement with the Secretary or a participating administrative entity.
- Repeatedly failing to make mortgage payments at times when project income was sufficient to maintain and operate the project.
- 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
- Committing any actions or omissions that would warrant suspension or debarment by the Secretary.

HUD'S DECISION NOT TO RENEW

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.

Process

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

- If more than 120 days remain on the contract, the AE/CA must:
 - Notify the owner that because the exigent health and safety (EH&S) deficiencies have not been corrected and the reinspection 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 Notice H 2014-14 for details).
 - Immediately begin the process for obtaining regular housing choice vouchers (HCVs) following the instructions in Notice PIH 2001-41 allowing up to 120 days for issuance of the HCVs.
 - 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.
- If less than 120 days remain on the contract, the AE/CA must:
 - Notify the owner that because the EH&S deficiencies have not been corrected and the reinspection 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 Notice H 2014-14 for details).
 - Immediately begin the process for obtaining regular housing choice vouchers (HCVs) following the instructions in Notice PIH 2001-41 or current guidance.
 - 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 an RCS, renew at rents that do not exceed market rent.

- Monitor the processing of the vouchers with the assigned public housing agency (PHA), PIH, and the owner, until the vouchers have been issued.
- 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.
- 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.
- 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 Notice H 2014-14 for details).
- Flag the owner in the APPS/2530 system.
- Designate the project as troubled.

OWNER'S APPEAL IF HUD REFUSES TO RENEW

If HUD refuses to renew an owner's Section 8 HAP contract, the following appeal process must 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.

The AE will:

- Provide a notice, in writing, to the owner notifying them of the reasons for refusal to renew the Section 8 HAP Contract
- Provide a short-term renewal of the contract pending review of any appeal, if the contract is about to expire
- Provide notice to tenants of the creation of a CDE Plan

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.

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.

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.

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.

If the owner wants to provide additional information, a short but mutually agreeable deadline will be established for submission of the material.

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.

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.

Based on the outcome of the appeal, the AE will:

- 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.
- 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.
- Monitor the processing of the vouchers with the assigned AE/CA, PIH, and the owner, until the vouchers have been issued.
- Terminate the contract after vouchers have been issued to the eligible residents

HUD'S TENANT NOTIFICATION OF REFUSAL TO RENEW

In cases where HUD elects not to renew the Section 8 contract due to any of the conditions noted above, the Regional Center or Satellite Office will notify all tenants in a project who are receiving Section 8 assistance, in writing, of HUD's decision not to renew the project's Section 8 contract.

As required by section 516(d) of MAHRA, subject to the availability of amounts provided in advance in Appropriation Acts, Section 8 tenants and any other low-income tenants residing in the project shall be provided with regular housing choice voucher (HCV) tenant-based assistance and reasonable moving expenses, as determined by the Secretary.

RHS SECTION 515/8

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 Four but may request to renew under any option for which they are eligible at the time of the renewal.

- **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 One A. However, the owner may still be able to renew the projects contract under Option One B.

Owners of Section 515/8 projects who are requesting a contract renewal under Option Four 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/CAs.

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

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 “zero” 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 (RCS) to show that the rents are below market.

The AE/CA will accept RHS-approved budgets reflecting the appropriate eight percent allowable owner's distribution on equity or any higher level as approved by RHS as an incentive to the owner to prevent prepayment.

- **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.

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

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.

An owner who has executed a HAP contract expiring on December 31st 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.

After the loan with RHS has been paid in full:

- If requesting a budget-based rent adjustment, the owner will submit their budget directly to the AE/CA. The budget must be completed in accordance with the Section 8 Renewal Guide.
- 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

One of HUD's primary goals is the long-term preservation of affordable housing. This section provides guidance on HUD's efforts to encourage the rehabilitation.

- Nonprofit owners or purchasers can use this guidance 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 of the Section 8 renewal guide can use this guidance when renewing under Option One, Mark-Up-To Market.
- For-profit owners can use this guidance when renewing under Options One or Two.
- For-profit entities who propose to acquire and rehabilitate a project can use this guidance but must renew under Option One, MUTM. This guidance 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.

NONPROFIT OWNER OR PURCHASER

The AE must determine if the nonprofit owner or purchaser meets the following criteria:

- Be financially solvent with no open or unresolved audit findings or findings from analyses of the audited annual financial statements.
- Have a tax exemption ruling from the Internal Revenue Service under Section 501(c)(3) of the Internal Revenue Code of 1986.
 - 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.
 - Exceptions include:
 - 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
 - Limited-equity cooperative entities that are not 501(c)(3) eligible
 - Having a resolution from the organization's board of directors that authorizes the additional debt to be incurred to purchase or rehabilitate the project.

An unacceptable nonprofit owner includes:

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

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 (LIHTCs) and raise capital through the sale of the tax credits.

The term *nonprofit owner* includes:

- 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
- 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

CRITERIA FOR BOTH CAPITAL REPAIRS AND TRANSFER PROGRAMS

The following requirements apply to most Multifamily housing projects with either:

- 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
- A MAHRA Renewal Contract issued under section 524(a) or (b) with rents at or below comparable market rents

If the owner or purchaser intends to renew the Section 8 HAP contract under:

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

Owners with the following Section 8 HAP contracts cannot apply:

- Section 8 Moderate Rehabilitation projects administered by the Office of Public and Indian Housing (PIH).
- Section 8 Moderate Rehabilitation Single Room Occupancy (SRO) projects administered by the Office of Community Planning and Development (CPD).
- 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.
- An original (non-MAHRA) Section 8 contract that is eligible to renew under MAHRA but has rents above comparable market rents.
- A 524(a) or 524(b) Renewal Contract with rents above comparable market rents.

BASIC REQUIREMENTS

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.

- **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 ended in 2015, the term will have been 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.

20-Year Contract

The owner or purchaser must agree to accept a 20-year Section 8 contract, subject to annual appropriations.

Early Termination of an Existing Section 8 Contract

HUD and the owner may terminate by mutual agreement most existing original HAP contracts and Section 524 MAHRA contracts 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.

The following contracts cannot be terminated early to take advantage of these programs:

- Section 514 or 515 MAHRA contracts
- Section 524 (e)(1) MAHRA demo contracts
- Section 524(e)(2) MAHRA preservation contracts
- Rental Assistance Demonstration (RAD) contracts

Owners of projects with rents above market that are currently subject to a HAP contract provision that allows for a discretionary comparability adjustment within each five-year term, or a fifth-year comparability adjustment, may request that project rents be reduced to market to participate and renew under Option Two in accordance with the following requirements and procedures:

- 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.
- 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. of the Contract Renewal Guide.
- The AE would attach forms 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.

Combining Multiple Contracts or Stages

If possible, owners must combine multiple contracts or stages.

Renewal Options

Renewal options include:

- The owner or purchaser renews under Option Two, Contract Renewals for Other Projects with Current Rents at or Below Comparable Market Rents.
- 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.
- 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.

Rent Increases

If the owner or purchaser intends to renew the Section 8 contract under Option One, then they must submit:

- 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 rehabilitation work was completed as of the date of the rent comparability study (RCS).
- A detailed description of the proposed transaction, including but not limited to:
 - For the Transfer Program:
 - A letter of intent to sell the project to an eligible nonprofit or eligible for-profit; and
 - The cost of recapitalizing the reserve for replacement account.
 - For the Capital Repairs Program, the cost of:
 - Modest repairs and rehabilitation (e.g., lead-based paint, energy efficient equipment, repairs, etc.) and recapitalizing the reserve for replacement account; or
 - 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).
- A Project Capital Needs Assessment (PCNA) or Comprehensive Needs Assessment (CNA), as discussed in the Contract Renewal Guide.
- A detailed “sources and uses” funding statement.

If the owner or purchaser intends to renew the Section 8 contract under Option Two, then the owner or purchaser must, in addition to all the items listed in Section 15-6, A. of the Contract Renewal Guide, 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.

For either renewal option, upon receiving the owner or purchaser's submission, the AE undertakes the initial screening of the owner or purchaser's RCS. The CA is responsible for the substantive review of the RCS.

The AE must notify the owner or purchaser of the maximum new rent levels when the AE completes processing the renewal request.

Effective Date of the New Rents

For the Capital Repairs Program involving a loan program:

- 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.
- 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.

For the Transfer Program, the final new rents will be effective once the transfer is approved and completed.

In the case of a blended transaction involving both a transfer and capital repairs, the rents will be adjusted after the strictest requirement as detailed above has been met.

UNASSISTED UNITS IN A HUD PROJECT

To protect low and moderate-income tenants who live in other HUD subsidized units, including Rent Supplement, RAP, BMIR, and Section 236 properties, the tenant's portion of the rent may be increased by no more than 10 percent because of the transaction.

Owners who raise these rents are reminded that they must comply with the notification requirements for rent increases.

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 (e.g., tax credit restricted rents).

PROJECT CAPITAL NEEDS ASSESSMENT

For both HUD-insured or conventionally financed projects, the owner or purchaser's mortgagee must submit a PCNA prepared in accordance Notice H 2012-27 or subsequent guidance. Those projects that are legally required to submit a 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.

If the transaction does not include new debt, the owner or purchaser assumes the role of the mortgagee discussed in the Section 8 Renewal Guide.

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.

CAPITAL REPAIRS PROGRAM

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

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

Additional Acceptability Requirements for the Owner

The owner must be:

- 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, or has failed to correct material violations of HUD rules);
- In compliance with the terms of the current Regulatory Agreement, Note, and Mortgage; and
- 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.

The owner must submit documentation with its Capital Repairs Program application to assist the AE in its review for compliance with the environmental regulations. 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.

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.

Project Eligibility

The AE checks that, if applicable, the rehabilitation proposal is compliant with HUD's environmental regulations at 24 CFR Part 50, and:

- 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.
- The AE will review documentation submitted by the owner. The AE should document compliance for the environmental review on Form HUD-4128.
- 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 HUD's website.
- In accordance with 24 CFR Part 50.20(a)(2), rehabilitation of buildings and improvements are categorically excluded from National Environmental Policy Act requirements when the following conditions are met, although it is not excluded from the individual compliance requirements of the other environmental statutes, executive orders, and HUD standards cited in 24 CFR Part 50.4:
 - Unit density is not changed more than 20 percent;
 - The project does not involve changes in land use from residential to non-residential; and
 - The estimated cost of rehabilitation is less than 75 percent of the total estimated cost of replacement after rehabilitation.
- Any actions, activities, and programs that do not meet the qualifications require an environmental review under the National Environmental Policy Act.

- 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:
 - Significant ground disturbance (digging) or construction not contemplated in the original application
 - A change in land use not contemplated by the original risk-based mitigation conducted on the site
 - Site expansion or addition
 - Any other activities which may result in contaminant exposure pathways or activities not contemplated in the original application
- 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 and 40 CFR 745.227.
- 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 and 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.

- 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 or manager of any evidence of PCBs in the electrical system.
- 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 specified in the Contract Renewal Guide
- Rehabilitation performed under the guide does not trigger Davis-Bacon Prevailing Wage Rate requirements. Davis-Bacon requirements are applicable under certain HUD mortgage insurance programs.

The AE also checks that the rehabilitation proposal:

- 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.
- 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 or CA will review proposed activities for compliance with accessibility standards in consultation with FHEO.

TRANSFER PROGRAM

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.

Additional Purchaser Requirements

The purchaser must have managerial experience in owning or operating Multifamily projects or significant activities related to the provision of decent housing that is affordable to very low, low, or moderate-income families.

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.

The purchaser must be in good standing and not subject to administrative sanctions (i.e., debarment, suspension, unresolved adverse audit findings, or failing to correct material violations of HUD rules).

The Transfer Program without repair or rehabilitation requires that the project have a physical inspection performed using UPCS by HUD's Real Estate Assessment Center (REAC) with a score greater than 60 with no uncorrected EH&S violations. Additionally, the project must not be designated as a troubled project.

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.

“Old Regulation” Owner Options upon Repayment

Specific requirements apply to 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 was prepaid in full or that will be prepaid in full.

There is a small number of HAP contracts issued by HFAs that 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 specified below.

HUD has determined that the 1975 HAP Form contains language that causes it to terminate automatically upon full prepayment of the original, permanent 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 of the Contract Renewal Guide 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.

Owner Options

In cases where the financing has been prepaid or will be prepaid, owners may select from the following options:

- 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 be deemed to reinstate the 1975 HAP Form of contract, and amend the HAP contract by extending the term through the originally scheduled maturity date of the financing that was formerly prepaid.
- 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 an 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.

