



OFFICE OF HOUSING

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-8000

SPECIAL ATTENTION OF:
Regional Center and Satellite Office
Directors, Account Executives; PBCAs;
Owners; and Management Agents

TRANSMITTAL
Section 8 Renewal Policy Guidebook
Issued: XX/XX/XXXX
Effective: XX/XX/XX

A. Purpose.

This transmittal updates the Section 8 Renewal Policy guidebook. The revisions are being published on _____, 2016. This guidance will apply to renewal and amend rent packages received by the Department (or post-marked) on or after _____, 2016.

B. Explanation of Changes.

Changes to the text of the Guide are in *italics*, except for Chapter 9 that was completely reorganized and updated. The changes:

1. Clarify that if an owner of a project with an existing Preservation Exhibit wishes to terminate the contract and renew early, the new Preservation Exhibit will replace the existing Preservation Exhibit and include only the number of years remaining on the contract being terminated. (See Section 2-4.A.2.a)
2. Clarify that Account Executives can round up or down the amount of time on the Preservation Agreement, depending on the amount of time remaining on the contract being terminated. (See Note after Section 2-4.A.2.a)
3. Clarify that an owner who wishes to renew under Option Three can renew for the lesser of 20 years or the remaining term of the use agreement. (See Section 2-4.B.3.e.)
4. Clarify that an owner who wishes to terminate an existing Option Four contract and renew the contract under Option Four, is allowed to do so. (See Section 2-4.B.4)
5. Clarify that an RCS is not required at any subsequent MTM "Full" renewal during the life of the use agreement. (See Note after 2-5.E.3.)
6. Direct users to Handbook 4350.1 for instructions on combining contracts. (See Section 2-10)
7. Remove Section 2-12.A.2.f on 202 repayments and distributions as the Department has issued Notice 13-17 (Deleted Section 2-12.A.2.f)

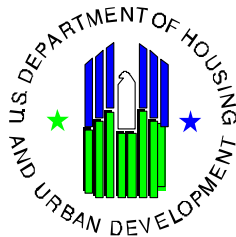
8. Clarify that the revised conditions for receiving increased distributions listed in Section 2-12.E apply to all projects, not just those renewed after August 2015. (See Note after Section 2-12.E.)
9. Clarify the vacancy rate that must be used in a budget based rent increase request for projects with 51 or more units and projects that are between 21 and 99 percent assisted. (See Section 2-15.A.2.)
10. Remove “Developer Fee” from the Note after Section 2-15.B.
11. Revise the factor for increasing the reserve for replacement deposits from the OCAF to the most recent “Regional AAF with Highest Utility Excluded”. (See second note after Section 2-16)
12. Revise Section 2-17.C.1 last line to say that tenant notifications on utility analyses do not have to be separate from a rent increase notification.
13. Move the criteria that a project must be owned by a profit motivated entity from General Eligibility Criteria (Section 3-2.D) to Entitlement Eligibility Criteria (Section 3-3.E).
14. Remove text in Section 3-3.E.1.d concerning an LLC and a managing general partner because LLC entities do not have a managing general partner. The same text was removed from Section 15-3.A.2. (See Sections 3-3.E.1.d. and Section 15-3.A.2.)
15. Clarify that nonprofits if they meeting one of the three discretionary criteria can participate in Option One B. (See Note after Section 3-6.A.)
16. Clarify that when terminating a MAHRA contract early the owner must agree to the terms of the Preservation Exhibit. (See 3-7.A.1.)
17. Clarify that projects currently renewed under Option Four in addition to those currently renewed under Option Two can reduce rents to market in order to qualify for renewal under Option Two. (See Note after Section 4-1)
18. Clarify the criteria under which a 202 projects that has been refinanced for a second time may be eligible for MTM. (See Section 5-1.H.)
19. Revise the text in Section 7-6 to say that an Option 5 project can request to renew under MTM if the project is being transferred or sold. (See Section 7-6)
20. Clarify that HUD staff may comment a study reviewed by a review appraiser but the final rent determination is the responsibility of the review appraiser. (See Note at the end of Section 9-16)
21. Clarify that a FHA appraisal can still be used as a substitute for a HUD Third-Party RCS. (See Note after 9-14.)
22. Add text to Section 15-1 to clarify that nonprofits that meet one of the statutory criteria can also renew under Option One B and that for profit owners can renew under Option One or Option Two. (See Section 15-1.)
23. Delete language in section 15-3 because an LLC does not have a “general partner.”

Filing Instructions:

Remove:	Insert:
Page Guide dated August 2015	Guide dated __/__/16

Section 8 Renewal Policy

*Guidance for the Renewal of
Project-Based Section 8 HAP Contracts*



Office of Multifamily Housing

The information collection requirements contained in this document are pending approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB control number 2502-0507 and 2502-0587.. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

2015

XXXXXXXXXX November 5,

Effective Date

364 ~~2-4.~~

EARLY TERMINATION OF A CONTRACT.

365 A. Non-MAHRA Contracts.

366 HUD will permit the early termination of a non-MAHRA contract (i.e., a contract
367 that has not yet been renewed under MAHRA) for an owner wanting to enter into
368 a MAHRA contract *only* if the owner:

369 1. Renews the Section 8 contract for 20 years under Option One, Two, Three
370 or Four; and

371 2. Agrees to:

372 a. The Preservation Exhibit, as contained in HUD Notice 2013-17 which
373 provides for the renewal of the HAP contract at the end of the 20 years for
374 a term that is at least equal to the term of the original terminated contract.

375 *If an owner of a project with an existing Preservation Exhibit wishes to*
376 *terminate the contract and renew early, the new Preservation Exhibit will*
377 *replace the existing Preservation Exhibit and include only the number of*
378 *years remaining on the contract being terminated.*

379 *Note: In determining the amount of time to put on the Preservation*
380 *Exhibit, the AE should round down to the whole year for any*
381 *term less than six months and up for any term six months or*
382 *greater. For a contract with less than six months remaining, no*
383 *Preservation Exhibit is required.*
384

385 a.b. Sign the HUD-93184 “Rider to Original Section 8 Housing Assistance
386 Payments Contract.”

387
388 B. MAHRA Contracts.

389 Owners may request the early termination of an existing non-MUTM MAHRA
390 contract only for the following reasons:

391 1. A for profit owner or a housing authority occupying the status of a “public
392 body corporate and politic” under the state legislation under which it was
393 created, wishes to renew the contract under Option One, MUTM.
394

395 2. Any owner wishes to renew the contract under Option Two and preserve
396 long term affordability by signing a 20-year contract.

397 3. Under Option Three:

398 a. An owner has an Interim-Lite or Interim-Full M2M contract and
399 Recap has completed processing before the expiration date of the
400 interim contract.

