

Rent Adjustment & Contract Renewal (RACR)

2015 Owner Agent Update
HUD Conference

Welcome

- About Your Trainer

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RACR Session Topics

- Contract Renewal Option Overview: Options 1 – 6
- Utility Allowance Analysis & Tenant Posting Requirements
- Budget-Based Rent Adjustments

Contract Renewal Option Overview

Options 1-6

Option 1: Mark up to Market (MUTM)

- This renewal option is an incentive for Owners of eligible projects with current rents well below the comparable market rents.
- Certain projects are automatically eligible; others require HUD approval.
 - Option 1 A: Entitlement eligible properties
 - Option 1 B: Discretionary authority
- Owners must renew the Section 8 contract for a minimum 5 year term. The rents are adjusted by the OCAF.

Option 1A: Entitlement to MU2M Eligibility

- Properties must have a REAC score of 60 or higher with no uncorrected EH&S violations
- Profit motivated or limited distribution entity
- RCS must demonstrate that the comparable market rents are at or above 100% of the published HUD Fair Market Rent (FMR) potential
- Project does not have use restrictions that cannot be eliminated by unilateral action by the owner i.e. an existing rent supplement contract, prior or present Flexible Subsidy, Low Income Housing Tax Credits

Option 1B: Discretionary Authority Eligibility

- Owner's that don't meet all criteria for option 1A.
- Request an increase that is greater than 150% of FMR.
- HUD will consider 1B requests for projects that meet at least 1 of the following:
 - Vulnerable Populations
 - Vacancy Rates
 - Community Support

Option 2: Projects with rents at or Below Comparable Market rents

- Renewal of contracts for projects with rents at or below market that do not qualify for Option 1.
- A Rent Comparability Study (RCS) is prepared following instructions in Ch. 9 of the Section Renewal Policy Guidebook
- Use of 2 different rent adjustment methods: OCAF adjustment or Budget-Based adjustment
- Rents are capped at market levels

Option 2: Projects with Rents At or Below Comparable Market Rents Eligibility

- RCS must show that Section 8 Contract rents are at or below the comparable market rents.
 - The RCS is reviewed and approved by INQ or a third party appraiser.
 - RCS has a 5-year life span and is adjusted by OCAF each year.
- Owner's of "Exception Projects" may renew under this option.
 - RCS is required
 - If the RCS demonstrates current contract rents are above comparable market rents, contract rents are reduced to comparable market rents.

Option 3: Referral to OAHP

- Renewal of contracts for projects with FHA-insured or HUD-held mortgages with rents at or above the comparable market rents.
- These request are reviewed by Office of Multifamily Housing Assistance Restructuring (OMHAR) – now referred to as Office of Affordable Housing Preservation(OAHP).
- Two Options for Renewal: Option 3A & Option 3B
 - 3A: Full Debt restructure with rents reduced to market
 - 3B: No debt restructuring with rents reduced to market

Option 3: Referral to OAHP Eligibility

- FHA Insured projects not identified as “Exception Projects”.
- Owner must not be suspended or debarred unless otherwise approved by HUD.
- Section 8 Contract Rents must be greater than Comparable Market Rents.

Option 4: Renewal of Projects Exempt from OMHAR (OAHP)

- Renewal of contracts for projects that are exempt from OAHP processing (Option 3) because of the nature of the financing used for the projects.
- May be allowed to have rents above market
- Use of two possible rent adjustment types:
 - OCAF Adjusted
 - Budget-Based Adjusted

Option 4: Renewal of Projects Exempted from OAHP Eligibility

- State or Local Government Financing
- Section 202 and 515 Projects
- Projects not subject to a HUD-held or HUD insured mortgage

Option 5: Portfolio Reengineering Demonstration / Preservation Projects

- These programs were early efforts by HUD to address the issue of expiring contracts.
- Primarily consist of Section 236 and 221d3 BMIR projects with Project Based Section 8.
- Handled slightly different due to agreements previously imposed by HUD under the programs.
- Generally involve two agreements:
 - Plans of Action (POA)
 - Long Term Use Agreements

Option 5: Portfolio Reengineering Demonstration Eligibility

- Preservation properties consists of Section 236 and 221d3 BMIR projects whose Owner entered into long-term use agreements with HUD.
- A Demo project that complete the Demo program as evidenced and recorded by a Demo Project use agreement.
 - Note - Contract can not exceed the number of years remaining on the use agreement and cannot opt out during use agreement.

