

Renewal Options for Preservation

Lonnie Winton and Allen Pannell, Contract Managers

Southwest Housing Compliance Corporation

lonniew@shccnet.org / allenp@shccnet.org

© 2024 Southwest Housing Compliance Corporation

Session Overview

Many owners and agents select their renewal option based on what was done the last time.

- ✓ Renewal decisions should take into consideration of all the available options and what the goals are
- ✓ Decision makers need to ask important questions:
  - ✓ Are current rents above or below market?
  - ✓ If rents are below market, how can I best maximize my rent potential?
  - ✓ If rents are above market, how can I protect my above market rents?
  - ✓ What are the renewal options and which best suits our needs?

© 2024 Southwest Housing Compliance Corporation

Section 8 Renewal Policy

- The handbook for renewing and adjusting HAP contracts.
- Chapter 2 is overview of all options and general HUD guidelines.
- Each renewal option has its own chapter for information specific to that detail.

- Other important chapters:
  - Chapter Nine-Rent Comparability Study Guidelines
  - Chapter 11 – Tenant Issues
  - Chapter 14 – RHS Section 515 and Section 8
  - Chapter 15 – preservation tool to obtain HUD approval of post-rehab rents

© 2024 Southwest Housing Compliance Corporation

Option 6

- Eligibility Requirements:
  - Owner must be able to opt-out. There can be no restrictions placed on the property from either the Section 8 Contract or the Use Agreement.
  - Owner must have provided an acceptable one-year notification to the residents and HUD.
- Short-term contract may be required to fulfill the resident's full 12 month notice.
- If you elect to opt out, you will be contacted by HUD or the CA to discuss an 8bb transfer.

© 2024 Southwest Housing Compliance Corporation

Option 5

- **Preservation Contracts**
  - Owners who entered into a long term use agreement with HUD must renew under Option 5.
  - The rent adjustment method is determined by the Plan of Action that was approved by HUD as part of the Preservation process.
  - These contracts can be renewed for up to the lesser of 20 years or the remaining term of the Use Agreement.
- **Demonstration contracts**
  - Project will have a Demo Use Agreement.
  - An owner is required to accept renewal offers from HUD and *cannot opt-out of its contract.*
  - These contracts can be renewed for up to the lesser of 20 years or the remaining term of the Use Agreement.
  - Not allowed to go back to Recap.

© 2024 Southwest Housing Compliance Corporation

Option 3 – Referral to Recap

- Eligibility requirements
  - FHA-insured loan
  - Current rents are above comparable market rents
- Also called Mark To Market (MTM).
- Interim one-year contract allows time for Recap to restructure the debt and lower the rents to market.
- Contract assigned to a PAE (Participating Administrative Entity) for all processing.

© 2024 Southwest Housing Compliance Corporation

Option 3 (cont.)

- **Option 3a (Lite)**
  - Also called a “haircut.”
  - One year renewal of the contract, with no debt restructuring and rents reduced to market.
  - Often ends up with a Watch List Contract
    - Three consecutive one-year renewals.
    - OCAF adjustment only.
    - Owner can return to Recap at any time.
- **OPTION 3B (Full)**
  - A renewal with full debt restructuring and rents reduced to comparable market rents.
  - Contract term of 20 years, Use Agreement of 30 years, and owner is only eligible for OCAF rent adjustments through term on contract.

© 2024 Southwest Housing Compliance Corporation

Option 4

- Eligibility requirements
  - Projects with primary financing or mortgage insurance provided by a unit of state or local government
  - Projects financed under section 202 or 515 of the Housing Act of 1949
  - Projects that have an expiring contract under Section 8 of the Housing Act of 1937 pursuant to Section 441 of the Stewart B. McKinney Homeless Assistance Act (SRO Mod Rehab)
  - Refinanced Section 202 projects
  - Projects that do not qualify as projects pursuant to Section 512 of MAHRA such as a project not subject to a HUD-held loan or a project with a HUD-held loan with rents below comparable market rents

© 2024 Southwest Housing Compliance Corporation

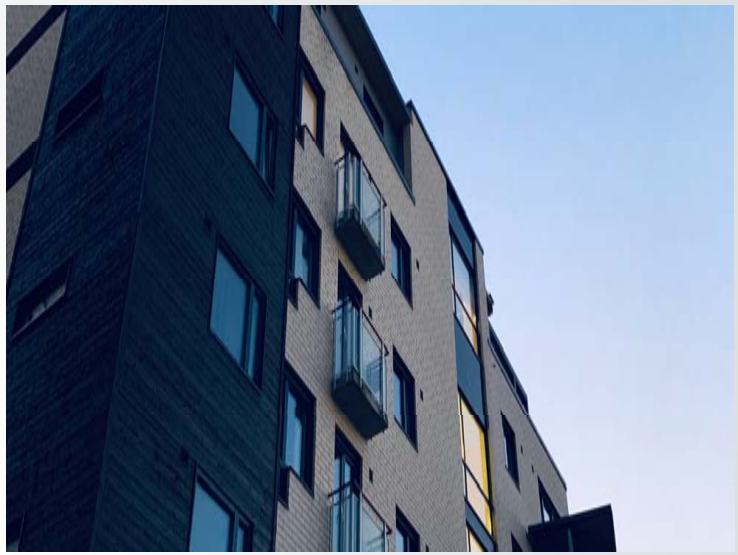
Option 4 (cont.)