- 401 b. An owner with a Watch List contract that meets one of the
- 402 requirements listed in Section 5-6.B.4. of this Guide.
- 403
- 404 c. The contract was previously renewed as a Lite contract and the
- 405 owner wishes to complete a full MTM debt restructuring.
- 406
- 407 d. An owner requests referral to Recap based on a RCS that
- 408 demonstrates that current rents are above market.
- 409
- 410 e. An owner wishes to refinance the project and wishes to renew the
- 411 contract for 20 years or the remaining term of the use agreement,
- 412 whichever is less.

411 4. An owner with an Option Four contract who wishes to subsequently renew
 412 the contract under Option Four using a 20-year contract to preserve long-
 413 term affordability provided that the project is still eligible for renewal
 414 under Option Four at the time of the request for subsequent renewal.

415 5. *An owner with an Option Five contract who wishes to renew the contract
 416 under Option Five using a 20-year contract to preserve long-term
 417 affordability.* (See Sections 7.3 and 7.4 for more information.)

418 65. To combine multiple contracts or stages. (See Section 2-10.C.2 below.)

419 **Note: An owner with a MUTM contract that has fulfilled the minimum five-**
 420 **year term, is allowed to terminate the contract early and renew the**
 421 **contract under any option for which the project is eligible for 20**
 422 **years. An owner with a MUTM contract that has not fulfilled the**
 423 **minimum five-year term may terminate the contract early but only if**
 424 **the owner agrees to renew the contract under MUTM for 20 years,**
 425 **assuming the project is eligible for MUTM when the first contract is**
 426 **terminated.**

427 C. The owner’s request for early termination under A or B above must be in writing
 428 and submitted to the AE/CA.

429 D. An owner is not allowed to terminate a contract early in order to Opt Out of the
 430 Section 8 program.

431 **Note: The AE/CA should document the project file by including a note that**
 432 **reads: “By mutual agreement, the owner and the CA have**
 433 **determined to terminate the Renewal Contract that runs from _____**
 434 **to _____ and, instead, to enter into a 20-year contract, which will run**
 435 **from _____ to _____. The owner has also agreed to the terms of**
 436 **the Preservation Exhibit.**

437

438 **2-5. RENT COMPARABILITY STUDY (RCS).**

439 Certain renewal options under MAHRA require a RCS.

- 478 2. Under Option One and Two the owner is required to submit a new RCS
 479 every five-years. However, in cases where the five-year life cycle of the
 480 RCS does not currently align with a multiyear contract's five-year life
 481 cycle an owner does not need to obtain another RCS until the time when
 482 the multiyear contract reaches the end of it five-year life cycle. In such
 483 cases, any rent adjustment during the years when a project has an aged
 484 RCS will be limited to the OCAF. The owner must obtain a new RCS at
 485 the end of the contract's five-year life cycle.
- 486 3. Notwithstanding any other renewal instructions, an owner seeking to
 487 terminate a Section 8 HAP contract early and renew that contract under
 488 the same or a different option, or renew an existing contract for more than
 489 5 years must submit a new RCS. This is true even if a previous RCS is less
 490 than 5 years old.
- 491 **Note: A RCS is NOT required at initial or subsequent renewal of an**
 492 **Option Four contract unless the project is renewing using the**
 493 **criteria in Section 6-1.B.2.**
- 494 *Note: A RCS is not required at any subsequent renewal of a MTM*
 495 *"Full" contract during the term of the MTM use agreement.*
- 496 4. Under Option Four, if the owner requests an annual budget based rent
 497 adjustment, the owner will be required to submit a current RCS unless one
 498 has been submitted within the preceding five years.

499 **FG.** The Cost of the RCS.

- 500 1. The cost of the RCS is an eligible project expense when:
- 501 a. The owner submits a RCS because HUD requested it under E
 502 above;
- 503 b. It is required by a renewal option; or
- 504 c. The owner submits a RCS under F above.
- 505 2. The cost of any unsolicited RCS, not covered by EF above, **is not** an
 506 eligible project expense.

507 **2-6. CONTRACTS.**

- 508 A. Copies of MAHRA renewal contracts are found on HUDCLIPS:
- 509 Option One uses:
- 510 • Renewal HAP Contract for Section 8 Mark-Up-To-Market Project, Form
 511 HUD-9638
- 512 Option Two may result in the use of the:

657 **2-10. COMBINING CONTRACTS.**

658 [Guidance on combining Section 8 contracts is found in Chapter 4.1 of Handbook](#)
659 [4350.1.HUD issued guidance on September 18, 2014, on processing requests to combine](#)
660 [Section 8 HAP contracts. The guidance is in Attachment 2-1.](#)

661 **2-11. REQUEST FOR A CONTRACT EXTENSION.**

662 HUD no longer allows Section 8 contract “extensions.” If there is a need for a long term
663 contract on the Section 8 assisted project and the project qualifies for early termination
664 under Section 2-4.A or B of this Guide, the Regional Center Director or designee may
665 allow the early termination of the existing contract with a 20-year renewal under any
666 option for which the project qualifies at the time.

667 For projects subject to a Full Mark-to-Market Renewal Contract (i.e., issued pursuant to
668 section 515 of MAHRA), the only subsequent renewal option for which the project is
669 eligible is Option 3. Under such circumstances, a new Full Mark-to-Market Renewal
670 Contract (i.e., HUD-9642) is to be prepared for a term that is equal to the number of years
671 remaining on the MTM Use Agreement. In addition, as previously stated, the
672 Preservation Exhibit is to be attached to the contract. (See Section 2-4 for additional
673 guidance.)
674

675 **2-12. DISTRIBUTIONS.**

676 A. Limitations on Distributions.

- 677 1. The old regulation, LMSA, Pension Fund, and Property Disposition (PD)
678 Section 8 contracts typically have no limitations on distributions. If
679 applicable, any limitation on distributions is based on a current HUD
680 Regulatory Agreement or a similar controlling document imposed by the
681 Housing Finance Agency or other interested lender.
- 682 2. The new regulation Section 8 contracts for new construction or substantial
683 rehabilitation limits an owner’s right to distributions.
- 684 a. A nonprofit owner is not entitled to distributions of excess project
685 funds unless HUD approves the nonprofit owner’s request for a
686 waiver. See sections 2-12.C and 2-18.A below.
- 687 b. A profit-motivated owner may receive distributions from surplus
688 cash in the amounts as follows:
- 689 1) For projects for elderly families: 6 percent of the initial
690 equity investment established when the project was newly
691 constructed or substantially rehabilitated;

