



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
Office of Housing

SPECIAL ATTENTION OF:

Hub and Program Center
Directors; Project
Managers; PBCAs; Owners;
and Management Agents

TRANSMITTAL

**Section 8 Renewal Policy
Guide Book
Issued: May 18, 2012**

1. **This Transmits.** Page changes to the Section 8 Renewal Policy Guide Book dated 1/15/08 (as revised 9-10-08 and 4-17-08. These changes are effective immediately unless noted otherwise.
2. **Explanation of Changes.** The changes appear with a single asterisk (*) before and after the new text. The changes:
 - A. Discontinue the use of Attachment 20 which allowed the Renewal Contract to which it was attached to be extended. The revised text now permits early termination and renewal of the Section 8 contract upon approval by the Hub Director or designee.
 - B. Eliminate Note 1 following Section 3-2 D which required rents for an Option One B renewal to be restricted to use restricted levels.
 - C. Require the use of current debt service in an Owner's budget-based rent increase request for Option Four. (Section 6-2 A 2. and 6-3 B.)
 - D. Permit the rent adjustments in a multiyear contract using a budget basis only if the proposed rents do not exceed comparable market rents for Option Four. (Section 6-3.B.)
 - E. Provide for new procedures when rents in a Rent Comparability Study are above 110 percent of the Fair Market Rent or Small areas Fair Market Rent for metropolitan areas. This change is effective 90 days from the date of these page changes. (Section 9-23 and 9-24)

- F. Remove language in Chapter 16 "Other Issues" that requires original debt service to be used in budget-based rent increase requests in Option Four to make it consistent with the language in Chapter 6.

Filing Instructions:

Remove:	Insert:
Chapter 2, page 9, dated 01/15/08	Chapter 2, page 9,10 dated May 18, 2012
Chapter 3, page 2, dated 01/15/08	Chapter 3, page 2, dated May 18, 2012
Chapter 6, page 3, 4, 5 dated 01/15/08	Chapter 6, page 3, 4, 5 dated May 18, 2012
Chapter 9, page 32 dated 01/15/08	Chapter 9, page 32, 33, 34 dated May 18, 2012
Chapter 15 dated 09/10/08	Chapter 15 dated May 18, 2012
Chapter 16, page 2 and 3 dated 04/17/09	Chapter 16, pages 2 dated May 18, 2012

_____/s/_____
 Carol J. Galante
 Acting Assistant Secretary for Housing -
 Federal Housing Commissioner

contractually bound by the Renewal Contract provisions that specify HUD's role pursuant to the Renewal Contract (including provisions concerning applicable HUD requirements, statutory changes during the term, distributions and PHA default).

For example, the Renewal Contract provides that if HUD determines that the PHA contract administrator has committed a material and substantial obligation of the PHA's obligation to pay amounts due to the Owner, "HUD shall take any action HUD determines necessary for the continuation of housing assistance payments to the Owner in accordance with the Renewal Contract." This provision defines HUD's role in the event of PHA default. HUD is contractually bound to carry out this role as defined in the contract, and the Owner may sue to enforce HUD's contractual obligation.

If the Renewal Contract is originally executed by HUD, HUD may assign the Renewal Contract to a PHA contract administrator, for the purpose of PHA administration of the Renewal Contract. Such an assignment does not affect the Owner's contractual rights – to enforce the contract administrator's contractual obligations against the new contract administrator, and to enforce HUD's contractual obligation to carry out HUD's role as defined in the Renewal Contract.

***EARLY TERMINATION AND RENEWAL OF THE SECTION 8 CONTRACT VS CONTRACT EXTENSION**

Section 2-8

Effective with the date of these page changes the Department is no longer allowing Section 8 contract extensions under Section 524 of MAHRA. Attachment 20 "Project-Based Section 8 Housing Assistance Payments – Extension of Contract Term" is being withdrawn.

If there is a need for a long term contract on the Section 8 assisted property, for which the original Section 8 HAP contract has already been renewed under MAHRA, the Hub Director or designee may allow the early termination of the existing Renewal Contract and the renewal of the contract under any option for which the property is eligible at the time. The owner and the Contract Administrator may mutually agree to terminate the existing Renewal Contract, provided that the Owner and Contract Administrator execute a 20-year Renewal Contract, which includes the "Preservation Exhibit" that is provided in Attachment 1 of Housing Notice 11-31. The term of the Renewal Contract must be equal to 20 years. The Preservation Exhibit must be completed to provide that upon expiration, the 20-year Renewal Contract shall renew for an additional term equal to at least the number of years remaining on the Renewal Contract that is being terminated. Should the contract term exceed the Use Agreement, the Use Agreement must be extended to the end of the contract term.

