

**CITIZENS HOUSING & PLANNING ASSOCIATION (CHAPA)  
COMMUNITY ECONOMIC DEVELOPMENT ASSISTANCE CORPORATION  
(CEDAC)  
LOCAL INITIATIVES SUPPORT CORPORATION (LISC)**

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**RENEWAL OPTIONS FOR  
EXPIRING PROJECT-BASED SECTION 8 CONTRACTS**

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On January 19, 2001, HUD published "Section 8 Renewal Policy: Guidance for the Renewal of Project-Based Section 8 Contracts,"<sup>1</sup> based on permanent statutory authority provided in the FY00 HUD Appropriations Act.<sup>2</sup> These rules supersede all prior contract renewal notices and will govern expiring contracts under the jurisdiction of the Office of Multifamily Housing until further notice.

**GENERAL RULES**

- A. Applicability.** The HUD rules apply to all project-based contracts (except for PHA/Mod Rehabs, PHA/ Section 8 Project-Based Vouchers or Certificates, former Section 23 contracts, and contracts administered by the Office of Community Planning and Development, CPD), *at the point of contract expiration*. Units covered by a contract (or stage related to the original construction phasing) that has not yet expired will continue to be governed by the rules applicable to that contract.
- B. Owner Options.** When the contract expires, the Owner may be eligible for one or more of the following options (depending on the type of project and rent level):
- 1. Mark Up to Market:** increase rents to comparable market levels--either automatically (for certain owners and non-profit purchasers), or with a HUD HQ waiver.
  - 2. Regular Renewal:** renew at current rents adjusted by an Operating Cost Adjustment Factor (OCAF)<sup>3</sup> or a budget-based increase, not to exceed comparable market rents. For non-profit owners, this option may include a budget-based increase to finance capital repairs.
  - 3. OMHAR Renewal:** for HUD-insured projects, renew at rents reduced from above-market to comparable market levels, with debt restructuring (*Mark-to-Market*) or without

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<sup>1</sup>Available on the web at <http://www.hud.gov/fha/mfh/exp/guide/S8guide.html> (including periodic updates).

<sup>2</sup>The Preserving Affordable Housing for Senior Citizens and Families Into the Twenty-First Century Act of 1999, Titles II and V of the HUD FY00 Appropriations Act, PL 106-74, October 20, 1999; amending S. 524 of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA).

<sup>3</sup>The OCAF increase is applied to the gross rents minus debt service attributable to the units covered by the expiring contract. For FY01, the OCAF for Massachusetts is 2.64%; see Attachment 6 of the Renewal Guide for other states.

(*OMHAR-Lite*). These renewals must be approved by HUD's Office of Multifamily Housing Assistance Restructuring (OMHAR).

4. **Exception Project Renewal:** for non-insured and certain other projects, renew at the lesser of current OCAF-adjusted rents or budget-based rents (without a market cap).
  5. **Preservation or Demonstration Project Renewal:** for projects funded under the federal preservation programs (ELIHPA or LIHPRHA<sup>4</sup>) or participating in HUD's Portfolio Reengineering Demonstration Programs, special rules apply.
  6. **Opt Out:** terminate the project-based contract and convert to tenant-based assistance.
3. **Owner Request.** The Owner must initiate the request to renew or terminate the contract at least 120 days prior to the contract expiration date. The Owner must submit:
- a completed Owner's Checklist and Worksheet for the selected option (Attachments 3A&B);
  - a Rent Comparability Study (RCS) prepared in accordance with HUD requirements (Chapter 9), at the initial renewal if applicable;
  - a current budget or budget-based rent increase application, if applicable; and
  - any other information required for the selected option.
4. **Initial and Subsequent Renewals.** Initial and subsequent renewals of a project-based contract are processed differently. Generally, the *initial renewal* is the first renewal of a project's contract or stage that is processed under MAHRA rules, and the *subsequent renewal* is any renewal after the initial renewal.
5. **Rent Comparability Study.** A Rent Comparability Study (RCS) is required for options (other than OMHAR renewals) that cap rents at comparable market levels, i.e. Options 1 & 2, and in some other cases; see below. Most Owners submitted (or will submit) a RCS at the initial renewal.

