



## **Frequently Asked Questions on the Section 8 Renewal Policy Guide**

October 30, 2015

### CHAPTER 1

### CHAPTER 2

1. When combining HAP Contracts that expire on different dates, are extensions allowed?

***Response:*** *To combine HAP Contracts that expire on different dates, you could either renew the earlier expiring contract with a Short Term Contract to align, or terminate the later expiring Contract to meet the earlier date. No contract extensions are allowed. (See Section 2-11)*

2. Is the Regulatory Agreement the only controlling document that limits distributions?

***Response:*** *Several controlling documents may limit the amount of distributions an owner can make to include the Regulatory Agreement, Section 8 Contract, and or Use Agreement. These documents vary from property to property and should be reviewed to determine any limits on distributions.*

3. Are Non-profits eligible for Option 2 Renewals?

***Response:*** *Yes. (See Section 2-1.B.)*

4. Can a Short Term Contract be implemented to meet the one year tenant notification requirement for Opt-Outs?

***Response:*** *Yes (See Section 2-8.A.1.)*

5. Can you please clarify that any contracts expiring after the effective date of the new Guide will have their contract expiration date moved to the end of the month? So for example we will if a contract expires on December 2, it would now expire December 31 and the contract will be renewed for the requested number of years and 29 days.

***Response:*** *That is correct. (See Section 2-7.A.6.)*

6. Do the asset management fees apply to all owner entities or only those with Section 42 LIHTC Low Income Housing Tax Credits?

***Response:*** *Asset management fees are only allowed if part of a tax credit transaction.*

7. If a budget includes a debt service line item and the mortgage is not FHA insured, can the Debt Service Coverage of 1.2 be recognized?

***Response:*** *Yes*

8. An example of the types of HAP Contract(s) that may have language that allows a discretionary comparability adjustment will be appreciated.

***Response: The Basic multiyear contract (HUD-9637) is the only contract that contains the language. (See Section 2-2.A.2.b.)***

9. Please clarify whether the RCS is to be adjusted by the OCAF factor published in the Federal Register, or the property-specific adjusted OCAF factor (line R of the OCAF Worksheet).

***Response: The published factor. (See Section 2-5.D.)***

10. Does the language in section 5.b(2)(c) of MUTM contract fit the criteria of allowing a discretionary comparability adjustment as stated in 2-1.A.1.b? Said another way, can a property with an expiring Option 1 contract with an RCS that shows they are above comps, have their rents reduced to market to renew under Option 2 (assuming it is exempt from Recap)?

***Response: No, owners cannot reduce rents at the project to below market just prior to renewal in order to qualify for MUTM. (See Section 2-1.A.1.b.)***

### CHAPTER 3

1. Do projects with **old** tax credits qualify for Option 1b? (i.e. tax credits that have been issued over 15 years ago)

***Response: No. Tax credit allocations only count if they are less than five years old (Section 3-6.B.3.)***

2. Can a nonprofit qualify to renew under MUTM?

***Response: If the project meets any of the three Discretionary criteria listed in Section 3-6 of the Guide, then they can qualify for MUTM. This section in chapter 3 and a corresponding section in Chapter 15 will be revised.***

3. If a project is planning on renewing under Option 1 and wants to use only the Owner's RCS and not a HUD RCS, and their current contract is going to expire before the new Section 8 Renewal Policy Guide's policies become effective, can they do so?

***Response: Yes, but the Owner's RCS needs to be conducted in accordance with Section 9-23 of the Guide and demonstrate that the proposed rents are below 140% of the Median Rent by Zip Code. .***

Can we stop ordering HUD RCSs now for Option One? What if we have already ordered the study?

***Response: Yes, but only if the appraiser is willing to complete the documentation in the Guide that shows that the rents are below 140% of median rent. If already ordered, do not cancel the order.***

4. Is a letter from the City describing the project's significance to the community no longer acceptable when evaluating whether a project qualifies for Option 1-B?

***Response: Correct. A letter from the city without some type of financial investment is not an acceptable form of showing community significance.***

5. Who's responsibility is it to review the Owner's RCS for Option 1?

***Response: The PBCA***

6. What if a RCS is submitted during the 90- day period for Option Two that we know the rents are above 140 percent?

***Response: The new guidance for RCSs does not go into effect until January 11, 2016, 150 days after publication. Until the rule is effective, continue to process under the existing guidance.***

7. What if the owner submits the RCS early in order to benefit from not having to comply with the 140% trigger?

***Response: Section 2-17.A.2 says cannot submit any earlier than 180 days before renewal.***

8. What if a package is not complete?

***Response: The new RCS guidance goes into effect on January 11, 2016. If the complete package is not received by that day, the new guidance applies.***

9. A housing authority occupying the status of a “public body corporate and politic” under the state legislation under which it was created, or\*” Must the owner submit legal counsel’s written verification with their Option 1 renewal packet to prove eligibility?

