

Chapter Seventeen

"Old Regulation" State Housing Finance Agency Projects – Owner Options upon Full Prepayment of Original, Permanent Financing

17-1. BACKGROUND, APPLICABILITY AND OVERVIEW.

This Chapter provides guidance for Owners of Section 8 projects that are subject to the "old regulation" State Housing Finance Agency ("HFA") form of HAP contract for New Construction or Substantial Rehabilitation projects, *i.e.*, the November 1975 version of HUD-52645A ("1975 HAP Form"), for which the original, permanent financing provided by an HFA ("Financing") was prepaid in full. ~~on or before the date of issuance of this guidance, *i.e.*, _____ (date of issuance to be inserted by Housing).~~ It applies only to these projects.

The Department has determined that the 1975 HAP Form contains language that causes it to terminate automatically upon full prepayment of the Financing. Consequently, any project that is subject to the 1975 HAP Form for which the Financing has been fully prepaid has been operating since the date of prepayment with no written HAP contract in place. The Department has further determined, however, that where the Owner and HFA have continued after prepayment to discharge their respective contractual roles and

responsibilities as if the written contract were still in place, their conduct gives rise to an implied contract, the terms of which are identical to those of the written but now expired HAP contract. Section 17-2 provides three options to Owners for which the Financing has been fully prepaid. In issuing this guidance, the Department endeavors to establish an orderly process for the continuation of housing assistance payments to Owners of affected projects who choose to continue participating in the Section 8 program.

17-2. OWNER OPTIONS.

In cases where the Financing has been prepaid, Owners may select from the following options:

- A. Amend the HAP contract. Amend the HAP contract by extending the term to the originally scheduled maturity date of the Financing using the instrument attached as Appendix 17-1, "Extension Amendment to Old Regulation State Agency Housing Assistance Payments Contract" ("Extension Amendment"). Execution of the Extension Amendment by both Owner and HFA will (1) be deemed to reinstate the 1975 HAP Form of contract, and (2) amend the HAP contract by extending the term through the originally scheduled maturity date of the Financing that was formerly prepaid. Owners choosing to execute the Extension Amendment must use Appendix 17-1, which must be used *verbatim*. No variations in the contract language are permitted without HUD's the prior written approval of the HUD Multifamily Hub Director with jurisdiction;

- B. Renew the HAP contract under MAHRA. Regardless of when the Financing was prepaid, the Owner may renew the HAP contract under MAHRA pursuant to any renewal option for which the project is eligible. Owners are to complete Form HUD-9624, Contract Renewal Request Form (**Attachment 3A-2**), indicating the renewal option of their choice, and the corresponding Renewal Worksheet for the selected option. Should the Owner choose a renewal option that requires submission of a Rent Comparability Study ("RCS"), *i.e.*, Option One,

Option Two, Option Three, or Option Five, the RCS must be dated ~~no earlier than~~ no more than 90 days before the Owner submits Form HUD-9624.

~~_____ (Housing to select a date certain).~~ Project eligibility will be determined as of the "Date of Submission" on page 1 the Contract Renewal Request Form. The term of the MAHRA renewal contract is to begin on the first day of the month following the month in which the parties execute the renewal contract. Should the Owner and HFA execute the contract during different months, the renewal term is to begin on the first day of the month following the month in which the last party to execute the contract does so; or

- C. Opt out of the Section 8 program. Owners choosing to opt out of the Section 8 program may do so by selecting Option Six on the Contract Renewal Request Form. If additional time is needed to satisfy the one-year notification requirement, the HFA and Owner may enter into a short-term renewal of the HAP contract at rents that do not exceed comparable market rents using the Basic Renewal Contract (Attachment 11). See Chapter Eleven. In such cases, the RCS must be dated ~~no earlier than~~ no more than 90 days before the Owner submits Form HUD-9624.

~~_____ (date certain of Housing's choosing).~~

17-3. TIMELINESS.

Owners of projects to which this Chapter applies are encouraged to submit a completed Extension Amendment or Contract Renewal Request Form and supporting documentation to the HFA ~~by~~ as soon as possible.

~~_____ (date certain of Housing's choosing).~~

- Appendix 17-1 - Extension Amendment
- Appendix 17-2 - HFA Owner Notification Letter