The RCS must be based on current data (collected within 90 days of the appraiser's letter) and is valid for 5 years. During the 5-year life cycle, all subsequent contract renewals (and/or rent adjustments during the term of a multiyear contract) are covered by the original RCS, with OCAF-adjusted comparable market rent caps. Other contracts (or stages) in the project may also be covered if the original RCS included all Section 8 unit types.

HUD may require one RCS update during the 5-year period and may adjust rents up or down.

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<sup>4</sup>The Emergency Low Income Housing Preservation Act of 1987 (Title II) or the Low Income Housing Preservation and Resident Homeownership Act of 1990 (Title VI).

- 6. Contract Term.** Contract renewals will generally be for one, five, or up to twenty years, depending on the renewal option. For some renewal options the contract term is mandated by statute (5 years minimum for Mark-Up To Market and one year for preservation projects; see below). In some cases, HUD may require, or the Owner may request, a long-term contract, e.g. to match a long-term use restriction on the property. *All contracts, after the initial year, are subject to annual appropriations.*

Subject to any mandatory term requirements, contracts will generally be aligned with the 5-year RCS life-cycle. Thus, if an Owner voluntarily requests a 5-year contract but a RCS was submitted one year ago with the initial renewal, the subsequent renewal contract would probably be for 4 years. In some cases, the Owner may be permitted to submit an updated RCS during the 5-year period.

Short-term contracts of less than one year may be provided, at HUD's discretion, to facilitate opt-outs, to transition to Mark-to-Market or Mark Up to Market, or to align the expiration dates of multiple contracts or stages. Any applicable OCAF adjustment will be prorated. HUD encourages owners to combine or align multiple contracts or stages expiring in the same fiscal year, either through a short-term renewal of the earlier stage or an early termination of the later stage.<sup>5</sup>

- 7. Contract Rents & Rent Adjustments.** Initial contract rents are determined by the specific rules of each renewal option. Rents are adjusted at the subsequent renewal (or, in the case of a multiyear contract, annually during the contract term) on a budget-basis or by OCAF, depending on the applicable rules. A proportionate amount of any OCAF adjustment must be applied to the project's annual replacement reserve contribution. Application of the OCAF factor may not result in a negative rent adjustment.
- 8. Disqualified Owners/ Enforcement Properties.** HUD may refuse to renew a contract if the Owner has engaged in adverse management or financial practices, with respect to any subsidized property in its portfolio. HUD may also refuse to renew the contract if serious physical problems exist that threaten residents' health and safety, unless the Owner has submitted, and is complying with, a viable remediation plan.

The Owner must receive written notice of a proposed contract termination and may appeal within 30 days. HUD is required to utilize all available resources to restore full compliance, including a proposed sale to a new Owner. HUD must make every effort to ensure that vouchers are in place prior to a contract termination, including issuance of short-term contracts.

- 9. Tenant Notice.** Tenants and HUD must be notified in writing of the owner's future intent to opt-out or renew, at least one year prior to the date of contract expiration or termination. For a one-year contract, the notice must be sent at the time of contract execution. For a multiyear contract, the notice must be sent one year before the expiration date (i.e. 4 years after execution of a 5-year contract). If the Owner fails to give proper notice, the tenant's rent payment cannot be

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<sup>5</sup>However, Section 8 contracts executed before and after October 1, 1981 cannot be combined due to conflicting income eligibility requirements.

increased during the required notification period.

The Notice must state that tenants have a right to remain at the property, as long as is available for rental use and the rent charged is reasonable, as determined by the PHA. The owner may terminate tenancies only for cause under federal, state, and local law.

