

NAHMA Analysis

News and Analysis of Breaking Issues in Affordable Housing



National Affordable Housing Management Association
526 King Street, Suite 511- Alexandria, Virginia 22314 - 703-683-8630 - FAX 703-683-8634 -
www.NAHMA.org - E-Mail George.Caruso@NAHMA.org or Chris.Lord@NAHMA.org - all rights reserved

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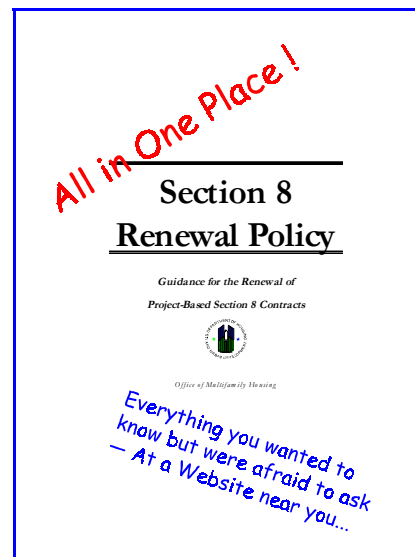
Section 8 Renewal Policy Section 8 Handbook Issued January 19, 2001

If HUD publications were marketed like Borders or Barnes and Noble market the latest Sue Grafton novel you would have seen an ads that looks like the one on the right in Saturday's paper.

Yes, the long awaited compilation of HUD's greatest Section 8 Hits is out. The new Section 8 Renewal Policy Guide was quietly issued about 7 PM Friday January 19th.

The guide has been in work for a long time, it is designed to pull all the materials on contract renewals together in one easily followed document so that everyone could work more easily. The main guide is 127 pages long, along with a 95 page Appendix, and 161 pages of Attachments. The 383 page handbook contains everything needed by an owner, HUD or a Contract Administrator to renew Section 8 contracts. The vast majority of the material is unchanged from the policies that have been issued by HUD over the past year and a half on contract renewals. There are however some changes in parts of the materials, so you will want to print and distribute the handbook to anyone in the organization dealing with contract renewals.

As you can imagine with a document of this size, particularly with the attachments, we are still reviewing the contents, and framing questions and issues. We have a meeting with the Senior HUD staff this Friday, January 26 to go over the handbook and questions. We will have a followup NAHMA Analysis for you after that meeting.



In summary terms, lifted directly from the handbook, here is what is covered in chapter order in the new guide;

Chapter 1: Introduction

This Chapter provides the legislative history of the Multifamily Assisted Housing Reform and Affordability Act (MAHRA). It also provides a chronological listing of HUD's rule making and administrative policies for implementing statutory requirements associated with Section 8 expiring contract renewals.

Chapter 2: Contract Renewals

This chapter outlines the various ways a contract can be renewed and provides six options available to owners with expiring Section 8 contracts. It defines initial and subsequent renewals and explains how rent adjustments are made during the term of a multi-year section 524 contract. This chapter also discusses contract terms, rent calculations for short-term renewals and instructions for combining contracts.

Chapter 3: Owner Option One, Mark-Up-To-Market

This Chapter provides instructions for renewing a contract under the Mark-Up-To-Market option. It identifies who is eligible for renewal under this option and how to process the renewal request. Owners must meet certain eligibility criteria which are outlined in the chapter. This chapter also provides information on how to calculate owner distributions and future rent adjustments.

Chapter 4: Owner Option Two, Other Contract Renewals with Current Rents At or Below Comparable Market Rents

This Chapter provides instructions for renewing a contract in cases where a contract's current rents are at or below comparable market rents but the contract is not being renewed using the mark-up-to-market option. It outlines who is eligible to renew under this option and identifies documentation to be submitted by the owner to HUD/Contract Administrators for review. It also provides processing instructions and guidance for future rent adjustments.

Chapter 5, Owner Option Three, Referral to the Office of Multifamily Housing Assistance Restructuring (OMHAR)

This Chapter discusses the procedures by which a project with rents above comparable market rents is referred to the Office of OMHAR for processing and renewal. The chapter identifies items an Owner must submit with their renewal request and it outlines what steps will be taken by OMHAR if a restructuring agreement is not reached between the owner and OMHAR.

