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Ins and Outs of Understanding Contract Renewals and Contract Types

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Timelines

- All Contract Renewal submissions should be sent 120 days prior to contract expiration.
- NTHDC sends a letter 6 months prior to expiration notifying owners of this date.

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Milestones in the Process

- 6 month reminder letter
- Owner submission 120 days before expiration
- NTHDC reviews submission
 - May request further documentation or corrections
 - Utility Analyses
- 'Complete package'
- Calculate rents
- Execute rent schedule
- Ask HUD to fund contract
- Send Contract to OA for signature
- Send OA signed and NTHDC signed contract to HUD for final execution

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Complete Package Requirements Contract Renewal Request Form

Rent Adjustment Documents

- Budget
- OCAF

Tenant Notification Information

- 1 Yr. Notice
- 30 Day Notice
- Certification of Compliance with tenant comment procedures

RCS (If Applicable)

- Option 1
- Option 2
- Option 3A
- Option 5 (check POA)

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Rent Comparability Study (RCS)

Compares your units, amenities, and property features to other properties in the vicinity.

What is the 'going rate' or 'market' charging for a comparable unit?

Why Are They Necessary?

- The Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA), was enacted on October 27, 1997.
- This was a major change as 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.
- Therefore, when determining rents at renewal time for most properties, a comparability study that determines the Market Rents is used as a cap.

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Purpose of the RCS

- Create Rent Ceiling based on current market conditions
- Comparison based on similar units, amenities, features etc.

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Good to Know

- An RCS is good for 5 years
- The year the study is done sets the comparables (your cap) for that year
- In years 2-5, the comparables are adjusted by the published OCAF factor. So in effect, your comparables increase each year, thus moving the rent cap up.
- An RCS cannot outlive the life of your contract

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Good to Know

- Any RCS completed because of a requirement by HUD is an eligible project expense.
- For some options, a complete RCS may not be necessary.....
- Owners MAY submit an additional RCS if they feel it will impact their rents, but this is NOT an allowable expense.

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Alternatives to the RCS

- 75 % of the Fair Market Rent (FMR)
- Non-Section 8 Units in the S8 Project

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Utility Analyses

Generally, if your site has a utility allowance (aka PBE, Personal Benefit Expense), you must include in your renewal submission a Utility Analysis

- 10% sample of each bedroom type (min of 5 units per type)
- 12 consecutive months of bills for each unit in sample
- Tenant Comment Post & OA certification to Tenant Comment Period

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Utility Allowance Decreases

- Approved by HUD
- Residents must have been provided appropriate 30 day notice
- Must submit Certification as to Compliance with Tenant Comment Procedures
- O/As must implement any change to the UA regardless of the amount or percentage of the change.

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Contract Renewal Option Types

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Option 1: MU2M

- Type types of MU2M
 - 1 A: Entitlement
 - 1 B: Discretionary

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Option 1A: Entitlement Eligibility

- REAC Score of 60 or above.
- Profit motivated or LD Entity
- RCS must demonstrate that market rents must be at or above 100% of the FMR.
- Property does not have low and moderate income use restrictions.
 - Ex. Flex Sub, Rent Sup, LIHTC

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Option 1B: Discretionary Authority Eligibility

HUD has the discretion under MAHRA to mark rents up to market for properties who meet the following characteristics:

- Vulnerable Populations – At least 50% of the units rented to elderly, disabled or large families (5 or more persons)

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Option 1B: Discretionary Authority Eligibility

- Vacancy Rates– Property is located in a low-vacancy market area where there is a lack of affordable housing and where HCV would be difficult to use.
- Community Support – Property is a high priority for the local community as demonstrated by a contribution of State or local funds.

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Option 1: MU2M

- Typically, if the owner is not eligible for Option 1A, the owner may pursue Option 1B to mark rents up to market.
- Rents are adjusted by an OCAF for the remaining years of the contract.
- RCS is required.
- There is no appeal process when differences in the Owner and HUD RCS occur.

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Option 2: Rents at or Below Comparable Market Rents

- Current rents are at or below the comparable market rents as demonstrated through an RCS; or
- The current rents exceed comparable market rents, however the owner is willing to reduce their rents. (Must be OAHP exempt)

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Option 2: Rent Adjustments

- May be budget based or through an OCAF.
- Rents cannot exceed the rents listed on the Rent Comparability Study.
- RCS is required every 5 years
- Owner can choose length of Contract term, however there are greater distributions for 20 year terms
 - Most owners receive 100% of the surplus cash.