- 10. Tenant Protections.** HUD will provide tenant-based vouchers to all eligible residents (with incomes at or below 80% of area median) covered by a project-based contract that is not renewed.<sup>6</sup> For opt-outs and projects "vouchered out" in conjunction with Mark-to-Market restructuring, vouchers will be at "enhanced" (market) levels for tenants who elect to remain in their units. For contracts terminated due to HUD enforcement action or foreclosure, vouchers will generally be at the regular payment standard (FMR or exception rent), with exceptions on a case-by-case basis where necessary to enable residents to remain in the housing.
- 11. Administration.** HUD is currently in the process of contracting out its Section 8 contract administration functions to state and local government agencies.<sup>7</sup> The HUD Contract Administrator (CA) will assume many of the duties previously carried out by the HUD field office including rent comparability review, budget review, rent increase processing, and contract preparation. HUD will retain final authority for budget-based rent increase approvals, waivers, OMHAR approvals, and contract termination decisions. Although not a signatory to the contract, HUD is legally bound by provisions of the renewal contract that specify HUD's role.

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<sup>6</sup>If the opt-out occurs in conjunction with the prepayment of a subsidized mortgage (or termination of mortgage insurance), residents who are elderly, disabled, or living in a low vacancy area are eligible for enhanced vouchers with incomes at or below 95% of area median.

<sup>7</sup>The Massachusetts Housing Finance Agency (MHFA) is assuming responsibility for most project-based Section 8 contracts in Massachusetts.

## CONTRACT RENEWAL OPTIONS

### Option 1: Mark Up to Market

#### *Regular Program: For-Profit or Limited Dividend Owners*

- **Description.** This Option is designed to encourage for-profit owners in strong market areas to remain in the Section 8 program. Rents may be marked up to comparable market rents, capped at 150% FMRs (except with a waiver; see below).
- **Automatic Eligibility.** The project is automatically eligible if it has:
  - comparable market rents at or above 100% of FMRs;
  - a HUD REAC (Real Estate Assessment Center) score of at least 60, with no urgent health and safety violations outstanding;
  - no low or moderate income use restriction that cannot be unilaterally terminated by the Owner. Common types of restrictions are those associated with a HUD Flexible Subsidy loan, a Preservation Use Agreement, or, in Massachusetts, a Chapter 121A tax contract, zoning restriction, or urban renewal land disposition agreement. *Note:* the Owner's Checklist includes a certification that there are no such use restrictions.
- **Discretionary Eligibility.** Owners who are not automatically eligible for Mark-Up to Market (or who seek rents exceeding the 150% FMR cap) may still be eligible on a discretionary basis. These renewals require prior HQ approval, based upon the field office's recommendation. To qualify for discretionary approval, the project must:
  - have a vulnerable population: at least 50% elderly, disabled, or large (5+ person) families;
  - be located in a low-vacancy area (less than 3%) where vouchers are difficult to utilize; and/or
  - constitute a high priority for the local community, as demonstrated by a contribution of state or local funds to the property (tax abatements, rehabilitation grants, etc.);

For projects with low or moderate income use restrictions, HUD will permit rents to be marked up only to the use-restricted level (and will typically renew the contract for the remaining term of the use restriction).

*Note:* if a project with a subsidized mortgage is not prepayment-eligible, it is not eligible for the regular Mark Up to Market program on either an automatic or discretionary basis. This category includes projects with original non-profit owners and some Flexible Subsidy projects (but see Non-Profit Transfers, below).

- **Initial Rents.** HUD will determine the initial rents based on market studies completed by the

Owner and HUD. In addition to the 150% FMR rent cap, rents for Section 236/ BMIR/ 515 projects will generally be reduced by the value of the actual or imputed mortgage subsidy, with some exceptions.<sup>8</sup>

- **Contract Term.** The minimum contract term is 5 years, and up to 20 years for use-restricted projects. Prepayment of Section 236 and Section 221(d)(3) BMIR mortgages is prohibited during the contract term, except as part of a transaction to preserve affordability. There is no renewal obligation after the initial term.
- **Rent Adjustments.** During the contract term, rents will be OCAF-adjusted up to the market rent cap, which is also OCAF-adjusted. Rents will be re-adjusted to market (up or down) every 5 years based on the new RCS.
- **Non-Section 8 Units.** The mark-up will apply only to those units covered by the expiring Section 8 contract(s) and not to non-Section 8 units, units covered by continuing contracts, or units occupied by Section 8 voucher-holders.
- **Distributions.** Owners of Section 236, 221(d)(3) BMIR, and 515 projects that have partial Section 8 assistance will receive the increase in Section 8 rents as an additional distribution, on top of their original allowable dividend. Owners of all other Section 8 projects participating in the regular Mark Up to Market program will receive unlimited distributions. A minimum REAC score of 60 is required to take distributions.