- 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).

Owners of projects to which this Section 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.

CHAPTER 9 POST TEST

1. HUD may refuse to renew a HAP contract based on a REAC physical inspection.
 - a. True
 - b. False
2. If HUD refuses to renew, the owner has _____ calendar days from receipt of the notification to provide HUD written objections.
 - a. 10
 - b. 15
 - c. 20
 - d. 30
3. An owner renewing a 515/8 contract under Option 4 is not allowed to use the project budget approved by RHS.
 - a. True
 - b. False
4. One of HUD's primary goals is the long -term preservation of affordable housing.
 - a. True
 - b. False
5. HUD allows early termination of HAP contract, in order to facilitate preservation activities. To take advantage, the new contract must equal _____ years.
 - a. 10
 - b. 15
 - c. 20
 - d. 25

6. If an owner does choose to early terminate, they must also agree to a renewal at the end of the term equal to:
 - a. 10 additional years
 - b. The remaining term of the original terminated contract
 - c. A term determined by HUD
 - d. None of the above

7. In order to protect residents that live in unassisted units (such as BMIR, Section 236 etc), the tenant portion of the rent may not increase more than _____% because of a preservation transaction.
 - a. 5
 - b. 7
 - c. 8
 - d. 10

Notes

CHAPTER 10 Section 8(bb) Transfer of Budget Authority

Section 8(bb) of the United States Housing Act of 1937 (42 U.S.C. 1437f(bb)) provides HUD with a tool for preserving budget authority for project-based rental assistance (PBRA) under Section 8. Under Section 8(bb), if a PBRA housing assistance payments (HAP) contract is terminated or expires and is not renewed, HUD is authorized to transfer any remaining budget authority to either a new or an existing PBRA HAP contract to provide assistance to eligible families, including those receiving project-based assistance at the time of the contract termination, under terms and conditions prescribed by HUD.

To execute an 8(bb) transfer, HUD's current policy is that the owner of the transferring property (Owner A) must identify the property to which the budget authority will be transferred. The owner of the project to which the budget authority is transferred (Owner B) must agree to accept the budget authority. Owner A's request to transfer the budget authority under Section 8(bb) will be reviewed by HUD to determine if it complies with Notice H 2015-03 and subsequent guidance.

LIST OF POTENTIAL RECIPIENT PROPERTIES (PROPERTY B) FOR 8(BB) TRANSFER

The Office of Multifamily Housing is compiling a centralized list of properties whose owners have submitted letters of interest indicating a desire for their project to be considered as a potential recipient of Section 8 Project-Based Rental Assistance (PBRA) through the Section 8(bb) authority.

The following webpage makes the list available to owners who are interested in transferring their PBRA budget authority. This information may also be considered by HUD in instances where an 8(bb) transfer is being pursued in the context of a HUD enforcement action. Please note, participation in a Section 8(bb) transaction is in no way limited to the properties on this list.

- https://www.hud.gov/program_offices/housing/mfh/8bb

The list of potential receiving properties for transfer of Section 8 Project Based Rental Assistance can be downloaded at:

- <https://www.hud.gov/sites/dfiles/Housing/documents/recontractblist.xls>

Note: HUD has not determined the eligibility of the properties on this list for the transfer of Section 8 PBRA budget authority via 8(bb).

Instructions: After downloading the Excel document, use the filter on the state code column to view the list of potential receiving properties in the same state as the transferring property.

LETTER OF INTEREST SUBMISSION INSTRUCTIONS

To be placed on this list, HUD invites owners of Multifamily properties to submit letters of interest. Owners are encouraged to review the eligibility requirements in Notice H 2015-03 before submitting their letters of interest. Letters of interest must be submitted by email to the following addresses, depending on the state where the properties are located:

Region	Contact Information
Northeast Region: Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia	northeast8bb@hud.gov
Southeast Region: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee, Virgin Islands	Southeast8bb@hud.gov
Midwest Region: Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin	CHI.8BB@hud.gov
Southwest Region: Arkansas, Iowa, Kansas, Louisiana, Missouri, Nebraska, New Mexico, Oklahoma, Texas	MFSW8bb@hud.gov
West Region: San Francisco: Alaska, California, Hawaii, Idaho, Nevada, Oregon Denver: Arizona, Colorado, Montana, N. Dakota, S. Dakota, Utah, Washington, Wyoming	SF.Incoming@hud.gov & Den.Incoming@hud.gov In the subject line, include the property name and “8(bb) letter of interest”

HUD is accepting letters of interest on an ongoing basis with no termination date. You must submit the following information:

- Your consent to HUD to provide the name and address of your property and other relevant information about the property, as well as the contact information, with owners who are seeking to terminate their Section 8 HAP contract, in whole or in part, and transfer the remaining budget authority to another project or projects.
- The name and address (including county and state) of the properties where you would like to receive Section 8 PBRA budget authority.
- If the properties are HUD-affiliated, provide the FHA number, HAP contract number, and iREMS ID number.
- Individual contact information for any 8(bb) inquiries.

For general questions about 8(bb) transfers, HUD advises that you contact your Multifamily field office account executive or send an email to InsuranceTerminationRequests@hud.gov, but to not send letters of interest to this address.

BACKGROUND

Section 8(bb) provides HUD with a tool for preserving Section 8 budget authority. Under Section 8(bb), if a project-based Section 8 contract is terminated or expires and is not renewed, HUD is required to transfer any remaining budget authority to another contract (either a new or an existing Section 8 HAP contract) to provide assistance to eligible families, including eligible families receiving project-based assistance at the time of contract termination, under the terms and conditions prescribed by HUD. The remaining budget authority, however, must not be required to meet any rescissions under a HUD Appropriations Act. Headquarters will notify the Field Office in the event there are rescission requirements in any HUD Appropriations Act that limit the use of this preservation tool.

The contract administrator (either HUD or a PHA) under an Annual Contributions Contract (ACC) with HUD) and the owner of the project from which any budget authority on the Section 8 HAP contract is to be transferred must mutually agree to the termination of all or a portion of the existing Section 8 HAP contract and to the transfer of any remaining budget authority. The owner of the project to which the budget authority is transferred must agree to accept the budget authority.

The project from which HUD transfers budget authority may continue to exist as a Multifamily housing project after the transfer, or it may cease to exist. The budget authority may be transferred to one or more projects.

APPLICABILITY

The requirements in the Section 8(bb) notice (Notice H 2015-03) apply to all project-based Section 8 HAP contracts on existing Multifamily housing projects administered by the Office of Multifamily Housing Programs, whether through a performance-based contract administrator (PBCA), a traditional contract administrator (CA), or by HUD.

The notice applies only when the contract administrator and the owner of a project that is subject to an existing project-based Section 8 HAP contract have mutually agreed:

- To terminate the contract so that all of the remaining budget authority can be transferred to another Multifamily housing project; or
- To subdivide the contract and then terminate one or more of the resulting contracts so that the budget authority remaining on the contracts that were terminated may be transferred to the Section 8 HAP contract on one or more other Multifamily housing projects.

The other projects may be owned by the same owner as the project from which the budget authority is being transferred or by a different owner. If the budget authority associated with the terminated contract is to be transferred to a project owned by a different owner, the owner must agree to accept the budget authority that is to be transferred.

The contract to which HUD transfers budget authority may be an existing project-based Section 8 HAP contract, in which case:

- The additional units must already be in existence and ready for occupancy at the time HUD transfers budget authority; and
- The owner and contract administrator must execute an Amendment to Project-Based Section 8 Housing Assistance Payments Contract Pursuant to Section 8(bb)(1) of the U.S. Housing Act of 1937 (“Amendment B”), to reflect the increase in the number of assisted units made possible by the transfer of budget authority and subjecting the project to the requirements of the following:
 - The Physical Condition Standards and Inspection Requirements (24 CFR Part 5, Subpart G);
 - The Physical Condition of Multifamily Properties (24 CFR Part 200, Subpart P); and
 - The Uniform Financial Reporting Standards (24 CFR Part 5, Subpart H, Appendix Two-B)

On the same day that the owner executes Amendment B, the owner and the contract administrator must agree to terminate the amended contract, and the owner must request that it be immediately renewed under MAHRA for a 20-year term under any renewal option for which the contract is eligible. In addition, the Preservation Exhibit (Appendix Three) must be attached to the renewal contract and completed. The Preservation Exhibit provides for the automatic renewal of the contract upon expiration (i.e., at the end of the 20-year renewal term) for a whole number of years to be filled in by the Hub/PC, which must be at least the number of years remaining on the contract at the time of its termination by mutual agreement.

If the project is not already subject to an existing project-based Section 8 HAP contract, the owner must execute a new, original New Construction project-based Section 8 HAP contract. The budget authority cannot be transferred to the new Section 8 HAP contract unless or until the units at Project B are existing and ready for occupancy.

Section 8(bb) must only be used where the project from which budget authority will be transferred and the project or projects to which budget authority will be transferred are located in the same state. HUD may approve exceptions to this policy on a case-by-case basis.

The remaining budget authority being transferred must be sufficient to fund the proposed number of units under the project-based Section 8 HAP contract to which budget authority is transferred. HUD has no statutory authority to increase the budget authority.

This guidance does not apply when:

- There is a Section 8 project-based HAP contract administered by the Office of Public and Indian Housing (i.e., a Section 8 Moderate Rehabilitation contract or a Section 8 Project-Based Voucher HAP contract) or by the Office of Community Planning and Development (i.e., a Section 8 Single-Room Occupancy Moderate Rehabilitation HAP contract).
- An expiring project-based Section 8 HAP contract is renewed at an existing project.
- There is no remaining budget authority on a project-based Section 8 HAP contract. HUD does not have the statutory authority to increase the budget authority to facilitate an 8(bb) transfer.
- There is an enacted HUD Appropriations Act with rescission requirements. Headquarters will notify the Field Office of the rescission requirements.
- HUD has recaptured the remaining budget authority from a terminated HAP contract.

- An owner requests transfer of debt, statutorily required low-income and very low-income use restrictions, in addition to all or a portion of a Section 8 HAP contract from one project to another. In those types of transactions, Section 214 of the Consolidated Appropriations Act, 2014, is the applicable statute, depending on whether all conditions stated in Section 214(c) can be satisfied. Section 214 is limited to qualifying transfers approved during fiscal years 2014 and 2015.
- Project A or Project B (see Definitions section that follows) is subject to an Interim (Full) Mark-to-Market Renewal Contract, an Interim (Lite) Mark-to-Market Renewal Contract, both of which are authorized under Section 514 of MAHRA, or a Full Mark-to-Market Renewal Contract, which is authorized under Section 515 of MAHRA. These properties are still eligible for transfer or receipt of Section 8 budget authority under Section 8(bb) but will be handled on a case-by-case basis until additional guidance is released.
- Project A has a post-conversion project-based rental assistance (PBRA) contract issued as part of the Rental Assistance Demonstration (RAD). Properties that have completed conversion to PBRA under RAD may only transfer the PBRA contract under the process described in Notice PIH 2012- 32, which generally does not permit a transfer within the first 10 years following such conversion.
- Project A has a bond-financed “new regulation” HAP contract, refunded with a sharing of HAP savings pursuant to Section 1012 of the Stewart B. McKinney Homeless Assistance Amendments Act.

DEFINITIONS

Contract A is the existing project-based Section 8 HAP contract at Project A.

Contract A1 is one of two or more contracts resulting from the mutual agreement of the parties to subdivide Contract A into two or more contracts for the purpose of retaining a portion of the project-based assistance at Project A. Contract A1 refers to the contract that is retained with reduced budget authority and a resulting smaller number of assisted units at Project A.

Contract A2 is one of two or more contracts resulting from the mutual agreement of the parties to subdivide Contract A into two or more contracts for the purpose of terminating Contract A2 by mutual agreement. Immediately after the termination of Contract A2, and if applicable, of other contracts resulting from the subdivision of Contract A other than Contract A1 (e.g., Contract A3, Contract A4, etc.), the budget authority associated with the terminated contracts will be transferred to Project B.

Contract B is the project-based Section 8 HAP contract at Project B. It may be an existing project-based Section 8 contract already at the project or a new project-based Section 8 HAP contract to which Project B becomes subject as the result of the Section 8(bb) transaction. In the latter event, the new project-based Section 8 HAP contract must be a New Regulation Part 880 HAP Contract (Appendix One in Notice H 2015-03). There may be more than one project receiving the remaining budget authority, and therefore there may be more than one existing or new project-based HAP contract in the transaction. All project-based Section 8 HAP contracts, whether new or existing, receiving transferred budget authority will be referred to as and be subject to all the requirements for Contract B.