- Project will be subject to the Lesser of Test at each renewal.
  - Owner submits budget-based rent adjustment and OCAF adjustment. Resulting rent adjustment is the lesser of the two. **Can result in a rent decrease if approved expenses do not support current rents.**
- **Option in Depth (What you can tell the owner)**
  - Protects above market rents.
  - Good for times when real estate market is volatile and comparable market rents are not a good indicator.
  - Saves money – no costly RCS required.
  - Rent adjustments in subsequent years can be OCAF or budget-based.
  - Limits future rent adjustment options – if BBRI is needed an RCS will have to be provided.

© 2024 Southwest Housing Compliance Corporation

Option 2

- Eligibility requirements
  - Aggregate current rents are at or below market rents, as determined by an RCS
  - OR the contract's current rents exceed comparable market rents but the project is exempt from MTM restructuring
- Must submit a Rent Comparability Study (RCS)
- Rents can be adjusted by the OCAF or with a budget-based increase (Mark Up to Budget)



© 2024 Southwest Housing Compliance Corporation

Option 2 (cont.)

- **Option in depth (what you can tell the owner)**
  - Because an RCS is required, the 150% rule will be applied. Could add time to processing if a HUD RCS is needed.
  - If a long term contract is executed, rents are set to comparables at the end of the five year RCS cycle.
  - Allows an owner the option to “mark up” rents with a budget using the RCS as the comparable ceiling.
  - If not FHA-insured and RCS shows current rents are above comparables, rents are automatically lowered to comps.
  - Rent adjustments in subsequent years can be OCAF or budget-based.
  - Good option for playing the “long game” in regards to marking rents to comparables. If property is not eligible to MU2M at renewal, they will be adjusted to comparable market rents at end of the RCS cycle.

© 2024 Southwest Housing Compliance Corporation

Option 1

- General eligibility requirements
  - Current rents less than comparable market rents.
  - Management and Occupancy Review of “Satisfactory” or above.
  - Physical inspection score of 60 or above with no uncorrected EH&S.
  - All Financial Assistance Subsystem (FASS) findings closed or under a corrective action plan.

© 2024 Southwest Housing Compliance Corporation

Option 1A- Entitlement MUTM

Requires a Rent Comparability Study

Use HUD's Option 1 worksheet to determine eligibility for 1A

Appendix 1 and 2 required for tenant comment requirements

- Eligibility Requirements
  - RCS rents must be at or above 100% of FMR.
  - No low- and moderate- income use restriction that cannot be eliminated.
  - Not subject to a contract for moderate rehabilitation assistance before 10/1/1991.
  - Project is not one for which a public housing authority provided voucher assistance to one or more of the tenants after the owner has provided notice of termination of the contract covering the tenant's rent.
  - Ownership entities:
    - Profit motivated
    - Housing Authority occupying a status of a "public body corporate and politic"
    - Limited Partnership or LLC with one or more nonprofit general partners
    - Non Profit owners can renew if the meet the requirements for HUD's discretionary authority

© 2024 Southwest Housing Compliance Corporation

Option 1b-HUD's discretionary authority

Requires a Rent Comparability Study

Owner must submit supporting documentation of proof of eligibility

Appendix 1 and 2 required for tenant comment requirements

- HUD has discretionary authority to approve entry into Mark Up to Market for projects that do not qualify under Option 1-A.
  - Eligibility Requirements
    - Vulnerable Populations
    - Vacancy Rates
    - Community Support



© 2024 Southwest Housing Compliance Corporation

1b Eligibility Options

- **Vulnerable Populations**
  - At least 50% of the units are rented to elderly families, disabled families, or large families (large families are defined as a family of five or more persons). The 50% can include all three or a combination of any.
- **Vacancy Rates**
  - The project is located in a low-vacancy market area. If there is a lack of affordable housing in the area, it will make HCV harder to use. To determine the vacancy rate, contact the HUD Economic and Market Analysis Section (EMAS) to get the rate for the requested area.
  - The rate needs to be 3% or less.
- **Community Support**
  - Project is a high priority for the local community as demonstrated by a contribution of State and/or local funds.
  - Examples include (but are not limited to), tax credits, tax abatements, capital improvement funds, etc.
  - HUD will sign off on whether the evidence presented by the owner demonstrates community support.
    - Keep track of any odd ones you get approval for so you know if it was or was not accepted.

