

Appendix G: Owner's Package

Owner's Package includes the following:

Cover Letter, plus

Attachment 1: Overview of Mark-To-Market Process

Attachment 2: Key Decision Points For Owners

Attachment 3: Checklist of Owner's Documentation

Attachment 4: Financing Options and Sources

Attachment 5: Financing Options Comparison Chart

When sent to Owner, PAE should attach:

Form 4.1 Data Release Authorization Letter

Form 4.2 Related Parties Checklist

Form 4.3 Loan History Statement

Insert Owner's name and address

Dear **insert:**

SUBJECT: Owner's Package for Full Debt Restructuring
Kick-Off Meeting Date: **insert date scheduled**
Project Number: **insert**

This package is designed to assist you as an owner of a Mark-To-Market property in understanding the process of restructuring existing debt through HUD's Mark-to-Market Program. HUD's Office of Multifamily Housing Assistance Restructuring (OMHAR) has contracted with us as their Participating Administrative Entity (PAE) and we will be working with you throughout the restructuring process. Our initial kick-off meeting with you is scheduled for **insert date scheduled**, at which time we will elaborate on the process, provide additional information for your review and respond to your questions.

The program's goal is to ensure the availability of affordable housing at the least cost to the government - a goal that depends on the long-term economic and physical well-being of the property. We will work with you to achieve a full debt restructuring to assure that well-being. Full debt restructuring can be done either by modifying the current HUD insured or HUD-held mortgage or by replacing it with new debt. The restructured debt will be underwritten to a level that can be serviced by the property's lower income once the rents are reduced. The restructuring will allow adequate cash flow to cover expenses, the debt service on the restructured debt, monthly deposits for future capital needs, and a return to you the owner. All or a portion of any claim payment made to reduce the debt will be included in a 2nd and sometimes a 3rd mortgage held by HUD.

The process must move forward promptly. We, as PAE, must complete our efforts in a timely manner, reaching closing within 12 months. In addition, you, as owner, must ultimately accept or appeal the approved Restructuring Plan within 20 business days of receipt and must also respond within 10 business days should any appeal be rejected by OMHAR. We seek your involvement and cooperation throughout the process.

This package will hopefully make clear the basic steps in the process and significant time frames that apply to you. It will also explain various incentives available to you for timely performance and cooperation. We also call your attention to the section entitled "Potential Consequences for Non-Cooperation and Untimely Performance" which makes clear that certain problems can result in a reduction of rents to market without timely reduction of the debt.

A key element in the restructuring process is the review of the project's prior audited financial statements. If you could forward the **three most recent full year audited statements** to us before the meeting it would greatly expedite the entire process. If that is not possible, please bring copies of the audited statements with you to the Kick-Off meeting.

We have attached the following:

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|--------------|---|
| Attachment 1 | Process Overview |
| Attachment 2 | Key Decision Making Points for Owners |
| Attachment 3 | Required Documentation |
| Attachment 4 | Discussion of Financing Options and Sources |
| Attachment 5 | Financing Options Comparison Chart |

We sincerely hope that we can provide you with the assistance you need to reach the best possible restructuring outcome for you as the owner, for the tenants and for HUD. Your contact here is *Insert (name and title of individual)* at *Insert (phone #)*. We look forward to seeing you at the kick-off meeting.

Sincerely,

Insert PAE name

Appendix G, Attachment 1: Brief Overview of the Full Debt Restructuring Process

- ⇒ Owner Notifies local HUD Office (under HUD Notice 99-36) of Option to Reduce rents to market and to Restructure Debt..
- ⇒ Local HUD Office forwards the project to OMHAR.
- ⇒ OMHAR assigns the project to the Participating Administrative Entity (PAE); PAE notifies Owner of assignment.
- ⇒ If the owner believes that the PAE to which the project has been assigned has a **conflict of interest**, the owner must advise OMHAR HQ in writing and copy the OMHAR Regional Office.

The Restructuring process must be completed within 12 months of the assignment of the property to the PAE.