Chapter 6, Owner Option Four, Renewal of Projects Exempted From OMHAR

This Chapter identifies "exception" projects. Exception projects are ineligible for OMHAR and as such, they are exempt from having to conduct rent comparability studies and lower rents to comparable market rents. This chapter outlines the Owners' renewal submission requirements and provides instructions for initial and subsequent renewals.

Chapter 7, Option Five, Renewal of Portfolio Reengineering Demonstration or Preservation Projects

This chapter details how to renew a contract that has been through the Demonstration program. It provides instructions for renewal in cases where the project had its rents reduced and or had its mortgage restructured and it provides instructions for processing a renewal in instances where the project failed to have a rent reduction or debt restructuring. It also provides guidance for renewing Preservation contracts according to the approved Plan of Action (POA).

Chapter 8, Option Six, Opt-Outs

This Chapter provides instructions for processing Owner opt-outs. Opt-outs are expiring Section 8 project-based contracts whose owners elect not to renew the contract. This Chapter identifies owners' responsibilities to the tenants and provides processing instructions.

Chapter 9, Rent Comparability Studies (RCS)

This Chapter provides instructions for conducting and reviewing rent comparability studies.

Chapter 10, Residual Receipts

This Chapter identifies the steps that must be taken, when appropriate, to assure that residual receipts are returned to HUD.

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This Chapter outlines all of the steps that must be followed to assure that tenants are protected during the renewal process. This chapter defines housing conversion actions and identifies notification requirements an owner must meet. It also describes the differences between a regular voucher and an enhanced voucher.

Chapter 12, Physical Condition of the Property

This Chapter discusses how a project's physical condition impacts the contract renewal process.

Chapter 13, HUD's Refusal to Renew/Section 8 Contract Owner's Dispute and Appeal of Rejection

This Chapter outlines the circumstances under which HUD may refuse to renew an expiring Section 8 contract, and it provides Owners with an appeal process to follow in cases where their request to renew is rejected.

Chapter 14, RHS/515 Projects

This Chapter outlines how to renew a Farmers Home 515 project.

Chapter 15, Nonprofit Rent Increases

This Chapter outlines the procedure for providing budget-based rent increases to nonprofit owners. The Chapter identifies eligibility requirements for "marking up to budget" and provides instructions for future rent adjustments.

Chapter 16, Other Issues

This Chapter discusses miscellaneous issues that have not been included in previous chapters of this guide. This Chapter includes rent increases for non-Section 8 rents, and REMS reporting requirements. It also addresses the effect of refinancing FHA insured properties on Mark-to-Market eligibility and how any new debt should be addressed in a projects operating budget.

The attachments and appendices contain all the forms, blanks and draft contracts to do all forms of contract renewal.

George's Spin - There are both positive and negative changes in the handbook. There are also a few issues that need discussion with HUD before we can conclude what the effect will be. The best news here is that all of the various notices, letters, and memo's have been pulled together into a coherent whole which an manager can use to get contracts renewed, and share with Owners, and limited Partners to explain what the options are going forward, and how things will work.

Here in very short form are some of the issues of interest:

- **Plus** - The owners distribution expansion in Mark Up to Market properties is clearly laid out, and expanded distributions going forward are assured.
- **Plus**- OCAF calculations are detailed, and the application of subsequent year increases is detailed.
- **Plus with Questions** - There is now a detailed process for renewal of LIPRHA and ELIHPA Preservation properties, not all of the nuance on contract renewals for properties close to market is clear, there may be other options.
- **Neutral with Questions** - This handbook details how the Contract Administrators will now be executing renewal contracts. There are a lot of questions that remain to be answered about Privity of Contract issues, and whether the authority to sign contracts can be delegated to CA's.
- **Negative** - The Notice provisions on contract renewals have been changed yet again. Congress revisited the notice provisions last year to make them less onerous, and to reserve the ability to consider whether to renew or not. HUD has changed the process back, once again if you have any intention of opting out, no matter how remote, you will have to issue the opt out notice. The method of issuing notice has also been limited, posting is no longer allowed.

