U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-8000

ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

SPECIAL ATTENTION OF:
Regional Center and Satellite Office Directors, Account Executives; PBCAs; Owners; and Management Agents

TRANSMITTAL
Section 8 Renewal Policy Guidebook
Issued: 8/7/2015
Effective 11/5/15

A. **Purpose**.
This transmittal updates the Section 8 Renewal Policy guidebook. The revisions are being published on August 7, 2015. This guidance will apply to renewal and amend rent packages received by the Department (or post-marked) November 5, 2015 or later.

B. **Explanation of Changes.**
The body of the guidebook contains stars (*) to indicate where specific text has been revised. Chapter Two and Chapter 16 have been completely revised and do not contain stars (*) to indicate specific changes in the text. Beyond grammatical revisions, major changes:

1. Remove repetitive language that applies to more than one renewal option and incorporates that text into an expanded Chapter Two.

2. Provide for terminating a non- Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA) contract early if the owner agrees to: renew under Options One, Two, Three or Four; renew for 20 years plus the remaining balance on the terminated non-MAHRA contract; and agrees to sign the "Rider to the Original Section 8 Housing Assistance Payments Contract (HUD-93184)." (Section 2-4.A)

3. Allow Option Five contracts to terminate early and renew under Option Five. (Section 2-4.B.4)

4. Indicate that contracts eligible for the Auto OCAF will have the RCS adjusted automatically and the adjustment factor will be the OCAF. (Section 2-5.D)

5. Require those seeking to terminate a contract and renew it or those seeking to renew a contract for more than five years to obtain a new RCS. Also do not require an owner with an RCS that expires prior to a multiyear contracts five-year life cycle to obtain a new RCS until the fifth year of the contact, under certain conditions. (Section 2-5 E.3)

6. Discuss the term of the Section 8 contracts and the ability to use 20-year contracts. In addition, the Regional Center Director's approval is no longer required for multiyear contracts. (Section 2-7.A)

7. Clarify that a Contract Administrator (CA) can renew a contract for up to five years but any renewal for more than five years must be referred to the Account Executive (AE) for review. (Section 2-7.A.1)

8. Indicate that the minimum contract term is one year except for MUTM contracts that require a five-year minimum term. (Section 2-7.A.2)

9. Indicate that owners can ask for an extension of the use agreement to facilitate a preservation transaction. (Section 2-7.A.3)

10. Add language that tells the AE/CA not to use the prorated-OCAF for short-term renewals under Option One, Two, or Three but to provide retroactive rent increases upon completing of contract renewal processing. (Section 2-9.C)

11. Refer users to a September 18, 2014 memorandum for instructions on how to combine Section 8 HAP contracts. (Section 2-10)

12. Add language that LMSA, Pension Fund, and Property Disposition contracts, in addition to old regulation contracts, typically have no limitations on distributions. (Section 2-12.A.1)

13. Add language that says that users must follow the guidance in Housing Notice 2015-04 when developing utility allowances. (Section 2-17.A.2.b)

14. Highlight that HUD will not accept the RHS utility allowance calculation unless it developed in accordance with Housing Notice 2015-04. (Note after Section 2-17.A.3.g)

15. Clarify that if an owner checks the box on HUD 9626 or 9627 requesting a "0" budget based rent adjustment, then no budget submission is necessary. (Section 2-17.B.3.b)

16. Add language that allows for-profit and non-profit owners renewing under Option Two access to increased distributions if the owner signs a 20 year HAP contract. (Section 2-12.D.1.a.2)

17. Add text that material FASS findings must be closed in order to qualify for increased distributions. (Section 2-12.E.1.a)

18. Add language that should an owner cease to be eligible for increased distributions the AE should follow the guidance in HUD Handbook 4370.2 Chapter 2. (Section 2-12.E.2)

19. Provide modifications to Chapter 7 of Handbook 4350.1 concerning budget-based rent increases for MAHRA contracts. (Section 2-15)

    i. No longer allow a 2 percent contingency reserve for projects owned by nonprofits or those projects once owned by nonprofits but which have been sold to limited dividend partnerships (Section 2-15 A.1).

    ii. Allow nonprofit owned projects with 100 percent Section 8 to include a vacancy rate of 3 percent in the budget unless a lender requires a different number. (Section 2-15.A.2)

    iii. Allow small projects to include a vacancy loss rate of 5 percent and partially-assisted project to use a vacancy loss rate of 7 percent in the budget submission. (Section 2-15 A.2.a and b)

    iv. Allow debt service coverage in a budget-based rent adjustment request but if not used for project purposes the amount must revert to the residual receipts account if the project is required to have a residual receipts account. (Note after 2-15 B)

    v. Allow projects with low income housing tax credits to include in their budget certain fees associated with the tax credit transaction. (Section 2-15.C)

20. Allow owners to request zero budget-based rent adjustments. (Section 2-15-D)

21. Allow owners of Option Four projects who submit a zero budget-based rent adjustments to do so without a Rent Comparability Study (RCS). Allow owners of Section 515/8 projects who submit budgets that result in rents that will be less than the OCAF adjustment to do so without a RCS. (Section 2-15. F)

22. Add language that if rents are adjusted by the OCAF, then deposits to the replacement for reserve account are to be adjusted by the OCAF. (Note after Section 2-16)

23. Add that users must follow the guidance in any HUD notices as well as Housing regulations in developing utility allowances. (Section 2-17.A.2.b)

24. Add new section that reminds the AE/CA that they must verify that owners are not

suspended or debarred. (Section 2-17.A.3.b)

25. Highlight that HUD does not accept the RHS utility allowance calculation and that owners must submit the UA using HUD standards. (Note after Section 2-17.A.3.g)

26. Incorporate previously published language indicating that if a contract or amended 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 fiscal year. (Section 2-17.A.3.h.4)

27. Add language describing the procedure for the AutoOCAF. (Section 2-17.B)

28. Clarify that Section 245 Tenant Notifications are not required for OCAF rent adjustments but are required for budget-based rent adjustments or for any adjustment where the utility analysis results in a possible decrease in the utility allowance. (Section 2-17.C.1)

29. Clarify that if an owner checks the box on HUD 9626 or 9627 requesting a "0" budget based rent adjustment, then no budget submission is necessary. (Section 2-17.B.3.b)

30. Provide information on processing of regulatory and directive waivers. (Section 2-18)

31. Require that all owners must register with Dun and Bradstreet and obtain a DUNS number. (Section 2-19)

32. Clarify that certain qualifying criteria apply to all projects but other criteria only to projects attempting to renew under Option One A.(Section 3-2 and Section 3-3)

33. Clarify that a limited-distribution entity can qualify to renew under MUTM. (Section 3-2 D.1.a)

34. Clarify that a nonprofit-controlled for-profit can renew under MUTM. (Note after Section 3-2.D.1.a)

35. Require that management have a "Satisfactory" or above score to qualify for MUTM. (Section 3-2.B.1)

36. Clarify that a housing authority occupying the status of a "public body corporate and politic" would qualify to participate in MUTM. (Section 3-2.D.1.b)

37. Reemphasize that properties with most use restrictions are not eligible for Option

One-A. (Section 3-3.B)

38. Clarify that the 150 percent of FMR cap only applies to Option One-A. To exceed the 150 percent cap, the property must meet the criteria found in Section 3-6.B. (Section 3-5)

39. Clarify that the "vulnerable population" criteria for Option One B applies only to the assisted units not the entire project and is inclusive of all three categories. (Section 3-6.B.1)

40. Clarify that in order to meet the low vacancy criteria for Option One B that the rental vacancy rate is three percent or less. (Section 3-6.B.2)

41. Add language that receipt of tax credit allocations can qualify as "community support" for purposes of qualifying for Option One B. (Section 3-6.B.3)

42. Add language that allows the termination of a non-MAHRA contract at any time in order to participate in MUTM with certain conditions. (Section 3-7.A.2)

43. Add language that Full M2M, Rental Assistance Demonstration (RAD), and DEMO contracts cannot be terminated early in order to renew under MUTM. (Section 3-7.C and Section 3-7.D)

44. Eliminate language that requires a HUD RCS for MUTM contract renewals (Section 3-8.A) and substitutes a requirement that HUD will hire a third-party appraiser to complete a HUD RCS should rents in the owner's RCS exceed 140 percent of the Median Gross Rent By Zip Code Tabulation Area. (Section 9-23)

45. Clarify that as part of a Chapter 15 transaction, the "as is" rent determination in the RCS is used to determine eligibility for MUTM (Section 3-8.A)

46. Add language that should a property not qualify for Option One A that the owner has the option to request renewal under Option One B. If the project does not qualify for Option One A or B that the Owner can request a contract renewal under any other option for which it qualifies . (Section 3-8.B.1 and Section 3-8.B.2)

47. Remove the requirement, formerly found in Section 3-8A, that comparable rents should be reduced by the Interest Subsidy Adjustment Factor for Section 236, 221(d)(3) and 515 properties (Chapter 3).

48. Clarify that owners with contracts that exceed five years must follow the instructions in Section 2-17.C.4. concerning fifth year rent adjustments. (Section 3-9.B)

49. Clarify that if the contract's aggregate rents are at or below market the project can qualify for Option Two even if the rents on one particular bedroom size exceeds market. (Section 4-1.A)

50. Specify that owners of projects renewing under Option Two can include both non-profit and for profit entities and that in a transfer the requirements apply to the purchaser. (Section 4-1.B)

51. Clarify that at the time of renewal, rents can be adjusted by the OCAF or a budget-based rent adjustment limited by market. (Section 4-2.B)

52. Replace the name "OAHP" with "Recap" throughout the chapter.

53. Add that authorization for referral to Recap for restructuring sunsets October 1, 2017, unless subsequently extended. (Section 5-1.A)

54. Clarify definition of "once eligible, always eligible" for restructuring, even if current rent is at or below market. (Section 5-1.B)

55. Add information on a 202 project and its eligibility for restructuring if refinanced a second time with a loan insured under the National Housing Act. (Section 5-1.H)

56. Clarify that post-M2M, a project is under a Section 8 HAP contract that is limited to OCAF rent adjustments, whether under a single 20-year contract, or multiple shorter term contracts, for a period of 20 years. (Section 5-4.A.2)

57. Add detail on subsequent renewals, i.e., what happens when the initial 20 years post-M2M are complete, or in the case of a mutually agreed upon termination and early renewal. (Section 5-5.A, Section 5-5.B, and Section 5-5.C)

58. Incorporate information from prior appendices into the body of the chapter, and eliminates the appendices in Chapter Five.

59. Clarify that a project may renew under Option Four if the project is exempt from debt-restructuring or does not meet the definition of an "eligible multifamily housing project." (Section 6-1)

60. Clarify that a state or local government-financed project that is not insured under the National Housing Act is not subject to review by Recap (Note after Section 6-1.A)

61. Clarify that a RCS is not required if the owner is seeking a "$0" budget based rent

adjustment (Section 6-3.A.2.a)

62. Add that 202 projects that have refinanced for the first time retain their exemption from restructuring. (Section 6-1.A.3)

63. Add projects financed under Section 542(c) risk-sharing with qualified State and local housing finance agencies to the list of projects exempt from MTM. (Section 6-1.B.1)

64. Clarify that debt service to be included in a budget submission can include the debt service associated with the new loan if the renewal is part of a refinancing transaction. (Note after 6-2.A)

65. Clarify that there is no "lesser of" test at the time of the annual rent adjustment for a multiyear contract in Option Four. (Section 6-3.B)

66. Define "Project Specific Rents" and provides a mechanism for adjusting those rents. (Section 7-8.B)

67. Clarify that the instructions for a budget-based rent adjustment request include Emergency Low-Income Housing Preservation Act (ELIPHA) projects. (Section 7-9.B)

68. Clarify that even though the ELIHPA Use Agreement ends on the first day of the month and the Section 8 contract ends on the last day of the previous month that HUD considers them as ending coterminous and therefore the owner may select any renewal option for which the property is eligible, except Option Five. (Section 7-9.C)

69. Clarify that if an owner does not provide timely notice that the tenant's portion of the rent can only be increased due to an annual recertification or a change in household income. (Section 8-3.A.3.b.1)

70. Revise text to require appraisers to use the standard checklist when reviewing an RCS. (Section 9-17.A)

71. Remove Section 9-18 "Special Procedures for Mark-Up-To-Market Projects."

72. Add a requirement that HUD will hire a third-party appraiser to complete a HUD RCS should rents in the owner's RCS exceed 140 percent of the Median Gross Rent By Zip Code Tabulation Area. The effective date of this change is 150 days from the date of this transmittal. (Section 9-23.C)

73. Remove much of the text in Chapter 10, Residual Receipts" and refer the reader to Housing Notice 2012-14 or subsequent guidance.

74. Provide updated information on "Housing Conversion Actions." (Section 11-1.C)

75. Provide reference information for those anticipating relocation activities. (Section 11-2.A.3)

76. Provide additional guidance in case an owner does not provide acceptable tenant notification. (Section 11-4.E)

77. Add policy regarding LEP considerations during tenant notifications and other renewal communications. (Section 11-5)

78. Add policy regarding effective communications with persons with disabilities. (Section 11-6)

79. Add language to the sample "One-Year Notification Letter Owner Intends to Renew" informing tenants that they will receive a one-year notification should the owner decide not to renew the Section 8 contract. (Section 11 Appendix 2)

80. Add a MTM second notice of Opt-Out 120 day notice to tenants should an owner decide to opt out during the processing of the MTM restructuring. (Section 11 Appendix 3)

81. Clarify that the Project Manager has flexibility to renew a contract based on the REAC score. (Section 12-1)

82. Remind owners that certain barriers to accessibility may constitute an Exigent Health and Safety (EH&S) deficiency. (Section 12-2)

83. Add instructions to reviewers when a project receives a EH&S notice. (Section 12-2.A)

84. Add language that if a property has a REAC score below 60, then the AE/CA will follow the instructions in Notice H 2015-02, or current instructions. (Section 12-2 B.4)

85. Clarify the process when HUD decides not to renew a contact. (Section 13-2)

86. Add language that HUD may refuse to renew a contract if the poor condition of the project cannot be remedied in a cost effective manner. (Section 13-1.A.3)

87. Add language that a material adverse action includes failure to comply with nondiscrimination or economic opportunity orders. (Section 13-1.B.1)

88. Add instructions on appeals and short-term renewals. (Section 13-3.A)

89. Detail steps for a termination appeal process (Section 13-3.I)

90. Add language that requires the Regional Center/Satellite Office or the Property Disposition Center to provide notice to tenants receiving Section 8 assistance if HUD refuses to renew a contract. (Section 13-4)

91. Clarify that 515/8 projects are can renew under any option for which they qualify in addition to Option Four. (Section 14 Overview)

92. Add language that HUD will not accept a Rural Development (RD) utility analysis (UA) and an owner must submit a UA based on HUD's standards. (Note after 14-2.A)

93. Clarify that a 515/8 must submit a RCS only if requesting a budget-based rent increase at the time of the annual "amend rents" and only if the budget request would result in rents that exceed what the OCAF would have provided. (Section 14-2.B)

94. Add language that says that HUD will notify RHS and the owner of the new rents and the new annual adjustment period. (Section 14-2.D)

95. Clarify that when a RD loan has been paid in full that the owner will submit the annual budget request directly to HUD. (Section 14-2.G)

96. Clarify that for-profit owners can use Chapter 15 and renew under Option Two for purposes of Capital Repairs but must use Option One and Chapter 15 if seeking a Transfer or a Transfer with Capital Repairs. (Section 15-1)

97. Clarify that a nonprofit owner can include one or more nonprofit general partners or a sole general partner that is wholly owned and controlled by one or more nonprofits. (Section 15-3.A.1)

98. Add "Full" MTM projects to the list of these ineligible for participation in Chapter 15. (Section 15-4.C.3)

99. Clarify that owners with original term (pre-MAHRA) contracts can terminate the contract early to participate in Chapter 15 if they agree to certain conditions. (Section 15-5.C.1)

100. Revise language to allow non-MAHRA and Option Four MAHRA contracts, with rents at or below comparable market rents, to terminate early in order to participate in Chapter 15 transactions. (Section 15-5.C.3)

101. Add language that 515 MAHRA contracts cannot be terminated early to participate in Chapter 15. (Section 15-5.C.2.a)

102. Clarify that a for-profit entity purchasing a property must renew the Section 8 HAP contract under Mark-Up-To-Market. (Section 15-5 E.2)

103. Revise language on combining contracts. (Section 15-5.D)

104. Add language to require RCSs submitted as part of a Chapter 15 transaction to determine both the "as is" comparable market rent and the "after rehab" comparable market rent. (Section 15-6.A.1)

105. Revise language that establishes the effective date for "after rehab" rents based on the type of loan used to finance. (Section15-6.A.2.b.2)

106. Add language that instructs the AE/CA to notify the owner/purchaser of the new post rehabilitation rents after processing the renewal request. (Section 15-6.D)

107. Add language that that allows "after rehab" rents to be effective at closing under certain circumstances. (Section 15-6.E.1.b)

108. Clarify that for unassisted units in a Chapter 15 transaction, it is the tenant's portion of the rent that cannot be increased by more than 10 percent. (Section 15-7.A)

109. Add language that an AE/CA will not lower comparable market rents in the RCS to reflect any use restrictions. (Section 15-8)

110. Remove language in the Guide concerning the structure of a PCNA and refer the lender/owner to HUD Notice 2012-27, " Revised Requirements for Project Capital Needs Assessments, Estimated Reserves for Replacements and Remedies for Accessibility Deficiencies."

111. Add language that certain types of non-insured projects are not required to have a Reserve for Replacement account unless required by the existing or proposed financing. (Note after Section 15-9.A)

112. Add that an owner cannot have FHEO charges or letter of finding under fair housing and failed to correct the violation as an eligibility requirement.

(Section 15-12.A.1)

113. Clarify the Owner submission requirements for environmental review under the Capital Repairs Program. (Section 15-12.B)

114. Eliminate the requirement formerly found in Section 15-13.A that property have at least a 30 REAC score to participate in Capital Repairs under Chapter 15.

115. Add language to clarify the meaning of "Compliant with HUD's environmental regulations at 24 CFR Part 50". (Section 15-13.A)

116. Clarify that rehabilitation undertaken under Chapter 15 does not trigger Davis-Bacon wage rates unless FHA financing is involved. (Section 15-13.A.11)

117. Remove the requirement that a nonprofit have ties to the community previously contained in Section 15-15.B)

118. Add language that purchasers must be in compliance with applicable nondiscrimination and equal opportunity requirements (Section 15-15.B)

119. Add language that purchasers must be in good standing and not subject to administrative sanctions. (Section 15-15.C)

120. Add language that directs the reader to Handbook 4350.1 for instructions on the process for approving the transfer of Physical Assets for HUD Insured properties. (Section 15-17)

121. Remove old Chapter 16 "Other Issues" and transfers appropriate information to other chapters.

122. Add new Chapter 16 "Old Regulation" State Housing Finance Agency Projects – Owner Options upon Full Prepayment of Original, Permanent Financing" that describes the options owners have when they prepay a state agency financed loan on a project with an "old reg" Section 8 contract. (Section 16)

123. Revise "Attachment 1 Glossary" to include several new terms.

124. Revise "Attachment 2 List of Acronyms."

125. Remove "Attachment 3-10"

Filing Instructions:

Remove:	Insert:
The Guide dated 01/15/08 (and subsequent page changes)	The Guide effective 11/5/15

/ S /

Edward L. Golding, Principal Deputy
Assistant Secretary for Housing

Section 8 Renewal Policy

Guidance for the Renewal of

Project-Based Section 8 HAP Contracts

Office of Multifamily Housing

The information collection requirements contained in this document are pending approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB control number 2502-0507 and 2502-0587.. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

_____ ____November 5, 2015____

Effective Date

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Chapter One

Section 8 Renewal Guide

Since the mid-1990's, 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:
http://www.hud.gov/offices/adm/hudclips/index.cfm and
http://www.hud.gov/offices/hsg/mfh/mfhsec8.cfm

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. The Section 8 Renewal Policy Guide Book is being published on August 7, 2015. This guidance will apply to renewal and amend rent packages received by the Department (or post-marked) This guidance will apply to renewal and amend rent packages received by the Department (or post-marked) November 5, 2015 or later.

To assist users, a Glossary of the terms used throughout this Guide can be found at Attachment 2. The asterisks (*) throughout the Guide indicate revisions to the text except for Chapter Two and Sixteen which have been completely revised.

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 of 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. RULE MAKING.

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 a number of 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 Housing Notice H 98-34 which provided instructions for renewing Section 8 contracts expiring in FY 1999.
- **H99-08**. On May 27, 1999, HUD published Housing Notice H 99-08 which made several modifications to H 98-34.
- **H99-15**. On June 16, 1999, HUD published Housing 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 H98-34 and H99-08.
- **H99-32**. This Notice, published December 1, 1999, clarified existing renewal policies.
- **H99-36**. On December 29, 1999, Notice H99-36 was issued 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 Housing Notice H 00-12 which provided policies and procedures for preparing, submitting and reviewing RCS associated with renewals of expiring Section 8 contracts.
- **H00-21.** On October 13, 2000, HUD published Housing 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.

Chapter Two

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 on the basis of 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 Project Manager 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. As a general rule, 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 in 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.

   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.

4. *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.*

5. 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, is allowed to 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. An owner is not allowed to terminate a contract early in order 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 of 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 it 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.

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.

G. 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 F 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 in order 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 or not 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) makes a determination 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 in order 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 divided by 12 = .208 x 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.

HUD issued guidance on September 18, 2014, on processing requests to combine Section 8 HAP contracts. The guidance is in Attachment 2-1.

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 other 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.

f. If a project was formerly financed under the Section 202 program, then the project was originally regulated by 24 CFR Part 885. However, the regulations governing projects subject to a Section 202 Direct Loan have since been recodified and are currently located at 24 CFR Part 891. Under 24 CFR Part 891.600(e) the Borrower is not entitled to distributions.

At the time of the 202 prepayment, the requirement to operate the project under the provisions of 24 CFR Part 891 would have terminated except that the owner agreed in the Use Agreement, to continue to abide "by all applicable Federal regulations." Therefore, the owner must request a waiver of the Use Agreement, to allow a distribution of six percent on initial equity investment for this elderly project for non-project uses. All waiver requests must be submitted to the Director, OAMPO.

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. In an effort 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 in compliance 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).

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 in the event that the owner becomes eligible to resume receiving access to increased distributions when compliant with all of 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.B.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 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.

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, Developer Fee, 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).)

Note: If a contract receives an OCAF rent adjustment, then the deposits to the reserve for replacement account must be adjusted by the OCAF. Example: The current annual deposits are $2400 and the OCAF adjustment factor is 1.02, then the RFR deposits would increase by $48 or $2400 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 at this time. 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 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.

h. Prepare a contract renewal.

1) The AE/CA establishes the renewal rent according to 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. Any tenant notification related to the utility analysis should be separate from any rent increase notice to reduce confusion.

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 Central Contractor Registration (CCR).

Attachment 2-1

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-8000

OFFICE OF HOUSING

SEP 18 2014

MEMORANDUM FOR: All Multifamily Hub Directors
All Multifamily Program Center Directors
All Multifamily Asset Management Staff

FROM: Benjamin T. Metcalf, Deputy Assistant Secretary for Multifamily Housing Programs, HT

SUBJECT: Combining Section 8 Housing Assistance Payments Contracts

This memorandum provides guidance on combining Section 8 Housing Assistance Payments (HAP) contracts that contain similar provisions and those that contain differing provisions. Contracts may be combined by mutual agreement between the Owner and the Department, and the units and budget authority rolled into the surviving contract which will then be renewed for a 20-year term. Owners can request that contracts be combined at any time. This memorandum does not apply to Project Rental Assistance Contracts (PRACs) or Project Assistance Contracts (PACs).

The Department is encouraging portfolio level asset management that will allow owners and HUD to realize certain operational savings. Although not required, Project Managers or contract administrators should encourage owners to combine contracts or stages by informing the owner of the benefits. Benefits of combining contracts include:

- Lowered administrative costs;
- Reduced oversight (i.e. one Management and Occupancy Review (MOR), one audited Annual Financial Statement (AFS), etc.);
- Potential to share reserves and facilitate a better capitalized property assisting a struggling property; and
- Superior debt and equity terms and pricing.

The field office should provide the Owner with all of the necessary and relevant information, as outlined in this memorandum, to help the Owner make an informed decision.

NOTE: Contracts that are combined will be treated as one contract for all purposes, including enforcement actions.

A. CONDITIONS FOR COMBINING CONTRACTS

In order for any contract to be combined with another contract, they must meet the following conditions:

1. The projects where the contracts will be combined must have the same controlling owner.

2. Contracts renewed under different MAHRA options must both qualify to renew under one specific option at the time of renewal request for combining contracts.

   Example One: Owner wishes to combine the contracts on Project X and Project Y. Project X underwent restructuring under Mark-To-Market (MTM) in 2010 and has a MTM 30-year use agreement. Project Y renewed its contract for 20 years under Mark-Up-To-Market in 2012. These contracts would not be eligible to be combined.

   Example Two: Owner wishes to combine the contracts on Project A and Project B. Project A renewed under Option Four "Renewal of Projects Exempted from OAHP" and Project B renewed under Option Two "Contract Renewals for Other Projects with Current Rents at or Below Comparable Market Rents." In order to combine the contracts on these projects, the owner would have to select a single option to renew under and provide the required information so that the field office can determine if the combined projects qualify for the option selected.

3. If there are two or more FHA insured loans on the projects, the projects must have only one mortgage loan, or as part of this transaction, be in the process of refinancing the existing loans into one loan. If there are two or more conventional mortgages and neither have FHA insurance, contract combinations may occur on a case-by-case basis, with the consent of all lenders. If there are two or more loans and one of the loans is FHA insured, the contracts cannot be combined unless the properties are refinanced under one mortgage. If the combination is approved, it may not occur until the refinance has closed. If the Owner is using FHA insurance to refinance, the properties must be one marketable and manageable real estate entity.

4. Each project must have submitted any required electronic audited AFS for the most recent fiscal year through FASSUB.

5. Management and Occupancy Reviews:

   a. The most recent MOR must have a rating of "Satisfactory" or better within the last three years. If the MOR is older than three years, at least a limited MOR desk review must be completed and the property must score "Satisfactory" or above prior to approval; or
   b. The most recent MOR rating (within the last three years) is less than "Satisfactory" but the project is rated potentially troubled or not troubled, and there is a HUD-approved plan in place to correct all deficiencies; or
   c. If the property is rated troubled and the MOR is more than 12 months old, at least a limited MOR must be completed and the property must score "Satisfactory" or above prior to approval.

6. The projects are within the same Fair Market Rent (FMR) area. In those cases where the projects are in different FMR areas, the Department will consider granting waivers on a case-by-case basis. If the projects are in different states the owner must confirm there are no conflicting state laws that would interfere with Department requirements (i.e. tenant notification on opt-outs, eviction procedures, etc.). The Department will consider contract combinations in different FMR areas and different states on a case-by-case basis, per the chart below.

Scenario		State	FMR Area	Permissible to Combine Contracts	HQ Consultation	Owner Certifies there are no conflicting state laws	Guidance on Contract Administration Provided by HQ
1	Same	X	X	YES	NO	NO	NO
	Different						
2	Same		X	YES	YES	YES	YES
	Different	X					
3	Same	X		YES	YES	NO	YES
	Different		X				
4	Same			YES	YES	YES	YES
	Different	X	X				

If Headquarters consultation is required, please contact your assigned Office of Asset Management and Portfolio Oversight Desk Officer for further information.

7. The most recent Real Estate Assessment Center (REAC) inspection score must be 60 or above or there must be a HUD-approved plan in place to correct any deficiencies. If the most recent REAC score is more than three years old, a new REAC inspection must be undertaken and the resulting score must be 60 or above before the field office will recommend combining of the contracts.

8. Many Section 8 HAP contracts have the same income eligibility requirements and distribution requirements. Owners can request to combine contracts with the same provisions as noted below:

   A. Section 8 HAP contracts effective before October 1, 1981 can be combined with other Section 8 HAP contracts effective before October 1, 1981.

   B. Section 8 HAP contracts effective after October 1, 1981, can be combined with other Section 8 HAP contacts effective after October 1, 1981. If there is a disagreement as to

the effective date of the contract or any contract provision related to income eligibility, the contract must be sent to Office of Asset Management and Portfolio Oversight for review; and

C. Pre-October 1, 1981, Loan Management Set-Aside (LMSA) contracts can be combined with old regulation Section 8 HAP contracts or with other pre-October 1, 1981, LMSA contracts.

D. Post-October 1, 1981, LMSA contracts can be combined with old regulation Section 8 HAP contracts, or with other post October 1, 1981, LMSA contracts.

NOTE: Where the contracts to be combined contain the same income eligibility requirements and distribution limitations, the later expiring contract should be terminated early and the units and budget authority rolled into the surviving contract. If the contract expiration dates are the same, the field office must select the surviving contract.

9. Some HAP contracts will have differing income eligibility requirements and distribution limitations. HUD will not approve combining these types of contracts unless the owner agrees to abide by the most restrictive contract provisions as noted below:

A. Properties with Section 8 HAP contracts effective before October 1, 1981, occupancy by families who are other than very low-income is restricted to no more than 25 percent (24 CFR §5.653(d)(1)). For most properties with Section 8 contracts effective on or after October 1, 1981, all units must be occupied by families who are very low-income, except that HUD has a 15 percent exception authority (see HUD Handbook 4350.3 REV-1, Sections 3-7.A. and B.) (24 CFR §5.653(d)(2)).

NOTE: The existing waiting lists for each project will remain in place and tenants on those waiting lists will continue to be selected according to existing priorities until the existing waiting lists have been exhausted. On the effective date of the new combined contract, any applicants applying for the new waiting list must meet the more restrictive income limits and be placed on a new waiting list. Applicants from this list will not be selected for admission to the project until the previous waiting lists have been exhausted. Please see Attachment One for a diagram of the waiting list process.

B. Old regulation Section 8 HAP contracts can be combined with new regulation Section 8 HAP contracts only if the owner agrees to the more restrictive provisions on distributions in the new regulation contract.

NOTE: For those projects that have renewed under Option One or Option Two and have had the distribution restrictions conditionally lifted, the new contract will contain Exhibit B to the contract that will allow the owner to retain increased distributions as long as the projects continue to meet the conditions spelled out in the Section 8 Renewal Policy Guide.

C. Loan Management Set Aside (LMSA), Property Disposition (PD), or Section 8 Community Investment Demonstration (Pension Fund) contracts can be combined with new regulation Section 8 contracts only if the owner agrees to abide by the more

restrictive provisions, including limitations on distributions, in the new regulation contract.

D. Pre-October 1, 1981, LMSA contracts can be combined with LSMA contracts issued on or after October 1, 1981, only if the owner agrees to abide by the more restrictive income eligibility provisions in the LSMA contracts effective on or after October 1, 1981.

NOTE: Where the contracts to be combined contain differing income eligibility requirements and distribution limitations, the contract with the most restrictive provisions must survive. If the contract with the most restrictive provisions expires last, then that contract is the surviving contract.

10. The Owner must agree to renew the HAP contract for 20 years.

11. The resulting HAP contract must include language that requires physical condition standards and inspections of the project by the Department as well as submission of the audited AFS.

12. The owner must also agree to the terms of the "Preservation Exhibit" (attached). The Preservation Exhibit provides for the automatic renewal of the contract upon expiration (i.e., at the end of the 20-year renewal term) for a whole number of years to be filled in by the Hub/PC, which must be at least the number of years remaining on the latest expiring contract at the time of its termination by mutual agreement.

    Example: Project X's contract will expire in December 2018. Project Y's contract will expire in November 2020. In order to combine the contracts on Projects X and Y, the owner must agree to extend the newly renewed combined contract by the remaining term of Project Y's contract.

13. If the Department grants a waiver to allow an owner to terminate an original term (pre-MAHRA) contract early, the owner must sign the "Rider to Original Section 8 Housing Assistance Payments Contract" (HUD-93184). Projects with "old regulation" State Housing Finance Agency contracts that terminate upon prepayment of the original financing do not have to sign the Rider.

14. Projects with differing use agreements can only be combined if the owner agrees to place all of the projects under the most restrictive use agreement. The owner will need to obtain a release of any recorded use agreements that conflict with the most restrictive use agreement. If there is a Use Agreement at any of the projects that are part of the contract combination, Headquarters must be consulted prior to approval.

15. Projects with differing deposit requirements for reserve for replacement accounts and or residual receipts accounts can be combined but the final determination of the revised deposit requirements must be made based on the needs of the combined project in its entirety.

B. PROCESS

The Owner will submit a request to combine contracts to the Multifamily Hub/Program Center. Hub/Program Center Directors are authorized to approve the combination of Section 8 HAP contracts based on the instructions above. Hub/Program Center Directors must submit a list of approved combined contracts monthly to the Sharepoint site at http://hudsharepoint.hud.gov/sites/DASMFH/OMAM/fam/Shared%20Documents/Forms/AllItems.aspx.

The Multifamily Hub/Program Center Director or designee must use the checklist attached to this memorandum (Attachment Two) to review an Owner's request to combine contracts. The Multifamily Hub/Program Center Project Manager/Account Executive must draft a letter notifying the Owner that the requested contract combination is approved. The letter must include any conditions of the combination (e.g. limitations on distributions, or more restrictive income limit requirements). The approval letter should be submitted to the Hub/Program Center Director or designee for signature. A copy of the checklist and the approval letter must be retained in the project file.

Instructions for combining contracts and realigning units in the Tenant Rental Assistance Certification System (TRACS) are found in the iCon User's Manual that can be found at http://hudatwork.hud.gov/po/h/hm/tracs/iug/tracsiconug20.pdf. More detailed instructions are attached (Attachment Three).

If the Multifamily Hub/Program Center determines the contracts are eligible for combination, in order to begin the combination process, the Owner must submit the following to the Contract Administrator:

1. Prior to renewal, the owner must submit a full renewal package in accordance with the guidance in the Section 8 Renewal Policy Guide, including a request on HUD-9625 including copies of HAP contracts requested to be combined and renewed for 20 years and any recorded use agreements.
2. For those renewals requiring a new Rent Comparability Study (RCS) the study must provide neighborhood specific rents for both projects and include a rent grid (HUD 92273-S8) for each neighborhood.

If there are any questions regarding funding during the contract combination process, please contact Chiara Law, Senior Financial Analyst, Financial Operations Division, at (202) 402-3842, or Marina McCulley-Boyd, Senior Financial Analyst, Financial Operations Division, at (202) 402-2602.

The Department will continue to evaluate this policy and will make adjustments as needed. Specifically, the Department is requesting feedback on the administrative procedures outlined in this memorandum and the broader policy implications of Section 8 contract combination. If you have feedback on this memorandum, please contact the Program Administration Office, Office of the Deputy Assistant Secretary for Multifamily Housing, at MFPolicyFeedback@HUD.gov. If you have any questions on specific transactions, please contact your Desk Officer in the Office of Asset Management and Portfolio Oversight.

Attachments

Attachment One

ATTACHMENT TWO

USE FOR HUD STAFF ONLY

DATE ___/___/_____

COMBINING SECTION 8 HOUSING ASSISTANCE PAYMENTS CONTRACTS CHECKLIST

PLEASE ANSWER AND COMPLETE ALL QUESTIONS

Section 8 Housing Assistance Payments (HAP) contracts may be combined by mutual agreement between the Owner and the Department, and the units and budget authority rolled into the surviving contract which will then be renewed for a 20-year term. Owners can request that contracts be combined at any time, but it is not required.

This checklist should be completed by the Hub/Program Center Director or their designee. On the last page, the Hub/Program Center Director or designee certifies that all of the responses contained on the checklist are accurate. This checklist is for internal use only.

A. Section 8 Contract Numbers of Contracts to be Combined:

B. FHA Project Numbers (if applicable):

C. Hub/Program Center Office:

D. Owner's Name:

E. Owner's Phone Number:

Answer the following questions about the projects where the contracts will be combined.

1. Are the projects owned by the same controlling owner?	____Yes ___No	*If no, STOP.*
2. Do both contracts qualify to be renewed under one specific MAHRA option?	____Yes ___No	*If yes, the owner must select a single option to renew under and provide any information necessary to determine that the combined projects qualify for the selected option. If no, STOP.*

If no to any of the above questions, STOP. The Department will NOT permit the combining of HAP contracts that do not meet the above requirements.