- 692 2) For projects for non-elderly families: 10 percent of the
693 initial equity investment established when the project was
694 newly constructed or substantially rehabilitated.
- 695 c. Owners of “small projects” and owners of “partially-assisted
696 projects,” as defined in 24 CFR Part 880.201, 881.201 and
697 883.302, are exempt from any section 8 limitation on distributions.
698 24 CFR Parts 880.205(f), 881.205(f), and 883.306(f).
- 699 d. Owner Distributions for Partially-assisted Projects that qualify for
700 increased distributions under Section 2-12 D.
- 701 1) For partially-assisted projects that are not insured under
702 Section 236, 221(d)(3) BMIR, or do not have mortgages
703 under Rural Housing Service’s (RHS) Section 515/8:
- 704 a) For profit owners of these projects may keep
705 surplus cash generated on all units.
- 706 b) The Section 8 rents must not exceed the rents on the
707 unassisted units.
- 708 2) For partially-assisted projects that are insured under
709 Section 221(d)(3) BMIR, 236, or have mortgages under and
710 RHS Section 515/8:
- 711 a) For profit owners of these projects are eligible for
712 an increased distribution on the Section 8 units.
- 713 b) This amount will be added to the current limited
714 distribution in the FHA regulatory agreement on the
715 unassisted units to reach the total distribution.
- 716 e. If the form of ownership changes so does the right to receive
717 distributions under the Section 8 contract. For example, if a
718 nonprofit owner, who is prohibited by regulation and under the
719 HAP contract from receiving distributions, sells the project to a for
720 profit entity, the for profit buyer may receive distributions,
721 provided that all administrative conditions are met.
- 722 ~~f. — If a project was formerly financed under the Section 202 program,
723 then the project was originally regulated by 24 CFR Part 885.
724 However, the regulations governing projects subject to a Section
725 202 Direct Loan have since been recodified and are currently
726 located at 24 CFR Part 891. Under 24 CFR Part 891.600(e) the
727 Borrower is not entitled to distributions.~~
- 728 ~~At the time of the 202 prepayment, the requirement to operate the project
729 under the provisions of 24 CFR Part 891 would have terminated~~

730 ~~except that the owner agreed in the Use Agreement, to continue to~~
731 ~~abide “by all applicable Federal regulations.” Therefore, the~~
732 ~~owner must request a waiver of the Use Agreement, to allow a~~
733 ~~distribution of six percent on initial equity investment for this~~
734 ~~elderly project for non-project uses. All waiver requests must be~~
735 ~~submitted to the Director, OAMPO.~~

736 3. Nothing in this Chapter limits a nonprofit owner’s entitlement to excess
737 project funds generated by non-Section 8 assisted units in a partially
738 assisted project.

739 B. For profit Owners.

740 A for profit owner with a new regulation Section 8 contract may qualify for
741 increased distributions. (See Section 2-12.D.)

742 C. Distribution for Nonprofit Owners

743 By regulation (24 CFR Parts 880.205(a), 881.205(a), and 883.306(a)) nonprofit
744 owners who have New Regulation Section 8 HAP contracts are not allowed to
745 receive distributions of project funds.

746 D. Increased For profit Owner Distributions.

747 1. In an effort to encourage owners to preserve affordable housing, HUD will
748 allow increased distributions for owners with Section 8 project-based
749 assistance that are currently subject to limited distributions (i.e., the new
750 construction and substantial rehabilitation new regulation contracts), if:

751 a. In accordance with 24 CFR Parts 880.205(h), 881.205(h) or
752 883.306(g) the project’s rents are below market, or at or below
753 market for an Option Two project, before the Section 8 contract is
754 renewed; and either:

- 755 1) Under Option One, the owner will receive access to
756 increased distributions, even if the term of the contract is
757 less than 20 years; or
758 2) Under Option Two, the owner enters into a 20-year Section
759 8 contract can receive access to increased distributions.
760

761 b. Owners with Section 8 contracts currently renewed under Option
762 Two may receive increased distributions, for the term of the
763 renewal contract if:
764

- 765 1) The owner terminates the existing contract and renews the
766 Section 8 contract for 20 years; and

- 806 • Management & Occupancy Review (MOR);
- 807 e. The project has not been referred to Recap for restructuring; and
- 808 f. The owner is in compliance with the terms of the FHA Regulatory
- 809 Agreement, Note, and Mortgage and is current in debt service and
- 810 all escrow payments, including the reserve for replacement account
- 811 (RFR).

812 **Note: The conditions listed above for receiving access to increased**

813 **distributions apply to all contracts, not just to those renewed after**

814 **August 2015.**

- 815 2. If an owner ceases to be eligible for increased distributions, the AE should
- 816 follow existing instructions in HUD Handbook 4370.2, Chapter 2,
- 817 concerning eventual release to the owner in the event that the owner
- 818 becomes eligible to resume receiving access to increased distributions
- 819 when compliant with all of the conditions listed immediately above.
- 820 3. The eligibility to receive increased distributions will automatically transfer
- 821 upon sale of the project. However, in the case of a sale from a for profit
- 822 owner to a nonprofit owner of a new regulation Section 8 contract, the
- 823 nonprofit owner will be required to obtain a regulatory waiver to permit
- 824 distributions.
- 825 4. The AE is charged with annual compliance monitoring of the owner's
- 826 eligibility to receive continued distributions.

827 F. **PREEMPTION OF STATE LAWS LIMITING OWNER DISTRIBUTIONS.**

828 For consistency in administering the program as it relates to owner distributions,

829 Section 524(f) of MAHRA preempts State and local laws and regulations that

830 limit or restrict owner distributions to an amount less than that provided for under

831 regulations of the Secretary.

832 This preemption is now available to all projects which have Section 8 contracts

833 renewed under any section of 524 of MAHRA and which have distributions of

834 surplus funds accruing after October 20, 1999.

835 Preemption does not apply to State-financed projects. In addition, an owner may

836 elect to waive the preemption.

837 **2-13. RENT ADJUSTMENTS.**

- 838 A. Annual adjustments to contract rents that occur during the term of a multi-year
- 839 contract are called rent adjustments. These adjustments may be by application of
- 840 the published OCAF or, if applicable, a budget-based request of the owner and
- 841 subject to approval by HUD.
- 842 B. ***Exception*** processes to A. above:

- 843 1. See Section 2-17.~~CB~~.4. for additional instructions for Option One, and
844 Option Two.
- 845 2. Title II and Title VI preservation projects discussed in Chapter 7, Option
846 Five – Renewal of Portfolio Reengineering Demonstration or Preservation
847 Projects. The rent adjustment mechanism is spelled out in the individual
848 project’s Plan of Action (POA) and/or Use Agreement. These documents
849 may permit other rent adjustment mechanisms.

850 **2-14. OPERATING COST ADJUSTMENT FACTOR (OCAF).**

851 Each year HUD publishes the new OCAF in the Federal Register. The application of an
852 OCAF shall not result in a negative rent adjustment.

853 **2-15. BUDGET-BASED RENT ADJUSTMENT REQUESTS.**

854 An owner may prepare a budget-based adjustment request in connection with certain
855 MAHRA contract renewal options and annual rent adjustments.

856 A. Follow the requirements of Chapter 7 of HUD Handbook 4350.1, Multifamily
857 Asset Management and Project Servicing, as modified below.

