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Introduction

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

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

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

https://www.hud.gov/program_offices/administration/hudclips and
https://www.hud.gov/program_offices/housing/mfh/mfhsec8

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

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

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

1-1. CONTENTS OF THIS GUIDE

Chapter 1: Introduction

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

Chapter 2: Section 8 Renewals

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

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

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

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

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

Chapter 5: Option Three: Referral to Recap

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

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

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

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

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

Chapter 8: Option Six: Opt-Outs

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

Chapter 9: Rent Comparability Studies

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

Chapter 10: Residual Receipts

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

Chapter 11: Tenant Issues

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

Chapter 12: Physical Condition of the Project

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

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

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

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

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

Chapter 15: Section 8 Preservation Efforts

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

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

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

1-2. LEGISLATIVE HISTORY

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

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

1. Section 524(a)(1) renewals required a RCS. If the RCS indicated rents were at or below comparable market rents, the contract was renewed at current rents adjusted by OCAF, unless the owner submitted documentation justifying a budget-based rent increase or participation in MUTM. In no case could renewal rents exceed comparable market rents. If the RCS indicated rents above comparable market rents, the contract was referred to Recap for debt restructuring and/or rent reduction.
2. Section 524(a)(2) renewals were for projects identified as “exception” projects that were not eligible for Recap. In some cases, these projects had rents greater than market. Examples of projects that do not qualify as eligible multifamily housing projects pursuant to Section 512(2) of MAHRA include a project that is not subject to a HUD-held or insured mortgage; or, a project that has FHA mortgage insurance or is HUD-held with rents at or below comparable market rents.

B. The Preserving Affordable Housing for Senior Citizens and Families Into the 21st Century Act of 1999, Titles II and V of the HUD Fiscal Year 2000 Appropriations Act, Pub. L. 106-74, was enacted on October 20, 1999. This legislation made modifications to the previous Section 8 renewal policies and established specific provisions for rent adjustments in subsequent years after an initial renewal under MAHRA. On December 29, 1999, Notice H99-36 was issued to implement these changes. Specifically, the Act

1. Modified Sections 524(a)(1) and 524(a)(2) of the original MAHRA. Projects that previously fell under section 524(a)(1), are now covered under section 524(a), and projects that previously fell under section 524(a)(2), are now covered by section 524(b).

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

1-3. RULEMAKING

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

1-4. ADMINISTRATIVE POLICY

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

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

1-5. APPLICABILITY

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

1-6. PAPERWORK REDUCTION ACT

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

Section 8 Renewals

2-1. INTRODUCTION

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

When an owner elects not to renew but instead chooses to opt-out of a project-based Section 8 contract, eligible tenants living in the Section 8 project based assisted units at the project are provided with enhanced vouchers (see Chapter Eleven).

2-2. OWNER OPTIONS

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

A. Six Owner Options.

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

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

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

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

B. Determining Option.

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

2-3. TYPES OF RENEWALS

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

http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips

A. Initial Renewal.

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

B. Subsequent Renewal.

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

C. Renewal Options.

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

2. **Exceptions** to the general rule include:

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

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

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

2-4. EARLY TERMINATION OF A CONTRACT

A. Non-MAHRA Contracts.

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

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

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

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

B. MAHRA Contracts.

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

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

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

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

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

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

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

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

2-5. RENT COMPARABILITY STUDY (RCS)

Certain renewal options under MAHRA require a RCS.

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

- C. Reviewing the RCS.

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

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

- D. Adjusting the RCS.

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

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

E. HUD Required RCS.

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

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

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

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

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

F. The Cost of the RCS.

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

2-6. CONTRACTS

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

1. Option One uses:
 - Renewal HAP Contract for Section 8 Mark-Up-To-Market Project, Form HUD-9638
2. Option Two may result in the use of the:
 - Basic Renewal Contract — One Year, Form HUD-9636, or
 - Basic Renewal Contract — Multi-Year Term, Form HUD-9637
3. Option Three may result in the use of one or more of the following:
 - Basic Renewal Contract — One Year, Form HUD-9636,
 - Basic Renewal Contract — Multi-Year Term, Form HUD-9637,
 - Interim (Full) Mark-To-Market Renewal Contract, Form HUD-9640,
 - Interim (Lite) Mark-To-Market Renewal Contract, Form HUD-9641,
 - Previous Mod Rehab Projects, Form HUD-9644,
 - Full Mark-To-Market Renewal Contract, Form HUD-9642, or
 - Watch List Renewal Contract, Form HUD-9643
4. Option Four may result in the use of the following:
 - Basic Renewal Contract — One Year, Form HUD-9636,
 - Basic Renewal Contract — Multi-Year Term, Form HUD-9637
5. Option Five uses:
 - Basic Renewal Contract - One Year, Form HUD-9636,
 - Basic Renewal Contract – Multi-Year Term (For DEMO Projects) , Form HUD-9637, or
 - Preservation Renewal Contract, Form HUD-9639

