

The Section 8 Renewal Policy Guide

What has changed and how it impacts the renewal process

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Background

On February 28, 2014, HUD posted draft revisions to the Section 8 Renewal Policy Guidebook.

After considering industry comments, HUD published a final version of the guidebook on August 7, 2015.

The changes outlined in this revision of the guidebook became effective November 5, 2015.

Chapter 2 of the Guidebook

Section 8 Renewals

Early Terminations

- Language (2-4 A.): Non-MAHRA Contracts. HUD will permit the early termination of a non-MAHRA contract for an owner wanting to enter into a MAHRA contract *only* if the owner:
 1. Renews the contract for 20 yrs. under Option 1, 2, 3 or 4; and
 2. Agrees to A.) The Preservation Exhibit; B.) Signs the HUD-93184 : Rider to Original Section 8 HAP contract

TRANSLATION: Pre-MAHRA contracts can terminate early and enter into a MAHRA contract.

Early Terminations

- 2-4 B. Owners may request the early termination of an existing non-MUTM MAHRA contract only for the following reasons:
- Language added (2-4 B. 4.): MAHRA Contracts. 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.

TRANSLATION: An owner can terminate their existing Option 5 contract in order to enter into the same contract with a longer term.

Early Terminations and the RCS

- Language (2-5 E. 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.

TRANSLATION: A new RCS (when applicable) is required at the beginning of ALL long term contracts and contracts that were terminated early.

General Contract Terms

- Language (2-7 A. 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 Account Executive (AE) for final approval.

TRANSLATION: The CA obtains approval through the HUD AE (formerly known as PM)

General Contract Terms

- Language (2-7 A. 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 in order to facilitate a preservation transaction.

TRANSLATION: A contract cannot be renewed for longer than the remaining years of the Use Agreement. If the Owner needs a longer term contract, the HUD AE may extend the Use Agreement.

General Contract Terms

- Language (2-7 A. 6.): The AE/CA must ensure that the expiration date of all new renewal contracts is the last day of the month.

TRANSLATION: All Contracts will now expire the last day of the month. Your contract will show the extension to allow for expiration at the end of the month.

General Contract Terms

- Language (2-9 C.): 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.
 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.

TRANSLATION: Do not process a Pro-rated OCAF, as the rents will be retroactively applied when the processing of the renewal is complete.

Utility Allowance

- Language (2-17 A. 2. b.): For Renewals, at least 120 calendar days but no earlier than 180 calendar days before
- expiration of the Section 8 contract, the owner submits an analysis of the project's Utility Allowances (see Housing Notice 2015-04);

TRANSLATION: For the first year (this year), the owner must include a compliant baseline UA analysis as part of their complete package.

Utility Allowance

- Language (2-17 A. 3. g.): If applicable, the AE/CA reviews the owner's budget based request including any tenant comments received in connection with 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.**

TRANSLATION: The PBCA cannot accept the UA figures as listed on the RHS budget. Owners of RHS projects must submit a UA that is compliant with Notice 2015-04.

Budget and Appendix 5 Calculations

- Language (2-15 A. 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.

TRANSLATION: The PBCA will no longer include the 2% net income reserve in the Appendix 5 calculations. The PBCA will calculate rents on the Appendix 5 without this figure.

Budget and Appendix 5 Calculations

- Language (2-15 A. 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 must include a vacancy loss rate of 5 percent in the budget; or
 - b. Projects where the assisted units account for 20 percent or less of the total units must use a vacancy loss rate of 7 percent in the budget.

TRANSLATION: Generally, the PBCA will include a 3% vacancy allowance for 100% Section 8. See next slide.

Budget and Appendix 5 Calculations

Property Type	Vacancy Rate
100% Section 8	3%
Refinanced 100% Section 8	As required by lender documents
Projects with 50 or fewer total units	5%
Assisted units at property = 20% or less of total units	7%

Budget Eligibility Changes

- Language (2-15 F.): 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.

TRANSLATION:

No RCS is required for zero budget adjustments.

RHS projects also do not have to submit an RCS as long as the Budget rents do not exceed the OCAF adjusted rents.

