

# Chapter Five

## Option Three Referral to OAHP

---

### Eligibility

#### Section 5-1

- A. Expiration of Statutory Authority: The statutory authority for the restructuring tools under MAHRA used by the Office of Affordable Housing Preservation (OAHP) expire on **October 1, 2011** (“Sunset”), unless extended by statute. Prior to Sunset, FHA-insured projects or projects with Secretary-held mortgages, the Owners of which request renewal of their Section 8 contracts, and have above-market rents must be referred to OAHP.
- B. Once Eligible, Always Eligible: Prior to Sunset, FHA-insured projects or projects with Secretary-held mortgages that had above-market rents at the time of initial renewal under MAHRA (on or after October 1, 1998), are eligible for referral to OAHP and the Owner may request debt restructuring even though the rents were reduced earlier. (See Appendix 5-1 “Implementation of Statutory Authority for Continuing Mark To Market Eligibility” dated April 22, 2002.).
- 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 debt restructuring and, thus, referral to OAHP prior to Sunset.
- D. “Preservation Projects”: Preservation projects with approved Plans of Action (POA) under the Emergency Low Income Housing Preservation Act of 1987 or the Low-Income Housing Preservation and Resident Homeownership Act of 1990, are eligible for OAHP restructuring before Sunset, but only if the property is being transferred or sold.
- E. “Exception Projects”: Exception projects are projects that are either not an “eligible multifamily housing project” under Section 512(2) of MAHRA, or are exempt from debt-restructuring under Section 514(h) of MAHRA (Refer to Chapter Six).

- 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 property 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 OAHP for a rent determination. Eligibility for a Lite will be determined on a case by case basis by OAHP 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, OAHP will return the housing assistance payment contract (“HAP Contract”) to the Property Manager/Contract Administrator (PM/CA). If the HAP Contract is renewed even though the project is ineligible for a Lite, the PM/CA must renew the HAP Contract using a Watch List Renewal Contract (Attachment 17) at OAHP-determined comparable market rents (“Market Rents”). The property should be designated, monitored and entered into the Real Estate Management System (REMS) as a “Watch List” contract.

## **Binding Commitment**

### **Section 5-2**

**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 HUD 9624, Contract Renewal Request Form (Attachment 3A-2) 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 would allow debt restructuring to continue after Sunset, as does a fully executed Interim (Full) Mark-To-Market Renewal Contract (Attachment 14). 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).

## **Entry Into OAHP**

### **Section 5-3**

- 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 (Attachment 15) for entry into OAHP as a Lite. An Interim (Lite) Mark-To-Market Renewal Contract has a term which is not to exceed twelve

months. Rent adjustments are prohibited during the term of the Interim (Lite) Mark-To-Market Contract.

2. Option 3B (Full): A debt restructuring and contract renewal with the rents reduced to comparable market rents. (with a term of up to twenty years.) Use the Interim (Full) Mark-To-Market Renewal Contract (Attachment 14) for entry into OAHP as a Full. Rent adjustments are prohibited during the term of the Interim (Full) Mark-To-Market Renewal Contract.

***NOTE 1: If HUD determines that contract rents exceed comparable market rents and the project is otherwise eligible for referral to OAHP for debt restructuring and/or rent reduction, the PM must forward the project to OAHP for processing.***

***NOTE 2: In cases where a CA makes the determination that contract rents exceed comparable market rents and that the project should be referred to OAHP, the CA must return the contract to the PM with the recommendation that the project be referred to OAHP 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 Renewal Contracts (Attachment 17) may request re-entry into OAHP for restructuring, but must have a binding commitment as set forth in Section 5-2, above, in order for any restructuring to occur after Sunset. If approved by OAHP for re-entry, terminate the Watch List Renewal Contract and issue the Interim (Full) Mark-To-Market Renewal Contract (Attachment 14).
2. Owners who were originally eligible for OAHP, but whose rents were reduced without the benefit of debt restructuring may request entry into OAHP 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 (Attachment 14).

- C. Required Owner Submissions:

1. For Lite Rent Restructuring: The Owner submits a Contract Renewal Request Form (Attachment 3A-2), 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 or debarred. If the Owner or any affiliate is suspended or debarred, the project may, at the discretion of the Secretary, continue to be eligible for a Lite. (Refer to Chapter 6, "Approvals, Ineligibility and

Appeals”, of the OAHP Operating Procedures Guide). The PM/CA executes the Interim Lite Renewal Contract (Attachment 15) for a term not to exceed 12 months.

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 neither the Owner nor any affiliate of the Owner is suspended or debarred. If the Owner is suspended or debarred, a request for a contract renewal with 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 of the Owner 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 OAHP Operating Procedures Guide.)