*Note:* any state or local restrictions on Owner distributions in units subject to mark-up (other than in state-financed projects) are preempted, unless the Owner voluntarily agrees to forego the preemption.

- **When Available.** Rents may be marked up upon contract expiration, or *at any time* during the term of a MAHRA contract (subject to a replacement contract).

#### *Non-Profit Transfers ("Safe Harbor" Rules)<sup>9</sup>*

- **Description.** This option is designed to facilitate ownership transfers to non-profit purchasers. Rents may be marked up to comparable market rents, capped at 150% FMRs (except with a waiver; see below).

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<sup>8</sup>For Section 236 and 515 properties, the actual amount of annual interest reduction subsidy is used. For 221(d)(3) BMIR projects, the mortgage subsidy is computed by multiplying the outstanding mortgage balance by the difference between an imputed market interest rate of 7% and the subsidized interest rate (typically 3%).

Some exceptions may be made for projects refinancing under the Section 236 "decoupling" program that need significant repairs or are located in areas with lower market rents, as long as rents are computed on a budget basis. This approach is not available for transactions involving equity takeout by an existing owner, or for ownership transfers at an above-market price.

<sup>9</sup>For transactions complying with the "safe harbor" rules, the mark-up can be approved by the HUD field office. In all other cases, a HQ waiver is required.

- **Eligibility.** Non-Profit purchasers are **exempt** from the regular Mark-Up to Market eligibility criteria (i.e. projects can have comparable market rents that are less than 100% FMR, any REAC score, or low and moderate income use restrictions). However, the purchaser/ sponsor must have:
  - a non-profit charter under state law;
  - 501(c) tax-exempt status (except for limited-equity cooperatives or projects where such status was not previously required to participate in a HUD program);
  - previous ownership or management experience with affordable multifamily housing;
  - community ties (a national or regional non-profit may joint venture with a local non-profit, or secure majority tenant support);
  - a resolution of the Board of Directors authorizing any debt in addition to the HUD mortgage;<sup>10</sup>
  - no unresolved audit findings; and
  - no "identify of interest" relationship with the current owner (such as overlapping directorships).

*Note: a non-profit controlled limited partnership may elect to proceed either as a non-profit purchaser under the Non-Profit Transfer program or, if eligible, under the regular Mark-Up to Market program.*

- **Waivers.** Non-profit purchasers seeking market comparable rents in excess of the 150% FMR cap must meet one of the three criteria required for discretionary participation in the regular Mark Up to Market program (see above).<sup>11</sup> HQ approval is also required for any other departure from the "safe harbor" rules. In addition, non-profits acquiring projects with certain types of financing must request a regulatory waiver to receive an annual distribution (see below).
- **Initial Rents.** HUD will determine the initial rents based on market studies completed by the buyer and HUD. In addition to the 150% FMR rent cap, rents for Section 236/ BMIR/ 515 projects will generally be reduced by the value of the actual or imputed mortgage subsidy (with exceptions as noted above).
- **Contract Term.** The minimum contract term is 20 years. HUD will also require a Use Agreement that extends any existing federal affordability restrictions applicable to the property for 20 years.

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<sup>10</sup>The Notice does not modify HUD's standard requirements for secondary financing (e.g. payment of debt service out of surplus cash only; no foreclosure).

<sup>11</sup>The waiver criteria for this option reflect slight variations from the regular Mark Up to Market program. For example, the required vacancy rate is 3% or less. The state or local funding contribution requires a *minimum 25% match*. It is not clear whether these differences are intentional.

