

**FHA Multifamily Housing Policy Handbook
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UNIT 4 ASSET PRESERVATION

CHAPTER 4.1 COMBINING SECTION 8 CONTRACTS

4.1.1 PURPOSE

This chapter provides guidance for the U.S. Department of Housing and Urban Development's (HUD) review and approval of an owner's request to combine project-based Section 8 (PBS8) housing assistance payments (HAP) contracts.

4.1.2 BACKGROUND

The Office of Multifamily Housing (MFH) believes that a desirable goal is to have only one Section 8 HAP contract per project. To achieve this goal, owners may request to combine multiple contracts or stages, provided that all applicable requirements are met, including those established in this chapter and in the Section 8 Renewal Policy Guidebook.

An owner of a project that consists of one building and has more than one HAP contract on the same building may request to combine those contracts under the guidance in this chapter. The guidance also provides some limited opportunity for an owner to combine multiple projects and contracts under a single, scattered site project.

A. A. Benefits of Combining PBS8 HAP Contracts

Owners are not required to combine contracts. However, the benefits of combining multiple contracts or stages in the same project should be pointed out to the owner. Benefits of combining contracts include:

- 1) administrative cost savings;
- 2) potential to share reserves and facilitate a better capitalized property;
- 3) reduced oversight (e.g., one management and occupancy review (MOR), one audited annual financial statement (AFS), etc.); and
- 4) superior debt and equity terms and pricing.

B. Specifications for Combining Contracts

- 1) With HUD approval, PBS8 contracts may be combined by mutual agreement between the owner and the contract administrator within a pre-existing single project, or by combining projects under a single ownership entity. PBS8 units and budget authority are rolled into the surviving contract, which is then renewed for a 20-year term, subject to appropriations, under any renewal option under Section 524 of the Multifamily Assisted Housing Reform and Affordability Act (MAHRA) for which the project subject to the combined contract is eligible.

- 1 2) Once combined, the executed combined contract is used for all purposes,
2 including enforcement actions.

3 C. Special Considerations When Combining Separate Projects/Contracts

4 An Ownership entity may acquire two or more projects that have separate
5 mortgages and refinance the mortgages with one new combined mortgage, either
6 with FHA mortgage insurance or conventionally. With one new mortgage, the
7 previously separate projects will operate as one scattered site project, and if
8 refinanced with FHA mortgage insurance, under one FHA project number and
9 regulatory agreement. In this scenario, HUD will consider combining PBS8
10 contracts and projects where there is reasonable justification to do so which
11 demonstrate a strong benefit for each project and has no material impact on HUD's
12 ability to monitor risk at the property. An example of reasonable justification would
13 be where projects with separate financing are located in close proximity to each
14 other, and the buildings are of comparable nature (close in age, physical condition)
15 where one ownership entity will acquire and refinance all with one mortgage.

16 Examples of scenarios that would not be in the best interest for a contract
17 combination would be projects that have a large gap in the age of the buildings,
18 projects that are located several miles apart, in different towns/counties/fair market
19 rent areas. Projects separated by many miles may create logistical complications in
20 the management, maintenance, and inspection of the projects. Owner proposals to
21 combine contracts where one project may be a high-performing project and another
22 may be a low-performing project are unlikely to be approved unless there is
23 compelling demonstration that a refinance may be a source to bring the low-
24 performing project up to an acceptable performance and better align the property
25 risk profiles.

26 HUD must weigh carefully all potential outcomes prior to approval. Such
27 considerations include, but are not limited to:

- 28 1) Inefficiency related to location of the properties, especially if inspectors are
29 required to travel amongst numerous properties;
30
31 2) Challenges related to size of the newly created contract, as larger properties
32 present unique administrative and other management challenges and are often
33 more difficult to manage effectively;
34
35 3) Initial changes in the management structure (e.g., one managing agent) and its
36 potential effects on project residents; and
37
38 4) Consideration of whether the contracts have specific tenant rights.
39

1 **4.1.3 APPLICABILITY**

2 A. Project/Contract Requirements

3 Requirements for combining HAP contracts apply to existing multifamily housing
4 projects that are subject to existing PBS8 contracts administered by the
5 Performance-Based Contract Administrator (PBCA) for the state in which the
6 project is located pursuant to an annual contributions contract with the Office of
7 MFH Programs, those that are administered by a Traditional Contract Administrator
8 (TCA) and those that are administered by HUD.

