



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-0500

OFFICE OF HOUSING

Special Attention of:	Notice:	H 2021-02
Multifamily Regional Directors, Multifamily Division Directors for Production and Asset Management, Multifamily Asset Management Staff, Property Owners, and HUD-Approved Mortgagees	Issued: Expires: Supersedes:	June 30, 2021 This Notice remains in effect until amended, revoked, or superseded Notice H 2012-10 and Appendix C of the Mark-to- Market Operating Procedures Guide

TITLE

Guidelines for Certain HUD Approvals Regarding Properties Encumbered by HUD-Held Mark-to-Market Program Debt and Portfolio Reengineering Demonstration Program Debt

SUBJECT

This Notice addresses the assumption, subordination, or assignment of Mark-to-Market Program (“M2M”) loans and Portfolio Reengineering Demonstration Program (“Demo Program”) loans in transfer or refinance transactions; actions in the event of default upon maturity of such loans; and requests to transfer budget authority of a project-based Section 8 Housing Assistance Payments Contract under Section 8(bb)(1) of the United States Housing Act of 1937 where the request involves a project encumbered by a M2M or Demo Program lien.

BACKGROUND

This Notice replaces Housing Notice 2012-10, “Guidelines for Assumption, Subordination, or Assignment of Mark-to-Market (M2M) Loans in Transfer of Physical Assets (TPA) and Refinance Transactions” in its entirety and provides new instructions for the acquisition and/or refinancing of projects which have been through a M2M debt restructuring or a Demo Program restructuring (collectively, “Post M2M”) and are encumbered by HUD-held debt. In addition, Section 3 of this Notice replaces Appendix C of the Mark-to-Market Operating Procedures Guide regarding transfers of assets to qualified nonprofits. This Notice does not apply to transactions where the Post M2M debt will be repaid in full, although other HUD requirements and procedures may apply.

M2M allows HUD to restructure debt that is FHA-insured or Secretary-held on certain projects that have above-market project-based Section 8 contract rents. Through the M2M restructuring, HUD adjusts the rents down to market and the owner obtains a new first mortgage loan that is supportable at the new rents. In most M2M restructuring transactions, HUD pays off a portion of the existing FHA-insured or HUD-held formerly insured first mortgage through a one-time non-default payment of claim made on behalf of the owner. HUD documents the owner's continuing obligation to repay this amount through a Mortgage Restructuring Note ("MRN") and/or a Contingent Repayment Note ("CRN"). The Demo Program, a precursor to M2M, operated in much the same way, with the owner's obligation documented by one or more "Demo Notes." Except as otherwise specified, for the remainder of this Notice, the term "M2M" shall be used to mean either M2M or the Demo Program, and the term "Note" shall be used to mean an MRN, CRN, or Demo Note.

The repayment terms of the Notes include a "due on sale or refinance" clause. For an owner to transfer ownership of a project or refinance the new first mortgage lien debt without causing an acceleration of the subordinate debt evidenced by a Note, an owner must obtain a waiver of the due on sale or refinance clause from HUD. In the case of a transfer of ownership, if HUD grants the waiver, the new owner of the project would assume the obligations under the Note and HUD would agree to subordinate the mortgage securing the Note to a new first mortgage lien. This Notice governs HUD's review of such requests. Notwithstanding HUD's approval of a request to waive the due on sale or refinance clause in one instance, any future sale or refinance of the project remains subject to this Notice. In some instances, HUD also has authority to assign to a Qualified Nonprofit Purchaser (as defined herein) HUD's interest in, and right to receive subsequent payments on, an MRN Note and a CRN Note. This Notice also governs such assignments, ensuring that the proposed nonprofit assignee is qualified, and that the assignment benefits the current and future residents, the nonprofit, and HUD's interest in the long-term affordability of the project.

ORGANIZATION AND EXPLANATION OF MAJOR PROVISIONS

This Notice includes the following Sections:

- Section 1 provides definitions for terms used in this Notice.
- Section 2 describes the processing requirements applicable to the activities covered by this Notice and governs any request to assume and/or subordinate M2M debt and to waive the due on sale or refinance clause contained in the loan documents that evidence and secure M2M debt.
- Section 3 governs any request made by a "Qualified Purchaser" (defined below) to receive certain types of debt relief with respect to an MRN or CRN. Section 3 does not apply to Demo Notes.
- Section 4 governs certain requests for a term extension of a Note.
- Section 5 governs any request for approval of a proposal under Section 8(bb)(1) of the United States Housing Act of 1937 for HUD to transfer the budget authority remaining on a project-based Section 8 Housing Assistance Payments (HAP) Contract at the time of its termination to another HAP Contract in cases where either the project from which budget authority is transferred (Project A) or the project to which it is transferred (Project B) is subject to a Full M2M Renewal Contract (defined below).

This Notice streamlines and revises pre-existing guidance related to the refinance, assumption, subordination, assignment, forgiveness, or modification of Notes. This Notice reduces processing requirements not warranted by the benefits and provides transparency regarding processing of requests not addressed in the prior guidance. Among the key provisions and changes are to:

- Streamline HUD review of the first mortgage debt to focus on maximizing Project cash flow, protecting long-term viability of the Project, and evaluating the impact on future valuation of the Project for the remaining term of the M2M Use Agreement.
- Emphasize preservation of the affordable housing resource as a core criterion for granting waivers of the due on sale or refinance clause.
- Replace the emphasis on “Strategic Communities” with an emphasis on preservation of affordable housing, as documented by meeting projected capital needs, as the basis for granting incentives within the Notice.
- Consolidate into this Notice the subjects covered in Appendix C of the Mark-to-Market Operating Procedures Guide and provide more detailed guidance regarding review of proposed Qualified Nonprofit Purchasers.
- Establish guidance on processing Notes that are in default to maximize coordination among HUD offices.
- Establish guidance on processing a request for approval of a proposal under Section 8(bb)(1) of the United States Housing Act of 1937 for HUD to transfer the budget authority remaining on a project-based Section 8 HAP Contract at Project A at the time of its termination to another contract (i.e., at Project B) when either project is subject to a Full M2M Renewal Contract.

EFFECTIVE DATE

This Notice is effective immediately for all Requests or applicable transactions initiated after the date of publication of this Notice.

GUIDELINES FOR CERTAIN HUD APPROVALS REGARDING PROPERTIES ENCUMBERED BY HUD-HELD MARK-TO-MARKET PROGRAM DEBT AND PORTFOLIO REENGINEERING DEMONSTRATION PROGRAM DEBT

Section 1. Definitions. Capitalized terms not otherwise defined shall have the meaning set forth below.

1.1. Acquiring organization or entity. For the purpose of Debt Relief, the term “acquiring organization or entity” means the legal entity that will acquire title to a Project (including fee simple, a ground leasehold interest, or some other form of title).

1.2. Affiliates. The term “Affiliate” means any entity that Controls another entity, is Controlled by another entity, or is under common Control with another entity.

1.3. Assignment. Transfer of an MRN and/or a CRN to a qualified nonprofit entity (see QNP). This process does not apply to Demo Notes.

1.4. Assumption. Transaction in which a Purchaser will assume a Seller's obligations under the loans evidenced by MRN, CRN, or Demo Note(s) and the Seller is released from such obligations.

1.5. Community Advisory Board or CAB. A CAB is a panel whose membership assures there will be significant representation of the views of the community in which the Project is located, and that has a substantive voice in Project operations as described in greater detail in Section 3.2(B)(b)(ii).