A HUD-Affiliated Project is a project with any HUD affiliation, including but not limited to a HUD Use Agreement, FHA insurance, a HUD-Held mortgage, or some other form of HUD subsidy (e.g., interest reduction payments under Section 236).

MAHRA is the Multifamily Assisted Housing Reform and Affordability Act of 1997.

Owner A is the owner of Project A.

Owner B is the owner of Project B. There may be more than one Project B, and if so, they may be owned by the same or different owners. Project B may also be owned by the same owner as Project A.

Project A is the multifamily housing project from which some or all of the remaining Section 8 budget authority is transferred. Owner A will be required to adhere to all requirements for Project A, as described in Section V of Notice H 2015-03. Project A will continue to exist as a HUD-affiliated project if it has a HUD-insured or HUD-held mortgage or retains a portion of the remaining budget authority in Contract A1.

Project B is an existing multifamily housing project or projects to which some or all of the budget authority from Project A is transferred. There may be more than one project that is receiving the remaining budget authority, and they may be owned by the same or different owners. Project B may also be owned by the same owner as Project A. If there is more than one project, there will be a Project B, Project C, etc.

- All projects (whether one project or more than one) receiving this transferred budget authority are referred to as Project B in Notice H 2015-03.
- Project B owners are required to adhere to all requirements for Project B, as described in Section VI of the notice.

Remaining Budget Authority is the dollar amount remaining on a project-based Section 8 HAP contract at the time of termination by mutual agreement. The Hub/Program Center will determine whether there is any remaining budget authority, and if so, in what amount. This information is available from the Multifamily Housing Field Funding Coordinator.

- Most project-based Section 8 HAP contracts have already been renewed under MAHRA, which requires that multi-year renewal contracts be funded on a year-to-year basis. In cases where Contract A has already undergone renewal under MAHRA, any budget authority remaining on the contract at the time of termination by mutual agreement will be limited to an amount equal to or less than the amount needed to fund Contract A for a single year. There is more likely to be budget authority remaining on Contract A, in cases where Contract A has already undergone renewal under MAHRA, in scenarios in which it is terminated by mutual agreement at or close to the beginning of the one-year funding cycle for a multi-year renewal contract.
- In the rare case where Contract A is an original project-based Section 8 HAP contract (i.e., one that has not yet expired and thus has not been renewed under MAHRA), the remaining budget authority will consist of what is left from the original obligation of budget authority when the contract was executed (i.e., an estimate of the amount of money needed to fund the contract for its original, multi-year term), including any amounts added by amendment, as authorized under the heading “Project-Based Rental Assistance” in annual appropriations acts. There is more likely to be budget authority remaining on this type of Contract A in scenarios in which it is terminated by mutual agreement in the middle of its term.

PROJECT A

REQUEST TO TRANSFER ALL REMAINING BUDGET AUTHORITY

If all of the remaining budget authority will be transferred from Project A, the following programmatic requirements must be met. Owner A must submit all applicable documentation and certify that all requirements are met in their proposal for the transfer of budget authority under Section 8(bb)(1).

- If all of the remaining budget authority will be transferred from Project A to Project B, Owner A and the contract administrator will mutually agree to terminate Contract A and the remaining budget authority associated with Contract A will be transferred to Project B.

- If Project A will not continue to exist as a HUD-Affiliated Project, Owner A should submit the proposed plan for the future use of the project and demonstrate that there is no longer a need for affordable rental housing at the project. This should include an explanation of why the Section 8 assistance is no longer needed at the project and how the transfer of the budget authority will have no adverse impact on the tenants affected by the transfer, including those accepting vouchers, those remaining at the property, and those relocating to Project B.

REQUEST TO TRANSFER PART OF THE REMAINING BUDGET AUTHORITY

If Owner A requests that some of the remaining budget authority is transferred to Project B and some of the budget authority remains at Project A, Owner A must meet the following requirements and certify as such in their proposal for the transfer of budget authority under Section 8(bb)(1).

- An explanation as to why there is need for only a portion of the Section 8 assistance and why there will be no adverse impact on the long-term preservation of the project or the tenants affected by the transfer, including those accepting vouchers, those remaining at the property, and those relocating to Project B. This must include a revised operating budget to show that Project A will remain financially viable after transfer of a portion of the remaining budget authority.
- If Contract A is subdivided (e.g., into Contract A1 and Contract A2), Owner A and the contract administrator must execute Amendment A (Appendix Two-A of Notice H 2015-03) to Contract A1. Amendment A reflects the number of assisted units at Project A resulting from the transfer of budget authority and requiring compliance with the requirements of
 - The Physical Condition Standards and Inspection Requirements of 24 CFR Part 5 Subpart G,
 - The Physical Condition of Multifamily Properties of 24 CFR Part 200 Subpart P; and
 - The Uniform Financial Reporting Standards of 24 CFR Part 5 Subpart H (Appendix Two-A).

- On the same day Amendment A is executed, Owner A and the contract administrator must mutually agree to terminate Contract A1, and Owner A must submit a request for the immediate renewal of Contract A1 for a 20-year term, subject to appropriations, under any MAHRA renewal option for which Contract A1 is eligible. In addition, the Preservation Exhibit (Appendix Three) must be attached to the renewal contract and completed.
- Owner A must submit a separate request for each project-based Section 8 HAP contract that is to be terminated (or subdivided and then terminated). The Hub will consider each request separately. If the proposal is part of a phased transfer of the budget authority under Contract A, the phasing plan should be included with the submitted proposal for information purposes only. HUD will only approve one request to transfer budget authority at a time. Additional requests should be submitted as the phased project moves forward.

REQUIREMENTS FOR ALL REQUESTS TO TRANSFER BUDGET AUTHORITY FROM PROJECT A

Owner A must meet the below requirements. Owner A must submit all applicable documentation and certify that all requirements are met in their proposal for the transfer of budget authority under Section 8(bb)(1).

- Owner A must be current in the submission of audited or owner-certified annual financial statements and monthly accounting reports, if applicable, for the prior three-year period or for the period of time the new ownership has been in place, whichever is less.
- If Project A is subject to a Section 236 mortgage, the owner must have submitted Excess Income Reports for the prior seven-year period. All excess income owed to HUD, regardless of timeframe, must be paid in full prior to HUD's approval of the project owner's request to transfer the budget authority.
- Owner A must resolve all non-compliance flags, if any, or the owner must have a HUD-approved plan in place to resolve any flags.

- If Project A will continue to exist as a HUD-affiliated project after transfer of the remaining budget authority and if it received any deficiencies on its last HUD physical inspection, the deficiencies must be cured or a plan must be approved by HUD that will result in cure of those deficiencies within a timeframe acceptable to HUD.
- If Project A will continue to exist as a HUD-affiliated project after transfer of the budget authority and if it received a less than satisfactory rating in any section of its last three Management and Occupancy Reviews (MORs), corrective actions satisfactory to HUD must be completed or a plan for those corrective actions and an acceptable timeframe for their completion must be approved by HUD.
- If Project A will continue to exist as a HUD-affiliated project, the transfer of budget authority must have no adverse impact on the financial and physical feasibility of the project. To demonstrate there is no adverse impact, Owner A must certify in writing that they will make all mortgage payments (if applicable), meet all physical condition standards and management requirements, and be in compliance with all other business agreements imposed by HUD or the lender.
- If Project A is subject to an FHA-insured mortgage, Owner A must ensure that the FHA lender submits a letter stating that it consents to the proposed transfer of budget authority. If a mortgage prepayment is planned in conjunction with the transfer of authority, HUD may waive this requirement.

OWNER A'S PROPOSAL

In addition to the submission of all applicable documentation and written certification that the above requirements are met as applicable, Owner A's proposal must include the following:

- A written request asking to terminate the project-based Section 8 HAP Contract. The request will specify whether all or a portion of the remaining budget authority will be transferred, the amount of the remaining budget authority that will remain at the project, if any, and if known, the name of the project to which the budget authority will be transferred and whether the budget authority will be transferred to a new or existing project-based Section 8 HAP contract (the Multifamily Hub/Program Center (PC) will provide this information if Owner A does not have it). The narrative will also include a description of the proposed transaction, why it is being proposed, and how there will be no adverse impact to the existing assisted tenants as a result of the transaction.
- Prior to submission of the proposal, the owner of Project A will need to consult with the Hub/PC to determine the amount of the total remaining budget authority on Contract A.
- A description of the steps Owner A has taken to market the vacant units, if applicable, at Project A.
- The number and configuration of the units, current rents, and operating budget, as well as the proposed number and configuration of the units, rents, and operating budget after transfer of the budget authority. If Project A will remain a HUD-affiliated project, the proposed operating budget must show that Project A will remain financially viable after the transfer of the budget authority.
 - **Note:** The total number of units under Contract A1 and Contract B may be greater than the number of units under Contract A prior to its termination by mutual agreement, provided there is no increase in the total amount of budget authority and that there is sufficient budget authority to cover the units.

- The total number of units under Contract A1 and Contract B may be less than the number of units under Contract A prior to the transfer, if all eligible tenants residing in an assisted dwelling unit at the time of the transfer are protected from displacement (e.g., with a comparable unit at Project A, a comparable unit at Project B, a tenant protection voucher, etc.). The reduced number of units supported by the budget authority at Project B should be substantially the same (within the lesser of five percent or five units) as the number of units supported by the budget authority at Project A. However, a proposed reduction of units beyond the identified threshold will be permitted in limited circumstances, if either:
 - The Policy Development and Research (PD&R) Analysis determines the transfer will result in a material improvement in the location of the budget authority, but the location has higher rents than the location of Project A; or
 - Project B is in the same Small Area Fair Market Rent (SAFMR) area as Project A, and a reconfiguration of units is necessary due to the average vacancy rate in a given unit type being at least 25 percent for at least 24 months in accordance with Notice H 2011-03
- A Relocation Plan, if applicable, including a budget and Sources and Uses Statement, that describes relocation of the existing tenants to other units within Project A or to Project B.
- A copy of the notice advising tenants of the transfer, copies of all the tenant comments, Owner A's evaluation of the tenant comments, a copy of the sign-in sheet from the tenant meeting, and a certification by the transferring owner that it has complied with all of the regulatory requirements, as applicable.

- Owner A must identify any fair housing litigation settlement agreements, voluntary compliance agreements, or other remedial agreements signed by the owner and HUD. The Office of Fair Housing and Equal Opportunity (FHEO) will ensure there is no conflict between the agreements and the proposed transfer. If there is a conflict, Owner A may propose modifications to the remedial agreement as part of the transfer proposal.

PROJECT B

If the remaining budget authority at Project A will be transferred to more than one project, there could be more than one Project B ownership entity. If so, each ownership entity that is receiving a portion of the remaining budget authority from Contract A must meet the requirements in this Section prior to HUD's approval of the request to transfer all or a portion of the remaining budget authority.

The Hub/PC may assist in identifying Project B. Owner A may know of a project, or owners may make direct requests to the Hub/PC. Consideration should be given to the need for assisted housing in an area, the long-term feasibility of the project after receipt of the transferred budget authority, and the owner's ability to meet the criteria listed below.

PROJECT B GENERAL REQUIREMENTS

Project B must meet the below requirements. Owner B must submit all applicable documentation and certify that all requirements are met in their proposal to receive the transfer of budget authority under Section 8(bb)(1).

- Owner B must show that receipt of the remaining budget authority, and consequently the units assisted by the budget authority, is warranted by local demands for affordable housing and will ensure the long-term preservation of the project. Documentation to support the need for Section 8 assistance will include a list of the current tenants who are eligible for Section 8 assistance, eligible prospective tenants who are on the waiting list, and/or a market analysis that shows there are eligible families in the area.

