

Appendix D: Processing Transfers of Physical Assets (TPA) for M2M Full Debt Restructuring

1. **Overview.**
 - A. **Applicability.**
 - i. **Full Restructures.** This Appendix covers transfers proposed as part of Full Debt Restructuring Plans in accordance with the M2M Operating Procedures Guide, Chapter 4. The transfer must take place either:
 - a. After OMHAR and the purchaser execute the Restructuring Commitment but prior to the M2M closing; or
 - b. Immediately following the M2M closing, but under the same set of escrow instructions as the M2M closing.
 - ii. **OMHAR-Lites.** TPAs for OMHAR-Lite transactions will be handled by Multifamily Hubs and Program Centers.
 - B. **Full or Modified Review.** The PAE will conduct either a Full or Modified TPA review (as discussed in more detail below).
 - C. **PAE and OMHAR Roles.**
 - i. **Review and Approval.** The PAE will receive the purchaser's application and supporting materials, review them, determine their acceptability, and (if they are acceptable) recommend that the OMHAR Regional Office Director approve the transfer.
 - a. **Alternative Process:** The Hub or Program Center may process and approve the TPA under existing guidance.
 - ii. **Closing.** For all OMHAR-approved TPAs, the PAE's counsel will oversee and manage the closing of the transfer.
 - a. **Alternative Process.** If the Hub or Program Center processes and approves the TPA, the TPA closing normally will take place under the control and management of the Hub / PC field counsel.
 - D. **Preliminary Approval.** Based on the PAE's recommendation, the RO will grant Preliminary TPA Approval for the transfer to close.
 - E. **Final TPA Approval.** Based on the PAE's certification that the transfer closed in accordance with the Preliminary Approval, the RO will grant Final TPA Approval after

TPA closing has occurred. This approval may be given at the closing table, after all requirements have been satisfied.

- F. **NOTE.** The new principals may not assume control or ownership of the project until Preliminary Approval has been granted. If the M2M restructuring ultimately does not close, Preliminary Approval will be withdrawn and considered canceled. Thereafter, responsibility for further consideration of the TPA reverts to the Multifamily Hub or Program Center.
2. **Other Guidance.** OMHAR has determined that compliance with this Appendix will satisfy applicable HUD requirements. Some applicable HUD requirements are incorporated within this Appendix, and the remaining applicable HUD requirements are referenced in this Appendix (and shown in *bold italics*). All referenced guidance is available on the OMHAR Web site, on the Operating Procedures Guide web page (<http://www.hud.gov/offices/omhar/readingrm/opglinks.cfm>), under “Appendix D”.
3. **Objectives of TPA Review.** The PAE’s recommendation for OMHAR approval is based on the PAE’s determination that the proposed TPA will satisfy each of the following objectives:
- A. **Purchaser Suitability.** The purchaser has the capabilities necessary to own the property successfully.
- i. Prospective owners / managing general partners must satisfy the PAE that they have sufficient experience to operate the property. A troubled property may require an owner/managing general partner who has demonstrated the ability to successfully own and manage troubled multifamily properties.
- ii. If the purchaser is not clearly suitable, the PAE must discuss the purchaser with the Hub or Program Center to assess the purchaser’s performance on other HUD properties.
- iii. The proposed management agent must satisfy the PAE that he/she has sufficient experience to enable him/her to successfully manage the project. The type and length of experience required will vary depending upon the degree of difficulty of managing the particular project.
- B. **Soundness.** The property will be physically, financially and managerially sound, on a long-term basis, after the transfer. In general, this determination is made through the PAE’s normal M2M underwriting and structuring.
- C. **Proper Legal Structure.** The acquiring entity’s governing documents, and the proposed legal documents effecting the transfer, meet applicable HUD requirements. In general, this determination is made in accordance with the *TPA Handbook Exhibit G*, a memo from HUD’s Office of General Counsel concerning counsel review of TPA legal documents.
- D. **Consistency.** The terms of the TPA must be consistent with the Restructuring Commitment and with the terms of the proposed post-M2M 1st mortgage financing.