1.6. Control. The term "Control" shall have the more expansive of any meaning set forth in the applicable Notes and the meaning defined in 24 C.F.R. § 401.310(a)(2), as it may be amended from time to time, which, at the time of issuance of this Notice, reads:

Control means the power to vote, directly or indirectly, 25 percent or more of any class of the voting stock of a company; the ability to direct in any manner the election of a majority of a company (or other entity's) directors or trustees; or the ability to exercise a controlling influence over the company or entity's management and policies. For purposes of this definition, a general partner of a limited partnership is presumed to be in control of that partnership.

Further, a managing member of a limited liability company is presumed to be in control of that entity. HUD may make a similar presumption regarding the principal operating parties in other corporate structures not referenced in this Notice. In multilayered organizational structures, Control is not limited to a specific number of layers above the subject entity itself. The analysis of Control may disregard the separation of entities if HUD determines that such disregard is necessary to reflect how control is actually held and/or exercised.

1.7. CRN. A Contingent Repayment Note originated under M2M, secured by a mortgage that is usually in a third lien position encumbering a Project.

1.8. CRP. A Capital Recovery Payment, which is an incremental repayment of an Owner's required contribution toward M2M rehabilitation and transaction costs, with a market rate of return and subject to conditions specified in M2M legal documents, and which does not get transferred to a new Owner.

1.9. Debt Relief. The forgiveness, assignment, or Modification, as defined below, of an MRN and/or CRN, together with the security instruments that secures such Note(s), which HUD may provide in response to a QNP Request.

1.10. Demo Note. A note originated under the Demo Program, typically secured by mortgages in a second or third lien position encumbering a Project.

1.11. Demo Program. The Portfolio Reengineering Demonstration Program, first created in Section 210 of the Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1996, P.L. 104-134.

1.12. Entity. A person, partnership, organization, business, or corporate entity that has a legal and separately identifiable existence.

1.13. Exception Rents. Above-market rents, as authorized under Section 514(g)(2) of MAHRA and as reflected in Exhibit A to the Full M2M Renewal Contract issued at closing upon completion of the M2M debt-restructuring process, which were established based on a Departmental determination that the housing needs of the tenants and the community could not be adequately addressed through a M2M debt-restructuring and Full M2M Renewal Contract based on comparable market rents.

1.14. Full M2M Renewal Contract. A HAP Contract originally issued under Section 8 of the United States Housing Act of 1937, and as renewed under Section 515 of MAHRA with a Full Mark-to-Market Renewal Contract or, if applicable, a Housing Assistance Payments Contract for Previous Mod Rehab Projects. As used in this Notice, this term does not include HAP contracts renewed with an Interim (Full) Mark-to-Market Renewal Contract or an Interim (Lite) Mark-to-Market Renewal Contract. When the procedures outlined in this Notice require the use of a new Full M2M Renewal Contract, Form HUD-9642 REV 03-15-2012, or its successor (or, if applicable, a new Housing Assistance Payments Contract for Previous Mod Rehab Projects, Form HUD-9644 REV 10/09, or its successor), must be used.

1.15. HAP Contract. A housing assistance payments contract, as authorized under Section 8 of the United States Housing Act of 1937 (including those renewed under MAHRA), between the contract administrator (HUD, or a public housing agency (PHA) acting under an annual contributions contract with HUD) and the owner. The contract administrator makes housing assistance payments to the owner in accordance with the HAP Contract.

1.16. High Priority Project. A High Priority Project shall be a Project where both of the following conditions are met:

- A) There is significant demand in the market for affordable housing units, as evidenced by a current market study. The market study must justify the projected absorption rate, lease-up period, and stabilized vacancy rate for the proposed development.
- B) There are significant physical, financial, or operational needs that HUD reasonably anticipates will be addressed by actions the Owner contracts with HUD to undertake within a reasonable period, which needs are evidenced by one or more of the following factors:
 - i) Functional obsolescence of the Project with respect to competing market demands, which obsolescence is demonstrated, and addressed or mitigated through the proposed transaction, to the satisfaction of HUD;
 - ii) A HUD-approved capital needs assessment demonstrates materially greater capital needs than can be addressed by the existing replacement reserve funds;
 - iii) The Project is either the transferring or receiving Project in a Section 8(bb) transfer pursuant to Section 5;
 - iv) Financial distress as evidenced by the Project's operational history such as underperformance or non-performance on the Notes, due to circumstances beyond Owner control;

- v) Ownership by an entity that is proposed to exit the ownership, capitalization, and operational structure, which entity is fully or partially debarred from future participation in HUD programs; or
- vi) Other evidence of physical, financial, or operational needs as determined by HUD.

1.17. Incentive Performance Fee or IPF. The Incentive Performance Fee is a percentage of annual effective gross income that the Owner may collect under certain conditions.¹

1.18. Identity of Interest or IOI. Any relationship based on familial or other interpersonal ties or shared financial or other beneficial interests that would reasonably give rise to a presumption that the parties may not operate on an arms-length basis in establishing (a) the purchase price of the Project; (b) the cost of the design, rehabilitation, or construction; (c) the price for any service contracts; or (d) the terms of the financing. Relevant relationships include, without limitation, direct or indirect ownership interests (including officers, directors, shareholders, partners, trustees, managers, or members), financial interests (including employment, participation in hiring, or material contractual relationships), and familial relationships (including spouses, parents, grandparents, children, grandchildren, uncles, aunts, brothers, sisters, nieces, nephews, mothers-in-law, fathers-in-law, brothers-in-law, sisters-in-law, or the spouses or children of any of the foregoing). HUD may determine on a case-by-case basis that an IOI relationship exists whenever the facts and circumstances indicate that the parties in a transaction are not operating independently of such relationships.

1.19. MAHRA. The Multifamily Assisted Housing Reform and Affordability Act of 1997, Title V of the Departments of Veterans Affairs, Housing and Urban Development and Independent Agencies Appropriations Act, 1998 (Pub. L. No. 105-65, 111 STAT. 1384, approved 10/27/97, as amended), codified at 42 U.S.C. 1437f note, which established M2M (exclusive of the Demo Program).

1.20. Market Rents. Rents based on comparable market rents, as authorized under Section 514(g)(1) of MAHRA, and as reflected in Exhibit A to the Full M2M Renewal Contract issued at closing upon completion of the M2M debt-restructuring process.

1.21. Mark-to-Market Program or M2M. The Multifamily Housing Mortgage and Housing Assistance Restructuring (Mark-to-Market) Program established pursuant to MAHRA and implementing regulations at 24 C.F.R. §§ 401 and 402.

¹ The conditions under which the Incentive Performance Fee may be collected are set forth in the applicable transaction's M2M regulatory agreement.

1.22. Mark-to-Market Operating Procedures Guide. The Mark-to-Market guidelines and processing tools for the statutory and regulatory requirements and HUD’s expectations, standards, and requirements to be followed in the review and processing of Projects in M2M.

The guide can be found at:

https://www.hud.gov/program_offices/housing/mfh/presrv/presmfh/opglinks

1.23. Mark-to-Market (M2M) Use Agreement. A recorded use agreement on a form prescribed by HUD with a minimum term of 30 years, as required under Section 514(e)(6) of MAHRA, for Projects that undergo M2M debt-restructuring and whose Section 8 HAP Contract is renewed as a result with a Full M2M Renewal Contract.