- Project B must be an existing Multifamily project consisting of existing dwelling units before receiving any transfer of budget authority. Projects under construction are not eligible to receive transferred budget authority. Conditional approval for transfer of budget authority to a contract at a newly constructed Project B may be provided but only with the understanding that the transfer cannot occur until construction of Project B is complete and the project is habitable (e.g., as demonstrated by a certificate of occupancy).
- Owner B may use the letter approving the transfer of the Section 8 budget authority as a conditional commitment to obtain financing to construct or substantially rehabilitate the project (the letter may also be used to secure financing for moderate repairs). However, no transfer of budget authority can occur until construction or substantial rehabilitation is complete and the project is habitable.
- Owner B must provide documentation to assist HUD in an environmental review of the transfer in accordance with environmental regulations and requirements at 24 CFR part 50, at the time of the submission of the transfer proposal. HUD will conduct the environmental review as required by part 50 prior to approving a transfer. HUD will document compliance on Form HUD-4128, Environmental Assessment and Compliance Findings for the Related Laws. Owner B is responsible for submitting environmental information and reports and should use Chapter 9 of the MAP Guide and the HUD Environmental Review website for guidance on environmental review information requirements. If Project B is currently HUD-affiliated, a new Phase I Environmental Site Assessment (ESA) in accordance with ASTM E 1527-13 (or the most recent edition), including a Vapor Encroachment Screen in accordance with ASTM E 2600-10 (or the most recent edition), is not required, unless the transfer involves:
 - Significant ground disturbance (digging) or construction not contemplated in the original application or incompatible with current engineering or institutional controls
 - Site expansion or addition

- Transfer to a site for which a Phase I ESA in accordance with ASTM E 1527-05 (or a more recent edition) has not been prepared previously
- Any other activities that may result in contaminant exposure pathways not contemplated in the original application or incompatible with current engineering or institutional controls
- After a request has been submitted to HUD, Owner B and other participants in the proposed transfer, including owners and contractors on Project B, may not undertake or commit funds for acquisition, rehabilitation, conversion, or construction of the receiving property until HUD has completed the environmental review and notified Owner B that the transfer to Project B is acceptable. HUD may reject transfer requests with unacceptable environmental issues, or when mitigation of an issue is infeasible.
- Owner B must not be subject to any of the following actions that have not been resolved to HUD's satisfaction:
 - A charge from HUD concerning a systemic violation of the Fair Housing Act or a cause determination from a substantially equivalent state or local fair housing agency concerning a systemic violation of a substantially equivalent state or local fair housing law proscribing discrimination because of race, color, religion, sex, national origin, disability, or familial status; and
 - A Fair Housing Act lawsuit filed by the Department of Justice alleging a pattern or practice of discrimination or denial of rights to a group of persons raising an issue of general public interest pursuant to 42 U.S.C. 3614(a); or
 - A letter of finding identifying systemic noncompliance under Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, or Section 109 of the Housing and Community Development Act of 1974.

- HUD will determine if actions to resolve the charge, cause determination, lawsuit, or letter of findings are sufficient to resolve the matter. Examples of actions that would normally be considered sufficient to resolve the matter include, but are not limited to, current compliance with:
 - A voluntary compliance agreement (VCA) signed by all the parties
 - A HUD-approved conciliation agreement signed by all the parties
 - A conciliation agreement signed by all the parties and approved by the state governmental or local administrative agency with jurisdiction over the matter
 - A consent order or consent decree
 - A final judicial ruling or administrative ruling or decision
- Project B must comply with the site and neighborhood requirements specified below. Owner B must submit the address of the proposed property with their proposal and HUD will determine if the site meets the following requirements:
 - The site and neighborhood is suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Executive Order 11063, and related HUD regulations.
 - The neighborhood must not be one that is seriously detrimental to family life or in which substandard dwellings or other undesirable conditions predominate, unless there is actively in progress a concerted program to remedy the undesirable conditions.
 - The housing must be accessible to social, recreational, educational, commercial, and health facilities and services, and other municipal facilities and services that are at least equivalent to those typically found in neighborhoods consisting largely of unassisted, standard housing of similar market rents.

- If Project B is new construction and the budget authority will be transferred once construction is complete, Project B may not be located in a racially mixed area if the project will cause a significant increase in the proportion of minority to non-minority residents in the area and may not be located in an area of minority concentration.
- If HUD determines that Project B will be located in an area of minority concentration, Owner B must submit supporting data (e.g., census data, evidence of local revitalization efforts, etc.) in order for HUD to determine that they meet one of the exceptions below:
 - Sufficient, comparable opportunities exist for housing for minority households in the income range to be served by the proposed project, outside areas of minority concentration. Sufficient does not require that in every locality there be an equal number of assisted units within and outside of areas of minority concentration. Rather, application of this standard should produce a reasonable distribution of assisted units each year which over a period of several years will approach an appropriate balance of housing opportunities within and outside areas of minority concentration. An appropriate balance in any jurisdiction must be determined in light of local conditions affecting the range of housing choices available for very low-income minority households and in relation to the racial mix of the locality's population.
 - Units may be considered to be comparable opportunities if they have the same household type and tenure type (owner/renter), require approximately the same total tenant payment, serve the same income group, are located in the same housing market, and are in standard condition.

- Application of this sufficient, comparable opportunities standard involves assessing the overall impact of HUD assisted housing on the availability of housing choices for very low-income minority households in and outside areas of minority concentration, and must take into account the extent to which the following factors are present, along with any other factor relevant to housing choice:
 - A significant number of assisted housing units are available outside areas of minority concentration.
 - There is significant integration of assisted housing projects constructed or rehabilitated in the past ten years, relative to the racial mix of the eligible population.
 - There are racially integrated neighborhoods in the locality.
 - Programs are operated by the locality to assist minority households that wish to find housing outside areas of minority concentration.
 - Minority households have benefited from local activities (e.g., acquisition and write-down of sites, tax relief programs for homeowners, acquisitions of units for use as assisted housing units) undertaken to expand choice for minority households (or families) outside of areas of minority concentration.
 - A significant proportion of minority households have been successful in finding units in non-minority areas under the Section 8 Certificate and Housing Voucher programs.
 - Comparable housing opportunities have been made available outside areas of minority concentration through other programs.

- The project is necessary to meet overriding housing needs that cannot be met in that housing market area. Application of the overriding housing needs criterion, for example, permits approval of sites that are an integral part of an overall local strategy for the preservation or restoration of the immediate neighborhood and of sites in a neighborhood experiencing significant private investment that is demonstrably changing the economic character of the area (a “revitalizing area”). An overriding housing need, however, may not serve as the basis for determining that a site is acceptable if the only reason the need cannot otherwise be feasibly met is that discrimination on the basis of race, color, creed, sex, or national origin renders sites outside areas of minority concentration unavailable, or if the use of this standard in recent years has had the effect of circumventing the obligation to provide housing choice.
- Project B must meet all applicable accessibility requirements, including but not limited to the accessibility requirements of the Fair Housing Act, Section 504 of the Rehabilitation Act, and the Americans with Disabilities Act. Owner B must provide documentation that they have met all accessibility requirements in their proposal.
- Owner B must receive approval through the Previous Participation process, including 2530 reviews.
- Owner B must provide a tenant selection plan (TSP) for the project and an Affirmative Fair Housing Marketing Plan (AFHMP) that will be approved by HUD.

- If Project B is an FHA-insured project, there may be no liens on Project B other than the first mortgage that is secured by the project, unless the secondary financing on the project adheres to the following requirements:
 - If the secondary financing is from a federal, state, or local government agency, the subordinate loan may be secured by a promissory note and mortgage lien as is prescribed by the government funding source. Secondary financing or grants provided by public government entities or subsidiaries, when added to the first mortgage, may exceed 100 percent of the project's fair market value (FMV) or replacement cost.
 - When secondary financing is in place, the aggregate amount of the first mortgage and the private secondary loan may not exceed 92.5 percent of the FMV of the project, unless the project has or will receive low-income housing tax credits (LIHTCs), in which case a project-specific waiver of the total loan to value may be considered.

REQUIREMENTS IF PROJECT B IS HUD-AFFILIATED

If Project B is HUD-affiliated, Project B must meet the below requirements. Owner B must submit all applicable documentation and certify that all requirements are met in their proposal to receive the transfer of budget authority under Section 8(bb)(1).

- If the project received a less than satisfactory rating in any section of its last three MORs, corrective actions satisfactory to HUD must have been taken or a plan for those corrective actions and an acceptable timeframe for their completion must be approved by HUD.
- Owner B must be current in the submission of audited or owner-certified annual financial statements and monthly accounting reports, if applicable, for the prior three-year period or for the period of time the new ownership has been in place, whichever is less, and for Section 236 projects, Excess Income Reports for the prior seven-year period and all outstanding excess income, regardless of the time period.
- Owner B must resolve all noncompliance flags, if any.

- Project B must have a REAC score of at least 60 or, if it does not, Owner B must submit a plan that is acceptable to HUD to correct any identified deficiencies as part of the transfer transaction and bring the REAC score to 60 or above. If Project B does not have a current REAC physical inspection score, an inspection must be conducted and the score must be 60 or above. If the score is less than 60, the owner must submit a plan that is acceptable to HUD to correct any identified deficiencies as part of the transfer transaction.
- If there is an existing Section 8 HAP contract (Contract B), Owner B and the contract administrator must execute Amendment B (Appendix Two-B of Notice H 2015-03).
- Owner B and the contract administrator must mutually agree to terminate the amended Contract B on the same day it is amended, and Owner B must submit a request for the immediate renewal of Contract B for a 20-year term, subject to appropriations, under any MAHRA renewal option for which Contract B is eligible. In addition, the Preservation Exhibit (Appendix Three of Notice H 2015-03) must be attached to the renewal contract and completed.
- If there is no existing Section 8 HAP contract, Owner B and the contract administrator must execute a New Regulation Part 880 Project-Based Section 8 HAP Contract (Appendix One of Notice H 2015-03) with a one-day term. On the same day, Owner B and the contract administrator will also execute a renewal contract. Effective at the end of the one-day term, the renewal contract will be renewed under any renewal option for which Project B is eligible and the budget authority transferred to a 20-year renewal contract under MAHRA. Please refer to the Section 8 Policy Renewal Guide for details on renewal options. For the purposes of calculating distributions, initial equity will be the initial equity used at Project A, unless Owner B contributes additional equity to Project B in conjunction with the Section 8(bb) transfer.

REQUIREMENTS IF PROJECT B IS NOT HUD-AFFILIATED

If Project B is not HUD-affiliated, Project B must meet the below requirements. Owner B must submit all applicable documentation and certify that all requirements are met in their proposal to receive the transfer of budget authority under Section 8(bb)(1).

1. The project must have a REAC inspection prior to the transfer and receive a score of at least 60.
2. If the project has repair needs, a repair plan that details how the physical needs of the project will be addressed and comments on the status of any 18 corrective action in progress, e.g., what repairs have been completed, what other corrective actions are pending, and target dates for completing these actions.
3. Owner B and the contract administrator must execute a New Regulation part 880 project-based Section 8 HAP contract (Contract B) with a one-day term (Appendix One). Pursuant to the owner's request, a renewal contract with a 20-year term will be executed on the same day, subject to appropriations, under any renewal option under MAHRA for which Project B is eligible.
 - Please refer to the Section 8 Policy Renewal Guide for details on renewal options. For the purposes of calculating distributions, initial equity will be the initial equity used at Project A, unless Owner B contributes additional equity to Project B in conjunction with the Section 8(bb) transfer.
 - HUD will use the budget authority transferred from Project A until expended to reduce the amount of appropriations needed to fund the 20-year MAHRA renewal contract.

OWNER B'S PROPOSAL

In addition to the submission of all applicable documentation and written certification that the above requirements are met as applicable, Owner B's proposal must include the following:

- A written notification that Owner B agrees to accept the transferred budget authority.
- The current number and configuration of the units, current rents, and operating budget; and the proposed number and configuration of the units, rents, the amount of budget authority to be transferred, and operating budget after transfer of the budget authority.
 - The same permissions that apply to Owner A's proposal concerning the total number of units under Contract A1 and Contract B being greater than the number of units under Contract A prior to its termination by mutual agreement, provided there is no increase in the total amount of budget authority and that there is sufficient budget authority to cover the units; or less than the number of units under Contract A prior to the transfer, also apply here.
- To demonstrate that Project B is financially viable for the long term, written verification of the status of current or proposed financing (e.g., a commitment letter), existing or proposed lender approval (FHA or other) of the proposed transaction, written approvals of the proposed transaction from any other federal, state, or local agencies that have a financial or other interests in Project B, copies of all existing and proposed mortgage documents, and a title report.