4. **Type of Post-M2M Financing.** The type of first mortgage financing (post-M2M) helps determine whether TPA approval is required:
 - A. **Modification of Insured or HUD Held Loan.** Transfers occurring in M2M loan-modification transactions require TPA approval.
 - B. **223(a)(7) Loans.** Transfers occurring in M2M 223(a)(7) transactions require TPA approval. The 223(a)(7) loan proceeds cannot be used to finance the purchase price.
 - C. **223(f) and 221(d)(4) Loans.** These M2M transactions are purchases with new mortgages and therefore do not trigger any TPA requirements. HUD requirements for purchaser suitability, soundness, and proper legal structure are met as a part of the new loan underwriting by the Multifamily Hub or Program Center.
 - D. **Non FHA Financing.** If the transfer results in new conventional financing, with a Mortgage Restructuring Mortgage and/or Contingent Repayment Mortgage to be held by HUD, the PAE must satisfy itself that the purchaser is acceptable as a borrower under the restructuring and/or contingent mortgage. The purchaser suitability portions of this Appendix will help the PAE make this determination.
5. **When Is A Modified TPA Required?** In general, a modified TPA is required when a property undergoes a change of control of the current mortgagor (such as substitution of general partner, transfer of a 50 percent or greater interest in the project, or any other transaction resulting in a change of control). A Modified TPA review is required for each of these types of transactions:
 - A. A transfer of more than 50% of the partnership interest in a partnership that does not trigger a dissolution of the partnership.
 - B. A substitution of one or more general partners.
 - C. A transfer of more than 50% of the stock of a corporate owner, or a transfer of less than 50% of the stock that also results in a change in control.
 - D. A transfer of a portion, or all, of the beneficial interest in a passive trust, that does not cause a change in control.
 - E. A transfer of more than 50% of the stock of a corporate general partner, or a transfer of less than 50% of the stock that also results in a change in control of the general partner.
 - F. Other transactions that do not fall into one of the above categories, but that result in a change in control of the owner. The PAE is authorized to make a determination as to when a change of control has occurred. If there is doubt as to whether the transfer requires a review, the review is encouraged.
6. **When Is A “Full” TPA Review Required?** In general, a full TPA is required when a property is sold or conveyed to a new mortgagor who assumes or takes subject to an existing FHA insured mortgage or a HUD-held mortgage.

- A. **Novel Transactions.** When a novel transaction is proposed, OMHAR reserves the right to direct the PAE to treat the transaction as requiring a full review and to request any additional documentation it deems necessary.
 - B. **Transactions Requiring Full Review.** A Full Review TPA is required for each of the following transaction types:
 - i. A transfer of title from the owner to a buyer.
 - ii. A transfer of partnership interests that triggers a dissolution of the partnership.
 - iii. A transfer of 100% of the beneficial interest of a passive trust accompanied by a change in control.
7. **TPA Processing Fee Waiver.** The application fee for TPAs taking place in conjunction with M2M Full Debt Restructuring transactions is routinely waived. PAEs should call the OMHAR Closing Hot Line to verify that a waiver is in place with respect to each TPA transaction.
8. **TPA Timing.**
- A. **Timing vs. M2M Closing.** The TPA may be closed at any time after OMHAR gives Preliminary TPA Approval and before the M2M closing. At the option of the parties, the TPA may also be closed immediately following the M2M closing, in which case the M2M and TPA closings must be encompassed within a single set of closing instructions and a single escrow agreement.
 - B. **Plan Timing Carefully.** PAEs should work closely with purchasers and sellers to ensure that each understands the exact sequence of events. In particular, it is important that all parties agree who will hold title at the time of the M2M closing. The M2M claim payment will be made on behalf of that party, and the restructuring of the financing will take place during that party's ownership of the property.
9. **Purchaser's Submission Package for Modified TPA Review.** The proposed new mortgagor must submit, for review and approval by the PAE and its counsel, the items listed in Attachment 1.
10. **Preliminary Approval for Modified TPAs.** After review of the documentation and discussion with the parties involved in the transfer, the PAE provides a *PAE Certification and Recommendation for OMHAR Preliminary Approval of Modified TPA*. In order to make this certification, the PAE will:
- A. **2530 Clearance.** Receive Previous Participation approval from the Multifamily Hub or Program Center, for each new principal.
 - B. **Purchaser Suitability.** Establish the suitability of each proposed new principal (see item 3.A above).
 - C. **Acceptable Business Arrangements.** Satisfy itself that the business arrangements between seller and purchaser, contained in a binding Purchase and Sale Agreement executed by the seller and purchaser, are acceptable.