1.24. Modification. The term “Modification” refers specifically to certain changes to MAHRA-required provisions in a Note excluding certain minor amendments to loan documents. Minor amendments include items such as those that (a) evidence the change in responsible parties associated with any assumption, subordination, or assignment under this Notice; (b) eliminate the CRP (when a CRP is present); and/or (c) extend the maturity date to make it coterminous with a new first mortgage loan, if appropriate.

1.25. MRN. A Mortgage Restructuring Note originated under M2M that is secured by a mortgage that is usually in a second lien position encumbering a Project.

1.26. Multifamily Regional Center. One of the regional offices with asset management supervisory authority within the Office of Multifamily Housing Programs, Office of Housing, in the U.S. Department of Housing and Urban Development, or its successor office.

1.27. Net Proceeds. Proceeds as defined in Section 1.32 reduced by any usual and customary expenses of the proposed transaction approved by HUD and paid at the closing of the proposed transaction. Usual and customary expenses of the proposed transaction typically include third-party brokerage fees, local and state transfer taxes, legal and title fees, and other costs of the sale or purchase of the Project. Usual and customary expenses for this purpose generally exclude, however, Project payables and IOI payments.

1.28. Note. Any of a MRN, a CRN, or a Demo Note.

1.29. OAMPO. The Office of Asset Management and Portfolio Oversight, within the Office of Multifamily Housing Programs, Office of Housing, in the U.S. Department of Housing and Urban Development, or its successor office.

1.30. Owner. The term “Owner” has the same meaning as in Section 516(a) of MAHRA, which reads in relevant part: “[t]he term ‘owner’ as used in this subsection, in addition to it having the same meaning as in Section 8(f) of the United States Housing Act of 1937, also means an affiliate of the owner.” The term “Owner” can refer to the entity either before or after the sale or transfer associated with a Request.

1.31. Pay-Down. The payment described in Section 2.4(I) of this Notice. The purpose of the Pay-Down is to reduce the outstanding balance of the Notes when the transaction proposed involves Proceeds that will benefit the Seller or Purchaser. The Pay-Down represents recovery of a portion of the value created through the M2M debt restructuring.

1.32. Proceeds. All cash, fees, and other consideration paid to or on behalf of the Seller, Purchaser, or IOI entities of either the Seller or Purchaser. Proceeds include, without limitation, developer and other fees, deferred payments, Project accounts (including, without limitation, operating reserves, replacement reserves, tax and insurance escrows, and security deposit accounts), allocations of accounts payable, or other reductions in the party's liabilities, whether paid as part of a transaction or following closing of a transaction. Proceeds also include any indemnification to either party of a Pay-Down amount by the other party. Proceeds do not include distributions of Surplus Cash or payment of the CRP or IPF. The treatment of Proceeds in this Notice varies based on whether the Proceeds are received by the Seller or Purchaser.

1.33. Program Obligations. "Program Obligations" means (a) all applicable statutes and any regulations issued by the Secretary pursuant thereto that apply to the Project, including all amendments to such statutes and regulations, as they become effective, except that changes subject to notice and comment rulemaking shall become effective only upon completion of the rulemaking process, and (b) all current requirements in HUD handbooks and guides, notices, and mortgagee letters that apply to the Project, and all future updates, changes and amendments thereto, as they become effective, except that changes subject to notice and comment rulemaking shall become effective only upon completion of the rulemaking process, and provided that such future updates, changes and amendments shall be applicable to the Project only to the extent that they interpret, clarify and implement terms of the Project's contractual agreements with HUD rather than add or delete provisions from such documents.²

1.34. Project. A multifamily housing property for which a Request is made and that is encumbered by a mortgage securing a Note or is subject to a Full M2M Renewal Contract.

1.35. Purchaser. The legal entity that is proposed to own the Project, together with any of its Affiliates. The term "Purchaser" is used to distinguish the Owner after the sale or transfer from the Owner prior to the sale or transfer.

1.36. Qualified Nonprofit Purchaser or QNP. The acquiring entity eligible for Debt Relief upon Purchase of the Project pursuant to and as defined in more detail in Section 3. The acquiring entity must be a nonprofit entity, a nonprofit entity's directly and exclusively controlled Affiliate(s), a public agency, or a tenant organization. A QNP includes a Priority Purchaser under 24 C.F.R. § 401.2.

1.37. QNP Request. A request for HUD's approval as a Qualified Nonprofit Purchaser and for Debt Relief, made in conjunction with a Request.

1.38. RCS. A Rent Comparability Study conducted in accordance with Chapter Nine of the Section 8 Renewal Guide.³

² Handbooks, guides, notices, and mortgagee letters are available on HUD's official website (<http://www.hud.gov/offices/adm/hudclips/index.cfm>, or a successor location to that site).

³ https://www.hud.gov/sites/documents/508FIN_CONSOL_GUIDE6_8_17.PDF

1.39. Recap. The Office of Recapitalization, within the Office of Multifamily Housing Programs, Office of Housing, in the U.S. Department of Housing and Urban Development, or its successor office.

1.40. Refinance. A transaction involving the payoff of the existing first mortgage loan with funds from a new first mortgage loan from either a new lender or the existing lender, whether or not the transaction would increase the outstanding principal amount of the debt. A Refinance does not involve any change in ownership.

1.41. Request. A request (a) for HUD to waive the “due on sale or refinancing” clause in a Note and allow the Assumption and/or Subordination of such Note, or, in the case of a QNP Request, provide Debt Relief in connection with an acquisition of title; or (b) for HUD to approve a proposed transfer of budget authority under Section 8(bb)(1) of the United States Housing Act of 1937 and Section 5 of this Notice.

1.42. Return to Owner. The “Return to Owner” is defined in Chapter 3 of the Mark-to-Market Operating Procedures Guide and includes the Capital Recovery Payment (CRP), the Incentive Performance Fee (IPF), and the cash flow split with HUD pursuant to the Notes.

1.43. Section 8. Section 8 of the United States Housing Act of 1937 (42 U.S.C. § 1437f).

1.44. Section 8(bb). A provision in the United States Housing Act of 1937 that requires HUD (under Section 8(bb)(1)) to transfer to another HAP Contract any budget authority remaining on a project-based Section 8 Housing Assistance Payments Contract at the time of its termination under terms prescribed by the Secretary. 42 U.S.C. § 1437f(bb)(1).

1.45. Section 8(bb) Notice. Housing Notice 2015-03, or any successor notice, together with any other guidance applicable to Section 8(bb) (e.g., published responses to frequently asked questions).⁴

1.46. Section 8(bb) Units. Housing units supported by budget authority transferred to a new site pursuant to Section 8(bb), and thus increasing the number of units receiving rental assistance at the new site.

1.47. Seller. The Owner of the Project together with any of its Affiliates. The term Seller is used in the Transfer context to distinguish the Owner prior to the sale or transfer from the Owner after the sale or transfer.

1.48. Subordination. A transaction in which the lien securing a Note will be subordinated to a new mortgage lien.

1.49. Surplus Cash. Cash determined by the Multifamily Regional Center to be remaining at the end of each fiscal year from the operations of a Project in accordance with the documents

⁴ Housing Notice 2015-03 can be found at <https://www.hud.gov/sites/documents/15-03HSGN.PDF>.

that evidence, secure, or are executed with a Note. In the case of a Demo Note, Surplus Cash as used herein shall refer to “Net Cash” as defined in the Demo Note.