- Written narrative that Owner B has at least five years of successful experience owning, managing, and if applicable, renovating assisted housing. The narrative should include the following information:
 - The names of the proposed development team members, if applicable
 - Documentation demonstrating, as applicable, Owner B's recent successful experience financing, developing, rehabilitating, constructing, owning, and operating properties or projects that are similar to Project B
 - A description of the teaming partner relationships
 - A resumé for each proposed development team member, if applicable
 - If applicable, documentation demonstrating that the development team has experience with at least three transactions involving similar financing to Project B

TENANT PROCEDURES AND PROTECTIONS

TENANT NOTIFICATION

Owner A must give the tenants and legitimate tenant organizations of Project A written notification of the proposed transfer and provide a minimum 30-day comment period. HUD will not accept a Section 8(bb) transfer request for any project unless Owner A has notified the tenants of the proposed transfer and has provided the tenants with an opportunity to comment on the proposed transfer.

- The notification should include the address and phone number of the local HUD office, including the specific division and/or name and phone number of a contact at the local HUD office. The notification should be provided in appropriate formats as necessary to meet the needs of all, including persons with limited English proficiency and formats for persons with vision, hearing, and other communication-related disabilities (e.g., Braille, audio, and large type, sign language interpreters, assistive listening devices, etc.).

- The notification will include a description of the impact of the request on tenants' rental assistance and tenant contributions, and resulting tenant relocation rights and responsibilities under the Uniform Relocation Act (see Relocation section below). In addition, the notification must inform the tenants that if the project-based rental assistance budget authority supporting the unit they currently reside in will be transferred, they may be eligible for tenant protection vouchers if they choose not to relocate.
- The notice must be delivered directly to each unit in the project or mailed to each tenant and posted in at least three places or common areas throughout the project, including the project office. In a project greater than four stories, the notice may be served either by delivery to each unit or by posting. If the posting method is used, the notice must be posted in at least three conspicuous places within each building in which the affected dwelling units are located.
- The tenants (including any legal or other representatives acting for the tenants individually or as a group) have the right to inspect and copy the materials that the owner is required to submit to HUD for a period of 30 days from the date on which the notice is served to the tenants. Any tenant comments must be available in the project office during normal business hours for public reading and copying.
- The tenants have the right, during this period, to submit written comments on the transfer to Owner A and the local HUD office. Tenant representatives may assist tenants in preparing these comments.
- Owner A must hold a meeting with the tenants and legitimate tenant organizations to discuss the details of the notification and answer questions.

- Upon completion of the tenant comment period, Owner A must review the comments submitted by the tenants and their representatives and prepare a written evaluation of the comments. Any negative comments must be addressed. Owner A must then submit the following materials to the local HUD office at the time of submission of the request for transfer under Section 8(bb):
 - A copy of Owner A's Notification to the tenants
 - A sign-in sheet from the tenant meeting
 - Copies of all the tenant comments
 - Owner A's evaluation of the tenant comments; and
 - A certification by Owner A that it has complied with all of regulatory requirements, as applicable

RELOCATION

Owner A and Owner B are jointly responsible for determining which ownership entity or entities will be responsible for paying relocation expenses, including moving costs that residents incur in connection with a move to a different unit in Project A or to a unit in Project B. Under no circumstances may the residents pay for any relocation costs incurred as a result of this transaction.

- Any residents that move as a direct result of acquisition, rehabilitation, or demolition for an activity or series of activities that includes transfer of budget authority under Section 8(bb) may become eligible for relocation assistance under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA).
- Questions regarding URA applicability should be brought to the attention of the HUD Regional Relocation Specialist assigned to the state where the project is located.
- A state-by-state list of Regional Relocation Specialists is available at:
 - http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/library/relocation/contacts.

TENANT PROTECTION

If a tenant chooses not to relocate in connection with a transaction under this Notice, tenant protection vouchers (TPVs) will be offered to eligible tenants at Project A, subject to available appropriations. A tenant may receive a TPV, if they meet the eligibility requirements for voucher assistance, and the unit that they currently reside in is supported by project-based rental assistance budget authority that is subject to transfer as part of the Section 8(bb)(1) transaction. Owner A will notify the tenant of their potential eligibility to receive a TPV at the time of tenant notification and subsequently notify the Multifamily Hub/PC regarding how many TPVs are requested. If TPVs are needed, the Multifamily Hub/PC should work with the Public and Indian Housing (PIH) field office to follow the procedures outlined in Notice PIH 2001-41.

TENANTS MOVING FROM PROJECT A TO PROJECT B

Tenants that choose to move from Project A to Project B remain subject to their existing lease requirements and all occupancy rules under the Section 8 project-based rental assistance program (please see HUD Handbook 4350.3 for greater detail on occupancy requirements). Owner B may not seek to terminate the lease of a tenant from Project A for actions that occurred prior to the Section 8(bb)(1) transfer but the tenant will be subject to ongoing eligibility requirements for actions that occur after the transfer. Any eviction procedures currently underway at Project A will not be affected by the transfer of budget authority.

MULTIFAMILY HUB/PC RESPONSIBILITIES

The Multifamily Hub/PC will review and analyze the proposals from the Owners A and B and request additional information, as necessary.

In reviewing the proposals, the Multifamily Hub/PC will:

- Ensure that Owners A and B meet the requirements outlined in Sections V, VI, and VII of Notice H 2015-03.
- Ensure that Owner A has addressed any comments received from the tenants regarding the proposed transaction.
- Ensure that the proposal does not include any involuntary displacement of residents.
- Ensure that the budget authority will be transferred to a project that is in the same state as Project A. If Owner A or B proposes to transfer the budget authority outside of the state, HUD must approve the transfer based on Owner A and/or Owner B's provided justification.
- Perform an analysis to ensure that the transfer of budget authority is budget-neutral. Headquarters must approve this analysis prior to the transfer. The Department has no statutory authority to increase the budget authority to effectuate the transfer.
- Ensure that the budget authority will be transferred to an existing project or projects with existing units. Projects under construction are not eligible to receive transferred budget authority. Approval for transfer of budget authority to a contract at a newly constructed or substantially rehabilitated Project B may be provided, however, with the understanding that the transfer cannot occur until construction on Project B is complete and the property is habitable.
- Ensure Owner A and Owner B have demonstrated that Project A (if the project will remain HUD-affiliated) and Project B will remain financially viable after the transfer of budget authority.
- Review the TSP, AFHMP, and Tenant Relocation Plan (if applicable) for sufficiency.

- Forward the following components of the proposal to FHEO for review and approval:
 - The Affirmative Fair Housing Marketing Plan (AFHMP).
 - The Tenant Selection Plan (TSP) if the owner wishes to adopt a local or residency preference (see HUD Handbook 4350.3, page 4-3).
 - The address of Project B to determine compliance with Notice H 2015-03. If FHEO determines that Project B will be located in an area of minority concentration, they must notify the Multifamily Hub/Program Center staff, who will notify Owner B that they must submit supporting data (e.g., census data, evidence of local revitalization efforts, etc.) in order for FHEO to determine that Project B meets one of the exceptions.
 - FHEO will send a letter to the Multifamily Hub/Program Center indicating approval or disapproval of the proposed transaction within 30 business days of receipt of all pertinent information or request an extension for additional time to review the proposal.
- Use the address submitted by Owner B to determine if the site and neighborhood of Project B meet the criteria outlined in Notice H 2015-03.
- Review the documentation submitted to indicate that Owner B is in compliance with all applicable accessibility requirements of the Fair Housing Act, Section 504 of the Rehabilitation Act, and the Americans with Disabilities Act.
- If applicable, contact the regional relocation specialist to ensure that the Tenant Relocation Plan adheres to the requirements of the Uniform Relocation Act.
- Through the analysis of budget authority, ensure that the remaining budget authority is sufficient to cover the total number of units under Contract A1, if applicable, and Contract B.
- Review the narrative detailing the capacity of the proposed owner and management agent of Project B to own, operate, manage, and if applicable, renovate affordable housing.

- Verify Project A does not have a bond-financed “new regulation” HAP contract, refunded with a sharing of HAP savings pursuant to Section 1012 of the Stewart B. McKinney Homeless Assistance Amendments Act.
- Review the information submitted by Owner B to assist HUD with an environmental review of the transfer, as described above, and then conduct an environment review in accordance with the environmental regulations and requirements at 24 CFR part 50, prior to approving the transfer. Document the environmental review on Form HUD-4128, Environmental Assessment and Compliance Findings for the Related Laws. Guidance for completing the HUD-4128 can be found at the Multifamily Accelerated Processing (MAP) Guide, Chapter 9, and the HUD Environmental Review website (available at <https://www.onecpd.info/environmental-review/>). HUD may reject transfer requests with unacceptable environmental issues, or when mitigation of an issue is infeasible.

If the Hub/PC finds that the owners’ proposals meet the requirements of Notice H 2015-03, the Hub Director will submit a recommendation for approval with the complete package to the PD&R Field Economist for review and an analysis. The PD&R Field Economist will:

- Provide an analysis for each transfer request to enable Multifamily to assess whether there is sufficient demand for affordable rental housing in the receiving market area and that the transfer does not occur in neighborhoods with highly concentrated poverty. This analysis will consist of the following:

	Inter-Fair Market Rent (FMR) area transfers	Intra-Fair Market Rent (FMR) area transfers
	For Inter-FMR Area transfers, there can be two types: 1) Transferring to a new metropolitan area; or 2) transferring to a new non-metro county.	For Intra-FMR transfers, there can be three types: 1) Within a metro area to a new neighborhood (Small Area Fair Market Rent (SAFMR)/Zip); 2) within a metro area, in the same neighborhood (SAFMR/Zip code); and 3) within a non-metro county.
New Metro Neighborhood	<p>For moves into a metropolitan area, the receiving property's neighborhood must be in a SAFMR area with a poverty rate of less than 30 percent, unless:</p> <ul style="list-style-type: none"> a. The receiving property is in a neighborhood receiving a Choice Neighborhoods Grant or is part of a significant state or local revitalization initiative that will result in new construction and substantial rehabilitation of mixed income housing; or b. The receiving property is in a SAFMR area with a poverty rate between 30 and 40 percent; and either: <ul style="list-style-type: none"> 1. Housing market activity within the SAFMR area would indicate that the area is revitalizing; or 2. The poverty rate has seen significant recent decline. 	<p>Within a metro area to a new neighborhood (SAFMR/Zip code), the receiving property's neighborhood must be in a SAFMR area with a poverty rate of less than 30 percent, unless:</p> <ul style="list-style-type: none"> a. The receiving property is in a neighborhood receiving a Choice Neighborhoods Grant or is part of a significant state or local revitalization initiative that will include and result in new construction and substantial rehabilitation of mixed income housing; or b. The receiving property is in a SAMFR area with a poverty rate between 30 and 40 percent; and either <ul style="list-style-type: none"> 1. The proposed receiving site has a higher SAFMR than the current site; or 2. The proposed receiving site is considered immediately adjacent (within 1/2 mile) to the current site; or 3. Housing market activity within the SAFMR area would indicate that the area is revitalizing; or 4. The poverty rate has seen significant recent decline.

	Inter-Fair Market Rent (FMR) area transfers	Intra-Fair Market Rent (FMR) area transfers
Old Metro Neighborhood	N/A: By definition moving the budget authority to a new FMR area will transfer the budget authority to a new neighborhood.	<p>Within a metro area, and in the same neighborhood (SAFMR/Zip code), the receiving property's neighborhood must be in a SAFMR area with a poverty rate of less than 30 percent, unless:</p> <ul style="list-style-type: none"> a. The receiving property is in a neighborhood receiving a Choice Neighborhoods Grant or is part of a significant state or local revitalization initiative that will result in new construction and substantial rehabilitation of mixed income housing; or b. The SAFMR area is between 30 and 40 percent and at least 50 percent of the units at the receiving property are unassisted and either: <ul style="list-style-type: none"> 1. The proposed receiving site is considered immediately adjacent (within 1/2 mile) to the current site; or 2. Housing market activity within the SAFMT area would indicate that the area is revitalizing; or 3. The poverty rate has seen significant recent decline.

	Inter-Fair Market Rent (FMR) area transfers	Intra-Fair Market Rent (FMR) area transfers
Non-Metro	<p>For moves to a non-metropolitan county, the receiving property must be in a county that has a poverty rate less than 30 percent, unless:</p> <p>The county poverty rate is between 30 and 40 percent, and:</p> <ol style="list-style-type: none"> 1. The housing market activity within the county would indicate that the area is revitalizing; or 2. The poverty rate has seen significant recent decline; or 3. The transaction is part of a statewide portfolio preservation strategy operated by a Housing Finance Agency or is part of a significant state or local revitalization initiative that will result in new construction and substantial rehabilitation of mixed income housing. 	<p>Within the same non-metro county, the receiving property must be in a county that has a poverty rate of less than 30 percent, unless:</p> <p>The county poverty rate is between 30 and 40 percent and:</p> <ol style="list-style-type: none"> 1. The housing market activity within the county would indicate that the area is revitalizing; or 2. The poverty rate has seen significant recent decline; or 3. The transaction is part of a statewide portfolio preservation strategy operated by a Housing Finance Agency or is part of a significant state or local revitalization initiative that will result in new construction and substantial rehabilitation of mixed income housing.