B. Expiring Contract Provisions Renewed.

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

2-7. CONTRACT TERMS

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

1. The maximum term of the contract is 20 years. A CA can renew a Section 8 HAP contract for up to five years. If an owner wishes to renew the contract for more than five years, the CA must refer the contract to the AE for final approval.
2. The minimum term for a contract is one year except in the case of a MUTM contract which requires a minimum five-year term.
3. In cases where there is a Use Agreement that mandates a particular renewal option, the maximum term of the Renewal Contract must be coterminous with the Use Agreement. For example, if six years remain on a Use Agreement, the maximum term of the Renewal Contract cannot exceed six years. However, owners can ask that a Use Agreement be extended to facilitate a preservation transaction.
4. If an owner chooses a contract term of more than one year, the contract will be funded for one year, or increments thereof, with the remaining years, or increments thereof, subject to sufficient appropriations.
5. The effective date of a renewal contract is the day after the Expiring Contract expires.
 - a. For renewals of Lites, the original contract is terminated at the end of the month following the month in which the owner is offered a new contract at the market rents.
 - b. For renewals in conjunction with a full debt restructuring, the new contract will become effective on the earlier of the expiration of the interim contract or the first day of the month following closing.
6. The AE/CA must ensure that the expiration date of all new renewal contracts is the last day of the month.
7. The term of a multiyear contract need not be in whole years. There may be occasions where the last rental adjustment period may be less than 12 months. For example, a project has an existing Use Agreement with a remaining life of 2 years and 7 months. In this example, the last rental adjustment is for the remaining term of the contract, 7 months. Therefore, the owner would receive a prorated OCAF adjustment for the 7 months. See Section 2-9.B.2. below for instructions on calculating a pro-rated OCAF.

2-8. SHORT-TERM CONTRACT RENEWALS

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

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

2-9. CALCULATING RENTS FOR SHORT-TERM RENEWALS

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

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

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

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

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

C. Exceptions.

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

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

2-10. COMBINING CONTRACTS

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

2-11. REQUEST FOR A CONTRACT EXTENSION

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

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

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

2-12. DISTRIBUTIONS

A. Limitations on Distributions.

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

- b) This amount will be added to the current limited distribution in the FHA regulatory agreement on the unassisted units to reach the total distribution.
 - e. If the form of ownership changes so does the right to receive distributions under the Section 8 contract. For example, if a nonprofit owner, who is prohibited by regulation and under the HAP contract from receiving distributions, sells the project to a for profit entity, the for profit buyer may receive distributions, provided that all administrative conditions are met.
 - 3. Nothing in this Chapter limits a nonprofit owner's entitlement to excess project funds generated by non-Section 8 assisted units in a partially assisted project.
- B. For profit Owners.

A for profit owner with a new regulation Section 8 contract may qualify for increased distributions. (See Section 2-12.D.)
- C. Distribution for Nonprofit Owners

By regulation (24 CFR Parts 880.205(a), 881.205(a), and 883.306(a)) nonprofit owners who have New Regulation Section 8 HAP contracts are not allowed to receive distributions of project funds.
- D. Increased For Profit Owner Distributions.
 - 1. To encourage owners to preserve affordable housing, HUD will allow increased distributions for owners with Section 8 project-based assistance that are currently subject to limited distributions (i.e., the new construction and substantial rehabilitation new regulation contracts), if:
 - a. In accordance with 24 CFR Parts 880.205(h), 881.205(h) or 883.306(g) the project's rents are below market, or at or below market for an Option Two project, before the Section 8 contract is renewed; and either:
 - 1) Under Option One, the owner will receive access to increased distributions, even if the term of the contract is less than 20 years; or
 - 2) Under Option Two, the owner enters into a 20-year Section 8 contract can receive access to increased distributions.
 - b. Owners with Section 8 contracts currently renewed under Option Two may receive increased distributions, for the term of the renewal contract if:
 - 1) The owner terminates the existing contract and renews the Section 8 contract for 20 years; and
 - 2) The project's current rents are below comparable market rents.

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

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

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

E. Access to Increased Owner Distributions.

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

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

2. If an owner ceases to be eligible for increased distributions, the AE should follow existing instructions in HUD Handbook 4370.2, Chapter 2, concerning eventual release to the owner if the owner becomes eligible to resume receiving access to increased distributions when compliant with all the conditions listed immediately above.

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

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

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

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

2-13. RENT ADJUSTMENTS

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

2-14. OPERATING COST ADJUSTMENT FACTOR (OCAF)

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

2-15. BUDGET-BASED RENT ADJUSTMENT REQUESTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2-17. PROCESSING INSTRUCTIONS

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