The PM/CA should document this action by including a memorandum to the file for the project that states as follows: “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 executed the Preservation Exhibit which states that upon expiration the 20-year Renewal Contract shall renew the contract for an additional term at least equal to the number of years remaining on the existing HAP contract that is being terminated subject to all applicable laws and regulations in effect at that 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., Attachment 16) is to be prepared for a 20-year term. In addition, as previously stated, the Preservation Exhibit is to be completed according to the instructions above."

- E. Under Mark-Up-to-Market, Owners must renew the Section 8 contract for a minimum five-year term. Chapter Fifteen of this guide outlines the procedures for marking rents up to budget.

Option One-A: Entitlement Mark-Up-To-Market Eligibility

Section 3-2

All properties that meet the following criteria are eligible for a Section 8 contract renewal under Mark-Up-To-Market:

- A. Property Condition. A Real Estate Assessment Center (REAC) physical inspection score of 60 or above with no uncorrected Exigent Health and Safety (EHS) violations.
- B. Ownership. The property owner must be a profit-motivated or limited-distribution entity.
- C. Market Rents. The RCS must demonstrate that the comparable market rents are at or above 100% of the FMR potential. Use the FMR figures calculated for the fiscal year in which the contract is expiring to demonstrate eligibility.
 - 1. *Excel Worksheets*. Fillable worksheets are available on the internet for Owners and Contract Administrators. The site address is <http://www.hud.gov/offices/hsg/mfh/mfhsec8.cfm>.
 - 2. *iREMS*. PM/CAs can use the Integrated Real Estate Management System (iREMS) to establish initial eligibility. The worksheets in Appendices 3-1 and 3-2 are available in iREMS.
- D. 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 use restrictions would be the existence of a Rent Supplement Contract, prior or present Flexible Subsidy assistance, or Low-Income Housing Tax Credits.

1. **Contract Renewal Request Form and OCAF Worksheet.** The Renewal Worksheet documents the Owner's option selection and the OCAF-adjusted rent potential.
 2. **Budget.** A budget and rent schedule must be completed in accordance with the requirements of HUD Handbook 4350.1, Chapter 7, or the RHS approved budget, and Attachment 5. *Notwithstanding the instructions in the Handbook, owners must use current debt service when submitting a budget-based rent increase request.*
 3. **RCS.** For an FHA-insured or HUD-held project that is requesting renewal (as described in Section A.4. above), a RCS must demonstrate that the project's current rents are at or below comparable market rents.
 4. If the primary financing or mortgage insurance is provided by a State government or a unit of general local government, and the financing involves mortgage insurance under the National Housing Act:
 - a.. Copies of the original financing documents and,
 - b. The underlying statutory authority which the Owner believes conflicts with a mark-to-market restructuring plan, and
 - c. Counsel's opinion as to the conflict.
- B. Rent Determination. Based on the documentation submitted by the Owner, the initial renewal rents shall be set at the lesser of:
1. **Current Rents X OCAF.** The current rent potential of the expiring Section 8 contract(s) adjusted by the published OCAF; or
 2. **Budget.** The rent level required to meet operating expenses based on the format required by HUD Handbook 4350.1, Chapter 7 and Attachment 5, and submitted with the request for renewal. *Notwithstanding the instructions in the Handbook, owners must use current debt service when submitting a budget-based rent increase request.*

If the project had a budget approved by HUD less than one year before processing the initial renewal, a copy of that budget may be submitted in lieu of a new budget, unless the Owner refinanced the project.

RENT ADJUSTMENTS FOR MULTIYEAR CONTRACTS

Section 6-3

Except for contract subject to the Automatic OCAF process (AutoOCAF), for multiyear contracts, at least 120 days before the anniversary date of the contract, the owner should submit:

- A. OCAF Worksheet, Attachment 3; or
- B. A budget-based rent *adjustment* request. *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 Attachment 5, 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:*

- *1. 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.