HUD Internal Use Only

DATE ___/___/_____

COMBINING SECTION 8 HOUSING ASSISTANCE PAYMENTS CONTRACTS CHECKLIST

3. A. Do the projects have two or more FHA insured loans?	____Yes ___No	*If yes, the existing loans must be in the process of refinancing into one loan to continue.*
B. Do the projects have one FHA insured loan and one (or more) conventional mortgages without FHA insurance?	____Yes ___No	*If yes, the existing loans must be in the process of refinancing into one loan to continue.*
C. Do the projects have more than one conventional mortgage without FHA insurance?	____Yes ___No	*If yes, proceed to Questions 3.C.i. and 3.C.ii. If no, proceed to Question 4.*
i. Have all lenders consented to the contract combination?	____Yes ___No	*If no, lender consent must be given prior to contract combination.*
ii. Has Headquarters reviewed the request?	____Yes ___No	*If no, Headquarters must review the request prior to approval of the contract combination.*
4. Has each project submitted any required electronic audited Annual Financial Statements (AFS) for the most recent fiscal year through FASSUB?	____Yes ___No	*If no, any required AFS must be submitted prior to approval.*
5. For both projects, does the most recent Management and Occupancy Review (MOR) have a rating of "Satisfactory or better within the last three years; OR Is the most recent MOR rating (within the last three years) less than "Satisfactory" BUT the project is rated potentially trouble or not troubled, and there is a HUD-approved plan in place to correct all deficiencies?	____Yes ___No	*If no, and the property has not had an MOR in the past three years or the property is rated troubled and the MOR is more than 12 months old, a new MOR must be completed by the Project Manager (a desk review is acceptable) and the property must score "Satisfactory" or above prior to approval.*

HUD Internal Use Only

ATTACHMENT TWO

USE FOR HUD STAFF ONLY

DATE ___/___/_____

COMBINING SECTION 8 HOUSING ASSISTANCE PAYMENTS CONTRACTS CHECKLIST

6. A. Are the projects in the same state?	____Yes ___No	*If yes, proceed to Question 7. If no, consult the chart in section 6 on page three of the memo for additional guidance and continue at Question 6B.*
B. Has the owner certified that there are no conflicting state laws that would interfere with Department requirements?	____Yes ___No	*If no, the owner must provide such certification prior to approval.*
7. Are the projects within the same Fair Market Rent (FMR) area?	____Yes ___No	*If yes, proceed to Question 9. If no, continue at Question 8.*
8. If the contracts are in different FMR areas or different states, have you consulted with Headquarters about how to proceed?	____Yes ___No	*If no, consult with Headquarters before proceeding.*
9. Is the most recent Real Estate Assessment Center (REAC) inspection score less than three years old and 60 or more or is there a HUD-approved plan in place to correct all deficiencies at both projects?	____Yes ___No	*If the most recent REAC score is more than three years old, a new REAC inspection must be undertaken and the resulting score must be 60 or greater before the field office will recommend combining of the contracts.*
10. Do the contracts to be combined contain the same income eligibility requirements and distribution limitations? If not, has the owner agreed to the more restrictive requirements?	____Yes ___No	*See section 9 in memo "Combining Section 8 Housing Assistance Payments Contracts" for detailed information on combining these provisions.*
11. Has the new owner agreed to the terms of the "Preservation Exhibit" (attached)?	____Yes ___No	*Upon expiration of the 20-year HAP contract, the owner must agree to renew*

DATE ___/___/_____

COMBINING SECTION 8 HOUSING ASSISTANCE PAYMENTS CONTRACTS CHECKLIST

		the contract for an additional term at least equal to the number of years remaining on the latest expiring contract.
12. Does the resulting contract include language that requires physical condition standards and inspections of the project by the Department AND submission of the Annual Financial Statement (AFS)?	____**Yes** ___**No**	*If no, the HAP contract language must include these requirements prior to approval.*
13. A. Is the owner seeking to terminate an original term (pre-MAHRA) contract early?	____**Yes** ___**No**	*If yes, continue at Question 13B. If no, skip Questions 13B-13D.*
B. Has the owner received a waiver from the Department to terminate an original term (pre-MAHRA) contract early?	____**Yes** ___**No**	
C. Do the projects have "old regulation" State Housing Finance Agency contracts that terminate upon prepayment of the original financing?	____**Yes** ___**No**	*If yes, the owner does NOT need to sign the rider. If no, continue at Question 13D.*
D. Has the owner signed the "Rider to Original Section 8 Housing Assistance Payments Contract" (HUD-93184)?	____**Yes** ___**No**	*If the Department grants a waiver allowing early termination and the projects do not have 'old regulation' contracts, the owner must sign the rider prior to approval.*
14. A. Is there an existing Use Agreement at any of the projects?	____**Yes** ___**No**	*If yes, move to question 14B.*
B. Have you consulted Headquarters on how to proceed?	____**Yes** ___**No**	*If yes, move on to the process portion of the*

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DATE ___/___/_____

COMBINING SECTION 8 HOUSING ASSISTANCE PAYMENTS CONTRACTS CHECKLIST

		memo. If no, send the package to your Desk Officer for consultation.
15. A. Do the projects have differing requirements for deposits to the reserve for replacement account or the residual receipts account?	____**Yes** ___**No**	*If yes, move to question 15B.*
B. Have you consulted Headquarters on the revised deposit requirements?	____**Yes** ___**No**	*If no, consult with Headquarters before proceeding.*

Internal Use Only

DATE ___/___/_____

COMBINING SECTION 8 HOUSING ASSISTANCE PAYMENTS CONTRACTS CHECKLIST

PROCESS

Upon completion of the checklist, the Hub/Program Center Project Manager/Account Executive must draft a letter notifying the Owner that the requested contract combination is approved. The letter must include any conditions of the combination (e.g. limitations on distributions, or more restrictive income limit requirements). The approval letter must be submitted to the Hub Director or designee for signature. Hub/Program Center Directors must submit a list of approved combined contracts monthly to the Sharepoint site at:
http://hudsharepoint.hud.gov/sites/DASMFH/OMAM/fam/Shared%20Documents/Forms/AllItems.aspx

If the Multifamily Hub/Program Center determines the contracts are eligible for combination, in order to begin the combination process, the Owner must submit the following to the Contract Administrator:

1. Prior to renewal, the owner must submit a full renewal package in accordance with the guidance in the Section 8 Renewal Policy Guide, including a request on HUD-9625 including copies of HAP contracts requested to be combined and renewed for 20 years and any recorded use agreements.

2. For those renewals requiring a new Rent Comparability Study (RCS) the study must provide neighborhood specific rents for both projects and include a rent grid (HUD 92273-S8) for each neighborhood.

Instructions for combining contracts and realigning units in TRACS are found in the iCon User's Manual that can be found at http://hudatwork.hud.gov/po/h/hm/tracs/iug/tracsiconug20.pdf.

Comments or Recommendations:

Hub/Program Center Director (or Designee) Signature: _____**Date**_____

I certify that the checklist is complete and that the responses provided in this checklist are correct to the best of my knowledge. I certify that I have reviewed and submitted the appropriate documents as requested by HUD Headquarters.

COMBINING TWO CONTRACTS IN ONE PROJECT

The following outlines the actions necessary to combine data from two contracts belonging to the same project into one contract.

***Note**: This is a two-step process. Step One is to terminate contract that was combined. Then, Step Two includes the following actions applied to the surviving contract:*

1. *Renew the contract using the Modified Extension option in iCon to reflect the renewal effective date, renewal term, and renewal expiration date*
2. *Increase units in the associate project if needed*
3. *Create a Unit amendment to increase the total contract units.*
4. *Create a Unit Redistribution amendment if new unit size is needed*
5. *Create new unit types when applicable*
6. *Create active rents/utilities for the new unit types created when applicable*

Step One - Terminating the Contract

The first step in this process is to terminate the contract that was combined. The actions necessary to perform this are:

a. From the iCon main menu select **<File> <Search><Contract>**

b. Enter the contract number and click **<Search>**

c. Click on the contract number link from the Search Results section

d. Select **<Action> <Terminate>**

e. Enter Termination Date and select Termination reason which should be "Due to Combined Contracts", click **<Terminate>**

Step Two - Combining the Terminated Contract into the Surviving Contract

1. **Renew the contract** using the Modified extension option in iCon

a. If the remaining contract is a *non-staged contract*:

i. From the iCon main menu select **<File> <Search><Contract>**

ii. Enter the contract number and click **<Search>**

iii. Click on the contract number link from the Search Results section

iv. From iCon Left panel, select **<Renewals>**

v. Click on **<Add>**

vi. Select **<Modified Extn>**; Enter Renewal Effective Date, Renewal Execution Date, Renewal Term Length, Renewal Expiration date, optionally CA Amount, Total Units, BA Amount, then click **<Save>**

b. If the remaining contract is a *staged contract*:

i. From the iCon main menu select **<File> <Search><Contract>**

ii. Enter the contract number and click **<Search>**

iii. Click on the contract number link from the Search Results section

iv. From iCon Left panel, select **<Renewals>**

v. Click on "Flag" next to the stage that is being renewed.

vi. Click on **<Add>**

vii. Select **<Modified Extn>;** Enter Renewal Effective Date, Renewal Execution Date, Renewal Term Length, Renewal Expiration date, optionally CA Amount, Total Units, BA Amount, then click **<Save>**

2. Increase units in the associate project.

This step is needed if the units in the associate project has be to updated.

a. From the iCon main menu select **<File> <Search><Project>**

b. Enter contract number or FHA number or project name/State and click **<Search>**

c. Click on the Project Name link from the Projects section

d. From iCon Left panel, select **<Total Units>**

e. Click on **<Edit>**.

f. Enter correct units, then click on **<Save>**

3. Create a Unit amendment.

Record the new contracted units so that they are equal to the sum of the contracted units in the Surviving contract plus contracted units from the combined contract.

g. From iCon Left panel, select **<Amendments>**

h. Click on **<Add>**.

i. Select **<Unit>;** Enter Effective Date, Term, Execution Date, Total Units, then click on **<Save>**

4. Create a Unit Redistribution amendment.

Create a new Unit Redistribution amendment **if new unit size is needed**; otherwise, skip this step.

a. From iCon Left panel, select **<Amendments>**

b. Click on **<Add>**.

c. Select **<Unit Redistribution>;** Enter Effective Date, Term, Execution Date, then click on **<Continue>**

d. Check needed Unit Sizes, click on **<Save>**

5. Create New Unit Types.

Create New Contract Unit Types that are used in the combined contracts, but, either don't have matching unit types in the surviving contract or have different rents/utilities amount and/or effective dates.

a. From iCon Left panel, select **<Unit Distributions>**

b. Click on **<Add>** under "Unit Type Details".

c. Select from Project Unit Type OR select from Unit Size and enter Additional Identifier; enter Quantity; then click on **<Save>**

6. Create Active rents/utilities for the new unit types previously created

a. From iCon Left panel, click on "+" next to **<Rents/Utilities>** to get list of all unit types

b. Select the newly created unit type.

c. Click **<Add>** to create new rent or utility respectively.

COMBINING STAGES IN ONE CONTRACT

The following outlines the series of steps required to combine stages in one contract. Actions necessary to perform this task are:

1. *Cancel the Combined stages*
2. *Renew the Surviving stage using the Modified Extension option in iCon to reflect the renewal effective date, renewal term, and renewal expiration date*
3. *Flag Multtierm for the Surviving stage if necessary*
4. *Adjust contract unit type assignment for the Surviving stage.*

1. **Cancel the Combined stages.**

   a. From iCon Left panel, select **<Stages>**

   b. Click on **<Cancel>** next to the Combined stage; enter Cancellation date, click on **<Save>**

   c. Repeat steps a and b for other Combined stages.

2. **Renew the Surviving stage** using the Modified Extension option in iCon.

   a. From the iCon main menu select **<File> <Search><Contract>**

   b. Enter the contract number and click **<Search>**

   c. Click on the contract number link from the Search Results section

   d. From iCon Left panel, select **<Renewals>**

   e. Click on "Flag" next to the Surviving stage.

   f. Click on **<Add>**

   g. Select **<Modified Extn>;** Enter Renewal Effective Date, Renewal Execution Date, Renewal Term Length, Renewal Expiration date, optionally CA Amount, Total Units (**add up units from stages being combined**), BA Amount, then click **<Save>**

3. **Flag Multiterm for the Surviving stage.**

   a. From iCon Left panel, select **<Multiterm>**

   b. If the Term Definition is not correct, then click <Edit>

   c. Make proper adjustment to the Term Length fields to match the Overall Contract Term, then click <Save>

   d. From iCon Left panel, select **<Stages>**

   e. Click on **<Edit>** next to the Surviving stage; check Multi-term , click on **<Save>**

   f. Repeat steps d and e for other Surviving stages.

4. **Adjust contract unit type assignment for the Surviving stage.**

   a. From iCon Left panel, select **<Unit Distributions>**

   b. Under "Unit Type Details", click on **<View>** next to unit type that is used by the Surviving stage.

   c. Click on **<Edit>**; adjust the quantity, click on **<Save>**

Chapter Three

Option One - Mark-Up-To-Market

3-1. OVERVIEW.

A. The Mark-Up-To-Market (MUTM) Option was introduced as an emergency initiative in June 1999 to provide owners of certain properties with rents below market and located in strong markets to mark rents up to market as an incentive to renew the Section 8 contract and continue providing affordable housing. Because the cost of marking all below-market Section 8 properties up to market would likely have exceeded available resources, MUTM was made available to only a limited universe of properties. Section 524(a)(4)(A) of MAHRA made MUTM a permanent program and required HUD to mark rents up to market on properties meeting specific eligibility criteria as described in Section 3-3. Contract renewals under this authority are referred to as Option One-A, Entitlement MUTM.

B. To protect those most vulnerable and in an effort to further preserve affordable housing, Section 524(a)(4)(C) of MAHRA gives HUD authority to extend the option of marking rents up to market for properties not meeting the eligibility criteria under Option One-A but are still considered an important affordable housing resource. The eligibility criteria for marking rents up to market under Section 524(a)(4)(C) of MAHRA are described in Section 3-6. Contract renewals under this authority are referred to as Option One-B, Discretionary Mark-Up-To-Market.

3-2. *GENERAL ELIGIBILITY CRITERIA FOR OPTIONS ONE A AND B.*

A. *Rents. Aggregate current rent levels under the expiring or terminating contract must be less than comparable market rents.*

B. Project Condition. The project must have:

1. *Management's most recent Management and Occupancy Review (MOR) rating is "Satisfactory" or above; and*

2. A physical inspection score, from the Real Estate Assessment Center (REAC), of 60 or above with no uncorrected Exigent Health and Safety (EH&S) violations.

C. *FASS Findings. If applicable, all Financial Assistance Subsystem (FASS) findings need to be closed or under a HUD-approved corrective action plan.*

D. Ownership.

1. The project owner must be:

a. A profit-motivated entity (including a limited distribution entity);

b. *A housing authority occupying the status of a "public body corporate and politic" under the state legislation under which it was created, or*

c. *A limited partnership with one or more nonprofit general partners or a sole general partner that is wholly owned and controlled by one of more nonprofit entities.*; or

d. * 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.*

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.*

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

3-3. OPTION ONE-A ENTITLEMENT MARK-UP-TO-MARKET ELIGIBILITY.

Properties that meet the criteria listed in Section 3-2 and this Section are eligible for a Section 8 contract renewal under Option One-A.

A. Market Rents. The *owner's* Rent Comparability Study (RCS) must demonstrate that the comparable market rents are at or above 100 percent of the fair market rent (FMR) potential. Use the FMR figures calculated for the fiscal year in which the project is entering MUTM to demonstrate eligibility.

1. Excel Worksheets. Fillable worksheets are available on the Internet at http://www.hud.gov/offices/hsg/mfh/exp/workshet.cfm under Worksheets for Mark-Up-To-Market (Option One).

2. iREMS. The AE/CA should use the Integrated Real Estate Management System (iREMS) to establish initial eligibility. *Owners and Contract Administrators can use the fillable worksheets at the website listed above in A.1.*

B. Use Restrictions. The project does not have a low- and moderate- income use restriction that cannot be eliminated by unilateral action by the owner. Examples of such a use restriction would be the existence of Flexible Subsidy assistance, Low-Income Housing Tax Credits, *or Recap's Green Retrofit Program. If the project is subject to any use restriction at the time of the renewal request, the AE/CA must determine whether it is the type of use restriction that makes a project ineligible for Option One-A.*

C. *The project is not subject to a contract for moderate rehabilitation assistance under section 8(e)(2) of the United States Housing Act of 1937, as in effect before October 1, 1991.*

D. *The project is not one for which a public housing agency provided voucher assistance to one or more of the tenants after the Owner has provided notice of termination of the contract covering the tenant's unit.*

3-4. *150 PERCENT RENT CAP FOR OPTION ONE-A.*

A. *Section 8 Rents. Under Option One-A, the renewal rent levels equal the lesser of comparable market rents for the market area or 150 percent of the FMR. If the Final Comparable Gross Rent Potential is:

1. Greater than 150 percent of the FMR Potential, set the New Section 8 Gross Rents at 150 percent of the FMRs.

2. Equal to or less than 150 percent of the FMR Potential, set the New Section 8 Gross Rents at the Final Comparable Gross Rents.*

Owners and Contract Administrators can use the fillable worksheets at the website listed above.

B. Non-Section 8 and not expiring contract rents. MUTM has no effect on the rents of the non-Section 8 units or the Section 8 units in a Section 8 contract/stage that is not currently expiring.

3-5. EXCEEDING THE 150 PERCENT OF FMR CAP.

The 150 percent of FMR cap only applies to MUTM under Option One-A and only in cases where the lesser of the two measures identified in Section 3-4.A. (i.e., comparable market rents for the market area and 150 percent of FMR) is 150 percent of FMR. If the project meets one of the three criteria found in Section 3-6.B. below the renewal rents are equal the comparable market rents for the market area.

3-6. OPTION ONE-B DISCRETIONARY MUTM ELIGIBILITY.

Under Section 524(a)(4)(C) of MAHRA, the Secretary may mark rents up to market for projects that are not eligible for MUTM under Section 524(a)(4)(A), Option One-A, but that meet criteria listed in Section 3-2 and subsections A. and B. below. These projects are eligible for a Section 8 contract renewal under Option One-B.

A. To further preserve the affordable housing stock, the Secretary has the authority under Section 524(a)(4)(C) of MAHRA to mark rents up to market for projects that meet certain criteria. *Since enactment of Section 524(a)(4)(C), HUD's practice has been and continues to be to mark rents to market for eligible projects that meet only one of the three criteria identified in Section 3-6.B. However, if HUD determines that there is or may be a shortage of section 8 appropriations available for any fiscal year, HUD may use the discretion that Section 524(a)(4)(C) provides to mark rents up to market based on the number of criteria identified in Section 3-6.B. that the project meets.*

B. The project meets at least one of the following three characteristics:

1. Vulnerable Populations.

   The tenants of the project are a particularly vulnerable population, demonstrated by a high percentage (at least 50 percent) of the assisted units rented to elderly families, disabled families, or large families (large family is defined as a family of five or more persons). *The 50 percent can be inclusive of all categories or the individual referenced populations; or*

2. 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)*; or

3. Community Support.

   The project is a high priority for the local community as demonstrated by a contribution of State and/or local funds to the project. *Evidence of community support* may be in the form of tax credits, tax abatements, capital improvement funds, etc *that have been provided to the project within the last five years.*.

3-7. RENEWAL REQUESTS.

*See Section 2-17.A.2 as modified below. The owner:

A. *May request to enter into MUTM (Option One A or B) at any time

1. During the life of a Section 524 MAHRA contract. ***If the request is approved***, the owner will be allowed to terminate the existing contract early as long as the new contract equals 20 years and the owner agrees to renew the contract at the end of the 20 years for a term that equals the remaining term of the original terminated contract in whole months.*

2. *During the life of a non-MAHRA contract as long as the new contract equals 20 years, the owner agrees to the terms of the Preservation Exhibit to renew the contract at the end of the 20 years for a term that equals the remaining term of the original terminated contract and, for non-MAHRA contracts, the owner agrees to sign the HUD-93184 "Rider to Original Section 8 Housing Assistance Payments Contract".*

B. *Cannot request to terminate a "DEMO" or Preservation contract early to renew under MUTM.*

C. *Cannot request to terminate a "Full" Mark-to-Market contract (HUD-9642) early to renew under MUTM.*

D. *Cannot request to terminate a Rental Assistance Demonstration contract early to renew under MUTM .*

3-8. PROCESSING INSTRUCTIONS.

See Section 2-17 as modified below.

A. Initially Eligible. *The AE/CA must use the owner's RCS to determine if the project is eligible for renewal under* either Option One-A or One-B. *The AE/CA, along with a qualified appraiser, will also review the RCS 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. For transactions that include a RCS that has "as is" and "after rehab" market rent determinations as part of a Chapter 15 transaction, the AE/CA must use the "as is" market rents to determine initial eligibility.*

B. Not Eligible.

1. If the project is not eligible for Option One-A, but meets the eligibility criteria for Option One-B, the AE/CA will notify the owner and request the owner to modify its renewal request.

2. If a project is not eligible for Option One-A or One-B,

a. *In the case of a request for the early termination of an existing contract, the owner may be permitted to withdraw its renewal request entirely, in which case the existing contract would remain in place.*

b. *In all other cases the owner must switch to any other renewal option the project is eligible for including Option Six, Opt-Out. If an owner selects an option, other than Option One, then the owner's RCS, subject to review described in Chapter 9 of this Guide, shall be used to determine the market rents for the project.*

3. *In the case where an existing contract has expired, the AE/CA may provide short-term Renewal Contract at current rents to the owner while the owner determines the other renewal options for which the project may be eligible.*

C. Comparability Studies. Along with a request to Mark-Up-To-Market, the owner must submit a RCS prepared following the guidelines detailed in Chapter Nine of this Guide.

3-9. ANNUAL RENT ADJUSTMENTS DURING A MULTIYEAR CONTRACT.

A. No budget-based rent increases ***are*** permitted under the terms of MUTM contracts. In years two through five, the AE/CA adjusts rents by the published OCAF. (See Section 2-17.B. or 2-17.C. for processing details.)

B. For projects with a contract term that exceeds five years, the AE/CA should follow the instructions in Section 2-17.C.4. concerning fifth year adjustments.

Chapter Four

Option Two - Contract Renewals for Other Projects with Current Rents At or Below Comparable Market Rents

4-1. ELIGIBILITY.

A. Option Two is for owners who request a renewal of their Section 8 contract where the RCS indicates that:

1. The contract's *aggregate* current rents are at or below comparable market rents, or

2. The contract's aggregate current rents exceed comparable market rents, but the project is exempt from MTM restructuring and the owner is willing to cut the rents to comparable market rents prior to renewal of the contract.

B. *Owners can include both nonprofit and for profit entities. In cases where a transfer is involved in a transaction, the purchaser must meet the definition of owner.*

4-2. CONTRACT RENEWAL.

A. *Owners must follow the instructions in Section 2-17 when submitting the necessary information to renew the Section 8 HAP contract.

B. *Rents may be adjusted by either:

1. An OCAF, or

2. At the discretion of HUD, a budget-based rent adjustment limited by the market.*

4-3. ANNUAL RENT ADJUSTMENTS DURING A MULTIYEAR CONTRACT.

A. In years two through five, the AE/CA adjusts rents by the published OCAF, or at the discretion of HUD a budget based rent request. (See Section 2-17.B. or 2-17.C. for processing details.)
For a project with a contract term that exceeds five years, the AE/CA should follow the instructions in Section 2-17.C.4. concerning fifth year adjustments.

4-4. PROCESSING INSTRUCTIONS.

A. *For renewals follow the instructions in Section 2-17.A.*

B. *For rent adjustments follow the instructions in Section 2-17.B. or 2-17.C.*

Chapter Five

Option Three Referral to Recap

5-1. ELIGIBILITY *WAIVERS TO CHAPTER FIVE WILL BE IN ACCORDANCE WITH RECAP POLICIES*

A. Expiration of Statutory Authority: The statutory authority for the Mark-to-Market restructuring tools under MAHRA used by the Office of Recapitalization (Recap) (formerly known as OAHP expires on ***October 1, 2017*** ("Sunset"), unless extended by statute. Prior to Sunset, owners of projects subject to an expiring Section 8 HAP contract with above-market rents and that are subject to an FHA-insured or a Secretary-held mortgage, unless exempt from Mark-to-Market debt-restructuring under section 514(h) of MAHRA, must be referred to Recap.

B. Once Eligible, Always Eligible: *Per section 512(2)(C) of MAHRA, as amended, prior to Sunset, FHA-insured projects or projects with Secretary-held mortgages that had above-market Section 8 contract rents at the time of initial renewal under section 524 of MAHRA (on or after October 1, 1998), are eligible for referral to Recap, and the owner may request debt restructuring, even though the HAP contract was previously renewed under section 524 of MAHRA and even if current rents under the initial or subsequent MAHRA renewal contract are now at or below market. Projects must have a current, project-based Section 8 HAP contract, and an FHA-insured or HUD-held mortgage, to be eligible for Mark-to-Market.*

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

D. "Preservation Projects": The owner of a Preservation Project may request Mark-to-Market debt-restructuring any time prior to Sunset, only if the project is being transferred or sold. Upon such a request, Recap will determine whether to accept the project for M2M debt-restructuring.

E. "Exception Projects": Exception projects, as defined in Chapter Six, (which includes Section 542(c) Risk Sharing projects), are ineligible for referral to Recap, and once identified, will not be retained by Recap for renewal. However, once the condition(s)

qualifying a project as an Exception Project no longer exists, the project is eligible for referral to Recap for restructuring.

Note: Risk Sharing Projects do not meet the definition of "eligible multifamily housing project" in section 512(2) of MAHRA, and, on this basis, are eligible for renewal as an exception project under Option Four.

F. Ineligible Project Determinations: A project owner who is suspended or debarred is ineligible for a full debt restructuring ("Full"). However, even if the project is ineligible for a Full, the project may remain eligible as a project that is financially viable without a debt restructuring after the rents are reduced to comparable market rents ("Lite"). This kind of project should be referred to Recap for a rent determination. Eligibility for a Lite will be determined on a case by case basis by Recap after a review of the project's underwriting, which will include the results of the RCS and an analysis of the project's expenses. If the project is determined to be ineligible for a Lite and the owner or project has been rejected, Recap will return the HAP Contract to the AE. If the HAP Contract is renewed even though the project is ineligible for a Lite, the AE must renew the HAP Contract using a Watch List Contract (HUD-9643) at Recap-determined comparable Market Rents. The project should be designated, monitored and entered into the Integrated Real Estate Management System (IREMS) as a project subject to a Watch List Contract, and defined in IREMS as a project with a loan that failed M2M restructuring and is therefore operating under a Watch List Contract. Follow OAMPO guidance on monitoring of projects subject to a Watch List Contract.

G. *Mod Rehab Projects: Projects with Mod Rehab HAP contracts are eligible for Recap restructuring before Sunset as long as the projects meet the requirements in Section B, above. The Interim (Full) Mark-to-Market Renewal Contract (HUD-9640) is used for entry into Recap for a Mark-to-Market restructuring.*

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

5-2. BINDING COMMITMENT

Binding Commitment: Processing may continue after Sunset if, prior to Sunset, there is a binding commitment to restructure. The Renewal Worksheet for Option Three, which is part of form HUD 9624, Contract Renewal Request Form, contains language which constitutes a binding commitment for purposes of MAHRA. The execution of the Renewal Worksheet for Option Three by the owner and an authorized HUD representative thus allows debt restructuring to continue after Sunset, as does a fully executed Interim (Full) Mark-to-Market Contract. Such restructuring may continue so long as the owner and/or project remains eligible for debt restructuring under MAHRA at all times, and shall be subject to MAHRA,

the regulations promulgated under MAHRA ("Regulations"), and the Operating Procedures Guide (OPG).

5-3. ENTRY INTO RECAP

A. Above-Market Projects: Prior to Sunset, an owner of an eligible project may request:

1. Option 3A (Lite): A renewal of the contract without debt restructuring, with the rents reduced to comparable market rents. Use the Interim (Lite) Mark-to-Market Renewal Contract (HUD-9641), for entry into Recap as a Lite. An Interim (Lite) Mark-to-Market Renewal Contract has a term determined by Recap, not to exceed 12 months. Rent adjustments are prohibited during the term of the Interim (Lite) Mark-to-Market Renewal Contract.

2. Option 3B (Full): A debt restructuring and contract renewal (with a term of up to 20 years), with the rents reduced to comparable market rents. Use the Interim (Full) Mark-to-Market Renewal Contract, for entry into Recap as a Full. Rent adjustments are prohibited during the term of the Interim (Full) Mark-to-Market Renewal Contract.

Note: If HUD determines that contract rents exceed comparable market rents and the project is otherwise eligible for referral to Recap for debt restructuring and/or rent reduction, the AE must forward the project to Recap for processing.

Note: In cases where a CA makes the determination that contract rents exceed comparable market rents and that the project should be referred to Recap, the CA must return the contract to the AE with the recommendation that the project be referred to Recap for debt restructuring and/or rent reduction.

B. Currently At-Market Projects: Prior to Sunset, any project that had above-market rents at the time of the initial renewal on or after October 1, 1998, may be eligible for a full debt restructuring even if the current rents are at-or below-market. An owner of such project can request a debt restructuring as follows:

1. Owners with Watch List contracts may request re-entry into Recap for restructuring, but must have a binding commitment as set forth in Section 5-2, above, prior to Sunset, in order for any restructuring to occur after Sunset. If approved by Recap for re-entry, terminate the Watch List Renewal Contract and issue the Interim (Full) Mark-to-Market Renewal Contract.

2. Owners who were originally eligible for Recap, but whose rents were reduced without the benefit of debt restructuring may request entry into

Recap prior to Sunset. Generally, this group includes any project, including previously approved Lite projects, that had above market rents at the time of the initial renewal and are otherwise eligible. Use the Interim (Full) Mark-to-Market Renewal Contract.

C. Required Owner Submissions:

1. For Lite Rent Restructuring: The owner submits a Contract Renewal Request Form (HUD-9624), including a certification that project rents exceed comparable market rents (or exceeded comparable rents on or after October 1, 1998), and neither the owner nor any affiliate is suspended nor debarred. If the owner or any affiliate is suspended or debarred, the project may continue to be eligible for a Lite. (Refer to Chapter 6, "Approvals, Ineligibility and Appeals", of the Recap Operating Procedures Guide.) The AE/CA executes the Interim (Lite) Mark-to-Market Renewal Contract for a term determined by Recap, not to exceed 12 months.

*An owner requesting a Lite is also required to submit:

a. A physical inspection report,

b. A copy of the most recent audited financial statements (all financial statements must be official electronic submissions to HUD); and

c. A RCS.*

2. For Full Debt Restructuring: The owner submits a Contract Renewal Request Form, including a certification that project rents exceed comparable market rents (or exceeded comparable rents at a renewal on or after October 1, 1998), and that neither the owner nor any affiliate is suspended nor debarred. If the owner is suspended nor debarred, a request for a debt restructuring may be rejected by the Secretary, unless the debt restructuring includes a transfer of the project to a HUD-approved purchaser. If any affiliate is suspended or debarred, the project may continue to be eligible for contract renewal with restructuring at the Secretary's discretion. (Refer to Chapter 6, "Approvals, Ineligibility and Appeals" of the Recap Operating Procedures Guide.)

D. The AE/CA:

1. If the project is entering Recap for a debt restructuring, the AE/CA executes the Interim (Full) Mark-to-Market Renewal Contract and forwards it to Recap for processing. The Interim (Full) Mark-to-Market Renewal Contract expires by its terms upon the earlier of: 1) twelve (12) months; 2) last day of the month of closing under the Restructuring Commitment; 3) upon a final determination as defined in MAHRA and the Regulations ("Final Determination") that results in the discontinuance of the Restructuring process or that the owner is in default under the renewal contract.

2. If a project subject to a Watch List Renewal Contract (HUD-9643) is re-entering Recap, the AE/CA terminates the Watch List Renewal Contract and replaces it with the Interim (Full) Mark-to-Market Renewal Contract for a specific period of time determined by Recap to complete the processing.

3. If a completed Lite project wants to return to Recap for a debt restructuring, the AE/CA executes the contract for a specific period of time (12 months or less) determined by Recap to complete the processing. Use the Interim (Full) Mark-to-Market Renewal Contract to complete the processing.

E. Extensions of Interim Contracts:

1. Recap/Participating Administrative Entity (PAE)/HUD Delays: The AE, Recap or the PAE may request an extension of the Interim Contract at above market rents for any project that has exceeded the one year period. Extensions at above market rents may not exceed the approved expiration date. Recap projects with approved extensions must use the appropriate interim contract.

2. Owner Delays: There will be no extension at above-market rents when HUD determines that the owner is the cause of the delay. In these cases where additional time is required, the AE/CA will extend the Interim Full Renewal contract at market rents. Recap will direct the AE/CA to extend the contract for a sufficient period of time required to bring the project to closing.

5-4. CONTRACT RENEWALS – RENT OR DEBT RESTRUCTURING

A. General Policy: Once Recap processing is completed, Lites and Fulls are renewed as follows:

1. Lites: Lites are renewed under Section 524 of MAHRA. For multiyear contracts, contract rents are adjusted annually, per the renewal contract, by application of an OCAF or, if HUD approves, on a budget basis.

2. Fulls: Upon the closing of a debt restructuring, Fulls are renewed under Section 515 of MAHRA, generally for a term no greater than 20 years. Budget-based rent adjustments are not permitted during the term of a Full Mark-to-Market Renewal Contract or any renewal thereof, and under no circumstances may a Full Mark-to-Market Renewal Contract be terminated prematurely to permit the owner to participate in any other renewal option, including Mark-up-to-Market. Owners are required to combine contracts (including those that expire in later fiscal years) under a Full Mark-to-Market Renewal Contract.

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

1. Recap Lites:

*Upon notifying the PAE and owner of Recap's approval of the Lite, Recap contacts the OAMPO's Assisted Housing Division Director via email, requesting funding for the HAP Contract. A copy of Exhibit A, which includes a breakdown of unit number and type, rents, utility allowances and monthly totals, is provided in the email.

Once a notification of funding (in the form of an email, or a Notice of Funding Authorization, from OAMPO's Assisted Housing Division Director, has been received by Recap, Recap completes the one year Basic Renewal Contract (HUD-9636) or the multi-year Basic renewal Contact (HUD-9637) and forwards the contract to the PAE for the owner's signature. An electronic copy is also provided to the AE. The PAE will forward the contract to the owner for signature with instructions to return the contract to the AE/CA, for HUD execution and processing.*

2. Recap Fulls:

Upon notification to the PAE and owner of Recap's approval of the Full transaction, Recap contacts OAMPO's Assisted Housing Division Director via email, to provide early notification that the restructuring plan has been approved by Recap and a Restructuring Commitment is being issued to the owner. A copy of Exhibit A, which includes a breakdown of unit number and type, rents, utility allowances and monthly totals, is provided in the email (this is for early notice only, OAMPO's Assisted Housing Division Director may choose to process the request at this point, or wait for official funding request from Recap). When Recap is notified by the PAE that the Restructuring Commitment has been signed by the owner, an official funding request is sent to OAMPO's Assisted Housing Division Director, requesting the amount needed and the tentative closing date. An updated copy of Exhibit A, (in the case that rents have changed) is provided with this email. If the funding request was not processed by OAMPO's Assisted Housing Division Director upon early notification, it must be processed at this time. Once a notification of funding (in the form of an email, or a Notice of Funding Authorization, from OAMPO's Assisted Housing Division Director), has been received by Recap, Recap completes the Full Mark-to-Market Contract and forwards the contract to the PAE. The PAE will forward the contract to the owner for signature with instructions to return the contract to the AE/CA, for HUD execution and processing, prior to Mark-to-Market closing. An electronic copy is also provided to the AE, OAMPO's Assisted Housing Division Director, and HQ Closing Coordinator.

C. Post Closing: After closing, the Recap Regional Preservation Office will provide a "Closing Docket Transmission Memorandum" to the Multifamily Regional Center summarizing the details of the debt restructuring. Most of the information included in the Transmission Memorandum is also available through the Recap Management Information System database system. Refer to Chapter Seven, Closing, and Chapter Eight, Post-Closing Document Distribution of the Recap Operating Procedures Guide (OPG) for further information.

D. Owner Opt Outs: If an owner has decided to opt out of the project-based Section 8 contract while assigned to Recap for a rent or debt restructuring, and the Multifamily

Regional Center has confirmed that the owner has decided to opt out, Recap will complete the rent determination, inform the AE of the rent determination, and cease processing. If additional time is required to either process tenant vouchers or to complete the tenant notification period, the AE/CA will prepare a one-year Basic Renewal Contract, (HUD 9636), at comparable market rents using Recap's rent determination.

E. Owner Prepayments: If an owner decides to prepay the FHA-insured mortgage after submitting a Contract Renewal Request Form, and the Multifamily Regional Center has confirmed that prepayment has occurred, Recap will complete the rent determination, inform the AE of the rent determination, and cease processing. Under these circumstances, the project is not eligible for renewal under Option Four (i.e., as an Exception Project) and would not be eligible for renewal under Option Four in the future except as provided for in Section 6-4 (Section 202 Refinancings). The AE will prepare a Basic Renewal Contract at comparable market rents using Recap's rent determination.

F. Interim Section 8 Processing Guidance for Recap Projects: Processing Section 8 contracts for Lites, Fulls and Watch List properties should be done in accordance with the Multifamily policies and procedures regarding renewals of Project-Based Section 8 Housing Assistance Payments Contracts.

G. Performance-Based Contract Administrator: The Financial Management Center (FMC) will execute the Annual Contributions Contract (ACC) as well as complete the fund reservation process.

I. Contract Types: Please refer to Section 2-6 A of this Guide for a list of appropriate contracts to use when renewing a MTM contract.