Chapter 3 of the Guidebook

Option One – Mark-Up-To-Market

Mark Up to Market

- Language (3-2 D. 1. b., c., & d.): General Eligibility Criteria for Options 1A &1B.
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- The Ownership must be: A housing authority occupying the status of a “public body corporate and politic” under the state legislation under which it was created, or*
- *A limited partnership with one or more nonprofit general partners or a sole general partner that is wholly owned and controlled by one or more nonprofit entities.*; or
- * A limited liability company with one or more nonprofit managers or nonprofit managing members or a sole manager or managing member that is wholly owned or controlled by one or more nonprofit entities where the managing general partner is wholly owned and controlled by a nonprofit entity.*

Mark Up to Market

- Language (3-2 D. 1. b., c., & d.): General Eligibility Criteria for Options 1A & 1B.
- *Note: Nonprofit controlled for profit entities as described in
- Section 3-2.D.1.c and d. can renew under Option One or Option
- Two.*

TRANSLATION: When the processor receives a request for a MUTM, the processor will need to verify if the ownership entity is eligible for this Option.

Mark Up to Market

- Language (3-2 B. 1.) General Eligibility Criteria for Options 1A & 1B. The project must have an MOR score (from the most recent MOR) of Satisfactory or above.

TRANSLATION: In addition to verifying that the most recent REAC score was 60 or higher, the processor will also need to verify that the overall rating from the most recent MOR was Satisfactory or above prior to processing an owner's request for a MUTM.

Mark Up to Market

- Language (3-6 B. 1.) Option 1B Discretionary MUTM Eligibility. The Project meets at least one of three characteristics: Vulnerable Population. The tenants of the project are a particularly vulnerable population, demonstrated by a high percentage (at least 50 percent) of the assisted units rented to elderly families, disabled families, or large families (large family is defined as a family of five or more persons).
- ***The 50 percent can be inclusive of all categories or the individual referenced populations.**

TRANSLATION: Owners must demonstrate a 50% threshold, a combination of the above mentioned compositions can demonstrate the requirement has been fulfilled.

Mark Up to Market

- Language (3-6 B. 2.) Option 1B Discretionary MUTM Eligibility. The Project meets at least one of three characteristics: Vacancy Rates. The project is located in a low-vacancy market area (or in a rural area with
- no comparable rental housing) where there is a lack of affordable housing and where Housing Choice vouchers would be difficult to use.
- The determination of a low vacancy area should be made using the most
- recent available data on the rental inventory, renter households, rental
- vacancy rates and other factors as appropriate. **A market with a rental**
- **vacancy rate of *3 percent or less* is considered a low vacancy area.**
- ***The AE/CA must confirm* the vacancy rate with HUD Economic and**
- **Market Analysis *Section (EMAS)***

TRANSLATION: The owner must provide documentation to demonstrate his qualification of this requirement. HUD will confirm this rate.

Mark Up to Market

- Language (3-6 B. 3.) Option 1B Discretionary MUTM Eligibility. The Project meets at least one of three characteristics: Community Support. The project is a high priority for the local community as demonstrated by a contribution of State and/or local funds to the project.
- ***Evidence of community support* may be in the form of tax credits, tax abatements, capital improvement funds, etc. *that have been provided to the project within the last five years.***

TRANSLATION: The owner must provide documentation to demonstrate their qualification of this requirement.

Mark Up to Market

- Language (3-7 B., C., & D.) Option MUTM Eligibility. The owner:
- Cannot request to terminate a “DEMO” or Preservation contract early to renew under MUTM.
- Cannot request to terminate a “Full” Mark-to-Market contract (HUD-9642) early to renew under MUTM.
- Cannot request to terminate a Rental Assistance Demonstration contract early to renew under MUTM

TRANSLATION: Option 3 Full and Option 5 cannot terminate contracts early in order to enter into a MUTM.

Mark Up to Market

- Language (3-8 A.) Option MUTM Eligibility. Processing Instructions: The following language was **REMOVED**:
- Section 236, 221(d)(3)BMIR and 515 Properties. For properties with subsidized FHA loans, the comparable market rents are reduced to take into account the benefits which the property is already receiving from the below-market interest rate mortgage by using an Interest Subsidy Adjustment Factor.

TRANSLATION: For 236, 221(d)(3) and 515 properties, the MUTM Worksheet that is currently posted to the HUD website is incorrect.