- D. **Draft OMHAR Approval Letter.** Include a draft *OMHAR RO Preliminary TPA Approval Letter* for the OMHAR Regional Office Director's signature.
11. **Final Approval for Modified TPAs.**
- A. **PAE Certification.** Using *PAE Certification and Recommendation for OMHAR Final Approval of Modified TPA*, the PAE will certify to OMHAR that the transaction closed in accordance with OMHAR's Preliminary Approval and other applicable requirements.
- B. **Draft OMHAR Approval Letter.** The PAE will provide a draft *OMHAR RO Final TPA Approval Letter* for the OMHAR Regional Director's signature.
- C. **Post Closing Document Distribution.** The PAE retains copies of all documents to be included with the M2M final closing dockets. After the OMHAR Regional Director grants Final Approval, the PAE collects any remaining documentation and distributes the complete TPA package in accordance with Chapter 8 of the OPG by including it in the closing docket for the M2M transfer.
12. **Purchaser's Submission Package for Full TPA Review.** The proposed new mortgagor submits, for review and approval by the PAE and its counsel, the documents listed in Attachment 2.
13. **Preliminary Approval for Full TPAs.** After review of the documentation and discussion with the parties involved in the transfer, the PAE provides a *PAE Certification and Recommendation for OMHAR Preliminary Approval of Modified TPA*. In order to make this certification, the PAE will:
- A. **2530 Clearance.** Receive Previous Participation approval from the Multifamily Hub or Program Center, for each new principal.
- B. **Purchaser Suitability.** Establish the suitability of each proposed new principal (see item 3.A above).
- C. **Acceptable Business Arrangements.**
- i. Satisfy itself that the business arrangements between seller and purchaser, contained in a binding Purchase and Sale Agreement executed by the seller and purchaser, are acceptable.
 - ii. Review the documents for legal sufficiency and demonstrated business and management experience to determine the acceptability of the transfer.
 - iii. Assure that the proper forms have been used, the correct parties have executed the documents, and that the transaction is fully described and documented.
- D. **PAE Certification.** After review of the documentation and discussion with the parties involved in the transfer, the PAE provides a *PAE Certification and Recommendation for OMHAR Preliminary Approval of Full TPA*.

- E. **OMHAR Approval.** If recommending approval, the PAE includes a draft *OMHAR RO Preliminary TPA Approval Letter*.
14. **Final Approval For Full TPAs.**
- A. **PAE / Purchaser's Submission Package for Final Approval for Full TPAs.** The package contains the documents listed in Attachment 3.
 - B. **PAE Certification.** Using *PAE Certification and Recommendation for OMHAR Final Approval of Full TPA*, the PAE will certify to OMHAR that the transaction closed in accordance with OMHAR's Preliminary Approval and other applicable requirements.
 - C. **Draft OMHAR Approval Letter.** The PAE will provide a draft *OMHAR RO Final TPA Approval Letter* for the OMHAR Regional Director's signature.
 - D. **Post Closing Document Distribution.**
 - i. The PAE retains copies of all documents to be included with the M2M final closing dockets.
 - ii. After the OMHAR Regional Director grants Final Approval, the PAE collects any remaining documentation and distributes the complete TPA package in accordance with Chapter 8 of the OPG by including it in the closing docket for the M2M transfer.
15. **Multiple Transfers.** Parties frequently structure their proposals as multiple project transfers. A series of simultaneous project transfers is legally acceptable provided the parties have submitted all relevant documents with respect to each transfer. A separate review of each transfer must be performed to determine the acceptability on the entire proposal. However, the two transactions can be combined in one application with minimal review required of the first (2530 clearance, for example) in order to expedite the HUD review process. This same rationale is also applicable to any other interim "status" transfers by deed. To expedite the review of particularly complex multiple transfers, the PAE attorney should contact the OMHAR closing staff for referral to HUD counsel for assistance. In particular, questions often arise with respect to the amount of time between transfers.
16. **For Profit Acquisition of Nonprofit Property.** The transfer must comply with the requirements of Handbook 4350.1, Chapter 13, paragraphs 17 through 23.
17. **Optional Suggested Procedures** to assist in a smooth and complete TPA process:
- A. **Pre-submission meeting.** Experience strongly suggests that a pre-submission meeting will be helpful. PAE staff should meet with the owner and purchaser before submission of the TPA package in order to review OMHAR and HUD's requirements with the parties (see detail at Attachment 5 to Housing Notice H99-13) and to provide copies of model HUD documents. Such a pre-submission meeting may be particularly useful with a purchaser who has not previously done business with the Department and should assist in facilitating and expediting the TPA process.