5-5. *SUBSEQUENT RENEWALS*

A. *Lite Contracts. A project that receives a rent reduction and is renewed as a Lite using the Basic Renewal Contract, may, at subsequent renewal (generally five years), be renewed at the owner's request under any option that the project is eligible for at the time the contract expires.*

B. *Full Contracts (Full Mark-to-Market Renewal Contracts). When a Mark-To-Market debt restructuring is completed, an initial Full Mark-to-Market Renewal Contract is executed generally for a term of 20 years (the term may be 1 to 20 years), and is to be subsequently renewed under Option Three B up to the remaining term of the Use Agreement (which, by operation of section 514(e)(6) of MAHRA, must be at least 30 years). The term of the subsequent renewal (or sum of the subsequent renewals, if there is more than one), together with the term of the initial MTM contract, may not extend beyond the term of the Use Agreement. As long as the Use Agreement is in effect and the offer(s) for subsequent renewal from the Secretary does/do not exceed the remaining term of the Use Agreement, an owner is obligated to accept such offer(s) to renew the Full Mark-To-Market Renewal Contract during the term of the

Use Agreement, if such offer(s) is/are on the same terms and conditions. Full Mark-To-Market Renewal Contracts must be subsequently renewed using the same Full Mark-to-Market Renewal Contract form (HUD-9642) used for the initial Full Mark-To-Market renewal. Note that Full Mark-to-Market Renewal Contracts permit only annual OCAF rent adjustments and the rents for renewal are set at the levels under the expiring contract.*

Example 1: Project was restructured under Mark-to-Market and received a 20 year Full Mark-to-Market Contract at that time. After the expiration of this contract, HUD offered a 10 –year Full Mark-to-Market Renewal Contract (at the existing rents plus OCAF). The owner is required to accept the Renewal Contract because the term of the Use Agreement has not expired and the Renewal Contract term does not exceed the remaining term of the Use Agreement). The Renewal Full Mark-to-Market Contract would only allow OCAF rent increases.

*During the term of the Use Agreement: No RCS is allowed or required; no budget-based rent adjustments are permitted; and, under no circumstances, may a Full Mark-to-Market Contract be terminated prematurely to permit the owner to participate in any other renewal option, including Mark-up-to-Market. All renewals must utilize the Full Mark-to-Market Renewal Contract form (HUD-9642).

C. *Early Contract Termination and Renewal: Non-Exception Rent (See Section D, below, for Exception Rents). To facilitate the refinancing of a debt-restructured project's first mortgage loan and satisfy a typical lender condition for such refinancing, owners often request an extension of the term of the project's Full Mark-to-Market Renewal Contract. [Note that a refinancing will generally trigger the due-on-sale or -refinance clause contained in all Mark-to-Market mortgages. Waivers of this clause are subject to separate HUD guidance, Notice H 2012-10 or its successor.] Extensions of the Full Mark-to-Market Renewal Contract are not permitted, but the contract may be terminated and then renewed.

HUD may grant such requests only if the owner agrees to an extension of the term of the Use Agreement, if necessary, to equal the term of the renewed Full Mark-to-Market Renewal Contract. Just as with the original Full Mark-to-Market Renewal Contract, rent adjustments would continue to be limited to OCAF only. In each instance that a Full Mark-to-Market Renewal Contract is terminated early and then immediately renewed again, the subsequent renewal must be perfected using the Full Mark-to-Market Renewal Contract form HUD.*

**Example 2: Assume the facts of Example 1, above. Five years into the 10 year Full Mark-to-Market Renewal Contract, the owner now wishes to refinance the project and one of the lender conditions for refinancing is that the remaining term of the Full Mark-to-Market Renewal Contract be at least 10 years. The owner may request approval from HUD for a 5-year extension of the term of the Project's Use Agreement (to 35 years) and early termination of the existing 10 year Renewal Contract. If HUD approves these requests, the owner would receive a third Renewal Contract which can now be 10 years (Original 20 year*

*Full Mark-to-Market Renewal Contract, plus the second Renewal Contract which had run 5 years when terminated plus the 10 year term of the third Renewal Contract total 35 years, equal to the term of the extended Use Agreement). Rent increases would be limited to OCAF only for the entire 35 years.**

The anniversary date of the Renewal Contract will be based on the starting date of that Renewal Contract. The annual OCAF rent adjustment date is therefore reset based on the new anniversary date. This example may have the effect of more than 12 months between OCAF adjustments between the last OCAF adjustment under the current Full Mark-to-Market Contract and the first OCAF adjustment under the Renewal Contract. HUD will agree to the early termination and renewal of a Full Mark-to-Market Renewal Contract only to the extent that the owner accepts the resulting effect (described above) on the otherwise annual rent adjustment scheme.

Example 3: A Full Mark-to-Market Contract has an anniversary date of January 1, and receives an OCAF rent adjustment on that date. At the owner's request, the contract is terminated and renewed effective July 1 of that same year to accommodate new financing. The initial rents on the Renewal Contract are the same as the then-contract rents on the terminated contract. The new anniversary date of the contract is July 1, with the next OCAF rent adjustment one year later on July 1. It will therefore be 18 months between OCAF rent adjustments.

D. *Early Contract Termination and Renewal: Exception Rents. In no event will a contract with MAHRA Section 514(g) "Exception Rents" be renewed with a term that extends beyond the original term of the Use Agreement; the term of the Use Agreement on such properties will not be extended beyond 30 years from the date of the Mark-to-Market restructuring. An early contract termination and subsequent renewal will be processed only if the combined terms of the contracts do not exceed 30 years.*

Example 4: Assume the facts of Example 2 (the owner is 5 years into a 10 year Renewal Contract, year 25 post restructuring), but under this Example 4, the contract has Exception Rents and the owner requests a 10 year extension of its Renewal Contract with Exception Rents. The owner's request would be rejected by HUD because the 10 year term of a third Renewal Contract, combined with the terms of the prior Mark-to-Market Contracts, would exceed 30 years.

E. *Renewal After Expiration of the Use Agreement. With the exception of certain transactions with qualified nonprofits which are for more than 30 years, renewals for any period beyond 30 years from the date of the Mark-to-Market restructuring (assuming that the Use Agreement has not been extended pursuant to Section 5-5 (C) will be under then-applicable statutes and regulations, using any renewal option for which the project is eligible at that time.*

5-6. "WATCH LIST' MTM PROJECTS

A. Watch List Contracts are used when:

1. Recap makes a determination of ineligibility under Section 516(a) of MAHRA; or,
2. An owner refuses to change his/her election from a Lite to a Full after Recap has determined that a renewal without a debt restructuring would not be sufficient to maintain adequate debt service coverage and/or the physical integrity of the project; or,
3. An owner refuses to execute a Restructuring Commitment or close on a Full; or,
4. Recap concludes that the restructuring process will not result in an economically and/or financially feasible project.

See Chapter Six, "Approvals, Ineligibility, and Appeals" in the OPG for further information on ineligibility and discontinuance in Recap.

Use the Watch List Renewal Contract (HUD-9643). These contracts are limited to one year terms; multi-year contract terms are not permitted for projects placed on the Watch List. See HUD-9643, Section 4d(2).

B. Processing Watch List Contracts: Once the PAE completes the processing, Recap prepares a new one-year Watch List Renewal Contract HUD-9643 and forwards a copy of the contract to the AE/CA.

1. Market Rents and Term: The Watch List Contract reduces rents to market using Recap's determination, and requires the owner to submit monthly accounting reports. The project is placed on the Watch List, and defined in IREMS as a project subject to a loan that failed M2M restructuring and is therefore operating under a Watch List Section 8 HAP Contract, to be monitored by a designated Account Resolution Specialist.

2. Term and Rent Adjustments: Unless the project meets the conditions listed below for removal, a project remains on the Watch List for three years and would receive three contracts, each of one year's duration. No rent adjustments are allowed during the term of each contract, but OCAF adjustments are permitted between contracts. For example, there could be an OCAF adjustment for the rents established in the second Watch List contract and the third Watch List contract.

3. Continued Mark-to-Market Eligibility: If, after the effective date of the Watch List Contract, the owner chooses a full debt restructuring, he/she must submit a HUD 9624, Contract Renewal Request Form, to the AE/CA. Recap reserves the right to reassess the eligibility and suitability of the project and the owner. If approved for re-entry, the owner must execute an Interim (Full) Mark-to-Market Renewal Contract at current market rents. Prior to Sunset, the owner must have a

binding commitment to restructure the debt in order for processing to continue after Sunset. See Section 5-2.

4. Removal from the Watch List: A project can only be removed from the Watch List if any one of the following is satisfied:

   (a) The owner requests to return to Recap, and Recap approves;

   (b) The project has been on the Watch List for three years, and the Account Resolution Specialist has determined that the project is not experiencing physical, financial, or managerial signs of deterioration;

   (c) The owner has prepaid the mortgage; or

   (d) The owner has opted out of the Section 8 Program.

   Multifamily Regional Center may request removal of a project from the Watch List by submitting written justification to Recap Headquarters.

C. Monitoring Watch List Contracts: Projects on the "Watch List" list are considered to be at greater risk and have questionable long-term financial viability. As a result, these projects must be monitored closely. Refer to Handbook 4350.1 and other guidance for policies and procedures that must be applied to all projects on the Watch List.

D. File Return and IREMS Documentation: The PAE will return project files to the appropriate AE who is responsible for entering the following information in the problem statement screen in IREMS:

   1. The monitoring category and the reason(s) why, i.e., defined as loans that failed M2M restructuring and are therefore operating under a Watch List Renewal Section 8 HAP Contract, and

   2. Any other relevant information provided by the PAE/ Recap process that indicate the physical, financial and/or management problems that should be closely monitored over the term of the contract.

E. If, over the term of the contract, the project shows signs of deterioration, the AE/CA should take immediate actions that are consistent with Handbook 4350.1, Multifamily Asset Management and Project Servicing Guide (See Chapter Thirteen of this Guide if it is determined that the housing assistance payments should be abated).

F. Owner Prepayments: If the owner prepays the mortgage while under a Watch List Contract, the AE will notify Recap, the project will be removed from the Watch List, and the AE will issue a Basic Renewal Contract at the comparable market rents established under the Watch List Contract.

5-7. GENERAL INFORMATION

A. Recap Processing Information: The OPG addresses program policies and procedures for Lites and Fulls, eligibility requirements, rent and debt restructurings, closing and post-closing procedures and PAE responsibilities. The OPG can be found at:

   www.portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/presrv/presmfh

B. MTM Contacts: Contact your local Debt Restructuring Specialist (DRS) located in one of two Regional Preservation Recap Offices – Washington, D.C. or Chicago, or you may contact Headquarters at (202) 708-0001.

Chapter Six

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

6-1. ELIGIBILITY.

At the time of contract expiration or termination, a project may renew under Option Four at "exception rents" if:

- *The project is exempt from debt-restructuring under section 514(h) of MAHRA: or
- The project does not meet the definition of an "eligible multifamily housing project" under section 512(2) of MAHRA.*

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

1. State or Local Government Financing. Projects for which the primary financing or mortgage insurance was provided by a unit of State government or a unit of general local government (or an agency or instrumentality of either) and is insured under the National Housing Act *and the implementation of a Mark-to-Market Restructuring Plan would conflict with applicable law or agreements governing such financing.*

Note: State and local government financed projects that are not insured under the National Housing Act are not subject to* Recap *review.

To confirm the exemption, a determination must be made by Recap as to whether or not implementation of a Mark-to-Market Restructuring Plan is in conflict with applicable law, or agreements governing such financing. In these cases, the contract and supporting documentation of the potential conflict must be referred to Recap for review. The owner (or lender) must submit an opinion of counsel in a form acceptable to HUD, along with copies of the relevant financing documents or applicable local or State legal authority.

Upon receipt of the owner's documentation, Recap will complete its review and notify the AE/CA of its determination generally within 5 business days.

a. In cases where Recap determines that the project is not (or is no longer) exempt from debt restructuring, the AE/CA will notify the owner that *the project may either be processed under B.2. below or the owner may select another renewal option.*

***Note**: In cases where referral to Recap is necessary, CAs must return the contract to the AE with the recommendation that the AE forward the contract to Recap for review.*

b. In cases where Recap determines that the Restructuring Plan would be in conflict with applicable laws and/or agreements, Recap will return the case to the AE/CA for renewal under the Option Four provisions.

2. Section 202/8 and Section 515/8 Projects. Projects currently financed under Section 202 of the Housing Act of 1959 or Section 515 of the Housing Act of 1949. However, these projects can be eligible for restructuring if refinanced with FHA mortgage insurance.

Note: Section 202 and 811 Capital Advance projects are not eligible because they do not have Section 8 contracts.

3. *Refinanced Section 202 project. The project was refinanced pursuant to Section 811 of the American Home Ownership and Economic Opportunity Act of 2000. See Section 6-4 below.*

4. SRO Mod Rehab. Projects that have an expiring contract under Section 8 of the United States Housing Act of 1937 pursuant to Section 441 of the Stewart B. McKinney Homeless Assistance Act.

B. 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.*

2. *Projects that are subject to an FHA-insured or HUD-held mortgage* with rents at or below comparable market rents.

Note: An owner must obtain a RCS to establish eligibility under Section 6-1.B.2.

6-2. RENEWALS.

A. *The "lesser of" test is required at both initial and subsequent renewal. (See section 524(b)(1) of MAHRA and 24 CFR Part 402.5(b).) The rents are to be set at the lesser of:*

1. Current rents as adjusted by OCAF; or

2. Budget-based rent level.

Note: Project rents may be reduced.

Reminder: For projects (including 202 projects) that are being refinanced, "current debt service" means the debt service which will take effect when the new loan closes (See Section 2-15.B for more details).

B. *See Sections 2-15 and 2-17.A. for processing instructions.*

6-3. RENT ADJUSTMENTS FOR MULTI-YEAR CONTRACTS.

A. Rents may be adjusted by either:

1. *An* OCAF adjustment; or

2. A budget-based rent adjustment. If requesting a budget-based rent adjustment, the rent level required to meet operating expenses based on the format required by HUD Handbook 4350.1, Chapter 7 and HUD-9635**,** must be submitted with the request. Notwithstanding the instructions in the Handbook, owners must use current debt service if an owner requests a budget-based rent adjustment. If requesting a budget-based rent adjustment:

   a. The owner must submit or have submitted within the preceding 5 years a RCS prepared following the instructions found in Chapter Nine of the Section 8 Renewal Guide. *This requirement does not apply if the owner is seeking a "0" budget based rent adjustment.*

   b. Previously submitted RCS's are valid for 5 years and will be adjusted annually by OCAF.

   c. If the RCS demonstrates that the current rents are above comparable market rents, the request for a budget-based rent adjustment will be denied (except any request for a $0 budget-based rent adjustment) and owner will only receive an OCAF rent adjustment.

d. If the proposed rents as adjusted on the basis of a budget, do not exceed comparable market rents as established by the RCS, the owner may, at HUD's discretion, receive a budget-based rent increase, not to exceed comparable market rents.

Note: In the case of a 515 project, accept the RHS approved budget without review; however the owner* will be required to submit a RCS if the resulting rents exceed the rents the project would have received from an OCAF adjustment (see chapter 14)*

Note: In the case of a 202 project with a written and signed "Debt Service Savings Agreement," HUD will allow the dollar amount listed in the agreement to be included in the budget.

B. *There is no "lesser of" test required at the time of the annual rent adjustment for a multiyear HAP contract.*

C. *See Section 2-17.B for processing instructions.*

6-4. SECTION 202 REFINANCINGS.

A. If a project owner complies with the provisions of Section 811 of the American Home Ownership and Economic Opportunity Act of 2000 then it remains exempt from debt-restructuring, notwithstanding above market rents and an FHA-insured mortgage.

B. *If the project owner does not comply with the provisions of Section 811, then the project will remain exempt from debt-restructuring unless the Section 202 Direct Loan is refinanced with a FHA-insured mortgage when the HAP contract comes up for renewal.*

C. *Some properties that have prepaid the original Section 202 Direct Loan may now wish to "re-refinance" these former 202 projects. If the project owner re-refinances with conventional (non-FHA) financing, the project retains eligibility to renew under Option 4 of the Renewal Guide ("Renewal of Projects Exempt from *or not Eligible for Debt-Restructuring*") at the next expiration date of the HAP contract. However, if the owner re-refinances with an FHA insured loan, the project will no longer be exempt from Mark-to-Market restructuring and will lose the ability to renew under Option 4 upon the next expiration of the HAP contract. Following the re-refinance, the former 202 project must continue to operate under the terms and conditions of the recorded Section 202 Use Agreement.*

D. *For detailed information on refinancing of 202 properties, please refer to Notice H 2013-17 or subsequent notices that may amend or supersede this notice.*

Chapter Seven

Option Five - Renewal of Portfolio Reengineering Demonstration or Preservation Projects

7-1. ELIGIBILITY

A Portfolio Reengineering Demonstration ("Demo") Program Project is any project that completed the Demo Program as evidenced by a recorded Demo Program Use Agreement. If the owner entered into the Demo Program but did not execute and record a Demo Program Use Agreement, it is not eligible for renewal under Option Five.

Preservation projects primarily consist of Section 236 and 221(d)(3) BMIR projects whose owners entered into long-term *Use Agreements with HUD under either Title II, Emergency Low Income Housing Preservation Act of 1987 (ELIHPA) or Title VI, Low-Income Housing Preservation and Resident Homeownership Act of 1990 (LIHPRHA) (the Preservation Programs).*

Portfolio Reengineering Demonstration Program Projects

The Demo Program was undertaken as an interim measure until a permanent debt-restructuring program could be adopted. The program was authorized for FY 1996, 1997, and 1998. There are 188 DEMO projects remaining in the program.

*Properties participating in the Demo were subject to the rules of the program in force at the time of their entry into the program. When time limits for restructuring activities were not met, properties might:

- Leave the program;
- Receive extension in some circumstances; and/or
- Restructure under the authorization in force when the time limits were reached.*

Restructurings were completed under the Demo program through 1999 and into the year 2000.

7-2. RENEWAL OF PORTFOLIO REENGINEERING DEMONSTRATION PROJECTS

A. If the project has either a recorded Mortgage Restructuring Demo Program Use Agreement or a recorded Budget-Based Without Mortgage Restructuring Demo Program Use Agreement:

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

2. The owner is required to accept offers from HUD to renew the Section 8 contract throughout the term of the Demo Use Agreement. Therefore, an owner cannot opt-out of the contract.

B. If the project went through the Demo Program but does not have a recorded Demo Program Use Agreement, it does not qualify as a Demo project. The owner:
1. Cannot renew its contract under Option Five.
2. May renew its contract under any other Option for which it qualifies.

7-3. OWNER SUBMISSION FOR DEMONSTRATION PROJECTS UNDER OPTION FIVE

A. Initial Renewal.
The Portfolio Reengineering Demonstration Program (PRD) has been replaced by the M2M program and HUD is no longer processing initial renewals under the PRD program.

B. Subsequent Renewal

1. A Demonstration project will renew under Option Five, *with a minimum term of one year and a maximum term not to exceed *the lesser of 20 years or the remaining life of* the project's Demo Program Use Agreement.

Note: Owners have the ability to request that the existing Demo Program Use Agreement be extended in order to facilitate a refinancing transaction.

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

C. Rent adjustments

1. In the case of a renewal contract with a term in excess of five years,* at the end of each 5-year period, the owner must obtain a RCS to permit

HUD/CA to adjust project rents to that extent that they have risen above or fallen below market during such 5-year time period.

a. If the rents are below comparable market rents, the AE/CA shall adjust the rents to equal the comparable market rents.
b. If the rents are above comparable market rents, the AE/CA shall reduce the rents to the comparable market rents.*

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

a. The published OCAF, or

b. A budget-based rent adjustment.

7-4. PROCESSING INSTRUCTIONS FOR DEMONSTRATION PROJECTS

A. Portfolio Reengineering Demonstration Section 8 contracts are not eligible for Recap processing.

B. See Section 2-17 for detailed processing instructions.

Note: Owners have the ability to request that the existing Demo Program Use Agreement be extended in order to facilitate a refinancing transaction.

7-5. PRESERVATION PROJECTS (LIHPRHA AND ELIHPA).

When owners entered into long-term Use Agreements with HUD under the Preservation Program, HUD agreed to certain items which were outlined in the Preservation project's approved Plan of Action (POA).

In a majority of Preservation contracts, the POA allows for either a budget-based rent adjustment, *an OCAF rent adjustment,* or an Annual Adjustment Factor (AAF) rent adjustment.

A. Renew the HAP Contract for a Preservation Project contract according to the provisions outlined in the project's *approved* POA *which includes the HUD approval letter and the recorded Preservation Use Agreement.* The HAP Contract for Preservation Projects ***cannot*** be renewed under any option other than Option Five *unless the project is being transferred or sold, in which case the owner may request Mark-to-Market debt-restructuring (Option Three) in accordance with section 5-1.D.*

B. Corrections. There are instances where some *Section 8* contracts of Preservation projects were renewed under terms different than the terms in the approved POA. In these cases the AE/CA should calculate the rent as it would have been if the contract(s) had been renewed under terms consistent with the

approved POA. This is the "current rent" that should be used as the basis for determining the renewal rent. There is no reimbursement for income lost due to past renewals.

C. Opt-Outs. In general, *approved* POAs do not permit the owner to opt-out of the Section 8 contract. However, if a Preservation project owner believes it has the authority to opt-out of the Section 8 contract:

1. **Plan**. The owner must submit a detailed plan to the AE/CA that indicates how it intends to honor its obligations under the Use Agreement to maintain the project as affordable housing.

   a. This plan should detail how the owner intends to maintain the appropriate income mix.

   b. Owners must be made aware that should they elect to opt-out; they are not released from their obligations set forth under the long-term Use Agreement to provide affordable housing**.**

2. ***Role of the Local HUD Office***. The Regional Center or Satellite Office (or CA) should take the following steps:

   a. The AE/CA should review the *approved* POA to determine if it provides for the right of the owner to opt-out of the Section 8 contract. In general, opt-outs were precluded, but each *approved* Preservation POA was structured differently, and as a result, the AE/CA must review each *approved* POA *which includes the HUD approval letter* and *the recorded Preservation* Use Agreement to determine whether or not the project is eligible to opt-out of the Section 8 contract.

   b. If the *approved* POA does not allow the owner to opt-out, the AE/CA should advise the owner that it must renew the Section 8 contract.

   c. If the *approved* POA allows the owner to opt-out, the owner must provide the standard one year notification of termination of the Section 8 contract(s) to the tenants. Eligible families will be issued enhanced vouchers to permit the families to remain in their units.

3. **Plan Submission to HQ**: If after review of the owner's plan, the AE/CA agrees that the owner is allowed to opt-out, the AE/CA forwards a copy of the plan to the Director of the Office of *Asset Management and Portfolio Oversight*, Headquarters for review and either approval or rejection.

D. Conflicting Documents. The *Preservation* Use Agreement was recorded to implement the terms of the *approved* POA. However, there may be instances where the terms of the *approved* POA and the Use Agreement conflict.

1. Since the Use Agreement is a recorded instrument, binding on all third parties, if a discrepancy exists between the *Preservation* Use Agreement and the *approved* POA, the *Preservation* Use Agreement prevails and is binding on all parties.

2. *The approved* POAs are far more extensive and cover many more items than are covered in a *Preservation* Use Agreement. In cases where there are items contained in the *approved* POA that are not addressed in the *Preservation* Use Agreement, the terms of the *approved* POA, as they relate to the specific item, are binding on all parties.

7-6. OWNER'S SUBMISSION FOR PRESERVATION PROJECTS

A. A multiyear contract ***cannot*** exceed the *lesser of 20 years or the* remaining term of the recorded Use Agreement.

Note: Owners have the ability to request that the existing Preservation Use Agreement be extended in order to facilitate a refinancing transaction.

*****B. The only renewal option available to an owner of a preservation project is Option 5.

C. Rents are adjusted in accordance the *approved* POA and *the recorded Preservation* Use Agreement.

D. See Section 2-17 for more detailed information.

7-7. PROCESSING INSTRUCTIONS FOR PRESERVATION PROJECTS

A. Preservation Section 8 contracts are ineligible for Recap processing.

B. See Section 2-17 for detailed processing instructions.

7-8. *PROJECT SPECIFIC RENTS (PSRS)*

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.

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.*

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.*

Note: Both Housing Notices are available on HUDCLIPS at

http://www.hud.gov/offices/adm/hudclips/index.cfm*

7-9. PRESERVATION UPDATES.

A. Shallow Rent Subsidy.

The 1995 Appropriations Act language establishing the Shallow Rent Subsidy was not made permanent. Therefore, the Shallow Rent Subsidy *provision in approved Use Agreements* is no longer applicable.

B. Budget-Based Rent Increase.

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

2. Section 11-7.C.3. states: "if non-operating costs increase or decrease, e.g. a loan secured by the project is repaid, the budget will be adjusted for the change." Therefore, HUD will recognize new debt in a budget-based rent increase request.

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

C. *ELIHPA Use Agreement and Section 8 Contract.

When both the mortgage and ELIHPA Use Agreement end on the first of the month or at midnight of the last day of the month, both the Section 8 contract and the Use Agreement are considered coterminous. Therefore, the owner may select any renewal option for which the project is eligible except Option Five.*

Chapter Eight

Option Six - Opt-Outs

8-1. OVERVIEW.

HUD is committed to preserving affordable housing and the Regional Office should make every effort to inform owners of all available options. However, if an owner has satisfied the relevant requirements and ultimately chooses to opt-out of the Section 8 contract, it may request to opt-out of the Section 8 program by providing the Contract Renewal Request Form, (Form HUD-9624) and elect Option Six. Owners should be aware of their obligation to honor the right of tenants to remain and all notification requirements.

HUD will renew the contract up until the day the contract expires should the owner change its mind on opting out. It is important to note that HUD has no authority to enter into a new contract after the owner has opted-out of the Section 8 contract.

8-2. OWNER REQUIREMENTS *FOR TENANT NOTIFICATION.*

The owner ***must*** provide a one-year notification to the tenants and the AE/CA of the intent to opt-out of the Section 8 project-based contract (See Appendix 11-1.)

8-3. PROCESSING INSTRUCTIONS.

A. AE/CA Review. The AE/CA must complete the review to provide enough time to obtain tenant-based assistance and to make sure tenants have adequate search time to locate another unit should they desire to relocate. The AE/CA should:

1. Determine that the owner elected to opt-out under Option Six;
2. Make sure that the owner has provided all required documentation including the Contract Renewal Request Form (HUD-9624);
3. Make sure that the owner is eligible to opt-out of the Section 8 contract.

a. Are there any restrictions stated in the Section 8 HAP contract or Use Agreement that prohibit the owner from opting-out?

b. Did the owner provide an acceptable one-year notification to the tenants and AE/CA that it intended to opt-out of the Section 8 project-based contract? Does the letter state that the owner will honor the right of tenants to remain?

Note: If proper notification was not provided, the owner must provide acceptable one-year written notification to tenants and the AE/CA.

During this one-year period:

1) The families' contribution to the rent can *only be increased during* the period of time necessary to fulfill the full notification time frame *for reasons of increases in household income and/or changes resulting from an annual income recertification.*

2) The AE/CA will offer the owner a short-term contract. See Section 2-8 for information on rent setting for the short-term renewal.

a) If the owner renews the contract when it ends in the middle of the month, and the owner has submitted a voucher for the full month, nothing further is needed.

b) If the owner does not renew the contract when it ends in the middle of the month, and the owner has submitted a voucher for the full month, the owner is required to pay back the funds for the period not covered by the contract. *The CA will determine the amount to be repaid and HUD will process any recovery action.*

c. Does the owner certify that it will honor the tenant's right to remain at the project as long as the project continues to be offered for rental housing (if the PHA approves a rent equal to the new rent charged for the unit), unless the owner has grounds for eviction under State or local law?

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

B. *Four months (120 days) prior to the contract expiration date, and upon receipt of the written notice provided by the owner, the AE should again contact the owner to explore alternatives to opting out.*

C. It is imperative that the AE coordinate this effort with Public and Indian Housing (PIH) staff *in the Regional Center/Satellite Office with jurisdiction*. If there is a delay in the provision of tenant-based assistance, *the CA and the owner may enter into a short-term contract, not to exceed a term of one year, at current contract rents using the Basic Renewal Contract (HUD-9636)*. Refer to PIH Notice 2001-41(HA) for detailed guidance on the conversion process.

D. Recap Projects. If an owner has decided to opt-out while the project is assigned to Recap for a rent reduction or debt restructuring, see Section 5-4.D. of this Guide for detailed processing instructions.

Chapter Nine

Rent Comparability Studies

9-1. BACKGROUND APPLICABILITY AND OVERVIEW

As a requirement for renewal under Section 524(a) of MAHRA, most project owners with expiring Section 8 project-based contracts must submit a RCS at initial renewal to demonstrate that current rents are at or below comparable market rents.

Beginning with the date of the initial renewal of the expiring Section 8 project-based contract, the RCS will start a maximum five-year "life cycle" before a new RCS is required. In general, any contract that renews during the five year life cycle can only be renewed for a term that does not exceed the remaining life of the RCS. An exception is when the owner submits a new RCS when requesting permission to mark rents up to market.

9-2. APPLICABILITY

A. This Chapter applies to all RCSs required by this Guide regardless of who [HUD Housing staff, Contract Administrator (CA) or Recap, formally known as OAHP] reviews the RCS.

B. Recap amended its Operating Guide and will apply the Rent Comparability Grid and policies similar to those in Sections 9-7 through 9-16 of this Guide to RCSs Recap processes or purchases.

C. When HUD Notice H 97-14 (AAF Rent Adjustment Procedures) requires owners of new construction/ substantial rehabilitation projects to submit a HUD 92273, Estimates of Market Rent by Comparison, owners instead must either:

1. Submit the new Rent Comparability Grid (HUD 92273-**S8**) and other materials required by Section 9-14 of this Chapter. Owners must require appraisers preparing the reports to do so in accordance with the guidance in Sections 9-7 through 9-13 of this Chapter, but should follow instructions provided in HUD Notice H 97-14 to determine which units must be included in the RCS, or

2. Ask to use non-Section 8 units at the Section 8 project to set the market rent ceiling instead of performing a RCS if the project meets all of the conditions in Section 9-6A 2 through 6 of this Chapter for all unit types for which HUD Notice

H 97-14 requires a HUD 92273 rent comparison. The owner must submit a request in the format shown in Appendix 9-6, but should delete references to renewals and instead refer to rent comparisons required by HUD Notice H 97-14 (also substitute rent comparisons for references to renewals when reading Section 9-6).

Other provisions of HUD Notice H 97-14 (e.g., adding initial difference to the rent resulting from the analysis in Paragraph 1 or 2 above) still apply and HUD Notice H 97-14 determines which units the RCS must cover.

D. This Chapter does *not* apply to market rent analyses required in development processing of applications for FHA insurance except to the extent that the market rent analysis is being used as a substitute for the HUD required RCS (See Section 9-23)..

9-3. OVERVIEW OF CHANGE

This Chapter gives HUD staff, Section 8 contract administrators (CAs), and appraisers guidance on HUD's standards for preparing, submitting and reviewing RCSs. More specifically, this Chapter:

A. Sets forth HUD's expectations regarding scope of appraiser's research and selection of comparable units. These topics are addressed in Sections 9-7 through 9-13. The selecting comparables portion provides answers to questions such as: Can comparables be selected from outside the project's market area? Do government boundaries (e.g., state or county lines) affect market area definitions? May unassisted units in partially assisted projects be used as comparables? May tax credit (LIHTC) or other rent restricted units be used as comparables? This Chapter provides specific guidance on each of these questions and, hopefully, will standardize practice so that RCSs will be treated similarly around the country.

B. Standardizes the content of the RCS. Sections 9-14 through 9-16 set forth content requirements. These requirements include clear, convincing narratives that explain what appraisers should do on key points (e.g., selecting comparables, adjusting rents, deriving market rents from adjusted rents).

C. Clarifies how the Uniform Standards of Professional Appraisal Practice (USPAP*)* relate to the appraiser's preparation and HUD's / CA's review of RCSs. The main references to USPAP are contained in Section 9-7 A5 and Section 9-20.

D. Provides a form, the Rent Comparability Grid *("Rent Grid")*, for valuing and documenting adjustments to comparables' rents and provides detailed guidance on valuing adjustments. The new Rent Grid (HUD 92273- S8) is shown in Appendix 9-2 and a sample completed Grid is included in Appendix 9-3's Sample RCS.

1. The Rent Grid retains the basic structure of the HUD 92273, but reorders lines to make the analysis more logical. When prepared in Excel, the Grid automatically performs any calculation required on the form and displays a summary of

adjustments that helps appraisers catch loading errors and gives reviewers a quick picture of the volume, level and direction of the adjustments.

Section 9-12 provides general guidance on valuing adjustments and specific guidance on valuing differences in utility, unit size and non-shelter services (e.g., elderly services, neighborhood networks, service coordination). In addition, Appendix 9-8's instructions for preparing the Rent Grid provide detailed guidance for each line of the Grid.

E. Permits some projects to demonstrate that rents are less than market without doing a RCS (i.e., selecting comparables and adjusting for differences between the comparables and the Section 8 project). Only owners renewing under Option Two (Chapter Four, using current rents adjusted by OCAF/ budget) may, at their option, ask to use these alternate methods.

1. Owners may ask to renew without an RCS if the contract's current gross rent potential and proposed OCAF/ budget based renewal rent potential is less than 75% of FMR. *(See policies and procedures in Section 9-5.)*

2. Owners of projects only partially-assisted with Section 8 may ask to use the non-Section 8 units in the Section 8 project to set the market rent ceiling if: a) the proposed OCAF/ budget-based rent for each Section 8 unit type being renewed does not exceed the average rent charged for nearly identical, non-Section 8 units at the Section 8 project; and b) the project meets all criteria set forth in Section 9-6 of this Chapter.

F. Provides detailed procedures for CAs and HUD staff to follow in checking the timeliness, completeness and substance of RCSs. These procedures are in Sections 9-17 through 9-20 of the Chapter.

G. Requires that all HUD offices and Section 8 contract administrators give owners an opportunity to appeal the decisions HUD / the CA makes on RCSs. Given the significant financial impact that RCS conclusions have, HUD believes that all offices should share the reasoning underlying their decisions and give owners an opportunity to discuss and appeal those decisions. *(See Section 9-21 for appeal procedures).*

9-4. ALTERNATIVES TO THE RENT COMPARABILITY STUDY

This Section gives owners three methods of demonstrating how the Section 8 rents proposed at renewal compare to rents charged for other units. The methods are listed below. Options A and B are provided to avoid the costs, processing times and delays associated with RCSs when facts strongly suggest that the proposed rents would be under rents computed in a RCS.

A. Comparing proposed Section 8 rents to fair market rents (FMRs), as provided in Paragraph 9-5.

B. Comparing Section 8 rents to rents charged for other units in that Section 8 project, as provided in Paragraph 9-6.

C. Purchasing and submitting a RCS in accordance with Sections 9-7 through 9-16 of this Chapter.

Note: Owners may elect Option A or B, but HUD may not require owners to use those options. The FMRs or rents for non-Section 8 units in the Section 8 project act as a cap or ceiling on rents computed using an OCAF or budget approach. Rents are not automatically set at FMRs or rent levels charged for other units in the Section 8 project.

9-5. USING FMRS TO DETERMINE BELOW MARKET STATUS

A. Eligibility. Owners eligible to renew under Chapter Four of this guide may request to renew without a RCS if the current Section 8 gross rent potential and the proposed Section 8 gross ***rent potential*** at renewal are less than 75% of the FMR ***potential*** for the units being renewed. Since the FMRs represent the 40th percentile of area market rents collected in HUD's phone surveys, rents under the limit used here should almost always be below the typical market rent for the area. Any exceptions to this normal conclusion can be captured by the control imposed in Paragraph B1 below.

1. The Section 8 renewal potential used in the above comparison must be the current rent potential found in the Contract Renewal Request Form and OCAF Worksheet (Attachment 3 of this guide) and adjusted by the OCAF or the budget. The potential must be the gross potential (contract rent + utilities) to make the figure comparable to FMRs, which include utilities.

2. To request renewal using this FMR comparison, an owner must submit a request using the format in Appendix 9-7. The owner also must submit only the following parts of the Contract Renewal Request Form and OCAF Worksheet found at Attachment 3 of this Guide:

   - The **first** page of Attachment 3's **Cover Sheet** identifying all contracts at the project and indicating which contracts will be renewed.

   - If seeking a budget-based adjustment, a Budget Worksheet (Form HUD 92547-A).

   - If seeking an OCAF driven adjustment, Steps 1 and 2 of the OCAF calculation.

   Note: Since Appendix 9-7 will impose the market rent ceiling, don't impose a market rent ceiling on Line O of the OCAF worksheet. Instead, to compute the increase factor on Line N of Step 2, divide the adjusted potential (Line N) by the current Section 8 potential for the expiring contracts (Line E of Step 1).

3. Use the form in Appendix 9-7 to compare the proposed OCAF/ budget adjusted rents and FMR rent levels. The FMRs create the market rent ceiling that is usually created using an RCS' rents. The proposed rent potential must be less than 75% of the FMR potential for the units being renewed. (FMRs are updated annually around early October and are posted on HUD's Internet @ www.huduser.org/datasets/fmr/html.)

4. If an owner elects this FMR method, there will be no RCS to update for budget-based rent adjustments or for renewals that occur within the next five years as discussed in Chapter Two. Budget-based rent adjustments made during multiple year contracts will be processed as described in Chapter Four, Section 4-4 A-2, but the market ceiling will be set by 75% of the FMRs in effect at the time the adjustment is processed. At any subsequent renewal, the owner must choose one of the three methods allowed in Section 9-4 above.

B. HUD processing. Staff should make a decision on the request within 20 calendar days after receiving the owner's request. Project managers may process these requests, but they should be familiar with the project's condition and amenities and must seek an appraiser's input as to prevailing rent levels in the subject market area.