- ⇒ **Owner confers** with tax advisors and discusses restructuring with Limited Partners and other General Partners, if applicable.
- ⇒ **Owner discusses** potential debt restructuring with existing Lender and other potential financing sources.
- ⇒ PAE schedules Kickoff meeting and forwards information package to owner.
- ⇒ **Owner submits** the requested information to the PAE. (See Attachment C)
- ⇒ PAE and owner notify tenants and other interested parties and hold first tenant meeting.
- ⇒ PAE obtains Physical Condition Assessment (PCA) and Limited Scope Appraisal. Any owner data and tenant comments provided to preparers of these 3rd party reports.
- ⇒ **Owner applies** for take-out financing.
- ⇒ Draft Restructuring Plan prepared by PAE. Ongoing discussions with owner and Lender. PAE conclusions on rents, repairs and reserves, supplied to owner.
- ⇒ Second tenant meeting held to discuss Draft Restructuring Plan.

- ⇒ PAE submits Draft Restructuring Plan to OMHAR.
- ⇒ OMHAR approves Restructuring Plan; OMHAR issues Restructuring Commitment
- ⇒ **Owner executes** Restructuring Commitment.
- ⇒ OMHAR issues Firm Commitment for financing under Section 223(a)(7); or **owner submits** financing commitment from alternate Lender.
- ⇒ Closing documents prepared and distributed.
- ⇒ Closing scheduled and completed.

Appendix G, Attachment 2: Key Decision Points for Owners

- ◆ **Consultation Process.** You should begin planning and consulting appropriate parties as soon as possible after requesting a debt restructuring. Limited Partners are key decision makers whose involvement and approval is crucial to the success of the Restructuring Plan. You should also start seeking appropriate financing as early as possible in the process if new or modified debt is anticipated.

- ◆ **Working with the PAE.** In general, OMHAR expects that PAEs will contact owners early in the restructuring process and will engage in an ongoing dialogue regarding the property and its debt restructuring. The PAE will send you a copy of the PAE's appraisal and PCA (Physical Condition Assessment) not later than 30 days after the PAE receives the final appraisal report and PCA.

At the time the PAE presents you with the draft Restructuring Plan (or a term sheet for discussion that would form the basis of the Restructuring Plan), the PAE will also provide additional information that is reasonably sufficient to allow you to understand the basis for the PAE's conclusions. Such information will include, at a minimum:

- The PAE's analysis supporting its market rent conclusions.
 - The PAE's analysis supporting its conclusions on physical condition, reserve needs, any critical repairs and/or any repair/rehabilitation escrow.
 - Appropriate pages from the optional underwriting model, or equivalent, showing the PAE's recommended restructuring.
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- ◆ **Incentives for Cooperation and Timely Performance.** It is important to remember that the restructuring process must be completed within 12 months of the assignment of the property to the PAE. If the owner cooperates with the PAE, enabling timely completion of the full restructuring process, and the closing of the transaction, the following new incentives will be made available:
 - A waiver of the FHA Application Fee of \$3 per thousand of the loan amount for loans insured under Section 223(a)(7).
 - A waiver of the FHA Review Fee of \$.50 per thousand of the original loan amount for properties that require a Transfer of Physical Assets (TPA) due to ownership changes or ownership restructuring.
 - An increase in the percentage of transaction costs that can be included in the mortgage from 50% to 80%.

- An increase in the amount of the Initial Deposit to the Replacement Reserves that can be included in the mortgage from 80% to 100%
 - A monthly Capital Recovery Payment (CRP) (included in underwriting as an expense) providing equal monthly principal and interest payments for a term of 7 to 10 years at an interest rate of up to 350 basis points over like-term Treasuries. The CRP is intended to provide a reasonable return for any new capital investment in the project. The CRP would be paid monthly after project expenses, replacement reserves and debt service payments on the first mortgage. Unpaid amounts could accrue.
 - An Incentive Performance Fee (IPF) of up to 3% of Effective Gross Income. The ability to pay the IPF is determined by the audited financial statement and would be paid annually after the payment of all approved expenses, replacement reserves, debt service payments on the first mortgage and Capital Recovery Payments. This Fee would have an initial floor of \$100 a unit and a ceiling of \$200 a unit and would depend on the owner's successful management of the financial and physical assets of the project. Unpaid amounts would not accrue.
- ◆ **Review and Appeal Provisions.** The owner can review the approved Restructuring after its receipt from the PAE and then appeal the Restructuring Plan to OMHAR. If OMHAR rejects the appeal, the owner must respond promptly to OMHAR's letter turning down any appeal. Specific time requirements will be contained in the applicable correspondence.
- ◆ **Potential Consequences for Non-Cooperation and Untimely performance.** If the owner rejects the approved final debt restructuring plan (after completion of any appeals) or fails to respond to the PAE's requests for information, assistance and/or acceptance of the Restructuring Plan, the following consequences may result:
- Loss of some or all of the Incentives listed above.
 - Reduction of rents to market without restructuring of the debt.
 - Placement of the project on the FHA "Watch List" for close monitoring. HUD staff will carefully watch over these projects, which are potentially troubled as a result of rent reductions without debt restructuring.

