

Follow up testimony regarding HB 3042, April 17, 2023

To: Senate Committee on Housing and Development

From: Rob Prasch, Network for Oregon Affordable Housing

HUD Project Based Section 8 Programs

During the hearing, Senator Knopp referenced a comment in OLIS that suggested owners of Section 8 properties would opt out of their contracts if HB 3042 is passed.

Rob Prasch responded that owners can only opt out of a Section 8 contract at the end of the contract term. At expiration of a contract, owners may renew for terms ranging from 1 to 20 years, or elect to opt out. There are opt-out and renewal notice requirements under the HUD Section 8 programs, and different renewal options based on the type of Section 8 contract.

It is important to note that the HUD Section 8 Housing Choice Voucher program and the HUD Project Based Section 8 contract programs, are covered by different sections of the United States Housing Act of 1937 and have different rules. The Housing Choice Voucher program is not subject to Oregon preservation statute and would not be affected by HB 3042 in any way.

During the debate on the House floor on April 5th, several members stated they owned rental properties and strongly opposed the provisions of HB 3042. Again, it is important to note that Oregon's preservation statute only applies to publicly supported multifamily rental housing defined as having 5 units or more.

Senator Knopp requested information about the HUD Section 8 program be put into the record.

Statutory Reference: Section 8 of the United States Housing Act of 1937 (42 U.S.C. § 1437f)

Parts of the Act related to HUD Project-Based Section 8 programs:

- New construction 24 CFR Part 880
- Substantial rehabilitation 24 CFR Part 881
- State agency financed projects w/Section 8 assistance 24 CFR Part 883
- Loan management/property disposition set-aside 24 CFR Parts 886 and 247
- Supportive housing for elderly and persons with disabilities 24 CFR Parts 891 and 247

HUD Section 8 Renewal Policy references:

- [Guidance for the Renewal of Project-Based Section 8 HAP Contracts](#)
- Additional Guidance: [HUD Handbook 4350.3](#)

References below:

- Chapter Two of HUD Section 8 Renewal Guide
- Summary of HUD Project-Based Rental Assistance from the 2023 National Low-Income Housing Coalition Advocacy Guide
- Understanding HAP Contract Renewals, Opt Outs, and Terminations from the National Housing Law Project

Chapter Two

Section 8 Renewals

2-1. INTRODUCTION.

The enactment of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA) by Congress signaled an important shift in the Section 8 program: In general, Section 8 rents must be comparable to unsubsidized rents in the area where the project is located. In some cases, this requirement meant the rents could be adjusted upward. Congress also recognized that the rents at some Section 8 projects needed to be reduced. For many projects, MAHRA requires the preparation of a rent comparability study (RCS), to find out if a project's Section 8 rents are comparable to market rent levels.

When an owner elects not to renew but instead chooses to opt-out of a project-based Section 8 contract, eligible tenants living in the Section 8 project based assisted units at the project are provided with enhanced vouchers (see Chapter Eleven).

2-2. OWNER OPTIONS.

At the time of renewal, an owner must choose among any of six renewal options for which the project is eligible.

A. Six Owner Options.

1. Option One is Mark-Up-To-Market(MUTM).
2. Option Two is the renewal of contracts with existing rents adjusted by an operating cost adjustment factor (OCAF) or based on a budget:
 - a. When rents under the expiring contract are at or below market; or
 - b. Where the owner of a project has a contract that contains language that allows a discretionary comparability adjustment within the 5-year term and the project is exempt from Recap restructuring with above market rents requests to have the project's rents reduced to market.
3. Option Three is referral to Recap for processing because the contract rents are greater than market rents and the project has a HUD-insured or HUD-held mortgage.

Note: FHA-insured projects that have a Section 8 moderate rehabilitation contract other than a moderate rehabilitation contract under Section 441 of the Stewart B. McKinney Homeless Assistance Act are eligible for referral to Recap.

4. Option Four is renewal of contracts for “exception” projects under Section 524(b)(1) of MAHRA. These projects are exempt from debt-restructuring pursuant to Section 514(h) of MAHRA or are not an “eligible multifamily housing project,” as defined in Section 512(2) of MAHRA;
5. Option Five is the renewal of contracts for:
 - a. Portfolio Reengineering Demonstration projects with a:
 - Mortgage Restructuring Demo Program Use Agreement; or
 - Budget-Based Without Mortgage Restructuring Demo Program Use Agreement.
 - b. Preservation projects under either:
 - Title II, Emergency Low Income Housing Preservation Act of 1987 (ELIHPA); or
 - Title VI, Low-Income Housing Preservation and Resident Homeownership Act of 1990 (LIHPRHA).
6. Option Six is to opt-out of the Section 8 contract.

B. Determining Option.

When determining which option to select, owners should be aware that the contract renewal options are determined by the project’s eligibility at the expiration date of the existing Section 8 HAP contract. If the HAP contract is being terminated by mutual agreement of the parties, the project eligibility is determined at the time of termination of the HAP contract by mutual agreement.

2-3. TYPES OF RENEWALS.

When requesting a renewal, an owner must submit the Contract Renewal Request Form, Form HUD-9624, available on HUDCLIPS, and any required supporting documentation to the HUD *Account Executive* or the Contract Administrator/Performance Based Contract Administrator (AE/CA) for processing. (See Section 2-22 for detailed processing instructions.) The HUDCLIPS web address is:

http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips

A. Initial Renewal.

Generally, the first renewal of a project's Section 8 contract or contract stage processed under MAHRA's rules is the initial renewal of the contract.

B. Subsequent Renewal.

The renewal of a MAHRA contract *after* the initial renewal is considered the subsequent renewal of the contract.

C. Renewal Options.

1. Generally, an owner may renew the contract under any option in which the project is eligible at the time of renewal (i.e., the expiration date of the existing contract or, if applicable, the date of termination by mutual agreement of the existing contract).

2. *Exceptions* to the general rule include:

a. Projects with Watch List Contracts can only be renewed under Option Three, Re-entry into Recap, for three consecutive one-year renewals, using the Watch List Contract. At the end of the third one-year renewal, if the project has demonstrated physical, financial and managerial improvement to HUD's satisfaction, the project can renew under any option in which the project is eligible at the time of renewal.

Note: Certain housing finance agency HAP contracts may terminate at the prepayment of the original financing (See Chapter 16 for more information. An owner who wishes to terminate early any HFA contract that does not terminate at the prepayment of the original financing must obtain HFA approval prior to the termination of the contract.

b. Projects with contracts that are renewed under Section 515 of MAHRA (Full Mark-to-Market Renewal Contract) must renew under Option Three during the life of the MTM Use Agreement. (See Section 5-5.C for more information)

c. Owners of Preservation projects and Owners of Portfolio Reengineering Demonstration projects must renew under Option Five during the life of the LIHPHRA or ELIPHRA Use Agreements or of the Demo Use Agreement, except that the owner of a Preservation Project may request Mark-to-Market debt-restructuring any time prior to Sunset if the project is being transferred or sold. (See section 5-1. D)

EARLY TERMINATION OF A CONTRACT.

A. Non-MAHRA Contracts.

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

1. Renews the Section 8 contract for 20 years under Option One, Two, Three or Four; and
2. Agrees to:
 - a. The Preservation Exhibit, as contained in HUD Notice 2013-17 which provides for the renewal of the HAP contract at the end of the 20 years for a term that is at least equal to the term of the original terminated contract.

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

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

B. MAHRA Contracts.

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

1. A for profit owner or a housing authority occupying the status of a “public body corporate and politic” under the state legislation under which it was created, wishes to renew the contract under Option One, MUTM.
2. Any owner wishes to renew the contract under Option Two and preserve long term affordability by signing a 20-year contract.
3. Under Option Three:
 - a. An owner has an Interim-Lite or Interim-Full M2M contract and Recap has completed processing before the expiration date of the interim contract.
 - b. An owner with a Watch List contract that meets one of the requirements listed in Section 5-6. B.4. of this Guide.
 - c. The contract was previously renewed as a Lite contract and the owner wishes to complete a full MTM debt restructuring.

- d. An owner requests referral to Recap based on a RCS that demonstrates that current rents are above market.
 - e. An owner wishes to refinance the project and wishes to renew the contract for 20 years *or the remaining term of the use agreement, whichever is less.*
4. *An owner with an Option Four contract who wishes to subsequently renew the contract under Option Four using a 20-year contract to preserve long-term affordability if the project is still eligible for renewal under Option Four at the time of the request for subsequent renewal.*
5. An owner with an Option Five contract who wishes to renew the contract under Option Five using a 20-year contract to preserve long-term affordability. (See Sections 7.3 and 7.4 for more information.)
6. To combine multiple contracts or stages. (See Section 2-10. C.2 below.)

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

- C. The owner's request for early termination under A or B above must be in writing and submitted to the AE/CA.
- D. *The owner agrees to the terms of the Preservation Exhibit, as contained in HUD Notice 2013-17 which provides for the renewal of the HAP contract at the end of the 20 years for a term that is at least equal to the term of the original terminated contract. 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.*

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

- E. An owner is not allowed to terminate a contract early to Opt Out of the Section 8 program.

Note: The AE/CA should document the project file by including a note that reads: "By mutual agreement, the owner and the CA have determined to terminate the Renewal Contract that runs from _____ to _____ and, instead, to enter into a 20-year contract, which will run from _____ to _____."

_____ to _____. The owner has also agreed to the terms of the Preservation Exhibit.

2-5. RENT COMPARABILITY STUDY (RCS).

Certain renewal options under MAHRA require a RCS.