- B. **Review for completeness.** HUD advises that in analyzing the processing of TPA's, the single largest factor contributing to delays is the acceptance of incomplete TPA packages. HUD recommends that if the package is incomplete, it should be returned without processing and the purchaser and owner advised of the deficiencies.

Attachment 1: Submission Package for Modified TPAs Under M2M

1. **Notification that Change of Control is Imminent.** This is an advisory letter announcing that a transfer is being considered and identifying the parties.
2. **Narrative description of the TPA in the context of the Restructuring Plan.** Any new party that is a REIT (real estate investment trusts) or LLC / LLP should be clearly identified. Compliance with *Housing Notice H 95-66* is required for LLC's.
3. **Previous Participation Certification (Form HUD-2530).** Required for all new principals, including any new management agent. The PAE will submit all HUD-2530s to the Multifamily Hub or Program Center for processing.
4. **Amended Organizational Documents.** A copy of the Proposed Amended Partnership Agreement.
5. For Transfers of a 50 Percent or Greater Interest:
 - A. Copies of Proposed Additional Financing Documents (if any). The buyer and seller must provide to the PAE copies of all documents that discuss financial arrangements between buyer, seller, the Project, and OMHAR/HUD, regardless of when the financial transactions take place.
 - B. For partnership mortgagors: Attorney's Certification that the transfer does not cause a dissolution under applicable state law. If the transaction would cause dissolution of the partnership, a Full TPA Review is required.
6. **Resumes.** Resume for Incoming General Partner(s), and new Management Agent, if any.
7. **Form HUD-92458, Rental Schedule and Information.** The front of the HUD-92458 should reflect the rents established in the Restructuring Plan. The back should reflect any applicable changes in principals.
8. **Physical Inspection Report.** Notice H-99-13 (section A.7.b) requires the purchaser to submit a physical inspection report meeting HUD requirements.
 - A. The Purchaser may fulfill this requirement by accepting the PAE's Physical Condition Assessment.
9. **Additional Requirements.**
 - A. **Requirements Normally Applicable Only for Full TPAs.** The PAE may, in addition, impose any requirements that would be applicable under a Full TPA review.
 - B. **Deferred Purchase Price Documents, If Applicable.** If any portion of the purchase price will be paid other than in cash at closing, the deferred portion of the purchase price is termed "secondary financing" for TPA purposes. Submit the proposed legal documents (executed but not recorded) governing the payment of the deferred purchase price. If there will be any "secondary financing":
 - i. **Administrative Requirements.** The PAE must determine if the administrative

- requirements of *Paragraph 13-15 of HUD Handbook 4350.1* have been met.
- ii. OMHAR Review. MAHRA has specific provisions for debt subordination in M2M transactions where “secondary financing” is proposed; any secondary financing must be reviewed by OMHAR for acceptability.
 - iii. Mortgagee Consent. If there will be any secured secondary financing, approval of the first mortgagee must be obtained.
- B. **If Flexible Subsidy Is Involved.** Normal HUD requirements (Notice H-99-13 Section A.10) do not apply in M2M; instead, the Flexible Subsidy loans normally will be modified and subordinated in accordance with OPG Appendix P. The PAE should contact Jo Anne Garrison at OMHAR HQ (x3651).
- C. **Preservation Properties.** If the property was preserved under LIHPRHA or ELIHPA, the PAE should contact Jo Anne Garrison at OMHAR HQ (x3651). Such properties are eligible for M2M only if sold. They also have existing use agreements that will need to be subordinated to the M2M Use Agreement.
- D. **Management Documents.** If a change in management is proposed:
- i. Management Certification (per HUD Handbook 4381.5).
 - ii. Management Form 2530 – Form 2530 is required for the proposed management agent and its principals.
 - iii. Management Entity Profile (HUD Form 9832).
- E. **Credit reports.** Credit reports are required on all proposed mortgagor entity principals. Reports must be from an acceptable credit reporting agency and must include an original on the agency’s letterhead.