- The PD&R field economists will write a memo detailing the analysis results to the Hub/PC that is reviewing the transfer proposal.
- The Multifamily Hub/PC will review the memo. If PD&R has advised against the transfer, the Multifamily Hub/PC will work with the PD&R field economist to understand the reason for the rejection and communicate this reason to the owner.

If the Multifamily Hub/PC finds that the owners' proposals meet the requirements detailed in Notice H 2015-03, and the PD&R field economist's memo recommends the transfer, the Hub Director will submit a recommendation for approval to Headquarters, Director, Office of Asset Management and Portfolio Oversight. The recommendation will include:

- The analysis performed by the Multifamily Hub/PC to ensure that the transfer of budget authority will not result in an increase in the amount of existing budget authority.
- The feasibility analyses described above.
- Background information on Project A and Project B.

- Summary information on how Project A and Project B meet the requirements specified in Notice H 2015-03.
- The number of units and amount of budget authority that will be included under each contract.
- The PD&R field economist's memo detailing their analysis.

HEADQUARTERS' REVIEW AND APPROVAL

Upon receipt of the completed package from the Hub/PC, the responsible Headquarters office will review the package.

If the package meets the requirements defined in Notice H 2015-03, Headquarters will prepare an approval memo to the Multifamily Hub/PC.

- The Headquarters approval memorandum will include an additional line for the signature of the Performance Based Contract Administrator's (PBCA) authorized representative for the PBCA to consent to the termination by mutual agreement (and to the prior subdivision, if applicable) of any and all HAP contracts for which the memorandum requires termination by mutual agreement.
- Upon receipt from Headquarters, this memorandum will be sent to the PBCA by the Hub/PC.
- An authorized representative of the PBCA must sign this memorandum on the designated signature line.

Upon receipt of approval from Headquarters, the Multifamily Hub/PC will ensure that (See Appendix Four of Notice H 2015-03 for further clarification):

- For Project A:
 - If all of the remaining budget authority is to be transferred, Contract A is terminated before the transfer takes place.
 - If a portion of the remaining budget authority will remain at Project A, Contract A is subdivided into two or more contracts (e.g., Contract A1, Contract A2, etc.) prior to termination of Contract A. The budget authority associated with Contract A1 will remain at the project and the contract will be amended using Amendment A (Appendix Two-A of Notice H 2015-03). Contract A2 will be terminated by mutual agreement, and the budget authority associated with Contract A2 (and others, if applicable) transferred to Project B.
 - Owner A and the contract administrator mutually agree to terminate amended Contract A1, and on the same day Owner A and the contract administrator execute a renewal of Contract A1 for a 20-year term, subject to appropriations, under any MAHRA renewal option for which Contract A1 is eligible.
 - The Preservation Exhibit (Appendix Three of the notice) is attached to the 20- year renewal contract and is completed.
- For Project B:
 - If there is an existing Section 8 HAP contract, Owner B and the contract administrator must execute Amendment B.
 - Owner B and the contract administrator must mutually agree to terminate the amended Contract B, and on the same day, Owner B and the contract administrator must execute a renewal of Contract B for a 20-year term, subject to appropriations, under any MAHRA renewal option for which Contract B is eligible. In addition, the Preservation Exhibit (Appendix Three of Notice H 2015-03) must be attached to the renewal contract and completed.

- If there is no existing Section 8 HAP contract at Project B, the owner and the contract administrator execute a New Regulation Part 880 Project-Based Section 8 HAP Contract (Contract B) with a one-day term (Appendix One of Notice H 2015-03). On the same day, Owner B will execute a renewal contract, that will be effective at the end of the one-day term, and will be renewed under any renewal option for which Project B is eligible with the understanding that HUD will use the budget authority transferred from Project A until expended to reduce the amount of appropriations needed to fund the 20-year MAHRA Renewal Contract.
- Owner B receives approval through the Previous Participation process, including a 2530 review.
- Before the transfer takes place, Project B must have a REAC score of at least 60 or Owner B must submit a plan that is acceptable to HUD to correct any identified deficiencies as part of the transfer transaction and bring the REAC score to 60 or above. If Project B does not have a current REAC physical inspection score, an inspection must be conducted and the score must be 60 or above, or the owner must submit a plan that is acceptable to HUD to correct any identified deficiencies as part of the transfer transaction.
- The Multifamily Hub/PC will also ensure that:
 - Contract A1 and Contract B are established as described in Appendix Five of Notice H 2015-03, Steps for Establishing a New Section 8 Contract under Section 8(bb) in PAS/LOCCS/TRACS.
 - Upon completion of the transfer, iREMS is updated to reflect the changes made to the projects, including the information from the Appendices of the notice. For questions regarding the should be directed to the local HUD Field Office or the Desk Officer in the Office of Asset Management.

HUD FAQs

In June 2018, HUD updated their previously published Frequently Asked Questions on Transferring Budget Authority under Section 8(bb)(1). This current notice supersedes the FAQs published December 2016.

- http://nlihc.org/sites/default/files/8bb_FAQ.pdf

In the updated FAQs, HUD addresses some of the common issues that owners and agents are having. The FAQs included are outlined below:

BUDGET NEUTRALITY

1. How does HUD determine the maximum number of units that can be placed on the contract at Property B?

HUD Response: 8(bb) transfers must be “budget neutral.” “Budget neutrality” means that the annual gross rent potential (GRP) for Property B may not exceed the annual GRP for units terminating at Property A. Budget neutrality may result in either an increase or decrease in units placed on the contract at Property B as compared to those being terminated at Property A, if the average rents for the properties differ. (Any decrease in units of more than 5 percent must be supported with additional documentation indicating a material improvement in location or a market-driven need to reconfigure unit types, as detailed in section VI.D of the Notice.) Note that for Property A, GRP is determined based on current PBRA rents for all contract units being terminated through the 8bb. For Property B, GRP is determined based on market rents as established by an RCS. For HUD-assisted properties with an RCS conducted within the past 12 months, current rents may be considered market rents. For the subsequent MAHRA renewal of Contract B, the Regional Center director can waive the requirement in Section 2-5 of the Section 8 Renewal Guide for a new RCS. The sample calculation below illustrates how to use GRP to size units at Property B and demonstrate budget neutrality of the transfer (numbers are for illustrative purposes only).

Using the GRP at Property A and Property B, field offices must submit a unit sizing and budget neutrality calculation worksheet with the 8(bb) request for review by headquarters. A template for the calculation will be provided to HUD field staff. The demonstration of an equivalent or reduced GRP at Property B will satisfy the requirements of the Notice to demonstrate that the remaining budget authority being transferred from Property A is sufficient to fund the proposed number of units at Property B.

Unit Sizing and Budget Neutrality Demonstration						
		Rents	Units	Subtotal	Total	
Property A: Gross Rent Potential						
A	Current monthly GRP for all contract units at Property A					
	GRP - 1 Bedrooms (\$870 per month X 50 units)	\$870	50	\$43,750.00	\$101,250.00	
	GRP - 2 Bedrooms (\$1150 per month X 50 units)	\$1,150	50	\$57,500.00		
B	Annual GRP at Property A (Line A X 12 months)				\$1,215,000.00	
C	Number of Contract Units at Property A					100
Property B: Initial Estimate of Units						
D	Monthly GRP for Property A units at Property B market rents, by unit type					
E	GRP - 1 Bedrooms	\$900	48	\$43,200.00	\$100,775.00	
F	GRP - 2 Bedrooms	\$1,175	49	\$57,575.00		
G	Annual GRP for units terminating at Property A using Property B market rents (Line D X 12)				\$1,209,300.00	
H	Budget Neutrality Indicator (Line G/Line B)					99.5%
	Size the units at Property B so the budget neutrality indicator is 100% or less					
I	Estimated Number of Units for Property B (Line E + F)					97

Note: The final number of units at Property B may differ from this estimate if there is a change in the mix of unit types from Property A to Property B. This is acceptable so long as total GRP for Property B does not exceed GRP for Property A. To continue our example, a combination of 38 one-bedroom units and 57 two-bedroom units can be accommodated at Project B within the annual GRP of \$1.215M (or Budget Neutrality Indicator of 99.9%), for a total of 95 units.

2. We have three Owner As that have elected to terminate their HAP contracts by mutual agreement with HUD. Are we able to combine this budget authority to use on a single Property B or multiple Property Bs, therefore creating a pool of budget authority from all the Property As? (Revised June 14, 2018)

Response: Budget authority from multiple Property As may be pooled for a transfer to a single Property B. PD&R will conduct a review for each Property A-Property B combination. However, HUD will not permit the transfer of budget authority from multiple Property As to multiple Property Bs. HUD has determined that such transfers would not be feasible due to the administrative difficulty of comparing all Property As to all Property Bs in PD&R's analysis.

Two versions of the Budget Neutrality worksheet are available to field staff to accommodate: (1) multiple Property As (i.e., "many-to-one transfer") and (2) multiple Property Bs (i.e., "one-to-many transfer").

UNIT SIZING AND TRANSFER OF BUDGET AUTHORITY

3. How do I "size" the transferring number of units when there are multiple Property Bs?

Response: In a one-to-many transfer, the GRP for the "many" should be calculated on a gross basis, i.e., combining all Property Bs to ensure that the gross GRP does not exceed the GRP at Property A. Next, the gross GRP is divided among the "many" according to the proposed units and unit types at each property. A unit sizing and budget neutrality calculation worksheet will be provided to Field Offices to assist with this calculation.

4. What are “budget authority” and “remaining budget authority,” and how is remaining budget authority related to the sizing of number of units at Property B?

Response: In this context, budget authority is a commitment to fund 12 months of subsidy at Property A. Remaining budget authority is 12 months of (calendar year) budget authority for Property A, less amounts expended/vouchered for during the calendar year at the time of the transfer. Remaining budget authority will often be greater than the balance reflected in LOCCS, as a full year of funding may not have been obligated to Contract A in the accounting system.

Remaining budget authority is not related to sizing the number of units that may be added at

Property B. As discussed in FAQ 1, Gross Rent Potential is relied on to size the number of units that can be supported by the transfer and to demonstrate budget neutrality as required by the Notice. Gross Rent Potential less tenant contributions is used to impute the total annual budget authority needed for housing assistance payment to Property A and Property B.

The Field Office is not required to submit the amount of remaining budget authority on Contract A as part of its 8(bb) approval request to headquarters, since the number continually changes as vouchers are submitted. Only the unit sizing and budget neutrality demonstration is required (see FAQ 1).

5. What does “within the lesser of five percent or five units” in Section V.D, Paragraph 3, mean?

Response: As the Notice states, “the number of units supported by the budget authority at Project B should be substantially the same...as the number of units supported by the budget authority at Property A.” When there is a reduction in units, there is a test to determine if the reduction exceeds the threshold of “within the lesser of five percent or five units.” If the reduction does not meet this test, there are additional criteria that must be met. The threshold of “within the lesser of five percent or five units” means that for projects with 100 terminating units or more, the unit reduction threshold is always limited at five. For projects with fewer than 100 terminating units, the five percent threshold will be the limitation (e.g., 95×0.05). If the reduction exceeds the threshold, the request must be supported with additional documentation indicating a material improvement in location or a market-driven need to reconfigure unit types, as detailed in section V.D of the Notice.

8(bb) transfer Scenario 1:

- Project A’s budget authority funds 130 units
- 5% of 130 is 6.50 units
- The reduction in units cannot be more than 5

8(bb) transfer Scenario 2:

- Project A’s budget authority funds 28 units
- 5% of 28 is 1.4 units (rounded up)
- The reduction in units cannot be more than 2

6. The current notice states in paragraph III.B that the Notice applies only when the contract administrator and Owner A have mutually agreed to “terminate the Contract so that all of the remaining budget authority can be transferred to another multifamily housing project.” Do we take this literally to mean all the budget authority?

Response: No, this does not literally mean that all budget authority has to be transferred to a single project in order to obtain Departmental approval. OAMPO will only allocate the necessary budget authority.