- A. A RCS is prepared following the instructions found in Chapter Nine of this Guide. In addition, Section 9-4 of this Guide provides acceptable alternatives to the RCS.
- B. The RCS:
 1. Is valid for 5 years from the date the owner's Appraiser signs the HUD-92273-S8, Rent Comparability Grid. HUD's Integrated Real Estate Management System (iREMS) automatically generates an event notice to the AE/CA that the RCS is coming to the end of its five-year life cycle. The AE/CA must remind affected owners in writing that a new RCS is required at the end of the fifth year to receive a rent adjustment or a renewal of the Section 8 Contract.
 2. Must include all the Section 8 unit types in the project.
 3. Establishes the market rent for renewal of expiring contracts or stages that were not combined and will expire during the five-year life cycle of the RCS. (See Section 2-10. C. below for a discussion of combining contracts.)
- C. **Reviewing the RCS.**
Upon receipt of the RCS, the AE/CA, along with a qualified appraiser, will review the RCS based on the instructions found in Sections 9-17 through 9-20 of this Guide and determine whether the comparable market rent conclusions are reasonable. If the conclusions are deemed reasonable, the AE/CA records the RCS data in iREMS.
Note: The AE/CA shall not lower the comparable market rents in the RCS to reflect any use agreement restriction on the rents that can be charged; (e.g. tax credit restricted rents).
- D. **Adjusting the RCS.**
Contracts eligible for the Auto OCAF will have the RCS adjusted automatically to reflect the increased operating costs, as recognized by HUD in the Notice of Certain Operating Cost Adjustment Factors published annually in the Federal Register. Those not eligible for the Auto OCAF (i.e. EPC contracts) must be adjusted manually using the annual OCAF. Further details on adjusting the RCS are found in the iREMS Guide.
- E. **HUD Required RCS.**

1. The Satellite Office/Regional Center Director may require one additional rent comparability study during each 5-year period of an Option One or Two contract renewal, if s/he believes the OCAF adjusted comparable market rent is not an accurate reflection of the market.
2. Under Option One and Two the owner is required to submit a new RCS every five-years. However, in cases where the five-year life cycle of the RCS does not currently align with a multiyear contract's five-year life cycle an owner does not need to obtain another RCS until the time when the multiyear contract reaches the end of its five-year life cycle. In such cases, any rent adjustment during the years when a project has an aged RCS will be limited to the OCAF. The owner must obtain a new RCS at the end of the contract's five-year life cycle.
3. Notwithstanding any other renewal instructions, an owner seeking to terminate a Section 8 HAP contract early and renew that contract under the same or a different option, or renew an existing contract for more than 5 years must submit a new RCS. This is true even if a previous RCS is less than 5 years old.

Note: A RCS is NOT required at initial or subsequent renewal of an Option Four contract unless the project is renewing using the criteria in Section 6-1. B.2.

Note: A RCS is not required at any subsequent renewal of a MTM "Full" contract during the term of the MTM use agreement.

Note: A RCS is not required at any subsequent renewal of an ELIHPA or LIHPHRA project unless the POA indicates otherwise.

4. Under Option Four, if the owner requests an annual budget based rent adjustment, the owner will be required to submit a current RCS unless one has been submitted within the preceding five years.

F. The Cost of the RCS.

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

2-6. CONTRACTS.

A. Copies of MAHRA renewal contracts are found on HUDCLIPS:

Option One uses:

- Renewal HAP Contract for Section 8 Mark-Up-To-Market Project, Form HUD-9638

Option Two may result in the use of the:

- Basic Renewal Contract - One Year, Form HUD-9636, or
- Basic Renewal Contract – Multi-Year Term, Form HUD-9637

Option Three may result in the use of one or more of the following:

- Basic Renewal Contract - One Year, Form HUD-9636,
- Basic Renewal Contract – Multi-Year Term, Form HUD-9637,
- Interim (Full) Mark-To-Market Renewal Contract, Form HUD-9640,
- Interim (Lite) Mark-To-Market Renewal Contract, Form HUD-9641,
- Previous Mod Rehab Projects, Form HUD-9644,
- Full Mark-To-Market Renewal Contract, Form HUD-9642, or
- Watch List Renewal Contract, Form HUD-9643

Option Four may result in the use of the following:

- Basic Renewal Contract - One Year, Form HUD-9636,
- Basic Renewal Contract – Multi-Year Term, Form HUD-9637

Option Five uses:

- Basic Renewal Contract - One Year, Form HUD-9636,
- Basic Renewal Contract – Multi-Year Term (For DEMO Projects) , Form HUD-9637, or
- Preservation Renewal Contract, Form HUD-9639

B. Expiring Contract Provisions Renewed.

Except as specifically modified by the MAHRA Renewal Contract, all provisions of the expiring contract are renewed.

2-7. CONTRACT TERMS.

A. General Contract Terms. The term of the contract is one or more years. HUD believes long-term, multiyear contracts assist in preserving affordable housing and, therefore, the Regional Center Director's approval is not required when the owner requests a renewal for a multiyear term.

1. The maximum term of the contract is 20 years. A CA can renew a Section 8 HAP contract for up to five years. If an owner wishes to renew the contract for more than five years, the CA must refer the contract to the AE for final approval.
2. The minimum term for a contract is one year except in the case of a MUTM contract which requires a minimum five-year term.
3. In cases where there is a Use Agreement that mandates a particular renewal option, the maximum term of the Renewal Contract must be coterminous with the Use Agreement. For example, if six years remain on a Use Agreement, the maximum term of the Renewal Contract cannot exceed six years. However, owners can ask that a Use Agreement be extended to facilitate a preservation transaction.
4. If an owner chooses a contract term of more than one year, the contract will be funded for one year, or increments thereof, with the remaining years, or increments thereof, subject to sufficient appropriations.
5. The effective date of a renewal contract is the day after the Expiring Contract expires.
 - a. For renewals of Lites, the original contract is terminated at the end of the month following the month in which the owner is offered a new contract at the market rents.
 - b. For renewals in conjunction with a full debt restructuring, the new contract will become effective on the earlier of the expiration of the interim contract or the first day of the month following closing.
6. The AE/CA must ensure that the expiration date of all new renewal contracts is the last day of the month.
7. The term of a multiyear contract need not be in whole years. There may be occasions where the last rental adjustment period may be less than 12 months. For example, a project has an existing Use Agreement with a remaining life of 2 years and 7 months. In this example, the last rental adjustment is for the remaining term of the contract, 7 months. Therefore, the owner would receive a prorated OCAF adjustment for the 7 months. See Section 2-9. B.2. below for instructions on calculating a pro-rated OCAF.

2-8. SHORT-TERM CONTRACT RENEWALS.

- A. Short-term contract renewals are for less than one year. The phrase “short-term” refers to the term of the contract, not the “type” of contract. The AE/CA should use short-term renewals:

1. To protect the residents (see Chapter Eleven). For example: in the case of an opt-out when an owner provides the required one-year notice when less than one year remains before the contract expires (e.g., when 8 months remain before contract expiration). In this example, the Contract Administrator and the owner may enter into a short-term contract, not to exceed a term of one year, at current contract rents. In these circumstances the AE/CA must use the Basic Renewal Contract (HUD-9636).
 2. To extend the contract, at current rents, of a project that has been referred to Recap for debt restructuring but has yet to close under a Restructuring Plan after a year. To receive a short-term renewal beyond a year under these conditions at current rents, the owner must request and receive approval from Recap (see 24 CFR Part 401.600).
 3. To align the Section 8 contract with the project's fiscal year end.
 4. To align the Section 8 contract with a Use Agreement that expires in less than 12 months.
 5. To provide additional time to secure a HUD RCS when one is required.
 6. To combine contracts when the later expiring contract is the most restrictive.
- B. Renewal. Regional Center/Satellite Office Directors and CA Directors should use their discretion when determining whether to grant a short-term renewal for the reasons listed in Section 2-8. A. above.
- C. Short-term Contract Execution.
1. The contract is renewed in increments of months, not days.
 2. The AE/CA must document the need for the short-term renewal in the project file and in iREMS.
- D. The effective date of the new Section 8 contract is the day after the short-term contract expires.

2-9.

CALCULATING RENTS FOR SHORT-TERM RENEWALS.

- A. In cases where the AE/CA/Participating Administrative Entity (PAE) decides as to market rents for the project, the short-term renewal rents will be capped at market.
- B. Section 524 contracts.
1. If the project is eligible for an OCAF rent adjustment, apply a pro-rated OCAF to the short-term contract instead of a full OCAF.

- a. The law does not permit the project to receive more than one full OCAF increase within a 12-month period.

However, projects entering into MUTM or MUTB in the same year are not receiving an additional OCAF adjustment and, therefore, are exempted from this restriction. However, the preceding statement does not preclude the owner of a project that received a rent adjustment from (1) agreeing to terminate the Renewal Contract within 12 months of the date of the rent adjustment to renew under Option One or Two (assuming eligibility), and (2) receiving a rent increase based on the rent-setting provisions under those options.

- b. Because the project is entitled to a full OCAF increase at the first anniversary date of a multi-year contract, the OCAF increase for the short-term initial renewal must be pro-rated.
 - c. Budget-based rent adjustments are not permitted for a short-term renewal.
2. Calculating a pro-rated OCAF. Divide the rent increase factor (line (R) from HUD Form 9625 by 12 and multiply that number by the number of months needed for the short-term renewal.

Example:

Rent increase factor
(line (R) from HUD
Form 9625: 2.5 percent
Months in Year: 12
Term of Short-term contract: 8 months
2.5 divided by 12 = .208 x 8 = 1.67

The pro-rated rent increase factor to apply to the short-term renewal is 1.67 percent.

After determining the pro-rated rent increase factor, follow the instructions in the OCAF Worksheet, Form HUD-9625, for applying the OCAF to the contract rents for the Section 8 units being renewed.