858 1. Paragraph 7-30.P. of HUD Handbook 4350.1 does not apply. For Section
859 8 projects, the budget will no longer include a 2 percent contingency
860 reserve for projects owned by nonprofits and those projects once owned
861 by nonprofits but which have been sold to limited dividend partnerships.

862 2. Projects with 100 percent Section 8 must include a vacancy loss rate of 3
863 percent in the budget unless as part of a refinancing, the lender requires a
864 different vacancy rate. Exceptions to the policy are:

865 a. Projects with 50 or fewer (which includes both assisted and
866 unassisted units) units must include a vacancy loss rate of 5
867 percent in the budget; ~~or~~

868 b. ~~Projects with 51 or more (more (which includes both assisted and~~
869 ~~unassisted units) units must include a vacancy loss rate of 3—~~
870 ~~percent in the budget.~~

871 ~~c~~b. Projects where the assisted units account for 20 percent or less of
872 the total units must use a vacancy loss rate of 7 percent in the
873 budget.

874 d. ~~Projects where the assisted units account for between 21 and 99~~
875 ~~percent~~99 percent of the total units must use a vacancy loss rate of
876 ~~5—~~ percent in the budget.

877 B. Section 22-16 of Chapter 22 of HUD Handbook 4350.1, will not apply.

878 The budget must reflect the project’s current debt service and debt service
879 coverage requirement. The maximum debt service coverage ratio allowed in the
880 budget is 1.2. In the context of a refinancing transaction and a renewal of the
881 Section 8 contract to preserve the project, “current debt service” is that which will
882 take effect when the new loan closes. If the debt service associated with the
883 refinancing changes before the contract renewal, HUD retains the right to revise
884 the budget.

885 **Note: Any amount designated in the budget for debt service coverage may be**
886 **drawn upon by the owner at year’s end to pay allowable annual**
887 **distributions, ~~Developer Fee~~, or deferred Developer Fee (from surplus**
888 **cash, using the required form of Residual Receipts Note (form HUD-**
889 **91710M, Residual Receipts Note for Nonprofit Borrowers) or**
890 **Promissory Note)). All remaining surplus cash must be deposited in**
891 **the Residual Receipts account. If there is no Residual Receipts**
892 **account in place, this requirement does not apply.**

893 **Note: See the note after Section 6-3.A.2.d. for information on how to treat**
894 **debt service savings on 202 projects that have been refinanced.**

895 C. Projects with low-income housing tax credits may include in their budgets only
896 the following fees and expenses for operating a tax credit project, including
897 payment of the equity syndicator’s asset management fees; state allocating
898 agency’s compliance and asset monitoring fees; mandatory interest payments that
899 do not exceed one percent due on subordinate debt provided by a governmental
900 lender; and deferred developer’s fees, plus interest accrued at the applicable
901 federal rate, which may be deferred for no more than 12 years. The deferred
902 developer fee and interest payments on government loans can only be paid from
903 surplus cash.

904 D. Owners may request a zero-dollar budget-based rent adjustment by marking the
905 appropriate box on the “**Amend Rents Auto OCAF- Part A (HUD - 9626) or**
906 **Part B (HUD - 9627)**. Owners do not need to submit a budget when the
907 appropriate box on the “Amend Rents” form is checked.

908 E. For projects that have not previously prepared and submitted a budget-based rent
909 increase, only the first request must include Attachment 5 (HUD-9635), Projects
910 Preparing a Budget-Based Rent Increase, of this Guide.

911 F. Owners of projects with an Option Four contract must submit a RCS when
912 requesting an annual budget-based rent adjustment. This requirement does not
913 apply at renewal. Owners requesting a zero budget-based rent adjustment do not
914 have to submit a RCS. Owners of Section 515/8 projects who are required to
915 submit budgets to Rural Housing do not have to submit a RCS if the rents
916 resulting from the budget-based rent adjustment request do not exceed rents the
917 project would have received based on the OCAF adjustment for that year.

918 G. Owners submitting a budget-based rent adjustment request must comply with the
919 notification requirements of 24 CFR Part 245 Subpart D.

920 **2-16. INCREASES IN DEPOSITS TO THE RESERVE FOR REPLACEMENT.**

921 The owner or lender may request increases in the monthly deposit to the RFR account.
922 Either the owner or Lender will be required to submit a Project Capital Needs
923 Assessment (PCNA) or its equivalent.

924 **Note: A project that is partially-assisted with a new regulation Section 8 contract**
925 **under 24 CFR Parts 880 or §881 is exempt from the requirement to establish**
926 **and maintain a RFR account. (See 24 CFR Part 880.602(a)(1)(v).) A project**
927 **that is partially-assisted with a new regulation Section 8 contract under 24**
928 **CFR Part 883 may be exempt from the requirement to establish and**
929 **maintain a RFR account. (See 24 CFR Part 880.602(a)(2)(v).)**

930 **Note: If a contract receives an OCAF rent adjustment, then the deposits to the**
931 **reserve for replacement account must be increased adjusted by the most**
932 **recent published “Regional AAF with Highest Utility Excluded” OCAF.**
933 **Example: The current annual deposits are \$2,400 and the most recent**
934 **published AAF OCAF adjustment factor is 1.02, then the RFR deposits**
935 **would increase by \$48 or \$2,400 x 1.02 percent.**

936 **2-17. PROCESSING INSTRUCTIONS.**

937 A. Renewals

938
939 1. Before submitting a renewal request under A.2. below, the Owner must
940 follow the tenant notification procedures in 24 CFR Part 245 Subpart D
941 unless the rent increase is an OCAF rent adjustment. For example, a
942 budget-based rent increase or a MUTM increase would require the owner
943 and the AE/CA to comply with the requirements of 24 CFR Part 245
944 Subpart D.

945 2. At least 120 calendar days but no earlier than 180 calendar days before
946 expiration of the Section 8 contract, the owner submits:

947 a. Contract Renewal Request Form, Form HUD-9624;

948 b. An analysis of the project’s Utility Allowances (see Housing
949 Notice 2015-04); and

950 c. If applicable:

951 1) The OCAF Rent Adjustment Worksheet, Form HUD-9625;

952 2) A RCS; and/or

- 1122 a. Signed HUD-Form 9626 or HUD-Form 9627.
- 1123 b. All documentation required for a budget-based rent adjustment as
1124 defined in HUD Handbook 4350.1, Chapter 7.
- 1125 6. Upon receipt of the O/As submission, AE/CA:
- 1126 a. Should review O/As rent adjustment documentation.
- 1127 b. If acceptable, update iREMS.
- 1128 c. If the rent increase does not exceed five percent, then the CA
1129 processes the increase. If the rent increase equals or exceeds five
1130 percent, then the CA should forward the request to the AE for review.
- 1131 d. Execute Rent Schedule Low Income Housing, Form HUD-92458, and
1132 return to O/A.

