

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:
 - Mortgage Restructuring Demo Program Use Agreement; or
 - Budget-Based Without Mortgage Restructuring Demo Program Use Agreement.
 - b. Preservation projects 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).
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:

Option One uses:

- Renewal HAP Contract for Section 8 Mark-Up-To-Market Project, Form HUD-9638

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

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

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

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 HUD
Form 9625: 2.5 percent
Months in Year: 12
Term of Short-term contract: 8 months
 $2.5 \text{ divided by } 12 = .208 \times 8 = 1.67$

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
 - c. If applicable:
 - 1) The OCAF Rent Adjustment Worksheet, Form HUD-9625;
 - 2) A RCS; and/or
 - 3) A budget-based rent increase request prepared in accordance with the requirements of Section 2-15 above or a 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.

3. AE/CA should complete the review of an owner’s submission within 30 calendar days.
 - a. The AE/CA checks to see if the owner:

- 1) Is eligible to renew the Section 8 project-based contract under the Option selected.
 - 2) Has provided all required documentation discussed in A.1. and A.2. above.
 - 3) Specified on the Cover Sheet of Form HUD-9624 whether it wants any multiple stages or contracts combined now. See Section 2-10 above.
- b. 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, verify that information by using www.sam.gov.
- 1) 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. However, the AE/CA should document his/her assessment and reasons for permitting renewal in iREMS.
 - 2) 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.
- c. The AE/CA logs the owner's request as indicated on the Renewal Worksheet, Form HUD-9624 and any other relevant information in iREMS.
- d. Non-renewal determination:
- 1) If the AE determines that the contract should not be renewed, the AE should follow the procedures in Chapter 13, of this Guidebook.
 - 2) If the CA determines that the contract should not be renewed, the CA should follow the procedures in the Section 8 Contract Administrators Guide.

- e. If applicable, the AE/CA reviews the RCS to make sure that the study was done in accordance with the requirements included in Chapter Nine of this Guide and determines that the comparable market rent conclusions are reasonable. Instructions for conducting the review are found in Sections 9-17 through 9-22. The AE/CA must record the data in iREMS.
- f. 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. (See Chapter Five, Option Three Referral to Recap.)

- g. 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 Housing Notice 2015-04 or its successor.

- h. Prepare a contract renewal.
 - 1) The AE/CA establishes the renewal rent per requirements for the renewal option selected.
 - 2) For the appropriate term:
 - a) Less than one year;
 - b) One year; or
 - c) Multiyear.
 - 3) For the expiration date of the contract:

The contract expiration date must be on the last day of the month.
 - 4) 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.

- 5) For all Option One Renewal Contracts and for Option Two Renewal Contract where the term of the Renewal Contract is 20 years, insure that Exhibit B of the Basic Renewal Contract is attached to allow access to increased distributions.
- 6) For contracts which are renewed following an early termination insure that the Preservation Exhibit is attached to the Renewal Contract and for any contract renewed following the early termination of a non-MAHRA contract insure that HUD-93184 “Rider to Original Section 8 Housing Assistance Payments Contract” is attached to the Renewal Contract.

B. 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.
1. For projects that have tenant paid utilities, the owner must submit an analysis of the project’s Utility Allowance (see Housing Notice 2015-04) 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. In the event the owner’s utility analysis results in a possible decrease in the utility allowance(s) to the tenants, owners must follow the tenant notification procedures in 24 CFR Part 245.

2. 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:
 - a. 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.
 - b. 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.
 - c. Send letter and Exhibit A to O/A.
3. Upon receipt of the letter and the Exhibit A, the owner will review the OCAF adjusted rents and calculations and:
 - a. Elect to receive the Auto OCAF rent adjustment, or
 - b. 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 “\$0” budget based rent increase.
4. Should the O/A select the Auto OCAF rent adjustment, the O/A must complete and return to AE/CA a signed HUD-Form 9626 or HUD-Form 9627.
5. Should the O/A select a budget-based adjustment, the O/A must return to AE/CA:
 - a. Signed HUD-Form 9626 or HUD-Form 9627.
 - b. All documentation required for a budget-based rent adjustment as defined in HUD Handbook 4350.1, Chapter 7.
6. Upon receipt of the O/As submission, AE/CA:
 - a. Should review O/As rent adjustment documentation.
 - b. If acceptable, update iREMS.

- c. 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.
 - d. Execute Rent Schedule Low Income Housing, Form HUD-92458, and return to O/A.
- C. Annual Rent Adjustments for Multiyear Contracts for Projects not Participating in Auto OCAF
1. Before submitting the annual rent adjustment request under 2. Below, the owner must follow the tenant notification procedures in 24 CFR Part 245 Subpart D if the rent increase is not an OCAF rent adjustment. Whenever an owner's utility analysis results in a possible decrease in the utility allowance(s) to the project tenant 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.*
 2. At least 120 days but no earlier than 180 days before the anniversary date of the contract, the owner submits:
 - a. OCAF Rent Adjustment Worksheet, Form HUD-9625;
 - b. An analysis of the project's Utility Allowances (See Housing Notice 2015-04 or subsequent notices); and
 - c. If applicable:
 - 1) A RCS; and/or
 - 2) A budget-based adjustment, prepared in accordance with paragraph 2-15 of this Guide or a RHS approved budget that does not exceed comparable market rents.
 3. The AE/CA should complete the review of an owner's submission within 30 calendar days.
 - a. 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.
 - b. Prepare an amended Exhibit A, Rent Schedule, for the MAHRA contract to be issued to the owner and update iREMS. If applicable:

- 1) The resulting rents cannot exceed the OCAF-adjusted RCS.
 - 2) The OCAF-adjusted RCS serves as the market cap.
 - 3) 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 when processing Option Five preservation projects.
 - 4) 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.
4. 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:
- a. The owner submits a new RCS at the end of each 5-year life cycle of the RCS. The new RCS must be reviewed in accordance with the instructions in Chapter 9 of this Guide.
 - b. If rents are:
 - 1) Above market, the AE/CA will reduce the rent to the comparable market rent.
 - 2) Below market, the AE/CA will increase the rents to comparable market rents.

2-18. WAIVERS.

A. REGULATORY WAIVERS.

HUD's policy on regulatory waivers appears in HUD's regulations at 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/or labor standards. To determine if a civil rights related program requirement may be waived, the HUD Satellite 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 Satellite 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 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.

B. 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:
 - a. Notify the HUD Regional Office, in writing, of the approval or rejection of the waiver request.
 - b. Retain a copy of the approval or rejection memorandum and related documentation for 3 years from the date the waiver is granted; and

- c. 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;

2-19. **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 2011-01, issued January 5, 2011, and HUD 2012-06, dated April 25, 2012, for detailed instruction concerning the deadline for and the process for obtaining a DUNS Number and Registering in System for Award Management (SAM).