C. Exceptions.

Do not use the proration of OCAF for calculating the rents for:

1. Short-term renewals for Section 514(c) contracts (Option Three) which are used for projects that must be processed by Recap. The short-term renewal is at current rent. (See Chapter Five.)

2. Section 524 contract, if used for a project that is subject to an enforcement action. Any short-term renewal is at current rent not to exceed market.
3. Short-term renewals under Option One or Two. The AE/CA will renew the contract at current rents and provide retroactive rents upon completion of the processing.

2-10. COMBINING CONTRACTS.

Guidance on combining Section 8 contracts is found in Chapter 4.1 of Handbook 4350.1. Until Chapter 4.1 of Handbook 4350.1 is published, please continue to use the Guidance issued on September 18, 2014, except that no combinations will be allowed that include projects in two different Fair Market Rent areas.

2-11. REQUEST FOR A CONTRACT EXTENSION.

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

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

2-12. DISTRIBUTIONS.

A. Limitations on Distributions.

1. The old regulation, LMSA, Pension Fund, and Property Disposition (PD) Section 8 contracts typically have no limitations on distributions. If applicable, any limitation on distributions is based on a current HUD Regulatory Agreement or a similar controlling document imposed by the Housing Finance Agency or another interested lender.
2. The new regulation Section 8 contracts for new construction or substantial rehabilitation limits an owner’s right to distributions.
 - a. A nonprofit owner is not entitled to distributions of excess project funds unless HUD approves the nonprofit owner’s request for a waiver. See sections 2-12.C and 2-18. A below.

- b. A profit-motivated owner may receive distributions from surplus cash in the amounts as follows:
 - 1) For projects for elderly families: 6 percent of the initial equity investment established when the project was newly constructed or substantially rehabilitated;
 - 2) For projects for non-elderly families: 10 percent of the initial equity investment established when the project was newly constructed or substantially rehabilitated.
 - c. Owners of “small projects” and owners of “partially-assisted projects,” as defined in 24 CFR Part 880.201, 881.201 and 883.302, are exempt from any section 8 limitation on distributions. 24 CFR Parts 880.205(f), 881.205(f), and 883.306(f).
 - d. Owner Distributions for Partially-assisted Projects that qualify for increased distributions under Section 2-12 D.
 - 1) For partially-assisted projects that are not insured under Section 236, 221(d)(3) BMIR, or do not have mortgages under Rural Housing Service’s (RHS) Section 515/8:
 - a) For profit owners of these projects may keep surplus cash generated on all units.
 - b) The Section 8 rents must not exceed the rents on the unassisted units.
 - 2) For partially-assisted projects that are insured under Section 221(d)(3) BMIR, 236, or have mortgages under and RHS Section 515/8:
 - a) For profit owners of these projects are eligible for an increased distribution on the Section 8 units.
 - b) This amount will be added to the current limited distribution in the FHA regulatory agreement on the unassisted units to reach the total distribution.
 - e. If the form of ownership changes so does the right to receive distributions under the Section 8 contract. For example, if a nonprofit owner, who is prohibited by regulation and under the HAP contract from receiving distributions, sells the project to a for profit entity, the for profit buyer may receive distributions, provided that all administrative conditions are met.
3. Nothing in this Chapter limits a nonprofit owner’s entitlement to excess project funds generated by non-Section 8 assisted units in a partially assisted project.

B. For profit Owners.

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

C. Distribution for Nonprofit Owners

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

D. Increased For Profit Owner Distributions.

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

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

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

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

- 1) The owner terminates the existing contract and renews the Section 8 contract for 20 years; and
- 2) The project's current rents are below comparable market rents.

Note: The AE/CA must check the existing contract to make sure it contains Exhibit B, Distributions Limitation. If Exhibit B is missing, modify the contract by adding the exhibit which is found in the current Multi-Year Basic Renewal Contract.

2. Owner Distributions for 100 percent Section 8 Assisted Properties.

a. Owners should follow existing guidance in paragraph 2-8 of Handbook 4370.2 REV-1, Financial Operations and Accounting for Insured Multifamily Projects, for computing surplus cash.

- b Owners may keep all surplus cash available each year for distribution during the term of the contract.
3. The above statements reflect the normal policy on increased distributions. However, an owner may have agreed to waive payment of distributions and to use all surplus cash to repay flexible subsidy grants/loans. Nearly all flexible subsidy contracts contain such clauses. Even if the project did not receive flexible subsidy, the owner may still have agreed to waive payment of distributions in return for HUD's approval of other forms of mortgage relief (e.g. provisional workout, modification, partial payment of claim, etc.).

If these scenarios exist, the amount of increased distributions may be reduced by the owner's repayment obligation to HUD.

E. Access to Increased Owner Distributions.

1. The owner may continue to receive the increased distributions during the term of the Section 8 Renewal Contract provided:
 - a. If applicable, all material Financial Assistance Subsystem (FASS) findings are closed or under a HUD-approved corrective action plan;
 - b. The owner maintains the project in good condition, as demonstrated by a REAC score of 60 or higher on the project's most recent inspection, with no uncorrected Exigent Health and Safety (EHS) violations;
 - c. The owner is not suspended or debarred.
 - d. The owner has no open or unresolved items on the most recent:
 - Physical Inspection Report; or
 - Management & Occupancy Review (MOR);
 - e. The project has not been referred to Recap for restructuring; and
 - f. The owner is complying with the terms of the FHA Regulatory Agreement, Note, and Mortgage and is current in debt service and all escrow payments, including the reserve for replacement account (RFR).

Note: The conditions listed above for receiving access to increased distributions apply to all contracts, not just to those renewed after August 2015.

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

F. Preemption of state laws limiting Owner distributions.

For consistency in administering the program as it relates to owner distributions, Section 524(f) of MAHRA preempts State and local laws and regulations that limit or restrict owner distributions to an amount less than that provided for under regulations of the Secretary.

This preemption is now available to all projects which have Section 8 contracts renewed under any section of 524 of MAHRA and which have distributions of surplus funds accruing after October 20, 1999.

Preemption does not apply to State-financed projects. In addition, an owner may elect to waive the preemption.

2-13. RENT ADJUSTMENTS.

- A. Annual adjustments to contract rents that occur during the term of a multi-year contract are called rent adjustments. These adjustments may be by application of the published OCAF or, if applicable, a budget-based request of the owner and subject to approval by HUD.
- B. ***Exception*** processes to A. above:
 1. See Section 2-17. C.4. for additional instructions for Option One, and Option Two.
 2. Title II and Title VI preservation projects discussed in Chapter 7, Option Five – Renewal of Portfolio Reengineering Demonstration or Preservation Projects. The rent adjustment mechanism is spelled out in the individual project's Plan of Action (POA) and/or Use Agreement. These documents may permit other rent adjustment mechanisms.

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

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

2-15. BUDGET-BASED RENT ADJUSTMENT REQUESTS.

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

- A. Follow the requirements of Chapter 7 of HUD Handbook 4350.1, Multifamily Asset Management and Project Servicing, as modified below.
 1. Paragraph 7-30. P. of HUD Handbook 4350.1 does not apply. For Section 8 projects, the budget will no longer include a 2 percent contingency reserve for projects owned by nonprofits and those projects once owned by nonprofits but which have been sold to limited dividend partnerships.
 2. Projects with 100 percent Section 8 must include a vacancy loss rate of 3 percent in the budget unless as part of a refinancing, the lender requires a different vacancy rate. Exceptions to the policy are:
 - a. Projects with 50 or fewer (which includes both assisted and unassisted units) units, *20 percent or more of which are assisted with Section 8*, must include a vacancy loss rate of 5 percent in the budget;
 - b. Projects where the assisted units account for 20 percent or less of the total units, *no matter the total number of units in the project*, must use a vacancy loss rate of 7 percent in the budget.
 - c. *Projects where the assisted units account for between 21 and 99 percent of the total units and have more than 50 units, must use a vacancy loss rate of 5 percent in the budget.*
- B. Section 22-16 of Chapter 22 of HUD Handbook 4350.1, will not apply.

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

Note: Any amount designated in the budget for debt service coverage may be drawn upon by the owner at year's end to pay allowable annual distributions, or deferred Developer Fee (from surplus cash, using the required form of Residual Receipts Note (form HUD-91710M,

Residual Receipts Note for Nonprofit Borrowers) or Promissory Note)). All remaining surplus cash must be deposited in the Residual Receipts account. If there is no Residual Receipts account in place, this requirement does not apply.

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

- C. Projects with low-income housing tax credits may include in their budgets only the following fees and expenses for operating a tax credit project, including payment of the equity syndicator's asset management fees; state allocating agency's compliance and asset monitoring fees; mandatory interest payments that do not exceed one percent due on subordinate debt provided by a governmental lender; and deferred developer's fees, plus interest accrued at the applicable federal rate, which may be deferred for no more than 12 years. The deferred developer fee and interest payments on government loans can only be paid from surplus cash.
- D. Owners may request a zero-dollar budget-based rent adjustment by marking the appropriate box on the “**Amend Rents Auto OCAF- Part A (HUD - 9626)** or **Part B (HUD - 9627)**”. Owners do not need to submit a budget when the appropriate box on the “Amend Rents” form is checked.
- E. For projects that have not previously prepared and submitted a budget-based rent increase, only the first request must include Attachment 5 (HUD-9635), Projects Preparing a Budget-Based Rent Increase, of this Guide.
- F. Owners of projects with an Option Four contract must submit a RCS when requesting an annual budget-based rent adjustment. This requirement does not apply at renewal. Owners requesting a zero budget-based rent adjustment do not have to submit a RCS. Owners of Section 515/8 projects who are required to submit budgets to Rural Housing do not have to submit a RCS if the rents resulting from the budget-based rent adjustment request do not exceed rents the project would have received based on the OCAF adjustment for that year.
- G. Owners submitting a budget-based rent adjustment request must comply with the notification requirements of 24 CFR Part 245 Subpart D.

