



Understanding How to Maximize Your Section 8 Contract

The [Section 8 Renewal Policy Guide](#) provides comprehensive guidance for renewing expiring Section 8 project-based contracts. Each Section 8 contract is renewed pursuant to the Multifamily Assisted Housing Reform and Affordability Act (MAHRA) and rents are adjusted either with an automatic Operating Cost Adjustment Factor (OCAF) or budget-based rent adjustment. Contracts are renewed and rents are adjusted using various renewal options. To respond to the evolving nature of Section 8 renewal legislation and policy, the individual sections within the guide are updated as needed.

The guide is available on the web at: http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_14528.pdf.

HUD Approach to Long-Term Housing Assistance Payment Renewal

HUD promotes long-term renewal of Section 8 Housing Assistance Payment (HAP) contracts. The key points in the current Section 8 Renewal Guide are:

- Owners may generally request 20-year contract renewals to assist in preserving affordable housing.
- HUD Field Offices should suggest that owners request the *longest possible term* for their Section 8 contract renewals (typically 20 years).
- HUD and an owner may agree to an early termination of a HAP for the purpose of renewing for twenty years - see below for more details.

Generally, the maximum term of a Section 8 contract is twenty years. The exception is with a property with an existing Use Agreement that controls the renewal options available to the owner (examples include ELIHPA and LIHPRHA properties). In this case, the maximum term of the contract is the lesser of twenty years or the remaining term of the use agreement.

Benefits of 20-Year Contract Renewal Benefits

A 20-year contract provides stability in rental income and protection from vacancies or other volatility in the housing market. The stable 20-year income stream is typically required by lenders and LIHTC investors, in order to make the property meet financing standards needed to raise capital for rehabilitation loans. Benefits include:

- Preserved long-term affordability of Section 8 properties
- Reduced processing time and annual paperwork
- Annual rent increases and potential to receive increased distributions



- Ability to secure financing for needed repairs & remodeling
- Stable long-term income stream

Executing a New 20-Year Contract

HUD may be able to terminate an existing Section 8 contract for the purpose of executing a new 20-year contract. The owner must agree to execute a 20-year contract that includes a “preservation exhibit” stating they will add the years remaining on the current contract to the end of the new 20-year contract term.

Cases in which this is possible include:

- An original contract that has not yet renewed under MAHRA, where there are just a few years left on the contract; or
- A MAHRA renewal contract in the midst of a multi-year term, where the owner is doing a long-term preservation transaction.

Example: An owner with 2 years remaining on their current contract would execute a new 20-year contract + the 2 years left in their existing contract = 22 years total.

How to Apply for a 20-Year HAP Renewal: Expiring HAP Contracts (Typical Renewal)

1. Complete the following documents:
 - a. Contract Renewal Request Form ([Form HUD-9624](#)): Select the desired option and specify a period of twenty years. Forms and instructions at: http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/mfhsec8
 - b. Accompanying documents: Please check with your Performance-Based Contract Administrator (PBCA) or Traditional Contract Administrator (TCA) for a list of required documents, depending on the option you choose.
2. Submit the cover letter and all necessary accompanying documents to the PBCA/TCA or to your HUD project manager.
3. For most renewal options, you will also be required to submit a Rent Comparability Study.
4. If you are requesting a Budget-Based Adjustment (BBA), you will also need to submit an operating budget.
5. If you are obtaining a new loan for the property, you will include the estimated new debt service in the budget-based rent calculation.

Required Documents for HAP Contract Renewals

1. Owner’s cover letter stating the purpose of the proposal
2. Attachments of the supporting documents:
 - a. Attachment 3A - Contract Renewal Request [Form HUD 9624](#), owner’s option
 - b. Owner’s Rent Comparability Study (if applicable)
 - c. A budget worksheet, [Form HUD 92457-A](#), and explanation for increase in expenses over 5% or \$500
 - d. A signed request for an increase in the Reserve for Replacement if needed. See Appendix 6 of [Form HUD 4350.1](#).