Appendix G, Attachment 3: Checklist of Owner's Documentation

	<u>Date Sent</u>
Delivered at Kick-off Meeting	
Lender Data Authorization Letter (Form 4.1 attached) Loan History Statement (Form 4.3 attached) Prior 3 Years Audited Financial Statements	
Within 30 days after Kick-off Meeting	
Ownership Documentation. Provide copies of applicable documentation required by your state/locality or type of organization: <input type="checkbox"/> Partnership Agreement <input type="checkbox"/> Certificate of Limited Partnership <input type="checkbox"/> Current termination date of the Partnership and consents needed to extend <input type="checkbox"/> Consents needed to effectuate debt restructuring transaction <input type="checkbox"/> Articles Of Incorporation <input type="checkbox"/> Bylaws <input type="checkbox"/> Trust Documents <input type="checkbox"/> Any other documents necessary to show the current ownership structure and interests in the property.	
Preliminary Title Report. To assist in reviewing the ownership structure, please obtain and submit a preliminary title report. A final Title Policy will be required at closing.	
Easements and Joint Use Agreements. Provide copies of any written agreements granting another party the right to use the subject property and the conditions of that use.	
Checklist of Related Party Agreements. Complete Form 4.2 (attached) and submit copies of any contracts or agreements between the owner and identity of interest entities; if none, please state that on the form.	
Insurance Policies. Provide copies of the project's current fire and hazard, personal injury, flood and any other insurance policies.	
Evaluation of Physical Condition. <i>The statute requires</i> that the owner evaluate the physical condition of the property. Please indicate whether you intend to: <ul style="list-style-type: none"> • obtain your own evaluation (please contact the PAE for information on the various components), or • adopt, after review, the PAE's conclusions on repairs and reserve needs based on the Physical Condition Assessment performed by a third party contractor of the PAE. 	
List of Recent Major Repairs and Replacements. This list is optional, but is strongly recommended since it may reduce the estimate of long term physical needs and the resulting deposits to the Replacement Reserve. Please indicate number and type of appliances replaced, roof or boiler replacements, date replaced, etc.	

<p>Subordinate Project Debt. Full documentation of existing subordinate debt is required whether secured or unsecured by the property.</p>	
<p>Existing Use Agreement, Use Restriction, Deed Restriction or Equivalent. These items will need to be subordinated to the M2M Use Agreement at closing.</p>	
<p>Supplemental Information - (if checked below)</p> <p><input type="checkbox"/> Project rent and expense analysis</p> <p><input type="checkbox"/> 20 year pro formas</p> <p><input type="checkbox"/> Management Agreement</p> <p><input type="checkbox"/> HUD Management Certification</p> <p><input type="checkbox"/> Income Tax Returns</p> <p><input type="checkbox"/> As-built site survey</p> <p><input type="checkbox"/> Service Contracts</p> <p><input type="checkbox"/> Commercial leases</p> <p><input type="checkbox"/> Utility bills for the past 3 years</p> <p><input type="checkbox"/> Property tax bills for the past three years</p> <p><input type="checkbox"/> Location Map suitable for providing directions to the site</p> <p><input type="checkbox"/> Rent Roll</p> <p><input type="checkbox"/> Financing Plan Outline</p> <p><input type="checkbox"/> Other _____</p>	

The owner may be asked to submit additional information by the PAE as a result of the underwriting process.

Appendix G, Attachment 4: Financing Options and Sources

Full debt restructuring can be achieved by modifying the current HUD insured mortgage or by replacing it with new debt from a variety of public and private sources. The terms and conditions connected with different financing alternatives will vary. Each project is unique and some M2M projects may not meet the eligibility criteria for all financing sources and programs. Owners should shop early for the best available financing for their project. All 1st mortgage financing must be subordinated to the M2M Use Agreement.

The restructured debt will be underwritten to a level that can be serviced by the property's reduced income once the rents are marked down. All or a portion of any claim payment made to reduce the debt will be included in a 2nd and sometimes a 3rd mortgage held by HUD (2nd and 3rd mortgages will not require new financing sources). The following addresses alternate sources for first mortgage financing and provides some suggestions on how to obtain additional information. A Chart comparing and summarizing basic loan features and requirements is also attached.