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

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

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

maintain a RFR account. (See 24 CFR Part 880.602(a)(2)(v).) The term “partially-assisted” has the meaning set forth in 24 CFR Part 880.201, 881.201, and 883.302.

Note: The deposits to the reserve for replacement account must be *increased* by the *most recent published “Regional AAF with Highest Utility Excluded,” Table 2 for the region in which the project is located.* Example: The current annual deposits are \$2,400 and the *most recently published AAF* is 1.02, then the RFR deposits would increase by \$48 or \$2,400 x 1.02 percent.

2-17. PROCESSING INSTRUCTIONS.

A. Renewals

1. Before submitting a renewal request under A.2. below, the Owner must follow the tenant notification procedures in 24 CFR Part 245 Subpart D unless the rent increase is an OCAF rent adjustment. For example, a budget-based rent increase or a MUTM increase would require the owner and the AE/CA to comply with the requirements of 24 CFR Part 245 Subpart D.
2. At least 120 calendar days but no earlier than 180 calendar days before expiration of the Section 8 contract, the owner submits:
 - a. Contract Renewal Request Form, Form HUD-9624;
 - b. An analysis of the project’s Utility Allowances (see Housing Notice 2015-04); and
 - c. If applicable:
 - 1) The OCAF Rent Adjustment Worksheet, Form HUD-9625;
 - 2) A RCS; and/or
 - 3) A budget-based rent increase request prepared in accordance with the requirements of Section 2-15 above or a RHS approved budget.

Note: If the project has a budget approved by the AE/CA less than one year before processing the initial renewal under MAHRA, a copy of that budget may be submitted in lieu of a new budget, unless the owner refinanced the project.

3. AE/CA should complete the review of an owner’s submission within 30 calendar days.
 - a. The AE/CA checks to see if the owner:

- 1) Is eligible to renew the Section 8 project-based contract under the Option selected.
 - 2) Has provided all required documentation discussed in A.1. and A.2. above.
 - 3) Specified on the Cover Sheet of Form HUD-9624 whether it wants any multiple stages or contracts combined now. See Section 2-10 above.
- b. Under renewal Options One through Five, the AE/CA reviews the owner's certification regarding suspension or debarment on the Contract Renewal Request, Form HUD-92624. If the owner checked that they are not suspended or debarred, verify that information by using www.sam.gov.
 - 1) If the AE/CA determines that the owner is suspended or debarred, HUD may permit the owner to renew the Section 8 contract if the project(s) in question is adequately managed and maintained, and activities there were not the cause of the administrative actions against the owner. However, the AE/CA should document his/her assessment and reasons for permitting renewal in iREMS.
 - 2) Where there are material violations and the enforcement process has progressed to the point that HUD has decided to terminate the existing contract, then HUD should deny the renewal request.
- c. The AE/CA logs the owner's request as indicated on the Renewal Worksheet, Form HUD-9624 and any other relevant information in iREMS.
- d. Non-renewal determination:
 - 1) If the AE determines that the contract should not be renewed, the AE should follow the procedures in Chapter 13, of this Guidebook.
 - 2) If the CA determines that the contract should not be renewed, the CA should follow the procedures in the Section 8 Contract Administrators Guide.

- e. If applicable, the AE/CA reviews the RCS to make sure that the study was done in accordance with the requirements included in Chapter Nine of this Guide and determines that the comparable market rent conclusions are reasonable. Instructions for conducting the review are found in Sections 9-17 through 9-22. The AE/CA must record the data in iREMS.
- f. If applicable, review the OCAF Rent Adjustment Worksheet, Form HUD-9625 to verify that the calculations provided include only those Section 8 units in the expiring contract and the accuracy of the computations.

If the worksheet shows that the current contract rent potential of the project is greater than the market rent potential of the comparable rents, the project may be eligible for Recap processing. (See Chapter Five, Option Three Referral to Recap.)

- g. If applicable, the AE/CA reviews the owner's budget based request including any tenant comments received about the request. In the case of a 515 project, the AE/CA must accept the RHS approved budget that does not exceed comparable market rents without review.

Note: HUD does not accept the RHS utility analysis. The owner must submit a utility analysis based on the instructions in Housing Notice 2015-04 or its successor.

- h. Prepare a contract renewal.
 - 1) The AE/CA establishes the renewal rent per requirements for the renewal option selected.
 - 2) For the appropriate term:
 - a) Less than one year;
 - b) One year; or
 - c) Multiyear.
 - 3) For the expiration date of the contract:

The contract expiration date must be on the last day of the month.
 - 4) For the effective fiscal year for records effective October 1 in iREMS:

If a contract or amend rents record expires on September 30, the last day of the fiscal year, the effective date of the new contract or Amend Rents record is October 1, the first day of the new HUD fiscal year.

- 5) For all Option One Renewal Contracts and for Option Two Renewal Contract where the term of the Renewal Contract is 20 years, insure that Exhibit B of the Basic Renewal Contract is attached to allow access to increased distributions.
 - 6) For contracts which are renewed following an early termination insure that the Preservation Exhibit is attached to the Renewal Contract and for any contract renewed following the early termination of a non-MAHRA contract insure that HUD-93184 “Rider to Original Section 8 Housing Assistance Payments Contract” is attached to the Renewal Contract.
- B. Annual Rent Adjustments for Multiyear Contracts for Projects Participating In and Eligible for Auto OCAF in years of Amend Rents

Projects eligible for Auto OCAF rent adjustments are projects with contracts in years of Amend Rents and at the fifth-year adjustment to comparables. Projects may have renewed under any of the following Options:

- Option One
 - Option Two – Project renewed under a Multi-Year Term Contract
 - Option Three
 - Option Four – Projects renewed under a Multi-Term Contract
 - Option Five – Demos with restructured loans only, for life of Use Agreement.
1. For projects that have tenant paid utilities, the owner must submit an analysis of the project’s Utility Allowance (see Housing Notice 2015-04) so that processing may be completed and any resulting change be effective on the date of the contract anniversary. To utilize the Auto OCAF process to its maximum benefit, owners are encouraged to submit their analysis prior to 150 days from contract anniversary, but should not submit more than 180 days. In the event the owner’s utility analysis results in a possible decrease in the utility allowance(s) to the tenants, owners must follow the tenant notification procedures in 24 CFR Part 245.

2. At 150 calendar days before the anniversary date of the contract, the AE/CA will receive a system notification to process an Auto OCAF. The AE/CA will:
 - a. Access the Amend Rents record in iREMS and review the calculation of contracts rents performed by iREMS. Make any adjustments necessary based on current documentation.
 - b. Generate the Auto OCAF letter to the owner/agent (O/A) (Form HUD-9626 for Options One and Three, Form HUD-9627 for Options Two and Four), and the Exhibit A Rent Schedule. Review documents for accuracy.
 - c. Send letter and Exhibit A to O/A.
3. Upon receipt of the letter and the Exhibit A, the owner will review the OCAF adjusted rents and calculations and:
 - a. Elect to receive the Auto OCAF rent adjustment, or
 - b. Request a budget-based rent adjustment (if permitted under the terms of the renewal contract governing contract rent adjustment). An O/A may request a zero budget-based rent adjustment to maintain current rents. By checking the appropriate box on HUD 9626 or HUD-9627 an owner does not need to submit a budget if requesting a “\$0” budget based rent increase.
4. Should the O/A select the Auto OCAF rent adjustment, the O/A must complete and return to AE/CA a signed HUD-Form 9626 or HUD-Form 9627.
5. Should the O/A select a budget-based adjustment, the O/A must return to AE/CA:
 - a. Signed HUD-Form 9626 or HUD-Form 9627.
 - b. All documentation required for a budget-based rent adjustment as defined in HUD Handbook 4350.1, Chapter 7.
6. Upon receipt of the O/As submission, AE/CA:
 - a. Should review O/As rent adjustment documentation.
 - b. If acceptable, update iREMS.

- c. If the rent increase does not exceed five percent, then the CA processes the increase. If the rent increase equals or exceeds five percent, then the CA should forward the request to the AE for review.
 - d. Execute Rent Schedule Low Income Housing, Form HUD-92458, and return to O/A.
- C. Annual Rent Adjustments for Multiyear Contracts for Projects not Participating in Auto OCAF
 - 1. Before submitting the annual rent adjustment request under 2. Below, the owner must follow the tenant notification procedures in 24 CFR Part 245 Subpart D if the rent increase is not an OCAF rent adjustment. Whenever an owner's utility analysis results in a possible decrease in the utility allowance(s) to the project tenant notification procedures in 24 CFR Part 245 must also be followed even if the rent adjustment was made by the OCAF. *Should a notice need to be issued for both a rent increase and a utility allowance decrease, a single notice is sufficient if the owner clearly identifies both items in the notice.*
 - 2. At least 120 days but no earlier than 180 days before the anniversary date of the contract, the owner submits:
 - a. OCAF Rent Adjustment Worksheet, Form HUD-9625;
 - b. An analysis of the project's Utility Allowances (See Housing Notice 2015-04 or subsequent notices); and
 - c. If applicable:
 - 1) A RCS; and/or
 - 2) A budget-based adjustment, prepared in accordance with paragraph 2-15 of this Guide or a RHS approved budget that does not exceed comparable market rents.
 - 3. The AE/CA should complete the review of an owner's submission within 30 calendar days.
 - a. If applicable, review the RCS and the charts on the worksheet (HUD-9625) to verify that the calculations provided include only those Section 8 units in the expiring contract and ascertain the accuracy of the computations.
 - b. Prepare an amended Exhibit A, Rent Schedule, for the MAHRA contract to be issued to the owner and update iREMS. If applicable:

- 1) The resulting rents cannot exceed the OCAF-adjusted RCS.
 - 2) The OCAF-adjusted RCS serves as the market cap.
 - 3) If the rents are above the OCAF adjusted RCS rents or market rents determined by an alternative method (See Chapter 9), HUD will not approve the budget-based request. The owner would receive the OCAF adjustment or could resubmit the budget that is limited to market. This requirement is not applicable when processing Option Five preservation projects.
 - 4) If a budget-based rent increase does not exceed five percent then the CA processes the increase. If a budget-based rent increase equals or exceeds five percent, then the CA should forward the request to the AE for review.
4. Under Option One, Mark-Up-To-Market, Option Two, Contract Renewals for Other Projects with Current Rents at or Below Comparable Market Rents, and Option Five, Portfolio Re-engineering Demonstration Program (Demo) contracts, if the contract is for a period greater than five years:
 - a. The owner submits a new RCS at the end of each 5-year life cycle of the RCS. The new RCS must be reviewed in accordance with the instructions in Chapter 9 of this Guide.
 - b. If rents are:
 - 1) Above market, the AE/CA will reduce the rent to the comparable market rent.
 - 2) Below market, the AE/CA will increase the rents to comparable market rents.