MUTM Worksheet

Property:	Green Acres
City/State:	Anytown, USA
Section 8 #:	999-99999
Total Units in Property:	100

Section 236, 515 & BMIR Properties Only	
Annual IRP Amount:	(For 236 properties only. If not available, leave blank)
Original Mkt. Interest Rate:	7% (If not available, use 7%)
Subsidized Interest Rate:	3% (Usually 1% for Section 236 & 515, 3% for BMIR)
Unpaid Principal Balance:	1,000,000

Section 8 Units in Contracts Eligible Under this Notice Only

(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)	(I)	(J)	(K)	(L)
Unit Type	# of Units	Current Section 8 Rents	Utility Allowance	Current Section 8 Gross Rents (C + D)	New Authorized Rents (236, 515 & BMIR)	New Authorized Gross Rents (F + D)	Owner Comparable Market Rents	Owner Comparable Gross Rents (H + D)	HUD Comparable Market Rents	HUD Comparable Gross Rents (J + D)	Fair Market Rents
One Bedrooms	12	400	50	450	410	460	500	550	450	500	450
Two Bedrooms	32	450	75	525	465	540	550	625	500	575	500
Three Bedrooms	16	500	100	600	520	620	600	700	550	650	550
				0		0		0		0	0
				0		0		0		0	0
				0		0		0		0	0
				0		0		0		0	0
				0		0		0		0	0
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				0		0		0		0	0
				0		0		0		0	0
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				0		0		0		0	0
Monthly Total	60	27,200	4,600	31,800	28,120	32,720	33,200	37,800	30,200	34,800	30,200
Annual Total	60	326,400	55,200	381,600	337,440	392,640	398,400	453,600	362,400	417,600	362,400

Chapter 5 of the Guidebook
Option Three Referral to Recap

Referral to Recap (Option Three)

- Language (5-1 H.) Eligibility.
- Section 202 Projects Refinanced for a Second time: Projects financed under Section 202 Elderly and Disabled Housing Direct Loan Program (Section 202) are eligible for restructuring if the project has been refinanced at least two times and if the second refinance uses a loan insured under the National Housing Act. All other projects refinanced under Section 202 are ineligible for restructuring under Mark-to-Market.

TRANSLATION: Re-Refinanced 202's are not considered Exempt from Recap and may undergo a MTM.

Chapter 6 of the Guidebook

Option Four – Renewal of Projects Exempt from or not Eligible for Debt-Restructuring

Projects Exempt from Recap

- Language (6-1 B.1.) Eligibility.
- The following projects are not eligible for debt-restructuring on the basis that they do not meet the definition of “eligible multifamily housing project” under section 512(2) of MAHRA:
 - 1. Projects that are not subject to an FHA-insured or HUD-held mortgage; and, ***Note: Projects financed under the risk-sharing loan programs under Section 542(b) and (c) of the Housing and Community Development Act of 1992, are eligible for renewal under Option Four.***

TRANSLATION: Projects with 542(b) Risk Sharing Loans are Exempt from Recap.

Chapter 7 of the Guidebook

Option Five – Renewal of Portfolio Reengineering Demonstration or Preservation Projects

Project Specific Rents

- Language (7-8)
- PSRs are first discussed in Housing Notice 94-42, Mid-Course Correction II - For Low Income Housing Preservation and Resident Homeownership (LIHPRHA) and Emergency Low Income Housing Preservation Act (ELIHPA) Programs and are used in Title II and Title VI preservation projects. PSRs are also discussed in Revisions to Notice 94-42, MCCII - For Low Income Housing Preservation and Resident Homeownership (LIHPRHA) and Emergency Low Income Housing Preservation Act (ELIHPA) Programs.

Project Specific Rents

- Language (7-8 A.)
- The PSRs are the rents unsubsidized tenants would reasonably expect to pay in preservation properties for their subject unit based on actual project and conditions.
- PSRs are derived from a market comparability analysis but adjusted to the actual project characteristics, including any repairs that are to be completed.*

Project Specific Rents

- Language (7-8 B.)
- Where applicable, PSRs will be maintained and updated annually during the annual rent increase process. Housing Notices 94-42 and 95-56 failed to identify a methodology for making the annual adjustment. Therefore, the AE will adjust the PSRs using the annual OCAF. The owner may periodically submit a new PSR analysis at any time during the life of the Use Agreement if the PSRs affect the total tenant payment. The PSR analysis must be supported by market comparables adjusted to the actual project characteristics and condition. In turn, the Multifamily Regional Office valuation staff will review the analysis to assure the proper adjustments have been made.