1133 C. Annual Rent Adjustments for Multiyear Contracts for Projects not Participating
1134 in Auto OCAF

1135 1. Before submitting the annual rent adjustment request under 2. Below, the
1136 owner must follow the tenant notification procedures in 24 CFR Part 245
1137 Subpart D if the rent increase is not an OCAF rent adjustment. Whenever
1138 an owner's utility analysis results in a possible decrease in the utility
1139 allowance(s) to the project tenant notification procedures in 24 CFR Part
1140 245 must also be followed even if the rent adjustment was made by the
1141 OCAF. *Should a notice need to be issued for both a rent increase and a
1142 utility allowance decrease, a single notice is sufficient as long as the
1143 owner clearly identifies both items in the notice. Any tenant notification
1144 related to the utility analysis should be separate from any rent increase
1145 notice to reduce confusion.*

1146 2. At least 120 days but no earlier than 180 days before the anniversary date
1147 of the contract, the owner submits:

- 1148 a. OCAF Rent Adjustment Worksheet, Form HUD-9625;
- 1149 b. An analysis of the project's Utility Allowances (See Housing
1150 Notice 2015-04 or subsequent notices); and
- 1151 c. If applicable:
- 1152 1) A RCS; and/or
- 1153 2) A budget-based adjustment, prepared in accordance with
1154 paragraph 2-15 of this Guide or a RHS approved budget
1155 that does not exceed comparable market rents.

1282 2. A physical inspection score, from the Real Estate Assessment Center
1283 (REAC), of 60 or above with no uncorrected Exigent Health and Safety
1284 (EH&S) violations.

1285
1286 C. *FASS Findings. If applicable, all Financial Assistance Subsystem (FASS)
1287 findings need to be closed or under a HUD-approved corrective action plan.*

1288 ~~D. Ownership.~~

1289 ~~1. The project owner must be:~~

1290 ~~a. A profit motivated entity (including a limited distribution entity);~~

1291 ~~b. *A housing authority occupying the status of a “public body
1292 corporate and politic” under the state legislation under which it
1293 was created, or*~~

1294 ~~e. *A limited partnership with one or more nonprofit general partners
1295 or a sole general partner that is wholly owned and controlled by
1296 one of more nonprofit entities.*; or~~

1297 ~~d. * A limited liability company with one or more nonprofit managers
1298 or nonprofit managing members or a sole manager or managing
1299 member that is wholly owned or controlled by one or more
1300 nonprofit entities where the managing general partner is wholly
1301 owned and controlled by a nonprofit entity.*~~

1302 ~~*Note: Nonprofit controlled for profit entities as described in
1303 Section 3-2.D.1.c and d. can renew under Option One or Option
1304 Two.*~~

1305 ~~2. *In the case of a proposed sale, this requirement must be met by the
1306 purchaser.*~~

1307

1308 **3-3. OPTION ONE-A ENTITLEMENT MARK-UP-TO-MARKET ELIGIBILITY.**

1309 Properties that meet the criteria listed in Section 3-2 and this Section are eligible for a
1310 Section 8 contract renewal under Option One-A.

1311 A. Market Rents. The *owner’s* Rent Comparability Study (RCS) must
1312 demonstrate that the comparable market rents are at or above 100 percent of the
1313 fair market rent (FMR) potential. Use the FMR figures calculated for the fiscal
1314 year in which the project is entering MUTM to demonstrate eligibility.

1315 1. Excel Worksheets. Fillable worksheets are available on the Internet at
1316 [http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/](http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/mfhsec8)
1317 [mfhsec8http://www.hud.gov/offices/hsg/mfh/exp/workshet.cfm](http://www.hud.gov/offices/hsg/mfh/exp/workshet.cfm) under

1318 Forms Associated With Section 8 Renewals~~Worksheets for Mark-Up-To-~~
1319 ~~Market (Option One).~~

1320 2. iREMS. The AE/CA should use the Integrated Real Estate Management
1321 System (iREMS) to establish initial eligibility. *Owners and Contract
1322 Administrators can use the fillable worksheets at the website listed above
1323 in A.1.*

1324 B. Use Restrictions. The project does not have a low- and moderate- income use
1325 restriction that cannot be eliminated by unilateral action by the owner. Examples
1326 of such a use restriction would be the existence of Flexible Subsidy assistance,
1327 Low-Income Housing Tax Credits, *or Recap’s Green Retrofit Program. If the
1328 project is subject to any use restriction at the time of the renewal request, the
1329 AE/CA must determine whether it is the type of use restriction that makes a
1330 project ineligible for Option One-A.*

1331 C. *The project is not subject to a contract for moderate rehabilitation assistance
1332 under section 8(e)(2) of the United States Housing Act of 1937, as in effect before
1333 October 1, 1991.*

1334 D. *The project is not one for which a public housing agency provided voucher
1335 assistance to one or more of the tenants after the Owner has provided notice of
1336 termination of the contract covering the tenant’s unit.*

1337 E. ~~D.~~ Ownership.

1338 1. The project owner must be:

1339 a. A profit-motivated entity (including a limited distribution entity);

1340 b. *A housing authority occupying the status of a “public body
1341 corporate and politic” under the state legislation under which it
1342 was created, or*

1343 c. *A limited partnership with one or more nonprofit general
1344 partners or a sole general partner that is wholly owned and
1345 controlled by one of more nonprofit entities.*; or

1346 d. * A limited liability company with one or more nonprofit managers
1347 or nonprofit managing members or a sole manager or managing
1348 member that is wholly owned or controlled by one or more
1349 nonprofit entities-where the managing general partner is wholly
1350 owned and controlled by a nonprofit entity.*

1351 ***Note: Nonprofit controlled for profit entities as described in**
1352 **Section 3-2.D.1.c and d. can renew under Option One or**
1353 **Option Two.***

1354 2. *In the case of a proposed sale, this requirement must be met by the
1355 purchaser.*

13563-4.

150 PERCENT RENT CAP FOR OPTION ONE-A.

1357 A. *Section 8 Rents. Under Option One-A, the renewal rent levels equal the lesser
1358 of comparable market rents for the market area or 150 percent of the FMR. If the
1359 Final Comparable Gross Rent Potential is:

1360 1. Greater than 150 percent of the FMR Potential, set the New Section 8
1361 Gross Rents at 150 percent of the FMRs.

1362 2. Equal to or less than 150 percent of the FMR Potential, set the New
1363 Section 8 Gross Rents at the Final Comparable Gross Rents.*

1364 Owners and Contract Administrators can use the fillable worksheets at the
1365 website listed above.

1366 B. Non-Section 8 and not expiring contract rents. MUTM has no effect on the rents
1367 of the non-Section 8 units or the Section 8 units in a Section 8 contract/stage that
1368 is not currently expiring.

1369**3-5.**

EXCEEDING THE 150 PERCENT OF FMR CAP.

1370 The 150 percent of FMR cap only applies to MUTM under Option One-A and only in
1371 cases where the lesser of the two measures identified in Section 3-4.A. (i.e.,
1372 comparable market rents for the market area and 150 percent of FMR) is 150 percent
1373 of FMR. If the project meets one of the three criteria found in Section 3-6.B. below
1374 the renewal rents are equal the comparable market rents for the market area.