***Response: Yes (See Section 3-2.D.1.b.)***

#### CHAPTER 4

1. For a project that renews under Option 2, we understand that at the 6<sup>th</sup> year, rents are adjusted to match comparables in the market. What if the market has faced economic obstacles and marking the rents to comps actually decreases the current rents?

***Response: The rents must be reduced to market.***

2. Why has HUD added the phrase “at the discretion of HUD” to an owner’s option to seek a budget based rent increase under Option 2 and Option 4? It is not clear from where this new HUD discretion originates and this conflicts with the terms of the renewal contract at Section 6(b)(1)(ii) which states that the owner has the discretion to request a budget base a rent increase.

***Response: HUD has the discretion to review and approve any budget based rent increase request. (See Section 4-2.B.2 and Chapter 6; Page 4; Section 6-3A.2.d)***

#### CHAPTER 5

1. Are owners under a Watchlist contract required to submit monthly accounting reports for the entire three years term?

***Response: Yes.***

2. What role does the PBCA play in the processing of Watchlist contracts?

***Response: Recap will prepare the contract and forward to the PAE to disperse to the owner with instructions to execute the contract and forward to the PBCA and HUD for signatures. The PBCA will issue renewals for the 2<sup>nd</sup> and 3<sup>rd</sup> years, allowing for OCAF adjustments.***

3. Chapter 5 states “Full Mark-To-Market Renewal Contract must be subsequently renewed using the same Full Mark-To-Market Renewal Contract form (HUD-9642) used for the initial Full Mark-To-Market renewal.” This contract has changed over the years. Do we have to find the version that was in effect at the time of the initial full M2M contract? That could be challenging. Also, for several years, there was no place to put actual market rents on the Full M2M contract when the contract was renewed at exception rents. In those cases, there is no way for the CA to know that exception rents were used, and the new contract would be filled out incorrectly/incompletely. Maybe you should add something about checking with Recap if there was no section for listing market rents in the contract that is being renewed.

***Response: Full Mark-To-Market Renewal Contracts should be renewed using the most current Full Mark-To-Market Renewal Contract form (HUD-9642). In cases where there is no section regarding Market Rents on the contract to be renewed, the CA should contact Recap to verify usage of exception rents and obtain the market rent determinations that should be inserted to the renewal contract. (See Section 5-5.B)***

4. Chapter 5 instructs us to “refer to the 4350.1 and other guidance for policies and procedures that must be applied to all projects under the Watch List.” Can you be more specific? Has the 9/27/01 memo that the old policy referred to been replaced?

***Response: The 9/27/01 memo has not been replaced. Other guidance can be obtained in the Mark-To-Market Operating Procedures Guide (OPG). The major concern is to ensure that properties are carefully monitored in regards to operations and management, fiscal and physical positions, including provisions for long term capital needs. (See Section 5-6.C.)***

## CHAPTER 6

1. Does a 202 property lose Option 4 eligibility if they refinance a second time using conventional financing?

***Response: No. However, the 202 property would lose eligibility if they refinanced twice, both times using FHA insured financing. (See Section 6-4.)***

2. How would the CA know if there is a “written and signed Debt Service Savings Agreement?”

***Response: The owner needs to submit the document. (See Section 6-3.A.2. Note 2)***

3. Can an existing Option 4 contract (exception rents—above market) be early terminated and replaced with a 20 year Option 4 contract with above market rents. Until now the answer has been yes. The Guide suggests the answer has changed to no.

***Response: Owners of such project can terminate the contract early and renew for 20 years as part of a preservation transaction. Language in the Section 2-4 of the Guide will be revised to clarify.***

4. How are the Guide provisions regarding distributions for projects subject to a 202 Use Restriction to be understood in light of existing HUD policy which says something different?

***Response: Staff should follow the instructions in Notice 2013-17 for 202 projects. Language in Section 2-12.A.2.f. of the Guide will be revised to clarify.***

## CHAPTER 7

1. Can we require a Rent Comparability Study for Demonstration “Demo” Section 8 Contracts?

***Response: It depends on the type of contract and the length of the contract. If the owner has a multi-year “Basic” contract then you need to check the contract because it probably allows/requires a fifth year market adjustment and a RCS.***

## CHAPTER 8

1. Are Opt-Outs allowed prior to the end term of the HAP Contract?

***Response: No. Owner cannot unilaterally end contract early. However, HUD may abate and terminate in instances where the physical condition of the property warrants such action. By mutual consent, the Department can also terminate the contract to facilitate an 8bb transfer. (See Chapter 12).***

## CHAPTER 9

1. Can you please clarify that a “substantive review” is the same process as completing the Standard Checklist? It is unclear to us what the true difference is between completing the Standard Checklist and when to complete an Initial and Substantive Review.

