

Chapter Four

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

4-1. ELIGIBILITY.

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

1. The contract's current rents are at or below comparable market rents; or
2. The contract's current rents exceed comparable market rents, but the project is exempt from OAHP restructuring and the Owner is willing to cut the rents to comparable market rents.

4-2. INITIAL/SUBSEQUENT RENEWAL.

At least 120 days before expiration of the Section 8 contract, the Owner submits:

- A. Owner's Contract Renewal Request Form, Form HUD 9624;
- B. The OCAF Rent Adjustment Worksheet, Form HUD 9625;
- C. An RCS prepared following the instructions found in Chapter Nine of this Guide; and
- D. If applicable, a budget-based rent increase request prepared in accordance with the requirements of HUD Handbook 4350.1, Chapter 7, and Attachment 5 of this Guide.

Note: Under Option 2, the owner should use the project's current debt service when preparing the budget.

4-3. PROCESSING INSTRUCTIONS.

- A. PM/CA Review. The review should be completed within 45 calendar days.
- B. The PM/CA checks to see that the Owner:
 - 1. Is eligible to renew the Section 8 project-based contract under the Option selected.
 - 2. Has provided all required documentation. For example:
 - a. Owner's Contract Renewal Request Form, Form HUD 9624.
 - b. OCAF Rent Adjustment Worksheet, Form HUD 9625.
 - c. A RCS, if required.
 - d. A budget-based rent increase request, if required.
 - 3. If the Owner specified on the Cover Sheet 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 www.epls.gov.
 - 1. 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 in question is adequately managed and maintained, and activities at the

project were not the cause of the administrative actions against the Owner.

2. Where there are material violations and the enforcement process has progressed to the point that the PM has decided to terminate the existing contract or refuse to renew the contract, the PM should deny the renewal request.
- D. Log the Owner's request as indicated on Renewal Worksheet and any other relevant information in the iREMS system.
- E. Non-renewal determination:
1. The CA can recommend that a contract not be renewed but the final decision rests with HUD.
 2. If the PM feels that the contract should not be renewed the PM must prepare a notice:
 - a. Advising the Owner of the basis for rejection; and
 - b. Giving the Owner 30 days to appeal the decision not to renew or to cure the problems identified.
 3. If the PM's concern is resolved renew the contract.
- F. Review the RCS to make sure that the study was done in accordance with the requirements included in Chapter Nine of this Guide and that the conclusions are reasonable. Record the finding in REMS.
- G. 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 OAHP processing. (See Chapter Five, Option Three Referral to OAHP.)

- H. Prepare a contract renewal.
 - 1. Apply the appropriate rent adjustment method.
 - a. Application of OCAF, or
 - b. If applicable, application of budget based rent increase method.
 - 2. For the appropriate term:
 - a. Less than one year
 - b. One to twenty years
 - c. Other

4-4. RENT ADJUSTMENTS FOR MULTIYEAR CONTRACTS.

- A. At least 120 days before the anniversary date of the contract, the Owner submits:
 - 1. OCAF Rent Adjustment Worksheet, Form HUD 9625.
 - 2. If applicable, a budget-based rent increase request.
 - a. The resulting rents cannot exceed the OCAF-adjusted RCS discussed in Chapter Two of this Guide.
 - b. The OCAF-adjusted RCS serves as the market cap.
 - c. If the rents are above the RCS, HUD will not approve the budget-based request.
- B. If the contract is for a period greater than five years:

1. The Owner must complete a new RCS every 5 years.
 2. The rent adjustment corresponding with the submission of a new RCS will be upward or downward, if necessary, to make sure that the rents at the project are not less than nor greater than comparable market rents.
- C. In addition to the comparability analysis and adjustment of contract rents at the fifth year anniversary, the Hub/Program Center Director may, at his/her discretion, require or permit the PM/CA to conduct a RCS one time within each five-year period.

4-5 INCREASED OWNER DISTRIBUTIONS.

- A. In an effort to encourage Owners to preserve affordable housing, the Department will increase distributions for for-profit Owners with Section 8 project-based assistance that are currently subject to limited distributions (i.e. the post 1980 new construction and substantial rehabilitation new regulation contracts), to take increased distributions if:
1. In accordance with 24 CFR 880.205(h), 881.205(h) or 883.305(g) the projects rents are below market; and either:
 2. The for-profit Owner enters into a 20 year MARHA contract; or
 3. The for-profit Owner modifies its existing MAHRA contract to add enough years when combined with the existing term to have a 20 year remaining life on the MAHRA contract.
- B. Owner Distributions for 100% Section 8 Assisted Properties:
1. For-Profit Owners should follow existing guidance in Handbook 4370.2 REV-1, paragraph 2-8 for computing surplus cash.

2. For-Profit Owners are allowed to keep all surplus cash available each year during the term of the contract for distribution if the property is maintained in good condition, as demonstrated by a REAC score of 60 or higher on their most recent inspection.

C. Owner Distributions for Partially-Assisted Properties.

1. Partially-Assisted Properties that are neither Section 236, 221(d)(3) BMIR, nor Section 515:

- a. Owners of these properties may take all surplus cash generated on all units in any project year if the property is maintained in good condition, as demonstrated by a REAC score of 60 or higher on their most recent inspection.
- b. The Section 8 rents must not exceed the non-Section 8 rents.

2. Section 221(d)(3) BMIR, 236, and Section 515:

- a. Owners of partially-assisted Section 221(d)(3), 236, and 515 projects are eligible for an increased distribution on the Section 8 units under Option 2, if the property is maintained in good condition, as demonstrated by a REAC score of 60 or higher on their most recent inspection.
- b. This amount will be added to the current limited distribution on the unassisted units to reach the total distribution.

D. 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 this is the case, the amount of increased distributions may be reduced by the Owner's repayment obligation to HUD.