1375**3-6.**

OPTION ONE-B DISCRETIONARY MUTM ELIGIBILITY.

1376 *Under Section 524(a)(4)(C) of MAHRA, the Secretary may mark rents up to market for
1377 projects that are not eligible for MUTM under Section 524(a)(4)(A), Option One-A, but
1378 that meet criteria listed in Section 3-2 and subsections A. and B. below. These projects
1379 are eligible for a Section 8 contract renewal under Option One-B.*

1380 A. To further preserve the affordable housing stock, the Secretary has the authority
1381 under Section 524(a)(4)(C) of MAHRA to mark rents up to market for projects
1382 that meet certain criteria. *Since enactment of Section 524(a)(4)(C), HUD's
1383 practice has been and continues to be to mark rents to market for eligible projects
1384 that meet only one of the three criteria identified in Section 3-6.B. However, if
1385 HUD determines that there is or may be a shortage of section 8 appropriations
1386 available for any fiscal year, HUD may use the discretion that Section
1387 524(a)(4)(C) provides to mark rents up to market based on the number of criteria
1388 identified in Section 3-6.B. that the project meets.*

1389 *Note: Non-profit owned projects that meet one of the three criteria below can qualify*
1390 *for Option One B and have the projects' rents marked up to market, assuming*
1391 *they otherwise qualify.*

1392 B. The project meets at least one of the following three characteristics:

- 1393 1. Vulnerable Populations.
- 1394 The tenants of the project are a particularly vulnerable population,
 1395 demonstrated by a high percentage (at least 50 percent) of the assisted
 1396 units rented to elderly families, disabled families, or large families (large
 1397 family is defined as a family of five or more persons). *The 50 percent
 1398 can be inclusive of all categories or the individual referenced populations;
 1399 or*
- 1400 2. Vacancy Rates.
- 1401 The project is located in a low-vacancy market area (or in a rural area with
 1402 no comparable rental housing) where there is a lack of affordable housing
 1403 and where Housing Choice vouchers would be difficult to use.
- 1404 The determination of a low vacancy area should be made using the most
 1405 recent available data on the rental inventory, renter households, rental
 1406 vacancy rates and other factors as appropriate. A market with a rental
 1407 vacancy rate of *3 percent or less* is considered a low vacancy area.
 1408 *The AE/CA must confirm* the vacancy rate with HUD Economic and
 1409 Market Analysis *Section (EMAS)*; or
- 1410 3. Community Support.
- 1411 The project is a high priority for the local community as demonstrated by
 1412 a contribution of State and/or local funds to the project. *Evidence of
 1413 community support* may be in the form of tax credits, tax abatements,
 1414 capital improvement funds, etc *that have been provided to the project
 1415 within the last five years.*

1416 **3-7. RENEWAL REQUESTS.**

- 1417 *See Section 2-17.A.2 as modified below. The owner:
- 1418 A. *May request to enter into MUTM (Option One A or B) at any time
- 1419 1. During the life of a Section 524 MAHRA contract. **If the request is**
 1420 **approved**, the owner will be allowed to terminate the existing contract
 1421 early as long as the new contract equals 20 years and the owner agrees to
 1422 **the terms of the Preservation Exhibit to** renew the contract at the end of
 1423 the 20 years for a term that equals the remaining term of the original
 1424 terminated contract in whole months.*
- 1425 2. *During the life of a non-MAHRA contract as long as the new contract
 1426 equals 20 years, the owner agrees to the terms of the Preservation Exhibit
 1427 to renew the contract at the end of the 20 years for a term that equals the
 1428 remaining term of the original terminated contract and, for non-MAHRA
 1429 contracts, the owner agrees to sign the HUD-93184 “Rider to Original
 1430 Section 8 Housing Assistance Payments Contract”.*

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

1484**4-1.**

ELIGIBILITY.

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1486

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

1487

1488

1. The contract's *aggregate* current rents are at or below comparable market rents, or

1489

1490

1491

2. The contract's aggregate current rents exceed comparable market rents, but the project is exempt from MTM restructuring and the owner is willing to cut the rents to comparable market rents prior to renewal of the contract.

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1493

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Note: Projects currently renewed under either Option Two or Option Four can reduce rents to market in order to renew under Option Two if they meet the conditions in 2-4.A.2.

1495

1496

B. *Owners can include both nonprofit and for profit entities. In cases where a transfer is involved in a transaction, the purchaser must meet the definition of owner.*

1497**4-2.**

CONTRACT RENEWAL.

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1499

A. *Owners must follow the instructions in Section 2-17 when submitting the necessary information to renew the Section 8 HAP contract.

1500

B. *Rents may be adjusted by either:

1501

1. An OCAF, or

1544 qualifying a project as an Exception Project no longer exists, the project is eligible for
1545 referral to Recap for restructuring.

1546 **Note: Risk Sharing Projects do not meet the definition of “eligible multifamily**
1547 **housing project” in section 512(2) of MAHRA, and, on this basis, are**
1548 **eligible for renewal as an exception project under Option Four.**

1549 F. Ineligible Project Determinations: A project owner who is suspended or debarred is
1550 ineligible for a full debt restructuring (“Full”). However, even if the project is
1551 ineligible for a Full, the project may remain eligible as a project that is financially
1552 viable without a debt restructuring after the rents are reduced to comparable market
1553 rents (“Lite”). This kind of project should be referred to Recap for a rent
1554 determination. Eligibility for a Lite will be determined on a case by case basis by
1555 Recap after a review of the project’s underwriting, which will include the results of
1556 the RCS and an analysis of the project’s expenses. If the project is determined to be
1557 ineligible for a Lite and the owner or project has been rejected, Recap will return the
1558 HAP Contract to the AE. If the HAP Contract is renewed even though the project is
1559 ineligible for a Lite, the AE must renew the HAP Contract using a Watch List
1560 Contract (HUD-9643) at Recap-determined comparable Market Rents. The project
1561 should be designated, monitored and entered into the Integrated Real Estate
1562 Management System (IREMS) as a project subject to a Watch List Contract, and
1563 defined in IREMS as a project with a loan that failed M2M restructuring and is
1564 therefore operating under a Watch List Contract. Follow OAMPO guidance on
1565 monitoring of projects subject to a Watch List Contract.