A. FHA - General

1. There are a variety of FHA insured loan programs available for debt restructuring. They range from modifying the original mortgage to originating a new FHA insured loan on the property. The owner should identify a FHA-Approved Multifamily Lender interested in providing the financing early in the restructuring process. The timing of the insured loan application and processing should coincide with OMHAR's approval of the proposed Restructuring Plan and issuance of the Restructuring Commitment.
2. Approach the current lender as well as other lenders when considering new insured financing. Lists of FHA-Approved Multifamily Lenders active in processing applications under these insured loan programs on HUD's Multifamily Products Web site at <http://www.hud.gov/fha/mfh/fhamie/fy99mie/> Note: a PAE which is also a HUD-Approved multifamily lender may also provide takeout financing (subject to OMHAR review).
3. **Generally any post restructuring financing that is FHA insured cannot exceed the current unpaid principal balance (UPB) prior to restructuring.** Descriptions of the various FHA insured financing options, including additional terms, conditions and limitations, follow in Attachment E.

B. FHA - Mortgage Modification.

1. The first option to be considered is modification of the existing insured mortgage. A mortgage modification requires the agreement of the current lender (and investors if applicable), so it may not be an option for many restructurings. If viable, however, it is worth pursuing as it is usually less costly than obtaining new financing.
2. Loans currently FHA insured:
 - a) may be modified with the approval of the existing FHA-insured mortgagee

- b) may include adjustment of interest rate up or down and reamortization within the existing loan term
 - c) will not generate cash proceeds for rehab or transaction costs
3. Loans currently HUD-held:
- a) may be modified on PAE recommendation
 - b) will have accrued interest added to the principal balance.
 - c) may include adjustment of interest rate up or down and reamortization
 - d) will be processed directly between HUD and the PAE, with approval by OMHAR.

C. FHA Insured Mortgage under Section 223 (a)(7).

Applications for mortgage insurance under Section 223(a)(7) will receive an expedited review by the PAE with approval by OMHAR. The expedited review is possible because OMHAR has delegated authority to issue commitments and because such commitments involve only refinances of existing insured loans.

- 1. HUD-held mortgages and projects requiring substantial rehabilitation cannot be refinanced through a Section 223(a)(7) loan.
- 2. A restructuring that includes a transfer of ownership requires submission of a request for a Transfer of Physical Assets (TPA) in addition to the 223(a)(7) insured loan application.

D. Other FHA Mortgage Insurance.

New FHA insured financing may also be provided under Sections 223(f) and 221(d)(4). Applications under these Sections of the National Housing Act must be submitted by a HUD Approved Multifamily Accelerated Processing (MAP) Lender and will be processed and approved by Housing staff (not OMHAR) in the local HUD Offices. The PAE will need to coordinate closely with the local HUD office processing the application.

- 1. Section 223(f). Available for acquisition or refinance of properties requiring repairs or moderate (but not substantial) rehabilitation. Has a maximum mortgage term of 35 years.
- 2. Section 221(d)(4). Available for refinance or acquisition of properties requiring substantial rehabilitation. Has a maximum mortgage term of 40 years.
- 3. HUD Risk Sharing under 542(b) or (c). FHA insured financing may also be provided by a state or local Housing Finance Agency or through Fannie Mae, Freddie Mac and the Federal Home Loan Bank of Seattle under Risk Sharing programs between those entities and HUD. OMHAR will issue approval letters for risk sharing loans taken out under these programs. However, if the PAE is also providing this financing they will be subject to further review by OMHAR.

E. State and Local Government Financing Programs.

There are many different financing programs available locally that support affordable housing preservation. They are funded by a variety of HUD, State and Local Government entities. The

features and requirements of these programs vary greatly. The demand for the assistance provided generally exceeds the supply of funds. There is no guarantee that any given property will qualify for or be able to obtain such assistance.

The best place to seek information on local government supported programs is at the local government level. The local HUD Office and State and local Housing Finance Agencies are an excellent source of information on local and state programs. The financing and any financial or use restrictions accompanying the financing would need to support the approved Restructuring Plan.