The PM/CA:

- If the project is entering OAHP for a debt restructuring, the PM/CA executes the Interim (Full) Mark-To-Market Renewal Contract (Attachment 14) and forwards it to OAHP 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.
- If a project with a Watch List Renewal Contract (Attachment 17) is re-entering OAHP, the PM/CA terminates the Watch List Renewal Contract and replaces that contract with the Interim (Full) Mark-To-Market Renewal Contract (Attachment 14) for a specific period of time determined by OAHP to complete the processing.
- If a completed Lite project wants to return to OAHP for a debt restructuring, the PM/CA executes the contract for a specific period of time (twelve months or less) determined by OAHP to complete the processing. Use the Interim (Full) Mark-To-Market Renewal Contract (Attachment 14) to complete the processing.

#### D. Extensions of Interim Contracts:

1. OAHP/Participating Administrative Entity (PAE)/HUD Delays: The PM, OAHP or the PAE may request an extension of the 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. As provided in the guidance, OAHP 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 PM/CA will extend the Interim Full Renewal contract at market

rents. OAHP will notify the PM/CA to extend the contract for a sufficient period of time required to bring the project to closing.

## **Contract Renewals - Rent or Debt Restructuring**

### **Section 5-4**

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

1. Lites: Lites are renewed under Section 524 of MAHRA with contract rents adjusted annually. 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 closing, Fulls are renewed under Section 515 of MAHRA (generally, up to 20 years with an obligation on the Owner to accept offers to renew the contract during the term of the affordability and use restrictions required by section 514(e)(6) of MAHRA). OAHP Fulls only permit annual OCAF rent adjustments. Where an Owner has executed a 20-year Full contract, there is no RCS required during the term of the contract. Owners are required to combine contracts (including those that expire in later fiscal years) under an OAHP Full contract.

***NOTE 3: A Certification Of Reduction of Rents in Accordance with Rent/Debt Restructuring Form found at Appendix 5-2 must be attached to all OAHP renewals.***

B. Once OAHP (and the PAE) complete processing, the Section 8 contracts for Lites and Fulls will be executed in one of the following ways:

1. OAHP Lites: OAHP completes the Basic Renewal Contract for either one year (Attachment 11-1) or multiple years (Attachment 11-2) at market rents, forwards the contract to the PAE and submits a copy of the contract to the PM to begin the fund reservation process. OAHP contracts will be forwarded through the PM to the appropriate CA. The PAE will forward the contract to the Owner for signature with instructions to return the contract to the PM/CA for processing. An Owner Certification Form must be attached to the Section 8 HAP Contract in which the Owner certifies that the vouchers submitted for payment are at market rent levels. (See Appendix 5-2, Certification of Reduction of Rents in Accordance with Rent/Debt Restructuring Form.).
2. OAHP Fulls: OAHP completes the Full Mark-To-Market Contract at market rents (Attachment 16)(Owner completes the Owner Certification Form) and forwards the contract to the PM/CA to begin the fund reservation process. Copies are submitted to the PAE. OAHP will inform the Field Office of the closing process, schedule, and address of the designated Escrow Agent to be used at closing. Two weeks prior

to closing, the PM/CA forwards the executed contract to the designated Escrow Agent. The Owner executes the contract at or prior to closing.

- C. Post Closing: After closing, the OAHP Regional Office will provide a “Closing Docket Transmission Memorandum” to the HUD Field Office summarizing the details of the debt restructuring. A Sample of this Transmission Memorandum can be found as Appendix 5-5 to this Guide. Most of the information included in the Transmission Memorandum is also available through the OAHP MIS database system. Refer to Chapter Seven, Closing, and Chapter Eight, Post-Closing Document Distribution of the OAHP 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 OAHP for a rent or debt restructuring, and the Multifamily Hub or Program Center has confirmed that the Owner has opted out, the PAE will complete the rent determination, inform the PM 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 PM/CA will prepare a short term Basic Renewal Contract at comparable market rents.
- E. Owner Prepayments: If an Owner decides to prepay the FHA-insured mortgage after submitting a Contract Renewal Request Form, and the Multifamily Hub or Program Center has confirmed that prepayment has occurred, the PAE will complete the rent determination, inform the PM of the rent determination, and return the project to Housing. Under these circumstances, the project is not eligible for renewal with Section 524 (of MAHRA) exception rents (Option 4). The PM will prepare a Basic Renewal Contract (Attachment 11-1 or 11-2) at comparable market rents.
- F. Interim Section 8 Processing Guidance for OAHP Projects: Processing Section 8 contracts for OAHP 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. PAE as CA: Once the contract is renewed and, if the PAE is acting as the CA, the contract will be assigned to the PAE during the next assignment period. Up until that time, the PM will begin the fund reservation process upon receipt of a copy of the contract from OAHP.
- H. 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:
  - 1. “Interim (Lite) Mark-To-Market Renewal Contract” (Attachment 15), see Section 5-3A.1 of this Guide.
  - 2. “Interim (Full) Mark-To-Market Renewal Contract” (Attachment 14), see Section 5-3A.2 of this Guide.

3. “Basic Renewal Contract”, either one year (Attachment 11-1) or multiple years (Attachment 11-2), see Section 5-4A.1 of this Guide.
4. “Full Mark-To-Market Renewal Contract” (Attachment 16), see Section 5-4A.2 of this Guide.
5. “Watch List Renewal Contract” (Attachment 17), see Section 5-6A of this Guide.