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Option 3: Referral to OAHP

Exempt from OAHP

202/515	State or Local Gov't Financing	SRO Mod Rehab	Section 512(2) of MAHRA
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Option 3A: Lite

- Rents reduced to comparable market
- HUD may issue Watch List Contract
- RCS required every 5 years

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Option 3B: Full

- Debt Restructured
- Your PBCA does not make rent determinations or restructure your loan
- OAHP assigns a Participating Administrative Entity (PAE) to do the processing.
- 20 Year Contract
- Use restrictions
- OCAF rent increases for the duration of the contract
- No RCS is required for the term of the HAP contract

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Option 4: Renewal of Projects Exempted from OAHP

Exempt from OAHP			
202/515	State or Local Gov't Financing	SRO Mod Rehab	Section 512(2) of MAHRA

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Option 4: Renewal of Projects Exempted from OAHP

- “Lesser of” Test Applies
- Rents may be lowered based on results of Budget
- No RCS Requirement

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Option 4: Rent Adjustments

- Automatic OCAF increases given unless O/A requests BBRA
- RCS is required if O/A selects a BBRA (N/A for RHS and \$0 Budget)
- Rents will be capped by the RCS

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Option 5: Portfolio Demonstration or Preservation Projects

- Long term Use Agreements
- Not eligible to renew under any other Option
- RCS may be applicable
- O/A may select the contract term.

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Option 5A: Portfolio Reengineering Demonstration

- No New Demo Contracts
- Demo Use Agreements
- Cannot Opt out of contract
- RCS required every 5 years
- Cannot exceed market rent
- OCAF adjustments only

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Option 5B: Preservation

- LIPHRA and ELIHPA
- Plan of Action (POA)
- Long term Use Agreement
- Use Agreement trumps POA
- RCS may apply (check POA)
- Shallow Rent Subsidy no longer applicable
- In most cases, property must increase rent by OCAF, however may request BBRA if OCAF does not cover expenses.

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Option 6: Opt Out

- May not opt out if Use Agreement or HUD held, or FHA loan is in place.
- Tenants must be provided a one year notice.
- Notice must contain all required CFR language.
- Resident's have the right to remain at the property.
- HUD Coordinates with local PHA to ensure vouchers are issued.

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Option 6: Notification Requirements

- 1 Yr Notice Must:
 - Be on the owner's letterhead and signed.
 - Must be delivered or mailed directly to each tenant.
 - No taping
 - If population speaks a language other than English, owners are strongly encouraged to translate letter.
 - Owner's must state that they will honor resident's right to remain.
- Sample letter found in Ch. 11 of Sec. 8 Renewal Guide

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Section 8 Renewal Guide Proposed Changes

- Contracts eligible for the Auto OCAF will have the RCS adjusted automatically and the adjustment factor will be the rent increase factor not the OCAF factor.
- No longer require an owner with a RCS that expires prior to a multiyear contract's five-year life cycle to obtain another RCS until the time when the multiyear contract reaches the end of its five-year life. However, in such cases, any rent adjustment during the years when a project does not have a RCS will be limited to the OCAF. The owner must obtain a new RCS at the end of the contract five-year life cycle.

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Section 8 Renewal Guide Proposed Changes

- Modifications to 4350.1 Ch. 7
- No RCS for Section 515/8 projects who submit budget that result in rents lower than the OCAF
- Clarify that Section 245 Tenant Notifications are not required for OCAF rent adjustments but is required for budget based rent adjustments or for any adjustment where the utility analysis results in a possible decrease in the utility allowance.

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Section 8 Renewal Guide Proposed Changes

- Require that management have a “Satisfactory” or above score to qualify for MUTM.
- Eliminate language that requires a HUD RCS as part of the MUTM contract renewal.
- Projects financed under Section 542(c) risk-sharing with qualified State and local housing finance agencies are exempt from OAHP.
- Define Project Specific Rents and provides a mechanism for adjusting those rents.

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Section 8 Renewal Guide Proposed Changes

- Add a requirement that HUD will hire a third-party appraiser to complete a HUD RCS should rents in the owner's RCS exceed 110 percent of the Median Gross Rent By Zip Code Tabulation Area.
- Clarify that when a RHS loan has been paid in full that the owner will submit the budget directly to HUD.

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Questions???

