

# Budget Based Rent Adjustments (BBRA) for Mark-to-Market (M2M) Properties - Frequently Asked Questions

Update: 05/23/2024

Q. I am interested in applying for a BBRA. How much funding has been set-aside for the program?

**Congress has not supplemented the PBRA budget for this purpose and therefore there is no set-aside funding specifically for M2M BBRA requests. Limited funding is available for BBRAs from the Office of Multifamily Housing's Section 8 account. Through [Notice H 2024-05](#), HUD has established a prioritization structure through which the Department can assess the extent of available funding for BBRAs at various points in time.**

Q. I am an Owner of a M2M property, and I am in the process of selling it to a purchaser. Who would be responsible for applying for a BBRA? Would it be the seller or the purchaser?

**The owner/seller would need to apply for the BBRA. The owner/seller could designate the purchaser to act on its behalf, but the Initial and Final submissions are actions taken by the owner.**

Q. Is there any grouping or prioritization preference provided for a property's specific location or geography?

**There is no specific prioritization for location or geography, but one factor of how a property is prioritized is by the Fair Market Rent (FMR) for the property's metropolitan statistical area.**

Q. If a property has an annual renewal with Operating Cost Adjustment Factor (OCAF) that has already been approved, can the owner change that to a budget-based rent adjustment?

**If a property's OCAF has been approved, you should increase the project's contract rents by the OCAF. Once the property's priority grouping is eligible for BBRA (ex: now if in Group A), you can also apply for the BBRA separate from your already-approved OCAF.**

Q. Is a MOR still required if it's related to a sale of the property where there will be a change of management agent?

**Yes, the MOR is required.**

Q. While all properties in Group A are considered 1st priority will there be further sub-prioritizations within Group A?

**There are no further prioritizations or sub-prioritizations within Property Group A.**

Q. When and how will HUD notify stakeholders when applications are open to other prioritization Groups?

**HUD will publish short Notices from time to time that will look like Section 5 of Notice H 2024-05, inviting specific priority categories to apply.**

Q. Are the Group A criteria equally weighted?

**Yes, all Group A criteria are equally weighted.**

Q. Is \$1,500 of owner contributions per year over the last 3 years considered as an average or a minimum per year regardless of the average?

**The owner's contribution amounts are considered a minimum, not an average, for each of the last three fiscal years.**

Q. Is FMR compared to the contract rent plus utility allowance or is it compared to just the contract rent?

**FMR is compared to the gross rent, which is contract rent plus the utility allowance for a property's specific unit type.**

Q. The property's financial deficits have not only led to operational shortfalls but have resulted in drawing down the replacement reserve account to the HUD-required minimum and deferring capital needs. Can an Owner submit a 20-year capital needs assessment (CNA) as part of BBRA to show the capital needs for the property that will result in a necessary increase to replacement reserve contribution?

**A CNA is required as part of the Final Submission, and the results of that CNA will be considered in setting the rents. However, commissioning a CNA prior to being invited to provide a Final Submission is not advisable, as the CNA must have been completed no earlier than 180 days prior to the owner's submission of the Final Submission, except in cases where HUD approval is granted. If the CNA is older than 180 days from the Final Submission date, a new CNA would be required to be commissioned.**

Q. If a property receives a BBRA will an extension to the M2M Use Agreement be required?

**Yes. The statute requires an extended affordability period (see Section 7.4 of the Notice). The extended use restriction is focused on affordability and does not extend the OCAF-only structure.**

Q. Is a CNA required if an owner is not seeking a BBRA to fund the replacement reserve deposits, but rather to fund operations?

**Yes. A CNA, using the CNA eTool, is a requirement for all BBRA Final Submissions.**

Q. Do the reasonable market-rent estimates that an owner submits at Initial Submission have any impact or cap rents at Final Submission?

**No. The estimates at Initial Submission are used to help HUD estimate the needed budget authority to fund eligible properties. Final rent levels are equal to the lesser of budget-based rents or comparable market rents per a Rent Comparability Study.**

Q. For this Initial Submission, what is an owner's "reasonable estimate" of market rents? Can an owner use the FMRs on HUD's website as a reasonable estimate?

**The statute caps the rent at market so this is the owner's estimate of the upper bound of the rent adjustment, which will be used to determine if there is sufficient budget authority available for the request. If an owner can justify that the estimate is the same as the FMR, then that will be acceptable at Initial Submission. The final rent will be determined through the underwriting process.**

Q. If an Initial Submission is denied now by HUD but circumstances change and the owner feels that they qualify, how soon can you re apply?

