

HFA Owner Notification Letter

Owner Name
Address
City, State-Zip Code

Subject: Prepayment of Original, Permanent HFA Financing for Section 8 Projects Subject to
“Old Regulation” Form of HAP Contract

Project Name:
FHA Number:
Section 8 Number:

Dear Owner:

This letter is to advise you of a determination by the Office of General Counsel (“OGC”) of the Department of Housing and Urban Development (“HUD”) concerning the prepayment of the original, permanent HFA financing for Section 8 projects that are subject to the “old regulation” form of housing assistance payments (“HAP”) contract for New Construction or Substantial Rehabilitation projects, *i.e.*, the November 1975 version of HUD-52645A (“1975 HAP Form”). This letter applies only to these projects.

The 1975 HAP Form provides in section 1.4a that the term of the contract shall not exceed the shorter of (1) a specific number of years, or (2) “a period terminating on the date of the last payment of principal due on the permanent financing.” OGC has determined that by operation of the latter provision, the HAP contract automatically terminates upon full prepayment of the original, permanent HFA financing (“Financing”). Any project that is subject to the 1975 HAP Form for which the Financing has been prepaid has thus been operating since the date of prepayment with no written HAP contract in place. OGC has further determined, however, that where the Owner and HFA have continued since prepayment to discharge their respective contractual roles and responsibilities as if the written contract were still in place, such conduct gives rise to an implied contract, the terms of which are identical to those of the written but now expired HAP contract. HUD has recently issued guidance that it intends to minimize disturbance to Owners and assisted families who are affected by this determination. To that end, HUD has made the following three options available.

Owners may execute an instrument that HUD has prepared that will (1) be deemed to reinstate the HAP contract, and (2) amend it by extending the term to the originally scheduled maturity date of the Financing, leaving rent levels unchanged (“Extension Amendment”). Alternatively, Owners may request renewal of the HAP contract under the Multifamily Assisted Housing Reform and Affordability Act of 1997, Pub. L. 105-65, 111 Stat. 1384 (“MAHRA”), as amended, under any renewal option for which the project is eligible. Owners wishing to renew the HAP contract under MAHRA are to complete Form HUD-9624, Contract Renewal Request Form (Section 8 Renewal Guide, Attachment 3A-2 and www.hudclips.org) and all necessary supporting documentation specified therein and return to us. Any Rent Comparability Study

required in connection with the renewal option that the Owner selects must be dated no ~~earlier than~~ no more than 90 days before the Owner submits Form HUD-9624.
_____ (~~date certain of Housing's choosing~~).

The third option is to opt out of the Section 8 program. Owners wishing to do so must complete the Form HUD-9624, Contract Renewal Request Form and select "Option 6." See Chapter Eleven of the Section 8 Renewal Guide for guidance regarding tenant/CA notification.

HUD is not imposing any deadline for Owners to make a selection but encourages all affected Owners to submit a completed Extension Amendment or Contract Renewal Request Form with all necessary supporting documentation as soon as possible. by _____ (~~date certain of Housing's choosing~~).

Should you have any questions regarding this subject matter, please contact _____ at _____.

Sincerely,

Executive Director
Housing Finance Agency