2-18. WAIVERS.

A. REGULATORY WAIVERS.

HUD's policy on regulatory waivers appears in HUD's regulations at 24 CFR Part 5.110. Generally, a waiver requires a "good cause" determination. The waiver should state the specific provision or provisions to be modified and must be of limited duration. Many of HUD's regulations are based on statutory requirements and cannot be waived. Only non-statutory regulatory requirements may be waived upon a determination by the Office of Housing for good cause. Also, certain statutes, including appropriations acts, prohibit waivers of requirements in the areas of fair housing, nondiscrimination, environmental protection, and/or labor standards. To determine if a civil rights related program requirement may be waived, the HUD Satellite Office should consult with the FHEO Regional Office or Program Center that serves the area where the project is located. To

determine if an environmental protection requirement may be waived, the HUD Satellite Office should consult with the appropriate HUD Environmental Officer. To determine if a labor standard may be waived, the HUD Satellite Office should consult with the Office of Labor Standards in the Office of Field Policy and Management.

1. The owner submits to the HUD Satellite Office a request for a regulatory waiver along with any supporting documentation.
2. The HUD Multifamily Satellite Office may reject the proposal or forward the request to the Director of OAMPO in Headquarters, specifying the grounds for granting the waiver **and** recommending its approval.
3. OAMPO reviews the waiver request and either rejects the request or prepares a recommendation for approval for the Assistant Secretary for Housing-FHA Housing Commissioner.
4. The Assistant Secretary for Housing-FHA Housing Commissioner will either approve or disapprove the waiver request.
5. Headquarters notifies the HUD Satellite Office of the approval or rejection of the waiver request.
6. Regulatory waivers granted by HUD are published in the Federal Register on a quarterly basis.
7. OAMPO retains any approved regulatory waivers and related documentation for five years from the date the waiver is granted.

B. DIRECTIVE WAIVERS.

The term “Directive” includes handbooks, guidelines, notices, interim notices and special directives such as Mortgagee Letters.

1. The owner submits to the AE, a request for a waiver of the Section 8 Renewal Guide along with any supporting documentation.
2. The HUD Regional Office may reject the proposal or forward the request to the Director of OAMPO in Headquarters, specifying the grounds for granting the waiver **and** recommending its approval.
3. OAMPO, in Headquarters, reviews the waiver request and either approves or rejects the request. OAMPO will:
 - a. Notify the HUD Regional Office, in writing, of the approval or rejection of the waiver request.
 - b. Retain a copy of the approval or rejection memorandum and related documentation for 3 years from the date the waiver is granted; and

- c. Retain approved waivers of the Section 8 Renewal Guide for three years and will make the waivers available for public inspection upon request.
4. The AE will notify the Sponsor/owner in writing of the approval or disapproval of the waiver request;

2-19. DUNS NUMBER.

All project owners receiving monthly rental assistance are required to register with Dun & Bradstreet and obtain a Data Universal Numbering System (DUNS) Number. See Notice H 2011-01, issued January 5, 2011, and HUD 2012-06, dated April 25, 2012, for detailed instruction concerning the deadline for and the process for obtaining a DUNS Number and Registering in System for Award Management (SAM).

Project-Based Rental Assistance

By National Preservation Working Group, sponsored by National Housing Trust

Administering Agency: HUD's Office of Multifamily Housing Programs

Years Started: 1961 – Section 221(d)(3) Below Market Interest Rate (BMIR); 1963 – USDA Section 515; 1965 – Section 101 Rent Supplement; 1968 – Section 236; 1974 – Project-Based Section 8, and Rental Assistance Payments Program; 1978 – Section 8 Moderate Rehabilitation Program.

Number of Persons/Households Served:

Approximately 1.2 million households with over 2 million people. [HUD's Picture of Subsidized Housing query tool](#) includes 1.2 million units of project-based Section 8 “reported” and 1.3 million units “available.”

Population Targeted: Extremely low- to moderate-income households

Funding: \$14.91 billion in FY23, up from \$13.94 billion in FY22 (of this, \$969 million is provided in a disaster supplemental for project-based rental assistance in a separate section of the bill)

See Also: For related information, refer to the *USDA Rural Rental Housing Programs, Tenant Protection Vouchers, and Project-Based Vouchers* sections of this *Guide*.

Project-based housing refers to federally assisted housing for low-income households produced through a public-private partnership. Project-based assistance is fixed to a property, in contrast to portable tenant-based Section 8 Housing Choice Vouchers. Historically, HUD has provided private owners of multifamily housing either a long-term project-based rental assistance contract, a subsidized mortgage, or in some cases both, in order to make units affordable. This article focuses on the project-based rental assistance (PBRA) portfolio, after a historical summary of “legacy” HUD-subsidized mortgages that are maturing or being refinanced for which

there is no replacement subsidized mortgage program.

This stock of PBRA-supported affordable housing is in danger of being permanently lost as a result of owners opting out of Section 8 contracts renewal or physical deterioration of properties. When owners choose not to renew a project-based Section 8 contract (referred to as “opting out”), they may convert their properties to market-rate rental buildings, condominiums, or non-housing uses.

BASIC DESCRIPTION OF THE SECTION 8 PROJECT-BASED RENTAL ASSISTANCE (PBRA) PROGRAM

In 1974, Section 8 of the “United States Housing Act” was enacted, providing a comprehensive tool for both project-based and tenant-based rental assistance. The project-based Section 8 program replaced a previous program, Section 236 described in the History section, below, as the primary affordable multifamily housing production tool through the New Construction, Substantial Rehabilitation and State Agency Programs. Instead of subsidizing a mortgage, as Section 236 did, HUD provided a 20- to 40-year fully appropriated rent subsidy. This virtually guaranteed rent stream gave lenders confidence in the soundness of project financing (whether provided through conventional, Federal Housing Administration, or state housing finance agency debt).

More than 800,000 PBRA units were developed from 1974 to 1983, when authorization for new construction was repealed. In addition, from 1977 to 1991, project-based Section 8 was provided to subsidize rent of tenants living at properties that also had mortgages from the Section 202 program (see *Section 202 Housing for Elderly*).

Project-based Section 8 is also an affordable housing preservation tool. The Section 8 Loan

Management Set-Aside (LMSA) program was used to replace some Rent Supplement contracts, and to support the feasibility of some struggling properties that were financed with the Section 221(d)(3) BMIR or 236 programs. The Section 8 Property Disposition Program was established to enable HUD-foreclosed multifamily properties to continue to house extremely low-income tenants after being sold back to private ownership.

Finally, when the prepayment of subsidized mortgages and subsequent deregulation of BMIR and Section 236 properties became a national issue, the “Emergency Low Income Housing Preservation Act” of 1987 (ELIHPA) and the “Low Income Housing Preservation and Resident Homeownership Act” of 1990 (LIHPRA) were enacted to provide a comprehensive preservation solution, including the provision of incremental Section 8 PBRA (BMIRs, 236s, ELIHPA and LIHPRA are explained below).

Inherent in every project-based Section 8 property is a Housing Assistance Payments (HAP) contract, which provides funding for the subsidy and sets out program requirements. A HAP contract is between a property owner and HUD (except for Moderate Rehab contracts, discussed below), although a Section 8 contract administrator may be delegated by HUD. Every HAP contract has a fixed term, and when it expires, the owner has a choice whether to renew. The HAP renewal process is codified in the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA), discussed below. These contracts can be renewed, typically in one-, five-, or 20-year increments, with congressional funding for the contracts provided 12 months at a time.

Under project-based Section 8, residents are responsible for paying 30% of their adjusted income towards rent and utilities, while HUD provides a monthly subsidy payment to the owner that pays for the remaining cost of maintaining and operating the unit. The average monthly subsidy per household in 2021 was \$904. New residents in project-based Section 8 units can have incomes of no more than 80% of the area median income (AMI), with 40% of new

admissions required to have incomes below 30% of AMI.

The Project-Based Rental Assistance program (PBRA), in all its variations, provides rental assistance for about 2 million people in 1.2 million low-income, very low-income, and extremely low-income households allowing them to afford modest housing. Two-thirds of PBRA heads of households are seniors and disabled adults and the average household income is \$13,768.

Since no new net units are being constructed using Section 8 PBRA, the challenge today is ensuring that federally assisted affordable housing is not permanently lost, either through physical deterioration or as a result of properties being converted to non-affordable uses, such as high-rent units or condominiums, when a PBRA contract is not renewed (“opt-out”) or is terminated for any reason (see the Current Program Issues section below).