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

- *2. 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.*
- *3. 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.*
- *4. This requirement applies to those budget-based adjustment requests submitted 150 days following the effective date of these page changes.*

SUBSEQUENT RENEWALS

Section 6-4

- A. The “lesser of” test is required at subsequent renewal. (24 CFR §402.5(b)).
- B. Owner Submission. At least 120 days before expiration of the Section 8 contract, the Owner should submit:
 - 1. The Contract Renewal Request Form and OCAF Worksheet; and
 - 2. A budget prepared in accordance with HUD Handbook 4350.1, Chapter 7.
Notwithstanding the instructions in the Handbook, owners must use current debt service when submitting a budget-based rent increase request.

PROCESSING INSTRUCTIONS

Section 6-5

- A. PM/CA Review. The PM/CA should complete his/her review within 45 calendar days or whatever period is required to allow sufficient time for processing the contract renewal.
- B. The PM/CA checks to see:
 - 1. That the owner requested to renew under Option Four, *Renewal of Contract for Projects Exempted From OAHP*;
 - 2. If the Owner is eligible to renew the section 8 project-based contract under Option Four;
 - 3. That the Owner submitted all the required documentation. For example:
 - a. Contract Renewal Request Form and OCAF Worksheet;
 - b. A Rent Comparability Study, if applicable, prepared in accordance with Chapter Nine of this Guide;
 - c. A budget-based rent adjustment, prepared in accordance with Chapter 7 of HUD Handbook 4350.1. *Notwithstanding the instructions in the Handbook, owners must use current debt service when submitting a budget-based rent increase request.*

4. If the Owner specified on the Cover Sheet of the Contract Renewal Request Form whether they wanted any multiple stages or contracts combined at this time. See instructions provided in Chapter Two of this Guide.
- C. Review the Owner's certification regarding suspension or debarment on the worksheet. If the Owner checked that they are not suspended or debarred, verify that information by using the www.epls.gov.
 - D. If it is determined that the Owner is suspended or debarred, HUD will permit the Owner to renew the Section 8 contract if the project(s) in question were not the cause of the administrative actions against the Owner.
 - E. Log the Owner's request as indicated on Contract Renewal Request Form and any other relevant information in the iREMS system.
 - F. Prepare a 524(b) contract renewal.
 1. Renewals shall be at the lesser of the current rents adjusted by OCAF or the budget-based rent level.
 2. Rent Adjustments during term of multiyear contracts shall be by:
 - a. Application of OCAF, or
 - b. Application of budget-based method.

Note:

- No appeals are allowed on projects seeking to mark-up-to-market.
- If an Owner claims to have rents under market but the HUD/ CA review concludes that rents are over market, HUD/ CA should follow the procedures in Items 1 through 3 of Section 9-20C above before referring cases to OAHF.

IMPOSING SANCTIONS ON APPRAISERS

Section 9-22

If, after the substantive review and communication, discussion or appeal pursuant to Section 9-20 or 9-21, a CA or Program Center Director still concludes that the appraiser's work is seriously deficient, the CA/ Program Center Director should consider:

- A. Reporting egregious violations or repeated technical violations of USPAP to the state's real estate appraisal regulatory authority; and
- B. Imposing or recommending imposition of HUD's administrative sanctions [Limited Denial of Participation (LDP), suspension or debarment].

SPECIAL PROCEDURES WHEN AN RCS SHOWS THAT MARKET RENTS EXCEED 110 PERCENT OF SAFMR OR FMR

Section 9-23

The following requirements will apply for all contracts where the owner or HUD-commissioned RCS concludes that project comparable market rents exceed 110% of Small Area Fair Market Rents (SAFMR) in metropolitan areas or Fair Market Rents (FMR) in non-metropolitan areas. This requirement applies to all RCSs where the HUD-92273 S8 is signed by the appraiser 150 days following the effective date of these page changes.

- *A. The RCS report must include a statement as to the percentage of properties in the market area whose rents exceed 110% of the SAFMR in metropolitan areas or 110% of the FMR in non-metropolitan areas. Additionally, the RCS should support this conclusion by documenting through paired rents the conditions that differentiate the properties below the 110% threshold from those above it. (e.g., variances in condition, age, neighborhood support facilities, etc.)*

B. Include the following as part of the RCS:

The subject market area within the SAFMR consists of _____ multifamily housing units of which it is estimated _____% fall above the Fair Market Rent (FMR) established for this Small Area (SA).