**Attachment 2: Submission Package for Preliminary Approval of Full TPAs Under M2M
(Replaces Notice H-99-13 Attachment 5, for M2M TPAs)**

1. **TPA Application Form. Form HUD-92666.** The form must be properly executed. Note that if a lien is being created, the mortgagee must sign the application.
2. **Mortgagee Consent.** Consent by the Mortgagee to the proposed transfer is required only if there is a deferred purchase price (see item 20 below) and a lien is proposed to be created against the property.
3. **TPA Fee.** The submission package need not include a TPA fee (see Appendix D, paragraph 7, regarding fee waivers).
4. **Purchaser's Letter.** "Purchaser" is defined to include all individuals purchasing as individuals or as principals in a joint venture, all general partners in a purchasing partnership, or a corporation. This letter must be signed by an authorized principal of the purchasing entity and must describe in full detail:
 - A. All financial consideration that will flow to the project and to the mortgagor / seller as a result of the transfer. All financial consideration that will flow to the project and to HUD as a result of the transfer.
 - i. The Purchaser may reference the Sources and Uses of Funds statement (item 9 below) and the Seller / Purchaser Affidavit (item 11 below) in fulfillment of this requirement.
 - B. The business transaction (the TPA in the context of the Restructuring Plan, as reflected in the Source and Use of Funds Statement), including but not limited to:
 - i. How the transaction complies with OMHAR's Objectives For TPA Review (Appendix D, paragraph 3).
 - ii. An explanation of the organization and structure of the purchasing entity.
 - iii. An explanation of the business transaction reflected in the Sources and Uses of Funds statement.
 - iv. The Purchaser's motivation for acquiring the project.
 - v. An explanation of its relationship to the management agent and whether it expects to make changes in the management of the project, particularly within the first year following preliminary approval.
 - vi. An explanation of why it believes the proposed repair program and/or deposit to the reserve for replacement account will be adequate to maintain the project in safe, decent and sanitary condition.
 - a. The Purchaser may fulfill this requirement by concurring with the PAE's suggested repairs and Reserve deposits.
 - vii. An explanation of how it will correct any financial deficiencies reflected in the interim financial statement, including eliminating payables at Preliminary Approval and making sure the various escrows (property tax, insurance) and trust accounts (tenant security deposit) will be properly funded as a result of the TPA.
 - C. The letter must state that if the project is HUD-insured the project mortgage is current or will be brought current at Preliminary Approval. If the mortgage is held by HUD, the

letter must state that the mortgage is either current or it must describe a plan for bringing the mortgage current.

- i. The purchaser may fulfill this requirement by requesting Preliminary Approval contingent upon the closing of the M2M debt restructuring.
5. **Purchaser's Certificate of Previous Participation. Form HUD 2530** – required for all new principals. The term “principal” includes:
 - A. The new ownership entity.
 - B. All general partners.
 - C. Individuals and/or entities who will own an interest in the project greater than 24%¹, or who own 10% or more of the stock of a corporate mortgagor.
 - D. Any proposed new management agent.
 - E. All consultants and/or packagers for profit.
 - F. Any other entities defined as “principals” in the instructions to the form.
6. **Purchaser's Resume.** Required for all M2M transfers, regardless of the purchaser's previous participation in HUD programs. The purchaser must describe its background and qualifications to own the project. The resume should, at a minimum, reference all of the purchaser's previous experience in the multifamily housing industry. The Resumes for each principal of the purchaser should be submitted and should be in sufficient detail for the PAE to understand the nature of their real estate experience.
7. **Purchaser's Personal Financial Statement.** If the proposed mortgagor entity has not yet been formed and capitalized, personal financial statements are required for the proposed mortgagor entity and all principals, using *FHA Form 92417*.
8. **Credit reports.** Credit reports, to be ordered by the mortgagee, are required on all proposed mortgagor entity principals. Reports must be from an acceptable credit reporting agency and must include an original on the agency's letterhead.
 - A. If no traditional first mortgage is proposed, the PAE will order the credit reports.
9. **Sources and Uses of Funds.** This shows ALL expected sources of funds and ALL expected uses of these funds.
 - A. Purchasers will use the standard M2M format (Restructuring Commitment Exhibit F).
 - B. The applicant may modify this format to suit the particular transaction, but the modification may not be less detailed or combine items to avoid specificity.
10. **Executed but Unrecorded Sale, Option or Land Contract.** Submit the applicable sale document in its entirety. The Contract must recite all consideration to the seller or its affiliates. The PAE will require recordation of the Contract as part of the M2M closing.
 - A. Required Contract Provision. The Contract must include the following language: “This (describe document) is expressly conditioned upon preliminary approval by HUD of the transaction as set forth in the Application for Transfer of Physical Assets, and supporting documents submitted in connection therewith. No transfer of any interest in the project under this (describe document) shall be effective prior to such approval by HUD. Buyer will not take possession of the project nor assume benefits of project ownership prior to such approval by HUD. The Buyer, his heirs, executors,