**There is no waiting period. An owner can resubmit whenever a property qualifies for the open Priority Group (or Groups) on a first come, first served basis.**

Q. How long will a CNA be valid?

**The CNA must have been completed no earlier than 180 days prior to the Final Submission, except with HUD approval. HUD strongly recommends that an owner not procure a CNA until the property has been invited to submit a Final Submission.**

Q. Are financing commitments required for Final Submission?

**If rehab is proposed as part of the BBRA request, the Owner must provide evidence of financing commitments or letters of interests from the third-party lenders. At Final Submission, 85% of the proposed sources must have an accompanying commitment and at Closing the commitments must be updated or supplemented to cover 100% of the committed sources of funds. Section 6.4(B)(vii) of the Notice describes this requirement in more detail.**

Q. How is FMR determined?

**HUD publishes FMRs annually. For the purposes of the BBRA Notice, HUD is using the Metropolitan Statistical Area FMRs only. FMR data can be found by accessing this hyperlink: <https://www.huduser.gov/portal/datasets/fmr.html>**

Q. If a MOR is needed, should the Owner reach out to HUD to get this scheduled? Are HUD travel funds being made available to allow HUD staff to travel if needed, or are PBCAs being given the ability to adjust their workplans to allow Owners to get this completed to meet the requirements?

**A MOR is needed if a property hasn't been subject to a MOR review within the last 3 years. If this is the case for a submitting property, the Owner can request an MOR directly from the Multifamily Preservation Resource Desk:  
(<https://pm2mbbra.hudmfpreservation.net/login.cfm>)**

Q. I am not familiar with the Green Analysis that is required to be submitted with the CNA. Is there any guidance or previous memo available with information on the Green Analysis and what the analysis entails?

**The HUD CNA eTool requires a CNA provider to identify green alternatives for each replacement component. HUD strongly recommends that an Owner use a CNA provider that has experience in preparing and submitting HUD CNA eTools. Additional Information can be found here: [https://www.hud.gov/program\\_offices/housing/mfh/cna](https://www.hud.gov/program_offices/housing/mfh/cna)**

Q. How is it determined if rehab is "needed" at a property?

**A CNA, which is a detailed physical inspection of a property to determine critical repair needs, short- and long-term rehabilitation needs, market comparable improvements, energy efficiency needs, unmet physical accessibility requirements, and environmental concerns, including lead-based paint, prepared in accordance with the requirements of Appendix 5, Section A.5.7 of Housing Guidebook 4430.G, Multifamily Accelerating Processing (MAP) Guide. The CNA must be prepared using the CNA eTool, including the narrative (the description of each component and its condition and, as applicable, a green alternative and/or an energy audit) and the financial model (the 20-year schedule and associated determination of an initial deposit to the reserve for replacements and the annual deposit to the reserve for replacements).**

Q. Which HUD Regions are expected to have the greatest number of Group A submissions? Will this require additional resources for each HUD region to process the inflow of submissions?

**The BBRA requests will be processed by the Office of Recapitalization (Recap) so there will not be a HUD regional burden or need for additional HUD resources to the region.**

Q. At the end of the original 30-year M2M Use Agreement, even with an extended 20-year affordability agreement, can an owner choose a different HAP Contract renewal option?

**Yes. At the end of the original 30 years M2M Use Agreement an Owner can renew under whatever option is available to them at that time per the Section 8 Renewal Guide.**

Q. Is there a limit to the number of Initial Submissions? Will HUD view each property on an independent basis or by owner submissions? Can one of the Initial Submissions hurt the chances of another property in an owner's submission group?

**The Initial Submission is on a property-by-property basis. There are no limits to Initial Submissions, but they must be within the priority category(-ies) invited to apply.**

Q. If an Owner appealed the most recent 2024 MOR, can we use the previous MOR?

**See Section 6.4(B)(v) describing what is needed for a MOR Corrective Plan if any remaining MOR findings remain open.**

Q. If a property in Group A submits after a property in Group B Initial Submission, does this mean that the Group A property is now behind in the queue from everyone in Group B?

**If the applicant property is eligible to apply at the time of Initial Submission, it is based on the date/time stamp of the Initial Submission so any subsequent priority category submissions that came in before the Group A property will be processed first.**

Q. If a property already has an extended M2M Use Agreement through year 50, would there be any flexibility on not needing to extend to another 20 years?

**No. The extension of the use agreement is required by statute, and the statute cannot be waived.**

Q. What is the anticipated timeline for Initial Submissions for Groups B - D and priorities 2 - 9? Does HUD estimate shortly after March 28 for the next priorities?