1566 G. *Mod Rehab Projects: Projects with Mod Rehab HAP contracts are eligible for
1567 Recap restructuring before Sunset as long as the projects meet the requirements in
1568 Section B, above. The Interim (Full) Mark-to-Market Renewal Contract (HUD-9640)
1569 is used for entry into Recap for a Mark-to-Market restructuring.*

1570 H. *Section 202 Projects Refinanced for a Second time: Projects financed under Section
1571 202 Elderly and Disabled Housing Direct Loan Program (Section 202) are eligible for
1572 restructuring if: 1) the project has been refinanced at least two times if the second
1573 refinance using a loan insured under the National Housing Act, 2) the project
1574 refinanced the mortgage under Notice 13-17 but did not renew under Option Four or
1575 3) the project refinanced with a FHA insured loan at the time of the 202 refinancing
1576 but did not refinance under the terms in Notice 13-17.—All other projects refinanced
1577 under Section 202 are ineligible for restructuring under Mark-to-Market.*

1578 **5-2. BINDING COMMITMENT**

1579 Binding Commitment: Processing may continue after Sunset if, prior to Sunset, there is a
1580 binding commitment to restructure. The Renewal Worksheet for Option Three, which is part
1581 of form HUD 9624, Contract Renewal Request Form, contains language which constitutes a
1582 binding commitment for purposes of MAHRA. The execution of the Renewal Worksheet for
1583 Option Three by the owner and an authorized HUD representative thus allows debt
1584 restructuring to continue after Sunset, as does a fully executed Interim (Full) Mark-to-Market

2112 **7-2.**

RENEWAL OF PORTFOLIO REENGINEERING DEMONSTRATION PROJECTS

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2115

A. If the project has either a recorded Mortgage Restructuring Demo Program Use Agreement or a recorded Budget-Based Without Mortgage Restructuring Demo Program Use Agreement:

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1. The Demo contract must be renewed under Option Five.

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2118
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2. The owner is required to accept offers from HUD to renew the Section 8 contract throughout the term of the Demo Use Agreement. Therefore, an owner cannot opt-out of the contract.

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B. If the project went through the Demo Program but does not have a recorded Demo Program Use Agreement, it does not qualify as a Demo project. The owner:

1. Cannot renew its contract under Option Five.
2. May renew its contract under any other Option for which it qualifies.

2125 **7-3.**

OWNER SUBMISSION FOR DEMONSTRATION PROJECTS UNDER OPTION FIVE

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A. Initial Renewal.
The Portfolio Reengineering Demonstration Program (PRD) has been replaced by the M2M program and HUD is no longer processing initial renewals under the PRD program.

2132

B. Subsequent Renewal

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1. A Demonstration project will renew under Option Five, *with a minimum term of one year and a maximum term not to exceed *the lesser of 20 years or the remaining life of* the project's Demo Program Use Agreement.

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Note: Owners have the ability to request that the existing Demo Program Use Agreement be extended in order to facilitate a preservation refinancing transaction.

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2. ***An exception** is permitted for projects with a recorded Budget-Based Without Mortgage Restructuring Demo Program Use Agreement. The owner **may** renew under Option One or Two for a minimum term of the project's Use Agreement and a maximum term of 20 years.*

2145

C. Rent adjustments

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2147

1. In the case of a renewal contract with a term in excess of five years,* at the end of each 5-year period, the owner must obtain a RCS to permit

2228 D. Conflicting Documents. The *Preservation* Use Agreement was recorded to
2229 implement the terms of the *approved* POA. However, there may be instances
2230 where the terms of the *approved* POA and the Use Agreement conflict.

2231 1. Since the Use Agreement is a recorded instrument, binding on all third
2232 parties, if a discrepancy exists between the *Preservation* Use Agreement
2233 and the *approved* POA, the *Preservation* Use Agreement prevails and
2234 is binding on all parties.

2235 2. *The approved* POAs are far more extensive and cover many more items
2236 than are covered in a *Preservation* Use Agreement. In cases where there
2237 are items contained in the *approved* POA that are not addressed in the
2238 *Preservation* Use Agreement, the terms of the *approved* POA, as they
2239 relate to the specific item, are binding on all parties.

2240 7-6. OWNER'S SUBMISSION FOR PRESERVATION PROJECTS

2241 A. A multiyear contract **cannot** exceed the *lesser of 20 years or the* remaining
2242 term of the recorded Use Agreement.

2243 ***Note: Owners have the ability to request that the existing Preservation Use**
2244 **Agreement be extended in order to facilitate a refinancing transaction.**

2245 *B. The only renewal option available to an owner of a preservation project is
2246 Option 5 **unless the project is being transferred or sold, in which case the owner*
2247 *may request Mark-to-Market debt-restructuring (Option Three) in accordance*
2248 *with section 5-1.D.*

2249 C. Rents are adjusted in accordance the *approved* POA and *the recorded
2250 Preservation* Use Agreement.

2251 D. See Section 2-17 for more detailed information.

2252 7-7. PROCESSING INSTRUCTIONS FOR PRESERVATION PROJECTS

2253 A. Preservation Section 8 contracts are ineligible for Recap processing.

2254 B. See Section 2-17 for detailed processing instructions.

2255 7-8. *PROJECT SPECIFIC RENTS (PSRS)*

2256 *PSRs are first discussed in Housing Notice 94-42, Mid-Course Correction II - For Low
2257 Income Housing Preservation and Resident Homeownership (LIHPRHA) and Emergency
2258 Low Income Housing Preservation Act (ELIHPA) Programs and are used in Title II and
2259 Title VI preservation projects. PSRs are also discussed in Revisions to Notice 94-42,
2260 MCCII - For Low Income Housing Preservation and Resident Homeownership
2261 (LIHPRHA) and Emergency Low Income Housing Preservation Act (ELIHPA)
2262 Programs.*

PROCEDURE FOR MANDATORY MARKET RENT THRESHOLD

Section 9-14

In addition to submitting the Rent Grid and the RCS Report, the RCS appraisers are also required to follow special procedures for all contracts, as outlined in this section, under the following topics:

- A. Mandatory market rent threshold
- B. Steps for computing median rent and comparing it to the threshold
- C. When project's median rent exceeds the threshold
- D. Special exceptions under the threshold

Note: HUD allows the use of a lender ordered MAP appraisal to serve as a substitute for the HUD required RCS if the following conditions are met.

1. The appraisal must be ordered, paid for, and underwritten by the lender. The MAP appraiser must follow the existing requirements as stated in Chapter 9 of the Renewal Guide to determine the rent. In cases where there is project-based Section 8 (Section 8), comparable market rents must be estimated both before and after repairs. The MAP Guide will be used for the remainder of the assignment.
2. The MAP appraiser will use the form HUD 92273-S8 in lieu of the form HUD 92273. The 92273-S8 form will be used in all Section 8 related appraisals. The 92273 form will continue to be used for non-Section 8 assignments.
3. Any appeals are to be made by the lender to the processing Regional Centers/Satellite Offices office. No direct appeals to Headquarters by the owner will be accepted.
4. In order to set the Section 8 rents, HUD staff shall use the lender-supplied appraisal and the HUD 92273-S8 as they would have used the HUD procured RCS and use Section 3-7.F to determine the final comparable market rents for the project.
5. Appraisers and HUD review appraisers should follow the most current USPAP.