- **Rent Adjustments.** During the contract term, rents will generally be OCAF-adjusted up to the market rent cap, which is also OCAF-adjusted. Rents will be re-adjusted to market (up or down) every 5 years based on the new RCS.
- **Non-Section 8 Units.** Rents in any non-Section 8 units *may not be increased* as a result of the purchase transaction (but may be increased for operating costs or rehab costs; see Non-Profit Owners: Capital Needs Program, below).
- **Distributions.** Pending a HUD regulatory change, non-profit purchasers of Section 236 projects and Section 8 New Construction or Substantial Rehabilitation projects (whether HUD-insured or HFA-financed) must apply for a *regulatory waiver* to receive a distribution equal to 6% on initial equity.<sup>12</sup> *Note:* this requirement does not apply to non-profit controlled limited partnerships, non-profit purchasers who prepay the Section 236 mortgage (without IRP retention), or non-profit projects subject to preservation use agreements which include approved distributions. The distribution may be used for the benefit of the project, for debt service on secondary financing, or for other purposes consistent with the non-profit's organizational charter.
- **When Available.** Same as above.

## **Option 2: Regular Renewal**

### *All Owners*

- **Description.** This option permits routine renewals for projects with rents that do not exceed comparable market levels. Owners may renew at current rents adjusted by OCAF or on a budget basis, at the Owner's option, subject to a market comparable rent cap.
- **Eligibility.** All projects with below-market rents. In addition, projects that are not eligible for OMHAR Renewal ("exception projects") but have above-market rents can proceed under this Option by voluntarily reducing rents to market.
- **Contract Term.** At least 1 year, but may be any length.
- **Rent Comparability Study.** A RCS is generally required to demonstrate that proposed rents do not exceed comparable market levels. However, an Owner may request Regular Renewal without a RCS if:
  - the proposed rents are less than 75% of the FMRs; or
  - the proposed rents will not exceed average rents paid for at least three months by tenants occupying substantially identical market units in the same property. The market units must constitute at least 25% of each unit type which is covered by the proposed Section 8

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<sup>12</sup>It is not clear whether this category also includes Section 221(d)(3) BMIR projects.

increase.

- **Rent Adjustments.** Rents will be annually adjusted by OCAF or on a budget basis at the Owner's option, subject to the OCAF-adjusted market rent cap. The market rent cap will be re-adjusted to market (up or down) every 5 years based on the new RCS.
- **Subsequent Renewals.** Subsequent renewals may be under any applicable option. However, "exception projects" with initial renewals under Regular Renewal may not revert to exception project status at a subsequent renewal.

*Non-Profit Owners: Capital Needs Program ("Safe Harbor" Rules)<sup>13</sup>*

- **Description.** This Option is designed to facilitate repairs by non-profit owners. Eligible owners may renew with a budget-based rent increase to finance capital repairs. Rents cannot exceed comparable market rents, capped at 150% FMRs and generally reduced by the value of any mortgage subsidy (with exceptions as noted above).
- **Eligible Uses of Funds.** The funds may be used for capital improvements, including debt service on a rehabilitation loan or increased replacement reserve funding. Additionally, non-profit owners may request a *regulatory waiver*, if needed, to receive a 6% allowable return on initial equity (see Mark Up to Market/ Non-Profit Transfers).

*Note:* the Capital Needs program offers an additional option to non-profits and does not replace any existing options. Any non-profit owner with an expiring contract may seek a "regular renewal" under Option 2 to fund budget-based increases for repair costs and replacement reserve contributions that are attributable solely to the Section 8 units. However, a regular renewal does not provide increases for rehab debt service or for costs attributable to the non-Section 8 units in a partially-assisted project, i.e. rents cannot be "skewed" (as effectively permitted by Mark Up to Market).