There are also process issues that need to be clarified. On first reading an amazing amount of material will be swapped between the HUD Asset Managers and the Contract Administrators. Two issues fall from that:

1. *Will the paper that has to move between the folks involved here move on a timely basis, and will the HUD staff have appropriate time to work the paper?*
2. *The Contract Administration Oversight Monitors seem to have no role in any of this, if they are not involved at least minimally how will they know if things are going well or badly with the Contract Administrators?*

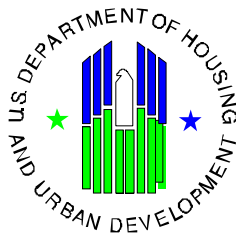
You can trust that we will be going into a lot of issues in much more depth to determine how all this will affect NAHMA members.

We have converted the Handbook into a six part Acrobat file to make this a bit easier to handle. Chapters 1 thru 9 are attached, 5 more E-mails will follow with Chapters 10 thru 16, the Attachments in two parts, and the Appendices in two parts. Willie Spearmon has given us all the original files, which are in Microsoft Word and Microsoft Excel format. We can E-mail those to you as well. A CD-ROM with all these materials will be included in your packet at the upcoming NAHMA meeting. As you download and print remember you are dealing with a document that is nearly 400 pages long, the files are range from 500 to 700 Kbytes in size. To quote John Autry, this one is a 3 cup of coffee download.

If you have any burning questions after scanning this; if you get them to me before Thursday night, we can get them into the discussion Friday morning. E-mail is best, George.caruso@NAHMA.org. FAX's are a close second, 703-683-8634.

Section 8 Renewal Policy

Guidance for the Renewal of Project-Based Section 8 Contracts



Office of Multifamily Housing

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Section 8 Renewal Guide

Since the mid-1990's, when long-term project-based Section 8 contracts began expiring, Section 8 policy has evolved dramatically. For several years, the Department issued Notices and other guidance to implement new policy related to renewing expiring Section 8 contracts and preserving affordable housing in a piecemeal fashion.

In order to make Section 8 policy more effective and accessible for HUD's partners, this guide provides comprehensive guidance for renewing expiring Section 8 project-based contracts. It incorporates the procedures contained in previous Section 8 expiring contract Housing Notices, along with a number of changes. As a living document, over time this guide is expected to contain nearly all of the information related to the renewal of expiring Section 8 contracts.

In order to respond to the evolving nature of Section 8 renewal legislation and policy, the format of this Guide provides the opportunity to accommodate changes through revisions of one or more sections without a complete revision of the entire document. As is the case with HUD Handbooks, when legislation or policy decisions warrant modifications to this guide, HUD will issue the revisions and make them available to all users. Only those portions of the guide that are affected by the change will be modified. This Guide is available on the web at www.hudclips.org.

It is noted that the instructions in this guide apply to all Contract Administrators who are responsible for overseeing Section 8 project based contracts. This includes Contract Administrators who have performance based contracts with the Department. Contract Administrators with performance based contracts are also required to follow the Guidebook for the Section 8 Contract Administration Initiative issued to them by the Office of Housing Assistance Contract Administration Oversight.

For purposes of assisting users, a Glossary of the terms used throughout this guide can be found at Attachment 1.

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LEGISLATIVE HISTORY

Section 1-1

- A. The Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA), Title V of the HUD Fiscal Year 1998 Appropriations Act, Pub. L. 105-65, was enacted on October 27, 1997. This was a major change as MAHRA established new policies for the renewal of Section 8 project-based contracts based on market rents instead of the Fair Market Rent (FMR) standard. For most insured projects with rents above market, the Act transferred Section 8 processing functions from the Multifamily Hubs and Program Centers to the Office of Multifamily Housing Assistance Restructuring (OMHAR). For further information on renewals by OMHAR, see Chapter Five.

In general, MAHRA required that expiring Section 8 project-based contracts be renewed under Section 524(a)(1) or 524(a)(2).