It is important to note that a property may have use restrictions or affordability covenants from a subsidized mortgage or other programs, as well as Section 8 PBRA pursuant to a HAP contract. Even if the affordability covenants expire or are terminated, the Section 8 rental assistance is independent of the mortgage financing, and so it survives any subsidized mortgage maturity or prepayment or other termination of covenants.

Another form of Section 8 rental assistance is the Moderate Rehabilitation (Mod Rehab) program, designed in 1978 to stimulate moderate levels of rehabilitation to preserve affordable housing. Mod Rehab provides project-based rental assistance for low- and very low-income residents; however, unlike other project-based Section 8 programs, the agreement is between the owner and a local public housing agency (PHA). Like project-based Section 8, residents pay 30% of adjusted income for rent, while rental assistance pays the balance. The program was repealed in 1991 and no new projects are authorized for development. There are approximately 14,436 Mod Rehab units and 10,402 Mod Rehab SRO (single-room occupancy)

units remaining. Because of rent restrictions and limitations on the term of contract renewal, Mod Rehab properties are eligible to convert to conventional project-based Section 8 under the RAD program.

HUD Project Based Section 8 programs are codified in 24 CFR Parts 880-891:

- New construction, 24 CFR Part 880.
- Substantial rehabilitation, 24 CFR Part 881.
- Moderate Rehabilitation Program for Single Room Occupancy (SRO) Dwellings for Homeless Individuals, 24 CFR Part 882.
- State agency financed projects w/Section 8 assistance, 24 CFR Part 883.
- Loan management/property disposition set-aside, 24 CFR Parts 886 and 247 Supportive housing for elderly and persons with disabilities, 24 CFR Parts 891 and 247.

A BRIEF HISTORY

From 1965 to the mid-1980s, HUD played an essential role in creating affordable rental homes by providing financial incentives such as below-market interest rate loans, interest rate subsidies, and project-based Section 8 contracts. Currently, no additional units are being produced through these programs.

Initially, project-based assistance was provided through the Federal Housing Administration (FHA) in the form of a mortgage subsidy. Mortgage subsidies (also referred to as “shallow subsidies”) reduced the cost of developing rental housing, and in return, owners agreed to restrictions that limited property rents, and occupancy to households meeting program income limits. Even though these programs provided a below-market rent that was affordable to low- and moderate-income tenants, they could not serve extremely low- or very low-income households, who could not afford even the subsidized rent.

Despite the limitation on the range of incomes served, the mortgage subsidy programs were an effective production tool. Two successive HUD programs created more than 600,000 units: the

Section 221(d)(3) Below Market Interest Rate (BMIR) mortgage insurance program, created by the “National Housing Act of 1961,” and Section 236, created in 1968. Some, but not all, subsidized mortgage properties also used precursors to project-based Section 8 to enable them to provide deeper affordability. Those early project-based rental assistance programs were the Rent Supplement program (Rent Supp, authorized by Section 101 of the “Housing and Urban Development Act of 1965”) and the Section 236 Rental Assistance Program (RAP). They each provided an early example of a “deep subsidy,” in which HUD sets the rent level, the tenant pays a percentage of their adjusted income and the subsidy program pays the balance. The last Rent Supp contracts converted to long-term project-based rental assistance contracts under the Rental Assistance Demonstration (RAD) in 2018. The last remaining RAP contracts converted to Section 8 under RAD in late 2019.

Another 136,000 households live in homes with one of the other forms of project-based assistance, but without rental assistance.

CURRENT PROGRAM ISSUES

Subsidized Mortgage Prepayment

Although Section 236 and Section 221(d)(3) BMIR mortgages originally had 40-year terms, program regulations allowed most for-profit owners to prepay their mortgages after 20 years. By prepaying, in most cases owners may terminate income and rent restrictions, although any project-based Section 8 rent subsidy will continue for the remaining term of the contract. Owners must give tenants at least 150 days’ advance notice of an intention to prepay. Upon prepayment, tenants are eligible for Tenant Protection Vouchers (TPVs), or in some cases an Enhanced Voucher (EVs), that allows a tenant to either remain in the property or find new affordable rental housing with the voucher assistance (see the *Tenant Protection Vouchers* section of this *Advocates’ Guide*).

Maturing Subsidized Mortgages

Tens of thousands of low-income families face

escalating rents if affordability protections are not extended for properties with maturing Section 236 and Section 221(d)(3) BMIR mortgages. Residents living in apartments with affordability protections but without project-based Section 8 contracts do not categorically qualify for enhanced vouchers or other rental assistance when the HUD-subsidized mortgage or a federal use agreement expires. However, in recent years, including FY 2022, Congress has appropriated \$5 million annually for Enhanced Vouchers or Project-Based Vouchers for tenants in low-vacancy areas who are at risk of becoming rent-burdened as a result of a subsidized mortgage maturity or expiration of a use agreement. The National Housing Preservation Database identifies more than 6,892 unassisted units in 34 properties in 13 states at risk of subsidized mortgage maturity or the expiration of use restrictions or assistance between FY22 and FY27 (tenants remain eligible despite the expiration of restrictions prior to FY15, subject to owner application).

Epiring Project-Based Section 8 Assistance Contracts

When project-based Section 8 contracts expire, owners may renew the contract, but also may choose to opt out of their contracts, enabling them to increase rents to market levels or to convert units to market-rate condominiums, thereby rendering apartments unaffordable to lower-income tenants. Owners must give tenants one-year advance notice of intent to opt out. Most tenants will receive enhanced vouchers to enable them to remain in their homes. According to the Joint Center for Housing Studies at Harvard University, of the approximately 1.2 million active Project-Based Rental Assistance (PBRA) units, more than 266,000 units (22%) are at risk of losing their affordability status according to calculations from the [National Housing Preservation Database](#).

Enhanced Vouchers

Special voucher assistance is provided to tenants who would otherwise be displaced due to rising rents or market conversion if an owner prepays a

Section 221(d)(3) BMIR or Section 236 mortgage, if an owner opts out of a project-based Section 8 contract, or if the Section 8 contract is terminated by HUD for cause. HUD is required by statute to provide Enhanced Vouchers (EVs) to tenants in such properties to enable them to afford to remain in their homes. Enhanced vouchers pay the difference between 30% of the tenant's income and the new rent, even if that rent is higher than the PHA's payment standard. Tenants have a right to remain in their apartments after conversion to market rents and owners must accept enhanced vouchers. If a tenant with an enhanced voucher moves to another property, the enhanced voucher converts to a regular voucher and the unit they occupied is unfortunately no longer affordable to any lower-income household (see the *Tenant Protection Vouchers* section of this *Advocates' Guide*).

Section 8 PBRA Contract Renewal: Mark-to-Market and Mark-Up-to-Market

Every Section 8 Housing Assistance Payment (HAP) contract was issued with a finite term, typically for 1, 5, 20, or 40 years. These contracts were fully funded at inception for the estimated cost over the entire term. When HAP contracts began to expire in large numbers in the mid-1990s, it became clear that comprehensive legislation, along with funding, was needed to prevent a massive upheaval due to loss of affordability.

The resulting statutory provisions governing renewal of Section 8 PBRA contracts (as well as Mod Rehab contracts) were defined in the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA). HUD's operational guidance on MAHRA renewals is contained in the [Section 8 Renewal Guide](#), which is organized around five Options, some of which have sub-options. A detailed description of the MAHRA renewal options is beyond the scope of this article, but the basic principles of MAHRA can be summarized as follows:

- HUD must renew all project-based Section 8 contracts if the owner elects, *subject to annual appropriations*.

- Multi-year contracts are permitted; a minimum five-year term is required for Mark-Up-to-Market contract renewals.
- Since any contract that is renewed for more than one year is subject to annual appropriations, HUD must provide a new funding increment each year, out of current appropriations made by Congress. Since the enactment of MAHRA, Congress has ultimately provided this funding, notwithstanding some occasional timing delays.

Certain properties with below-market contract rents may increase rents to market level at renewal (Mark-Up-to-Market or (Mark-Up-to-Budget).

- If contract rents are above market at the time of renewal, then:
 - If the property has an FHA-insured loan, rents must be reduced to market, and the debt is restructured (Mark-to-Market); and
 - If the property has non-FHA financing or is a Section 202 property, over-market rents may continue after renewal (Exception Properties).
- Future annual rent adjustments vary according to the renewal scenario selected by the owner.

Regarding Mark-to-Market: As noted, some FHA-insured properties with expiring project-based Section 8 contracts have rents that exceed market rents. This may be due to current market conditions and is also often a programmatic consequence of the early use of Section 8 as a production tool. Upon contract renewal, HUD is required to reduce rents in properties with FHA-insured mortgages to market level, creating a cash crunch for those properties and potentially putting their FHA-insured mortgages at risk of default. To address this problem, Congress enacted the Mark-to-Market Program in 1997. Owners of eligible properties must either go through the Mark-to-Market Program, renew at lower market rents, or opt out. In the Mark-to-Market Program, an owner has two options:

- Choose to have the mortgage restructured to be able to afford to operate and maintain the property with lower market rents. In exchange for this mortgage restructuring, an owner agrees to accept Section 8 rent subsidies for an additional 30 years, or
- Choose to renew the Section 8 contract for one year with Section 8 rents reduced to market without undergoing a mortgage restructuring.

HUD is also able to raise contract rents to market levels upon contract renewal for properties in high-cost areas through the Mark-Up-to-Market Program. Contract renewals of at least five years are required in Mark-Up-to-Market, which provides a needed incentive for owners to renew their participation in the Section 8 program when private-sector rents are high. These contract renewals also provide a source of revenue for capital improvements.