7. Can the Field Office approve a small transfer of budget authority?

Response: No, Headquarters must approve all transfers.

8. Is there a minimum threshold for transfer of budget authority?

Response: No.

9. Can an 8bb transaction transfer the budget authority in phases to Project B as newly constructed units are put on line?

Response: The Owner should include any plan to perform a transfer of budget authority in phases as part of their proposal to the local HUD Field Office. Please reference Section V.B.4 for guidance on phased-in transfers.

10. We have a proposed Project B with Rural Development loans and partial project-based RD assistance (similar to Section 8). The 8bb transfer would go into market rate/non-subsidized units. Would any of these variables prevent this property from being a Project B?

Response: No, as long as Project B meets the other eligibility requirements, the RD loans and RD assistance will not prevent it from being a candidate for Project B.

11. Has Headquarters approved the transfer of budget authority across state lines?

Response: Yes. Headquarters reviews these requests on a case-by-case basis. Headquarters also addresses the unique contract administration actions specific to transferring budget authority across state lines.

RENTS

12. What contract rents should I use for the one-day/amended contract at Property B? What if the rents at Property B are above-market?

Response: If Property B intends to renew the contract under Option One or Four, then use market-level rents for Property B as established by an RCS. If Property B intends to renew the contract under Option Two, then use the budget-justified rents, limited to RCS rents. For HUD-assisted properties with an RCS conducted within the past 12 months, current rents may be considered market rents.

For the subsequent MAHRA renewal of Contract B, the Regional Center director can waive the requirement in Section 2-5 of the Section 8 Renewal Guide for a new RCS. HUD will not approve Property B above-market contract rents as part of an 8(bb) transfer. Market rate units may be added to an existing Option Four contract where rents are above market, but there must be a separate rent schedule for the new market rate 8(bb) units. Owners with projects that currently have an Option Four renewal and/or are considering renewing under Option Four must submit an RCS as a part of the 8(bb) application in order to establish the market rent.

13. Can an owner increase rents under Option One or Option Two when renewing the one-day/amended contract? (Revised June 14, 2018)

Response: No. While the one-day/amended contract can reflect an increase in rents, the 8(bb) MAHRA renewal rents cannot be another increase over the one-day/amended contract rents. The one-day/amended contract rents and the 8(bb) MAHRA renewal rents must reflect the rents determined at the time of sizing.

14. In an 8(bb) transfer in which Owner B requests a 20-year renewal contract of Contract B under Option Two on the basis of a budget, how must renewal rents be set when (1) Project B is already subject to a Section 8 HAP contract, as amended per section V. B. 2. of Notice H 2015-03, to reflect the increase in the number of units (the “amended contract”); and (2) Project B is not already subject to a Section 8 HAP contract but becomes subject to one (i.e., a Part 880 New Construction HAP Contract), as required under section VI. C. 3. of Notice H 2015-03 (the “one-day contract”). (New June 14, 2018)

Response: This question is best answered by first distinguishing between (1) units that are added to the amended contract, or to the one-day contract, as a result of the transfer of budget authority (the “Section 8(bb) units”) to Contract B; and, in the case of the amended contract (2) units already covered by Contract B before the transfer of budget authority (the “existing units”). The renewal rents for both the Section 8(bb) units and the existing units under the amended contract are set at the level of the RCS-capped budget.

15. If an 8(bb) transfer involves renewal of Contract B under Option Two with renewal rents set below the RCS-determined market level on the basis of a budget, will HUD/CA agree to early termination of the contract and subsequent renewal under Option One? (New June 14, 2018)

Response: No, not before the end of year five of the Option Two renewal contract. HUD/CA will not agree to terminate an Option Two renewal contract with renewal rents set below the RCS-determined market level on the basis of a budget any sooner than the end of year five of the contract. At the beginning of year six or any time thereafter, the owner may request early termination and subsequent renewal under any renewal option for which the HAP contract is eligible at that time.

16. Question: If, in an 8(bb) transfer, Contract B is renewed under Option Two and renewal rents are set below the RCS-determined market level on the basis of a budget, will HUD/CA approve a request for a budget-based rent adjustment in any subsequent year? (New June 14, 2018)

Response: No, not before the end of year five of the Option Two renewal contract. Rent adjustments for the first five years following renewal will be restricted to OCAF. For any subsequent year, the owner may submit a request for a budget-based rent adjustment, which HUD/CA will evaluate and either approve or deny at that time.

TENANTS AND RELOCATION

17. Do there need to be available non-subsidized units at Property B for all tenants in Property A who wish to move?

Response: The number and type of contract units at Property B must accommodate all Property A tenants wishing to relocate to Property B. Tenants can be “over-housed” at Property B to accommodate all tenants who decide to move until an appropriate unit type becomes available.

18. Do Property A and Property B need to have the same eligibility requirements for age and disability?

Response: It depends. Tenants can move to a Property B with less restrictive requirements than Property A, but they cannot move to a Property B with more restrictive requirements if they do not meet those requirements. Because the Notice requires tenants to be given the option to move to Property B, an 8(bb) transfer from a less restrictive property to a more restrictive property when there are tenants involved is not feasible (i.e., from a property with a family designation to a property with an elderly designation). If Property B has less restrictive tenant eligibility requirements for age and disability, Owner A must disclose this fact to the tenants at Property A and describe the services (or lack thereof) at Property B as part of the notification to tenants of the proposed 8(bb) transfer.

19. If a short-term renewal is executed, can tenants move out using the Tenant Protection Voucher (TPV) on its effective date, or do they have to wait until the 8(bb) transfer is approved?

Response: The tenants with TPVs should move out within the timeframe established by the PHA. The tenants who are relocating to Property B will stay at Property A until the 8(bb) transfer is executed.

20. If a short-term renewal is executed to protect tenants who wish to move to Property B when Property B is ready, can the Owner of Project A move new tenants into units vacated by the tenants who have moved with TPVs?

Response: Yes, within limitations. An owner may move market-rate tenants or tenants with tenant-based vouchers into vacated units. However, the owner may not receive project-based rental assistance for those units nor may those tenants move to Project B. The Field Office must ensure that this restriction is enforced by the contract administrator.

CONTRACT EXPIRATIONS, TERMINATIONS, AND OPT-OUTS

21. If Owner A is willing, can we renew a contract that has expired (even up to several years ago) in order to facilitate the 8(bb) transfer, as long as the remaining funds have not been swept? A related question is whether we can renew a contract if all the tenants have already been issued, or are about to be issued, TPVs.

Response: No to both questions. To execute an 8(bb) transfer, Contract A must not be allowed to expire. Before Contract A expires, execute a short-term renewal under Chapter 2 of the Section 8 Renewal Guide to protect the tenants. Furthermore, there is a presumption in the Notice that HUD has made a determination that the 8(bb) transfer is in the best interest of the tenants. The Notice also provides that tenants will have the option of moving to Project B or receiving a TPV. Field offices must initiate the 8(bb) transfer process with sufficient advanced-planning so these choices are available for tenants.

22. Is it mandatory to renew Project A's existing contract for a short term if the 8(bb) transfer has not yet been approved before the expiration date of the current HAP contract?

Response: Yes, the contract must have a short-term renewal to remain an existing contract and be subject to the Notice. Once the contract expires, it is no longer an active contract. The Notice only addresses the transfer of budget authority from an existing, active HAP contract.

23. Owner A is opting out of the contract but is willing to renew the contract for a short term to allow the 8(bb) process to be completed. Would issuing a short-term contract give Owner A a new chance to change his or her mind and retain the contract?

Response: In the context of short-term contracts issued as part of an 8(bb) transfer, the Department will require the owner to agree in writing that they will not renew the contract under MAHRA as a condition of the short-term renewal.

24. Does issuing a short-term contract trigger a rent adjustment, which would change the Gross Rent Potential (GRP) and the unit sizing calculation?

Response: No. The short-term contract would be renewed at current rents.

25. We have an owner of Project A who wishes to subdivide his contract and move only a portion of the budget authority to another project. However, he does not want to renew the remaining contract for 20 years (Section V.B.3). Can this requirement be waived?

Response: The Department will consider waivers of this requirement to encourage the 8(bb) transfer.

26. An owner terminated his Section 8 contract two years ago, renewed his contract for 20 years, and agreed to a Preservation Exhibit whereby he agreed to renew the contract for the balance of the contract being terminated (10 years) at the end of the 20-year contract. This would ensure the project would have Section 8 assistance for 30 years. Now the owner wishes to terminate the contract early and transfer the subsidy to another property. Does the owner have to agree to a second Preservation Exhibit that would result in a 20-year contract, plus an agreement to renew for the 10 years in the original Preservation Exhibit and 18 years for the contract signed just two years ago, for a total of 48 years?

Response: No. HUD would replace the original Preservation Exhibit with a new Preservation Exhibit representing the 18 years attached to the current contract. The new renewal contract of 20 years plus the Preservation Exhibit of 18 years would result in an owner commitment of 38 years.

27. Can the PBCAs with a “Performance Based Contract” ACC (42 states) process terminations of Contract A for 8(bb) transactions?

Response: Yes. The June 2000 PBCA-ACC, under which 42 of the PBCAs operate, requires them to comply with HUD requirements (regulatory and non-regulatory) as amended or changed from time to time. Notice 2015-03 is such a requirement; it requires PBCAs to agree to the termination of a HAP contract that is the subject of an 8(bb) transaction. Therefore, HAP contracts that are in the portfolio of the PBCA will remain with the PBCA throughout the 8(bb) process.

28. We have an owner who wants to opt out of the Section 8 contract but has agreed instead to terminate the contract by mutual agreement with HUD and transfer the budget authority to another project. Can I recommend a transaction that transfers budget authority in a contract termination but also allows existing tenants to obtain Enhanced Vouchers so they can stay in the project?

Response: The transaction may occur, but the owner must opt-out in order for eligible families to remain at Property A with an enhanced voucher. All the other requirements in Notice 2015-03 must be followed to complete the transaction and there will not be an early termination of the contract.

HUD will honor an agreement between Owner A and Owner B to transfer the budget authority immediately following the opt-out by Owner A. The Property B contract would be made effective the day after the expiration date of Contract A. Owner A must adhere to both the Section 8(bb) tenant notification requirement in addition to the one-year notice of the owner's intent to opt-out. Tenants must be given the option to remain at Property A with an enhanced voucher, to move with a regular voucher to another property, or to move to Property B.

Tenants will have the 30-day tenant comment period to notify Owner A that they wish to move to Property B. They will not be able to request to move to Property B after the 30-day comment period ends. Early timing of the 8(bb) tenant notification is important because information about which tenants wish to move to Property B is essential to the relocation plan.

In the context of an opt-out, the HUD Regional Office will submit a request to headquarters for enhanced vouchers for all the units covered by the opt-out, in accordance with Public and Indian Housing (PIH) policy, regardless of how many tenants have initially indicated a desire to move to Property B. For further guidance on processing such transfers, please contact headquarters.

ENVIRONMENTAL REVIEW

29. If the owner prepared a Phase I ESA for his or her project three years ago, is a new one needed?

Response: If a Phase I ESA is required as part of the 8(bb) transfer, then yes. According to Section 9.3.A.1.c. of the 1/29/2016 MAP Guide, “The Phase I ESA must be conducted (meaning the earliest of the date of the site visit, records review documents, or interviews) within one-year of the submission to HUD. HUD may require updates or additional analysis in specific circumstances. A Phase I ESA that was conducted more than 180 days prior to the submission date to HUD, but within the allowable one-year period, must be updated pursuant to Section 4.6 of ASTM E 1527-13. A Phase I ESA prepared more than one year prior to submission to HUD, even if updated within 180 days of being submitted, is not acceptable.”

30. What is HUD's stance on using an environmental review from another agency, for example Rural Development?

Response: If a review has been prepared for a HUD project by another agency, those documents should be requested and used to the extent possible. However, HUD must conduct its own environmental analysis and prepare its own environmental review, and HUD will be responsible for the ultimate findings and determinations (See 24 CFR 50.35). HUD would use the other agency's review of the site for reference and ask the applicant to submit new or updated documentation and reports as needed.

31. What is the shelf life of the other environmental information that Owner B is required to submit, such as information on historic preservation or wetlands?

Response: The ASTM E 1527 shelf-life standard applies: new information should be submitted if over a year old, and if over six months old, the information should be updated.

32. For a Project B that is new construction, does the Phase I ESA have to be completed before construction begins?

Response: Yes.