**At this time, HUD cannot provide and commit to timeline estimates. HUD will assess and process BBRAs as efficiently as possible. This applies to both how long a submission review will take and when the next priority groupings are announced.**

Q. If an owner is applying for new mortgage financing, they will need to provide the mortgage lender with confirmation of what the new rents will be. However, the Final Submission requires all financing commitments. Will HUD be able to issue a conditional rent determination for purposes of documenting what rents are available when the owner applies for a new mortgage?

**The invitation to make a Final Submission is an indication that the property will be underwritten for a BBRA. At Final Submission, 85% of the proposed sources must have an accompanying commitment. After Final Submission, HUD will issue the Owner a conditional approval that will have the anticipated effective date and BBRA rent schedule that lenders can rely on. At Closing the commitments must be updated or supplemented to cover 100% of the committed sources of funds. Section 6.4(B)(vii) of the Notice describes this requirement in more detail.**

Q. If an Owner is selling a M2M property contingent on receiving tax credits, how does that work commitment wise at Final Submission? What if the sale does not go through and you submitted rents based on as-renovated with the assumption the buyer would receive credits, what happens then? Are you able to go to As-Is rents from the RCS as the current owner would continue owning the property?

**At Final Submission, 85% of the proposed sources must have an accompanying commitment, this would include any contemplated tax credit equity. After Final Submission, HUD will issue the Owner a conditional approval that will have the anticipated effective date and the pre- and post-rehab BBRA rent schedule that lenders can rely on. At Closing the commitments must be updated or supplemented to cover 100% of the committed sources of funds. If the sale fell through the property would need to be reevaluated and re-underwritten based a new CNA if the proposed scope of work cannot be completed.**

Q. If post-rehab rents are being used, can the Owner bring in additional amenities and services as a part of the RCS?

**The RCS analyzes the subject property (as is, at the time of the appraisal), identifies comps, and determines the rents paid at comparable properties and adjusts the market rents based on their differences (e.g., size, location, and amenities, as well as condition, utilities, street appeal, etc.).**

Q. How long will an Owner have to submit a Final Submission, if invited to do so?

**There is no specific deadline referenced in the Notice, but as a standard operational procedure, Recap will require the Final Submission to be submitted within 6 months of HUD's letter of invitation with an extension option. In the meantime, Owners may wish to compile the documents that encompass the Final Submission to expedite the process but should exercise caution commissioning the RCS or other documents that may become stale.**

Q. Does an Owner have to enter into a new HAP contract to qualify?

**No. The property must already have a Full Mark-to-Market HAP Contract and a M2M Use Agreement in place.**

Q. Will HUD re-subordinate any existing M2M debt to a new mortgage?

**Yes. HUD will resubordinate to new financing per applicable program requirements found in [Notice H 2021-02](#).**

Q. If a M2M property recently went through a LITHC syndication and rehab was completed, will that count towards the \$3,000 owner contribution?

**No. Equity contributions or investments are not considered an Owner Contribution as it pertains to the Notice. The Notice defines Owner Contributions as: The Owner's advance of funds to support Property operations, as documented in the Financial Statements. Owner Contributions may include accrued but unpaid reimbursement for property management site staff salaries and accrued but unpaid reimbursement for the fees pursuant to a property management contract with an affiliated property management agent provided that such fees do not exceed six percent (6%) of Project Income. Owner Contributions shall not include any equity investment at the time of a recapitalization transaction, nor any fees payable to entities affiliated with the owner of any share or interest in the Owner other than the fees set forth above. In general, Owner Contributions shall not refer to investments in capital expenditures unless approved by HUD.**

Q. Can Green and Resilient Retrofit Program (GRRP) funds be used with a BBRA request?

**Yes. A property that received or will receive GRRP funds is also eligible to receive a BBRA.**

Q. Do Owner loans (needed because rental income is insufficient to cover expenses) count as Owner contributions? How about operating reserve draws?

**The replacement reserve balance is a criterion for Group C and is otherwise not considered as an Owner Contribution to qualify for Group A. Owner loans can be considered Owner contributions if they are recorded in the AFS as such.**

Q. Does "Owner Contributions" exclude capital improvements? If so, what's the logic behind this, if an owner has been coming out of pocket for deferred maintenance?

**In general, deferred maintenance should be addressed utilizing the property's Replacement Reserves versus Owner contributions.**

Q. Implementing the BBRA rents exclusively on the contract anniversary date is inconsistent with existing HUD policy on, for example, early contract terminations and new 20-year contracts in an acquisition setting. Why was the policy tied to HAP anniversary dates?