- e. A notice to tenants to renew contract delivered to them one year ago
- f. Utility analysis
- g. If requesting a budget-based rent adjustment (BBA), tenant notice of a 30-day rent increase proposal to HUD
- h. If requesting a BBA, owner's certification as to compliance with tenant comment procedures in 24CFR 245

Is Rent Comparability Study Required?

- Whether or not a Rent Comparability Study is required will depend upon the renewal option selected. General Guidelines:
 - Mark-Up-to-Market: Yes
 - Mark-Up-to-Budget: Yes

Please follow-up with your PBCA, TCA, or HUD Project Manager for details affecting your specific property.

Mark-Up-to-Market Program Overview

This is a critical preservation tool for both owners and HUD. Originally introduced in June 1999, it became permanent under Section 524(a)(4)(A) of the Multifamily Assisted Housing Reform and Affordability (MAHRA) Act in 2000. Owners can obtain a rent increase up to comparable market-rate rent levels for all units covered under a project-based Section 8 contract. Key features:

- Owners can benefit from access to increased distributions.
- It is an effective tool to recapitalize and preserve properties as affordable housing.
- For market rents, owners are not required to submit budgets to HUD.
- Chapter 3 of the Section 8 Renewal Guide, published in May, 2012, provides the latest guidance on this program.
- You can request a Mark-up-to-Market at any time during a contract term. You do not have to wait for contract expiration.

Mark-Up-to-Market Eligibility Criteria (Option One A)

1. A Section 8 contract that has received its initial renewal under MAHRA or is renewing under MAHRA for the first time
2. A Real Estate Assessment Center (REAC) physical inspection score of at least 60 and no Exigent Health and Safety (EH&S) deficiencies. HUD may waive the REAC score requirement if the proposed work will rectify deficiencies, per [8-28-2014 Multifamily DAS memorandum](#).
3. Ownership that is a profit-motivated or limited distribution entity
4. Market comparable rents that are at or up to 100% of the FMR
5. Free from low-and moderate-income use restrictions that cannot be eliminated by unilateral action by the owner (for example, Rent Supplement Contracts, Flexible Subsidy Use Agreements, or Low-Income Housing Tax Credits)



Mark-Up-To-Market Program Discretionary Eligibility (Option One B)

To be eligible for the Mark-Up-To-Market Program's discretionary eligibility, one of the following is required:

- 1. Vulnerable Populations:** Residents of the property must be a particularly vulnerable population, defined as a high percentage of elderly, disabled persons, or large families.
- 2. Vacancy Rates:** The property must be located in a low-vacancy market area where there is a lack of affordable housing and where Section 8 vouchers would be difficult to use.
- 3. Community Support:** The property must be a high priority for the local community as demonstrated by a contribution of state or local funds to the property.

Note: Discretionary Mark-Up-to-Market requests are processed and approved by the Program

Center with jurisdiction over the project. Discretionary requests may include requests from nonprofit owners or Low-Income Housing Tax Credit limited partnerships.

Determining Final Market Level Rents

HUD will generally cap the new marked up rent levels at 150% of the Fair Market Rent and approve an increase in the annual distribution equal to the difference between the current rents and new marked up rents. For properties with 100% Section 8 assistance, HUD will allow owners to distribute 100% of surplus cash at year-end. For Section 236 and 221(d)(3) Below Market Interest Rate (BMIR) properties, market rent levels will be reduced by the level of interest reduction subsidy attributable to each unit type. Contracts will receive rent adjustments under published Operating Cost Adjustment Factors (OCAF), with adjustments to then-current market comparable rent every five years.

Mark-Up-To-Budget Program Overview

This option is designed to facilitate ownership transfers to nonprofit purchasers and/or capital repairs by nonprofit owners. Rents may be increased on a budget basis for acquisition and/or rehab costs, subject to a market cap. Pursuant to the Renewal Guide, HUD may approve rents at the "post rehab" rent level (the rent that the unit will be able to command in the market after repairs are completed). The post rehab rents will take effect when the rehab is complete. This option was originally only available to nonprofit purchasers and owners (which may include nonprofit controlled for-profit or limited dividend entities). Currently, for-profit owners may request a waiver in order to participate in a Chapter 15 renewal. Note that a nonprofit controlled partnership or LLC may elect to proceed under either Mark-Up-To-Market or Mark-Up-To-Budget.

