

**§ 402.1**

402.8 Tenant protections if an expiring contract is not renewed.

AUTHORITY: 42 U.S.C. 1437f note and 3535(d).

SOURCE: 63 FR 48953, Sept. 11, 1998, unless otherwise noted.

**§ 402.1 What is the purpose of part 402?**

This part sets out the terms and conditions under which HUD will renew project-based section 8 contracts under the authority provided in section 524(a)(1) or (2) of MAHRA. Renewal will also be in accordance with § 401.601 of this chapter for eligible projects without a HUD-approved Restructuring Plan under part 401 of this chapter. This part permits renewal notwithstanding part 24 of this title, but subject to section 516 of MAHRA (see § 402.7).

[63 FR 48953, Sept. 11, 1998; 63 FR 71374, Dec. 28, 1998]

**§ 402.2 Definitions.**

The definitions in § 401.2 of this chapter apply to this part.

**§ 402.3 Contract provisions.**

The provisions of chapter VIII of this title will apply only to the extent, if any, provided in the contract. Part 983 of this title will not apply.

**§ 402.4 Contract renewals under section 524(a)(1) of MAHRA.**

HUD may renew any expiring section 8 project-based assistance contract at initial rents that do not exceed comparable market rents. If the project is eligible for a Restructuring Plan under part 401 of this chapter, the owner's request for a renewal will be processed under § 401.601 of this chapter to determine whether a Restructuring Plan is needed. After comparable market rents have been initially established, any future rent adjustments will be determined by using an OCAF as provided in § 401.412 of this chapter, except that rents may be re-determined using a budget-based rent adjustment from time-to-time at the discretion of HUD. OCAF and budget-based adjustments may be positive or negative. The term of the initial and subsequent contract renewals under this section will be de-

termined by the appropriate HUD official.

**§ 402.5 Contract renewals under section 524(a)(2) of MAHRA.**

(a) *Renewal for exception project at owner's request.* HUD will renew project-based assistance under this section instead of § 402.4 if requested by the owner of a project described in paragraph (b) of this section. The term of the initial and subsequent contract renewals under this section will be determined by the appropriate HUD official.

(b) *Exception projects included.* This section applies to:

- (1) A project described in section 524(a)(2)(A) through (D) of MAHRA; and
- (2) A project described in section 524(a)(2)(E) of MAHRA.

(c) *Initial rent levels for exception projects.* If the owner of such a project requests renewal of project-based assistance under this section, HUD will initially renew the expiring contract at the lesser of:

- (1) Existing rents adjusted by an operating cost adjustment factor established by HUD (OCAF);
- (2) A budget-based rent determined in accordance with § 514(g)(3)(a) through (e) of MAHRA, except that HUD rather than a PAE will determine operating expenses and HUD may adjust the debt service component to reflect competitive interest rates; or

(3) In the case of a contract under the section 8 moderate rehabilitation program (other than single room occupancy dwellings under section 441 of the Stewart B. McKinney Homeless Assistance Act), the lesser of existing rents adjusted by an OCAF, fair market rents (less any amounts allowed for tenant-purchased utilities), or comparable market rents.

(d) *Rent adjustments.* Rent adjustments (either positive or negative) for contracts renewed under this section will be determined using an operating cost adjustment factor as provided in § 401.412 of this chapter, except that rents may be redetermined using a budget-based rent adjustment from time-to-time at the discretion of HUD.