**If the BBRA request includes a sale, refinance, or any other action, an owner or purchaser may request for the existing M2M Full Renewal HAP contract to be terminated early and renewed which would reestablish the HAP contract anniversary date. The Office of Recapitalization is working with OGC to streamline future guidance for owners and purchasers.**

Q. If I submit detailed information about the physical needs in my property, and the property is not approved for some reason, will HUD still require me to do all these repairs and improvements out of pocket and make it even less financially feasible to run?

**HUD is not reviewing any CNA findings as part of the Initial Submission. If a property is invited to submit a Final Submission, but is ultimately not approved for a BBRA, HUD will not require any work identified as part of a CNA to be completed.**

Q. If a purchaser received a tax credit award last year and is subject to an IRS deadline this year, will HUD take into account tax credit and IRS test deadlines as a priority?

**No. Initial Submissions received simultaneously (received before 11:59PM ET on 3/28) will be ordered by random lottery. After 11:59PM ET on 3/28 all Initial Submissions become first come, first served.**

Q. How will HUD be reviewing cash-out refinancing proceeds or proceeds to seller after repayment of debt and transaction costs? Are there specific metrics HUD will rely upon to determine whether an application is approved?

**Requests with existing M2M debt will also need Recap approval for a waiver of the due on sale clause of the M2M Notes. Notice H 2021-02 governs how these requests are reviewed, including the calculation of proceeds. If there is no existing M2M debt, any other applicable program guidance will govern (i.e.: FHA, HAP Assignments, etc.). HUD's intent is to make sure all identified needs of the project are being met and that the reserves are being appropriately set.**

Q. Will HUD review how quickly the remaining M2M HUD held debt will be repaid? For example, if the BBRA results in a slower repayment of the HUD held subordinated debt, will this be problematic for the Owner/Project's consideration for a BBRA?

**If the BBRA request triggers a waiver of the due on sale clause in the M2M Notes, HUD will**

**review the request per H2021-02 and the net present value of the surplus cash payments will be analyzed to determine if there is a negative impact on the value of the M2M Notes.**

Q. What if a transfer must occur in the middle of the BBRA approval process due to 10% timing/closing requirements for a 9% tax credit award. If the owner is required to submit, will the purchaser need to submit a new application?

**A new BBRA application will not be needed. The narrative or cover letter should inform Recap of the intended action or transfer. The sale or transfer of the Property must be submitted to and processed separately by the Office of Multifamily Housing (asset management). All other HUD-required transaction approvals related to the sale or transfer (i.e. 2530 previous participation clearance, management agent of the new Owner) must also be processed by and secured by the appropriate HUD office before or simultaneously at closing. Closing and the effective date of the BBRA approval may be conditioned upon such approvals.**

Q. Does the BBRA also apply for a property that recently had the use agreement and note assumed by a QNP?

**Yes. A property that assigned the M2M Note(s) and Use Agreement to a Qualified Nonprofit Purchaser (QNP) is eligible to receive a BBRA.**

Q. The property is 23 years into the M2M use agreement term and has a M2M Full Renewal HAP that is coterminous with the term of the M2M Use Agreement. If awarded a BBRA is it correct that when the use agreement expires in 7 years we will be able to pick another rent renewal option?

**Yes. Since your M2M Use Agreement and HAP term are coterminous, in 7 years the property may renew the HAP under whatever option is available at that time per the Section 8 Renewal Guide.**

Q. If a property was awarded RD MPR funds and is undergoing rehabilitation, would it still qualify for a BBRA?

**The property qualifies if it has an existing Full M2M Renewal Contract and an M2M Use Agreement. The funding for the rehabilitation will be reviewed under Notice H 2021-02 to make sure it meets program requirements.**

Q. If a MOR is needed, should the Owner reach out to HUD to get this scheduled? Or are PBCAs being given the ability to adjust their workplans to allow Owners to get this completed to meet the requirements?

**If the property is in the PBCA portfolio, then yes, the PBCA will perform the MOR based on its existing MOR Workplan. Please note that MOR performance is based on funding availability and that they are scheduled pursuant to the risk-based matrix.**

Q. If there is no MRN or CRN how will sale proceeds be evaluated?



**Sale proceeds would then be dictated by any other applicable programmatic requirements. HUD will review the BBRA request and the CNA to confirm that the appropriate amount of work is being completed and that the reserves are set to meet the 20-year needs of the property.**

Q. If the owner currently does OCAF rent increases through the PBCA (Contract Administrator) will they go through the Contract Administrator, or will this all be done by HUD only? How will Contract Administrators assist in this?

**The PBCA has no role in the processes outlined in Notice H 2024-05. The Owner/Agent works directly with HUD Staff (The Office of Recapitalization and Multifamily Account Executives).**

Q. What information needs to be made available to HUD by the March 28th deadline. Audits? Budgets? 20yr plans? Green? PCNA? All of these?