Option 6: Opt-Outs

- Not really a renewal option, but the processing of an Owner's decision not to renew the HAP contract under the Section 8 program.
- Imposes certain time restrictions on the O/A to provide additional information needed to process the Opt-Out.
 - Opt-Out Notice
 - Current Resident data

Utility Allowance Analysis and Tenant Posting Requirements

Utility Allowance Analysis

- A UA analysis is required yearly and must be submitted with the projects contract renewal or rent adjustment. The utility analysis should include 12 months of data for each bedroom size on the property. The submission should include backup documentation from the utility company.
- Information must be provided on 20% of the units, or 5 units, whichever is greater.

Utility Allowance Implementation

- No rent increase or utility allowance (Gross Rent) change can be implemented, or vouchered, until you receive a fully executed rent schedule from INQ.
- When you receive your Rent Decision Letter you should provide notification to residents indicating the rent increase.

Utility Allowance Implementation

- If there is a utility allowance decrease which will cause an increase to the tenant rent, the owner must give the tenant 30-day advance written notice of the increase. The notice must specify the new tenant rent and the effective date.

Utility Allowance tenant notification requirements

- If the utility allowance analysis results in a decrease in the amount the tenants will receive the owner/agent is required to comply with the tenant notification procedures outlined in HUD Handbook 4350.1, Chapter 7, Paragraph 7-5.

Utility Allowance tenant notification requirements

- In the event of a UA **decrease**, owners must notify tenants to advise them of their right to comment on the Utility Allowance decrease during a 30-day comment period.
- The owner/management agent must follow the posting instructions contained in Chapter 7 of the HUD Handbook 4350.1.

Utility Allowance tenant notification requirements

- At the end of the 30-day comment period, the owner/management agent must provide INQ with the certification of compliance with the tenant comment procedures along with any resident comments that were received.
- Refer to HUD Handbook 4350.1, REV-1, Chapter 7, 7-24 for complete guidance.

Budget-Based Rent Adjustments

Budget-Based Rent Adjustments Overview

- Owners of eligible projects may request a budget-based rent adjustment when a larger increase is needed than can be obtained using the applicable Annual Adjustment Factor (AAF) or Operating Cost Adjustment Factor (OCAF).
- Eligibility is determined by reviewing the existing HAP contract, Use Agreement or Plan of Action for adjustment of project rents.

Budget-Based Rent Adjustments Overview

- Capital Needs. A nonprofit owner may request a budget-based rent increase to perform capital improvements that will help maintain the long-term physical and financial viability of the project.
- Special rules apply to the processing of these adjustments.

Eligibility

- Prior to initial renewal under MAHRA the following projects are eligible for budget-based adjustments:
 - Section 202 Elderly/Handicapped
 - Section 236
 - Section 221(d)(3) BMIR
- At initial and subsequent MAHRA renewals, the budget-based method is one component of determining the rents under Options 2, 4, and 5 (refer to the Use Agreement / Plan of Action).

Section 515/8 Program

- While the Section 515 loan is in effect, Rural Housing Services (RHS) reviews and approves the budget, if a budget-based rent increase is authorized in the current HAP contract.
- At contract renewal, the owner may request either a budget-based or an OCAF rent adjustment.
- An owner requesting an OCAF adjustment is not required to submit a budget.

Budget-Based Rent Adjustment Forms

- **Budget Worksheet:** Form HUD-92547-A
- **Annual Financial Statements (AFS):** filed electronically to HUD for certain projects
- **Rent Schedule:** Form HUD-92458 records the approved rents