¹ Notice H-99-13 substituted ‘greater than 24%’ for the ‘25% or greater’ in previous guidance.

administrators or assigns, shall have no right upon any breach by Seller hereunder to seek damages, directly or indirectly, from the FHA Project which is the subject of this transaction, including from any assets, rents, issues or profits thereof, and Buyer shall have no right to effect a lien upon this project or the assets, rents, issues, or profits thereof.”

- B. If Land Contract Is Used. If a Land Contract is used, the Land Contract must comply with applicable requirements in *TPA Handbook Exhibit G*, at Section II, Paragraph K; and Section III, Paragraph G.
11. **Executed Seller/Purchaser Affidavit.** This is a sworn statement declaring that the Contract recites all of the consideration passing between the parties to the transfer, and identifying any identity of interest between parties contributing or receiving funds in the transaction.
 12. **Interim Unaudited Financial Statements.** The statements must be prepared in accordance with Handbook 4370.2. The period covered runs from the date of the last audited financial statement to the date of the TPA application. Unaudited statements are acceptable at the time of preliminary submission; final approval requires audited statements, from the last AFS date to the date of TPA closing.
 13. **Pro Forma Balance Sheet.** Pro forma balance sheet (prepared according to Handbook 4370.2). This Balance Sheet will show how the project accounts are expected to appear the day after the expected date of closing.
 14. **Mortgagee Escrow Statement.** The mortgagee should provide an opinion (certified) as to the adequacy of the present escrow balances (taxes, property insurance) and present monthly deposits to meet the next anticipated tax and insurance bills.
 15. **Physical inspection report.** Notice H-99-13 (section A.7.b) requires the purchaser to submit a physical inspection report meeting HUD requirements.
 - A. The Purchaser may fulfill this requirement by accepting the PAE’s Physical Condition Assessment.
 16. **MIO plan (if needed).** Management Improvement and Operating (MIO) Plan - Where the project will have physical, management, or financial needs or changes at the time of the transfer, a MIO plan or another plan acceptable to HUD must be submitted, which describes the timing and extent of planned repairs and financial contribution and the timing for all management or procedural changes.
 - A. The Purchaser may fulfill this requirement by executing the M2M Restructuring Commitment.
 17. **Management Documents.**
 - A. Management Certification (per HUD Handbook 4381.5).
 - B. Management Form 2530. *HUD Form 2530* is required for the proposed management agent and its principals.
 - C. Management Entity Profile. Using *HUD Form 9832*. The PAE may also request a summary or resume of the proposed management agent and its principals.
 18. **Proposed Mortgage Assumption Document.** Proposed Modification Agreement, or Proposed Release and Assumption Agreement, as appropriate, executed by the parties but not recorded.
 19. **Proposed New Regulatory Agreement.** Draft proposed regulatory agreement, executed by