TRANSLATION: PSR's are updated by the OCAF Factor.

Chapter 9 of the Guidebook
Rent Comparability Studies

Special Procedures When an RCS Exceeds 140% Median Gross Rent

- Language (9-23 C.)
- These requirements do not apply to studies undertaken as part of the MTM process. Appraisers will need to access the median rent figures on HUD's website at
- http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/mfhsec8
- Further details are provided in the guidebook.

Special Procedures When an RCS Exceeds 140% Median Gross Rent

- Language (9-23)
- Upon determining the median gross rent for the zip code, the appraiser will then compare that number with the median rent as determined by the RCS.
- The appraiser will compare the median rent from the above calculation with the median gross rent for the relevant zip code that is contained in the U.S. Bureau of the Census American Fact Finder. If the project's estimated /median rent does not exceed 140 percent of the "Gross Rent By Zip Code Tabulation Area," no further action is required.

Special Procedures When an RCS Exceeds 140% Median Gross Rent

- Language (9-23 C.)
- If the median rent in the project's RCS exceeds 140 percent of the "Gross Rent By Zip Code Tabulation Area," HUD will use the following process to establish comparable market rents:
 1. HUD will hire an independent third-party appraiser through its Contracting Officer.
- **TRANSLATION:** The PBCA's Appraiser will compare the Owner's RCS to those listed at 140% of the Median Gross Rent by Zip Code. ONLY if the Owner's rent exceeds 140%, HUD will order a third party RCS through their contracting office.

Chapter 11 of the Guidebook

Tenant Issues

Tenant Notification Letter

- Language (Chapter 11, Appendix 3) One-Year Tenant Notification Letter – Owner Intends to Renew
- *If we later decide not to renew the current Section 8 contract when it expires, we will provide you with at least one year of advance notification of this decision.

TRANSLATION: Added required language to the One-Year Tenant Notification Letter.

Tenant Notification Letter

- Language (Chapter 11, Appendix 3) One-Year Tenant Notification Letter – Owner Does Not Intend to Renew
- *Owners who elect to go to Recap and who decide during the restructuring process that they want to opt out of the project-based Section 8 contract, must provide tenants with a 120-day notice of their decision to opt-out (Sample found at Appendix 11-3). The 120-day notice is in addition to the
- one-year notice issued upon entry to Recap.
- ADDED: RECAP Second Notice of Opt-Out – 120 Days

Chapter 14 of the Guidebook
RHS Section 515/8

RHS Utility Allowance

- Language (14-2. A.)
- HUD does not accept the RHS utility analysis. The owner must submit a utility analysis based on HUD requirements.

TRANSLATION: RHS Owners must comply with the requirements of HUD Notice 2015-04

RHS Budgets

- Language (14-2. B.)

...any budget based rent adjustment request submitted at the time of the amend rents calculation cannot result in rents above market as determined by the RCS. If the rents resulting from the budget based rent adjustment submission result in a “0” increase or do not exceed the rents that would result from the application of the OCAF, the owner does not need to submit a Rent Comparability Study to show that the rents are below market.

TRANSLATION: RHS owners submitting the RD budget must compare the rents on the RD budget with their current rents increased by the application of the OCAF.

If the budget rents do not exceed the OCAF adjusted rents, then no RCS is needed.

If the budget rents exceed the OCAF adjusted rents, an RCS is required and the budget will be capped by that RCS amount.

Where can I read about the changes to the Section 8 Renewal process?

HUD has published the transmittal of changes to the Section 8 Renewal Guide here:

http://portal.hud.gov/hudportal/documents/huddoc?id=Section8_Renewal_Guide.pdf

When the property is eligible for renewal under several options, how can you determine which option is the most viable?

NTHDC suggests that you work with your Contract Specialist to determine the best option for your property.

Next Steps.....

- Fill out the course evaluation!
- Keep an eye out for upcoming training sessions being offered by NTHDC.
- Should you have any questions, contact your contract specialist or me directly at layla.hayavi@cgifederal.com