1. Regional Centers/Satellite Office staff should approve the request unless they have reason to believe that the proposed rents are over market. Staff might challenge the request if, for example:

- The units are unusually small, have limited appeal or offer substantially fewer amenities than typically offered in that market, or

- RCSs completed on other projects in the subject's area often produced market rents that were significantly lower than FMRs, or

- A previous RCS on this project concluded that the project's Section 8 rents were above market.

2. If HUD denies the owner's request, HUD may issue a short-term renewal to allow the owner a reasonable period of time to obtain a RCS prepared in accordance with Sections 9-7 through 9-16 of this Chapter. Owners may not appeal HUD/CA's denial of their requests to use FMRs in lieu of submitting a RCS. *(See Section 2-4 for guidance on setting rent levels in short-term contracts.)*

3. Staff should document their decision on the owner's request form and in REMS.

9-6. USING RENTS FOR NON-SECTION 8 UNITS IN THE SECTION 8 PROJECT

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

1. The contract(s) is eligible to be renewed under Chapter Four of this Guide.

2. At least 25% of each unit type being renewed is occupied by tenants who pay the full rent due the owner and receive no tenant rental assistance. "Tenant rental assistance" includes project-based Section 8, certificates/vouchers, PRAC/PAC in a 202/811 project, Rent Supplement, Rental Assistance (RAP), or any comparable federal/state/other public subsidy. Tenant rental assistance does *not* include Section 236 interest reduction (IRP) subsidies, other construction/mortgage based subsidies, or LIHTC / comparable state credits.

3. For each unit type being renewed, the proposed Section 8 contract rent is no more than the average rent tenants not receiving tenant rental assistance pay for that unit type.

4. Tenants in units used to compute Paragraph 3's average have been paying *(without assistance and for three or more months)* at least the rent levels used in computing the average. These tenants did and do not receive rental concessions or rebates and have no business or family relationship with the project's ownership or management.

5. The Section 8 units and the units occupied by tenants not receiving tenant rental subsidies are nearly identical and would not require adjustments if the units without tenant rent subsidies were used as comps in a RCS. "Nearly identical" means the two sets of units have the same number of bedrooms & baths; are similar in condition, layout & size; and have the same amenities & utilities included in the rent.

6. Occupancy rates in the units occupied by tenants not receiving tenant rental subsidies are not significantly less than occupancy levels for those unit types in the project's market area.

B. <u>Owner Request</u>.

1. To request a renewal that limits OCAF/ budget adjusted rents to rents paid by tenants not receiving tenant rental assistance at the Section 8 project, an owner must submit a request *on HUD-9629*. The owner also must submit the parts of the Contract Renewal Request Form and OCAF Worksheet found as Attachment 3 of this Guide that are listed in Section 9-5A2 above.

2. If an owner elects this method, there will be no RCS to update for budget-based rent adjustments or for renewals that occur within the next five years as discussed in Chapter Two. Budget-based rent adjustments made during multiple year contracts will be processed as described in Chapter Two, Section 2-15, but the market ceiling will be set by computing the average rent paid by tenants not receiving rental subsidies at the time the adjustment is processed. At any

subsequent renewal, the owner must choose one of the three methods allowed in Section 9-4 above.

C. HUD/CA processing**.** Staff should make a decision on the request within 20 calendar days after receiving the owner's request. Project managers may process these requests, but they should be familiar with the project's condition and amenities and must seek an appraiser's input as to prevailing rent levels in the subject market area.

1. Regional Centers/Satellite Office staff should approve the request unless they have reason to believe that the rents paid by tenants not receiving rental subsidies are significantly higher than rents in the surrounding area or that some of the eligibility conditions listed above are not met. Staff should:

   - Use REMS/ TRACS to check the data reported in the rent table attached to the owner's request.

   - Use Columns J and I of the owner's rent table to help assess compliance with the occupancy criterion in Section 9-6A6 above. A significant vacancy may indicate that the project is asking too much for these units.

2. If HUD denies the owner's request, HUD may issue a short-term renewal to allow the owner a reasonable period of time to obtain the RCS. owners may not appeal HUD/CA's denial of their requests to use projects' non-Section 8 units in lieu of submitting a RCS. *(See Section 2-4 for guidance on setting rent levels in short-term contracts.)*

3. Staff should document their decision on the owner's request form and in REMS.

9-7. PREPARING RENT COMPARABILITY STUDIES

A. Each RCS must:

1. Be prepared by or under the direction of an appraiser that meets the qualifications set forth in Section 9-8 below.

2. Cover at least all unit types that have Section 8 assistance in the contracts being renewed now. owners may also include other Section 8 unit types in other contracts that the owner plans to renew during the next five years. (For projects submitting RCSs to support AAF requests, Chapter Fifteen determines which units must be studied.)

3. Estimate **"**market" rents for each Section 8 unit type, by adjusting rents of comparable units to reflect the location, condition, appeal, amenities, and utilities of the Section 8 units. "Market Rent" is the rent that a knowledgeable tenant would most probably pay for the Section 8 units as of the date of the appraiser's report if the tenants were not receiving rental subsidies and rents were not restricted by HUD or other government agencies. **Note**: Appraisers should

estimate market rent without considering the market's ability to absorb all Section 8 units.

4. Be concise, but contain enough information that a person not familiar with the properties and market areas involved can understand how the appraiser arrived at his/her adjustments and opinion of market rent. At a minimum, the RCS must include the materials listed in Appendix 9-10.

5. Be prepared in accordance with this Chapter and with the Uniform Standards of Professional Appraisal Practice ("USPAP"). (Standards are available at www.appraisalfoundation.org.)

   a. If this Chapter's requirements go beyond USPAP, appraisers should consider the Chapter's requirements to be supplemental standards and comply with them.

   b. If this Chapter's requirements conflict with USPAP, appraisers must comply with HUD's requirements and may invoke USPAP's Jurisdictional Exception Rule for the parts on which HUD and USPAP requirements conflict. Jurisdictional Exception is justified by *The Preserving Affordable Housing for Senior Citizens and Families into the 21st Century Act of 1999 (*Title V of the Year 2000 HUD-VA Appropriations Act.) Section 524(a)(5) of Title V directs that "The Secretary [of HUD] shall prescribe the method for determining comparable market rent by comparison with rents charged for comparable properties...".

   c. Appraisers should review State laws and State real estate appraisal regulatory board rulings and determine whether the RCS is a consultation or an appraisal and comply with the appropriate parts of USPAP. HUD will accept RCSs prepared under Standards 1 and 2 (for appraisals) or Standards 4 and 5 (for consulting services).

B. In preparing the RCS, the appraiser must take the actions listed below and further described in the rest of this Chapter. The appraiser must have collected, updated or verified all data within 90 calendar days before the date of the appraiser's letter transmitting the RCS to the owner (or to HUD, when HUD purchases the study pursuant to Section 9-23).

   1. Inspect and analyze the subject Section 8 project and its surrounding neighborhood as discussed in Section 9-9.

   2. Select comparable units in accordance with Section 9-10

   3. Collect and document data on the comparable units as discussed in Section 9-11. Report the data on the Rent Grid shown in Appendix 9-2 and on a Comparable Project Profile. *(See Section 9-11C and sample profile in Appendix 9-4)*

4. Compare each comparable to the subject and adjust each comparable's rent to reflect the rental value tenants in the subject's market area would assign to differences between the comparable and the subject. To value the adjustments, follow the general instructions in Section 9-12 and the Line-by-Line instructions in Appendix 9-8. Enter the adjustments on the Rent Grid included in Appendix 9-2.

5. Use the comparables adjusted rents to derive an estimated market rent for each Section 8 unit type as directed in Section 9-13. (This rent was formerly called the "correlated" rent.)

Note: Appraisers must comply with the Fair Housing Act and the provisions of USPAP related to that Act. Appraisers may not use or rely on unsupported conclusions related to the racial, ethnic or religious mix of the comparable or subject properties or their surrounding areas or upon other factors prohibited by the Fair Housing Act. Appraisers' opinions, conclusions and reports must be impartial and objective and not illegally discriminate or contribute to illegal discrimination through subjective or stereotypical assumptions. (See USPAP Advisory Opinion #16 for additional guidance on complying with Fair Housing requirements.)

C. The project owner must review the appraiser's report and submit it as directed in Section 9-16 of this Chapter. No more than 90 calendar days should have elapsed between the date the owner submits the RCS to HUD and the date of the RCS.

9-8. APPRAISER'S QUALIFICATIONS

A. The appraiser must:

1. Be a Certified General Appraiser, licensed and in good standing in the state where the project is located. The license may be temporary or permanent. (Owners can obtain lists of appraisers meeting this standard at www.asc.gov or from each state's appraiser regulatory agency.)

2. Be currently active and regularly engaged in performing RCSs or appraisals of multifamily housing.

3. Meet all the requirements of the current Competency Provision in the Uniform Standards of Professional Appraisal Practice (USPAP) and have read all of this HUD Chapter. (Additional or updated information on USPAP can be obtained at www.appraisalfoundation.org.)

4. Have no prospective or present financial interest in the Section 8 project, its ownership or management agent entity, or the principals of those entities.

5. Not be an employee of the owner, the management agent, or the principals of those entities or have a business or close personal/family relationship with those parties that would commonly be perceived to create bias or a conflict-of-interest.

6. Not be debarred or suspended from doing business with the Federal Government and not be under a Limited Denial of Participation (LDP) imposed by the Regional Center or Satellite Office having jurisdiction over the Section 8 project.

B. The Appraiser must sign and take full responsibility for the report, but appraisal assistants may contribute to any of the tasks if: 1) they are employed by the same firm as the appraiser; and 2) the report identifies the roles the assistant appraiser performed.

9-9. ANALYZING THE SUBJECT PROJECT

A. Identify Primary and Secondary Unit Types.

1. Identify all unit types that will be included in the renewal contract and any other units the owner elected, per Section 9-7A2, to include in this study. Recognize a unit type for each rent level the owner is seeking following renewal.

2. Use the guidance in the rest of this Paragraph to label each unit type as a ***primary*** or ***secondary*** type. **Note**: Appraisers must estimate a market rent for each Section 8 unit type, but comparables and a Rent Grid will be required only for primary unit types. Appraisers may derive the market rent for a similar, secondary type by adjusting the market rent derived on the primary type's Rent Grid. *(See Section 9-13C.)*

   a. Consider the number of bedrooms and baths, the unit size, the structure (e.g., townhouse, elevator, walk-up), and any other factors the market would consider as significant differences. If two unit types have the same number of bedrooms and the same structure type but the units have only slight differences (e.g., an half bath, a few square feet, a view), consider the more common unit type to be *primary* and the other unit type to be *secondary*.

      Example: Project has 100 3-bedroom, 2-Bath, 1000 sq. ft. units and 30 3-bedroom, 1.5 Bath, 900 sq. ft units. The owner is charging different rents for these two types. Label the most common type (the 2 bath, 1000 sq. ft unit) *primary* and the other *secondary*.

   b. If the units being renewed are located on scattered sites, the appraiser must determine if separate unit types are needed for different sites. The appraiser must visit each site and assess the extent of any differences in neighborhood, condition, street appeal, services, or market area. If units are located in different market areas or other differences suggest that separate comparables are needed, the appraiser should generally create separate unit types for the sites that vary significantly. Appraisers should use their professional judgment to categorize the unit types as primary or secondary.

B. Inspect and Photograph the Subject Project.

1. Inspect: at least one unit of each primary unit type; project grounds; and the interior and exterior common areas (lobby, laundry rooms, community or dining

rooms, recreation rooms, parking areas, outdoor play areas). If the units being renewed are located on scattered sites, visit each site.

2. Take color photos of the items listed below. Take additional close-up photos as needed to show the project's condition, including:

    a. Subject's exterior, showing location on the site, exterior design, site layout, and site amenities

    b. Interior of typical units.

    c. Interior common areas (e.g., meeting rooms)

C. Determine and document project characteristics, condition and appeal. The appraiser must:

1. Determine and document the project's design, age, and structure. Assess the project's physical condition and overall appeal. Determine the extent of any major renovations made.

2. Identify all unit and site amenities and the type of utilities. The appraiser must consider all characteristics listed on the Rent Grid in Appendix 9-2 and any other characteristics that would affect the rent a tenant would be willing to pay.

    a. **Projects designed for the elderly/ disabled**. Appraisers should identify *all* services provided for elderly/ disabled. Appraisers should consider whether emergency call systems, transportation, social or educational activities, service coordination, meals, laundry or housekeeping are offered. Appraisers should determine which services are actually provided by the project and which are just accessed through arrangements the project has established with outside agencies.

3. Identify which services are included in the rent and any charges collected in addition to rent for services/ amenities. At projects providing **non-shelter services** *(e.g., service coordination, neighborhood networks, the elderly services noted above*), the appraiser should ask the owner/ agent to identify which services HUD/CA has authorized to be paid from rental income and which are paid from other sources. Other sources could include fees paid by tenants, other project funds (e.g. residual receipts), or grants from HUD or other agencies/businesses. [*See Section 9-12-6C4 for guidance on how funding source may affect valuing adjustments*.]

4. Determine or verify the size of each unit type. Estimate the rentable interior square footage of the unit. Do ***not*** count balconies, mechanical areas, or other non-living spaces.

D. Assess and describe the surrounding neighborhood. Assess the project's location, noting factors that would impact market rent levels. Consider access to schools,

employment and medical centers, transportation, shopping, recreation, and community services. Identify nuisance (e.g., street noise), crime rates, and other factors affecting the perceived quality of the neighborhood.

E. Identify the project's market area -- i.e., the geographic area from which the subject project would draw the majority of its applicants. Identify street or other boundaries. Consider mobility patterns and natural or man-made barriers (rivers, freeways, rails, etc).

Note: Government boundaries like state or county lines usually do not establish market area boundaries as projects often draw from more than one town, county or state.

F. If the units being renewed are located on scattered sites, assess whether the sites vary significantly on condition, street appeal, services, neighborhood, or other factors.

9-10. SELECTING COMPARABLE UNITS

A. Strive for Five Comparables Meeting Six Criteria. For each *primary* unit type identified pursuant to Section 9-9.A.2., the appraiser must attempt to identify comparable units from ***five*** different properties. The appraiser should select projects that would compete with the subject for tenants. The Appraiser must exert good faith effort to find comparable units that meet ***all*** of the conditions listed below. If the appraiser cannot find units that meet all of these criteria, the appraiser may use the methods discussed in Paragraphs B & C below.

1. Are in the same market area as the subject project.

2. Are ***not*** receiving tenant rental assistance (project-based Section 8, certificates/ vouchers, PRAC/PAC in a 202/811 project, Rent Supplement, Rental Assistance (RAP), or any comparable federal/state/other public subsidy). The tenant must be responsible for the full rent due the landlord.

3. Have locations and neighborhood conditions (including crime rates and accessibility to services, employment, transportation, etc.) similar to the subject's.

4. Are located in projects that are similar to the subject in terms of project structure and layout, design, street appeal, age, size and unit mix, unit amenities, and utilities.

5. Provide services and have project amenities similar to those available at the subject.

6. Are not rent restricted or rent controlled by a federal, state, local, or other public program. This category includes LIHTC, HOME, HOPE VI, state/local rent controlled and rent stabilization units, and all units in 236, BMIR, 202/811, and Section 515 Rural Development projects. (**Important**: See Section 9-10.B below for additional guidance on using rent restricted units.)

a. If a project contains rent restricted units or units with tenant subsidies but also has other units with no restrictions or subsidies, those units that are both unrestricted and unassisted may be used as comparables. Such mixes will often exist in tax credit, tax-exempt, state-financed, HOPE VI, or Section 221d3/d4 FHA insured projects.

b. If the subject project has unassisted units that have the same number of bedrooms as a Section 8 unit type and are very similar to the subject, those unassisted units generally should be used as a comparable (*If they are not used, the appraiser must explain why in the selecting comparables narrative required by Section 9-14 through 9-16 of this Chapter*).

c. If the appraiser selects comparables that he/she knows have the same ownership/management as the subject or are owned or managed by a company/individual having an identity-of-interest with the owner or management agent of the subject project, this must be disclosed in the Selection of Comparables Section of the RCS report (*See Handbook 4381.5, Paragraph 2-3 for a definition of the term "identity-of-interest").* Furthermore, the appraiser should take special care to verify the information, preferably through an unrelated party. For example, to verify that a unit is leased at the rent on-site management verbally gives, the appraiser might ask to see a copy of the lease.

B. Rent-Restricted Units:

1. If the appraiser cannot find five properties that meet all of the six conditions above, but can find rent restricted units that meet conditions 1 through 5, the appraiser may use the rent restricted units. Rent restricted units should only be used as comparables when they reasonably represent the market.

2. The appraiser may also use rent restricted units if less than five unrestricted, very similar units are available in the same market place but rent restricted units that meet criteria A2-5, are available in a nearby, similar market area.

3. The appraiser must clearly disclose the use of rent restricted comparables and the nature of the rent restriction in the Selecting Comparables narrative part of the RCS and on the Rent Comparability Grid *(Note: Appraisers may not adjust rents because the comparable unit is rent restricted).*

4. While rent restricted units may in some cases reflect market rent (e.g., when LIHTC units make up a large percent of the multifamily units in a neighborhood or nearly all units are rent controlled), rent restricted units can also be below market rent. Therefore, the appraiser may want to discuss the use of rent restricted units with the owner and HUD appraisal staff before finalizing the selection of comparables. Appraisers hired by HUD/CAs to prepare studies pursuant to Section 9-23 should be especially careful to avoid selecting rent restricted units that would artificially depress the RCS's rent conclusions.

C. When five strong comparables don't exist:

1. HUD recognizes that finding five comparables meeting all of the criteria in Section 9-10.A. can be difficult in some markets, (e.g. when the subject is the only multifamily complex in a rural town or is the only project with four bedroom units). When the appraiser exerts good faith effort and conducts appropriate research but cannot find five comparables that meet all of the conditions in Section 9-10A, the appraiser may adopt one or more of the following strategies:

   a. Use rent restricted comparables as discussed in Section 9-10.B.

   b. Select comparables from outside the market area.

   Note: Appraisers should try to select a market area that is similar to the subject's market area. In assessing similarity, appraisers should consider rent levels, housing prices, demographics, job opportunities, and other relevant economic indicators. If equally good comparables are available in more than one alternate market area and those market areas are similar, the appraiser should generally consider using an alternate that is near the subject. For Section 8 projects in rural areas, however, HUD recognizes that it will often be necessary to go to distant, alternate markets that are sometimes of a different character.

   c. Use comparables located in the same market, but less similar to the subject.

   d. If the above strategies do not produce five comparables for each unit type, use only three or four comparables for a unit type**.**

   Note: No unit type may have less than three comparables. Before proceeding with less than five comparables, the appraiser may ask the local HUD office if it is aware of any comparables the appraiser has not already identified.

2. The appraiser shall use his/her professional judgment to decide the pairing and ordering of the alternate strategies listed above.

3. If the appraiser adopts any of these alternate strategies, the appraiser must:

   a. Disclose that he/she did so in the Selecting Comparables narrative part of the RCS.

   b. Document what research was done to conclude that no other similar, non-rent restricted units or no units in the subject's market area were appropriate comparables.

   c. Provide market-based data to support adjustments for physical or market area differences resulting from relying on less similar comparables or going outside the subject's market area.

   d. Try to select some comparables that are superior and some that are inferior to the subject so that the subject is within the range of indicators.

e. Use units with a different number of bedrooms, units in properties of a different structure type (e.g. high rise vs. garden), or units in a different housing/service category (e.g., assisted living/luxury retirement vs. a 202/811) only when comparables in the same category are not available in the same market area. The appraiser must provide market support for both the decision to use a different number of bedrooms or a different structure/housing type and for any adjustments made for these differences.

D. Housing for Elderly/Disabled. Many Section 8 elderly housing projects provide services that are greater than traditional rentals would provide but less than assisted living facilities provide. The mix of services varies widely among projects. Appraisers should attempt to locate comparables that offer the same level of services as the subject. Appraisers should select comparables with significantly higher service levels only if they can make market-based adjustments for significant differences in service levels. For example, a complex that offers meals, transportation, assistance with dressing and medication, and 24 hour nursing oversight should be used as a comparable for a 202/other elderly Section 8 project that offers transportation and activities only if more comparable rentals are not available.

9-11. COLLECTING AND DOCUMENTING DATA ON COMPARABLE UNITS

A. Collecting Data.

For each unit type, the appraiser must collect data on the elements listed in Parts A through E of the Rent Grid in Appendix 9-2 and on any other characteristics that would affect the rent a tenant would pay. The appraiser must also identify any services that are provided for additional fees and that a tenant would consider in selecting a rental. If the comparable is located outside of the subject's market area, the appraiser must provide the market data requested in Paragraph A4 below. The appraiser must:

1. Independently verify any information pulled from existing files, Internet research, newspaper ads or apartment guides.

2. View each comparable's grounds and *exterior* common areas. If access is given, also view *interior* common areas (e.g., lobby, laundry rooms, community or dining rooms, recreation/fitness areas, business centers).

Note: The appraiser is not required to inspect a comparable's unit interiors, but should do so if a unit is available and access is given.

3. Take color photos of each comparable's *exterior*, showing location on the site and exterior design and condition.

4. If the comparable project is in a different market area than the subject, the appraiser must collect market-based data to compare the rent levels in the two markets.

5. Obtain the unit's rentable interior square footage. Balconies, mechanical areas, or other non-living spaces should be excluded. If the square footage available represents an exterior measurement, the appraiser must use his/her professional judgment to convert the square footage to an interior measurement that can be compared with the interior measurements Section 9-9.C.4. requires on the subject.

6. Talk with management to obtain overall occupancy rates for the project, typical and current occupancy levels specific to the unit type used as a comparable, and whether any unit type is particularly difficult to rent. If the comparable's occupancy rate for a unit type included in the RCS is not typical of the comparable's market, determine why. Is the rent too high or are other factors causing the vacancy? Also confirm and quantify the existence/ absence of any rent or use restrictions and tenant subsidies.

Note: If the contact person does not provide the unit size or other required information, the appraiser must try to obtain the data from other sources. The appraiser must use his/her professional judgment to determine if the data are sufficient to justify using the unit as a comparable (Section 9-11.C.2. requires disclosure of data limitations).

B. Identifying Non-Shelter Services.

Appraisers should determine if the project provides non-shelter services. At projects for the elderly/disabled, appraisers should take special care to determine if the project provides emergency call systems, transportation, social or educational activities, service coordination, meals, laundry, or housekeeping. Appraisers should determine which services are actually provided by the project and which are just accessed through arrangements the project has established with outside agencies. Appraisers should also identify which services are included in the rent and which are covered by additional fees residents pay.

C. Reporting Comparable Data.

1. For each ***primary*** unit type, the appraiser must report the data collected by completing the ***data*** columns of the Rent Grid shown in Appendix 9-2, the Comparable Project Profile required by Section 9-14.A., and Item 10 of Appendix 9-10.

   a. The appraiser must complete all lines of the Grid's data columns, i.e., even lines/items for which the appraiser will make no adjustment. All comparables for one unit type must be shown on one grid *(See Section 9-15 for more guidance on using this Grid).*

   b. Appendix 9-4 provides a suggested format for the Comparable Property Profile, but appraisers may use their own formats if those formats include all of the information listed in Item 10 of Appendix 9-10.

2. In the Scope of Work Section of the RCS report, the appraiser must identify any data that was unobtainable or estimated and all efforts to obtain data (*See Appendix 9-10, Item 2 for more detail on what the Scope of Work write-up must cover*).

9-12. COMPUTING ADJUSTED RENTS FOR COMPARABLE UNITS

The appraiser must use the Rent Grid (Form 92273-S8) to derive an ***adjusted rent*** for each comparable. Before doing so, appraisers should review the instructions in this paragraph and the line-by-line instructions provided in Appendix 9-8.

A. To compute the adjusted rent, the appraiser must:

1. Compute an **effective rent** by adjusting the most recently charged rent for factors (e.g., rent concessions) listed in Part A of the Grid.

2. Determine which differences between the subject and the comparable unit would affect the amount of rent a typical applicant would be willing to pay in the subject's market area.

3. For each difference tenants would value, adjust the comparable's rent by the amount tenants in the subject's market area would typically pay for that difference. Adjustments must be displayed in dollar amounts.

B. Adjust the *comparable to the subject.*

1. The goal is to determine what rent the comparable would obtain if the comparable were nearly identical to the subject. Thus, if the comparable is:

   a. ***Inferior*** to the subject on a particular characteristic, adjust the comparable upward. Enter the adjustment as a positive value to indicate that residents of the comparable would pay more if the comparable had the subject's characteristic.

   b. S***uperior*** to the subject on a particular characteristic, adjust the comparable downward. Enter the adjustment as a negative value to indicate that residents of the comparable would pay less if the comparable had the subject's characteristic.

   Example: If the subject has a washer/dryer hook-up in the unit and the comparable does not and the appraiser determines that a typical renter would pay $xx/month more for a unit with a washer/dryer hook-up, then the adjustment would be entered as a positive to the comparable.

2. Appraisers must provide concise, but professionally complete explanations as to ***why*** the adjustments were made and ***how*** the dollar values were derived. If the data show that a comparable differs from the subject significantly but no adjustment is made, appraisers must explain why. The explanations must be clear

and convincing to a person not familiar with the properties and market areas involved.

a. Do not just reiterate the entries in the data column. **Example**: Do not just say: "A negative adjustment was made to comparable 1 for location". Instead, outline the data and logic used to arrive at the adjustment amount. Say something like:

Comparable #1 was adjusted downward to reflect its location in a more desirable neighborhood that consists primarily of single-family homes, has little crime, and has good access to shopping. The adjustment was estimated by comparing the rents at Comparable #1 with those of Comparable #4, which is in the subject's neighborhood but otherwise very similar to Comparable #1. The average value of the superior location was estimated to be $25.

b. For all large adjustments and for items that are particularly quantitative (e.g., utilities), the appraiser must present market data to support his/her conclusions. For minor adjustments (generally in the $5 to $10 range), the appraiser may state his/her subjective evaluation of why the observed differences would affect rent.

C. Special Concerns

1. Rent Restricted/Comparables. No adjustment may be made for the fact that a rent is restricted as defined in Section 9-10.

2. Comparables Outside the Subject's Market Area. If a comparable is located in a different market area than the subject, the appraiser must adjust for any *significant* differences in rent levels between the two areas. Line 10 of the Rent Grid provides space for the adjustment.

3. Utility Adjustments. If a utility *(e.g. heat)* is included in the rent at both the subject and the comparable, a prospective tenant would probably perceive these as equal choices even if the energy sources (gas, electric, or oil) differed and no adjustment would usually be needed. But, if a utility is included in the subject's rent but not the rent of the comparable *(or vice versa)*, the appraiser must estimate the *rental value* of that utility and adjust accordingly.

a. For properties with typical utility costs, the "rental value" is probably close to what prospective tenants would expect to pay. However, for properties with unusually low utilities, prospective tenants initially may overestimate utility costs, putting rental value slightly above actual cost. For properties with unusually high utilities, the reverse may be true: prospective tenants initially may underestimate utility outlays, causing rental value to be less than the utility costs they actually incur following move-in.

b. If a utility is:

1) Excluded from the comparable rent but included in the subject rent, enter a ***positive*** adjustment that reflects the amount prospective tenants would reasonably expect to pay for that utility at the ***comparable***.

2) Included in the comparable rent but not the subject rent, enter a ***negative*** adjustment that reflects what prospective tenants would reasonably expect to pay for that utility at the ***subject***. [Since tenants make housing choices based upon total shelter cost (rent + utilities), estimated outlays for utilities reduce, dollar for dollar, the amount a prospective tenant is willing to pay for rent.]

c. The appraiser may use any reasonable method to value expected utility outlays, but must identify the method used and explain how the dollar adjustment was derived. Some data sources commonly used to value utility adjustments are listed below. Appraisers should use data that reflect the characteristic of the project on which the adjustment is based, i.e., the subject or comparable as bolded in paragraph b above.

1) Regional utility allowances published by independent public agencies;

2) Data gathered from utility providers;

3) Data gathered from tenants and landlords; and

4) A HUD/CA approved utility allowance if the type of service and building attributes considered in developing the utility allowance are similar to the comparable being adjusted.

4. Non-Shelter Services. If a project is seeking to mark up or down to market rent, appraisers must value adjustments as directed in Paragraph **4a** below. For other projects requesting an OCAF or budget-based rent adjustment, appraisers must value adjustments as directed in Paragraph **4b** below. Paragraph 4a applies to projects requesting lites, projects seeking to mark-up-to-market, and exception projects renewing under option two.

Note: If compliance with Paragraph 4a produces a market rent below the eligibility for marking up to market or an owner wishes to see the RCS before making a final decision on whether to request to mark up, appraisers may need to value adjustments pursuant to both Paragraphs a and b below. See Section 9-13D below for guidance on how to present dual adjustment methods on the Rent Grid.

a. Marking-to-Market Projects. *(See applicability at end of Paragraph 4 above.)* When comparing these projects with their comparables, appraisers may value the *availability* of any service regardless of funding source, but should recognize the value of services *actually provided* only for services that HUD/CA has authorized to be paid from rental income. **Example**: If meals are provided but paid by tenant charges, the project's residual receipts, or

outside grants, the appraiser may recognize the value tenants place on having access to meals but not the value of actually supplying the meals.

Note: While the cost factor (OCAF) or budget will drive the rent levels on other projects that submit RCSs, on mark-to-market projects the market rent will drive or set the level of the renewed Section 8 rent. If services not authorized to be paid from rental income were valued in developing the market rent, Section 8 subsidies would end up paying for non-shelter services that Section 8 is not allowed to cover.

b. Projects Requesting OCAF/Budget-Based Rents. Appraisers should assess the value of *all* services offered, regardless of whether the service is paid by the project, the tenant, or other sources.

1) Even services offered for a charge may have value as the market generally values the *availability.*

2) Generally, services included in the rent or funded from sources other than tenant charges should be more valuable than services offered to residents for an extra charge.

3) On these under-market projects, the project's budget or the applicable OCAF drives the rent levels and HUD rules on use of project funds and budget approvals determine which services may be paid from rental income. Hence, valuing all services will not result in the misuse of Section 8 as it would in the marking-to-market projects discussed above. Valuing all services is consistent with USPAP's directive to consider rental value to tenants and will ensure that the market rent ceiling does not inappropriately hold rents to less than amounts authorized through HUD's budget rent procedures.

D. Concepts to Keep in Mind when Valuing Adjustments.

1. Not all differences between the subject and the comp require adjustments. Adjust only for differences that would affect how much rent a tenant is willing to pay. If a difference would appear to affect rental value and no adjustment is made, explain why you didn't adjust.

2. Adjustments must reflect local markets. Base adjustments on what typical renters in the *subject's* particular market area will pay. Tenants in different markets may value amenities and services differently. **Examples**:

a. Tenants in the Northeast might pay less for a swimming pool than renters in the South would.

b. Tenants in colder regions are more conscious of heating costs and might pay more if heat were included in the rent than tenants in warmer climates would.

3. Adjustments often vary by unit type. Even in the same market, renters may value the same service differently among unit types. A second bathroom may be more valuable in a three-bedroom than in a two-bedroom unit. Similarly, 50 additional square feet may be valued differently in a 550 sq. ft, one bedroom unit than in an 800 sq. ft, two-bedroom unit.

4. Adjustments levels must reflect rental value, not construction cost or the cost of providing a service. **Example:** In adjusting for differences like an elevator, amortizing the cost of the elevator over its useful life is not what a market renter would do. Any adjustment should reflect only what residents would typically pay for the convenience of using the elevator rather than climbing stairs.

5. Adjustments, whether positive or negative, must be applied consistently. Don't make small negative adjustments when an amenity is superior while making large adjustments when the same feature is inferior.

6. Do not duplicate adjustments**.** Appraisers should be careful not to adjust for the same element in more than one place. **Example**: If adjustments are made for project appeal (Line 8) and age (Line 7), the appraiser should take care to ensure that the sum of those lines is not more than the value the tenant would place on all features covered by those lines.

9-13. DERIVING ESTIMATED MARKET RENTS (FORMERLY CALLED "CORRELATED RENT"

For each primary unit type, the appraiser must analyze the adjusted rents computed pursuant to Section 9-12 and determine, using his/her knowledge of the comparables, what point in that range of adjusted rents best represents the rent the subject could most probably obtain. The appraiser must enter this amount on Line 46 of the Rent Grid.

A. The appraiser must consider: the type, size, and number of adjustments made; the quality of each comparable; whether a comparable's data were estimated or incomplete; and how the adjusted rents for each unit type relate to each other. Better comparables should receive more weight. While appraisers may compute and consider averages and other mathematical formulas, those calculations do not allow for exercise of the appraiser's professional judgment and should not, by themselves, determine market rents.

B. The appraiser must explain ***how*** the market rent was derived and ***why*** it was derived that way. If the appraiser weights some comparables more than others or sets the market rent at the very high end of the range of adjusted rents, the appraiser must explain why. Explanations should be brief, but understandable and convincing. The explanation should be included as comments for Line 46 of the Rent Comparability Grid.

C. Primary vs. Secondary Unit Types. If ***secondary*** unit types are included in the RCS, the appraiser may adjust the market rent of the related primary unit type to arrive at the secondary unit type's market rent. To do so, the appraiser may adjust the

primary's market rent to reflect the slight differences (e.g., half bath) between the secondary and primary type and set the secondary's market rent at the resulting amount. The appraiser must explain ***how and why*** the adjustment was made. These comments should be presented immediately following Line 46's comments on derivation of market rent *(**Note**: See Section 9-9A2 for guidance on classifying unit types as primary or secondary*).

D. Marking-to-Market Projects with Non-shelter Services. If an owner is considering marking rents to market under any vehicle to which Section 9-12.C.4.a. applies, the appraiser should first prepare the Rent Grid in accordance with Section 9-12.C.4.a.'s instructions on valuing adjustments. If the resulting rents indicate the project may not be eligible to mark up or the owner wishes to see what market rent would be under Section 9-12.C.4.b.'s rules for OCAF/ budget requests, the appraiser need not complete a new grid. The appraiser may adjust the rent derived for marking up using the techniques described above for primary and secondary units. The appraiser must explain ***how and why*** the additional adjustments were made. These comments should be presented immediately following Line 46's comments on derivation of market rent.

9-14. CONTENT OF THE RENT COMPARABILTY STUDY

A. Each RCS must include at least the materials listed below. Each item below must cover the topics or data identified in Appendix 9-10 at the end of this Chapter. An appraiser should provide information that goes beyond Appendix 9-10 if such information is needed for HUD to understand the appraiser's conclusions.

1. Appraiser's Transmittal Letter;
2. Scope of Work;
3. Description of Subject Project *(including color photographs);*
4. Identification of the Subject's Market Area;
5. Description of Neighborhood;
6. Narrative Describing Selection of Comparables;
7. Locator Map for Subject and Comparables;
8. Rent Comparability Grid for Each Primary Unit Type;
9. Narrative Explaining Adjustments and Market Rent Conclusions *(one set of explanations for each Rent Grid);*
10. Comparable Project Profiles *(each including a color photograph);*
11. Appraiser's Certification; and a
12. Copy of Appraiser's License (*only if relying upon a temporary license*)

B. To expedite HUD's review, appraisers must order material in hard copy reports in the same order as Appendix 9-10 and present material in the format (e.g., grid/table vs. narrative) noted in that Appendix.

C. Narratives required by Appendix 9-10 should be concise but contain enough information that a person not familiar with the properties and market areas involved can understand how the appraiser arrived at his/her conclusions. Appendix 9-3 provides a sample RCS.

D. To expedite preparation, the appendices to this Chapter provide Word or Excel files for any table/grid requested in the Appendix. Appraisers may download electronic versions of these files at www.hud.gov/fha/mfh/exp/rentcomp.html. The Rent Grid may also be downloaded at www.hudclips.org.

9-15. PREPARING THE RENT COMPARABLITY GRID *("RENT GRID')*

Appraisers must use the Rent Grid (HUD 92273-**S8**) shown in Appendix 9-2 to document both the characteristics of the subject and the comparables and the adjustments made for differences between a comparable and the subject. Entries on the Rent Grid must comply with guidance provided in Sections 9-7 through 9-13 *(especially Section 9-12)* and in Appendix 9-2's line-by-line instructions.

A. A Rent Grid is required only for each ***primary*** unit type. For any ***secondary*** unit types, appraisers need not complete an entire grid. Instead, appraisers may start with the market rent for a primary type and adjust for the minor difference(s) between the secondary type and the related primary type. Appraisers must explain ***why*** adjustments were made and ***how*** they were made. The explanation should be presented immediately following the Line 46 explanation of how the market rent for the primary unit type was derived.

B. While appraisers may manually type entries onto a hard copy form, appraisers are encouraged to use the Excel file in Appendix 9-2 as it automates all calculations, and lets appraisers copy project-level data that stays constant across unit types. The Excel version is available as Form HUD-92273-**S8** on HUD's website at the addresses noted in Section 9-14D.

Note: Owner Responsible for Completeness of RCS. The owner must ensure that the RCS includes all information required by Appendix 9-10. Section 9-14B1 requires owners to certify that they have checked the RCS for completeness.

9-16. SUBMITTING THE RCS TO HUD

A. The owner must submit the RCS to HUD (or CA) no later than 120 days before the expiration of the Section 8 contract. Early submissions are allowed, but owners should not submit more than 180 days before the contract expires. Owners should submit the RCS along with the other information required in this guide.