1.50. Transfer. Transfer shall mean the sale or transfer of a Project or any portion thereof, an interest in the Owner, or an interest in an entity with Control of the Owner. The analysis of a transfer may examine multi-step transfers as a whole if HUD determines that such integrated review is necessary to reflect how ownership is actually held.⁵

1.51. Transfer of Physical Assets or TPA. A Transfer where the FHA-insured first mortgage survives after the Project is acquired by the Purchaser. “TPA” also refers to the process through which HUD reviews such Transfers.

Section 2. Submission and Processing of Requests for Waiver of the Due on Sale or Refinance Clause

2.1. Initiation of Requests. The necessary documentation to initiate all Requests, including QNP Requests seeking Debt Relief, must be submitted to the Project’s applicable Multifamily Regional Center. A courtesy copy of the Request may be submitted to Recap simultaneously if the Request is subject to Recap review based on the criteria listed below in Section 2.2. A courtesy copy submission to Recap may be particularly beneficial to the Purchaser in managing deadlines associated with the proposed transaction. Requests which are part of a portfolio of simultaneous transactions should identify the other related transactions. All submission requirements and instructions for Requests, including a *Draft Applicants’ Checklist: Request for Waiver of M2M “Due on Sale or Refinancing” Clause*, can be found online at https://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/presrv/presmfh/about_m2m. The public may submit transaction-specific questions regarding submission requirements and instructions to PostM2M@hud.gov.

2.2. Processing of Requests. Requests submitted to the Multifamily Regional Center which meet any of the criteria set forth in Section 2.2 A) through G) below, shall be routed to Recap for processing. The applicable Multifamily Regional Center shall process and close all other Requests without Recap approval consistent with existing Recap guidance to the Multifamily Regional Centers, as such guidance may be amended or replaced by Recap from time to time.

- A) All Assumptions and Subordinations involving Proceeds to Seller or Purchaser;
- B) All Assumptions and Subordinations involving Modifications to an existing Note;
- C) All Refinances of the existing first mortgage if such Refinance increases the debt service payment, increases the unpaid principal balance by an amount greater than the loan fees and transaction costs (such as title and recording) directly attributable to the Refinance, or extends the term of the existing loan;

⁵ Transfers which do not involve a TPA are sometimes referred to as “assignments of the HAP.”

- D) All Refinance transactions combined with changes to the Project ownership at any level;
- E) All Requests that are part of the Transfer of a portfolio of Projects between a Seller and a Purchaser if any of the Requests within the portfolio are subject to processing by Recap;
- F) All QNP Requests for Debt Relief; and
- G) All Requests which involve a transfer of budget authority to or from the Project pursuant to Section 8(bb).

2.3. Basic Eligibility for Waiver. To be eligible for a waiver of the due on sale or refinance clause(s) in a Note or other documents securing or evidencing a Note, Purchasers and Owners must also meet the following criteria, as applicable:

- A) If the Request is in connection with a TPA or other Transfer, the Purchaser must:
 - i) Have all elements of the TPA or other Transfer other than the Request reviewed by the applicable Multifamily Regional Center under HUD's applicable requirements;
 - ii) Not have any outstanding violations of fair housing laws in connection with any Project owned by the Purchaser, unless otherwise approved by HUD's Office of Fair Housing and Equal Opportunity. This includes, but is not limited to, an outstanding unresolved Fair Housing Act charge and/or an outstanding unresolved court finding of violation of the Fair Housing Act, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act (ADA);
 - iii) Set forth a plan acceptable to HUD to cure any current non-compliance with Program Obligations and any defaults (or events which, with the giving of notice and/or passage of time, would become a default) under a Note or any document that further evidences, secures, or was executed contemporaneously with the Note; and
 - iv) Be eligible in a manner consistent with the M2M debt restructuring eligibility criteria set forth in MAHRA.
- B) If the Request is in connection with a Refinance, the Owner must:
 - i) Not have any outstanding violations of fair housing laws in connection with any Project owned by the Owner, unless otherwise approved by HUD's Office of Fair Housing and Equal Opportunity. This includes, but is not limited to, an outstanding unresolved Fair Housing Act charge and/or an outstanding unresolved court finding of violation of the Fair Housing Act, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act (ADA).
 - ii) Be in full compliance with Program Obligations and have no defaults (or events which, with the giving of notice and/or passage of time, would become a default) under a Note or any document that further evidences, secures, or was executed contemporaneously with the Note.

2.4. Review Requirements.

- A) TPAs or Other Transfers. All TPAs and Transfers where the Note remains outstanding are subject to approval under this Notice. Review pursuant to this Notice is in addition to, and does not replace or substitute for, any other review required under HUD guidance, such as reviews of a TPA or an assignment of a HAP Contract. HUD review shall encompass properties not encumbered by the M2M Use Agreement to the extent such properties are anticipated to be under common ownership with the Project. For Requests approved by Recap, Recap will advise the Multifamily Regional Center of Recap's approval, rejection, or modification of the Request, together with any conditions associated with Recap's determination. TPAs or other Transfers will be processed by the Multifamily Regional Center according to their established procedures.⁶ A Purchaser must affirmatively assume the Notes as part of a TPA or Transfer. No Project may be sold "subject to" such encumbrance(s) and absent an affirmative assumption of the Notes.
- B) Outstanding Surplus Cash Note(s) Payments from Prior Fiscal Years. Upon receipt of a Request, the reviewing office (either the Multifamily Regional Center or Recap) will confirm whether HUD has received all Surplus Cash payments due on Note(s) for all completed fiscal years. The Owner must remit all outstanding Surplus Cash payments due to HUD in consideration of the Request.
- C) Anticipated Note(s) Payments for the Partial, Current Fiscal Year. A partial year audit or un-audited financial statement certified by the Seller shall be submitted to HUD following the closing of a Transfer, covering the period through the date of the closing. The audit, financial statement or in-house financial statements shall calculate any required partial-year Surplus Cash payment on the Note(s) for the current year owed to HUD. The Seller and the Purchaser shall be jointly and severally liable for payment of such amount to HUD. It shall be the responsibility of the Seller and the Purchaser to determine both the method and the responsible party by which the payment is remitted to HUD. For all Demo Notes, the partial year audit or financial statement must calculate the partial year payment based on the specific payment terms of the Note(s).
- D) Project Accounts in a Sale Transaction.
- i) HUD shall require the Seller to transfer to the Purchaser for the benefit of the Project the following amounts for their designated purposes:
 - a) The replacement reserve account funded at the lesser of 1) the amount necessary to satisfy HUD requirements and other affordable housing

⁶ For FHA-insured loans, such procedures include collection of a TPA transfer fee in accordance with 24 C.F.R. § 200.40(h).