Beginning in May of 1999, HUD began the process of transferring the administration of Section 8 contracts to third party Contract Administrators (CA). The CA's responsibilities were identified in HUD Notice H 99-36 and initially applied to some 16,000 contracts under 24 CFR parts 880-886. Specific tasks the CAs perform include:

1. Conduct management and occupancy reviews;
2. Adjust contract rents;
3. Process HAP contract terminations or expirations;
4. Pay monthly vouchers from Section 8 owners;
5. Respond to health and safety issues;
6. Submit Section 8 budgets, requisitions, revisions, and year-end statements;
7. Submit audits of the CA's financial condition;
8. Renew HAP Contracts;
9. Report on CA operating plans and progress; and
10. Follow-up and monitor results of physical inspections of Section 8 properties.

There currently are 53 third-party CAs operating across the country who are HUD's primary providers for overseeing compliance, renewing rental contracts, and managing tenant interactions.

Troubled Properties

HUD multifamily properties may be at risk when a property is in poor financial or physical condition. An owner in default on a HUD-assisted mortgage could result in termination of the Section 8 subsidy through HUD's foreclosure and property disposition process. Since 2005, however, Congress has used appropriations acts to renew the "Schumer Amendment," which requires HUD to maintain a project-based Section 8 contract at foreclosure or disposition sale if the property is in viable condition. If not viable, HUD can, after consulting tenants, transfer the Section 8 subsidy to another property.

Another risk is that HUD may terminate a Section 8 contract mid-term or refuse to renew the Section 8 contract if there is a serious violation of the terms of the Section 8 Housing Assistance Payment contract. Appropriations act provisions since FY06 have allowed HUD to transfer project-based assistance, debt, and use restrictions from properties that are physically obsolete or not financially viable to another project. Residents must be notified and consulted.

Resident Participation in Project-Based Section 8 Rental Assistance

Congress and HUD have acknowledged that active resident participation in the operation of HUD-subsidized properties is essential to the success of assisted properties. Tenants are closest to the harm perpetuated by poor housing policies and often have institutional knowledge that other stakeholders lack. Residents and resident organizations have played a vital role in highlighting systematic conditions and administrative issues at assisted properties and proposing solutions. Resident organizations also play an important role in informing and educating their neighbors about the federal housing programs and for building collective power. Resident engagement and participation

can ensure that tenants play an integral role in preserving the property, promoting services benefiting all residents, and furthering the goal of creating a more just housing system.

Overview

HUD tenants' right to organize is based on law at 12 U.S.C. § 1715z-1b and spelled out in regulations at 24 CFR Part 245, Subpart B, which require owners of privately owned, HUD-assisted multifamily housing to recognize tenant organizations. A legitimate tenant organization is one established by tenants that represents all tenants, operates democratically, meets regularly, and is completely independent of owners and management. The regulations recognize the rights of tenants to distribute leaflets, canvass, post notices, and convene meetings without management present and without prior notice or permission from management. Residents can invite outside organizers to assist them. HUD-funded organizers have the right to go into a building without a tenant invitation to help residents organize.

Unlike the Section 964 regulations for Public Housing, the Section 245 regulations do not require a specific structure, written bylaws, or even elections for a tenant association to be "legitimate," as long as the "organic" tests are met: the group meets regularly, operates democratically, represents all tenants, and is completely independent of owners. This allows "early stage" tenant organizing committees to demand recognition as legitimate tenant groups and to claim their right to organize in the face of common resistance or hostility from private owners and managers.

Over the years, Congress and HUD have expanded the formal process for tenant participation in decisions affecting HUD-assisted housing. For example, HUD must notify tenants about a pending auction or sale of their building if it is owned by HUD or is under HUD foreclosure so that tenants can either submit a purchase offer as a nonprofit or limited-equity cooperative or support purchase by others. Additionally, when owners choose to go into HUD's Mark-

to-Market program, HUD is required to notify tenants prior to a first and second tenant meeting so that tenants can comment on the owner's plans to rehabilitate the building and change the financing.

Enforcement

The civil money penalties regulation (24 CFR Part 30) allows HUD to assess fines on owners or management agents for major violations of tenants' right to organize. On June 18, 2010, HUD sent a letter to all owners and management agents highlighting key features of Part 245, emphasizing the right of tenants to organize and repeating the list of protected tenant organizing activities. HUD Notice H 2011-29 and Notice H 2012-21 repeated and elaborated on the content of the June 2010 letter, adding civil money penalties that HUD could impose on an owner or manager failing to comply with Part 245. Notice H 2014-12 revised Notice H 2011-29 and Notice H 2012-21 by adding a tenant appeals process when a decision by the local HUD office concludes that an owner did not violate the tenant participation regulations or other program obligations.

HUD Notice H 2016-05 updated the previous notice regarding filing complaints, added to the list of property types that may be assessed a civil money penalty, and clarified that civil money penalties may be assessed on Project-based Section 8 developments, not just buildings with HUD mortgages. HUD Notice H 2016-05 also elaborated on the responsibility of owners to give priority to meeting spaces that provide physical access to people with disabilities. Additionally, when residents have complaints, the Notice allows tenants to reject "mediation" with owners as an option for resolving complaints because many tenants found mediation unproductive; instead, tenants may seek a ruling by HUD regarding owner infractions.

Other HUD guidance on tenants' right to organize includes HUD's Model Lease, which is applicable to all HUD tenants, and explicitly refers to the regulations' about the right to organize. HUD's Management Agent Handbook 4381.5 Revision

2 requires owners to recognize tenant unions and specifies management practices that would violate tenants' rights and therefore potentially result in HUD-imposed sanctions.

Resident Rights and Responsibilities is a resident-oriented HUD brochure explaining that tenants have the right to organize free from management harassment or retaliation. This brochure must be made available in appropriate languages and distributed annually to all HUD tenants at lease signing or recertification.

HUD Preservation Action

As discussed earlier in this article, properties may lose their subsidy for a variety of reasons. As rental markets become more stressed, preserving the subsidy will be essential to maintaining communities' ability to provide affordable, decent, safe, and sanitary housing.

HUD and communities have several options to consider when working to preserve subsidy contracts. Preservation can be done by utilizing various intervention strategies that can be crafted into a preservation plan. A preservation plan is a coordinated effort to preserve the long-term affordability, quality, and supply of units available to house low-income families. In order to create an effective preservation plan, advocates must understand what is putting the subsidy at risk, the reasons for the owner exiting the program, and the rules governing the program. Below are some intervention strategies for consideration.

- **Increased Unit Rents:** A 2018 HUD report found that properties most at risk of owner opt-out are properties in higher opportunity and/or gentrifying communities with increasing rents and higher home values, as well as properties where the rent is below the surrounding fair market rent (FMR) and ownership is for-profit. If an owner cites low rents or high operating costs as reasons for exiting the program, HUD has several ways to renew the subsidy contract at higher rents. The Multifamily Assisted Housing Reform and Affordability Act of 1997, which includes the Mark-to-Market (M2M) program, provides the general framework for renewing expiring

subsidy contracts. As discussed above, M2M allows owners to renew their contracts at its expiration and provides additional incentives for remaining in the program. To learn more about the various contract renewal options, see [HUD Section 8 Renewal Guidebook](#).

- **Early Intervention due to Poor Habitability Conditions:**

Conditions: HUD must ensure assisted housing is decent, safe, and sanitary. And while a good portion of HUD's portfolio is in good condition, the conditions at non-compliant properties have a detrimental impact on assisted families' health and place the subsidy at risk. [HUD Notice H 2018-08](#) describes the various tools HUD can use to bring a property back into compliance after failing a HUD inspection. Often, tenants and advocates have had to push HUD to take one of these additional actions when a property has had a long period of non-compliance. Along with alerting HUD about the poor conditions, advocates have had success getting local jurisdictions to use their authority to have condition defects fixed.

- **Transferring of the Budget Authority:**

Where the property cannot be preserved, or the owner chooses to end their participation in the program, HUD can transfer the budget authority from that property to assist another property. There are two vehicles HUD can use to do this-- a Section 8(bb) transfer (codified at [42 U.S.C. § 1437f\(bb\)](#)) and a general provision of the annual appropriation act (the "Schumer Amendment," [section 209 in FY 22](#)). As discussed above, HUD lacks the authority and the funding to expand the size of the project-based Section 8 program. Thus, the ability to transfer the budget authority keeps the budget authority alive and available for continued use. HUD can use section 8(bb) transfers in response to an owner choosing to exit the program or in conjunction with an enforcement action. You can learn more about Section 8(bb) transfers by reviewing [HUD Notice H 2015-03](#).

- **Project-basing Tenant-based Assistance:**

When a property's affordability cannot be

preserved, Tenant Protection Vouchers (TPV) and Enhanced Vouchers (EV) are provided to eligible assisted families living at the building at the time of the triggering event. Tenants who receive TPVs or EVs can volunteer to participate in the process to "project-base" those vouchers, resulting in a subsidy that mirrors the Project-Based Voucher program. For more information on project-basing TPVs and EVs, see [HUD Notice PIH 2013-27](#) and the *Tenant Protection Vouchers and Project-Based Voucher* articles in this *Advocates' Guide*.

- **Local Preservation Working Groups:** Local preservation working groups are a collective of stakeholders working collaboratively to preserve affordable housing within a jurisdiction. Stakeholders can include tenant organizations, legal aid programs, local housing authorities, state and local government agencies, nonprofits, and other community groups. These local preservation working groups allow stakeholders to proactively plan for changes in the affordable housing stock, share knowledge, and quickly mobilize resources to at-risk properties.

Provisions of the "Consolidated Appropriations Act of 2022"

The "FY22 Consolidated Appropriations Act" has four key provisions affecting project-based programs. These provisions are in the HUD appropriations act's General Provisions section and are not codified in permanent law. Therefore, they must be renewed each year.