B. The submittal must include a cover letter in which the owner:

1. States that he/she has reviewed the content of the RCS and concluded that the RCS includes all material required by Appendix 9-10.

2. States that the appraiser's narratives and Rent Grid accurately describe the subject project and properly treat non-shelter services and their funding sources as required by Section 9-12.

3. Identifies any identity-of-interest existing between principals of the subject's ownership or management agent entity and the principals that manage/own the projects used as comparables (*See Handbook 4381.5, Paragraph 2-3 for a definition of the term "identity-of-interest").*

4. Certifies that: a) neither the selection of the appraiser nor the appraiser's compensation was/is contingent upon the appraiser reporting a predetermined rent or direction in rent; and b) to the best of the owner's knowledge, the appraiser meets Section 9-8A's conditions regarding absence of financial, employment, and family relationships.

5. Certifies that the fee paid for the RCS is the only compensation the appraiser will receive for the RCS work and there is no side agreement or other consideration.

6. Identifies whom HUD/CA should contact at the agent/ owner's office if staff have questions on the RCS and gives the email and phone number of the contact. **Note**: HUD/CA will send its decision letter to this contact unless the owner directs otherwise.

7. States whether HUD/CA may talk with the appraiser directly and copy the appraiser on written materials.

9-17. HUD/CA REVIEWS OF RENT COMPARABILITY STUDY

This Section gives the AE/CA guidance on how to review RCSs prepared and submitted in accordance with Sections 9-7 through 9-16 of this Chapter (Sections 9-4 through 9-6 provide procedures for reviewing Owner requests to use FMRs or the Section 8 project's non-Section 8 units in lieu of performing a RCS). When referring to a particular staff position, this Section uses titles typically used at HUD. Contract Administrators should translate those to their own position titles.

A. Regional Centers/Satellite Offices Offices and CAs must use the HUD drafted worksheets for completing these reviews. (See http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/mfhsec8)

B. A State-certified general appraiser should oversee all RCS processing and ensure that all staff involved in processing have read and understand this Chapter. While Program Assistants (PAs) or Account Executives (AEs) may screen the RCS for compliance with timeliness and content requirements, ideally a HUD/CA appraiser should complete all substantive reviews of the RCS's facts, reasoning, and conclusions. If staffing does not permit that, the Director of Multifamily may authorize AEs to assist with the substantive reviews if the conditions below are met.

   1. Rejections are issued only after a State-certified general appraiser has reviewed the study and concluded that the rejection is warranted. Rejections are decision letters that either tell the owner the study must be redone and resubmitted; or challenge the study's rent conclusions and suggest an alternate rent.

2. AEs have read and understand this Chapter.

3. AEs are allowed to independently accept an RCS's rent conclusions only:

   a. After the HUD/ CA appraiser has reviewed the AE's processing of several cases and found the AE's work to be acceptable.

   b. If the Director requires the AE to seek appraiser input on "exceptional" cases. The Director and appraiser may establish the list of factors that would trigger appraiser input. Appraiser input should be required when:

      1. Less than 5 comparables are used, or comparables are rent restricted units, located outside of the subject's market area, or significantly dissimilar to the subject (e.g., different number of bedrooms, structure type, or level of services).

      2. Adjustments are unusually large or not commonly made in the applicable market area, the adjustments don't meet the general rules in Section 9-12, or the RCS appraiser did not adjust for differences that the AE reasonably expects would require an adjustment.

      3. The explanation of how market rent was derived from adjusted rents is not convincing or the market rent is set very near the top of the range of adjusted rents.

      4. HUD/CA appraisers should retain review of RCSs submitted by RCS appraisers who have previously submitted inadequate RCSs.

9-18. RESERVED

9-19. INITIAL SCREENING FOR COMPLETENESS AND TIMELINESS

A. Within 10 calendar days, the AE/CA should determine *by completing the HUD checklist*:

   1. Is the date on the RCS appraiser's cover letter within 90 calendar days of the date the owner submitted the study to HUD? Did the RCS appraiser update data within 90 calendar days prior to the date of his/her report? *(Data collection dates should be discussed in the Scope of Work Section of the appraiser's report.)*

   2. Has the owner submitted all information required by Section 9-16?

   3. Has the appraiser included all items required by Section 9-14 and do those materials contain all of the information required by Appendix 9-10? Be sure to check for these items:

      a. Did the appraiser sign the appraiser certification, fill in blanks, and enter the license information requested on the bottom of the form?

b. Are names of contacts at the comparables and the subject included?

c. Is the market area identified and a locator map included?

d. Are photos of interior and exterior of the *subject* included as well as photos of exterior of all *comparables*?

e. Was selection of comparables explained? If applicable, was justification for using fewer than 5 comparables, rent restricted units, units outside of subject's market area, or units significantly dissimilar to the subject (e.g., different number of bedrooms, structure type or level of services) included? Was justification for not using similar unassisted units in project as a comparable included, if applicable?

f. Is a Rent Grid included for at least every primary Section 8 unit type? If Grids were included only for primary unit types, did the appraiser include an explanation of how market rent was derived for any secondary unit types?

g. Is an explanation of adjustments provided for each Rent Grid?

h. Did the appraiser explain how market rent was derived from adjusted rents?

B. If more than 180 calendar days elapsed between the date the RCS appraiser updated the data and the date the owner submitted the report to HUD/CA, staff should return the report to the owner and ask the owner to have the appraiser update the data.

Note: Staff should not return reports when either the owner or the RCS appraiser exceeded the 90 day timeframe Section 9-7.C. imposes on the owner or Section 9-7.B. imposes on the appraiser, but the data is no older than 180 days.

C. If the submission is incomplete, within 10 calendar days after receipt, staff should ask the RCS appraiser (by phone or email) to submit missing items within 7 calendar days. If the appraiser does not submit the missing items within the 7 days, staff should write (hard copy/email) the owner contact and advise that the report will not be processed until the items are submitted.

Note: The owner contact should be specified in the owner letter required by Section 9-16. Staff may contact the RCS appraiser directly unless the owner has specifically objected to that in the owner certification required by Section 9-16.

9-20. SUBSTANTIVE REVIEW

The HUD/CA appraiser, or the AE working in coordination with the appraiser, must *use the HUD checklist and* determine if the RCS appraiser's selection of comparables, adjustments, and rent conclusions are reasonable. The HUD/CA appraiser is not required to agree with every detail of the RCS, but only be convinced that the suggested market rents are reasonably supported by market facts. The RCS should contain sufficient information to convince a person unfamiliar with the market areas or properties involved.

Note: Policing compliance with USPAP should not be the focus of HUD/CA's review. HUD/CA appraisers should be concerned about a RCS's compliance with USPAP only if they find significant problems in the research, facts, reasoning, or conclusions noted in the report. Staff should not check for completeness of USPAP clauses just for the sake of doing so.

A. Listed below are key questions staff should answer. Staff should document any concerns or conclusions.

   1. Do the facts presented in the appraiser's narratives and grid accurately depict the subject?

      Note: Section 9-16B requires the owner to certify to the accuracy of these facts.

   2. Does HUD/ CA have any data on comparables that differ significantly from data the RCS appraiser presented on comparables? If an appraiser has submitted incorrect facts on other reports or HUD/CA questions the facts, HUD/CA may wish to verify the facts with the contact persons identified in the RCS.

   3. Is the appraiser's definition of the market area reasonable?

   4. Does the appraiser's explanation of how comparables were selected cover all points required by Section 9-10 and Appendix 9-10's Narrative on Selecting Comparables? If applicable, is justification for using fewer than five comparables, rent restricted units, units outside of subject's market area, or units significantly dissimilar to the subject (e.g., different number of bedrooms, structure type, or level of services) convincing? Is justification for not using similar unassisted units in the subject as a comparable convincing?

   5. If comparables were selected from outside the subject's market, did the appraiser adequately describe how the two markets' rent levels compare? If the rent levels differed, did the appraiser make a reasonable adjustment in Part B of the Rent Grid?

   6. Are other adjustments in Parts A through E of the Rent Grids reasonable - i.e., consistent with the facts, standard appraisal practice, and Section 9-12? (Pay special attention to extremely large adjustments and adjustments in Parts A and B of the Grids.)

a. Staff should not challenge minor differences between the RCS adjustments and values the HUD/CA appraiser would assign if they were doing the RCS. Appraising is not a science, and two reasonable, informed estimates may differ slightly.

b. Staff should not spend significant time reviewing and challenging adjustments if correcting the perceived flaws would not affect the rent an owner will receive *(now or in next few years*) or the estimated market rent shown on the grid. Example: Current contract rent is $450; the owner is seeking a $20 increase and it's clear the market rent will be well above the $20 even if adjustments were revised. In this case, it would not be cost effective to spend extensive time analyzing or challenging adjustments that are reasonably close.

c. For projects with non-shelter services, staff should assess whether the RCS appraiser complied with Section 9-12C4's guidance on valuing adjustments. Did the appraiser consider the funding source and whether services were actually provided or just accessed through the project? For MTM projects, did the appraiser value service delivery only for services the HUD/CA has authorized to be paid from the project's rental income as directed in Section 9-12C4a?

7. If the facts indicate an adjustment is needed but no adjustment is shown, did the RCS appraiser adequately explain why an adjustment was not made?

8. Is the estimated market rent for each primary unit type within the range of adjusted rents? Did the appraiser convince you that the market rent was an appropriate point in the range?

9. If the appraiser adjusted the market rent of a primary unit type to arrive at the market rent for a secondary unit type, is the appraiser's explanation of the adjustment reasonable?

B. Field Visits. While HUD/CA reviews usually only require a desk review, HUD/CA appraisers may conduct a field review if they believe a site visit is needed to accurately assess the RCS. Appraisers should consider site visits when:

1. The desk review raises major questions.

2. The reviewing appraiser is not familiar with the market area, the subject project, or the comparables.

3. The reviewing appraiser is considering challenging adjustments for condition, appeal, neighborhood, or other factors that can change quickly, especially if the reviewing appraiser has not visited the project recently.

C. Communicating Results of HUD/CA Reviews. HUD/CA should convey the results of their substantive review within 30 calendar days after receiving a complete package from the owner.

1. If HUD/CA staff agree with the appraiser's market rent conclusions, they should document that agreement on any office review form and notify the AE that the market rents in the RCS are acceptable for use in further processing of the renewal.

2. If aspects of the RCS are unclear or unconvincing, the HUD/CA staff should ask the appraiser for additional information or explanation. If the issues are minor and staff expect easy resolution, staff may call the appraiser. If concerns are many, more significant or complicated, staff should send the appraiser an email, fax, or hard copy letter stating the concerns and giving the appraiser 7 to 10 calendar days to respond (*Copy the owner contact on any written correspondence except on mark-up-to-market cases).* The RCS appraiser should send the information to HUD and copy the owner.

3. If the appraiser's response does not resolve the HUD/CA staff's concern(s), staff may talk with or write the appraiser again (*Copy the owner contact on any written correspondence except on mark-up-to-market cases).*

4. Within 10 calendar days after final information was due from the appraiser, HUD/CA staff must either: 1) accept the study and proceed as described in Item C1 above; or 2) draft a decision letter challenging the RCS.

   a. The decision letter must be signed by the Regional Center Director, clearly state the reasons the RCS is challenged, and list the owner options and the deadline cited in subparagraph 4b below. The letter may reject the study completely and require resubmission of a new study, or present alternate rents. Any alternate rents must be developed by a HUD/CA appraiser and be consistent with this Chapter's procedures and USPAP. The letter must tell the owner how the appraiser arrived at the suggested market rent.

   b. The owner may accept the letter's rents, resubmit a new study, or appeal HUD's decision. Within 10 calendar days after the date of HUD/CA's letter, the owner must advise HUD in writing of his/her choice. Submission of a new study restarts processing.

   c. If the owner appeals or will resubmit an RCS, HUD/ CA may prepare a short term renewal to allow time for processing the appeal.

9-21. OWNER APPEALS

A. If an owner decides to appeal, the owner must note that choice as required by Section 9-20.C.4.b. and must then submit a written statement of his/her reasons for appeal and any data that support his/her objections. The owner may request a meeting, but must still submit the written data. The reasons and data must be submitted within 15 calendar days after the date of HUD/CA's initial decision letter. The letter must be delivered, via email, fax, or mail, to the Regional Center Director.

B. If the owner requests a meeting, HUD/CA should hold the meeting or a conference call within 15 calendar days of the date of the owner's appeal. The owner, the RCS

appraiser, the HUD/CA appraiser that reviewed the RCS, and the Regional Center Director/designee should participate. The Director and HUD/CA appraiser should consider if a field visit is needed to accurately process the appeal *(See Section 9-20B for more on field visits).*

C. The Regional Center Director should issue a letter reporting the results of the Agency's review of the appeal. HUD/CA may accept the RCS, reject the study completely and require resubmission of a new study, or propose alternate rents. The Regional Center should issue the letter within 15 calendar days after the latest of: the date the owner submitted the basis for the appeal; the date of any meeting/ conference call conducted per Paragraph B; or the date by which owner agrees to submit additional information requested by HUD.

D. The owner may accept/ appeal the Regional Center Director's decision on the first level appeal. The owner must submit a written statement of his/her reasons for appeal and any data that support his/her objections. The submission must be received within 15 calendar days after the Regional Center Director's decision letter and must be addressed to the Regional Center Director. The owner may also request a short-term renewal if the contract has expired or if expiration is imminent.

1. The Regional Center Director will determine if the appeal has potential merit and, if so, issue a short term renewal to allow time to process the appeal. The Regional Center Director may contact the owner, the RCS appraiser, or the reviewing Appraiser for clarification or additional information.

2. The Regional Center Director should issue a decision letter to the owner within 15 calendar days after the date the owner appealed to the Regional Center. The letter must clearly state the basis for HUD's decision.

9-22. IMPOSING SANCTIONS ON APPRAISERS

If, after the substantive review and communication, discussion or appeal pursuant to Section 9-20 or 9-21, the Regional Center Director still concludes that the appraiser's work is seriously deficient, the Regional Center Director should consider:

1. Reporting egregious violations or repeated technical violations of USPAP to the state's real estate appraisal regulatory authority; and

2. Imposing or recommending imposition of HUD's administrative sanctions [Limited Denial of Participation (LDP), suspension or debarment].

9-23. *SPECIAL PROCEDURES WHEN AN RCS SHOWS THAT A PROJECT'S MEDIAN MARKET RENT EXCEEDS 140 PERCENT OF THE MEDIAN GROSS RENT FOR THE PROJECT'S ZIP CODE*

*The following requirements will apply for all contracts where the owner's RCS concludes a project's median gross rent exceeds 140 percent of the "Gross Rent By Zip Code Tabulation Area" as published by the U. S. Bureau of the Census or other

comparable source as determined by HUD. 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

In a few instances, the listing contains either a "**" or "$2800+". If the project is located in a zip code with a "$2,800+" in the number field, then a HUD RCS is only required if the new comparable market rents exceed $2,800 ($2000 X 140%), and the project's overall rent increase would exceed 5 percent. For those projects located in zip codes with "**", a HUD RCS is only required if the project's overall rent increase would exceed 5 percent.

Note: HUD allows the use of a lender ordered MAP appraisal to serve as a substitute for the HUD required RCS if the following conditions are met.

1. The appraisal must be ordered, paid for, and underwritten by the lender. The MAP appraiser must follow the existing requirements as stated in Chapter 9 of the Renewal Guide to determine the rent. In cases where there is project-based Section 8 (Section 8), comparable market rents must be estimated both before and after repairs. The MAP Guide will be used for the remainder of the assignment.

2. The MAP appraiser will use the form HUD 92273-S8 in lieu of the form HUD 92273. The 92273-S8 form will be used in all Section 8 related appraisals. The 92273 form will continue to be used for non-Section 8 assignments.

3. Any appeals are to be made by the lender to the processing Regional Centers/Satellite Offices office. No direct appeals to Headquarters by the owner will be accepted.

4. In order to set the Section 8 rents, HUD staff shall use the lender-supplied appraisal and the HUD 92273-S8 as they would have used the HUD procured RCS and use Section 3-7.F to determine the final comparable market rents for the project.

5. Appraisers and HUD review appraisers should follow the most current USPAP.

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.

MEDIAN RENT

A. In the first example, there are an even (90) number of units in the project. The median falls between the 45th and 46th unit at $1245. If the rents for the 45th and 46th units are different, the median value is obtained by taking the average of the rents for the 45th and 46th units.

XXX Apartments			
Any County XX			
Zip 99999			
Number of Bedrooms	#	RCS Rent	Cumulative # Units
1	4	975	4
1	6	995	10
2	15	1225	25
2	32	1245	57
3	11	1605	68
3	22	1625	90
Total # of Units	90		
Median	45		

In the second example, there are an odd number of units (49) in the project. The median rent will be the 26th unit or $389.

YYY Apartments			
Any County OH			
Zip 45142			
Number of Bedrooms	#	RCS Rent	Cumulative # Units
0	5	250	5
0	5	275	10
1	8	325	18
1	7	350	25
2	6	389	31
2	9	413	40
3	9	475	49
Total # of Units	49		
Median	26		

B. 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.

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. Since the RCSs will be done for both insured and uninsured properties, contract funds to pay for the studies will come from the sources below.

    a. FHA Insured: Technical Discipline Contract PAS Code: MTF.

    b. Noninsured: Section 8 program funds. PAS Code: CRE

2. **Differences in Comparability Studies**. There are no negotiations allowed nor is there an appeal process when there are differences between comparability studies.

    a. When the HUD comparable gross rent potential is greater than the owner's comparable gross rent potential, the final comparable market rents will be the owner's comparable market rents.

    b. When the HUD comparable gross rent potential is less than the owner's comparable gross rent potential, if the owner's comparable rent potential is:

        i. less than 105% of the HUD comparable rent potential, the final comparable market rents will be the owner comparable market rents;
        ii. greater than or equal to 105% of the HUD comparable rent potential, the final comparable market rents will be 105% of the HUD comparable gross potential rents.

    c. An owner may request a copy of the HUD RCS without going through the Freedom Of Information Act process.

D. i**REMS**. The AE will use iREMS to compare the owner and HUD RCS unit type rents and determine the final comparable market rents and determining final eligibility.

USE HUD FORM 9627

USE HUD FORM 92273—S

Rent Comparability Study

On

ABC Village Apartments

100 Main Street

Smithville, State

Date of Report

April 15, 2000

Prepared For

ABC Village Associates

P.O. Box 2255

Smithville, State 55555-2255

Prepared By

Appraisal Services International

123 Allen Street, Suite 456

Smithville, State 55555

Appraisal Services International

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joe@appraiserserv.com

April 15, 2000

Mr. Owner

ABC Village Associates

P.O. Box 2255

Smithville, State 55555-2255

Re: ***Rent Comparability Study / ABC Village Apartments***

Section 8 Contract Number: PA0000999992 FHA No. 1233566

Dear Mr. Owner:

Attached is the Rent Comparability Study (RCS) you requested for ABC Village Apartments.

The purpose of the study was to estimate the market rents for units that will be assisted under the renewed Section 8 contract. Market rent is the rent that a knowledgeable tenant would most probably pay for the Section 8 units as of the date of this report, if the tenants were not receiving rental subsidies and rents were not restricted by HUD or other government agencies. The following table lists the market rent I concluded for each Section 8 unit type.

			Estimated Market	

Unit Type	# Units	Size (Sq. Ft)	Rent	$/ Sq. Ft	Prepared Grid? (Y/N)
Efficiency	7	450	$485	$1.08	Y
Efficiency	3	500	$505	$1.01	N
Total	**10**				

The RCS was prepared in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP) and the supplemental standards of HUD Notice H 00-12. Market Rents were defined and estimated in accordance with Section 3 of Notice H 00-12 and the report was prepared in accordance with Section 4 of the Notice H 00-12. I understand that HUD/the Section 8 Contract Administrator (CA) and the project owner will use my estimate of market rents to determine: 1) the owner's options for renewing the project's Section 8 contracts; and 2) the maximum rents allowed under any renewal contract.

Should you have any questions or require more information, please contact me directly at the phone number or e-mail address listed above.

Sincerely,

Joseph Jones

Joe Jones

ST Certified General Appraiser #CG2222

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Exhibits

Color Photographs of Subject

Additional Photos of Comparables

Scope of Work

This Rent Comparability Study was completed in accordance with the requirements set forth in HUD's Notice H 00-12.

Joe Jones, a State certified general appraiser employed by Appraisal Services International (ASI), oversaw and supervised all data collection and analysis. Sharon Allen, an associate at ASI, performed some of the research under Joe Jones's supervision. The following actions were taken to complete this RCS.

- On March 13, 2000, Joe Jones and Sharon Allen inspected the interior and exterior of the subject project to determine the project's physical and functional characteristics. Jones & Allen inspected two small efficiency units, one large efficiency unit, interior common areas (lobby and community room), and exterior grounds. Ms. Sue Hancock, the on-site project manager, accompanied Jones & Allen on all inspections. Ms. Allen measured the interior of the units and interviewed Ms. Hancock to determine the rental rates, services, and amenities offered to tenants of the subject project.
- Ms. Allen researched comparable apartment rental activity in the subject township and competing locations. The research included pulling data from internet sites, local newspapers and rental publications, town records, owners and managers of local apartment properties, local real estate brokers, fellow appraisers, and files of Appraiser Services International.
- During the weeks of March 13 and 20, Jones & Allen inspected the exterior of each comparable project. For three of the comparables *(Holland Apartments, BCD Village Apartments and Glen Park),* Jones & Allen also inspected interior common areas and a model unit. At the other two comps *(Park Village and Lebanon Apts)* access was denied or no models were available, but Jones & Allen did view on-site photos of these units' interiors.
- During the site inspections or in separate phone interviews, Ms. Allen talked with the managers of the comparable properties to confirm all data and to collect additional information about each comparable, including size, age, and amenities, occupancy rates and general market information. The project manager provided floor plans or other information describing the size of comparable units after Sharon Allen explained that the interior size was needed.
- Ms. Allen completed the data & adjustment columns of the Rent Comparability Grid using the instructions in Attachment 2b and Sections 3 and 4 of Notice H 00-12. Mr. Jones reviewed all entries, modified some, and derived an estimated market rent for each unit type.

Description of Subject Project

ABC Village Apartments is a 5-story, brick elevator building located at 100 Main Street, Smithville, State. The site is located on a level, rectangular corner lot with 100 feet of frontage on Main Street and 200 feet of frontage on High Street in the Central Business District of Smithville, in the county of Gloucester. The corner lot provides excellent visibility and access.

The table below describes the unit mix for ***all*** 50 units at the project. This RCS applies only to the 10 efficiency units, as these are the only units in the complex that receive Section 8 subsidy. The market rent for the one-bedroom units is $595. The project is occupied by elderly residents. Elderly are drawn to the complex because of its central location and the services it provides.

Unit Type	**# Units**	**Interior Size** (SF)	**# Pjt- Based Sec 8 units**	**#** Other Rent Restricted **Units**	**# Units Not Rent Restricted**
0/1	**7**	450	**7**	0	0
0 / 1	**3**	500	**3**	0	0
1/ 1.5	**40**	600	**0**	0	40
	50		**10**	**0**	**40**

The building was originally constructed in 1950 as a manufacturing facility and was converted to its present use in 1980. Renovations at conversion were extensive and the building has been well maintained since the renovation. Occupancy for the subsidized units has consistently been near 100 %. Occupancy for the market-rate units has been just slightly lower, at 93% to 95% for the last three years.

Each efficiency unit contains a galley-style kitchen, a bathroom, and a living/bedroom area. The two groups of efficiency units are identical except for a difference in size: seven units contain 450 square feet and three contain 500 square feet. All units are carpeted, with linoleum flooring in the kitchens and bathrooms. Each unit contains a stove, refrigerator, garbage disposal, and small patio or balcony. The units have central air conditioning. Gas heat and hot water are included in the rent. Tenants pay for electricity, including air conditioning.

Each unit has an emergency call system that, if activated, will alert the manager's office and a 24-hour call service. If the manager does not respond to the emergency, the service will. Three days per week, a van makes scheduled trips to the grocery store, the shopping mall and the senior center. Tenants requiring transportation to doctor appointments may request a ride on the remaining two weekdays. ABC Village also offers well-organized social activities and gives

tenants the use of a lounge, a television area, and a large, sunny meeting room with tables and chairs for game activities.

The building is accessed by key only, and tenants may call a 24-hour maintenance line in case of accidental lockout or maintenance emergency. An on-site manager is at the project six days a week during the hours of 9:00 am to 6:00 p.m. The complex has a coin operated laundry facility with five washers and dryers and a small, paved parking lot for 20 cars. Parking is offered at an additional charge of $20 per month. There are no other amenities that require a charge in addition to rent.

Ms. Sue Hancock, the property manager, confirmed the above data. She is employed by Smithville Managers Inc. and her telephone number is (000)-555-3333.

Definition of the Subject's Market Area

Smithville is located in the northeast section of Gloucester County at the junction of Interstates 80 and 180. Smithville is the county seat of Gloucester County and a commercial and residential center for the surrounding towns. The market area for Smithville includes the Gloucester County towns within a fifteen-mile radius (*Bainbridge, Lexington, Upton, Newbury, and Barre*) and two Orange County towns within a ten-mile radius *(Exeter and Cypress Lakes).* This is the area from which the subject would normally draw its applicants.

Description of Neighborhood

The subject neighborhood is located in the central business district of Smithville, which is in the northeastern section of the city and near the historic Highlands area. The neighborhood contains a mix of professional and town offices, upscale boutiques, churches, older single-family homes that have been gentrified, and some older apartment buildings that were renovated between ten and twenty years ago. Property values in the area are generally growing and most properties are well kept. Access to Interstates 80 and 180 is less than five minutes from the subject property.

A senior center is within seven blocks of the complex. A small grocery store and a drug store are on the same block as the subject complex and a larger grocery store is three miles away (accessed by the van service.) A shopping mall and medical center are also within ten miles and van service is provided to them. There is no apparent crime in the area, nor are there any other significant negative influences.

How Comparable Properties Were Selected

The appraiser researched rental housing in the market area and identified ten market-rate apartment properties that appeared similar in age, condition and location. Six of them did not contain efficiency units.

The four that do provide efficiencies are Lebanon Apartments, BCD Village, Holland Apartments, and Park View Apartments. ***Lebanon Apartments*** and ***BCD Village*** are elderly projects, located within one mile of the subject and offering amenities similar to those at the subject. ***Holland Apartments*** is 75-unit family complex in Smithville (six miles away). It offers

mostly one and two bedroom units and has only three efficiencies. ***Park View*** is located in Lexington about 13 miles from the subject. It was renovated in 1999 through the use of low income housing tax credits. It is a mixed income property, offering 30 efficiency units at market rents and 30 one-bedroom tax credit units to elderly residents earning less than 60% of median income. The property is in the rent up phase.

The appraiser conducted additional research to identify other comparable efficiencies that were outside the market area, contained rent restrictions or were less similar to the subject. Brokers, property managers and owners were consulted as well as staff at the senior center. Additional efficiencies were found at ***Glen Park*** -- a 50-unit, market-rate, elderly project located in Channel Crossing, a town 30 miles away and outside the market area. ***Glen Park*** is very similar to the subject property. It was built and renovated in the same time period, serves a similar population, and offers similar amenities. Ten of its units are efficiencies. The remaining units consist of 25 one-bedroom units and 15 two-bedroom units.

Generally, the appraiser believes that the comparables are of good quality. While one of the comparables ***(Glen Park***) is outside of the market area and, thus, does not meet all of the target criteria in the HUD notice, all comparables are otherwise similar to the subject and the appraiser is confident that the adjustments made adequately valued the differences.

Based on information provided to the appraiser, none of the selected comparables are owned or managed by the entities having an identity - of - interest with the owner or management of the subject property.

Comparable Property Locator Map

APPENDIX 9-3

OMB Approval # 2502-0507 (exp 7/01)

Rent Comparability Grid ***Unit Type*** efficiency ***Subject's FHA #:*** 12335666

	Subject		Comp #1		Comp #2		Comp #3		Comp #4		Comp #5	
	ABC Village Apartments	Data	Lebanon Apts		BCD Village Apts		Holland Apts		Park View Apts		Glen Park	
	100 Main Street	on	13 Main Street		212 South Street		117 South Street		17 Park Ave		305 37th Street	
	Smithville, ST	Subject	Smithville, State		Smithville, State		Smithville, State		Lexington, State		Channel Crossing, State	
A.	**Rents Charged**		Data	$ Adj	Data	$ Adj	Data	$ Adj	Data	$ Adj	Data	$ Adj
1	**$ Last Rent / Restricted?**		$505	N	$500	N	$415	N	$525	N	$525	N
2	**Date Last Leased** (mo/yr)		Dec-99		Feb-00		Feb-00		Mar-00		Jan-00	
3	**Rent Concessions**								1 month free	($44)		
4	**Occupancy for Unit Type**		93%		93%		66%		82%		95%	
5	**Effective Rent & Rent/ sq ft**		$505	1.01	$500	0.91	$415	0.83	$481	0.88	$525	1.17
	In Parts B thru E, adjust only for differences the subject's market values.											
B.	**Design, Location, Condition**		Data	$ Adj	Data	$ Adj	Data	$ Adj	Data	$ Adj	Data	$ Adj
6	**Structure / Stories**	E/5	E/4		E/3		WU/3	$15	G/2	$15	E/7	
7	**Yr Built/Yr Renovated**	1950/80	1970/90	($15)	1950/80		1955/85		1978/99	($30)	1958/75	
8	**Condition /Street Appeal**	G	G		G		F	$20	G		G	
9	**Neighborhood**	G	G		G		G		E	($15)	G	
10	**Same Market? Miles to Subj**		Y/1-2		Y/1		Y/6		Y/13		N/30	($35)
C.	**Unit Equipment/ Amenities**		Data	$ Adj	Data	Adj	Data	$ Adj	Data	$ Adj	Data	$ Adj
11	**# Bedrooms**	0	0		0		0		0		0	
12	**# Baths**	1	1		1		1		1		1	
13	**Unit Interior Sq. Ft.**	450	500	($20)	550	($40)	500	($20)	550	($40)	450	
14	**Balcony/ Patio**	Y	Y		N	$10	N	$10	Y		N	$10
15	**AC: Central/ Wall**	C	C		C		N	$10	C		W	
16	**Range/ ReFrigerator**	RF	RF		RF		RF		RF		RF	
17	**Microwave/ Dishwasher**	N	D	($5)	D	($5)	D	($5)	D	($5)	N	
18	**Washer/Dryer**	L	HU	$5	N	$10	L		WD	($15)	L	
19	**Floor Coverings**	C	C		V	$5	C		C		V	$5
20	**Window Coverings**	B	B		B		B		B		D	
21	**Cable/ Satellite/Internet**	C	C		C		C		C, S, I	($5)	S	
22	**Special Features**	N	N		N		N		N		N	
23												
D	**Site Equipment/ Amenities**		Data	$ Adj	Data	$ Adj	Data	$ Adj	Data	$ Adj	Data	$ Adj
24	**Parking** ($ Fee)	L/$20	G/$55	($5)	N	$5	L/$0	($20)	G/$65	($5)	L/$0	($20)
25	**Extra Storage**	Y	Y		Y		Y		Y		N	$15
26	**Security**	Y	Y		Y		Y		N	$10	N	$10
27	**Clubhouse/ Meeting Rms**	MR	MR		MR		MR		Y	$5	MR	$5
28	**Pool/ Recreation Areas**	N	N		N		P	($15)	R	($10)	N	
29	**Business Ctr / Nbhd Netwk**	N	N		N		N		N		N	
30	**Service Coordination**	N	N		N		N		Y		N	
31	**Non-shelter Services**	EC/T	EC	$10	EC/T		N	$20	N	$20	EC/T	
32												
E.	**Utilities**		Data	$ Adj	Data	$ Adj	Data	$ Adj	Data	$ Adj	Data	$ Adj
33	**Heat** (in rent?/ type)	Y/gas	N/gas	$25	Y/gas		Y/elec		N/gas	$25	Y/gas	
34	**Cooling** (in rent?/ type)	N/elec	N/elec		N/elec				N/elec		N/elec	
35	**Cooking** (in rent?/ type)	N/elec	N/elec		N/elec		N/elec		N/elec		Y/elec	($5)
36	**Hot Water** (in rent?/ type)	Y/gas	N/gas	$10	Y/gas		Y/elec		N/gas	$10	Y/gas	
37	**Other Electric**	N	N		N		N		N		Y	($20)
38	**Cold Water/ Sewer**	Y	Y		Y		Y		Y		Y	
39	**Trash /Recycling**	Y	Y		Y		Y		Y		Y	
F.	**Adjustments Recap**		Pos	Neg	Pos	Neg	Pos	Neg	Pos	Neg	Pos	Neg
40	**# Adjustments B to D**		2	4	4	2	5	4	4	8	5	2
41	**Sum Adjustments B to D**		$15	($45)	$30	($45)	$75	($60)	$50	($125)	$45	($55)
42	**Sum Utility Adjustments**		$35						$35			($25)
			Net	Gross	Net	Gross	Net	Gross	Net	Gross	Net	Gross
43	***Net/ Gross Adjmts B to E***		*$5*	*$95*	*($15)*	*$75*	*$15*	*$135*	*($40)*	*$210*	*($35)*	*$125*
G.	**Adjusted & Market Rents**		Adj. Rent		Adj. Rent		Adj. Rent		Adj. Rent		Adj. Rent	
44	**Adjusted Rent** (5+ 43)		$510		$485		$430		$441		$490	
45	Adj Rent/Last rent			101%		97%		104%		92%		93%
46	**Estimated Market Rent**	$485	$1.08									

Estimated Market Rent/ Sq Ft

Joe Jones / /

Appraiser's Signature **Date**

Attached are explanations of :

a. why & how each adjustment was made
b. how market rent was derived from adjusted rents
c. how this analysis was used for a similar unit type

Grid was prepared: ☐ **Manually** ☑ **Using HUD's Excel form** **HUD 92273 - S8**

Explanation of Adjustments and Market Rent Conclusions

ABC Apartments

Primary Unit Type- Efficiency - Small

A Rent Comparability Grid was prepared for the primary unit type with 450 sq. ft. The market rent for the 450-sq. ft. unit was adjusted to create a market rent for the secondary, 500-sq. ft. unit. The only difference in these unit types is their size.

Line 1. Last Rented / Restricted? All of the units are currently rented at the rates shown on the grid. Rents range from $415 to $525. No unit used in the analysis has any rent restrictions. However, ***Park View*** is a mixed-income project with half of the units set-aside for tax credit residents. The unit used in this analysis is market rate.

Line 2. Date Last Leased. The Grid shows the effective date of the leases most recently signed. Effective dates range from December 1999 to March 2000. No adjustments were necessary.

Line 3. Rent Concessions. ***Park View*** is currently offering one month of free rent with a 12-month lease. The adjustment was derived by dividing the Line 1 rent by 12 months to arrive at a $44 adjustment. The complex has undergone a substantial renovation and is currently in lease up. The new owner does not anticipate any vacancy problems, but wanted to offer concessions to quickly fill the units.

Line 4. Occupancy for Unit Type. According to data collected, the market area has historically maintained an occupancy level between 90 percent and 95 percent for efficiency units over the past several years. The comparables' current occupancy rates range from 66% to 95%. ***Park View's*** low 82% occupancy is due to its recent substantial renovation. Since the appraiser does not believe the rent level contributed to the ***Park View*** vacancies, no adjustment has been made. ***Holland*** has an overall occupancy rate of 94%, but a 66% occupancy rate in the efficiency apartments. There are only three efficiencies and one unit is vacant. The tenant vacated two months ago. The unit is being renovated and is not available for occupancy. Therefore, no adjustment was made.

Line 6. Structures / Stories. The subject, ***Lebanon, BCD Village,*** and ***Glen Park*** are elevator-buildings. ***Holland*** is a three-story walk up and ***Park View*** is a garden apartment complex. Area brokers reported that: 1) rents on units in buildings with elevators are consistently higher than rents for similar units in buildings without an elevator, regardless of which floor the unit is on; and 2) rents on similar units in buildings without elevators are typically not affected by which floor the unit is on. These brokers noted that tenants found elevator buildings more attractive for several reasons – increased availability of common areas; possibility of views; sense of increased security; and convenient access to upper-level units. Typically, elevator buildings can command an additional $10 to $20 rent. A $15 adjustment was made to buildings without elevators.

Line 7. Yr. Built/Yr. Renovated - The subject and three of the comparables ***(Holland, Glen Park,*** and ***BCD Village)*** are 1950's vintage, with renovations completed between 1975 and 1985. These properties are similar in condition and utility and have a similar effective age. No adjustments were made to these properties. ***Park View*** was built in 1978 and was substantially renovated last year, with new exterior siding and windows and interior finishes including carpeting, flooring, and appliances. A $30 adjustment was made to ***Park View*** to reflect the almost-new condition of this comparable as compared to the subject's 20-year-old renovations. ***Lebanon*** was constructed 20 years after the subject, with renovations completed ten years ago. Based on our analysis of the rental data, a $15 adjustment was made to reflect the more modern utility and unit finishes of this comparable.

Line 8. Condition / Street Appeal. The subject and four of the comparables are in good condition and have good street appeal. ***Holland's*** exterior shows signs of deferred maintenance, including neglected landscaping. Based on our analysis of the rental data, a $20 adjustment was made to reflect the inferior appeal of this project.