- regulatory restrictions in place prior to the Transfer which will continue after the Transfer, or 2) the current account balance;
- b) Any operating reserve account funded at the lesser of 1) the amount necessary to satisfy HUD requirements and other affordable housing regulatory restrictions in place prior to the Transfer which will continue after the Transfer, or 2) the current account balance;
 - c) The balance in the tax and insurance escrows, unless a lesser amount is approved by HUD to align with a new lender's estimate of the tax and insurance escrow needs if the first mortgage is refinanced; and
 - d) The security deposit account funded to correspond with the contractual security deposits for all occupied units.
- ii) The Seller and the Purchaser may dispose of the cash in the specific accounts according to their negotiated business relationship by crediting and debiting amounts from the purchase price. However, if the net effect is that the Seller retains the value of any of the forgoing Project account balances, HUD will treat such funds as Proceeds to the Seller.
 - iii) The Purchaser is required to reestablish and fund all such accounts in an amount equal to the greater of the requirements of the first mortgage lender and the Multifamily Regional Center.
- E) Elimination of Capital Recovery Payments. As a condition of HUD's approval to waive the due on sale provision and allow an Assumption and Subordination, the Purchaser shall agree to eliminate the CRP as an eligible Project expense.
- F) M2M Rehabilitation. If the Owner has not completed the rehabilitation work agreed upon in the M2M transaction, as identified by Recap, prior to closing the Owner shall either:
- i) Complete the work to the satisfaction of Recap; or
 - ii) Transfer the remaining balance of the rehabilitation escrow to the Purchaser, and the Purchaser must provide a proposed rehabilitation plan acceptable to Recap incorporating any incremental cost as part of the Request.
- G) Lien Position. HUD shall require that the lien(s) of the Note(s) be senior to any other debt payable from cash flow or with contingent payment terms. The Note(s) may be subordinated to any HUD-approved amortizing, non-contingent, first-mortgage-lien debt.
- H) Financial Viability. For any Request reviewed by Recap pursuant to Section 2.2, the Project must be financially viable. Compliance with all of the following shall be an indication of financial viability, although HUD may also consider alternative measures of financial viability proposed by the Owner:
- i) The projected debt service coverage on any new permanent first mortgage loan as shown in a HUD-approved operating pro forma shall either (a) be equal to or greater than 1.20, or (b) be approved in a firm commitment for FHA-insured financing.

- ii) The permanent first mortgage loan must have a fixed rate of interest. There shall be no adjustable-rate loans during the term of the Note(s).
- iii) The permanent first mortgage loan must have a term equal to or greater than the least of (a) 15 years and (b) the remaining term of the M2M Use Agreement.
- iv) The permanent first mortgage loan payments must be sized to fully amortize the debt over a period of 40 years or less. A balloon payment is permitted if the mortgage term is shorter than the amortization period.
- v) The Request must demonstrate to HUD's satisfaction that the proposed operating expense levels are adequate to maintain the property's operations and physical condition for the remaining term of the M2M Use Agreement.
- vi) The estimated value of the Project, as determined by HUD based on the Project's estimated net operating income at the earlier of the expiration of the term of the proposed new permanent first mortgage or of the proposed M2M Use Agreement, must be equal to or greater than the estimated outstanding balance of the HUD debt, including principal and interest.
- vii) The proposed replacement reserve deposits, operating accounts, and vacancy estimates must be approved by the Multifamily Regional Center prior to a transaction being approved for closing.

I) Pay-Down.

- i) For any Request reviewed by Recap pursuant to Section 2.2 of this Notice, HUD will condition approval of the Request upon payment to HUD of a Pay-Down. The Pay-Down shall equal the greater of:
 - a) One-half of the Net Proceeds to be paid to the Seller; or
 - b) One-third of the sum of the Net Proceeds to be paid, accrued, or realized by the Seller and by the Purchaser.
- ii) As stated in Section 1.32, Proceeds received by a party include any indemnification or reimbursement to such party of a Pay-Down amount by the other party.

J) Identity of Interest Operating Contracts. For any Request reviewed by Recap pursuant to Section 2.2 of this Notice, HUD will require the disclosure of operating contracts and other contracts that will be established or survive after the closing of the Transfer or Refinance in which there is an IOI with either the Seller or Purchaser, or any relationship based on familial or other interpersonal ties or shared financial or other beneficial interests that would reasonably give rise to a presumption that the parties may not operate on an arms-length basis in establishing the price for any service contracts, including employment, participation in hiring, or material contractual relationships.

- K) Preservation of Affordability. For any Request reviewed by Recap pursuant to Section 2.2 of this Notice:
- i) For Projects without Exception Rents, to facilitate the refinancing of a Project's first mortgage loan and satisfy a typical lender condition for such refinancing, Owners may request an extension of the term of the Project's Full M2M Renewal Contract. HUD shall grant such requests only if the Owner agrees to an extension of the term of the Use Agreement, if necessary, to equal the term of the renewed Full M2M Renewal HAP Contract.
 - ii) For Projects with Exception Rents, except as required in Section 3.4(E), the term of the M2M Use Agreement may not be extended beyond its current term which may, in some cases, restrict the term of a new Full M2M Renewal Contract to a period of less than 20 years. Except for transactions with QNPs which have a M2M Use Agreement for more than 30 years, any subsequent Full M2M Renewal Contract for the period after the expiration of the term of the M2M Use Agreement will be under then-applicable statutes and regulations, using any available HAP Contract renewal option for which the Project is eligible at that time.
- L) High Priority Projects. For any Request reviewed by Recap pursuant to Section 2.2 of this Notice, HUD will eliminate the proposed developer fee⁷ from the calculation of Proceeds if the Project is a High Priority Project and if the Owner or Purchaser demonstrates that sufficient funds will be available to meet the 20-year capital needs of the Project as documented by a HUD-approved Capital Needs Assessment (CNA).⁸ The Owner or Purchaser must demonstrate the availability of funds through the initial funding of the replacement reserve account, through annual deposits to the replacement reserve account, or through other measures acceptable to HUD.
- M) Valuation Analysis of the Modification. For any Request reviewed by Recap pursuant to Section 2.2 which does not involve a QNP Request, any Note amendment which extends the maturity date of the Note or is reasonably

⁷ Developer fees may be paid only with capital sources reflected in a HUD-approved sources and uses or with the Return to Owner.

⁸ The Capital Needs Assessment (CNA) e-Tool automates and standardizes the preparation, submission and review of a capital needs assessment. The CNA e-Tool format is expected only with Requests seeking designation as High Priority Projects and only if required by other Office of Multifamily Housing Program guidance. For example, if the CNA e-Tool is required for asset management of M2M and Post-M2M projects, then the CNA e-Tool must be used in connection with a Request for a High Priority Project. If the Request involves FHA-insured financing and the CNA e-Tool is required for underwriting of FHA-insured multifamily projects, then the CNA e-Tool must be used in connection with such Request. See: https://www.hud.gov/program_offices/housing/mfh/CNA for more information. In all other situations, the CNA e-Tool is not required but the CNA must be in a form acceptable to HUD.

anticipated to impact the anticipated Surplus Cash available for payments under the Note must demonstrate to HUD's satisfaction that, in the event the Refinance or Transfer and any associated financing structure is approved, the present value of the anticipated repayment under the Notes pursuant to the structure proposed in the Request will exceed the present value of the anticipated repayment under the Notes absent the Request. The same underwriting assumptions shall be used for both of the following analyses. The analysis set forth below allows HUD to confirm that the altered cash flows do not present a cost to HUD when analyzing the net present value to the government.

- i) The anticipated repayment under the Notes pursuant to the structure proposed in the Request shall be calculated by taking the sum of the following:
 - a) The Pay-Down;
 - b) The present discounted value of anticipated annual payments under the Notes through maturity (which is calculated as a share of Surplus Cash pursuant to the terms of the Notes), using the projected Surplus Cash as the basis for future trending;
 - c) The present discounted value of a calculated post-foreclosure value of the Notes at maturity, considering an income-based valuation of the property, discounted for a distressed or foreclosure sale, transaction costs, assumed physical needs, and repayment of any senior debt; and
 - d) Any voluntary Note prepayment proposed in the Request.
- ii) The anticipated repayment under the Notes absent the Request shall be calculated by taking the sum of the following:
 - a) The present discounted value of anticipated annual payments under the Notes through maturity (which is calculated as 75% of Surplus Cash), using the average actual annual Surplus Cash amount for the three full years prior to the Request as the basis for future trending; and
 - b) The present discounted value of a calculated post-foreclosure value of the Notes at maturity, considering an income-based valuation of the property, discounted for a distressed or foreclosure sale, transaction costs, assumed physical needs, and repayment of any senior debt.