F. Fannie Mae and Freddie Mac.

Both of these entities provide financing for multifamily properties through a network of Approved Lenders. Their financing need not be limited to the remaining UPB prior to restructuring. Each has separate underwriting standards and loan terms and each has complete control of the loan processing and approval process. The amount of their new commitment would be limited to the maximum new loan amount approved as a part of the Restructuring Plan.

1. Information on Fannie Mae's loan programs and approved Lenders can be obtained at their web site: <http://www.fanniemae.com/multifamily>.
2. Freddie Mac's information is available at: <http://www.freddie.mac.com/multifamily>.
3. There is no guarantee that any given property will meet the loan standards of either Lender.

G. Other Private Sector Lenders/Conventional Financing.

There are a number of private sector lenders that may be able to provide financing to support the Restructuring Plan. Some are local branches of large national banks with community development financing goals and some are local institutions, which strongly support affordable housing financing. The Community Reinvestment Act encourages regulated financial institutions to meet the credit needs of the communities, which they serve. Potential sources of information on active local private Lenders include:

1. Local and State Housing Finance Agencies.
2. Local Community Development focused non-profit organizations.
3. The Mortgage Bankers Association of America and the various State Mortgage Bankers Associations. The national organization is located in Washington, DC and can be accessed at <http://www.mbaa.org>.
4. There are a number of privately run websites that provide a wide range of financing services and information. The public sector officials mentioned above may be able to provide you with information about such relevant web sites.

If conventional financing is proposed, the owner should obtain a "Conditional Letter of Intent" from the lender as evidence of a loan commitment for the new first mortgage piece of the Restructuring Plan.

Appendix G, Attachment 5: Comparison of different first mortgage financing options under M2M

	OMHAR Full Processing (all terms must be consistent with Restructuring Commitment)					
	modification of original mortgage	FHA 223(a)(7)	FHA 223(f)	FHA 221(d)(4)	HFA Risk Sharing	conventional financing
Lender requirements	no change in lender	FHA approved MF Mortgagee	FHA approved MF Mortgagee	FHA approved MF Mortgagee	HFA RS lender	as required by mortgagee
Eligibility	may be currently insured <u>or</u> HUD-held	<u>must be currently insured</u> (no HUD-held)	may be currently insured <u>or</u> HUD-held	may be currently insured <u>or</u> HUD-held	may be currently insured <u>or</u> HUD-held	may be currently insured <u>or</u> HUD-held
Relationship of new first to UPB and Restructuring Commitment	Capped at UPB prior to restructuring, (NTE amount in Restructuring Commitment)	Capped at UPB prior to restructuring, (NTE amount in Restructuring Commitment)	Capped at UPB prior to restructuring, (NTE amount in Restructuring Commitment)	Capped at UPB prior to restructuring, (NTE amount in Restructuring Commitment)	Capped at UPB prior to restructuring, (NTE amount in Restructuring Commitment)	may exceed UPB, (NTE amount in Restructuring Commitment)
Maximum loan term	remaining term of original loan	remaining term of original loan + 12 years, NTE original limit (eg., 35max if was 223f)	lesser of 35 years or 75% of remaining useful life	lesser of 40 years or 75% of remaining useful life	RS program requirements	lender requirements
Eligibility of sub rehab	no	no	no	yes	yes	yes
Underwriting/processing requirements	processed by OMHAR/PAE based on current FHA policy guidance modified by MOU provisions	processed by OMHAR/PAE based on current FHA policy guidance modified by MOU provisions	processed by Housing staff, subject to program limits	processed by Housing staff, subject to program limits	HFA processed, OMHAR/PAE approval (MOU provisions), subject to program limits and HFA RS standards	processed by lender subject to their limits
Regulatory Agreement required by new first mortgage financing	original remains in place, with M2M modifications	RA under which it was originally insured, with M2M modifications	New FHA/Section 8 RA with M2M modifications	New FHA/Section 8 RA with M2M modifications	New HFA RS RA	none
Processing of TPA (if applicable)	OMHAR/PAE processes TPA	OMHAR/PAE processes TPA	no TPA submission required	no TPA submission required	no TPA submission required	no TPA submission required
Primary role in Closings	OMHAR/PAE attorney leads	OMHAR/PAE attorney leads	OMHAR/PAE attorney coordinates with HUD Housing counsel	OMHAR/PAE attorney coordinates with HUD Housing counsel	OMHAR/PAE attorney coordinates with HFA Counsel	OMHAR/PAE attorney coordinates with conventional lender counsel