- the Purchaser but not recorded.
20. **Deferred Purchase Price Documents, If Applicable.** If any portion of the purchase price will be paid other than in cash at closing, the deferred portion of the purchase price is termed “secondary financing” for TPA purposes. Submit the proposed legal documents (not executed or recorded) governing the payment of the deferred purchase price. If there will be any “secondary financing”:
 - A. Administrative Requirements. The PAE must determine if the administrative requirements of *Paragraph 13-15 of HUD Handbook 4350.1* have been met.
 - B. OMHAR Review. MAHRA has specific provisions for debt subordination in M2M transactions where “secondary financing” is proposed; any secondary financing must be reviewed by OMHAR for acceptability.
 - C. Mortgagee Consent. If there will be any secured secondary financing, approval of the first mortgagee must be obtained.
 21. **Proposed Deed.** Proposed form of deed, not recorded.
 22. **Proposed Bill of Sale and Assignment.** Proposed form, executed by purchaser and seller. *Form HUD-92228* provides a model but is not required.
 23. **Title Report.** Issued by a title company acceptable to the PAE and conforming to applicable M2M program requirements.
 - A. If the PAE has obtained a title report, the Purchaser may fulfill this requirement by accepting the PAE’s title report.
 24. **Mortgagor’s Oath.** *Form HUD-2478* provides a model but is not required.
 25. **Proposed Rental Schedule.** *Form HUD-92458.* The front of the HUD-92458 should reflect the restructuring plan rents. The back should reflect the name of the proposed new mortgagor entity and should identify its principals. Approval of this form in conjunction with a TPA is not an approval to change the rents; rent changes in M2M are processed separately under existing procedures.
 26. **Executed Organizational Documents.**
 - A. Unless the purchaser is an individual, full details as to the entity acquiring the project shall be provided.
 - B. If the purchaser is a Limited Liability Corporation/Partnership, the documents must comply with *Notice H-95-66*. See item 29.B below.
 - C. If the purchaser is a corporation, trust, or partnership, two certified copies of the charter, trust, or partnership agreement must be furnished.
 - D. The organizational documents of a corporation, trust or partnership² must establish:
 - i. that the duration of the mortgagor is at least coextensive with the post-M2M financing and Use Agreement.
 - ii. the authority of the mortgagor to own and operate the project,
 - iii. the authority of the mortgagor to execute and be bound by the Regulatory Agreement and other relevant governing documents,
 - iv. that the terms of the Regulatory Agreement and Use Agreement take

² Notice H-95-66 includes similar requirements for LLCs and LLPs.

- precedence in the event of any conflict with the terms of the organization documents, and
- v. who is authorized to execute the Regulatory Agreement, other relevant governing documents, and other papers on behalf of the mortgagor.
27. **Certification of Purchaser's Attorney.** The purchaser's attorney must certify that, following preliminary TPA approval, all documents requiring execution and/or recordation will be executed and, as required, recorded in the form reviewed and approved by HUD. The attorney must use the form *Purchaser's Attorney's Certification on Execution and Recordation*.
28. **Byrd (lobbying) Amendment Certification.** An authorized representative of the purchaser must sign and submit a *Byrd Amendment Certification*. If lobbying expenditures have been made, an authorized representative of the purchaser must sign and submit *Standard Form LLL*.
29. **Additional Requirements.**
- A. **Special REIT Requirements.** In the case of transfers to REITs, special riders to the note, mortgage and regulatory agreement may be required to be executed and recorded. Other legal and/or state-specific requirements may also be imposed. The PAE should investigate these issues with its legal counsel and bring these potential transfers to OMHAR's attention as early in the TPA process as possible.
- B. **Special LLC / LLP Requirements.** In the case of transfers to LLCs, or LLPs, special riders to the note, mortgage and regulatory agreement may be required to be executed and recorded. Other legal and/or state-specific requirements may also be imposed. The PAE should investigate these issues with its legal counsel and bring these potential transfers to OMHAR's attention as early in the TPA process as possible. Compliance with *Housing Notice H-95-66* is required for LLC's and LLP's.
- C. **Allonge (if applicable).** Executed but unrecorded.
- D. **If Flexible Subsidy Is Involved.** Normal HUD requirements (Notice H-99-13 Section A.10) do not apply in M2M; instead, the Flexible Subsidy loans normally will be modified and subordinated in accordance with OPG Appendix P. The PAE should contact Jo Anne Garrison at OMHAR HQ (x3651).
- E. **Preservation Properties.** If the property was preserved under LIHPRHA or ELIHPA, the PAE should contact Jo Anne Garrison at OMHAR HQ (x3651). Such properties are eligible for M2M only if sold. They also have existing use agreements that will need to be subordinated to the M2M Use Agreement.
30. **Documents To Be Reviewed By PAE Counsel.** The documents above numbered 1, 2, 4, 10, 18-23, 26, 27 and 29C must be reviewed by the PAE counsel. [These are the docs that H-99-13 says should be reviewed by counsel]

