

## Office of Multifamily Housing Assistance Restructuring



**Deal Profile:** MAHRA Reauthorization, New Mark-to-Market Provisions and Program Enhancements

**Date of Presentation:** March 11, 2002

### Questions and Answers

#### 1. 2<sup>nd</sup> Mortgage Calculation Change

**Q.** Could you explain the change in calculation of the new 2<sup>nd</sup> mortgage?

**A.** The legislation changes the 2<sup>nd</sup> mortgage calculation to provide that the full claim amount can be placed into the 2<sup>nd</sup> mortgage, subject to reasonable repayability. Before this provision, the amount of the 2<sup>nd</sup> was limited to the amount of the difference between the UPB and the new 1<sup>st</sup> mortgage. The effect of this change will be to eliminate the need for 3<sup>rd</sup> mortgages in many restructurings. After implementation of the change, (probably in a couple of months), a 3<sup>rd</sup> mortgage will only be needed when the 2<sup>nd</sup> was limited due to reasonable repayable restriction.

**Q.** What should we do about deals currently in process that are structured according to the old 2<sup>nd</sup> mortgage definition?

**A.** Deals that are expected to close within the next couple of months should go ahead under the old guidelines, but deals earlier on in the process should be structured according to the new provision. The underwriting model, revision 4, incorporates the new rule.

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#### 2. Preservation Property Eligibility

**Q.** When can LIHPRHA properties come into the M2M program?

**A.** ELIHPA/LIHPRHA properties were not previously eligible for M2M. There is a provision in the new legislation that allows preservation properties that are being sold to be processed under M2M. The sale must occur at or prior to the M2M closing.

**Q.** When a preservation property goes through M2M, how will the affordability restriction be affected?

**A.** Although OMHAR's 30-year Use Agreement affordability regulations have less restrictive rent and income limitations than LIHPRHA's, it is unlikely that the restrictions in place would be lessened. The existing preservation property Use Agreement will probably be subordinate to the new M2M Use Agreement, but still in place.

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#### 3. ITAG/OTAG Funding

**Q.** What does the new legislation provide in the way of ITAG/OTAG funding?  
**A.** The legislation provides that HUD “shall” make up to \$10 million available annually. Payments on the oldest outstanding obligations have been made within the last 2 weeks and the remainder should be paid by the end of March 2002.

**Q.** When will sub-grantees be open for new applicants?  
**A.** We do not know when this will happen.

#### **4. Exception Rents Above 120% of FMRs**

**Q.** How did the formula change in determining number of units that can receive Exception Rents above 120% of FMRs?

**A.** Previously, the regulations limited the pool of Exception Rents above 120% of FMRs to 5% of the number of units subject to Restructuring Plans, (i.e., Fulls that Closed), in any fiscal year. Now, Congress has removed the fiscal year constraint and has widened the basis of calculating potential available slots. The new regulations allow for availability of 5% of all deals assigned to PAEs in the M2M program including Lites and Fulls that do not close.

**Q.** Did the rules for Exception Rents up to 120% of FMRs change?

**A.** No, the same rules apply. Up to 20% of the PAE’s portfolio can be approved for Exception Rents up to 120% of FMRs. A waiver must be obtained if additional authority is needed.

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#### **5 2<sup>nd</sup> Note May Be Assigned to a Qualified Nonprofit Purchaser**

**Q.** Why would assigning the Note to the Purchaser be of benefit to the Purchaser?

**A.** The new regulations provide that, in lieu of canceling or modifying the 2<sup>nd</sup> mortgage for qualified nonprofit purchasers, OMHAR may create the 2<sup>nd</sup> mortgage at the M2M closing and assign it to the purchaser. One of the major reasons this may be beneficial is that there is no ability for the owner to receive a Capital Recovery Payment, Incentive Performance Fee and share in the Surplus Cash Distribution without a 2<sup>nd</sup> mortgage note in place.

**Q.** Can the assignment of the 2<sup>nd</sup> mortgage to a qualified nonprofit be completed without additional guidance?

**A.** Published regulations are not required to implement this provision, however, OMHAR does need to finalize an internal policy statement.

**Q.** If there is a 3<sup>rd</sup> mortgage, is it assignable?

**A.** No. If a second will be assigned, we would likely not have a 3<sup>rd</sup>.

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#### **6. Moderate Rehab Properties**

**Q.** Were there any provisions for Mod Rehab properties in the new legislation?

**A.** No. As before, Mod Rehab properties may now enter the M2M program if they have FHA insurance and above market rents. Revisions to non-M2M rent standards were discussed, but Congress has not acted on this issue.

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## **7. New Underwriting Model**

**Q.** When will the new version of the model be available for use by the PAEs?

**A.** The model, revision 4, was posted on the OMHAR website March 18, 2002. PAEs may start using it immediately. Revision 4 incorporates the provisions of the new legislation as well as a number of features and simplifications requested by PAEs and OMHAR employees. Remember that a couple of the new legislative provisions require implementation guidance prior to Closing, but if you are starting due diligence, structuring your deal with the new model should be fine by the time you are ready to close.

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## **8. Addition of Significant Features in Rehab Requirement**

**Q.** Would security cameras be an allowable significant feature that could require less than a 20% Owner Contribution?

**A.** The new provision provides for a lower required owner contribution toward certain rehab items. The examples given are installation of air-conditioning, an elevator, and additional community space. Other items will need to be considered on a case-by-case basis. The factors to consider include: a.) the cost of the feature (material or not), b.) whether the PAE determined that this measure is needed, and c.) the nature of the work, (i.e., replacement items are not permissible under this provision).

**Q.** How does an owner take advantage of the provision to contribute less than 20% of the cost of the significant feature, for example air-conditioning, in the Rehab Requirements?

**A.** The revised model includes a section to differentiate between the regular 20% owner requirement and a different amount if there are any of these significant features in the restructure plan. There has been preliminary discussion that a 3% owner contribution might be reasonable, however, OMHAR will issue guidelines in the near future.

**Q.** Is there any differential between nonprofit and profit motivated owners concerning the required contribution percent for these significant features?

**A.** The statute is silent on this point. There is currently a requirement that all owners come up with at least 3% from non-governmental funds for the Rehab Escrow contribution. Based on this precedent, a guidance of a 3% contribution for the significant features items is reasonable, regardless of the ownership structure.

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## **9. HAP Contract Extension During Implementation Period**

**Q.** Will OMHAR extend expiring HAP Contracts at above Market Rents to accommodate the implementation waiting period?

**A.** This will be decided on a case-by-case basis.