Submission Requirements

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|--|---|--|---|
| Cover letter | <ul style="list-style-type: none"> - States the percent increase requested - Explains the reason(s) for the increase - Describes project physical conditions - Describes any improvements included in the budget request - Identifies any changes or proposed changes to equipment, services, and tenant charges - Proposes an effective date for the rent increase | Notice to Tenants and Certification | <ul style="list-style-type: none"> - Section 236 and BMIR projects only. - Copy of the tenant notice and a description of how it was distributed - Comments provided by the tenants to the owners that may impact the budget - Owner's evaluation of tenant comments and Certification of Compliance |
| Budget Worksheet HUD-92547-A | <ul style="list-style-type: none"> - The most recent audited financial figures from the Annual Financial Statement (AFS) appear in the left column - Year to date actual expenses are reflected in the middle column - Proposed amounts for the budget year are entered in the right column - Signed and dated by the person preparing the form (This may be the management agent.) | Certification Re: Purchasing Practices | <ul style="list-style-type: none"> - Owner's Certification regarding best practices for large and routine expenditures |
| Justification of Increase to Certain Budgeted Items | <ul style="list-style-type: none"> - A separate statement must give the reasons for increases in line items of 5% or more or \$500 or more. | Status Report on Energy Conservation Plan | <ul style="list-style-type: none"> - Only Section 236, BMIR and Rent Supplement projects that were converted to Section 8. - The owner may include an annotated copy of the plan or a separate narrative. |
| Itemization of Certain Budget Categories | <ul style="list-style-type: none"> -Details of the individual costs reflected in these categories must be provided <ul style="list-style-type: none"> • Miscellaneous Administration (account 6390) • Miscellaneous Operating / Maintenance (account 6590). • Contracts (account 6520). | Other Certifications if applicable | <ul style="list-style-type: none"> - Lead-Based Paint Certification (if the project was built before 1978). - Tax Review and Appeal Certification or a statement that this certification is not required if taxes are abated for this property. - Owner's Low Income Housing Tax Credit (LIHTC) Certification (if applicable). |
| Reserve for Replacement Request | <ul style="list-style-type: none"> - If the owner is requesting an increase, a separate form requesting the increase is required as shown in HUD Handbook 4350.1 REV-1, Chapter 7, Appendix 6. | Rent Schedule (HUD-92458) | <ul style="list-style-type: none"> - Owner fills out unit type, number of units, current rents and utility allowance, proposed rents and utility allowances |
| Utility Allowance Recommendation | <ul style="list-style-type: none"> - If the tenants pay any utilities, an analysis of utility costs and utility allowance recommendation. | | |

Budget Line Item Thresholds

- For any line item on the Budget Worksheet (HUD-92547-A) that increases by more than 5% or \$500 over the amount stated in the previous AFS, you must provide justification.

Supporting Documentation

- Examples of explanation/supporting documentation include:
 - Copies of contracts, invoices, or estimates obtained.
 - Dated notice of an increase from a utility company or other provider.
 - In some cases, a written explanation may be sufficient.

Tenant Notice Requirements

- Tenant notices of proposed increases in rent and utility allowances are required for **Section 236** and **Section 221(d)(3) BMIR projects with LMSA or PDSA** (except for cooperatives).
- The notice must be sent prior to submitting the BBRA to the PBCA and must allow 30 days for tenants to comment on the proposed increase.

Tenant Notice Requirements

- The written notice must be mailed or hand-delivered to all tenants.
 - For high rises only, the notice must be posted in at least 3 conspicuous places at the high-rise and in one conspicuous place at the address where the O/A will have the supporting documentation available for review. The posting must remain in place for the entire 30-day tenant comment period.

Tenant Notice Requirements

- Utility allowance changes generally are proposed at the same time an O/A requests a rent adjustment. However, if they are requested at another time the same tenant notification requirements apply.
- The owner must make the information used to justify the rent increase available to the tenants.

Tenant Notice Requirements

- If the O/A makes material changes to the documentation, another notice (and posting) is required and the comment period is extended by 15 days from the new notice date or the end of the original 30 days -- whichever is longer.
- At the end of the tenant comment period the O/A forwards the tenant comments and the owner's evaluation of the comments to the PBCA with an executed copy of the owner's Certification of Compliance.

HUD Approval

- HUD must approve the following:
 - Rent Adjustments greater than 5%.
 - Reserve for Replacement (RFR) Deposit Increases
 - Adjustments to Management Fee

Budget Based Rent Adjustment Common Issues

- Budget worksheet not signed or dated.
- Mathematical errors on worksheet.
- No supporting documentation for line items 5% over PY audit such as payroll, contracts, insurance, and miscellaneous expenses.
- Wrong vacancy allowance used (See Chapter 7, 7-30(m) for amount allowed, see Closing Documents for further clarification).

Budget Based Rent Adjustment Common Issues

- Cover letter not included.
- Letter does not include overall physical condition or proposed effective date.
- Prior year audit column does not match Annual Financial Statement.
- Releases from RFR in prior year not deducted from the corresponding line item.
- Proper tenant notification not included or incorrect.