- **Eligible Projects** must have a REAC score of at least 30.
- **Eligible Owners** must:
  - be organized as a non-profit under state law;
  - have 501(c) tax-exempt status (except for limited-equity cooperatives or projects where the non-profit owner was not previously subject to this requirement);
  - be in good standing and in compliance with the Regulatory Agreement, with no unresolved audit findings; and
  - be current on all obligations (or current under a Workout agreement).

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<sup>13</sup>For transactions complying with the "safe harbor" rules, the contract renewal can be approved by the HUD field office. In all other cases, a HQ waiver is required.

*Note: a non-profit controlled limited partnership may seek to fund repairs as a non-profit owner under the Capital Needs program, or may elect to proceed under the regular Mark-Up to Market program (see above), if eligible.*

- **Initial Renewal Rents.** HUD will determine the initial rents based on market studies completed by the Owner and HUD. Since rehabilitation is scheduled, initial rents are the *post-rehabilitation* market comparable rents (capped at 150% FMRs and generally reduced by the value of any actual or imputed mortgage subsidy, if applicable, with exceptions as noted above). For projects involving substantial rehab with a construction loan, the new rents will not be effective until rehab is completed.
- **Contract Term.** The minimum contract term is 20 years. HUD will also require a Use Agreement that extends any existing federal affordability restrictions applicable to the property for 20 years.
- **Rent Adjustments.** During the contract term, rents will be OCAF-adjusted subject to the OCAF-adjusted market rent cap. The market rent cap will be re-adjusted to market (up or down) every 5 years based on the new RCS.
- **Non-Section 8 Units.** Rents in the non-Section 8 units may be increased up to 10%.
- **Waivers.** The 150% FMR rent cap may be waived upon recommendation of the field office if the project meets one of the three criteria required for Non-Profit Transfers (see above). HQ approval is also required for any other departure from the "safe harbor" rules. In addition, certain non-profits must request a regulatory waiver to receive an annual distribution (see above).
- **Submission Requirements** include:
  - a proposed budget showing the need for the rent increase;
  - a financing plan - non-profit controlled limited partnerships must contribute at least 10% of the estimated Year 1 repair costs from sources other than project funds;
  - an estimate of initial deposit to reserves and monthly contributions required over the next 10 years;
  - a Project Capital Needs Assessment prepared in accordance with HUD guidelines (or a Comprehensive Needs Assessment updated within the past 12 months); and
  - a resolution of the Board of Directors authorizing the additional rehab debt, if applicable.<sup>14</sup>
- **When Available.** Rents may be increased upon contract expiration, or *at any time* during the term of a MAHRA contract (subject to a replacement contract).

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<sup>14</sup>The Notice does not modify HUD's standard requirements for secondary financing (e.g. payment of debt service out of surplus cash only; no foreclosure).

### **Option 3: OMHAR Renewals**

- **Description.** This Option permits restructuring of rents and mortgages in certain projects with above-market rents. Owners can renew at rents reduced from above-market to comparable market levels, with debt restructuring ("*Fulls*") or without ("*Lites*"). These renewals will be processed by state and local agencies and other entities under contract to HUD as Participating Administrative Entities (PAEs), with OMHAR approval.<sup>15</sup>
- **Eligibility.** Above-market projects with expiring project-based Section 8 contracts *and* HUD-insured or HUD-held mortgages.<sup>16</sup> Contracts expiring in future years may be considered on a case-by-case basis, at the Owner's request.
- **Contract Term:** During processing, interim contracts are provided for 12 months (Fulls) or 6 months (Lites), with extensions granted on a waiver basis. After approval of the restructuring plan, contracts are available as follows:
  - **Fulls:** up to 20 years, not to exceed the remaining term of the restructured HUD mortgage.
  - **Lites:** 1 - 5 years.
  - **Potentially troubled projects:** where owners refuse to execute restructuring commitments, 1 year (subject to monthly HUD monitoring of project financial and physical conditions and owner/manager performance).
- **Rent Adjustments.** For full debt restructurings, HUD's current policy is that rents will be annually adjusted by OCAF with no market cap. For Lites, see Regular Renewal (Option 2).
- **Use Restrictions.** For full debt restructurings, the Owner must accept Section 8 renewals or maintain tax credit affordability (rent and income restrictions for 20% or 40% of the units) for 30 years.