- A. **Mandatory market rent threshold.** The following requirements will apply for all contracts where the owner's RCS concludes that the project's median rent for the assisted units, as derived from the RCS, exceeds 140 percent of the "Median Gross Rent By Zip Code Tabulation Area" as published by the U. S. Bureau of the Census or other comparable source as determined by the Department. These requirements do not apply to studies undertaken as part of the Mark-To-Market (MTM) process. All RCS submissions (other than those for MTM process) to HUD/CA must include a distribution of RCS Rents and Subject Project's median rent (as explained in Step 1 below under Section 9-14.B).

1. The desk review raises major questions.
2. The substantive reviewer is largely unfamiliar with the market area, the subject project or the comparables.
3. The substantive reviewer is considering challenging adjustments for condition, appeal, neighborhood or other factors that can change quickly.

Note: If not acting as the review appraiser, HUD staff may review the RCS and communicate concerns to the review appraiser. However, the review appraiser makes the final determination of market rents.

COMMUNICATING RESULTS OF HUD/CA REVIEWS

Section 9-17

HUD/CA must convey the results of their substantive review within 30 calendar days after receiving a complete RCS package from the owner.

- A. **Approval:** If HUD/ CA substantive reviewer agree with the RCS appraiser's market rent conclusions, they must document that agreement on the reviewer's certification (Appendix 9-5-5) and notify the Account Executive that the market rents in the RCS are acceptable for use in further processing of the renewal.
- B. **Questions and/or Clarifications:** If aspects of the RCS are unclear or unconvincing, the HUD/CA substantive reviewer must ask the RCS appraiser for additional information or explanation, if the owner's cover letter permits HUD/CA to reach the RCS appraiser directly. If the issues are minor and HUD/CA expect easy resolution, the substantive reviewer may call the RCS appraiser. If concerns are many, more significant, or complicated HUD/CA must send the RCS appraiser an email /fax/hard copy of a letter stating the concerns highlighted in the Reviewer's Issues Memo (sample provided in Appendix 9-5-6), and give the RCS appraiser up to 10 calendar days to respond. **(HUD/CA must copy the owner contact on any written correspondence.)** The RCS appraiser must send the requested information to HUD/CA and copy the owner.

Within 10 calendar days after final information was due from the owner or RCS appraiser, HUD/CA must either: 1) accept the study and proceed as described in Section 9-17.A. above; or 2) draft a decision letter to the owner.

- C. **Decision Letter:** If the RCS appraiser's response does not resolve the substantive reviewer's concerns, the substantive reviewer will draft a decision letter challenging the RCS. If the substantive reviewer is a non-appraiser, an RCS review appraiser must also be engaged to review the subject's RCS prior to issuance of such a letter. If the RCS review appraiser also concludes that the rejection is warranted, then the substantive reviewer may issue the decision letter that either, a) tells the owner the study must be redone and resubmitted; or b) challenges the study's rent conclusions and suggests an alternate rent. Any alternate rents must be developed by a RCS review appraiser and be consistent with this Chapter's procedures and USPAP. The decision letter must tell the owner how the RCS review appraiser arrived at the suggested market rent. The decision letter must also:
 1. be signed by the Regional Office Director or designee;

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381

382 **Section 8 Preservation Efforts**

383 **15-1. OVERVIEW.**

384 One of HUD's primary goals is the long-term preservation of affordable housing. *This
385 chapter provides guidance on HUD's efforts to encourage the rehabilitation, known as
386 "Capital Repairs" in this chapter, and acquisition, known as "Transfer" in this chapter, of
387 affordable housing.

- 388 • Nonprofit owners *or purchasers* can use this chapter when renewing under Option
389 Two "Contract Renewals For Other Projects With Current Rents At or Below
390 Comparable Market Rents."
- 391 • *Nonprofit owners or purchasers who meet one of the three criteria listed in*
392 *Section 3-6 can use this chapter when renewing under Option One, "Mark Up To*
393 *Market."*
- 394 • For profit owners can use this chapter when renewing under Option *One or* Two.
- 395 • For profit entities who propose to acquire and rehabilitate a project can use this
396 chapter but must renew under Option One, "MUTM".*

397 This Chapter has been broken into four parts. Part One addresses the definition of
398 Nonprofit Owner, Part Two addresses the general criteria for both programs, Part Three
399 addresses the Capital Repairs Program and Part Four addresses the Transfer Program.

400 **PART ONE: DEFINITION OF NONPROFIT OWNER**

401 **15-2. NONPROFIT OWNER*/PURCHASER*.**

- 402 A. *The AE must determine if the nonprofit owner*/purchaser* meets the following
403 criteria* must:
- 404 1. Be financially solvent with no open or unresolved audit findings or
405 findings from analyses of the audited annual financial statements.
 - 406 2. Have a tax exemption ruling from the Internal Revenue Service under
407 Section 501(c) *(3)* of the Internal Revenue Code of 1986.

- 408 a. If the nonprofit is applying for the tax exemption ruling, the entity
409 is eligible. However, increased rents will be withheld until the
410 entity provides HUD with evidence that the tax exempt ruling has
411 been issued.
- 412 b. Exceptions:
- 413 1) Any project where the nonprofit owner was not previously
414 required to have a 501(c)(3) rating from the IRS to
415 participate in HUD programs.
- 416 2) Limited-Equity Cooperative entities that are not 501(c)(3)
417 eligible.
- 418 3) Have a resolution from the organization’s Board of
419 Directors that authorizes the additional debt to be incurred
420 to purchase and/or rehabilitate the project.
- 421 B. An unacceptable nonprofit owner includes:
- 422 1. A public body or instrumentality of a public body, or,
423 2. An entity whose organizational documents permit any part of its net
424 earnings to inure to the benefit of any private shareholder, contributor, or
425 individual.

426 **15-3. NONPROFIT CONTROLLED FOR PROFIT ENTITY (OWNER OR**
427 **PURCHASER).**

428 A nonprofit may form a for profit entity for a specific project. For example, the nonprofit
429 may want to obtain low income housing tax credits and raise capital through the sale of
430 the tax credits. See Section 15-5.E.3. for renewal options for nonprofit controlled for
431 profit entities.

- 432 A. For this Guide, the term “Nonprofit Owner” includes:
- 433 1. A limited partnership with *one or more nonprofit general partners or a
434 sole general partner that is wholly owned and controlled by one of more
435 nonprofit entities.*; or
- 436 2. A limited liability company with one or more nonprofit managers or
437 nonprofit managing members or a sole manager or managing member that
438 is wholly owned or controlled by one or more nonprofit entities, ~~*where~~
439 ~~the managing *general partner* is wholly owned and controlled by a~~
440 ~~nonprofit entity.~~
- 441 B. The nonprofit must meet the requirements of section 15-2.A. above.

442 **PART TWO: GENERAL CRITERIA FOR BOTH CAPITAL REPAIRS**
443 **AND TRANSFER PROGRAMS**