33. For a Project B that is already under construction, when does the Phase I ESA have to be completed?

Response: A Phase I ESA should have been completed prior to commencement of construction, whether it was FHA-financed or not. Also, please reference the ASTM E 1527 shelf-life standard for the Phase I ESA.

34. Can an owner of a Project B that currently does not have any affiliation with HUD (no FHA insurance, no HAP contract) order the Phase I Environmental Assessment after the transaction has been conditionally approved with a condition that the HUD-4128 is completed and approved?

Response: No. Owner B must submit the Phase I with the application. Also, please reference the ASTM E 1527 shelf-life standard for the Phase I ESA.

PD&R AND FHEO REVIEW

35. Has a point of contact with PD&R [field economist] for an 8(bb) review been established?

Response: The field economists are located in Philadelphia, Atlanta, Chicago, Oklahoma City, Ft. Worth, Denver, Los Angeles, San Francisco, and Seattle.

36. Do the field economists need to know details about current tenants in order to demonstrate demand for additional affordable housing?

Response: Details on current tenants such as their names and ages are not necessary. Field economists will review the following in determining demand for additional affordable housing: (1) market analysis showing there are eligible families in the area; (2) the number of current tenants and/or prospective tenants on the waiting list at Project A who are eligible for Section 8 assistance and intend to relocate to Project B; and (3) the number of prospective tenants on the waiting list at project B who are eligible for Section 8 assistance.

37. If a transaction results in a reduction in units that exceeds the five percent or five unit threshold, the Notice requires PD&R to determine that the transfer will result in a material improvement in the location of Project B; or when Project B is in the same Small Area Fair Market Rent (SAFMR) area as Project A, the Field Office must demonstrate that a reconfiguration of units is necessary due to the average vacancy rate in a given unit type being at least 25 percent for at least 24 months. If the units are moving from one good area to another good area, does that mean we can transfer the budget authority?

Response: Maybe. If the justification for exceeding the unit reduction threshold is a material improvement in the location of Project B, we recommend that early in the process the account executive contact PD&R and request an initial test for material improvement, such as a poverty rate comparison.

38. How is minority concentration defined as referenced in Section VI.A.6.d.?

Response: Minority concentration is defined similarly to minority neighborhood as found at the HUD Glossary: https://www.huduser.gov/portal/glossary/glossary_all.html.

39. Can the review by FHEO and PD&R occur simultaneously? (Revised June 14, 2018)

Response: Yes. The Field Office can make this request from the PD&R field economist. If the field economist agrees, the requirement to submit the complete application to PD&R would be waived. In place of the complete application, the account executive should provide the field economist with the 8(bb) application from Owner A, the addresses of Property A and Property B (including zip code), and a market analysis for location of Property B showing there are eligible families in the area, if available. If a market analysis is not available, submit (1) the number of current tenants and/or prospective tenants on the waiting list at Project A who are eligible for Section 8 assistance and intend to relocate to project B; and (2) the number of prospective tenants on the waiting list at Project B who are eligible for Section 8 assistance. In addition, if there is a reduction in the number of units (more than five percent or five units), additional information supporting a “material improvement” may be required.

REAC SCORES AND INSPECTIONS

40. Can an inspection from another state or federal agency (such as Rural Development) be used in lieu of a REAC inspection for an 8(bb) Property B?

Response: At this time there are no other federal agencies that conduct UPCS inspections on behalf of HUD. Some State Housing Finance Agencies (HFAs) that participate in the Physical Inspection Alignment Pilot Program have had their inspectors become UPCS-certified through the Department's certification program. These inspectors must use HUD's inspection software (4.0), and upload the inspection to REAC so that it is evaluated and scored before it is released to the owner. The HFA inspectors that are UPCS-certified conduct inspections on behalf of HUD in cases where there is an overlap in state and federal assistance programs. For instance, if a project has both LIHTC and a Section 8 HAP contract, both HUD and the HFA may be obligated to conduct a physical inspection at that project. The Physical Inspection Alignment Pilot is an attempt to eliminate the duplication of inspections by having one party conduct the inspection using a protocol (UPCS) that is acceptable to both parties and then sharing the result. When an HFA conducts the inspection as part of the pilot, they pay for the inspection.

41. How do we submit another agency's inspection to REAC for evaluation and scoring?

Response: If the individual doing the inspection has completed the required training and is certified to complete the inspection, the Department will issue them the equipment and software to enable them to upload the inspection results directly into the REAC system. More detailed information about the certification process and the software can be found on the REAC website at:
http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/reac/products/prodpass/dcd4.0

42. For new construction and Property Bs that are not HUD-affiliated, can the REAC inspection be ordered before the 8(bb) is submitted (since it takes some time for a REAC inspection to be conducted)?

Response: No. If the 8(bb) application is otherwise approvable, you will receive a conditional approval of the 8(bb) transfer from Headquarters, requiring that a REAC inspection be ordered. If the score is below 60, the deficiencies must be cured or a plan must be approved by HUD that will result in cure of those deficiencies within a timeframe acceptable to HUD.

43. How is a REAC inspection requested, especially when there is no record in iREMS for Project B yet?

Response: The first step is for the branch chief to create a “dummy” project in iREMS. This can be done by using the “project add” feature and inputting the name and address of Project B in iREMS and the assigned account executive. The branch chief should also use the Servicing Screen tab to show that the project has an active use agreement. This will make the project “active” so that REAC-PASS will be able to generate an inspection ID. The branch chief will notify the physical inspection coordinator in the region about the request and must remember to later mark the use agreement as terminated, whether the 8(bb) transfer goes through or not.

The second step is to send Brandt Witte, in HQ-OAMPO, the following information regarding Project B:

- Project name
- Address
- Number of buildings
- Number of units
- Owner and management agent contact information
- Copy of the commitment from Property B to receive PBCA budget authority

This information will be passed on to REAC-PASS so that an inspection can be scheduled with the owner/agent. A date can normally be scheduled within two to three weeks of receipt of this information.

44. Would HUD consider waiving the requirement in Section VI. C., Paragraph 1, that requires a REAC inspection and score above 60 if Project B is not a HUD-Affiliated property before the transaction?

Response: No, we would not. We would follow the process outlined in the FAQ that begins “How is a REAC inspection requested....”

45. In the case where Project B is a new construction project developed under an FHA mortgage program, i.e. Section 221(d)(4), can the HUD-executed Permission to Occupy be used to determine the units meet HUD's physical condition standards in lieu of a REAC inspection, allowing the transfer to proceed?

Response: Yes, the HUD-executed Permission to Occupy is sufficient to allow the transfer to proceed, and the project will begin its regular cycle REAC inspections from the date of final endorsement.

46. Does Section V.C., Paragraph 4, which discusses curing of deficiencies in Project A if it will continue to be HUD-affiliated, only apply if the project has a below 60 score?

Response: Yes, if the score is below 60, the deficiencies must be cured or a plan must be approved by HUD that will result in cure of those deficiencies within a timeframe acceptable to HUD. If the score is 60 or above, then the owner only has to correct any exigent health and safety (EHS) deficiencies within three business days.

47. If Property B becomes due for a REAC inspection during the 8(bb) process (e.g., between the submission and approval steps), is this new inspection required?

Response: Yes. The 8(bb) process does not stop the clock on the required REAC inspection schedule. There must be an up-to-date inspection with a score of 60 or above (or Owner B must submit a plan that is acceptable to HUD to correct any identified deficiencies) to approve the 8(bb) transfer. Projects that score between 90 -100 must be inspected at least once every three years. Projects that score from 80-89 must have an inspection at least once every two years. And projects with a score of 79 or below must have an inspection at least once a year.

THIRD-PARTY AGREEMENTS

48. If an owner is uninterested in participating in an 8(bb) transfer, can HUD step in and execute the transfer?

Response: Under Housing Notice 2015-03, 8(bb) transfers require mutual agreement from both Owner A and Owner B. If the owners do not mutually agree to the terms of an 8(bb) transfer, any remaining budget authority will be recaptured after contract termination.

49. Can an owner sell their HAP contract?

Response: HUD is not involved in third-party agreements.

MANAGEMENT AND OCCUPANCY REPORT (MOR)

50. Must the owner of Project A submit copies of the last three MOR Reports with the application if Project A will continue to be HUD-affiliated and if any section of its last three MORs were rated less than satisfactory?

Response: If the MOR findings are closed, then Owner A does not need to submit them. If there are any open MOR findings, then the Owner A must submit the MOR and address how they are closing any open findings. This requirement also applies in cases where there has been a change in ownership.

51. Can the requirements for submitting the items in Section V.C.1-3 be waived if all of the budget authority will be transferred from Project A as part of an 8(bb) transfer and the project will no longer be HUD-affiliated?

Response: No. If Owner A is not in compliance with Section V.C.1-3, HUD must reserve its right to pursue enforcement action with this owner.

If you have a question about transferring budget authority under Section 8(bb)(1), please submit it to your HUD Field Office account executive.

CHAPTER 10 POST TEST

1. The budget authority may be transferred to one or more projects.
 - a. True
 - b. False
2. Transfer of budget authority can be used on HAP contracts for Project-Based Vouchers.
 - a. True
 - b. False
3. The owner of project A can request to transfer:
 - a. Part of the remaining budget authority
 - b. All of the remaining budget authority
 - c. Both a and b
 - d. None of the above
4. For the owner of property A to qualify for a transfer of budget authority, they must:
 - a. Resolve all non-compliance flags with HUD
 - b. Be current on the submission of audited financial statements
 - c. Submit a written request asking to terminate the HAP contract
 - d. All of the above
5. One of the required criteria for a request that includes a reduction on the number of units funded by the budget authority, is that the reduced number of units should be substantially the same. HUD defines this as within the lesser of 5% or _____ units.
 - a. 5
 - b. 10
 - c. 2
 - d. 6

6. The owner of Property B may use the letter approving the transfer of budget authority as a conditional commitment to obtain financing to construct or rehabilitate the property.
 - a. True
 - b. False
7. If property B is new construction, the budget authority can be transferred before construction is complete.
 - a. True
 - b. False
8. Property B must have a current REAC score of at least _____.
 - a. 50
 - b. 55
 - c. 60
 - d. 70
9. Owner b must submit a written narrative stating that they have at least _____ years of successful experience owning, managing, and if applicable, renovating assisted housing.
 - a. 5
 - b. 7
 - c. 8
 - d. 10
10. Owner A must give residents a written notification of the proposed transfer and provide a minimum _____ day comment period.
 - a. 10
 - b. 20
 - c. 30
 - d. 60

11. Owner A and Owner B are jointly responsible for determining who will be responsible for paying the relocation expenses.
 - a. True
 - b. False
12. If a tenant chooses not to relocate, tenant protection vouchers will be offered from the _____ arm of HUD.
 - a. Community Planning and Development
 - b. Public and Indian Housing
 - c. Multifamily Housing
 - d. None of the above
13. HUD will forward the following to FHEO for review and approval:
 - a. Affirmative Fair Housing Marketing Plan
 - b. Tenant Selection Plan
 - c. Both a and b
 - d. None of the above
14. Final approval of all budget authority transfer requests must be given by HUD headquarters.
 - a. True
 - b. False
15. There is no minimum threshold for transfer of budget authority.
 - a. True
 - b. False

Notes

CHAPTER 11 Post Test Answers

Chapter 2: Common Types of Assistance

1. a, b, c	4. b	7. a	10. b
2. a	5. b	8. c	11. b
3. a	6. c	9. a	12. b
			13. a

Chapter 3: Overview of the Renewal Process

1. a	4. b	7. d
2. b	5. a	8. a
3. b	6. d	9. a

Chapter 4: Renewal Options

1. b	4. a	7. b	10. d
2. a, c	5. d	8. a	11. a
3. c	6. a	9. c	12. b
			13. b

Chapter 5: Rent Comparability Studies

1. c	4. b	7. a
2. a	5. d	8. b
3. b	6. a	

Chapter 6: Residual Receipts

1. b	4. b	7. a	10. c
2. c	5. c	8. c	
3. b	6. a	9. a	

Chapter 7: Tenant Issues

1. c	4. d	7. a
2. b	5. d	8. c
3. a	6. c	

Chapter 8: Physical Condition of the Property

1. a	2. b	3. c
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Chapter 9: Other Renewal Issues

1. a	3. b	5. c	7. d
2. d	4. a	6. b	

Chapter 10: Section 8(bb) Transfer of Budget Authority

1. a	4. d	7. b	10. c	13. c
2. b	5. a	8. c	11. a	14. a
3. c	6. a	9. a	12. b	15. a