2.5. Considerations for Green Projects. Requests involving Projects that will undergo significant rehabilitation and meet established green standards may also request an increase in the Project's Incentive Performance Fee (IPF) for the remainder of the IPF term. Projects with Demo Notes are not eligible for this consideration because they have no IPFs. The reviewing office (the Multifamily Regional Center or Recap) shall conditionally approve the request for an increase in the IPF provided that:

- A) The requested IPF percentage does not exceed one hundred fifty percent (150%) of the original IPF percentage; and

- B) The Owner or Purchaser certifies that it will pursue and achieve an industry recognized, independently verified standard for green building. Acceptable standards include:
- i) The Enterprise Green Communities Criteria;
 - ii) U.S. Green Building Council's LEED-H, LEED-H Midrise, LEED-NC, or LEED for Existing Buildings: Operations & Maintenance certifications;
 - iii) ENERGY STAR certification;
 - iv) EarthCraft House, EarthCraft Multifamily, or Earth Advantage New Homes certifications;
 - v) Greenpoint Rated New Home or Greenpoint Rated Existing Home (Whole House or Whole Building label) designation;
 - vi) The National Green Building Standard (NGBS);
 - vii) Passive Building Certification or EnerPHit Retrofits certification from the Passive House Institute US (PHIUS), International Passive House Association, or the Passive House Institute;
 - viii) Living Building Challenge Certification from the International Living Future Institute, or
 - ix) Other industry-recognized green building standards, subject to HUD's review and approval.

The increased IPF will be effective following completion of the rehabilitation, receipt by HUD of evidence that the Owner has achieved the anticipated green standard, and review and approval of such documentation by the office responsible for reviewing the Request pursuant to Section 2.2.

2.6. Consideration for Transactions with Modest Proceeds. Where the Request involves a transaction generating total Proceeds of less than \$25,000, where such transaction does not materially impact the residents or the Property, and where the transaction does not materially change the amount or payment terms of any debt senior to the Notes or otherwise materially impact the Notes, the Owner may request a streamlined review. Under such streamlined review, HUD shall receive a fifty percent (50%) Pay-Down of the Proceeds, and Recap may waive such review requirements under this Section 2.4 as Recap determines, in its sole discretion, to be appropriate to the circumstances. If applicable, the TPA or Transfer process will still be required by the Multifamily Regional Center.

2.7. Partial Releases of Land from M2M Use Agreement. An Owner shall not, without prior written approval from HUD, convey, transfer, or encumber any of the mortgaged Property. Chapter 16 in HUD Handbook 4350.1 (as it may be amended or replaced by future guidance) governs any request for a partial release of security from the insured mortgage. The Multifamily Regional Center will process and execute all documents concerning the partial release of the M2M Use Agreement, which release shall not result in a reduction in the value of the property encumbered by the mortgage securing the Notes unless such release advances a public purpose, such as the creation of additional affordable housing. The Multifamily Regional Center shall

consult with Recap in the review of a request for a partial release of the security in order for HUD to confirm that there is no anticipated negative impact to any existing M2M debt or to the residents.

Section 3. Requests for Qualified Nonprofit Status and Debt Relief

3.1. Grants of Debt Relief. MAHRA Section 517(a)(5) provides that: “The Secretary may modify the terms of the second mortgage, assign the second mortgage to the acquiring organization or agency, or forgive all or part of the second mortgage ... if the project is acquired ... by a tenant organization or tenant-endorsed community-based nonprofit or public agency.” The Purchaser may request the cancellation, modification, or assignment of the MRN and, if applicable, the CRN. Debt relief is not available with respect to Demo Notes. Until the repeal of Subtitle A of MAHRA (which, except for Section 524 is scheduled at the time of publication to occur on October 1, 2022), there is no time limit on how long after an M2M debt restructuring a QNP Request may be submitted. HUD and the Purchaser may continue to process to completion the QNP Request after repeal of Subtitle A of MAHRA if a binding commitment to continue such processing until completion has been entered into by HUD and the Purchaser prior to such repeal. Unless otherwise approved by HUD, the QNP Request must be made in conjunction with a Request to waive the due on sale or refinancing clause, which is evaluated pursuant to the terms of Section 2 except that the requirements of Sections 2.4(E), 2.4(G), 2.4(I), and 2.4(M) shall not apply. To be eligible for Debt Relief:

- A) The Project must be appropriate for preservation as a High Priority Project;
- B) The prospective Purchaser must meet the eligibility criteria set forth in Section 3.2.
- C) The prospective Purchaser must be independent of for-profit enterprises pursuant to Section 3.3; and
- D) The prospective Purchaser must agree to the terms of the Debt Relief pursuant to Section 3.4.
- E) The prospective Purchaser must not have any outstanding violations of fair housing laws in connection with any Project owned by the Purchaser, unless otherwise approved by HUD’s Office of Fair Housing and Equal Opportunity. This includes, but is not limited to, an outstanding unresolved Fair Housing Act charge and/or an outstanding unresolved court finding of violation of the Fair Housing Act, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act (ADA).

3.2. Organization Eligibility. Three types of prospective Purchasers are eligible to seek Debt Relief: (a) tenant organizations, (b) tenant-endorsed community-based nonprofit organizations, and (c) public agencies. HUD, in its sole discretion, will determine if the prospective Purchaser qualifies for Debt Relief.

- A) Tenant Organization. To request and receive Debt Relief as a tenant organization, the prospective Purchaser must:
- i) Be formally incorporated and validly existing as a nonprofit organization under the laws of the State in which the Project is located;
 - ii) Specify in its governing documents that the voting membership is open to all heads of household of a Project;
 - iii) Specify in its governing documents that the majority of the board of directors is comprised of residents of the Project;
 - iv) Have community support for its acquisition of the Project, evidenced by either:
 - a) A formal written endorsement of its proposed purchase of the Project and of its request for Debt Relief from the head of household of a majority of the occupied units, or
 - b) A resolution taken by the board of directors and certified by an authorized officer of the tenant organization, provided that the most recent election of the board of directors occurred within 12 months of the resolution and the heads of household of at least sixty percent (60%) of all occupied units participated in the election, in person or by proxy if permitted under applicable law and the tenant organization's governing documents.
- B) Tenant-Endorsed Community-Based Nonprofit Organization. To request and receive Debt Relief as a tenant-endorsed community-based nonprofit, the prospective Purchaser must:
- i) Tenant Endorsed. Be tenant endorsed, evidenced by a formal written endorsement of the nonprofit's proposed purchase of the Project and of its request for Debt Relief from the head of household of a majority of the occupied units. If unable to obtain such formal written endorsement, and after complying with section 24 CFR 401.480(e)(4)(ii), HUD will consider accepting a tenant endorsement based on support from tenants representing less than a majority of the occupied units upon receipt of a resolution taken by the board of directors of a tenant organization meeting the criteria set forth in Section 3.2(A) and certified by an authorized officer of the tenant organization, provided that the most recent election of the board of directors occurred within 12 months of the resolution and the heads of household of at least sixty percent (60%) of all occupied units participated in the election, in person or by proxy if permitted under applicable law and the tenant organization's governing documents. Because prospective Purchasers make binding commitments based on such community support, once the evidence of tenant endorsement is achieved, tenant endorsement cannot be retracted within a two-year period. If the criterion stated above is not satisfied, the prospective Purchaser may file a written request to Recap, setting forth additional evidence for why the prospective Purchaser should be considered

“tenant-endorsed” consistent with the requirements of 24 CFR 401.480(e)(4).