1. **Section 524(a)(1)** renewals required a Rent Comparability Study (RCS). If the RCS indicated rents were at or below comparable market rents, the contract was renewed at current rents adjusted by OCAF, unless the Owner submitted documentation justifying a budget-based rent increase or participation in mark-up-to-market. In no case could renewal rents exceed comparable market rents. If the RCS indicated rents above comparable market rents, the contract was referred to OMHAR for debt restructuring and/or rent reduction.
 2. **Section 524(a)(2)** renewals were for projects identified as “exception” projects that were not eligible for OMHAR. In some cases these projects had rents greater than market. No RCS was required except for certain FHA insured projects whose contracts were being renewed under 524(a)(2)(E) (projects that do not qualify as eligible multifamily housing projects pursuant to section 512(2) of MAHRA). Examples of projects that do not qualify as eligible multifamily housing projects pursuant to Section 512(2) of MAHRA include a project that is not subject to a HUD-held or insured mortgage; or, a project that has FHA mortgage insurance or is HUD-held with rents at or below comparable market rents.
- B. The Preserving Affordable Housing for Senior Citizens and Families Into the 21st Century Act of 1999, Titles II and V of the HUD Fiscal Year 2000 Appropriations Act, Pub. L. 106-74, was enacted on October 20, 1999. This legislation made modifications to the previous Section 8 renewal policies and established specific provisions for rent adjustments in subsequent years after an initial renewal under MAHRA. On December 29, 1999, Notice H99-36 was issued to implement these changes. Specifically,
1. The Act modified Sections 524(a)(1) and 524(a)(2) of the original MAHRA. Projects that previously fell under section 524(a)(1), are now covered under section 524(a), and projects that previously fell under section 524(a)(2), are now covered by section 524(b).
 2. Preservation projects and Portfolio Reengineering Demonstration projects are for the first time specifically addressed by sections 524(e)(1)a and 524(e)(2).
 3. Notice H99-36 created six renewal options for Owners to choose from when renewing their expiring Section 8 contracts. These options are detailed throughout this Guide.
- C. The Quality Housing and Work Responsibility Act (QHWRA) of 1998, Title V of HUD’s Fiscal Year 1999 Appropriations Act, enacted on October 21, 1998, made only minor modifications to the tenant notification requirements stated in MAHRA. On May 27, 1999, HUD issued Notice H 99-08 implementing these changes. Specifically, QHWRA:

1. Required Owners who intended to renew their expiring Section 8 contract to notify their tenants of their intent to do so. This requirement was amended by subsequent legislation (see Chapter Eleven for tenant notification requirements)
 2. For contracts that were renewed for five year terms, QHWRA changed the tenant notification requirement from one year to six months. The six month notification was to be provided to the tenants by the owners six months before expiration of the five year contract. This requirement was changed back to a one-year notification by subsequent legislation.
- D. The FY 2001 Military Construction and FY 2000 Emergency Supplemental Appropriations Act , amended the enhanced voucher statute at Section 8(t) of the United States Housing Act to grant enhanced voucher families the right to remain.

RULE MAKING

Section 1-3

- A. Interim Rule. An Interim Rule implementing the Multifamily Housing Mortgage and Housing Assistance Restructuring Program (Mark-to-Market), was published in the Federal Register on September 11, 1998, at 63 FR 48925. This Rule discussed the 524 requirements and governed the renewal or restructuring of expiring Section 8 project-based contracts. At the Final Rule stage, the sections of the Interim Rule that governed the renewal of Section 8 that were not participating in the Mark-to-Market program and the sections addressing the Mark-to-Market program are separated into two Final Rules, Part 401 and Part 402.
1. **24 CFR Part 401**. The Final Rule implementing the Mark-to-Market program was published on March 22, 2000. This Rule details how the Section 8 rents for eligible multifamily projects with HUD-insured or HUD-held mortgages will be reduced. The Mark-to-Market Program Operating Procedures Guide is available on the Office of Multifamily Housing Assistance Restructuring (OMHAR) Webpage at <http://www.hud.gov/omhar>. The Guide may also be obtained by contacting the Multifamily Housing Clearinghouse at 1-800-685-8470.
 2. **24 CFR Part 402**. The Final Rule for Part 402 authorizes the renewal of expiring Section 8 project-based assistance contracts for projects without Restructuring Plans under the Mark-to-Market Program, including projects that are not eligible for Restructuring Plans and eligible projects for which the owners require contract renewals without Restructuring Plans.