**If the property is in Group A the documents requested are the Initial Submission documents outlined in Section 6.3 B of the Notice. The Multifamily Preservation Resource Desk indicates if additional supporting documentation is needed for the owner to justify meeting the criteria.**

Q. What if we have good MORs and REACs but our operating expenses are high because the City assessed us an outrageous Storm Water and Sewer fees?

**The property will need to meet one of the eligibility criteria for Group A to be eligible for a BBRA as of the date of Initial Submission by an owner.**

Q. Does HUD anticipate 60 days before Group B, 90 days Group C, or should we assume 6 months before Group B is allowed to submit?

**There are no established timelines for other Priority Groups to be invited to apply for a BBRA. It is dependent on HUD's assessment of available Section 8 funding. When HUD opens submissions for other Priority Groups, a Notice will be published inviting future Priority Groups (i.e., 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>... 10<sup>th</sup>) to apply.**

Q. My Annual Audited Financial Statements won't be complete by the March 28<sup>th</sup> submission date. Will HUD accept other financial statements in lieu of audited financial statements?

**If an Owner is qualifying under 2.9(C-E), the Notice requires that the most recent fiscal year Financial Statements are to be included for HUD's review to confirm Group A eligibility at Initial Submission. Financial Statements are defined in the Notice as, "annual, audited financial statements prepared in accordance with Generally Accepted Accounting Principles (GAAP) and the guidance contained in HUD Handbook 4370.1, *Reviewing Annual and Monthly Financial Reports*, HUD Handbook 4370.2, *Financial Operations and Accounting Procedures for Insured Multifamily Projects*, and HUD Handbook 2000.04 Rev-2, *Consolidated Audit Guide for Audits of HUD Programs*, as such handbooks may be amended from time to time." For the March 28<sup>th</sup> submission date, HUD will accept the property's draft audited financial statements for the most recent fiscal year (FY2023) as part of the Initial Submission, to be supplemented by the final fiscal year annual audited financial statements (FY2023) upon HUD's request as the Initial Submissions are reviewed.**

Q: The Operating Cost Coverage Ratio (OCCR) is calculated by dividing Project Income by a Property's operating expenses. What are some financial considerations that could impact the OCCR calculation?

**Section 2.25 of the Notice states that financial expenses such as repayment obligations on debt shall be excluded from the Property's operating expense calculation. OCCR should not be confused with Debt Service Coverage Ratio (DSCR) which is calculated by dividing the Property's Net Operating Income by the Property's annual debt service (principal and interest) in its calculation. In addition, OCCR excludes fixed assets which include authorized withdrawals from and required deposits into the reserve for replacements or any operating reserves from both the project income and the operating expense figures.**

Q: Owner Contributions or advance of funds to support property operations must be verifiable and "documented in the Financial Statements." What additional parameters must owners comply with when reporting Owner Contributions? And what expenses or items must be excluded from the Owner's Contributions?

**The Financial Statements for the Property must show Owner contributions were made in the most recent or last three fiscal years. Future financial commitments will not be counted or reported in the owner's contribution for the purposes of determining eligibility at the time of submission. Additionally, any accrued but unpaid reimbursement for property management (PM) staff salaries or contract management fees will be capped at the lesser of their actual or 6% of project income. Lastly, owner contributions may not include any investment in a recapitalization transaction, capital expenditures or amounts due to affiliates with share or interest in the Owner for non-project purposes.**

Q: Does an environmental review need to be conducted on a Post M2M property that is applying for a BBRA under Notice H 2024-05?

**No, the BBRA does not trigger an environmental review. However an environmental review could be triggered by another program. For example, if a M2M project will utilize an FHA-insured mortgage or GRRP funds, a Part 50 will be required, or if a M2M project will utilize CDBG or HOME funds a Part 58 will be required.**

**Owners requesting a BBRA for a Property must submit a CNA using the CNA eTool based on a detailed physical inspection of the Property. Appendix 5 (A.5.7.3) of the MAP Guide touches upon additional environmental concerns in the CNA. As part of the CNA, the preparer should identify if the age/construction of the building would indicate that LBP or ACM may be present and to include abatement in the costs. Additionally, if the CNA is relied upon or required any additional testing or special inquiry, the CNA must name or identify the test, inquiry, or resulting report in the comment section. Examples of an additional test may include a seismic analysis, a radon test and report, an intrusive examination by a professional or contractor other than the Needs Assessor, a lead-based paint inspection or risk assessment report, a mold assessment report, or similar tests or reports. The preparer must attach such results or reports to the CNA at submission.**