- ii) Community-Based. Be community-based, evidenced by satisfying at least one of the following conditions:
 - a) Community-Based Board Composition. The Purchaser is a corporation. The Purchaser’s organizational documents must ensure that not less than one third of the board of directors are residents of the Project or low-income residents of the community in which the Project is located. The board of directors at the time of the Request must reflect this representation.
 - b) CBDO, CHDO, or CDFI Designation. The Purchaser is a HUD-designated Community Based Development Organization (“CBDO”) as qualified under 24 C.F.R. § 1003.204, Community Housing Development Organization (“CHDO”) as defined in 24 C.F.R. § 92, or Community Development Financial Institutions (“CDFI”) as defined in 12 C.F.R. § 1805; or is a wholly owned affiliate of an entity meeting such criteria.
 - c) Community Advisory Board. The Purchaser has established a Community Advisory Board (“CAB”) that, subject to HUD’s review and approval, is reasonably likely to be engaged in decisions affecting the operation and management of the Project and that meets the following requirements:
 - 1) The membership of the CAB is selected in a manner that assures there will be, for the term of the M2M Use Agreement, significant representation of the views of the community in which the Project is located;
 - 2) The Purchaser’s governing documents (e.g., Limited Partnership Agreement or Limited Liability Company Operating Agreement) provide that the CAB has a substantive voice in Project operations and require consultation with the CAB prior to taking actions related to the operation and management of the Project;
 - 3) The CAB is required to hold regular meetings at least twice each calendar year and is required to maintain written minutes; and
 - 4) The Purchaser agrees to provide the written minutes of future CAB meetings to HUD upon request.

HUD may consider the engagement of CABs at other projects affiliated with the Purchaser in evaluating the likely ongoing engagement of the CAB in decisions affecting the operation and management of the Project.

- iii) Nonprofit Status. Be an independent, nonprofit corporation or its wholly controlled affiliate, operated for the benefit of the current and future residents, evidenced by satisfying all of the following conditions:

- a) Legal Status. The corporation must be formally incorporated and validly existing as a nonprofit organization, must be recognized as a charitable organization under Section 501(c)(3) of the Internal Revenue Code, and must be qualified to do business under the laws of the State in which the Project is located.
- b) Operation for the Benefit of the Residents. The Purchaser must have a charitable purpose related to housing or the alleviation of poverty and be operated for the benefit of the current and future residents. Further, the Purchaser, or its affiliate corporate organization, must have a record of accomplishment in the development, ownership, and management of affordable housing. A Purchaser with five or more years of experience in these activities will be presumed to have met this requirement.
- c) Submission Requirements. To assist with the QNP determination, the prospective Purchaser shall provide to HUD the following documentation and certification as to its accuracy, in writing, signed by an authorized representative of the prospective Purchaser, at the time of request for Debt Relief and again at closing:
 - 1) An organizational chart of all material ownership interests in the prospective Purchaser;
 - 2) Documentation of incorporation as a nonprofit organization under applicable state law and of tax-exempt status under Section 501(c)(3) of the Internal Revenue Code;
 - 3) If the prospective Purchaser is not a nonprofit corporation, but instead an affiliate of the prospective QNP, then an index of citations that clearly identify those points in the application package where the exclusive control relationship between the parent nonprofit entity and subordinate entity/entities is demonstrated. The prospective Purchaser must provide complete organizational documents for all the relevant subordinate entities accompanying this index;
 - 4) Financial statements and IRS Form 990s of the prospective QNP or parent nonprofit of the prospective QNP, as applicable, for the past three years or for all years since the organization's founding, whichever is less;
 - 5) A complete copy of the purchase and sale agreement, including any ancillary or interrelated agreements, describing all compensation of any sort, including without limitation fees and indemnifications, to be paid to the Purchaser and Seller;
 - 6) A certification of disclosure of any relationships between the Purchaser and Seller described in Section 3.3 together with any disclosures relevant for a full and complete understanding of the subject financial and control relationships;

- C) Public Agency. To request and receive Debt Relief as a public agency, the prospective Purchaser must:
- i) Be formed and validly existing under the laws of the State in which the Project is located as an agency, office, or organization which serves as a division of State or local government or is a quasi-governmental agency;
 - ii) Have officers or a majority of directors, as applicable, that are either elected officers of a State or municipal government or are appointed by elected officers of a State or municipal government; and
 - iii) Be supported by public funds and serve the housing needs of the community.

3.3. Independence from For-Profit Entities. The prospective Purchaser must be independent of for-profit enterprises. To determine independence, HUD shall consider the following factors:

- A) Core Criteria. The prospective Purchaser shall fail the independence test if either of the following is present:
- i) The Purchaser and any parent entities or affiliates:
 - a) Are Controlled by a for-profit entity
 - b) Rely primarily on a single for-profit entity (other than a wholly owned subsidiary) for financial stability; or
 - c) Rely primarily on a single for-profit entity (other than a wholly owned subsidiary) to implement its major business endeavors.
 - ii) The Purchaser's major contractual relationships for financing or services associated with the development, rehabilitation, operation, or management of the Project (e.g., debt, development services agreements, construction contracts, property management contracts) are other than:
 - a) With a wholly owned subsidiary of the prospective Purchaser; or
 - b) With a nonprofit organization recognized as tax-exempt under Section 501(c)(3) of the Internal Revenue Code, or wholly owned by one or more nonprofit organizations recognized as tax-exempt under Section 501(c)(3) of the Internal Revenue Code; or
 - c) Arms-length agreements and terminable for-cause; or
 - d) Pursuant to terms which are significantly and demonstrably favorable to the Purchaser on both a short- and long-term basis.
- B) Heightened Scrutiny Criteria. HUD shall subject the prospective Purchaser's financial and decision-making independence to heightened scrutiny if the prospective Purchaser has any of the relationships described in this subsection with a for-profit entity. The prospective Purchaser shall certify to either the absence of or the existence of such relationship(s) with any for-profit entities, shall indicate the specific details, and shall justify why HUD should nevertheless determine that the Purchaser is "independent."

- i) There is a joint venture or shared ownership interest in a corporate entity or in the Project.
- ii) There is an IOI among parties involved in the transaction, with particular attention paid to the following relationships:
 - a) The Seller and the Purchaser of a Project. These transactions will generally not be approved if the IOI is between the for-profit Seller (including its investors) and the Purchaser.
 - b) The Seller or Purchaser of the Project and any general contractor or any material subcontractor, material or labor supplier, or equipment lessor involved in the rehabilitation of the Project;
 - c) The Seller or Purchaser of the Project and the provider of any material professional services used in the course of the acquisition, financing, rehabilitation, management, operation, or other function required by the Project, including, without limitation, provision of development services; and/or
 - d) The Seller or Purchaser of the Project and any lender holding debt secured by the Project after implementation of the transaction(s) contemplated by the Request.
- iii) A for-profit entity has the direct or indirect power (under contract, equity ownership, the right to vote or determine a vote, or otherwise) to direct the financial, legal, beneficial, or other interests of an entity when such power does not qualify as “Control”;
- iv) The Purchaser’s major contractual relationships for services associated with the development, rehabilitation, operation, or management of the Project are executed with parties that have been the primary provider the Purchaser has used for such service over an extended period of time;
- v) The Purchaser shares staff or office space with for-profit organizations that have financial ties to the Seller.
- vi) There exists any conflict of interest based on a current or recent personal or financial relationship between the Purchaser’s major contractual relationships and any member of the board of directors or key staff of the Purchaser;
- vii) The Seller or affiliate will act as the property management agent after the purchase if the terms of the property management contract (or other agreement) are not arms-length or significantly and demonstrably favorable to the Purchaser, or if the contract is for a period longer than three years and cannot be terminated for cause. This is in addition to other normal HUD requirements for service contracts.
- viii) The Purchaser has received, within the past three years, a preponderance of financial support, including in-kind support, or a preponderance of goods or services, from any single for-profit or from a for-profit involved in the transaction;