9 If multiple projects are being combined into one project, they must be located in the
10 same state. The original PBS8 HAP contracts requested to be combined can only
11 be those that are subject to the following regulations:

- 12 1) 24 CFR Part 880, Section 8 Housing Assistance Payments Program for New
13 Construction (both old regulation and new regulation)
- 14 2) 24 CFR Part 881, Section 8 Housing Assistance Payments Program for
15 Substantial Rehabilitation (both old regulation and new regulation)
- 16 3) 24 CFR Part 883, Section 8 Housing Assistance Payments Programs – State
17 Housing Agencies (both old regulation and new regulation)
- 18 4) 24 CFR Part 884, Section 8 Housing Assistance Payments for New
19 Construction for Section 515 Rural Housing
- 20 5) 24 CFR Part 886 Subpart C, Property Disposition(PD), including Section 8
21 Pension Fund HAP Contracts
- 22 6) 24 CFR Part 886 Subpart A, Loan Management Set-Aside (LMSA) HAP
23 Contracts
- 24 7) 24 CFR Part 891 Subpart E, Section 202/8 (formerly Part 885) (both old
25 regulation and new regulation)

26 B. Ineligible Contracts

27 The requirements of this chapter do not apply to contracts subject to the following:

- 28 1) Section 8 HAP contracts administered by the Office of Public and Indian
29 Housing (PIH)
- 30 2) 24 CFR Part 882, Section 8 Moderate Rehabilitation Programs
- 31 3) Project rental assistance contracts (PRAC) (PRAC is not a Section8 program)
- 32 4) Project assistance contracts (PAC) (PAC is not a Section 8 program)

- 1 5) Post conversion project-based rental assistance contracts as part of the rental
2 assistance demonstration (RAD) program

3 **4.1.4 REQUESTING COMBINATION**

4 A. Submitting Request

5 An owner that desires to combine PBS8 contracts within a single building or
6 combine multiple projects and PBS8 contracts, must submit a request to the
7 appropriate MFH regional center/satellite office. The request must demonstrate a
8 reasonable justification for the combination as discussed in section 4.1.2 of this
9 chapter. Regional center directors are authorized to approve the combination of
10 PBS8 contracts based on the guidance in this chapter.

11 B. Determining Contract Eligibility

- 12 1) If the MFH regional center/satellite office determines that the contracts are
13 eligible for combination, to begin the combination process, the owner must
14 submit the following to the servicing PBCA, TCA, or HUD:
- 15 a) Prior to renewal, the owner must submit a full renewal package in
16 accordance with guidance in the Section 8 Renewal Policy Guide. The
17 renewal package should include form [HUD-9625](#), OCAF Rent Adjustment
18 Worksheet, copies of HAP contracts requested to be combined and renewed
19 for 20 years, and any recorded use agreements.
- 20 b) For those renewals requiring a new rent comparability study, the study must
21 provide neighborhood-specific rents for both projects and include form [HUD-](#)
22 [92273-S8](#), Rent Comparability Grid, for each neighborhood.
- 23 2) Whether request for contract combination is approved or denied (e.g., because
24 found to be ineligible for combination), the MFH regional center director will
25 provide written notification to the owner, including conditions for an approval, or
26 identifying deficiencies for a denial.

27 **4.1.5 CONDITIONS FOR COMBINING CONTRACTS**

28 A. Requirements

29 For contracts to be combined (and those where projects and contracts will be
30 combined), the following conditions must be met:

- 31 1) Projects with contracts to be combined must have the same owner with one tax
32 identification number (TIN).
- 33 2) Neither the owner nor its proposed managing agent(s) may be subject to any
34 current exclusion from HUD or other federal government programs (i.e.,
35 suspension, debarment and/or limited denial of participation).