© 2024 Southwest Housing Compliance Corporation

Option 1 (cont.)

- Option in Depth (**what you can tell the owner**)
  - Easy way to be marked up to comparables.
  - New option for Non-profit owners and Housing Authorities.
  - Rent adjustments in subsequent years are OCAF only.
  - If a long term contract is executed, rents are set to comparables at the end of the five year RCS cycle.

© 2024 Southwest Housing Compliance Corporation

Chapter 15 Transactions

- The primary reason for submitting a Chapter 15 transaction, as opposed to a regular renewal, is to obtain **the approval of post-rehab rents from HUD.**
- Can be used by both non-profit and for-profit owners/purchasers.
- Property must have an original HAP contract or MAHRA contract with rents at or below comparable market rents.
- INELIGIBLE: Mod-rehab, Single Room Occupancy (SRO), Mark-to-Market (MTM), and any original HAP or MAHRA contract with rents above market*.

*there is the option to lower rents to comps and mark up to budget. Next slide.

© 2024 Southwest Housing Compliance Corporation

Chapter 15 (cont.)

- Basic Requirements
  - Use Agreement – owner/purchaser must agree to a 20-year recorded Use Agreement.
    - If the project already has a Use Agreement, the owner/purchaser must agree to extend the Use Agreement to 20-years.
  - 20 Year Contract – owner/purchaser must renew for 20 years, with any balance added on with the Preservation Agreement.
  - Early Termination – owner/purchaser can request an early termination of the current contract.
    - **NOT ELIGIBLE**: Mark to Market (MTM), Demonstration, Preservation, and RAD contracts.
    - **NOT ELIGIBLE**: Contracts with rents above market.
      - **EXCEPTION** If the current contract allows for a discretionary RCS or a 5th year RCS, the rents can be lowered to "as is" comps to allow Chapter 15, but must do Option 2 MUTB to get to "post rehab" rents.

© 2024 Southwest Housing Compliance Corporation

Chapter 15 (cont.)

- Combining Contracts – where possible, the owner is encouraged to combine contracts.
- Owner Submission Requirements
  - RCS with "As Is" and "As Renovated" rents
  - Detailed description of the proposed transaction including the scope and cost of the rehabilitation.
  - Letter if Intent to Sell (if transfer included)
  - PCNA
  - Detailed Sources and Uses funding statement
  - If owner/purchaser requesting MUTB, all applicable budget documentation as required by the 4350.1
  - Environmental Review
  - Accessibility Review
  - Relocation Plan (if applicable)

© 2024 Southwest Housing Compliance Corporation

Chapter 15 (cont.)

- Effective Date of New Rents
  - If new loan is not amortizing at the closing, the owner will receive "as is" rents at the closing and "as renovated" when rehab is complete.
    - HUD-931841 Must be completed with the renewal
    - HUD approves the post rehab rent implementation once rehab is complete
  - If new loan is amortizing at the closing, the owner can get "as renovated rents" at the closing.
    - HUD-93182 Must be completed with the renewal
  - Both of these attachments list the length of construction as 12 months. Many owners are now requesting 16-18 months. HUD must approve that.

© 2024 Southwest Housing Compliance Corporation

Use Agreements

- Use Agreements may impact if an owner can select a particular option.
  - **MTM Use Agreements**
    - 30-50 years. Language is contained in there that the Option 3 contract will be automatically renewed at the end of contract term through the term of the Use Agreement.
    - Contract Renewal Request Form added for these renewals.
    - While the Use Agreement is in place, no other renewal option can be selected.
  - **Demonstration Use Agreements**
    - Like, MTM, can only renew under the Demo program.
    - Use Agreement has language that states the owner MUST accept renewal offers from HUD. Owner cannot opt-out.

© 2024 Southwest Housing Compliance Corporation

Use Agreements (cont.)

- **Demo Use Agreements** (cont.)
  - If owner renews while Use Agreement is in place, the owner will submit an RCS at the end of each 5 year period to set rents at comparables.
    - In subsequent years, rents are adjusted by the OCAF or a budget-based rent adjustment.
- **Preservation Use Agreements**
  - Usually 50 years.
  - Owner cannot Opt Out.
  - Owner must renewed under Option 5 until the Use Agreement is over.
    - *Exception*: if the property is being sold to a new owner, that new owner can request to go to Recap if the current rents are above market.
  - Rents are adjusted by whichever method is found in the Plan of Action (POA).
- **202 Use Agreements** – generally talk about the type of resident served. There are no restrictions on renewal options.
- **Green and Resilient Retrofit** – these use agreements will exclude owners from renewing under Option 1a.

© 2024 Southwest Housing Compliance Corporation



Questions?

© 2024 Southwest Housing Compliance Corporation