1. **Section 8 Savings:** The savings provided to State housing finance agencies from refunding bonds can be used for social services, professional services essential to carrying out McKinney Act homeless assistance-funded activities, project facilities or mechanical systems, and office systems.
2. **Transfers of Assistance, Debt, and Use Restrictions:** Authorizes the HUD Secretary to transfer some or all project-based assistance, debt held or insured by HUD, and statutorily required to serve low-income and very low-income use from one or more obsolete

- multifamily housing project(s) to a viable multifamily housing project.
3. Management and Disposition of Certain Multifamily Housing Projects: Authorizes HUD to provide direction on HUD's management and disposition of certain multifamily housing projects owned by HUD and requires HUD to maintain a project-based Section 8 contract at foreclosure or disposition sale, unless "infeasible" (this is known as "the Schumer Amendment").
4. Physical Conditions Requirements: Describes HUD's oversight obligations within the PBRA program, and permits HUD to mandate corrective action, contract transfers, or change in management due to failure to meet physical condition standards.

TIPS FOR LOCAL SUCCESS

Subsidized multifamily rental housing can be at risk of leaving the affordable housing stock for any number of reasons, such as an owner's intent to prepay a subsidized mortgage or not renew a project-based rental subsidy contract, or uninhabitable living conditions prompting a HUD foreclosure. Preservation is when action is taken to ensure the federal housing subsidy and affordability restrictions remain in place, preserving long-term housing affordability. Preservation is usually combined with repairs to the property. Often the property is purchased by a new owner who is committed to the long-term affordability of the property and is then renovated and managed along with those values.

Preservation of affordable rental housing is usually undertaken by mission-driven developers, often regional or national nonprofits. The most successful local efforts include early identification of properties at risk of conversion, as well as active partnerships with tenants, local HUD officials, state and local housing officials, and lenders and investors with a shared commitment to preserving affordable rental housing.

Preservation inventories are lists of specific affordable multifamily rental properties in a

jurisdiction that can be used to identify and prevent the loss of at-risk properties. These inventories typically focus on dedicated subsidized properties, including those with project-based rental assistance, although affordable unsubsidized units may be covered as well. Preservation inventories may include information on each property's location, age, number of units (affordable and market rate), physical condition, and the year when rent restrictions expire, among other data points. Through proactive monitoring of this information, local jurisdictions can act in a timely manner to try to preserve at-risk properties as part of the affordable stock, allowing time to assemble financing or an incentive package to facilitate the transfer of the property to a mission-oriented owner or encourage the current owner to maintain affordability. Local Housing Solutions provides resources and examples for local governments which wish to create a preservation inventory.

NLIHC and the Public and Affordable Housing Research Corporation created the National Housing Preservation Database, a tool for preserving the nation's affordable rental housing. It provides integrated information on all housing subsidies for each federally subsidized project. It also enables advocates and researchers to easily quantify the supply of federally assisted affordable housing in any geographic area, while at the same time establishing a baseline of subsidized affordable units against which future levels can be measured. The database is available at: <http://www.preservationdatabase.org>.

WHAT TO SAY TO LEGISLATORS

Advocates should urge legislators to provide sufficient funding to renew all project-based rental assistance contracts for a full 12 months. If Congress moves forward with another long-term Continuing Resolution, explain that an anomaly will be needed to fully fund all project-based rental assistance contracts for the entire year, given necessary adjustments to rental contracts.

Members of Congress also should be asked to support preservation features of the RAD

program and improvements to the project-based voucher program to allow housing authorities, developers, and owners to preserve the existing housing stock. In addition, advocates should urge reintroduction of broad legislation to preserve assisted housing that would:

- Provide grants and loans to for-profit and nonprofit housing sponsors to help ensure that properties can be recapitalized and kept affordable.
- Allow owners to request project-based assistance in lieu of enhanced vouchers.
- Protect the rights of states to enact preservation and tenant protection laws that will not be preempted by federal law.
- Ensure that data needed to preserve housing are publicly available and regularly updated and allow for the creation of a single database for all federally assisted properties based on a unique identifier for each property.
- Streamline the process of transferring Project-Based Section 8 contracts under Section 8(bb) (1) of the United States Housing Act of 1937 to ensure no Section 8 budget authority is ever lost.
- Authorize rural housing preservation programs for Rural Development Section 515 properties.

HUD's Multifamily Preservation webpage,
https://www.hud.gov/program_offices/housing/mfh/presrv/presmfh.

HUD's Picture of Subsidized Housing,
<https://www.huduser.gov/portal/datasets/assthsg.html>.

FOR MORE INFORMATION

National Low Income Housing Coalition, 202-662-1530, www.nlihc.org.

National Housing Trust, 202-333-8931, www.nhtinc.org.

National Housing Law Project, 415-546-7000, www.nhlp.org.

National Alliance of HUD Tenants, 617-267-9564, www.saveourhomes.org.

HUD's Multifamily webpage, https://www.hud.gov/program_offices/housing/mfh.

HUD's Section 8 Renewal Policy Guide, https://www.hud.gov/sites/documents/508FIN_CONSOL_GUIDE6_8_17.PDF.



Understanding HAP Contract Renewals, Opt Outs, and Terminations

Jessie Cassella
National Housing Law Project
April 19, 2018

Types of HUD “Multifamily” Housing Programs

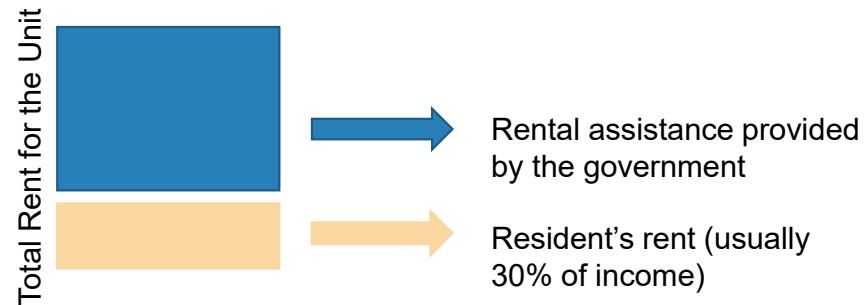
Mortgage Programs

- *Loans and mortgage insurance (with low interest rates) from HUD to private owners to build and manage affordable housing*
 - Loans include rent and use restrictions for a certain number of years (~40-50 years)
 - Ex: Section 236 program, Section 202 program



Rental Assistance Contracts

- *Contract between HUD/public housing authority and private owner to provide rental assistance for low-income residents*
 - Rental assistance supplements what the resident pays for rent
 - Ex: Project-based rental assistance, project-based vouchers, Moderate Rehabilitation program, Rent Supplement program, Rental Assistance Payment program



HAP Contract Renewals

Why is HAP contract renewal important?

- HAP contracts = usually 20-year term
 - Most owners are not required to renew HAP contract at the end of its term
 - Owner decision to renew or “opt out” of the HAP contract depends on variety of economic (rent levels) and non-economic (administrative burdens) factors
- HAP contract is critical to maintain resident rents and preserve affordable homes



Contract Renewal Options

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- Renew HAP contract for 1-20 years (at current rent)
- HUD “Mark Up to Market” program (5-20 years)
- HUD “Mark to Market” program
- Rental Assistance Demonstration (RAD) Component 2 (for Mod Rehab, Rent Supp, RAP, Section 202 PRAC properties only)



Refinancing Options

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- Many properties have growing repair needs, but few federal programs address them
- Options (capital and rental assistance) include:
 - Low Income Housing Tax Credits
 - Mark Up to Market
 - Rental Assistance Demonstration (RAD)
 - Project-Based Vouchers
 - Section 223(f) and Section 221(d)(4) mortgage insurance programs
 - State/local funds



HAP Contract Opt Outs

HAP Contract “Opt Out”

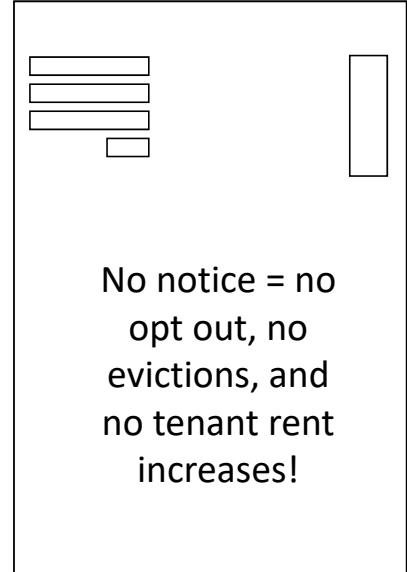
NATIONAL
HOUSING LAW
PROJECT

Contract “opt out” is when the owner decides *not to renew* the rental assistance contract when it *expires*



Notice Requirements

- Federal law requires that owners give a **1-year** written notice to *tenants and HUD* that the HAP contract is expiring
 - This notice **must** (see [HUD Section 8 Renewal Policy Guide](#)):
 - Clearly state the owner's intentions (to renew or not renew)
 - Be served directly to each unit in the property or mailed to each head of household
 - Be translated
- Owner must confirm with HUD their final decision **4 months before** the HAP Contract expires (renew or opt out)



No notice = no opt out, no evictions, and no tenant rent increases!

Opt Out = Enhanced Vouchers for Tenants

- If the contract is not renewed, federal law requires **Enhanced Vouchers** to be provided to tenants
- Enhanced Vouchers = Housing Choice Vouchers + additional tenant protections:
 - **Tenant right to remain**
 - EV tenant has the *right to remain* in their home, and the owner *must* accept the EV, as long as the property remains rental housing and has a reasonable rent
 - **Higher payment standard**
 - EV pays the difference between the tenant's rent and the *market* rent charged by the owner, even if that new rent is greater than the PHA's voucher payment standard
- If tenant moves, Enhanced Voucher becomes regular Housing Choice Voucher