Line 9. Neighborhood. The subject, ***Lebanon,*** *and* ***BCD Village*** are located in the CBD of Smithville, a congested area with surrounding land used for light industry and businesses. **Glen Park** is located in a similar neighborhood in Channel Crossing. ***Park View*** is located about 13 miles from the subject, outside the city limits and surrounded by residential properties. Rents for properties in the residential areas as compared to the city locations have been consistently higher. Based on our analysis of the rental data, a $15 negative adjustment was made to ***Park View*** to reflect the market preference for residential areas.

Line 10. Same Market? Miles to Subject. ***Glen Park*** is the only comparable that is outside the market. It is located in Channel Crossing about 30 miles north of Smithville on State Route 44. Channel Crossing is a suburb of the state capital (Gotham) and has higher property values than Smithville. To arrive at an adjustment, the Appraiser interviewed local brokers and apartment owners that have direct experience with both markets. The market data provided by brokers and managers indicated that rents in Channel Crossing are $30 to $50 higher than in the subject market area. The appraiser found that generally a $40 to $50 difference existed in larger units (two bedroom) and a $30 to $40 difference existed in smaller units (efficiencies and one bedrooms). Hence, a $35 adjustment was made to Glen Park to reflect the difference for efficiencies between the two markets. (This adjustment is also consistent with the $34 difference in fair market rents for the two communities.)

Line 13. Unit Square Footage. Four of the five comparables are larger than the subject. To value the size differences between the subject and these comparables, the appraiser reviewed the indicated rents after adjustments for all characteristics except size. The appraiser concluded that there is a value of $20 for each 50 square feet above the subject's 450 square feet. Thus, a $20 negative adjustment was made to ***Holland*** and ***Lebanon***, and a $40 negative adjustment was made to ***Park View*** and ***BCD Village***.

Line 14. Balcony / Patio. A $10 adjustment was made to comparable properties that lacked balconies.

Line 15. AC: Central/Wall. The subject has central air conditioning, as do three of the comparables. ***Holland*** does not provide air conditioning, but tenants may install their own window units. According to local property managers, tenants consider it worth $10 per month not to have the nuisance of installing a window unit. ***Glen Park*** has wall units provided, but no adjustment has been made because there is no evidence of a marketable difference in rent between central air and wall units in efficiencies in this market.

Line 17. Microwave/Dishwasher. ***Park View***, ***Lebanon***, ***Holland***, and ***BCD Village*** all have dishwashers and the subject does not. In efficiency units in this market, tenants place a minimal value on these amenities. Therefore, a nominal negative adjustment of $5 was made to the comparables for this amenity.

Line 18. Washer/Dryer. The subject has a coin-operated laundry facility. ***Park View*** provides stacked, washer-dryer units. Based on the appraiser's analysis of the data, renters appear willing to pay a $15 premium for in-unit washer/dryer combinations. ***Lebanon*** has hook-ups available in each unit and does *not* have a common laundry. In this market, elderly renters generally prefer common laundries to hook-ups. ***BCD Village*** has no laundry facilities at all. The Appraiser made a $5 adjustment at ***Lebanon*** and a $10 adjustment at ***BCD Village*** to reflect the inferior services.

Line 19. Floor Covering. All but two of the comparables have carpeting like the subject. Those comparables that have only vinyl floors were allocated a positive $5 adjustment to reflect the inferior floor covering.

Line 20. Window Coverings. ***Glen Park*** has drapes and the subject has blinds. Since the market does not recognize a rent differential between blinds and drapes, no adjustment was made.

Line 21. Cable / Satellite / Internet. All of the comparables and the subject have either cable or satellite service available. All the properties require that the tenants pay for their own cable/satellite service. Since ***Park View*** also has internet service in all the units, a nominal $5 negative adjustment was made.

Line 24. Parking. Parking in the Central Business District is limited and parking on the street is difficult. As a result, owners of neighborhood parking lots typically charge $20-$30 per month. Winter and summer conditions are harsh enough to make garage parking valuable and garage parking typically costs $60-$70 per month.

a. The subject offers limited lot parking for $20. ***BCD Village*** has no parking available, and tenants who need parking typically pay $20 per month to park in a lot several blocks away. ***Lebanon Apts*** and ***Park View Apts*** have no lot parking, but offer garage parking for $55 and $65, respectively. ***Holland Apts*** and ***Glen Park*** have lot parking available at no cost.

b. Comparables were adjusted to reflect whether parking was available and how its cost and quality compared to parking at the subject. Since tenants at ***BCD Village*** pay the same parking fee as tenants at the subject but the parking is less convenient, a small upward adjustment of $5 was made to reflect the inferior access to parking. A net, downward adjustment of $5 was made to ***Lebanon Apts*** and ***Park View Apts*** -- a negative $10 adjustment for the convenience of having highly desirable, on-site garage parking plus a positive $5 for the lack of on-site, lot parking. ***Holland Apts*** and ***Glen Park*** were adjusted downward $20, to reflect the fact that their lot parking is free.

Line 25. Extra Storage. The subject and four of the comparables have extra storage space available outside the living unit. Since the efficiency apartments are small, this extra storage space is desirable. Typically, these spaces are about half the size of the smallest storage units available in self-storage facilities in the market area for $30 per month. Assuming that about half of the tenants would value this amenity, a positive $15 adjustment is made for the lack of storage at ***Glen Park*.**

Line 26. Security. The subject, ***Holland*** and ***Lebanon*** have electronic entry systems. **Park View** has limited security with dead bolts on the doors. ***Glen Park*** does not have a secured entrance. Based on conversations with local brokers and property managers and an analysis of the market data, the appraiser concluded that a $10 adjustment is warranted to reflect the appeal to the market of the subject's entry system. Crime is not a problem in the area.

Line 27. Clubhouse / Meeting Rooms. Since ***Glen Park*** and ***Park View*** have no community meeting rooms, a nominal $5 adjustment was made.

Line 28. Pool / Recreation Areas. ***Park View*** has a fitness room with weights and aerobic equipment. ***Holland,*** the family project, has a swimming pool. ***Park View*** was adjusted negatively by $10 to reflect the fitness room and ***Holland*** was adjusted by $15 to reflect the swimming pool amenity. The adjustments were based on data collected from property managers.

Line 31. Non-Shelter Services. The subject project offers several amenities geared to its elderly tenancy: emergency call system, community sitting and meeting room, and limited transportation. Two comparables ***(Holland*** and ***Park View***) have no elderly services. ***Glen Park, BCD Village*** and ***Lebanon*** have pull cords in each unit, and ***Glen Park*** and ***BCD Village*** also offer limited transportation for residents. The property manager at ***Glen Park*** reported that, based on his experience leasing units at another complex that does not offer elderly services, elderly tenants requiring these elderly services will typically pay up to $50 additional rent for the emergency services and the availability of transportation. Based on this information and the fact that only a portion of the market would value these services, the appraiser estimated that the market overall would place a $10 value on the pull cords and a $10 value for the availability of transportation. Positive adjustments were made accordingly to ***Lebanon, Holland, and Park View.***

Line 33. Heat. Heat is included in the rent at the subject and three of the comparables. At ***Lebanon*** and ***Park View***, residents pay their own heat. Gas is the heat source at both of these

complexes. The Smithville Housing Authority's published utility allowances estimate gas heat for efficiencies in this market to be $25. The Appraiser confirmed, with local brokers and the property manager at Lebanon, that $25 per month was a reasonable estimate of the amount tenants would expect to pay for gas heat in this market. Based on this information, a positive $25 adjustment was made to ***Lebanon*** and ***Park View***.

Line 35. Cooking. At the subject project and four of the comparables, electricity used for cooking is not included in the rent. Tenants must pay for this separately. However, at ***Glen Park***, all utilities are included in the rent. The Appraiser made a negative $5 adjustment at ***Glen Park*** because, in his judgment, a knowledgeable tenant would expect to pay slightly less if electricity for cooking was not included in the rent. This adjustment is consistent with utility allowances published by the housing authorities in both Smithville and Channel Crossing.

Line 36. Hot Water. The cost of heating hot water is included in the rent at the subject and three of the comparables. At ***Lebanon*** and ***Park View***, tenants pay for hot water. Gas is the heat source at both of these complexes. The Smithville Housing Authority's published utility allowances estimate gas hot water for an efficiency in this market to be $10. The Appraiser confirmed, with local brokers and the property manager at Lebanon, that $10 per month was a reasonable estimate of the amount tenants would expect to pay for gas hot water in this market. Based on this information, a positive $10 adjustment was made to ***Lebanon*** and ***Park View***.

Line 37. Other Electric. At the subject project, the electric utility charges associated with lights and plugs are not included in the rent. Tenants must pay for this separately. This is also the case at four of the comparables. However, at ***Glen Park*** all utilities, including electricity for lights and plugs, are included in the rent. According to the utility allowances published by the housing authorities in Smithville and Channel Crossing, the cost of electricity for lights and plugs is typically $20 per month. The appraiser made a negative $20 adjustment at ***Glen Park*** to indicate that tenants would typically be willing to pay $20 less if they were required to pay directly for other electric.

Line 46. Conclusion of Market Rent, Primary Unit Type.

a. The adjusted rents range from $430 to $510. ***Lebanon*** and ***BCD Village*** are the best comparables, because they are most similar to ABC Village Apartments. Both complexes are located in the subject's neighborhood within a mile of the subject, lease to the elderly and offer elderly services, and are elevator buildings with comparable street appeal. Therefore, greatest weight was placed on Lebanon and BCD Village.

b. ***Glen Park*** is a good comparable except for the fact that it is outside the subject's market area. Less weight was placed on it for this reason.

c. Minimal weight was given to ***Holland*** and ***Park View***, which are outside the subject's neighborhood and are not elevator buildings. Further, Holland is a family complex and Park View required the most adjustments *(primarily because it just recently completed renovation, is still in lease up, lacks elderly amenities, and is located in a more desirable location)*.

The Appraiser concluded the market rent for the 450 square foot efficiency units to be $485, which is $1.08 per square foot.

Conclusion of Market Rent, Secondary Unit Type. Since the two unit types would be identical except for the 50 square foot difference in size, a separate grid was not prepared. A rental conclusion for 500 sq. ft. units was obtained by adjusting the primary, 450 sq. ft unit by the appropriate square foot adjustment ($20 for 50 square feet, as computed in Comment #13 above). The Appraiser concluded market rent for the larger, 500 sq. ft. efficiency units to be $505 -- the primary unit's $485 rent plus the $20 adjustment. This is $1.01 per square foot.

Lebanon Apartments

13 Main Street
Smithville, ST 00012

Management Agent: XXX Management **County**: Gloucester

Contact: Ira Menzer **Cross Street**: Broad and Main Street

Contact Phone: (000) 555-4444 **Neighborhood**: Highlands

Unit Type	No. of Units	Used as Comp in RCS? (Y/N)	Average Rent	Interior Size (SF)	Any Rent Restrictions? (Y/N)
0 / 1	3	Y	$505	500	N
1 / 1	45	N			
2 / 1.5	2	N			

Total Units: 50 Project Occupancy: 93%

Charges in Addition to Rent: Garage parking available for $55

Subsidies and Restrictions at Project: None

Other Comments: Elderly project

Date Information Verified: 3 / 22 / 00

BCD Apartments

212 South Street
Smithville, ST 00012

Management Agent: ABC Management **County: Gloucester**

Contact: Betty Smith **Cross Street: South and Main Street**

Contact Phone: (000) 555-6666 **Neighborhood: Highlands**

Unit Type	No. of Units	Used as Comp in RCS? (Y/N)	Average Rent	Interior Size (SF)	Any Rent Restrictions? (Y/N)
0 / 1	25	Y	$500	550	N
1 / 1	25	N			

Total Units: 50 Project Occupancy: 93%

Charges in Addition to Rent:

Subsidies and Restrictions at Project: None

Other Comments:

Date Information Verified: 3 / 18 / 00

Holland Apartments

117 South Street
Smithville, ST 00012

Management Agent: XXX Management **County: Gloucester**

Contact: Ira Menzer **Cross Street: Broad and Marginal Way**

Contact Phone: (000) 555-4444 **Neighborhood: Mixed commercial & residential**

Unit Type	No. of Units	Used as Comp in RCS? (Y/N)	Average Rent	Interior Size (SF)	Any Rent Restrictions? (Y/N)
0 / 1	3	Y	$415	500	N
1 / 1	48	N			
2 / 1.5	24	N			

Total Units: 75 **Project Occupancy**: 94%

Charges in Addition to Rent:

Subsidies and Restrictions at Project: None

Other Comments:

Date Information Verified: 3 / 22 / 00

Park View Apartments

17 Park Avenue
Lexington, ST 00456

Management Agent: 123 Management **County: Gloucester**

Contact: Janet Spence **Cross Street: Main Street at Maple Ave**

Contact Phone: (000) 555-5555 **Neighborhood: Residential**

Unit Type	No. of Units	Used as Comp in RCS? (Y/N)	Average Rent	Interior Size (SF)	Any Rent Restrictions? (Y/N)
0 / 1	30	Y	$525	550	N
1 / 1	30	N			

Total Units: 60 **Project Occupancy:** 80%

Charges in Addition to Rent: Garage parking available for $65

Subsidies and Restrictions at Project: One-bedroom units are restricted to households earning less than 60% of median income. Rent is based on requirements of low-income housing tax-credit regulations.

Other Comments: Elderly project

Date Information Verified: 3 / 20 / 00

Glen Park

305 37th Street
Channel Crossing, ST 00123

Management Agent: XYZ Management **County: Jefferson**

Contact: John Adams **Cross Street: Pleasant Avenue and 37th**

Contact Phone: (000) 666-5555 **Neighborhood: Park East**

Unit Type	No. of Units	Used as Comp in RCS? (Y/N)	Average Rent	Interior Size (SF)	Any Rent Restrictions? (Y/N)
0 / 1	10	Y	$525	450	N
1 / 1	25	N			
2/1	15	N			

Total Units: 50 **Project Occupancy**: 98%

Charges in Addition to Rent:

Subsidies and Restrictions at Project: None

Other Comments: Elderly project

Date Information Verified: 3 / 29 / 00

Appraiser Certification

Project Name: ABC Village Apts ***FHA Project No :*** *12335666*

By my signature below, I certify that, to the best of my knowledge and belief:

1. The statements of fact contained in this report are true and correct.
2. The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.
3. I have no present or prospective financial interest in the above project, its ownership or management agent entity, or the principals of those entities. I am not an employee of those principals or entities and I have no business or close personal/family interest with those parties that commonly would be perceived to create bias or a conflict of interest.
4. I have no bias with respect to the project that is the subject of this report or to the ownership or management parties involved with this assignment.
5. My engagement in and compensation for this assignment were and are not contingent upon the reporting of a predetermined rent or direction in rent. My fee is my only compensation for this rent study assignment. There are no other side agreements or considerations.
6. My analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice and all applicable HUD procedures for performing Rent Comparability Studies for Section 8 contracts.
7. Joe Jones & Sharon Allen inspected the interior and exterior of the subject project. Sharon Allen inspected the exteriors of the properties used as comparables in this report.
8. No one provided significant professional assistance to the person signing this report except the persons listed here: Sharon Allen, Assistant Appraiser. If anyone is listed here, his/her contribution is identified in the Scope of Work section of this report.
9. I am a certified general appraiser, licensed and in good standing with the state appraiser regulatory agency where the subject project is located and I meet all of the appraiser qualifications required in HUD's rent comparability procedures.
10. I am not debarred or suspended from doing business with the Federal Government. I also am not under a Limited Denial of Participation (LDP) imposed by the HUD Multifamily Regional Center or Satellite Office having jurisdiction over the Section 8 project. Any LDPs in effect now or in the past three years were imposed by the following HUD offices. None

Warning*:* If you knowingly make a false statement on this form, you may be subject to civil penalties under Section 1001 of Title 18 of the United States Code. In addition, any person who knowingly and materially violates any required disclosure of information, including intentional non-disclosure, is subject to civil money penalty not to exceed $10,000.00 for each violation.

Appraiser's Name: Joe Jones **Signature**: Joseph Jones **Date**: 4/15/00

Permanent License No: CG2222 **Issuing State**: ST **Expires**: 4/15/01

Did you prepare the RCS under a temporary license? No *If so, attach a copy of the temporary license.*

Subject Photos

Additional Photos of Comps

Property Name
Address
City/Town, State Zip Code

Management Agent: **County:**

Contact: **Cross Street:**

Contact's Phone: **Neighborhood:**

PHOTO

Unit Type	**No. of Units**	**Used as Comp in RCS?** (Y/N)	**Average Rent**	**Interior Size** (SF)	**Any Rent Restrictions?** (Y/N)

Total Units: ____ **Project Occupancy: ___%**

Charges in Addition to Rent:

Subsidies and Restrictions at Project:

Other Comments:

Date Information Verified: __/___/__

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USE HUD FORM 9629

USE HUD FORM 9630

Completing the Rent Comparability Grid (HUD 92273-S8)

Important: Before preparing the Rent Grid, read the guidance provided in Chapter Nine of this Guide, pay special attention to the information contained in Sections 9-12 and 9-13. If you are using HUD's Excel worksheet, be sure to read the notes to Excel users on the next page before you set up your Rent Grids or start loading data.

GENERAL INSTRUCTIONS

1. **Prepare a separate Rent Grid** for each ***primary*** Section 8 unit type. See Section 9-9A2 for guidance on classifying unit types as primary or secondary. Complete a data and an adjustment column for each comparable. Show all comparables for one unit type on one grid. Enter the comparable's name and address at the top of each column.

2. **Data Columns.** Complete all lines of the Grid's data columns – i.e., even lines/characteristics for which you will make no adjustment. Use the letter codes listed in the line-by-line instructions below. Use blank lines to add other characteristics that would affect the rent a project could command in the subject's market area.

3. **Adjustment Columns.** Not all of the characteristics will affect rents. Local market conditions will dictate if, when and how much of an impact each characteristic will have upon rent. Make adjustments only for differences in characteristics that would affect the amount of rent tenants in the *subject's* market area are willing to pay.

   a. The goal is to determine what rent the comparable could obtain if it were more like the subject. Thus, if the comparable is:

      - ***inferior*** to the subject on a particular characteristic, adjust the comparable upward -- i.e., enter the adjustment as a *positive value* to indicate that residents of the comparable would pay *more* if the comparable looked more like the subject on that characteristic.
      - ***superior*** to the subject, adjust the comparable downward -- i.e., enter the adjustment as a *negative value* to indicate that residents of the comparable would pay *less* if the comparable looked more like the subject on that characteristic.

   b. Leave adjustment entries blank (***not zero***) if local renters would not pay for the difference shown on that line. Display adjustments in dollar amounts. If you are using Excel, precede negative adjustments with a minus sign and Excel will format the entry in red type and parentheses. If you are typing on hard copy, enclose negative values in parentheses.

4. **Narrative Explanations.**

   a. Attach a narrative explaining ***why*** each adjustment was made and ***how*** the dollar value of the adjustment was derived**.** Prepare a separate set of explanations for each Grid. If an explanation applies to more than one comparable, you may refer back to that explanation rather than repeating it each time (e.g., the location adjustment for comp #Y was estimated for the same reason and in the same way as for comp #X).

   b. If the data columns show a comparable differs significantly from the subject project but you did not adjust, explain why.

   c. Be sure to include the ***two additional narrative*** explanations required for the estimated market rent, Line 46 of the instructions. These include an explanation of how: 1) market rent was

derived from the comparables' adjusted rents; and 2) a primary unit type's market rent was adjusted to derive a market rent for a secondary unit type.

IF YOU ARE USING THE EXCEL VERSION OF THE RENT GRID …

- The worksheet is protected and cells containing formulas are locked. If you try to enter data in a formula cell, you will receive an error message telling you the cells are locked and cannot be changed.
- The tab key will move you horizontally within the print area of the worksheet. It will let you skip locked, formula cells and stop only at cells designed to receive data. As you enter adjustments, Excel will automatically compute any counts, sums or percentages requested on the form. **Note:** The Tab Key will navigate as described only if the Excel settings are configured to: 1) ***not*** check the Transition Navigation Keys box; and 2) check the "Microsoft Excel Menus" button. Go to *Tools-Options-Transition Tab* to check settings.
- As you scroll horizontally to the right, columns will shift left and be hidden behind Column C's row labels. This keeps line labels next to the data cells, making it easier to accurately load data. To view the hidden columns, just scroll back to the left. Similarly, as you scroll down, rows will move up and disappear under the column headings. To bring the rows back into view, just scroll up.
- The "**Create New Grid**" button allows you to simultaneously add a new unit type worksheet, label the tab at the bottom of the worksheet, and fill in the Unit Type box at the top of the worksheet. You can enter different names/ labels for the tab and the unit type box on top.

  IMPORTANT: If you use the **Create New Grid** button, the resulting worksheet will contain all of the data that was on the worksheet containing the button. You will need to edit any data that is not appropriate for the new unit type. So, decide how you want to use the button. For example, you could:

  1. Load just the project names and other identifying header data that will apply to most unit types and then use the Create New Grid button to create a worksheet for each unit type. You could then load amenity and adjustment entries either individually on each sheet, by copying specific cells from one worksheet to another, or by clicking the control key and selecting multiple worksheets. When you use the control key option, data is entered simultaneously in the same cell location on all of the worksheets you selected.
  2. Fully complete one unit type worksheet, use the Create Grid button to add another worksheet, and edit the resulting worksheet to change data that is not appropriate for the new unit type. Be careful! Don't forget to check any copied data.

Part A: Rents Charged *(lines 1 through 5)*

Before the rents for comparable units can be adjusted for differences from the subject, they must be adjusted for conditions at the comparable project itself. This section makes adjustments that are primarily internal to each individual comparable and produces an effective rent. Subsequent sections adjust each comparable's effective rent by comparing the comparable to the subject project.

Line 1. Last Rent/Restricted. In the "data" column, enter the rent at which this unit type was last leased. This must be a rent that was actually paid; do not enter an asking rent which has not yet been achieved. In the adjustments column, enter **"Y"** if the unit is rent restricted and "**N**" if it is not. Rent restricted units include those that are subject to rent control, rent stabilization or other restrictions on the unit rent. (Example: LIHTC, HOME, HOPE VI, and 236/BMIR/ Rural Development Section 515 units). *Identify the specific reason for a yes answer in the narrative explanation of adjustments.*

> **Note**: No dollar adjustments may be made on this line. Rent restricted units should be used as comparables only when they reasonably represent market rents.

Line 2. Date Last Leased. In the data column, enter the date *(month/ year*) that unit type was most recently leased. This should be the date the most recent lease for the rent on Line 1 became effective. Make an adjustment here only if the rental market has changed significantly between the date on this line and the date of your analysis. This adjustment may be needed when the comparable is at full occupancy and has had no turnover for an extended period. If market conditions have not changed, do not adjust … even if considerable time has elapsed since Line 1's rent became effective.

Line 3. Rent Concessions. Is the comparable offering rent or renewal concessions? Enter "Y' or "N". Enter a negative adjustment to reflect the value of the concession. Prorate the concession over the typical lease period for the market. For example, make a ($33) adjustment for one month free on a 12-month lease, at $400 /month.

Line 4. Occupancy % for Unit Type. Consider *only* the unit type represented by the comparable. Enter the approximate percent of units *in that type* that are occupied as of your data collection date. Do ***not*** enter occupancy for all unit types at the comparable. If the comparable's occupancy rate for the unit type under consideration is not typical of the comparable's market, determine if the occupancy differential is due to the rent being set too high/ too low … or to other factors.

a. If the occupancy gap is due to factors other than Line 1's rent level (e.g. condition or location), do ***not*** make an adjustment. Adjust only if the occupancy gap is clearly due to the rent level used on Line 1. If the comparable's occupancy for the unit type being studied is significantly lower than the typical occupancy rate for that unit type, adjust negatively to indicate that the rent is too high. If the comparable's occupancy for the unit type being studied is significantly higher than the typical occupancy rate for that unit type, make a positive adjustment.

b. If the project manager/ other contact for a comparable is unwilling or unable to provide occupancy

rates *by unit type*, the appraiser should report overall occupancy for the comparable and note in the Item 4 explanation that the occupancy rate is project-wide. If only overall occupancy is reported, an occupancy adjustment may be made only if the unit mix is such that the appraiser can still conclude that the occupancy for the unit type is significantly different than market occupancy levels for that unit type. **Example**: If a project has 99% occupancy and 100 units (50 one bedrooms, 50 two bedrooms), one could still conclude that the two - bedroom units being studied were at least 98% occupied. The appraiser must explain how he/ she arrived at that conclusion.

Line 5. Effective Rent and Rent/ Sq. Ft. Enter the sum of lines 2, 3, and 4. This yields an effective rent after age of the lease, occupancy, and rental concessions are taken into account. If you are using Excel, the form will automatically calculate the total rent. After you enter the unit size in Part C, the form will also display the effective rent per square foot. **Note**: If you are typing on hard copy, enter the rent / sq. ft in the adjustment column of each comparable. Divide the effective rent on Line 5 by the unit size on Line C13.

Part B. Design, Location, Condition (lines 6 through 10)

This section allows for comparison of the comparable to the subject in terms of design, materials, condition, location, and appeal. The total adjustments in this section should not exceed the value a typical renter would place on these characteristics in the aggregate.

Line 6. Structure/ Stories. Enter the type of structure. Use "E" for Elevator, "G" for Garden, "WU" for other walk-up, and "T" for townhouse. Follow the letters with a slant bar and the number of stories. For example, enter "WU/3" for a three-story walk-up. Try to select comparables that have the same structure type as the subject.

Line 7. Year built/Year renovated. Enter the year the project was built. If it has been renovated, follow with a slant bar and the year the project was renovated. For example, 1939/70 would indicate that the project was built in 1939 and renovated in 1970. Adjust on this line if the effective age (*the age indicated by the utility/ quality of the structure* and *major equipment*) affects rental value. Consider if basic structures and major equipment have been replaced and whether baths and kitchens have been renovated.

Line 8. Condition/ Street Appeal. Enter "E" for excellent, "G" for good, "F" for fair, or "P" for poor. If the design of the building or the street appeal of the project would affect the rents it can command, adjust appropriately. Consider the overall appearance of the project -e.g., are grounds clean? landscaping well maintained? paint or siding in good shape? layout on site appealing (open space, shrubbery, etc)? especially appealing exterior architecture? Would the comparable's condition/street appeal cause applicants to pay more or less than they would pay at the subject? *Take care not to duplicate adjustments made on line 7. Adjustments made on lines 7 and 8 should not add to more than a tenant would pay if factors on Lines 7 and 8 were considered collectively.*

Line 9. Neighborhood. Enter "E" for excellent, "G" for good, "F" for fair, or "P" for poor. The entry should reflect the market's reaction to location features that affect rental values -- e.g., neighborhood desirability; nuisances such as street noise; nearby land uses; crime volume; and access (time/distance) to schools, transportation, shopping, recreation, and medical and employment centers.

- The Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA) specifically requires that neighborhood (including risk of crime), location and access be considered.
- HUD FHEO guidelines prohibit negative adjustments based solely on the racial, ethnic, religious mix of properties or their surrounding areas or other discriminatory criteria. Adjustments must be based on objective, quantifiable factors.

Line 10. Same Market? Miles to Subject? Is the comparable in the same market area as the subject? Enter "Y" or "N". Follow the entry with a slant bar, and the distance between the comparable and the subject in miles. If the comparable is in a different market area, collect quantitative data to compare the rent levels in the two market areas. Adjust for any significant difference in rental costs between the two market areas and explain how you computed the adjustment. If the comparable is in a different market area and you don't adjust, explain why.

Part C. Unit Equipment/Amenities (lines 11 through 23)

This section details specifics about the unit and its equipment and amenities. Use the blank line to add unit amenities or equipment that aren't listed but significantly affect the rent a tenant would pay. Total adjustments made for this Part should not exceed the value a typical renter would place on all unit amenities.

Line 11. # Bedrooms. Enter the number of bedrooms in the unit. Use "0" for efficiencies. If a comparable and the subject have a different number of bedrooms, explain why you selected a comparable of a different bedroom type in the Selecting Comparables narrative required by Section 4 of the Notice.

Line 12. # Baths. Enter the number of bathrooms in the unit. Use decimals to represent partial baths. For example, enter 1.5 to indicate one full bath and one bath with a toilet and sink, but no tub or shower stall.

Line 13. Unit Interior Sq. Ft. Enter the rentable *interior* square footage of the unit. Do not include balconies, mechanical areas or other non-living spaces. Explain: a) how the square footage of the subject was derived and how it corresponds to the square footage of the comparables; and b) the method used to determine the size adjustment.

Note: Adjust only if and to the extent the subject's market values a size difference. Some markets may not value small size differences and a difference in size may not increase the market value of a larger unit to the same degree that it might a smaller unit. For example, a difference of 50 sq.ft. might command a higher rent in a 500 sq. ft., 1-bedroom unit, than in an 800-sq. ft., two-bedroom unit.

Line 14. Balcony/Patio. Does the unit have a balcony or a patio? Enter "Y" or "N".

Line 15. AC: Central/Wall. The entry should reflect the type of cooling equipment in the unit, using "C" for central, "W" for wall unit, or "N" for none. Adjust only for the value of having AC equipment and for differences in the type of equipment (wall, central, etc.). Do not adjust for the cost of running the air conditioner; adjust for that on Line 34.

Line 16. Range /Refrigerator. Enter "R" for range, "F" for refrigerator, or "RF" if the unit has both appliances. If neither is present, enter "N".

Line 17. Microwave/ Dishwasher. Enter "M" for microwave, "D" for dishwasher, or "MD" if the unit has both appliances. If neither is present, enter "N".

Line 18. Washer/Dryer. If there is a washer/dryer hookup in the unit but the landlord supplies neither appliance, enter "HU." If the appliances are provided in the unit, enter "W" for washer, "D" for dryer or "WD" for both. If there is a common laundry area in the project, enter "L". If the project offers no laundry facilities, hookup, or appliances in the unit, enter "N".

Line 19. Floor Coverings. Indicate the predominant floor covering in the unit, using "V" for vinyl, "W" for wood, and "C" for carpet.

Line 20. Window Coverings. If the unit is rented with window treatments, enter "B" for blinds or "S" for shades or "D" for drapes. If the unit is rented without window coverings of any kind, enter "N" for none.

Line 21. Cable/Satellite/Internet. Enter "C" for cable TV, "S" for satellite TV, and "I" for Internet access. If the project has more than one of these amenities, enter all the corresponding letters. For example, "CSI" would indicate a project that offers all of these amenities. Consider whether the project merely offers *access* to the services or whether it offers the service itself *as part of the rent.* If only access is offered, adjust based on market value attributable to availability of the service. If the service is included in the base rent, reflect the value of both access to and provision of the service.

Line 22. Special Features. Use this line to adjust for items that are valued in the project's market but not listed above - e.g., views, fireplaces, vaulted ceiling. Enter "VW" for view, "F" for fireplace, or "VC" for vaulted ceiling. If the unit has safety bars, ramps, or other features to improve access for disabled or elderly, enter "A".

Lines 23. Blank line. Use this line to add a unit amenity that isn't listed but significantly affects the rent a tenant would pay. Describe the amenity on the line provided and make dollar adjustments as appropriate.

Part D. Site Equipment/Amenities *(lines 24 through 32)*

This section details specifics about the project and its amenities. Use the blank to add site amenities that aren't listed but affect the rent a tenant would pay. Total adjustments in this Part should not exceed the total value a typical renter would place on all amenities in this Part.

Line 24. Parking ($ Fee). Enter "L" for lot parking, "G" for garage, and "CP" for covered parking, followed by a slant bar and the amount of the additional charge, if any, the tenant pays for the service. In there is no charge, enter "0". Adjustments for the presence of a garage or carport should relate to local market demand for parking at similar unit/project types. *Adequacy* of parking at the subject or comparable properties must also be considered in the adjustment. If on-site parking is inadequate, comment on the availability and adequacy of on-street parking. What constitutes adequate parking will vary according to the location of the project and the type of tenancy. If tenants pay for parking outside of rent, adjust based upon the market value of

having the parking available. If the parking is included in the rent, reflect the value of the parking itself.

Line 25. Extra Storage. Enter "Y" or "N" indicating whether tenants are provided with additional storage space. This may include extremely large or functional closets or outside storage. Before adjusting for any storage inside the unit, be sure that any adjustment for unit size did not already capture that value.

Line 26. Security. Does the project offer security features such as locked doors with intercom or security guards? Enter "Y" or "N". Consider whether lack of security has a negative influence on the rent. Describe any security in your comments on Item 26.

Line 27. Clubhouse/Meeting Rooms/Dining Rooms. Enter "C" for clubhouse, "MR" for meeting rooms, and "DR" for dining room. If the project has none, enter "N"

Line 28. Pool/Recreation Areas. Enter "P" for pool, "E" for exercise rooms, or "R" for other recreation facilities such as playgrounds, volleyball or basketball courts. Be sure to describe the type of recreation facilities in your narrative description of adjustments.

Line 29. Business Center/Neighborhood Network. If the project has a business center offering office services such as copying and faxing, enter "BC." If the project has a HUD sponsored Neighborhood Network, enter "NNW". Enter "N" for neither. **Important:** Before completing this line, see Section 9-12C4 of this Chapter for guidance on valuing non-shelter amenities.

Line 30. Service Coordination. Does the project have a service coordinator that helps residents access social services, health care or resources for meeting other needs? Enter "Y" or "N". **Important:** Before completing this line, see Paragraph 3-6C4 of the Notice for guidance on valuing non- shelter amenities.

Line 31. Non-Shelter Services. Enter "M" for meals, "T" for transportation, "EC" for emergency call systems, "H" for housekeeping, and "L" for laundry service … or "N" for none. Write in and fully describe (in your adjustment explanations) any other services provided for the elderly or disabled. **Important**: ***Before completing this line, see Section 9-12C4 of this Chapter for guidance on valuing non-shelter amenities***. That paragraph discusses valuing access to services vs. valuing actual delivery of service and precludes certain adjustments for mark-to-market projects.

Lines 32. Blank. Use this blank line to add a site equipment or amenity that isn't listed but significantly affects the rent a tenant would pay. Describe these on the lines provided and make dollar adjustments as appropriate.

Part E. Utilities (lines 33 through 39)

a. For each line in this part, enter "Y" if the service is included in the rent and "N" if it isn't. Follow the Y or N entry with a slant bar and the energy source for the utility addressed on that line. If the project does not have a utility listed here, leave the space blank. "Other Electric" on line 37 includes the cost of electricity for things not listed separately on the

form (e.g., lights and outlets).

b. If a utility is:

- excluded from the comparable rent but included in the subject rent, enter a ***positive*** adjustment that reflects the amount prospective tenants would reasonably expect to pay for that utility at the ***comparable***.
- included in the comparable rent but not the subject rent, enter a ***negative*** adjustment that reflects what prospective tenants would reasonably expect to pay for that utility at the ***subject***.

c. See Section 9-12C3 of this Chapter for more guidance on valuing differences in utilities.

Part F. Adjustments Recap *(lines 40 through 43)*

This section calculates both the number and dollar value of adjustments, both before and after utility adjustments. If you are using Excel, the form will automatically calculate these items. If you are typing on hard copy, compute these manually.

Line 40 # of Adjustments B through D. Enter the ***total number*** of positive and, separately, negative adjustments you made to each comparable for items *in Parts B through D.*

Line 41. Sum of Adjustments B through D. Enter the ***total dollar amount*** of positive and, separately, negative adjustments you made to each comparable for items *in Parts B through D.*

Line 42. Sum of Utility Adjustments. Enter the ***total dollar amount*** of positive and, separately, negative adjustments you made to each comparable for the *utility items* in Part E of the form.

Line 43 Net/Gross Adjustments B to E. For ***net*** adjustments, add the four entries (positive and negative) on Lines 41 and 42. For the ***gross*** adjustments, add the positive entries on Lines 41 and 42 to the *absolute value* of the negative entries on those lines. (See sample completed Grid in Appendix 9-3 for an example.)

Part G. Adjusted Rents *(lines 44 through 45)*

If you are using Excel, the form will automatically calculate these items. If you are typing on hard copy, compute these manually.

Line 44. Adjusted Rent. Add *the **net** adjustments* (Line 43) to the *Effective Rent* (Line 5) to derive an adjusted rent for each comparable.

Line 45. Adjusted Rent/Last rent. Divide the Adjusted Rent (Line 44) by the Last Rent (Line 1) and express the answer as a percent. [This shows the impact of all adjustments made for all Parts of the form. The previous totals in Part F did not include the adjustments in Part A.]

Line 46. Estimated Market Rent. Using your professional judgment, determine what point in the range of adjusted rents best represents the rent a knowledgeable applicant would most probably pay for that unit type at the subject. Enter that amount. Excel will divide that rent by the square footage shown for the subject in Part C. Do this manually if you are typing on hard copy.

Be sure to explain the points listed below. Present these explanations immediately after your Item 46 comments. Studies without these explanations will be rejected.

- **how the estimated market rent was derived from comparables' adjusted rents**. Explain ***how*** the estimated market rent was derived and ***why*** it was derived that way. Note which comparables were given the most weight and why. If the estimated market rent is set at the high or low end of the adjusted rents' range, explain why.
- **how the estimated market rent derived on the Grid was adjusted to estimate a market rent for a similar, secondary unit type**. Explain what adjustments were made and why. *(**Note**: See Section 9-9A2 of this Chapter for guidance on classifying unit types as primary or secondary.)*

Bottom of form: Be sure to sign and date the form. Also indicate whether you prepared the Grid in Excel *(with the computer running the calculations using HUD's formulas)* or by manually entering the data and calculations. If you used another approach (e.g., imported to Lotus), note that on bottom of the grid or at the end of your Grid comments.