***Response: The standard checklist contains two different sections. The initial and substantive reviews are contained in checklist one and two respectively.***

2. Do the provisions for a HUD RCS still only apply to Option One MUTM?

***Response: No the requirement for a HUD RCS applies to any RCS where the project’s median market rent exceeds 140 percent of the median gross rent for the project’s zip code (See Section 9-23)***

3. Question: An owner is using 75 percent of the FMR as a substitute for a RCS. When the owner requests a budget-based rent increase adjustment, will the ceiling rents be set at 75% of FMRs in effect at the time of the adjustment?

***Response: Yes. (See Section 9-5.A.4.)***

4. When the owner’s appraiser concludes that the study’s rents are above the 140% of median gross rent for the project’s zip code, must the PBCA’s appraiser conduct a substantive review of the owner’s RCS?

***Response: Yes. (See Section 9-23)***

5. Will HUD need to provide a 3<sup>rd</sup> party RCS for Chapter 15 transactions when the owner’s appraiser concluded that the study’s rents are over 140% median gross rent?

***Response: If either the “as-is” rent determination or the post-rehab rent determination exceed 140% of median, then yes, a third party study is necessary. If a third party RCS is required because the owner’s post-rehab median rents exceed the 140% threshold, the “as is” will not be adjusted by the HUD RCS and will still be used to determine eligibility for the renewal option. (See Section 9-23)***

CHAPTER 10

CHAPTER 11

CHAPTER 12

CHAPTER 13

CHAPTER 14

CHAPTER 15

1. Why can't post-rehab rents be used to determine eligibility?

***Response: All projects must qualify based on current market conditions.***

2. If a project is refinancing with conventional financing, could they still require full-debt servicing at closing? How can we verify?

***Response: Yes, proof from the lender that full debt service is required at closing is sufficient.***

3. Is Chapter 15 the only way to get post-rehab rents?

***Response: Yes. A renewal occurring under Option One or Option Two without using Chapter 15 does not qualify for after-rehab rents.***

4. Is the February 22, 2010 Carol Galante memo titled “Waivers to the Section 8 Regulations and the Section 8 Renewal Guide” and the August 28, 2014 Benjamin Metcalf memo titled “Delegation of Waiver Authority For Certain Portions of the Section 8 Renewal Policy Guide” no longer required in certain transactions because of the following revisions codified in Chapter 15 of the new Guide?

***Response: Correct, these waivers are no longer required. You can stop processing them now.***

5. Please clarify whether the 10% restriction on rents for unassisted units applies to all unassisted units, or only those covered under one of the enumerated types of “other HUD subsidized units.” Does the 20-yr Ch. 15 Use Agreement give us the right to restrict units not covered under any other type of existing HUD agreement?

***Response: The Chapter 15 Use Agreement does not give HUD any authority over the non-Section 8 units. We only have authority over the HUD-assisted units. (See Section 15-7)***

6. If a non-FHA insured property with an expiring Option 4 contract was above market and wanted to renew under Option 2 and reduce their rents to market, could they do that? Or would the expiring contract have to be an Option 2 contract (which has the language about discretionary comparability adjustment)?

***Response: The contract has to contain the language about discretionary comparability adjustment. (See Section 15-5.C.3.)***

7. If an owner has two contracts, one is pre-universe and one is post-universe, the only way to combine is to go through the steps outlined in the recent memo. Does the owner HAVE to go through that process, since the memo says combining is not required?

***Response: For Chapter 15 the Guide says must combine, if possible. (See Section 15-5.D.)***

## GENERAL QUESTIONS

1. If a provision is not in the Use Agreement, but it is in the Plan of Action, what do we do?

***Response: The Use Agreement prevails over the Plan of Action. However, if the information is not listed in the Use Agreement, the Plan of Action is the guiding document.***

2. If a project has an existing Use Restriction affecting rents (for ex. a LIHTC LURA), and applies for a renewal under another chapter of the Guide OTHER than Ch. 15, do we assume that the rents are capped at the use-restricted levels? If yes, is there a waiver available to exceed the restricted levels outside of Ch. 15? Are there any circumstances in which a project that has tax credits would like to renew under one of the options of the Section 8 Renewal Policy Guide, but the rents would be capped by tax credit restrictions? Or do HUD rents always trump any tax credit use restriction?

***Response: No, market rent estimates in the RCS do not have to be capped at the Tax Credit use restricted level.***

3. Who is responsible for ensuring that Use Agreements are tracked?

***Response: The Senior Account Executive or the Account Executive assigned to the property should ensure that the Use Agreement is entered into IREMS Asset Management Section. This can be found through the "Servicing" link and Use Restriction List TAB.***

4. What whole number should be placed on the preservation exhibit, if the expiration term is less than 1 year or 1 year and two months remains?

***Response: For projects with contracts that have say 6 years five months and 29 days, round down to six years. For those projects with contracts that have 6 years and seven months round up to seven years. For projects with 6 months or less left, no preservation agreement is needed. For those with more than six months left round up to one year.***