- 1 3) The owner and its proposed managing agent(s) must have cleared HUD's
2 previous participation (2530) clearance.
- 3 4) Contracts renewed under different MAHRA options must both qualify to renew
4 under one specific option at the time of the renewal request for combining
5 contracts.
- 6 a) Example one: The owner wishes to combine the contracts on project X and
7 project Y. Project X underwent restructuring under mark-to-market (M2M) in
8 2010 and has a M2M 30-year use agreement. Project Y renewed its contract
9 for 20 years under mark-up-to-market in 2012. These contracts are not
10 eligible to be combined.
- 11 b) Example two: The owner wishes to combine the contracts on project A and
12 project B. Project A was last renewed under option four "renewal of projects
13 exempted from or not eligible for debt-restructuring" and project B was last
14 renewed under option two "contract renewals for other projects with current
15 rents at or below comparable market rents." For these contracts to be
16 combined, the owner must renew both contracts under a single renewal
17 option for which both are eligible and provide the required information so that
18 the regional center/satellite office can determine if the project subject to the
19 combined contract qualifies for the option selected.
- 20 5) If there are two or more FHA-insured loans on the projects, the projects must
21 have only one loan, or as part of this transaction, be in the process of
22 refinancing the existing loans into one loan. If there are two or more loans and
23 one of the loans is FHA insured, the contracts cannot be combined unless the
24 properties are refinanced under one loan. If the combination is approved, it may
25 not occur until the refinance has closed. If the owner is using FHA insurance to
26 refinance, the properties must be one marketable and manageable real estate
27 entity.
- 28 If there are two or more conventional mortgages and neither have FHA
29 insurance, contract combinations may occur. The owner must notify their lender
30 of the request for combination.
- 31 6) Each project must have properly submitted any required electronic annual
32 financial statements (AFS) for the most recent fiscal year through the Financial
33 Assessment Subsystem (FASS).
- 34 7) Management and occupancy reviews (MOR) for projects must comply with the
35 following:
- 36 a) The MOR must have a rating of satisfactory or better within the last three
37 years. If the MOR is older than three years, a full MOR must be completed
38 and the property must receive a score of satisfactory or above prior to
39 approval.

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- 1 b) If the most recent MOR rating (within the last three years) is less than
2 satisfactory, and the project is rated potentially troubled or troubled, a MOR
3 must be completed and the property must receive a score of satisfactory or
4 above prior to approval.
- 5 c) If the property is rated troubled and the MOR is more than 12 months old, a
6 MOR must be completed and the property must receive a score of
7 satisfactory or above prior to approval.
- 8
- 9 d) Notwithstanding, the Secretary maintains the discretion to require additional
10 MORs outside of this schedule, as deemed necessary.
- 11 6) The projects must be within the same fair market rent (FMR) area.
- 12 7) The most recent Real Estate Assessment Center (REAC) inspection score must
13 be 60 or above (for both projects if there are multiple projects/contracts being
14 combined) or there must be a HUD-approved plan in place to correct any
15 deficiencies. If the most recent REAC score is more than three years old, a new
16 REAC inspection must be completed and the resulting score must be 60 or
17 above, or the owner must submit a fully-funded repair plan for HUD's approval,
18 before the multifamily regional center/satellite office approves combining the
19 contracts. All exigent, health and safety (EHS) deficiencies identified in the
20 most recent REAC inspection must have been corrected.
- 21 8) Many PBS8HAP contracts have the same income eligibility requirements,
22 distribution requirements, and reserve for replacement requirements. Owners
23 can request to combine contracts with the same provisions as noted below:
- 24 a) Section 8 HAP contracts effective before October 1, 1981, can be
25 combined with other Section 8 HAP contracts effective before October 1,
26 1981, provided the owner agrees to adhere to the more restrictive
27 requirements in the post October 1, 1981, contract.
- 28 b) Section 8 HAP contracts effective after October 1, 1981, can be
29 combined with other Section 8 HAP contracts effective after October 1, 1981.
30 If there is a disagreement as to the effective date of the contract or any
31 contract provision related to income eligibility, the contract must be sent to
32 OAMPO in Headquarters for review.
- 33 c) Pre-October 1, 1981, LMSA contracts can be combined with old
34 regulation Section 8 HAP contracts or with other pre-October 1, 1981, LMSA
35 contracts.
- 36 d) Post-October 1, 1981, LMSA contracts can be combined with old
37 regulation Section 8 HAP contracts, or with other post October 1, 1981,
38 LMSA contracts.

1 **Note:** Where the contracts to be combined contain the same income
2 eligibility requirements and distribution limitations, the later expiring contract
3 should be terminated early and the units and budget authority rolled into the
4 surviving contract. If the contract expiration dates are the same, the regional
5 center/satellite office selects the surviving contract.

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

10 a) For properties with Section 8 HAP contracts effective before October
11 1, 1981, occupancy of available units by families other than very low income
12 may not exceed 25 percent (24 CFR 5.653(d)(1)). For most properties with
13 Section 8 HAP contracts effective on or after October 1, 1981, all units must
14 be occupied by families who are very low income, except for those impacted
15 by HUD's 15 percent exception authority (see Sections 3-7 A. and B. of HUD
16 [Handbook 4350.3 REV-1](#), *Occupancy Requirements of Subsidized*
17 *Multifamily Housing Programs*, (24 CFR §5.653(d)(2)).

18 **Note:** The existing waiting lists for each project remain in place and tenants
19 on those waiting lists continue to be selected according to existing priorities
20 until the existing waiting lists have been exhausted. On the effective date of
21 the newly combined contract, any applicants applying for the new waiting list
22 must meet the more restrictive income limits. Applicants from this list are not
23 selected for admission to the project until the previous waiting lists have
24 been exhausted. Please see [0](#) for the waiting list process.