Public reporting burden for this rent study is estimated to average 28 hours per study. This includes time for reviewing instructions, research and data collection and preparing the report. The 1997 Housing Act (MAHRA) and the HUD 2000 or 1997 Appropriations Act requires this information. The information is used to ensure that Section 8 rents do not exceed market limits imposed by statutes. This information is considered non-sensitive and does not require special protection. HUD may collect this information and you are required to complete this form only if it displays a valid OMB number.

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Required Contents for Rent Comparability Study

See Appendix 9-3 for a Sample RCS.

1. **Transmittal Letter signed by the Appraiser.** Address to project owner and date as of the date you gave the report to the owner. Include:

   - appraiser's name, company name, address, telephone, fax number and email address *(These may be included in letterhead or body of letter.)*
   - project name, FHA/other project number of the Section 8 project
   - table of estimated market rent for each unit type included in the study. Use table format shown below. In last column, enter "Y" for yes if you prepared a Rent Grid for that unit type. Enter "N" for No for secondary unit types for which you did not prepare a grid, but instead adjusted the primary type's estimated rent.

			Estimated Market		
Unit Type	**# Units**	**Size** (Sq. Ft)	**Rent**	**$/ Sq. Ft**	**Prepared Grid?** ***(Y/N)***
	Total				

   - statement that market rents were defined and estimated in accordance with Sections 9-7 through 9-13 of this Chapter and the report was prepared in accordance with Sections 9-14 through 9-16 of this Chapter.
   - appraiser's acknowledgment of how his / her report will be used: *Suggested language* -- I understand that HUD/the Section 8 Contract Administrator (CA) and the project owner will use my estimate of market rents to determine: 1) the owner's options for renewing

the project's Section 8 contracts; and 2) the maximum rents allowed under any renewal contract.

2. **Scope of Work.** Acknowledge that all work was done in accordance with the requirements set forth in this notice. Provide a narrative describing:
   - dates, number and types of inspections, and how unit sizes were verified.
   - how rent, condition and amenity data were collected and verified. Note interviews, records reviewed, Internet sites used, etc. Indicate time period during which data was collected.
   - any data that was unobtainable or estimated and all efforts to obtain that data.
   - any assistance from assistant appraisers.

3. **Description of Subject Project.** Address the items listed below. **Note**: If the units being renewed are located on scattered sites and those sites differ significantly on condition, services, street appeal or other factors listed below, note those differences.
   - *project name and address* (street, city, county, cross streets) and neighborhood name if applicable).
   - *site characteristics and improvements:* number of buildings and their design (construction material, structure type), number of units; topography and density; and access to site.
   - *unit mix for all units in the project, not just the Section 8 units.* Use the table format below. Include all revenue-producing units in the project & group them by major unit types (e.g., # bedrooms/ # baths). *(See Section 9-10A 6 for a definition of rent restricted units.).*

Unit Type	**# Units**	**Interior Size** (SF)	**# Pjt- Based Sec 8 units**	**#** Other Rent Restricted **Units**	**# Units Not Rent Restricted**
	Total		**Total**	**Total**	**Total**

- *condition:* age of project, state of repair, any recent/ planned rehab or refurbishing.
- *schedule of charges collected in addition to rent.*
- *3 to 5 labeled, color photos of exterior and interior (See Section 9-9B for more on photos. Place photos at the end of the RCS or in the body of RCS's description of the subject.).*
- *population or occupancy group targeted for this project (e.g., elderly), if any.*
- *summary of unit design and amenities.*
- *summary of project service/ site amenities*: parking, recreational facilities, community areas, security, service coordination, neighborhood networks, transportation, meal services, social or educational activities, emergency call systems, laundry or housekeeping, and any other amenities for elderly or disabled.
- *name and phone number of contact person with whom* you verified or collected information on the subject project

4. Identification of the Subject's Market Area. Identify the geographic area from which the subject would normally draw its applicants.

5. Description of Neighborhood. Discuss the project's location noting factors that would impact market rent level. Cover at least the factors listed below. **Note**: If the units being renewed are located on scattered sites and those sites differ significantly on the factors listed below, note those differences.

- project types (multifamily, single family, commercial) and rural/ suburban /urban nature of community.
- access to schools, recreation, transportation, shopping, medical and employment centers, community services or other features tenants at subject would seek
- nuisance (e.g., street noise), crime rates, and other factors affecting the perceived quality of the neighborhood.

6. Narrative Describing Selection of Comparables.

- Provide an overall assessment of the availability of comparables and the quality of the comparables selected and state ***why*** the comparables used were selected. If the unassisted units in the subject project have the same number of bedrooms and were not used as comparables, explain why. If less than five comparables were provided for any primary unit type, say so and explain why.
- Identify any comparables that are significantly dissimilar to the subject (e.g., different number of bedrooms, different structure type, different level of services). Describe what research was performed to determine that more similar comparables were not available.
- Identify any comparables that are outside the subject's market area. Describe what research was performed to determine that better comparables were not available in the subject's market area. Compare the rent levels in the alternate market area with those in the subject's market area.

- Identify any rent restricted units used as comparables. Explain the type of restriction (e.g., LIHTC, local rent control, etc.).
- Identify any comparables that are owned or managed by companies having an identity-of interest with the owner or management agent of the subject project.

7. Locator Map.

- Identify subject project and each comparable.
- Clearly mark major roadways and natural or man-made barriers (e.g., rivers, freeways, railways, etc).

8. Rent Comparability Grid (Appendix 9-2*)*

- Complete one grid for each primary unit type using instructions in Appendix 9-8 and guidance in Section 9-15 of this Chapter.
- Show all comparables for one unit type on one grid. Fill in all lines of the Grid's data columns, even if no adjustment is made on a line.

9. Narrative Explaining Adjustments and Market Rent Conclusions for Each Rent Grid. Review the guidance in Sections 9-12 and 9-13 and the line-by-line instructions in Appendix 9-8 before preparing this narrative. Be sure you explain the items listed below.

Note: Prepare a separate set of explanations for each grid. If an explanation applies to more than one comparable, you may refer back to that explanation rather than repeating it each time (e.g., the location adjustment was estimated for the same reason and in the same way as for comparable #X).

- **Adjustments made / not made**: For each adjustment, briefly explain ***why*** the adjustment was made and ***how*** you arrived at the dollar value of the adjustment. If data columns show a comparable differs significantly from the subject project but no adjustment was made, explain why.
- **How market rent was derived from comparables' adjusted rents**. Explain ***how*** the market rent was estimated and ***why*** it was derived that way. Note which comparables were given the most weight and why. If some comparables were weighted more heavily than others were or the estimated market rent is set at high end of adjusted rents' range, explain why.
- **How market rent for a primary unit was used to derive a market rent for a similar, secondary unit type**. Explain ***what*** adjustments were made and ***why***. Put these comments immediately following Line 46's comments. *(**Note**: See Section 9-9A2 for guidance on classifying unit types as primary or secondary).*

10. Comparable Property Profiles. Provide a one-page, table/ grid profile of each comparable property used in the RCS. Profile each property only once, regardless of the number of unit types for which the property was used. The profile must include at least the items listed below. Appendix 9-4 *provides a sample profile, but appraisers may create their own table / grid formats.*

- *property name and address* (street, city, county, cross streets) and neighborhood name

- *name and phone number of contact person with whom* you verified or collected information on the property and the date you did so.
- a *color photo* (at least 3" by 5") of the project's exterior. (Interior photos may be included if available, but they are not required).
- A *rent and unit mix table*. Include *all units* in the project and group them by major unit types (e.g., # bedrooms/ # baths). Indicate which unit types are used as comparables in the RCS.

Unit Type	No. of Units	Used as Comp in RCS? (Y/N)	Average Rent	Interior Size (SF)	Any Rent Restrictions? (Y/N)
	Total				

- Total number of units at the project and project-wide occupancy.
- List of any charges tenants pay in addition to rent.
- Describe *any rent / income/ use restrictions or tenant rent subsidies* (Section 8, certificates, vouchers, state/local payments on behalf of residents) in effect at the property. Provide this information even if the units covered by the restriction/ subsidy were not the units studied in the RCS.

11. Appraiser Certification (Appendix 9-1*)*

- Fill in blanks and sign and date the Certification. When entering names, also give title. (Example: Sharon Jones, Assistant Appraiser)
- Enter "***none***" in items 8 and 10 if you have nothing to disclose.

12. Copy of any Temporary License the appraiser is relying upon for this RCS. Any temporary license relied upon must be issued by the state where the property is located.

Important: The following items are *NOT* required in a RCS.

- Demographic trends for the market
- Interior photographs of comparables
- Copy of Engagement Letter
- Appraiser Qualifications (In Appendix 9-1 Appraiser Certification, appraisers certify that they meet all of the appraiser qualifications set forth in Section 9-8 of this Chapter)
- Copy of Appraiser's Permanent License

Chapter Ten

Residual Receipts

10-1. RESIDUAL RECEIPTS

Owners of Section 8 projects that are subject to the revised 1980 regulations at 24 CFR Parts 880.205(e), 881.205(e), or 883.306(e) are reminded that at any time during a project's fiscal year, the AE may determine that project funds are more than are needed for project operations, reserve requirements, and permitted distributions. Upon such a determination, the AE may require that all or a portion of the funds in the project's residual receipts account be used to reduce the Housing Assistance Payments or for other project purposes.

Regional Centers/Satellite Offices and project owners/management agents *should refer to Housing Notice H 2012-14 or subsequent Housing Notices for detailed guidance on the treatment of residual receipts.*

Chapter Eleven

Tenant Issues

11-1. DEFINITIONS.

A. Regular Housing Choice Voucher. Section 8 tenant-based assistance that is provided to eligible families and individuals to assist them in obtaining affordable housing in the private market.

1. The voucher is provided to the family or individual and generally allows the holder to choose any housing that meets the *program requirements.*

2. The vouchers are administered by local Public Housing Agencies (PHAs). The local PHA establishes the payment standard for the vouchers, determines tenant eligibility, certifies tenant income, and calculates the tenant's share of the rent. The payment standard for these vouchers is based on the established Fair Market Rents (FMR) for the area.

3. The payment standard determines the maximum amount of subsidy that may be paid on behalf of an assisted family or individual. The monthly housing assistance payment on behalf of the family or individual is the lesser of the PHA payment standard minus the family total tenant payment (TTP), or the gross rent of the unit minus the family TTP.

   The family TTP is the greater of:

   - 30 percent of adjusted monthly income;
   - 10 percent of gross monthly income;
   - the welfare rent in as-paid states; or
   - the PHA minimum rent ($0 - $50).

   In cases where the gross rent exceeds the payment standard, the family is responsible for paying the difference out-of-pocket, in addition to the TTP.

B. Enhanced Voucher. Tenant-based housing assistance used to assist eligible families affected by certain types of housing conversion actions, *called "eligibility events."*

1. Unlike a regular voucher, the subsidy is "enhanced" to cover the difference between the normally applicable payment standard and the possibly higher proposed rent of the unit that is going through the housing conversion action. The payment standard for enhanced vouchers is the gross rent of the unit, provided the PHA determines the gross rent is reasonable in comparison to similar unassisted units in the market area.

2. Enhanced vouchers have a special minimum rent requirement. The family must continue to contribute towards rent at least the same amount they were paying for rent on the date of the housing conversion action *unless the family suffers a decrease in gross family income of at least 15 percent from gross family income on the date of eligibility event. See PIH Notice 2001-41(HA), Part II C(3)(c)("Significant Decline in Family Income – Effect on Enhanced Voucher Minimum Rent").*

3. The enhanced feature of a voucher is tied to the project in which the housing conversion action took place. If the tenant moves from the project, the enhanced feature is lost and the voucher will have the features of a regular housing choice voucher issued by the PHA.

C. *Housing Conversion Actions. Upon the occurrence of housing conversion actions that constitute an "eligibility event," HUD is required to offer enhanced voucher assistance to eligible families. Tenants in other types of housing conversion actions are offered regular housing choice voucher assistance. Housing conversion actions include project-based Section 8 opt-out, preservation prepayment, HUD enforcement actions and HUD property disposition (PD). On November 14, 2001, HUD issued Notice PIH 2001-41(HA) "Section 8 Tenant-Based Assistance (Enhanced and Regular Choice Vouchers) For Housing Conversion Actions – Policy and Processing Guidance." This Notice outlines policies and processing guidelines for administering vouchers in cases of Housing Conversion Actions. For more information contact the local PIH Office.

A copy of PIH Notice 2001-41(HA) is available on HUDCLIPS.

http://www.hud.gov/offices/adm/hudclips/ *

11-2. HOUSING CONVERSION ACTIONS.

A. Opt-outs. This term refers to a conversion action where an owner chooses to opt-out *of the project-based Section 8 program* by not renewing an expiring Section 8 project-based *HAP* contract.

1. To opt-out of the project-based Section 8 program, an owner must satisfy all notification requirements, *including the provision of notice of the proposed HAP contract termination to the tenants and the contract administrator at least one year before termination,* and submit the request and certification to the local HUD Office/Contract Administrator (CA) not less than 120 days before the expiration of the contract.

2. HUD is committed to protecting families living in assisted units, regardless of the actions a project owner may take. To protect families living in assisted units, *section 524(d) of MAHRA requires HUD, subject

to appropriations, to make enhanced vouchers available to low-income families who, on the date of expiration of the HAP contract, are living in an assisted unit.*

3. Owners should refer to HUD Handbook 1378 for guidance regarding HUD real estate acquisition and relocation policy and procedures. Specifically, Chapter 3 contains guidance on planning for and providing appropriate access to relocation assistance and housing for persons with disabilities.

B. HUD enforcement actions. In these cases (or in conjunction with a HUD Property Disposition (PD) action), HUD is either terminating the project-based Section 8 HAP contract or not offering the owner the option to renew an expiring contract due to an owner's failure to comply with the terms of the HAP contract or other HUD requirements.

HUD enforcement actions may result from material adverse financial or managerial actions or omissions* as described in Section 13-1.B. of this Guide,* which lead to either owner default under a FHA-insured mortgage (monetary or technical) or a documented material violation of one or more of the obligations under the project's Regulatory Agreement. Regular housing choice vouchers will normally be provided in these circumstances to assist eligible families affected by the enforcement action because property condition or other issues will not allow tenants to remain in the project.

11-3. TENANT PROTECTIONS.

A. *Importance of the* Process. The process of converting from project-based assistance to tenant-based assistance can produce worry and fear for many families. Therefore, care must be taken to make sure the process is completed correctly and information is made clear and available for all families, owners, and PHAs.

B. Right to Remain. Tenants who receive an enhanced voucher have the right to remain in their units as long as the units are offered as rental housing. The tenant must have been issued an enhanced voucher sufficient to pay the rent charged for the unit, provided that the rent is reasonable. Owners may not terminate the tenancy of a tenant who exercises this right to remain except for cause under Federal, State or local law. To receive the full rent charged for the unit, the owner must agree to enter into a contract with the local PHA on behalf of each covered family. If an owner refuses to honor the tenants right to remain, the tenant's remedy will be determined by ***the provision of Federal law that provides for the right to remain (i.e., 42 USC § 1437f(t)(1)) and*** on State and local law.

1. The FY 2001 Military Construction and FY 2000 Emergency Supplemental Appropriations law, Pub. L. No. 106-246, Section 2801 (July 13, 2000) amended the enhanced voucher statute passed in the FY 2000 Appropriations Act (USHA Section 8(t), 42 USC Sec. 1437f(t)) and reads: ***"…the assisted family may elect to remain in the same project in which the family was residing on the date of the eligibility event for the project …"***.

2. This protection continues as long as the project is offered as rental housing, absent good cause to terminate tenancy under Federal, State or local law and provided the PHA continues to find the rent reasonable, Owners must continually renew the lease of an enhanced voucher family.

C. Tenant-Based Eligibility. Only eligible families will receive enhanced vouchers at the time of an opt-out. While a family may be income eligible, they are not automatically eligible for admission to the tenant-based program.

1. The tenant-based assistance program is administered through the Office of Public and Indian Housing (PIH). Some of the eligibility and admissions standards for PIH programs differ from those of project-based Section 8 programs. In some cases, a tenant may be denied assistance under the tenant-based assistance program.

   a. The PHA will re-certify and screen potentially eligible families and may deny them access to the tenant-based assistance program based on the grounds outlined in the Regulations (24 CFR Part 982.552 and 24 CFR Part 982.553). HUD encourages PHAs to use maximum flexibility during this process, such as setting up repayment agreements for tenants who owe funds to the PHA. However, if a family is ultimately denied assistance, the PHA must give them prompt notice of this decision which includes a brief statement of the reasons for the decision. An informal review can be requested by the family (the process is described in the Regulations, 24 CFR Part 982.554).

   b. Provided that the owner's current income certification for a tenant is no more than six months old and the PHA determines it is acceptable (through reviewing a small sampling), the PHA may use the owner's most recent tenant income certification in determining eligibility for enhanced vouchers.

2. In general, to be eligible to receive an enhanced voucher in the case of a regular opt-out (not proceeded by a prepayment) the family must be low-income (including very low-income) and residing in a unit covered by the expiring Section 8 contract. *This includes families who may have moved into a vacated unit during the term of the one-year notification period.*

   a. Unlike in a preservation prepayment situation, a family with an income above 80 percent of *area median income* (AMI) is not eligible for tenant-based assistance as a result of the opt-out.

   b. In cases of preservation prepayments, *the user must follow the guidance in Notice 2004-17.*

3. In instances when a new tenant, i.e., a tenant who was not residing in the project when the one-year notification was properly provided, moves into a unit during the one-year tenant notification period, owners are encouraged to add the following provisions, in the form of a lease addendum, to the required model lease: (1) "If the HAP contract terminates for any reason, the lease terminates automatically"; and (2)

"tenants who move into a vacated unit during the one-year notification period ***are not*** entitled to one-year notice of contract expiration or termination".

4. Tenants admitted to a PHA's tenant-based voucher program as a result of a housing conversion action are not subject to the income targeting requirements of the tenant-based Section 8 program.

D. Processing Delays. If there is any delay in processing the tenant-based assistance, HUD *must* ask the owner to consider a short-term renewal of the contract to provide HUD with *enough* time to get the vouchers in place.

11-4. OWNER NOTIFICATION REQUIREMENTS.

A. Law. Section 8(c)(8) of the United States Housing Act requires that owners give a one-year written notice to tenants and HUD of the contract's termination or expiration. The one-year notification must state the owner's intentions (i.e., to renew or not renew) at the time of the contract's expiration.

Note: The one-year notification is not required when an owner is terminating a contract early in order to renew the contract for 20 years or the remaining life of the use agreement.

B. Format. The notification letter must be:

1. On the owner's or duly authorized representative's letterhead and signed.

2. The notice must be served by delivery directly to each unit in the project or mailed to each tenant *(the head of household of a unit).*

Note: Taping the Notice to the outside of each unit is not acceptable.

3. If the population of the project speaks a language other than English, owners *must* provide the notification letters in the appropriate language(s). The cost of the translation of the letter is an eligible project expense.

C. Content of Notification Letter. Owners must include certain information in a notification letter. To meet the legal requirements for notification, this Guide provides owners with a sample one-year notification letter for use when an owner intends to opt-out of the project-based Section 8 contract. The sample is Appendix 11-1.

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

2. While owners are not required to specify the reasons for *opting out*, owners are encouraged to provide as much information as possible to the tenants and HUD.

3. Owners must state that they will honor the tenants' right to remain and will continually renew leases as long as:

- The project is offered as rental housing;
- The PHA continues to find the rent reasonable; and
- There is no cause for eviction under Federal, State or local law.

4. If an owner states that it intends to renew the contract, *but at a later date* decides to opt-out of the contract, *the owner must provide tenants, HUD, and the CA with a new one-year notification of this change of plans. Tenants, HUD, and the CA must receive a one-year notification of an owner's decision to opt-out.*

5. *If an owner elects to go to Recap for a debt restructure and/or rent reduction, upon execution of the Interim-Lite or Interim-Full Contract, the owner must provide a new one-year notification to the tenants.*

6. *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 and discussed in 5 above.*

D. AE/CA Review. All tenant notification letters must be reviewed by the AE/CA *either before the letters are sent to the tenants or at the time the letters are sent to the tenants in order to confirm* the letters are consistent with the established requirements. *In cases where HUD is not the CA, the owner must send a copy of the notification letter to HUD. Although HUD does not require owners to submit the notification letter for review before issuance, to avoid situations where a faulty notice must be corrected after it has been given to the tenants, owners are encouraged to submit letters for review 30 days in advance of the one-year time period. Absent early submission to the AE/CA, owners must submit the tenant notification letters to the AE/CA and the tenants at the same time.*

*In cases where an owner issues "intend to renew" letters, no AE/CA action beyond reviewing the letters for established requirements is required. However, if an owner sends "does not intend to renew" letters, the AE/CA must review the letter within 30 days of receipt from the owner. No HUD approval is required before the one-year clock starts; however, if the AE/CA review determines that the letter is not in compliance with HUD requirements, the owner will be notified that a corrected notice must be issued. In these cases, the one-year clock does not begin until the proper notice is provided to HUD, the CA and the tenants. (See Appendix 11-2 for a sample letter)

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

2. If the AE/CA review determines that the letter is unacceptable, the AE/CA will notify the owner that it has failed to provide proper notification to HUD/CA and the tenants.*

E. Unacceptable Notice. If an owner fails to provide proper one-year notification to HUD/CA and the tenants, the owner must permit the tenants to remain in their units without increasing their portion of the rent for whatever period of time is necessary to meet all of the notification requirements.

1. *Section 524(d)(1) of MAHRA requires HUD to make enhanced voucher assistance available to low-income families residing in an assisted unit in a project consisting of more than four dwelling units upon HAP expiration. Section 524(d)(1) makes no exception for cases in which the owner fails to issue a Notice or in which the Notice issued by the owner does not comport with HUD's regulations.*

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

    a. *If the family is eligible and wishes to move from the project, the PHA will immediately provide the family with a voucher in order to do so (the special enhanced provisions do not apply in the case where the family uses the voucher).*

    b. *If the family is eligible and wishes to stay in the project, the PHA will inform the family and the owner that the assisted tenancy with enhanced voucher assistance will commence as soon as the owner satisfies the proper one-year notice requirements. Since the law provides that the family can remain in the assisted unit with no increase in their portion of the rent until proper notice is given, there is no need for the enhanced voucher assistance to begin before that time.*

    c. *If the family is not eligible for enhanced voucher assistance, the family may remain in the unit with no increase in their rent payment until the owner satisfies the notice period.*

3. In instances where the owner intends to opt-out of the Section 8 contract and additional time is needed to meet the full one-year notice period, owners are encouraged to enter into a short-term renewal contract (at current rents) with a term that is sufficiently long to allow the owner to provide the full one-year notice of contract expiration. Unless the owner enters into a short-term renewal contract, the owner will receive only the tenant portion of the rent the families were paying under the expired contract until the full one-year notice period has been met, since the enhanced voucher assisted tenancy will not commence until that time.*

F. Short-term Contracts. In general, upon execution of a short-term contract, the owner must provide a one-year notification to tenants and HUD/CA. Over the course of this one-year period, the owner and HUD/CA may agree to additional short-term extensions. The owner is not required to provide a new Notice each time a subsequent short-term extension is granted ***within*** the one year time-frame of the Notice. If the owner accepts another short-term renewal after the 12-month notification period has expired, the owner will be subject to another 12-month notification requirement. Exceptions to this general policy are as follows:

1. Where the owner has fulfilled his/her notification requirement, but agrees to execute a contract for less than one year solely to provide HUD with enough time to provide Section 8 tenant-based assistance, execution of a

short-term contract does not require a new notice requirement because it is granted to protect the tenants.

2. Where an owner provided tenants and HUD with the proper notification of its intent to opt-out and then accepts a short-term renewal to consider accepting a Section 8 contract under the terms of Mark-Up-To-Market *(MUTM)*, the owner shall not be subjected to another one-year notification requirement.

G. Selection of Option at Contract Expiration. One hundred twenty (120) days before the contract expiration, owners must notify HUD's local Regional Center/Satellite Office Director/CA (whichever is applicable) in writing that they are going to renew or opt-out of their Section 8 contract (as noted in earlier chapters). In cases of an opt-out, HUD needs this time to obtain enhanced vouchers for the eligible families living in the assisted units. At this time, the AE/CA should again contact the owner to explore alternatives to opting out, particularly *MUTM. HUD will renew the contract up until the day the contract expires if the owner decides against opting out.*

H. *Reserved*

I. State and Local Requirements. In addition to meeting the above Federal notification requirements, Section 8 project owners *are reminded to* comply with any State or local notification requirements. Owners should check with their appropriate local authorities to find out about such requirements.

J. Long-Term Contracts. Upon signing a long-term contract renewal, owners are encouraged to notify tenants in writing that they have agreed to a long-term contract renewal agreement with HUD. This letter should inform the tenants that they will receive a one-year written notification of the expiration of the long-term contract.

11-5. *Limited English Proficiency Assistance

Owners must make reasonable efforts to provide language assistance to ensure meaningful access for Limited English Proficiency (LEP) individuals. The housing provider is expected to comply with Executive Order 13166, *Improving Access to Services for Persons with Limited English Proficiency*. In providing owners with guidance on reasonable steps for providing language assistance to tenants, *HUD* issued on January 22, 2007, *Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons (See 72 CFR Part 2732)* **http://www.hud.gov/offices/fheo/promotingfh/FederalRegistepublishedguidance.pdf).*

11-6. Effective Communications

*When owners provide written or verbal information to applicants or tenants, they must take steps to ensure effective communication with applicants, residents, and members of the public. HUD's regulation on effective communication with persons with disabilities is found at 24 CFR Part 8.6. Effective communications may include, but are not limited

to, conducting outreach in a manner that will reach persons with disabilities, such as by working with State and local organizations that serve or represent persons with disabilities, and ensuring that information about their programs is disseminated in a manner that is accessible to persons with disabilities. For example, special communication systems (e.g., TTY for persons who are hearing or speech impaired, materials on tape or in Braille) can greatly increase the effectiveness of outreach and ongoing communication.*

ONE-YEAR NOTIFICATION LETTER – *OWNER DOES NOT INTEND TO RENEW*

_____(*Date*)_____

Dear Tenant:

The Department of Housing and Urban Development subsidizes the rent of your apartment through the project-based Section 8 program. Federal law requires that owners provide tenants with a one-year notification before the expiration of a Section 8 contract. The Section 8 contract that pays the government's share of your apartment rent at _____(*name of project*)_____ expires on _____(*one year from date of this letter*).

Although there will be no immediate change in your rental assistance, we are required to inform you of our intended actions when the contract expires one year from now.

THIS LETTER IS TO NOTIFY YOU THAT WE DO NOT INTEND TO RENEW THE CURRENT SECTION 8 CONTRACT WHEN IT EXPIRES.

Since we do not intend to renew this project-based contract upon its expiration, it is our understanding that, if Congress makes funds available (which it has in the past and is expected to in the future), the Department of Housing and Urban Development will provide all eligible tenants currently residing in a Section 8 project-based assisted unit with tenant-based assistance. Unlike the current project-based Section 8 contract, Section 8 vouchers are issued to the tenants and allow them to choose the place they wish to rent. The Section 8 voucher program is administered by the local Public Housing Authority. Federal law allows you to elect to continue living at this property provided that the unit, the rent, and we, the owners, meet the requirements of the Section 8 tenant-based assistance program. As an owner, we will honor your right as a tenant to remain at the property on this basis as long as it continues to be offered as rental housing, provided that there is no cause for eviction under Federal, State or local law.

You will also have the opportunity to choose another development or single family house in which to move provided that the new landlord will accept the voucher and the owner and the unit meet Section 8 tenant-based program requirements.

Please remember that project-based Section 8 rental assistance will continue to be provided on your behalf for one year. In addition, we may agree to a renewal of the project-based contract with HUD, thus avoiding contract termination altogether.

Approximately four months (120 days) before the expiration of the Section 8 contract, HUD requires that we confirm our final decision to not renew this contract. Following this confirmation, you will be contacted by the local Public Housing Authority (PHA) to determine your household's eligibility for tenant-based assistance. If you intend to apply for Section 8 tenant-based rental assistance you should not move from your current unit until you have consulted with the local PHA about your eligibility for tenant based assistance.

If you have any questions or would like information on the Section 8 Program, the following sources may be of assistance:

Contract Administrator *(if applicable)*

Name: _____

Telephone Number: _____

HUD Regional Center

Name: _____

Telephone Number: _____

HUD Web

http://www.hud.gov - click on "I want to" and the on "Find Rental Assistance."

Sincerely,

_____(*Owner*)_____

_____(*contact info*)_____

cc: Local HUD Office/_____*(Contract Administrator)*_____

ONE-YEAR NOTIFICATION LETTER – *OWNER INTENDS TO RENEW*

_____(*Date*)_____

Dear Tenant:

The Department of Housing and Urban Development subsidizes the rent of your apartment through the project-based Section 8 program. Federal law requires that owners provide tenants with a one-year notification before the expiration of a Section 8 contract. The Section 8 contract that pays the government's share of your apartment rent at _(*name of project*)_____ expires on _____(*one year from date of this letter*)__.

While there will be no immediate change in your rental assistance, we are required to inform you of our intended actions when the contract expires one year from now.

THIS LETTER IS TO NOTIFY YOU THAT WE INTEND TO RENEW THE CURRENT SECTION 8 CONTRACT WHEN IT EXPIRES.

If Congress makes funds available, which it has in the past and is expected to in the future, we will renew the Section 8 contract. However, in the unlikely circumstance that we cannot renew our contract, it is our understanding that, subject to the availability of funds, HUD will provide all eligible tenants currently residing in a Section 8 project-based assisted unit with tenant-based assistance. 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.

If you have any questions or would like information on the Section 8 Program, the following sources may be of assistance:

Contract Administrator (*if applicable)*

Name: _____

Telephone Number: _____

HUD Regional Center

Name: _____

Telephone Number: _____

HUD Web

http://www.hud.gov - click on "I want to" and the on "Find Rental Assistance."

Sincerely,

_____(*Owner*)_____

_____(*contact info*)_____

cc: Local HUD Office/_____*(Contract Administrator)*__

RECAP SECOND NOTICE of OPT-OUT – 120- DAYS

(*Date*)

Dear Tenant:

This letter is to notify you that we are continuing with our intent ***not*** to renew the current Section 8 contract when it expires as stated in the one-year notification letter provided to you on (insert date of one-year notification letter).

Since we do not intend to renew this project-based contract upon its expiration, it is our understanding that, if Congress makes funds available (which it has in the past and is expected to in the future), the Department of Housing and Urban Development will provide all eligible tenants currently residing in a Section 8 project-based assisted unit with tenant-based assistance. Unlike the current project-based Section 8 contract, Section 8 vouchers are issued to the tenants and allow them to choose the place they wish to rent. The Section 8 voucher program is administered by local Public Housing Authorities. Federal law allows you to elect to continue living at this project provided that the unit, the rent, and we, the owners, meet the requirements of the Section 8 tenant-based assistance program. As an owner, we will honor your right as a tenant to remain at the project on this basis as long as it continues to be offered as rental housing, provided that there is no cause for eviction under Federal, State or local law.

You will also have the opportunity to choose another development or single family house in which to move provided that the new landlord will accept the voucher and the owner and the unit meet Section 8 tenant-based program requirements.

Please remember that project-based Section 8 rental assistance will continue to be provided on your behalf until (one year from date of one-year notification letter). In addition, we may agree to a renewal of the contract with HUD, thus avoiding contract termination altogether. However, if we do not agree to a renewal, and if we continue with our intent not to renew the current Section 8 contract, as stated above, you will be contacted and provided with additional information.

If you have any questions or would like information on the Section 8 Program, the following sources may be of assistance:

Contract Administrator *(if applicable)*

Name: _____

_____

Telephone Number: _____

HUD Regional Center

Name: _____

_____

Telephone Number: _____

HUD Web

http://www.hud.gov - click on "I want to" and the on "Find Rental Assistance."

Sincerely,

(*Owner*)

(*contact info*)

cc: Local HUD Office/*Contract Administrator)*

Chapter Twelve

Physical Condition of the Project

12-1. PHYSICAL CONDITION.

The physical condition of a project and the history of a project's physical condition are important components in making the decision to renew a Section 8 contract.

The Real Estate Assessment Center (REAC) *or the mortgagee performs an inspection using the REAC physical inspection protocol to determine the physical condition of a project every one to three years depending on the project's last physical inspection score.*

Depending on the physical condition of a project, the contract may be renewed, abated, terminated or allowed to expire. The course of action that the AE takes when deciding whether to renew the contract, if requested by the owner, will depend on the score the project receives on a physical inspection report(s), and whether the owner corrects and certifies that all of the deficiencies noted in the report and identified in the owner's survey of the project have been corrected in an acceptable and timely manner.

12-2. EXIGENT HEALTH AND SAFETY (EH&S) DEFICIENCY NOTICE AND PHYSICAL INSPECTION REPORT.

An EH&S deficiency notice or a REAC physical inspection report may affect the decision to renew, abate or terminate the contract. The AE must determine if the project is in compliance with HUD's physical condition standards before processing a request to renew the contract. HUD usually will not abate a contract based on failing REAC scores unless OAMPO in Headquarters approves the action.

*On March 2, 2015, HUD issued Notice H 2015-02 "Required Actions for Multifamily Housing Projects Receiving Failing Scores from HUD's Real Estate Assessment Center (REAC)" which supersedes Notice H 2012-16, "Revised Protocol for Placing a Flag in the Active Partners Performance System (APPS). Notice H 2015-02 implements Section 230 of the Consolidated Appropriations Act of 2014 and Section 226 of HUD's Fiscal Year 2015 Appropriations Act, which require HUD to take certain steps in cases when a multifamily housing project receives a score of 59 or below on a Real Estate Assessment Center (REAC) physical inspection report. *

* Owners are reminded that they must comply with applicable physical accessibility requirements such as those under Titles II and III of Americans with Disabilities Act (1990), Section 504 of the Rehabilitation Act of 1973, the Architectural Barriers Act (1968), the Fair Housing Act, and state or local laws. Certain barriers to accessibility may constitute exigent health and safety deficiencies – for example, accessible routes from a dwelling unit to public transportation or parking impeded by elevators or automatic doors in disrepair; sidewalks encroached on by obstacles such as dumpsters; and curb cuts or sidewalks in disrepair. Such deficiencies may be readily identified during a visual inspection of the project. The inspection result should be referred to FHEO for further review.*

*For information on REAC physical inspection standards and for scoring the physical condition of a project, interested persons should consult the December 8, 2000, Federal Register posted on the REAC website at: www.hud.gov/offices/reac/pdf/uniform_stds.pdf. Interested persons should also consult the August 9, 2012 Federal Register Final Notice on physical condition scoring and a revised dictionary of deficiency definitions. For HUD staff, additional information issued establishing the protocol for oversight and treatment of properties based on physical inspection scores is posted at:

http://hudatwork.hud.gov/po/h/hm/fog/physinsp.cfm.*

Note: hud@work is an internal site with no access for the general public. Those interested in accessing this information, should contact the Regional Center/Satellite Office for assistance.

A. *EH&S Deficiency Notice.

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

1. *The owner must:

   a. Immediately correct or mitigate EH&S deficiencies irrespective of a project's physical inspection score; and

   b. Submit a written certification to the AE within 3 business days of the date of the inspection certifying that ***all*** EH&S deficiencies at the project have been corrected or mitigated, not just the EH&S deficiencies cited in the Notification of EH&S report.*

2. *The AE must:

   a. Not take action to abate a contract based solely upon the issuance of an EH&S Deficiency Notice but must take into consideration the action(s) taken by the owner to correct all of the EH&S deficiencies at the project.

b. Flag the owner in the Active Partners Participation System (APPS) 2530 system if the owner does not correct or mitigate all EH&S deficiencies at the project.

c. Make an elective referral to the DEC or the Office of General Counsel, if at any time an owner is uncooperative and refuses to follow the protocol on correcting EH&S deficiencies.*

B. Physical Inspection Report

1. *The owner receives a copy of the physical inspection report via the internet. When a project's physical inspection score is below 60, the owner is responsible for conducting a survey of the entire project to determine, based on the REAC's physical inspection findings, similar problems in other units.*

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

   a. *Use the physical inspection report, owner's survey of the project, owner responses to the inspection, and any subsequent REAC inspection reports, to assess the physical condition of the project when determining whether to renew the contract. *

   b. *Review the iREMS administrative record for the project in concert with the recent inspections when making the decision to renew the contract. The quality of management services provided and the owner's ability to meet all Departmental requirements must be considered. For example, a change of management could be a condition placed on the owner before renewing the contract.*

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

   a. Renew the contract, if the owner has corrected or mitigated the EH&S deficiencies, unless such citations were appealed.

   b. Follow the procedures in Chapter 13, if the owner has not corrected or mitigated the EH&S deficiencies, unless such citations were appealed.*

4. *For inspections where the score is below 60, the AE will follow the instructions in Notice H 2015-02, or current instructions, to determine the owner's compliance with submission of the "Project Owner's Certification" within the specified timeframe and the results of re-inspection(s) of the project:

   a. Renew the contract if the owner is in compliance with current requirements.

   b. Enter into a short term renewal of the contract if the owner is not in compliance with current requirements, until a Compliance

Disposition and/or Enforcement (CDE) plan is approved by the OAMPO in Headquarters or other enforcement action is taken.*

Note: Short term renewals of the Section 8 contract may be necessary in cases where enforcement action is anticipated and/or consummated and until vouchers can be ordered.

