



1280 Maryland Avenue, SW
Suite 4000
Washington, DC 20024

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF MULTIFAMILY HOUSING ASSISTANCE RESTRUCTURING

JANUARY 27, 2003

MEMORANDUM FOR: All Multifamily HUB Directors
All Multifamily Program Center Directors
All OMHAR Portfolio Directors and Relationship Managers
All OMHAR Participating Administrative Entities

FROM: Charles H. Williams, Director, Office of Multifamily
Housing Assistance Restructuring, V

SUBJECT: Supplemental Guidance on Waivers Under Section 401.600 -
Restrictions on the Renewal of Section 8 Contracts in
OMHAR (Revision to 04/11/01 Guidance)

Restriction: Section 401.600 of HUD's regulations restricts the renewal of Section 8 contracts on Mark-to-Market (M2M) eligible properties to one year at above-market rents. The regulation further requires that rents be reduced to market rents (or exception rents) thereafter. Any extension of a Section 8 contract beyond one year at above-market rents requires a waiver of 24 CFR § 401.600.

Purpose: This memorandum updates prior guidance (April 11, 2001) with modification primarily to OMHAR's internal processing, use of 10-day notice to cure letters, and minimum timeframes for contract extension.

Waiver Conditions: The FHA Commissioner has the authority to grant waivers extending Section 8 contracts at above-market rents on a *case-by-case basis*. The Commissioner will consider such waivers provided certain conditions listed below are satisfied. Waivers will only be granted where:

1. There has been a delay in assigning the property to a PAE, or when a property has been reassigned to another PAE; **AND/OR**
2. The assigned property encountered delays in the restructuring processing on the part of the PAE, OMHAR, or another HUD office, and through no fault of the owner; **AND/OR**
3. The HUD Field Office and OMHAR agree that a reduction of rents to market would adversely affect a restructuring plan for the property; **AND**
4. The owner continues to demonstrate good faith and is fully cooperating in the M2M rent or debt restructuring process

Owner Cooperation: As a standard condition for granting waivers, the owner must continue to show good faith and fully cooperate in the M2M process. Any property whose owner is not cooperating in the process will not be considered for a waiver regardless of the presence of any of the other waiver conditions cited above.

In no event may an owner benefit from delays caused by or relating to the owner, either directly or indirectly. For example:

- Legal issues related to ownership, such as partnership issues (e.g., consents, structure, or tax issues) must be addressed early in the process. Waivers will not be granted on the basis of such issues.
- Owners must identify lenders and discuss financing in a timely manner to assure that there are no delays in closing the restructuring. Waivers will not be granted where financing has not been sought and processed in a timely manner.

The issues identified above are well within the control of the owner and its counsel, and must be addressed early in the process without reliance on waivers.

Transfer of Physical Assets: Waivers will not be considered as part of a sale by an owner of the property, unless a Purchase and Sale Agreement has been executed, the waiver is a necessary part of the restructuring plan, and the extension period is reasonable.

Extending Contracts without Waivers: Where the owner has caused the delay and a Section 401.600 waiver is not permitted, Interim Lite and Full contracts can be extended *only at market rents* until the project is closed or processing is completed (including as an Action Other Than Closing). Where an extension is appropriate, OMHAR will notify the appropriate HUD Field Office to extend the expiration date of the contract. The notification must include a revised Exhibit A to the contract that identifies the *new market rents* and *expiration date* for the extension. The HUD Field Office extends the contract and adjusts the rents in REMS and TRACS. Sufficient notice must be given for the Field Office to reserve funds, if necessary, and adjust the rents in the system.

Ten-Day Notices to Cure: Where an owner is uncooperative, OMHAR will send the owner a 10-day notice to cure. There are two versions of the 10-day notice to cure available. The first is when OMHAR intends to discontinue the restructuring process. The attached 10-day Notice to Cure letter (Discontinuance Notice) requires the owner to cure the restructuring deficiencies within ten days or face discontinuance with an immediate reduction of rents to market. A Watch List contract is then issued.

The other version of the 10-day notice to cure is used when an owner is slow to respond but OMHAR believes the owner will eventually close on a restructuring and the interim above market contract still has over 60 days to run. The attached 10-day Notice to Cure letter (Timely Notice to Cure) can be used in such instances. If the owner does not fully cure the deficiencies and remains slow to respond, then OMHAR can *continue* the interim contract but will notify the HUD Field Office to immediately reduce rents to market and provide a revised Exhibit A. No additional waivers should be requested.

Waiver Process: On the first Tuesday of the month, a notice of Contract Expiration with an accompanying spreadsheet will be sent to all OMHAR Portfolio Directors (PDs) and Relationship Managers (RMs) for all properties with HAP contracts due to expire within the coming three (3) months.

Portfolio Directors will be given until close of business on the first Thursday of the month (two business days after receipt of the information from OMHAR Headquarters) to return the completed waiver spreadsheet. Without altering the spreadsheet format provided, RMs will need to provide four (4) items in the specified columns:

1. Whether a waiver should be granted at this time;
2. Anticipated closing or completion date;
3. Date to which the contract should be extended; and
4. Justification (in detail) for the extension.

The OMHAR PD must receive any required HUD approvals before submitting the spreadsheet to OMHAR Headquarters. The Spreadsheet or cover memorandum must indicate OMHAR PD approval. All HUD Field Office Directors and OMHAR PDs and RMs will be notified of the waiver approvals as soon as authorization has been received. In addition, the updated listings of all approved waivers will be posted to OMHAR's web page.

Headquarters Review: Norman Dailey, as Field Liaison, is responsible for the processing of all waivers that have been appropriately requested and approved by an OMHAR PD.

Duration of Waivers: The waiver request must be for the period of time the OMHAR PD has concluded is necessary to close the transaction. In no event, however, should the recommended period of time be less than 90 days or more than 180 days. To alleviate pressure on the HUD Field Office, OMHAR PDs and RMs are encouraged to seek a waiver for sufficient time to close or complete the transaction or AOTC, and without need for further waivers. With the use of the ten-day letters (see Ten Day Notices to Cure on preceding page), OMHAR has the tool to keep the owner's attention focused on closing, regardless of the contract term.