### **Option 4: Exception Project Renewals**

- **Description.** This Option permits Owners to maintain above-market rents that are justified on a cost basis. Owners may renew at *the lesser of*: 1) current OCAF-adjusted rents; or 2) budget-based rents. Rents are not subject to a market or 150% FMR cap.
- **Eligibility.** Projects ineligible or exempt from OMHAR renewals, i.e.
  - projects with state or local government financing, including those with HUD mortgage insurance where debt restructuring is determined to conflict with laws or agreements

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<sup>15</sup>In Massachusetts, MHFA has been designated as the PAE for most projects.

<sup>16</sup>Except for HUD-insured mortgages financed by a state/local government agency where debt restructuring conflicts with laws or contracts that govern the financing.

governing the financing;

- Section 202/8 or Section 515/8 projects (unless refinanced with HUD mortgage insurance);
  - Section 8 Mod Rehab SROs;
  - projects with conventional or other non-insured financing; and
  - projects with HUD-insured or HUD-held mortgages that have below-market rents.
- **Contract Term.** At least 1 year, but may be any length.
  - **Rent Adjustments.** Rents will be annually adjusted by OCAF or on a budget basis at the Owner's option, *with no market cap*.

*Note:* the "lesser of" requirement (see above) applies only to the initial renewal rent. Budget-based rents include debt service on the original HUD mortgage (whether or not refinanced), plus the allowable dividend as determined by HUD (6-10% on original equity).

- **Subsequent Renewals.** Subsequent renewals may be under any applicable option (e.g., Options 1 and 2 if proposed rents do not exceed market).
- **Rent Comparability Study.** The Owner must submit a RCS only if the project is HUD-insured or -held with below-market rents (to document eligibility for this Option).

### **Option 5: Preservation and Demonstration Project Renewals**

#### ***Preservation Projects***

- **Description.** This Option permits Owners who participated in the federal Preservation programs to continue to receive the benefits promised in their contractual agreements with HUD. Owners may renew in accordance with the terms of the existing Use Agreement, with contract rents above- or below-market. Preservation projects are now exempt from Mark to Market.
- **Eligibility.** Projects preserved under ELIHPA and LIHPRHA.
- **Contract Term.** One year only, based on a current statutory limitation.
- **Rent Adjustments.** As required by the existing Use Agreement.
- **Use Restrictions.** Owners may not opt-out of their Section 8 contracts unless permitted by the Use Agreement. If opt-out is permitted, the Owner must demonstrate how the required income and rent profile will be maintained.

#### ***Demonstration Projects***

- **Description.** This Option also permits owners who participated in the Portfolio Reengineering

Demonstration Program to renew on terms consistent with their original agreements. Projects with restructured debt or rent reductions may renew at OCAF-adjusted rents. For all others with executed use agreements and above-market rents, OMHAR may approve exemptions from debt restructuring on a case-by-case basis at the Owner's request.

- **Eligibility.** Projects participating in HUD's Portfolio Reengineering Demonstration Programs.
- **Contract Term.** 5 years.
- **Rent Adjustments.** Rents will be OCAF-adjusted for four years.
- **Subsequent Renewals.** Subsequent renewals will be subject to a market cap, based on a RCS. Owners may renew under Regular Renewal or Mark Up to Market, if applicable.
- **Use Restrictions.** Per Demonstration Agreement, if applicable. Generally, Owners may not opt-out under a Demonstration Agreement.

#### **Option 6: Opt Out**

- **Description.** The Owner may terminate and not renew the contract upon expiration. Eligible tenants will receive enhanced preservation vouchers.
- **Eligibility.** Any Owner may elect this option, unless precluded by the terms of an existing restriction.
- **Requirements.** The Owner must notify tenants and HUD at least one year before contract termination or expiration. The Owner must inform HUD of its election to opt-out at least 120 days before contract termination or expiration.