## Subsequent Renewals

### Section 5-5

General Policy: An OAHP contract that received a renewal under a rent restructuring under MAHRA may, at subsequent renewal prior to Sunset, be renewed at the Owner’s request under any option that the contract is eligible for at the time of renewal. All renewal contracts during the term of the MAHRA affordability and use restrictions shall be under Section 515 of MAHRA, even if the contract renewal takes place **after** Sunset. The Owner should submit to the PM/CA for processing a Contract Renewal Request Form and OCAF Worksheet found at Attachment 3 of this Guide.

## “Watch List” OAHP Projects

### Section 5-6

- A. Watch List Contracts are used when: (1) OAHP 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 OAHP 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 property, or where the Owner refuses to execute a restructuring commitment or close on a Full; or, (3) OAHP concludes that the restructuring process will not result in an economically and/or financially feasible project. Refer to the section entitled “Watch List Project Type” in the attached guidance (Appendix 5-3) for a description of the circumstances that can result in a Watch List Contract (See Chapter Six, “Approvals, Ineligibility, and Appeals” in the OPG for further information on ineligibility and discontinuance in OAHP). Use the Watch List Renewal Contract (Attachment 17). These contracts are limited to one year terms. See Attachment 17, Section 4d(2).
- B. Processing Watch List Contracts: Once the PAE completes the processing, OAHP prepares a new one-year Watch List Renewal Contract (Attachment 17) and forwards a copy of the contract to the PM/CA. The Certification of Reduction of Rents in Accordance with Rent/Debt Restructuring Form found at Appendix 5-2 must be included with the Watch List Renewal Contract. Multi-year contract terms are not permitted for projects placed on the Watch List.

1. **Market Rents and Term:** The Watch List Contract reduces rents to market and requires the Owner to submit monthly accounting reports. The project is placed on the Watch List to be monitored by Senior Project Managers. These contracts are limited to one year terms only.
  2. **Term and Rent Adjustments:** Unless the project meets the conditions listed below for removal, a project remains on the Watch List for 3 years and would receive 3 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 OAHP Eligibility:** If, after the effective date of the Watch List Renewal Contract, the Owner chooses a full debt restructuring, he/she must submit a HUD 9624, Contract Renewal Request Form (Attachment 3A-2), to the PM/CA. OAHP reserves the right to reassess the eligibility and suitability of the project and the Owner, and if approved for re-entry, the Owner must execute an Interim Full Renewal Contract at current market rents. 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: (1) the Owner elects to return to OAHP, and OAHP approves the project for re-entry ; (2) the project has been on the Watch List for three years and OAHP has determined that the project is not experiencing physical, financial, or managerial signs of deterioration; (3) the Owner has prepaid the mortgage; or (4) the Owner has opted out of the Section 8 Program. Field Offices may request removal of a project from the Watch List by submitting written justification to OAHP 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 the "Watch List Memorandum: Revised Guidance on Monitoring OMHAR Watch List Properties", dated September 27, 2001, (Appendix 5-3) for policies and procedures that must be applied to all projects on the Watch List. PMs assigned to these Watch List projects are required to submit to their Hub Directors quarterly reports as described in Appendix 5-4, "Watch List Tracking and Servicing Memorandum" dated July 25, 2002, including the PM Tracking Report.
- D. **File Return and REMS Documentation:** The PAE will return project files to the appropriate PM who is responsible for entering the following information in the problem statement screen in REMS: (1) the monitoring category and the reason(s) why; and (2) any other relevant information provided by the PAE/OAHP 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 PM/CA should take immediate actions that are consistent with Handbook 4350.1, Multifamily Asset Management and Project Servicing Guide and the attached Guidance on Monitoring OAHP Watch List Properties (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 Renewal Contract, the PM will notify OAHP Headquarters and the project will be removed from the Watch List and the PM will issue a Basic Renewal Contract at the comparable market rents established under the Watch List Contract.

## **General Information**

### **Section 5-7**

- A. OAHP Processing Information: The OPG addresses program policies and procedures or Lites and Fulls, eligibility requirements, processing rent and debt restructurings, closing and post-closing procedures and PAE responsibilities. The OPG can be found on the Web at:

[www.hud.gov/offices/hsg/omhar/readingrm/opglinks.cfm](http://www.hud.gov/offices/hsg/omhar/readingrm/opglinks.cfm)

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

## **APPENDICES:**

- 5-1** Implementation of Statutory Authority for Continuing Mark To Market Eligibility, dated April 22, 2002.
- 5-2** Certification of Reduction of Rents in Accordance with Rent/Debt Restructuring Form.
- 5-3** “Watch List Memorandum”: Revised Guidance on Monitoring OMHAR Watch List Properties, dated September 27, 2001.
- 5-4** OMHAR Watch List Tracking and Servicing Memorandum, dated July 25, 2002 (includes Project Manager Tracking Report).
- 5-5** Mark-to-Market (M2M) Debt Restructuring Post Closing Transition to HUD.