*The subject rents exceed the 110% threshold of this SAFMR or FMR as a result of:

	COMMENTS
<input type="checkbox"/> Shopping	_____
<input type="checkbox"/> Schools:	_____
<input type="checkbox"/> Transportation:	_____
<input type="checkbox"/> Age:	_____
<input type="checkbox"/> Condition:	_____
<input type="checkbox"/> Design/Appeal:	_____
<input type="checkbox"/> Management:	_____
<input type="checkbox"/> Employment Centers:	_____
<input type="checkbox"/> Healthcare Providers:	_____
<input type="checkbox"/> Other:*	_____

INSTRUCTIONS FOR LOCATING FAIR MARKET RENTS AND SMALL AREA FAIR MARKET RENTS

Section 9-24

Appraisers should use the list of Fair Market Rents (FMRs) or Small Area Fair Market rents (SAFMRs) found on the Department’s website at <http://www.huduser.org/portal/datasets/fmr.html> when determining if the rents in the RCS exceed 110 percent of the SAFMR in metropolitan areas or 110 percent of the FMR in non-metropolitan counties. If an appraiser is unsure of whether the county (or town in New England) in question is part of a metropolitan area, HUD maintains a metropolitan area identification tool at <http://www.huduser.org/portal/datasets/geotools.html> that can be used to determine whether the locality is part of a metropolitan area as determined by OMB.” The user selects the state and county (or town) and is presented with a metropolitan or non-metropolitan determination.

*A. SAFMRs have been developed by the Department to provide a more localized measure of rents and are published at the ZIP code level for all metropolitan areas. For properties located within metropolitan areas users should use the “Hypothetical Small Area FMR Lookup System” for the appropriate fiscal year Users should locate the section labeled “Small Area FMRs” at <http://www.huduser.org/portal/datasets/fmr.html> and select the

link labeled “Look Up FY20__ Hypothetical Small Area FMRs (Based on Final FY20__ Metropolitan FMRs)” for the appropriate year. Users should first select either: 1) the relevant state and county (or town), or; 2) the relevant metropolitan area. Following the area selection, a list of all relevant ZIP codes is generated by the system. A complete list of all Small Area FMRs by state, county, and ZIP code for metropolitan areas nationwide is also available in Excel format by selecting the link labeled “FY2012 Hypothetical Small Area FMRs (Based on Final FY20__ Metropolitan FMRs) (*.xls, 3.69MB, Updated 12/19/11)” at <http://www.huduser.org/portal/datasets/fmr.html>.*

- *B. For properties located outside of metropolitan areas, users should use the “Final FY20__ FMR Documentation System” for the appropriate fiscal year. Users should locate the section labeled “FMR Documentation” at and select the link labeled “Individual Area Final FY2012 FMR Documentation” for the appropriate year. After the user selects the relevant state and county (or town), the FMR for that particular county (or town) is displayed along with information regarding its calculation. A complete list of FMRs by state and county nationwide is also available in Excel format by selecting the link labeled “County Level Data File” in the section labeled “20__ Fair Market Rents” for the appropriate year under the subheading “Final Data ” at <http://www.huduser.org/portal/datasets/fmr.html>.

HUD REVIEW OF ADDITIONAL REQUIREMENTS FOR RENTS EXCEEDING 110 PERCENT OF THE SAFMR OR FMR

Section 9-25

Current Guidance applies for the review of Rent Comparability Studies, as found in Sections 9-17, 9-19 and 9-20 of the Section 8 Renewal Policy Guide.

Effect of Prepayment on OAHF Eligibility

Section 16-2

In cases where the owner of a project that is eligible for debt-restructuring selects Option Three (debt-restructuring) but subsequently prepays the FHA-insured or HUD-held mortgage, the prepayment does not provide an opportunity for the owner to revise the renewal selection. While the project under such scenario is no longer subject to an FHA-insured or HUD-held mortgage and would ordinarily be eligible on this basis for renewal at exception rents (Option Four), eligibility for a Restructuring Plan is determined by the status of the project on the earlier of the termination or expiration date of the project-based assistance contract, which may include a contract renewed under section 524 of MAHRA, or the date of the owner's request for a Restructuring Plan. Any later prepayment of the FHA-insured or HUD-held mortgage does not provide the owner an opportunity to revise the renewal selection and will result in a reduction of rents to market.

For Further Information

Section 16-3

- A. Section 8 Renewal Help Desks have been established in each Hub and certain Program Centers to provide technical assistance to Project Owners, managers and contract administrators who have questions regarding the Section 8 contract renewal process.
- B. A complete and up-to-date list of Section 8 Renewal Help Desk Officers is available on the Multifamily Business Page for Section 8 Expiring Contracts at <http://www.hd.gov/officcec/hsg/mfh/mfhsec8.cfm>.