Chapter Thirteen

HUD's Refusal to Renew Section 8 HAP Contracts

13-1. HUD'S REFUSAL TO RENEW A SECTION 8 HAP CONTRACT.

Under Sections 516 and 524(a)(2) of MAHRA:

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

1. The owner or purchaser of the project has engaged in material adverse financial or managerial actions or omissions with regard to such project;

2. The owner or purchaser of the project has engaged in material adverse financial or managerial actions or omissions with regard to other projects of such owner or purchaser that are federally assisted or financed with a loan from, or mortgage insured or guaranteed by, an agency of the Federal Government;

3. *The owner or purchaser of the project materially failed to follow the procedures and requirements of MAHRA after receipt of notice and opportunity to cure.*

B. Material adverse financial or managerial actions or omissions include:

1. Materially violating any Federal, State, or local law or regulation with regard to the project, or any other federally assisted project, after receipt of notice and an opportunity to cure, *including, but not limited to, failure to adhere to a judicial or administrative order to comply with a requirement under a nondiscrimination or equal opportunity authority*;

2. Materially breaching a Section 8 HAP contract for assistance under Section 8 of the United States Housing Act of 1937, as amended, after receipt of notice and an opportunity to cure;

3. Materially violating any applicable regulatory or other business agreement with the Secretary or a participating administrative entity, after receipt of notice and an opportunity to cure, *including, but not limited to, failure to implement a provision of a voluntary compliance agreement to address a finding that the project violated a nondiscrimination or equal opportunity authority or failure to implement a provision of a conciliation agreement to address a charge of a violation of the Fair Housing Act*;

4. Repeatedly and materially violating any Federal, State, or local law or regulation with regard to the project or any other federally assisted project;

5. Repeatedly and materially breaching a Section 8 HAP contract for assistance under Section 8 of the United States Housing Act of 1937, *as amended;*

6. Repeatedly and materially violating any applicable regulatory or other agreement with the Secretary or a participating administrative entity;

7. Repeatedly failing to make mortgage payments at times when project income was sufficient to maintain and operate the project;

8. Materially failing to maintain the project according to *The Uniform Physical Condition Standards (UPCS) of 24 CFR Part 5 Subpart G and 24 CFR Part 200 Subpart P after receipt of notice* and a reasonable opportunity to cure; or

9. Committing any actions or omissions that would warrant suspension or debarment by the Secretary.

13-2. *HUD'S DECISION NOT TO RENEW THE EXPIRING CONTRACT.*

A. Regional and Headquarters Roles.

*The Regional Center or Satellite Office must follow guidance issued by OAMPO in Headquarters when a decision is made by the Regional Center Director or Satellite Office Director to not renew the contract based on a REAC physical inspection before the contract can be abated or allowed to expire. *

B. Process.

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

1. If more than 120 days remain on the contract the AE/CA must:

   a. Notify the owner that because the EH&S deficiencies have not been corrected and the re-inspection score is less than 60, a Notice of Default has been issued and that HUD intends to abate or allow the contract to expire *and, if possible transfer the project's budget authority to another project via the 8bb process. (See Housing Notice 2014-14 for details.)*

   b. *Immediately begin the process for obtaining regular Housing Choice Vouchers (HCVs) following the instructions in Notice PIH 2001-41 (HA), Section 8 Tenant-Based Assistance (Enhanced and Regular Housing Choice Vouchers) For Housing Conversion Actions – Policy and Guidance, or current guidance, allowing up to 120 days for issuance of the HCVs. Notice PIH 2001-41 (HA) can

be found at: http://www.hud.gov/offices/adm/hudclips/notices/pih/01pihnotices.cfm.*

c. Monitor the processing of the vouchers with the assigned Public Housing Agency (PHA),* the Office of Public and Indian Housing (PIH), and the owner, until the vouchers have been issued.*

2. If less than 120 days remain on the contract the AE/CA must:

a. Notify the owner that because the EH&S deficiencies have not been corrected and the re-inspection score is less than 60, a Notice of Default has been issued and that HUD intends to abate the contract *and, if possible transfer the project's budget authority to another project via the 8bb process. (See Housing Notice 2014-14 for details.)*.

b. *Immediately begin the process for obtaining regular Housing Choice Vouchers (HCVs) following the instructions in Notice PIH 2001-41 (HA), Section 8 Tenant-Based Assistance (Enhanced and Regular Housing Choice Vouchers) *For Housing Conversion Actions – Policy and Guidance*, or current guidance.*

c. Enter into a short-term renewal of the contract at current rents with the owner, using the Basic Renewal One Year contract (HUD-9636) at current rents, or if a determination has been made as to market rents based on a RCS, renew at rents that do not exceed market rent.

d. *Monitor the processing of the vouchers with the assigned Public Housing Agency (PHA), PIH, and the owner, until the vouchers have been issued.*

3. *If the contract will be abated and HUD is going to relocate the tenants to other acceptable housing, the Regional Center/PC Director must obtain authority to conduct a relocation program from the Director of OAMPO in Headquarters. The AE must alert the Property Disposition Center that a request to relocate the tenants will be submitted to the OAMPO.

4. Make sure the Regional Center has a written disposition plan in place and shared with the owner before abating a contract with an underlying insured or Secretary-held mortgage.

5. Terminate the contract after vouchers have been issued to eligible residents and, if possible transfer the project's budget authority to another project via the 8bb process. (See Housing Notice 2014-14 for details.)*.

6. Flag the owner in the APPS/2530 system.

7. Designate the project as troubled.*

C. Appeals

If the owner appeals HUD's decision to not renew the Section 8 HAP contract based on the physical inspection, or otherwise asks for relief from the physical inspection score, follow the instructions in Chapter 13, HUD's Refusal to Renew Section 8 HAP Contract, of this Guide.

D. iREMS Reporting Requirements.

The AE must record all activities related to bringing a project into regulatory and contractual compliance because of a REAC physical inspection in the Workload Management screen of iREMS.

1. *Compliance with the EH&S and REAC physical inspection protocols must be entered as this may influence future decisions on renewal of the Section 8 HAP contract and because it is important to have a complete and accurate administrative record should HUD proceed with enforcement actions.*

2. *The AE must record all closeout activities regarding physical inspections and any related matters and must share them with the owner.*

3. *The AE must record a project designated as troubled in the Risk Management screen, if applicable.*

13-3. OWNER'S APPEAL OF HUD'S REFUSAL TO RENEW A SECTION 8 HAP CONTRACT.

If HUD refuses to renew an owner's Section 8 HAP contract, the following appeal process shall be followed. In the case of an appeal, it is important to take all steps necessary to protect the residents. This may include executing any short-term contract to complete the appeal process.

A. The AE will:

1. Provide a notice, *in writing,* to the owner notifying them of the reason(s) for *refusal to renew the Section 8 HAP Contract.*

2. *Provide a short-term renewal of the contract pending review of any appeal, if the contract is about to expire.*

3. *Provide notice to tenants of the creation of a CDE Plan.*

B. The owner has 30 calendar days from receipt of this notice to provide written objections to the *Satellite Office Director* or to cure the problems identified. If the owner does not submit written objections or cure the problems identified during that period, the decision will become a final determination under Section 516(c) of MAHRA.

C. If the owner submits written objections or asserts that the problems identified have been cured, the AE will consider the matter, review the owner's action, if any, and send the owner a letter notifying it of the final decision to affirm,

modify, or reverse the refusal to renew and setting forth the rationale for the final decision.

D. Within 10 days of receiving the final decision, the owner may submit a written appeal to the AE contesting the decision and requesting a conference with the Regional Center that has jurisdiction over the project to discuss the issues.

E. A representative of the Regional Center will meet with the owner at a mutually agreeable time, but no later than 10 calendar days after the owner requests the meeting.

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

G. Within 20 days after the conference with the Regional Center, or 20 days after any agreed upon extension of time for submission of additional materials, the Regional Center will send the owner a letter advising it of the decision to reverse, modify or affirm the original decision.

H. The Regional Center Director or his/her designee will review any appeal, conduct the conference, and issue the written decision. The official designated will be one who was not directly involved in making the decision being appealed. The reviewing official's decision is a final determination.

I. *Based on the outcome of the appeal, the AE will:

1. *Renew the contract if the owner subsequently becomes compliant or prevails with the appeal and the Regional Center or Satellite Office changes its decision to terminate the contract.*

2. *Begin the process for obtaining regular Housing Choice Vouchers (HCVs) if the owner does not prevail in their appeal and the Regional Center or Satellite Office upholds its decision to terminate the contract. The instructions in Notice PIH 2001-41 (HA), *Section 8 Tenant-Based Assistance (Enhanced and Regular Housing Choice vouchers) for Housing conversion actions – Policy and Guidance, or any successor notice,* must be followed. Notice PIH 2001-41 (HA) can be found at:*

   http://www.hud.gov/offices/adm/hudclips/notices/pih/01pihnotices.cfm.

3. *Monitor the processing of the vouchers with the assigned AE/CA, PIH and the owner, until the vouchers have been issued.*

4. *Terminate the contract after vouchers have been issued to the eligible residents.*

13-4. *HUD'S TENANT NOTIFICATION OF REFUSAL TO RENEW.*

A. *In cases where HUD elects not to renew the Section 8 contract due to any of the conditions noted in Section 13-1, above, the Regional Center or Satellite Office shall notify, in writing, all tenants in a project who are receiving Section 8 assistance, of HUD's decision not to renew the project's Section 8 contract.*

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

Chapter Fourteen

RHS Section 515/8

14-1 OVERVIEW

Representing a significant share of the affordable housing in many rural communities, *Rural Housing Service* (RHS) housing projects with Section 8 are exempt from debt restructuring under MAHRA. *These projects ae eligible to renew under Option 4 but may request to renew under any option for which they are eligible at the time of the renewal.* The information below provides additional guidance on the renewal process for these exception projects which is discussed in general in Chapter 6.

Note: If a 515/8 project is subject to a use agreement that cannot be eliminated by unilateral action of the owner, the project is not eligible for Option 1A. (See Section 3-3.B.). However the owner may still be able to renew the projects contract under Option 1B.*

14-2. PROCESSING

A. Owners of Section 515/8 projects who are requesting a contract renewal under Option 4 pursuant to 524(b)(1) of MAHRA must submit their project budget approved by *RHS.* The AE/CAs are not required to review and approve these budgets. As long as the budget has been approved by RHS *, the budget-based rent will be accepted by HUD/CA's.

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

B. *RHS agreed in November 2010, that any budget based rent adjustment request submitted at the time of the amend rents calculation cannot result in rents above market as determined by the RCS. If the rents resulting from the budget based rent adjustment submission result in a "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.*

C. AE/CA will accept RHS-approved budgets reflecting the appropriate 8 percent allowable owner's distribution on equity or any higher level as approved by RHS as an incentive to the owner to prevent prepayment. (This is explained in RHS's administrative Notice dated April 12, 1999)

Note: If the owner of the project is a for profit who is not restricted by RHS at the State level, HUD cannot and will not limit the owner distributions for the project.

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

E. An owner of a Section 515/8 project may receive a short-term renewal to align the project's accounting cycle with the anniversary date of the Section 8 HAP contract. The AE/CA will issue a short-term contract covering the months between the end of the current HAP contract and the end of the current accounting cycle (December 31). Upon expiration of the short-term contract, the owner will be eligible for renewal under the provisions of MAHRA, as described above.

Note: RHS projects are exempted from debt restructuring under 524(b). Like all other 524(b) projects, at initial and subsequent renewal, they are subject to the "lesser of" OCAF or budget-based test.

F. An owner who has executed a HAP contract expiring on December 31st is requested to submit its request for renewal to HUD/CA annually by September 1. The owner may submit a non-approved budget at this time. The owner should submit the RHS-approved budget to the local HUD Regional Center or Satellite Office/CA no later than November 15th.

G. After the loan with RHS has been paid in full:

1. *If requesting a budget-based rent adjustment,* the owner will submit their budget *directly to AE/CA. The budget must be completed in accordance with Chapter 2 of this Guide.*

2. *Upon expiration of the contract, the owner will submit a* request for contract renewal directly to HUD/CA. *The owner may elect to renew under any renewal option available at that time for which the project is eligible.*

Chapter Fifteen

Section 8 Preservation Efforts

15-1. OVERVIEW.

One of HUD's primary goals is the long-term preservation of affordable housing. *This chapter provides guidance on HUD's efforts to encourage the rehabilitation, known as "Capital Repairs" in this chapter, and acquisition, known as "Transfer" in this chapter, of affordable housing. Nonprofit owners can use this chapter when renewing under Option Two "Contract Renewals For Other Projects With Current Rents At or Below Comparable Market Rents." For profit owners can use this chapter when renewing under Option Two. For profit entities who propose to acquire and rehabilitate a project can use this chapter but must renew under Option One, "MUTM".* This Chapter has been broken into four parts. Part One addresses the definition of Nonprofit Owner, Part Two addresses the general criteria for both programs, Part Three addresses the Capital Repairs Program and Part Four addresses the Transfer Program.

PART ONE: DEFINITION OF NONPROFIT OWNER

15-2. NONPROFIT OWNER*/PURCHASER*.

A. *The AE must determine if the nonprofit owner*/purchaser* meets the following criteria*must:

1. Be financially solvent with no open or unresolved audit findings or findings from analyses of the audited annual financial statements.

2. Have a tax exemption ruling from the Internal Revenue Service under Section 501(c) *(3)* of the Internal Revenue Code of 1986.

   a. If the nonprofit is applying for the tax exemption ruling, the entity is eligible. However, increased rents will be withheld until the entity provides HUD with evidence that the tax exempt ruling has been issued.

   b. Exceptions:

1) Any project where the nonprofit owner was not previously required to have a 501(c)(3) rating from the IRS to participate in HUD programs.

2) Limited-Equity Cooperative entities that are not 501(c)(3) eligible.

3) Have a resolution from the organization's Board of Directors that authorizes the additional debt to be incurred to purchase and/or rehabilitate the project.

B. An unacceptable nonprofit owner includes:

1. A public body or instrumentality of a public body, or,

2. An entity whose organizational documents permit any part of its net earnings to inure to the benefit of any private shareholder, contributor, or individual.

15-3. NONPROFIT CONTROLLED FOR PROFIT ENTITY (OWNER OR PURCHASER).

A nonprofit may form a for profit entity for a specific project. For example, the nonprofit may want to obtain low income housing tax credits and raise capital through the sale of the tax credits. See Section 15-5.E.3. for renewal options for nonprofit controlled for profit entities.

A. For this Guide, the term "Nonprofit Owner" includes:

1. A limited partnership with *one or more nonprofit general partners or a sole general partner that is wholly owned and controlled by one of more nonprofit entities.*; or

2. 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.

B. The nonprofit must meet the requirements of section 15-2.A. above.

PART TWO: GENERAL CRITERIA FOR BOTH CAPITAL REPAIRS AND TRANSFER PROGRAMS

15-4. APPLICABILITY.

A. This section applies to most multifamily housing projects with either:

1. *An original Section 8 HAP contract (i.e., one that has not yet been renewed under MAHRA)*, with rents *at or* below comparable market rents, or

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

B. *If the owner/purchaser intends to renew the Section 8 HAP contract under

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

2. Option One the current rents must be below market at the time of renewal.*

C. Owners with the following Section 8 HAP contracts cannot apply:

1. Section 8 Moderate Rehabilitation projects administered by the Office of Public and Indian Housing.

2. Section 8 Moderate Rehabilitation Single Room Occupancy Projects administered by the Office of Community Planning and Development.

3. *Section 8 contracts that have closed under Mark-to-Market and been renewed with a Full Mark-to-Market Renewal Contract issued under section 515 of MAHRA.*

4. An original (non-MAHRA) Section 8 contract that *is eligible* to renew under MAHRA but has rents above comparable market rents.

5. A 524(a) or 524(b) Renewal Contract with rents above comparable market rents

Note: See Section 15-5.C.3. for guidance on allowing certain projects to reduce rents to market to enable them to participate in Chapter 15

15-5. BASIC REQUIREMENTS.

A. Use Agreement.

At renewal, the owner must agree to accept a 20-year recorded Use Agreement requiring the current and future owners to accept any Section 8 contract offered by HUD for the next 20 years. (See HUD-Form 90055)

Note: If the project has an existing Use Agreement: The term must be extended for an additional 20 years. For example, if the current Use Agreement ends in 2015 the term will be extended to 2035. There are various conditions imposed by the use agreement, therefore the existing Use Agreement may have to be modified to include the conditions imposed by the Use Agreement.

B. 20-Year Contract:

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

C. Early Termination of an existing Section 8 contract.

1. HUD and the owner may terminate by mutual agreement most existing *original HAP contracts and* Section 524 MAHRA Contract(s) that have rents at or below market to take advantage of these programs *as long as the new contract equals 20 years, the owner agrees to renew the contract at the end of the 20 years for a term that equals the remaining term of the original terminated contract and, for non-MAHRA contracts, the owner agrees to sign the HUD-93184 "Rider to Original Section 8 Housing Assistance Payments Contract". (See 15-5 C.3.)*

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

    a. Section 514 *or 515* MAHRA contract
    b. Section 524 (e)(1) MAHRA Demo Contract
    c. Section 524(e)(2) MAHRA Preservation Contract
    d. *Rental Assistance Demonstration (RAD) Contract*

3. *Owners of projects with rents above market that are currently subject to a HAP contract provision that allows for (i) a discretionary comparability adjustment within each five-year term or (ii) a fifth year comparability adjustment, may request that project rents be reduced to market in order to participate in Chapter 15 and renew under Option Two in accordance with the following requirements and procedures:

    a. At the time of the discretionary comparability adjustment or at the fifth year adjustment, at which point the AE/CA would reduce rents to market.

    b. The Section 8 HAP contract would then be terminated and renewed for 20 years under Option Two, in accordance with the procedures in Section 15-6.B.,

    c. The AE would attach HUD-93181 or HUD-93182 (formerly known as Appendix 15-2A and 15-2B respectively) to the contract which would provide a determination of the "as is" and "after rehab" rents for the project.*

    Note: HUD lacks the authority to allow a project to reduce rents to below market to enable it to renew under MUTM.*

D. Combine Multiple Contracts or Stages.

If possible, owners **must** combine multiple contracts or stages. *(See Section 2-10 for more information on combining contracts.)*

E. Renewal Options.

1. The owner/purchaser renews under Option Two, "Contract Renewals for Other Projects with Current Rents At or Below Comparable Market Rents."

2. *Assuming eligibility for MUTM, a for profit entity participating in the Transfer or both the Transfer and Capital Repairs programs must* renew under Option One.

3. *A nonprofit controlled for profit entity, if eligible, may renew under Option One, MUTM. If renewing under Option One, the rent setting mechanism in Option One overrides the sent setting mechanism in Section 15-6 of this Guide.*

15-6. RENT INCREASES.*

A. *If the owner/purchaser intends to renew the Section 8 contract under Option One then they must submit:*:

1. A rent comparability study *that contains a determination of the "as is" market rents and the "after rehab" market rents that* assumes all repairs and/or rehabilitation work was completed as of the date of the rent comparability study.

2. A detailed description of the proposed transaction including but not limited to:

   a. For the Transfer Program:

      1) A letter of intent to sell the project to an eligible nonprofit or eligible for profit; and

      2) Cost of recapitalizing the *reserve for* replacement account.

   b. For the Capital Repairs Program the cost of:

      1) *Modest* repairs and rehabilitation (e.g., lead-based paint, energy efficient equipment, repairs, etc.) and recapitalizing the *reserve for* replacement *account*, or

      2) Substantial rehabilitation *(defined as hard costs exceeding $6,500 (or subsequent threshold established by HUD) per unit times the High Cost Percentage for that area)*.

3. A Project Capital Needs Assessment (PCNA) or Comprehensive Needs Assessment (CNA) as discussed in Section 15-9.

4. A detailed sources and uses funding statement.

B. If the owner/purchaser intends to renew the Section 8 contract under Option Two then the owner/purchaser must, in addition to all of the items listed in Section 15-6A, submit a request for a budget-based rent *increase* not to exceed comparable market rents to pay for costs associated with the transaction including new debt *and debt service coverage.* (See Note after Section 2-15 B)

C. For either renewal option, upon receiving the owner/purchaser's submission, the AE checks the owner/purchaser's RCS for completeness and timeliness.

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

E. Effective Date of the New Rents.

1. For the Capital Repairs Program involving a loan program:

a. *That does not require full debt service at closing*, the final *"after rehab"* rents will not be *effective* until the PCNA is completed, financing is approved and, if applicable, the critical repairs are complete. The owner must agree to sign HUD-93181 Addendum to Renewal Contract under Option One or Option Two for Capital Repairs and/or Acquisition Costs.*

b. *That requires full debt service at closing (such as the Fannie Mae or Freddie Mac Mod Rehab Programs or the FHA 223(f) programs) * the Regional Center/Satellite Office can allow the rents, that would otherwise not go into effect until after the rehabilitation is completed, to go into effect at closing. The owner must agree to sign HUD-93182 Addendum to Renewal Contract under Option One or Option Two for Capital Repairs and/or Acquisition-Post- Rehabilitation Rents at Closing.*

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

3. In the case of a blended transaction, involving both a transfer and capital repairs, the rents will be adjusted after the strictest requirement in 1 or 2 above has been met.

15-7. UNASSISTED UNITS IN A HUD PROJECT.

A. To protect low and moderate income tenants who live in other HUD subsidized units, including Rent Supplement, RAP, BMIR, and Section 236 properties (refer to Handbook 4350.3 REV-1, Occupancy Requirements of Subsidized Multifamily Housing Programs) *the tenant's portion of the* rent may be increased by no more than 10 percent as a result of the transaction.

B. Owners who raise these rents are reminded that they must comply with the notification requirements in 24 CFR Part 245.

15-8. CAP ON MARKET RENTS.

If applicable, the AE *will not* lower the comparable market rents in the RCS to reflect any use restriction on the level of rents that can be charged; for example tax credit restricted rents.

15-9. PROJECT *CAPITAL* NEEDS ASSESSMENT AND INCREASED DEPOSITS TO THE REPLACEMENT RESERVE ACCOUNT.

A. *For both HUD insured or conventionally financed projects,* the owner/purchaser's mortgagee must submit a PCNA prepared in accordance *Housing Notice 2012-27 or subsequent guidance.* *Those projects that are legally required to submit CNA may submit a current CNA in lieu of a PCNA. The CNA must have been updated or resubmitted within the previous 12 months.*

Note: For a non-insured project with an old regulation/LMSA/PD/ Pension Fund Section 8 contract or for a partially assisted project, no RFR account is required unless the existing or proposed financing requires that a RFR account be maintained during the life of the mortgage. Projects with new regulation contracts must maintain the RFR.*

B. If the transaction does not include new debt, the owner/purchaser assumes the role of the mortgagee discussed in Section A above.

C. For non-insured projects, the AE has the authority to review the PCNA to determine the adequacy of the recommendations and make recommendations for revisions to the PCNA.

15-10. RESERVED.

PART THREE: CAPITAL REPAIRS PROGRAM

15-11. GENERAL.

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

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

B. Substantial rehabilitation.

15-12. ADDITIONAL ACCEPTABILITY REQUIREMENTS FOR THE OWNER.

A. The owner must be:

1. In good standing and not subject to administrative sanctions (i.e., debarment, suspension, unresolved adverse audit findings or *a letter of findings under any fair housing or civil rights authority* has failed to correct material violations of HUD rules);

2. In compliance with the terms of the current Regulatory Agreement, Note, and Mortgage; and

3. Current in debt service and all payments, including the reserve for replacement *account* (or current under a workout agreement).

***Note*: If the current owner is subject to administrative sanctions, they may still participate *as the seller* in the Transfer Program. Such owners may not receive funds from the transaction until all costs associated with bringing the project to an acceptable standard are covered.**

B. *The owner must submit documentation with its Capital Repairs Program application to assist the AE in its review for compliance with the environmental regulations at 24 CFR Part 50. Details on the information required for the AE to conduct the environmental review are discussed at Section 15-13.A below. All repair or rehabilitation actions under the Capital Repairs Program will require environmental review. HUD environmental policy requires that there be a limitation of activities or actions by any direct or indirect parties to the transaction until HUD has completed the environmental review process.*

C. Owners are reminded also that their multifamily housing projects may be subject to physical accessibility requirements under HUD's regulations implementing Section 504 of the Rehabilitation Act and/or the Fair Housing Act. An owner must submit documentation with its Capital Repair Project application to assist the AE in its review for compliance with applicable accessibility requirements (which could be conducted by or in concert with the applicable Regional FHEO Office or FHEO Program Center).

15-13. PROJECT ELIGIBILITY.

The AE checks that, if applicable, the rehabilitation proposal is:

A. Compliant with HUD's environmental regulations at 24 CFR Part 50, and.

1. *All repair or rehabilitation actions under the Capital Repairs Program will require environmental review. HUD environmental policy requires that there be a limitation of activities or actions by any direct or indirect parties to the transaction until HUD has completed the environmental review process. As such, the environmental review must be completed before the AE approves capital repair plans.*

2. *The AE will review documentation submitted by the owner. The AE should document compliance for the environmental review on Form HUD-4128, "Environmental Assessment and Compliance Findings for the Related Laws." Guidance for completing the HUD-4128 can be found at the Multifamily Accelerated Processing (MAP) Guide, Chapter 9, and in Handbook 1390.2, "Environmental Assessment Guide for Housing." In addition, HUD provides extensive online information regarding environmental topics and review requirements at: http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/environment.*

3. *Field/Regional Environmental Clearance Officers and other appropriate HUD staff may be contacted to assist in the environmental review. Contact information for HUD's environmental officers may be accessed through the above website.*

4. * In accordance with 24 CFR Part 50.20(a)(2)(ii), the following actions, activities and programs are categorically excluded from National Environmental Policy Act requirements. They are not excluded from the individual compliance requirements of the other environmental statutes, Executive orders and HUD standards cited in 24 CFR Part 50.4 (i.e., Part A of Form HUD-4128):

    a. Rehabilitation of buildings and improvements when the following conditions are met:

        1) Unit density is not changed more than 20 percent;

        2) The project does not involve changes in land use from residential to non-residential; and

        3) The estimated cost of rehabilitation is less than 75 percent of the total estimated cost of replacement after rehabilitation.*

5. * Any actions, activities and programs that do not meet the qualifications at 15-13.A.4., above, require an environmental review under the National Environmental Policy Act and in accordance with the laws and authorities listed at 24 CFR Part 50.4 (i.e., Parts A and B of Form HUD-4128).*

6. *A new Phase I ESA in accordance with ASTM E 1527-05 (or the most recent edition), as well as a Vapor Encroachment Screen in accordance with ASTM E 2600-10 (or the most recent edition), will be required if the activity being approved involves:

    a. Significant ground disturbance (digging) or construction not contemplated in the original application;

    b. A change in land use not contemplated by the original risk-based mitigation conducted on the site;

    c. Site expansion or addition;

    d. Any other activities which may result in contaminant exposure pathways or activities not contemplated in the original application.*

7. *HUD's lead based paint testing and abatement requirements for the management and removal of lead-based paint are applicable to housing built before 1978, and are found at 24 CFR Part 35.*

8. *Owners of HUD-insured properties are required to comply with Environmental Protection Agency (EPA) and the Department of Labor - Occupational Safety and Health Administration (OSHA) requirements concerning the management/abatement (e.g. maintenance, removal, disposal and encapsulation)

of asbestos when an owner takes an action, such as renovation or demolition, which involves the disturbance of asbestos or presence of damaged friable asbestos. Any abatement that is undertaken should only be done with EPA trained and accredited contractors who are experienced in working with asbestos and knowledgeable in federal, state and local requirements. All asbestos abatement must be done in accordance with EPA requirements for air pollution prevention pursuant to 40 CFR Subpart M, especially 40 CFR Part 61.145, and OSHA requirements for Worker Protection, pursuant to 29 CFR Part 1926.1101. Any local or state asbestos abatement and worker protection rules also apply.*

9. *HUD-insured properties are required to comply with the Toxic Substances Control Act, 15 U.S.C. 2605(e), and EPA regulations, 40 CFR Part 761, governing Polychlorinated Biphenyls (PCBs). PCBs are toxic substances formerly used in electrical equipment. The Toxic Substances Control Act and implementing EPA regulations require the registration, and in some cases, the removal and replacement of PCBs. In accordance with EPA regulations, owners of residential projects must have transformers inspected, and replaced if PCB is found. An employee of the utility company can inspect the transformers at the owner's request and inform the project owner/manager of any evidence of PCBs in the electrical system.*

10. *When an application for the Section 8 Renewal Capital Repairs Program is submitted along with an application to the Office of Multifamily Programs for FHA multifamily mortgage insurance, the environmental review that is conducted by HUD staff under Chapter 9 of the MAP Guide as part of the multifamily mortgage insurance application process will satisfy the requirements of this section.*

11. *Rehabilitation performed under Chapter 15 does not trigger Davis-bacon Prevailing Wage Rate requirements. Davis-Bacon requirements ae applicable under certain HUD mortgage insurance programs.

B. *Has a relocation plan for the residents during the rehabilitation acceptable to HUD, including, but not limited, to arrangements to continue reasonable accommodations granted to persons with disabilities or otherwise plan for and accommodate the needs of persons with disabilities.*

C. *Complies with physical accessibility requirements and standards – including, but not limited to, requirements for multifamily housing projects under HUD's regulations at 24 CFR Part 8.23 and for covered multifamily dwellings at 24 CFR Part 100. The AE/CA will review proposed activities for compliance with accessibility standards in consultation with FHEO.*

15-14. GENERAL.

Under the Transfer Program, HUD will permit a rent *adjustment based on a budget-based rent request* under Option Two, provided the new rents do not exceed comparable market rents, to facilitate a change in ownership from a for profit or limited-dividend owner to a nonprofit or a nonprofit controlled entity; or from a nonprofit owner to another nonprofit or a nonprofit controlled entity.

HUD will also permit a rent adjustment under Option One, provided the new rents do not exceed comparable market rents, to facilitate a change in ownership from a for profit or limited-dividend owner to a for profit or limited-dividend owner; or from a nonprofit owner to a for profit or limited-dividend owner.

15-15. ADDITIONAL *PURCHASER* REQUIREMENTS.

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

B. *The purchaser must be in compliance with all applicable nondiscrimination and equal opportunity requirements set forth at 24 CFR Part 5.105(a). Accordingly purchasers must provide information regarding lawsuits, charges, cause determinations, or letters of findings related to discrimination that have been issued or filed against the owner and will be ineligible to participate in the Transfer Program if they have not resolved these matters to the satisfaction of HUD.*

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

15-16. PROJECT ELIGIBILITY.

The Transfer Program without repair or rehabilitation requires that the project have a physical inspection performed using the Uniform Physical Condition Standards [24 CFR Part 5] by the REAC with a score greater than 60 with no uncorrected Exigent Health and Safety (EHS) violations. Additionally, the project must ***not*** be designated as a "troubled project."

15-17. TRANSFER OF PHYSICAL ASSETS (TPA) FOR A HUD INSURED TRANSACTION.

To encourage nonprofit transfers, HUD will waive the transfer fee. Follow outstanding TPA instructions found in HUD Handbook 4350.1, Asset Management and Project Servicing.

Chapter Sixteen

"Old Regulation" State Housing Finance Agency Projects – Owner Options upon Full Prepayment of Original, Permanent Financing

16-1. BACKGROUND, APPLICABILITY AND OVERVIEW.

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 prepaid in full or that will be prepaid in full.

There is a small number of HAP contracts issued by HFAs which lack the HUD-52645A form number, but have the key provisions of this form retyped in a different format. HAP contracts that contain the same key provisions but lack the HUD-52645A form number are also covered by the provisions of the this Chapter.

HUD has determined that the 1975 HAP Form contains language that causes it to terminate automatically upon full prepayment of the original, permanent financing (financing). Consequently, any project that is subject to the 1975 HAP Form for which the Financing has been fully prepaid has been operating since the date of prepayment with no written HAP contract in place. HUD has further determined, however, that where the owner and the HFA have continued, after prepayment, to discharge their respective contractual roles and responsibilities as if the written contract were still in place, their conduct gives rise to an implied contract, the terms of which are identical to those of the written but now expired HAP contract. Section 16-2 provides three options to owners for which the Financing has been fully prepaid. In issuing this guidance, HUD endeavors to establish an orderly process for the continuation of housing assistance payments to owners of affected projects who choose to continue participating in the Section 8 program.

16-2. OWNER OPTIONS.

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

A. Amend the Section 8 HAP contract. Amend the Section 8 HAP contract by extending the term to the originally scheduled maturity date of the Financing using Form HUD 9647, Extension Amendment to Old Regulation State Agency Housing Assistance Payments Contract" ("Extension Amendment") *verbatim*. No variations in the contract language are permitted without the prior written approval of the HUD Multifamily Regional Center Director with jurisdiction. Execution of the Extension Amendment by both owner and HFA will (1) be deemed to reinstate the 1975 HAP Form of contract, and (2) amend the HAP contract by extending the term through the originally scheduled maturity date of the Financing that was formerly prepaid.

B. Renew the HAP contract under MAHRA. Regardless of when the financing was prepaid, the owner may renew the Section 8 HAP contract under MAHRA pursuant to any renewal option for which the project is eligible. For these renewals, the Preservation Exhibit and the HUD-93184 are not required. Owners are to complete Form HUD-9624, Contract Renewal Request Form indicating the renewal option of their choice, and the corresponding Renewal Worksheet for the selected option. Should the owner choose a renewal option that requires submission of a Rent Comparability Study ("RCS"), *i.e.*, Option One, Option Two, or Option Three, the RCS must be dated no more than 90 days before the owner submits Form HUD-9624. Project eligibility will be determined as of the "Date of Submission" on page 1 the Contract Renewal Request Form. The term of the MAHRA renewal contract is to begin on the first day of the month following the month in which the parties execute the renewal contract. Should the owner and HFA execute the contract during different months, the renewal term is to begin on the first day of the month following the month in which the last party to execute the contract does so. For prospective prepayments, the term of the contract must begin on the prepayment date.

C. Opt out of the Section 8 program. Owners choosing to opt out of the Section 8 program may do so by selecting Option Six on the Contract Renewal Request Form. If additional time is needed to satisfy the one-year notification requirement, the HFA and the owner may enter into a short-term contract, not to exceed a term of one year, at current contract rents using the Basic Renewal Contract (HUD-9636).

16-3. TIMELINESS.

Owners of projects to which this Chapter applies are encouraged to submit a completed Extension Amendment or Contract Renewal Request Form and supporting documentation to the HFA within 120 days of the contract anniversary date.

ACRONYMS USED IN THIS GUIDE

AAF	Annual Adjustment Factor
ACC	Annual Contributions Contract
*AMI	Area Median Income*
APPS	Active Partners Participation System
BMIR	Below Market Interest Rate
CA	Contract Administrator
CDE	Compliance Disposition Enforcement Plan
CFR	Code of Federal Regulations
CNA	Comprehensive Needs Assessment
CPD	Office of Community Planning and Development
CRN	Contingent Repayment Note
DEC	Departmental Enforcement Center
DEMO	Portfolio Reengineering Demonstration Program
DRS	Debt Restructuring Specialist
EH&S	Exigent Health and Safety
ELIHPA	Emergency Low-Income Housing Preservation Act
EMAS	Economic and Marketing Analysis Section
EPC	Energy Performance Contract
FHA	Federal Housing Administration
FMR	Fair Market Rents
FY	Fiscal Year
HAP	Housing Assistance Payment
HFA	Housing Finance Agency
*HCV	Housing Choice Vouchers*
*iREMS	Integrated Real Estate Management System*
LIHPRHA	Low-Income Housing Preservation and Resident Homeownership Act
LMSA	Loan Management Set Aside
MAHRA	Multifamily Assisted Housing Reform and Affordability Act
MFI	Median Family Income
Mod Rehab	Moderate Rehabilitation
MOR	Management Occupancy Review

Mu2B	Mark-up-to-budget
MUTM	Mark-up-to-Market
OAHP	Office of Affordable Housing Preservation now known as the Office of Recapitalization (Recap)
OAMPO	Office of Asset Management and Portfolio Oversight (Formerly Office of Asset Management)
OCAF	Operating Cost Adjustments Factor
OGC	Office of General Counsel
OMHAR	Office of Multifamily Housing Assistance Restructuring
PAE	Participating Administrative Entity
PBCA	Performance Based Contract Administrator
PCNA	Project Capital Needs Assessment
PD	Property Disposition
PHA	Public Housing Agency (as defined in the United States Housing Act of 1937. 42 U.S.C. 1437 et seq.).
PIH	Office of Public and Indian Housing
AE/CA	Housing Account Executive/Contract Administrator
POA	Plan of Action
QHWRA	Quality Housing and Work Responsibility Act of 1998
RAD	Rental Assistance Demonstration
RCS	Rent Comparability Study
REAC	Real Estate Assessment Center
*RFR	Reserve for Replacement Account*
RHS	Rural Housing Service - 515/8 Projects
SRO	Single Room Occupancy
TPA	Transfer of Physical Asset
TRACS	Tenant Rental Assistance Certification System
*TTP	Total tenant payment*