ADMINISTRATIVE POLICY

Section 1-4

HUD Notices. Since the enactment of MAHRA the Department has issued a number of Housing Notices which established Section 8 renewal policies. With the publication of this Guide, these Notices are no longer in effect.

- **H98-34.** On October 16, 1998, HUD published Housing Notice H 98-34 which provided instructions for renewing Section 8 contracts expiring in FY 1999.
- **H99-08.** On May 27, 1999, HUD published Housing Notice H 99-08 which made several modifications to H 98-34.
- **H99-15.** On June 16, 1999, HUD published Housing Notice H 99-15 which implemented the Mark-Up-To-Market Option for Owners of projects with expiring Section 8 contracts.
- **H99-25.** This Notice, published on September 22, 1999, extended Notices H98-34 and H99-08.
- **H99-32.** This Notice, published December 1, 1999, clarified existing renewal policies.
- **H99-36.** On December 29, 1999, Notice H99-36 was issued to implement changes to Section 8 renewal policies pursuant to the HUD Fiscal year 2000 Appropriations Act.
- **H00-12** On June 29, 2000, HUD published Housing Notice H 00-12 which provided policies and procedures for preparing, submitting and reviewing Rent Comparability Studies (RCS) associated with renewals of expiring Section 8 contracts.

APPLICABILITY

Section 1-5

This document applies to all Multifamily Housing Projects with expiring project-based Section 8 assistance contracts, unless otherwise noted. It does not apply to Moderate Rehabilitation projects, Section 8 project-based certificate contracts, Section 8 project based voucher contracts or former Section 23 projects administered by the Office of Public and Indian Housing or to any projects administered by the Office of Community Planning and Development.

POLICY CHANGES FROM FISCAL YEAR 2000

Section 1-6

- A. The terms “initial renewal” and “subsequent renewal” have been clarified and a new term, “multi-year rent adjustment” has been added. These terms are defined in Chapter 2, Section 2-1.
- B. Mark-Up-to-Market has been broken into two options: Option 1A which is an Owner entitlement if the statutory requirements are met; and, Option 1B, which is a discretionary mark-up-to-market option which the Department utilizes to preserve scarce affordable housing resources. See Chapter Three for details.
- C. Under Option One, the original criteria for participation was that a project have current rents that exceed 110% of FMR. HUD was given authority to adjust this percentage upon determination and written notification to the Congress. HUD has determined and notified Congress that, in an effort to preserve scarce housing resources, it is necessary to lower the 110% threshold to 100%. This Guidebook implements this change.
- D. Owner Distributions. The issuance of the *Increased Distributions to Owners of Certain HUD-Assisted Multifamily Rental Projects final rule, published October 13, 2000*, gave the Department the authority to allow Owners of certain Section 8 Assisted properties to take all surplus cash on Section 8 units participating in Mark-Up-To-Market. Owners of properties with 100% project-based Section 8 units and Owners of partially-assisted properties that are not Section 236, 221(d)(3) BMIR, nor Section 515 may take all surplus cash generated on all units in any project year. Owners of partially-assisted Section 236, 221(d)(3), or Section 515 will continue to calculate their distribution as identified in previous Notices 99-15 and 99-36, which allows an increased distribution in the amount of the rent increase for the Section 8 units under Mark-Up-To-Market.
- E. Owners **must** provide HUD/Contract Administrators and tenants with one year notification of their **intent to opt-out** of their Section 8 contract in order to opt-out.
- F. The one year notification letter from HUD to Owners reminding the owners to notify tenants that their Section 8 contracts will be expiring are no longer being provided. However, the field office will review and approve the notices provided by the Owner.G.. HUD has provided, as attachments to this guide, revised HAP contracts that may be used for terms up to 20 years.
- G. When a Renewal Contract is executed by a PHA in accordance with the instructions provided in this Guidebook, and in the forms prescribed by HUD, HUD is contractually bound by the Renewal Contract provisions that specify HUD’s role in accordance to the Renewal Contract.
- H. Owners must certify on the Option 6 Renewal Form that they will comply with the requirement to allow families receiving enhanced vouchers who elect to remain to do

so as long as the property remains a rental property, unless the owner has just cause for eviction.