Chapter 15 Eligibility Requirements

- A nonprofit charter under State law, or in certain cases, a profit-motivated organization (if a waiver is provided by HUD)
- 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)
- Financial solvency, with no unresolved audit findings
- A REAC score greater than 30 (for capital repairs) or greater than 60 (for transfers without capital repairs)



Additional Requirements for Nonprofit Purchasers

- Previous ownership or management experience with affordable multifamily housing
- Community ties (a national or regional nonprofit must joint-venture with a local nonprofit, or secure majority tenant support)

Chapter 15 Required Documents

To apply for a Section 8 contract under Chapter 15 Mark-Up-To-Budget, the nonprofit must submit:

- A budget-based rent increase application
- A rent comparability study showing "as is" market conditions and after rehabilitation market conditions
- A capital needs assessment, prepared to HUD specifications
- A sources and uses statement
- A detailed description of the proposed transaction, including documentation of site control (for transfers) and documentation of rehab costs (for capital repairs)

Components of Budget-Based Submission for Chapter 15 Funds

- Repairs
- Increased replacement reserve contributions and/or debt service on a new rehab or acquisition loan
- All costs must be budget-justified.

Chapter 15 Distributions

HUD regulations generally prohibit cash distributions to nonprofit owners of subsidized projects. This limitation does not apply to nonprofit controlled limited partnerships or Limited Liability Corporations.

Under Mark-Up-To-Budget, nonprofit owners may apply for a regulatory waiver to receive a distribution equal to 6% on initial equity.

Required Contract Term for Chapter 15

- The required contract term to participate in the Mark-Up-to-Budget program is twenty years.
- HUD also requires a Use Agreement that extends for twenty years beyond the term of any existing federal affordability restriction.
- Most, but not all, existing post-MAHRA contracts may be terminated early and replaced with a Mark-Up-To-Budget contract.
- The following contracts cannot be terminated early to take advantage of these programs:
 - Non-MAHRA contract (HUD may waive this limitation, per [8-28-2014 Multifamily DAS memorandum](#))
 - Section 514 MAHRA contract
 - Section 524(b) MAHRA Contract with rents above comparable market rents
 - Section 524 (e)(1) MAHRA Demo Contract
 - Section 524(e)(2) MAHRA Preservation Contract



- HUD will also terminate and renew an existing Mark-Up-to-Budget contract (starting at current rents) for up to twenty more years, at the owner's or purchaser's request.

Chapter 15 Rent Determination

Where rehabilitation is scheduled, rents may reflect the post-rehabilitation market comparable rents (if greater than the current rents).

Higher rents will not be effective until critical repairs (for moderate rehab) or the entire construction scope (for substantial rehabilitation requiring a construction loan) is completed. HUD may waive this limitation if the lender requires full debt service at closing, per [8-28-2014 Multifamily DAS memorandum](#).

During the contract term, rents will generally be OCAF-adjusted up to the OCAF-adjusted market rent cap. Rents will be re-adjusted to market (up or down) every five years based on the new RCS.

The tenant portion of rents in any non-Section 8 units may be increased no more than 10% in conjunction with the transaction.

Tips for Successful Contract Renewals

1. Accurate and timely processing of contract renewal requests is of the utmost importance in order to avoid delays in subsidy payments.
2. Contract Administrators/HUD Field Offices will work with you to ensure that your contract renewal request is prepared in accordance with HUD guidelines.
3. Contract renewal requests are due to Contract Administrators/HUD Field Offices 120 days before the contract expiration date. Reminder letters are sent two months prior to the due date.

As a recommended best practice, start preparing as soon as you receive the reminder letter, as this can be a time consuming process.