25 b) Old regulation Section 8 HAP contracts can be combined with new
26 regulation Section 8 HAP contracts only if the owner agrees to be bound by
27 the new regulation contract, which is the more restrictive of the two.

28 **Note:** For those projects renewed under option one or option two and that
29 have had the distribution restrictions conditionally lifted, the new contract
30 contains Exhibit B that allows the owner to retain increased distributions as
31 long as the projects continue to meet the conditions set forth in the Section 8
32 Renewal Policy Guide.

33 c) LMSA, PD, or Section 8 pension fund contracts can be combined with
34 new regulation Section 8 contracts only if the owner agrees to abide by the
35 more restrictive provisions, including limitations on distributions, in the new
36 regulation contract.

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

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- 1 **Note:** Where the contracts to be combined contain differing income eligibility
2 requirements and distribution limitations, the contract with the most
3 restrictive provisions survives. If the contract with the most restrictive
4 provisions expires last, then that contract is the surviving contract.
- 5 10) The owner must agree to renew the surviving HAP contract for 20 years.
- 6 11) The resulting HAP contract must include language that requires physical
7 condition standards and inspections of the project by HUD, as well as
8 submission of the audited AFS. If not included in the surviving contract, it
9 can be included by an amendment.
- 10 12) The owner must also agree that a Preservation Exhibit, [0, will be attached to](#)
11 [the renewal contract.](#) It provides for the automatic renewal of the contract
12 upon expiration (i.e., at the end of the 20-year renewal term) for a whole
13 number of years to be filled in by the regional center/satellite office, which
14 must be at least the number of years remaining on the latest expiring
15 contract at the time of its termination by mutual agreement.
- 16 Example: Project X's contract expires in December 2018. Project Y's
17 contract expires in November 2020. To combine the contracts for projects X
18 and Y, the owner must agree to extend the newly renewed combined
19 contract by the remaining term of project Y's contract.
- 20 13) If the contract administrator agrees to the early termination of an original
21 term (pre-MAHRA) contract, the owner must sign form HUD-93184, Rider to
22 Original Section 8 Housing Assistance Payments Contract. Projects with old
23 regulation State Housing Finance Agency contracts that terminate upon
24 prepayment of the original financing do not have to sign the rider.
- 25 14) Projects with differing use agreements are only eligible to be combined if the
26 owner agrees to place all the projects under the most restrictive use
27 agreement. The owner needs to obtain a release of any recorded use
28 agreements that conflict with the most restrictive use agreement. If there are
29 differing use agreements at any of the projects that are part of the contract
30 combination, the regional center/satellite office must consult with
31 Headquarters' OAMPO prior to approval.
- 32
- 33
- 34
- 35 15) Projects with differing deposit requirements for reserve for replacement
36 (RfR) accounts and/or residual receipts accounts can be combined but the
37 final determination of the revised deposit requirements is made based on the

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1 needs of the combined project in its entirety, and the most restrictive
2 regulatory provisions will apply.

3

4

1 **Exhibit 4.1-1 Section 8 Contract Combination Waiting List Process**

2

3 **Note: This example is for 2 projects/contracts that will be combined (Project 1 and**
4 **Project 2)**

5

6 **Pre-Contract Combination:**

- 7 - **Project 1 – Pull from the existing waiting list for Project 1**
- 8 - **Project 2 – Pull from the existing waiting list for Project 2**

9

10 **Date of Contract Combination:**

- 11 - **On the date the two contracts are combined, a new waiting list for the**
12 **combined projects must be created (all new applicants will be placed on**
13 **this new waiting list as of this date)**

14

15 **Post Contract Combination:**

16

- 17 - **The original waiting lists for Project 1 and Project 2 are exhausted**
- 18 - **Once both waiting lists are exhausted from Projects 1 and 2, applicants**
19 **are pulled from the new waiting list created for the combined projects**

20

21

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Exhibit 4.1-2 Preservation Exhibit

<http://portal.hud.gov/hudportal/documents/huddoc?id=13-17hsgn-2.pdf>

Subject to all applicable laws and regulations in effect upon expiration, the Renewal Contract shall automatically renew for a term of _____¹ year(s) beginning on _____.² This requirement shall be binding on the Owner and the Contract Administrator, as identified in section 1 of the Renewal Contract, and on all their successors and assigns.

¹ Enter a whole number of one year or more.

² Enter the date of the first day after expiration of the Renewal Contract.