Attachment 3: Submission Package for Final Approval of Full TPAs Under M2M

1. **Executed and Recorded Documents.** Provide one certified or recorded and one conformed copy of all recorded executed documents, including:
 - A. Deed or assignment of the deed (recorded plus one copy),
 - B. Mortgage assumption document (Attachment 2 item 18).
 - C. New Organizational Documents (certified or recorded, as required for type of entity, plus one copy),
 - D. Contract - Sale, Option or Land (recorded plus one copy), and
 - E. Original Regulatory Agreement, if applicable (2 copies evidencing original recording are sufficient, original not required.)
2. **Executed and Unrecorded Documents.** Provide two copies, certified by the purchaser, trustee or other authorized person to be true copies, of all unrecorded executed documents.
3. **Legal Status Documents.**
 - A. Certification of Change in Documents. The purchaser's attorney must certify that, prior to final execution and recordation, any OMHAR required changes and no others were made to the documents. See *Purchaser's Attorney's Certification of Changes*. Provide an original certificate and one conforming copy.
 - B. Title Policy - Provide an original and one copy of title policy or endorsement, as appropriate. If the mortgagor-seller is to be released, a proposed title binder or letter from the company issuing the original mortgagee's policy shall show that after the transfer the mortgage will remain a first lien on the property and the mortgagee will still be protected by a mortgagee's title policy.
 - C. Attorney's Opinion - Attorney's Opinion stating that the transaction has been legally consummated and that the purchaser is legally authorized to operate the project and is obligated to abide by the terms of the Regulatory Agreement. The opinion must also state that the documents that were executed and/or recorded are the same, in form and content, as those approved by OMHAR in the preliminary review process. The attorney shall not have an identity of interest with the purchaser or seller.
4. **Financial Status/Management Documentation:**
 - A. Audited Interim Financial Statement - covering the period from the date of the last audited report furnished to OMHAR/HUD to the date of the transfer. Provide the original and one copy.
 - B. Purchaser's Balance Sheet. Showing the actual condition as of the date of the transfer of title to the purchaser (provide the original plus one copy).

- C. Deferred Payment Notes. If applicable, provide one certified and one additional copy of any deferred payment notes approved by OMHAR and certified to be true copies by the holder.
- D. Mortgagee's Statement. Provide an original statement of account plus one copy for all trust and escrow accounts showing balances as of date of transfer of title to the purchaser. Documentation of transfer of these to the purchaser must also be provided.
- E. Rental Schedule (*Form HUD-92458*) dated after the date of transfer of the project. The Rental Schedule must list the HUD-approved principals, all of whom must have received 2530 clearance. Provide two copies.

Attachment 4: Frequently Asked Questions

1. **‘Determinative Criteria’.** Handbook 4350.1 refers to HUD’s Determinative Criteria for approving TPAs. Are these applicable in M2M TPAs? *Yes. The principles underlying the Determinative Criteria have been incorporated into Appendix D.*
2. **Management Review.** Notice H-99-13 requires a management review. How is this requirement satisfied in M2M TPAs? *This is satisfied by the PAE’s normal underwriting, by the PAE’s determination of the acceptability of ownership and management.*
3. **Flexible Subsidy.** Are Flexible Subsidy loans handled differently in M2M TPAs? *Yes; in M2M, OMHAR has delegated authority to modify Flex loans. See OPG Appendix P.*
4. **Physical Inspection.** Notice H-99-13 requires the purchaser to submit a physical inspection report meeting HUD requirements. How is that handled in M2M? *The purchaser may satisfy this requirement by accepting the PAE’s PCA.*
5. **Non-HUD Funds.** Handbook 4350.1 requires that all non-HUD funds be committed prior to issuance of Preliminary TPA Approval. How is this handled in M2M? *In M2M, Preliminary TPA Approval is not issued until OMHAR and the purchaser have executed the Restructuring Commitment, which in turn requires that all funds be committed.*
6. **Affordability.** Handbook 4350.1 requires that TPAs provide for the continuing affordability of the property for the remaining original mortgage term. How is this handled in M2M? *The M2M Use Agreement, calling for a minimum 30 year affordability period, satisfies this requirement.*
7. **Checklists.** Do Attachments 5-8 of Notice H-99-13 apply in M2M TPAs? *All requirements from these attachments have been incorporated into Appendix D.*
8. **Subsidy Layering.** Does the M2M subsidy layering requirement satisfy the similar requirement for TPAs? *Yes.*