- ix) The Seller retains any financial interest or other relationship in the Project or with the Purchaser, including, without limitation:
 - a) A lender or guarantor interest in any financing to the Purchaser or associated with the Project, for example:
 - 1) Debt that is secured by the Project;
 - 2) Debt that is secured by a pledge of ownership interests in the Owner;
 - 3) Debt whose repayment is materially dependent on the cash flow and/or future value of the Project.
 - b) An equity interest, or ownership by one Entity (or its Affiliate) of any interest in another Entity (or its Affiliate).
 - c) Contingent contractual rights to financial payments dependent on, for example, cash flow from the Project.
 - d) Development services or property management contracts.
- C) Heightened Scrutiny Analysis. In conducting the heightened scrutiny described in this Section, HUD will analyze the disclosed relationship(s) to determine:
 - i) Whether the for-profit entity *could* significantly influence the Purchaser to an extent that the Purchaser might be prevented from fully pursuing its own separate interests. HUD shall consider, among other factors, the Purchaser's subject matter knowledge to negotiate terms of the transaction with the for-profit entity, the Purchaser's financial risk and consequent interest in the terms of the relationship, the manner in which the Purchaser selected the for-profit entity to work with, and the ability of the Purchaser to work with a different for-profit entity.
 - ii) Whether the financial benefit of the Debt Relief accrues to the current and future residents, the long-term sustainability of the Project as affordable housing, or the Purchaser. HUD shall consider, among other factors, whether financial benefits to the for-profit entity are fixed, contingent with a cap, or fully contingent; are regulated by a governmental agency; are determined by a third-party valuation; and are arms-length or significantly and demonstrably favorable to the Purchaser.
- D) Tax Credit Equity Investors. An entity which is the sole general partner, or the sole managing member, of a low-income housing tax credit entity shall be considered independent notwithstanding the participation of a for-profit entity as the equity investor, provided the equity investor's rights absent default by the general partner or managing member do not include management and direction of the low-income housing tax credit entity. For purposes of this paragraph, common and commercially reasonable approval requirements with respect to major actions such as refinancing, sale, or control changes, are not considered "management and direction of the low-income housing tax credit entity."

3.4. Terms and Commitments Associated with Debt Relief.

- A) Role of Eligible Acquiring Entity. An acquiring entity eligible to benefit from Debt Relief, as described in Section 3.2, must act in one of the following roles with respect to the Project:
- i) The Purchaser itself;
 - ii) The controlling general partner of the partnership if the Purchaser is a limited partnership;
 - iii) The controlling managing member of the limited liability company if the Purchaser is a limited liability company;
 - iv) An entity which would meet one of the requirements set forth in subsections (i), (ii), or (iii), above, if organizational layers that are wholly owned by a parent organization are disregarded.
 - v) Other types of entities that HUD determines meet requirements substantially equivalent to those outlined in this Section.
- B) Sequence. To avoid merger, the Notes may be assigned to the Purchaser and further assigned to the eligible Acquiring entity prior to transfer of the deed to the Project.
- C) Sale Restriction.
- i) Any TPA or other Transfer within fifteen (15) years of the closing of the proposed transaction referenced in the Request for Debt Relief (a) must result in an ownership structure which satisfies the requirements for Debt Relief under this Notice and (b) must not be detrimental to the long-term preservation of the Project, to the sustainability of the affordable housing Project, and/or to the well-being of the current and future residents, as determined by HUD, in its sole discretion.
 - ii) The Accommodation Agreement executed in connection with the Debt Relief transaction will contain the following language:

“Transfer Restriction/Other Obligations. Purchaser hereby covenants and agrees that for a period of fifteen (15) years commencing on the date of this Agreement, without HUD’s advance written consent the Purchaser shall not convey the Project or allow a transfer of any interest in the Purchaser (including any entities which comprise the Purchaser), directly or indirectly, beneficial or otherwise. If such transferee is a limited liability investor, as such term is defined in the Program Obligations, HUD shall receive the same certifications and organizational charts required by the Program Obligations for the admission of a limited liability corporate investor at a transaction’s closing and HUD’s consent shall not be unreasonably withheld. There are no conditions or constraints on HUD’s ability to withhold such consent with respect to any party other than a limited liability investor. Purchaser hereby expressly assumes the undertakings and obligations contained in (i) the Restructuring Commitment, and (ii) any

applicable Rehabilitation Escrow Deposit Agreement between the Seller and the Secretary, and Purchaser agrees to be bound to the terms thereof.”

- iii) In connection with any subsequent Transfer of the Project or of any interest in the Purchaser (including any entities which comprise the Purchaser) within the fifteen (15) year period, HUD will not approve Requests involving:
 - a) Any deferred compensation to the Seller beyond that reflected in the Pay-Down calculation pursuant to Section 2.4(I); or
 - b) Any compensation to any for-profit partners or members of the Purchaser other than 1) assumption of any outstanding debt plus \$1, 2) Proceeds disclosed to and approved by HUD at the time of the Transfer (such as developer fees), and 3) routine Surplus Cash distributions.
- D) Developer Fee. In conjunction with Debt Relief, HUD shall require deferral of at least thirty percent (30%) of the developer fee for the proposed transaction unless HUD determines that an exception to this requirement is in the best interests of the long-term preservation of the Project, the sustainability of the affordable housing Project, and/or the current and future residents. Developer fees may be paid only with capital sources reflected in a HUD-approved sources and uses or with the Return to Owner.
- E) Affordability Commitments. The Purchaser shall accept an extension to the Use Agreement for a total term of fifty (50) years from the date of the M2M restructuring event. After the expiration of thirty (30) years from the date of the M2M restructuring event, the Purchaser shall be obligated and contractually commits to renew the HAP Contract under any renewal option for which the project is eligible at the time. If the Purchaser fails to timely select a renewal option, the Secretary shall have the right to determine the renewal option pursuant to which the Purchaser shall renew the HAP Contract.
- F) Distribution Limitations after Debt Relief. The existence of the second mortgage created in the M2M debt restructuring process establishes eligibility for the Return to Owner. The MRN or CRN overrides the otherwise applicable distribution limitations contained in the underlying mortgage being refinanced during the M2M debt restructuring process or in the HAP Contract and/or the applicable Section 8 regulations. In the absence of an MRN or CRN, the Return to Owner distributions are no longer applicable, and one or more of the following, pre-existing distribution limitations may apply:
 - i) The underlying Regulatory Agreement might provide that no distributions may be made to nonprofit mortgagors.
 - ii) The underlying Regulatory Agreement might provide that distributions are limited to a percentage of equity.
 - iii) The HAP Contract and/or associated regulations might include a limitation on distributions.
 - iv) New first mortgage financing might impose a limitation on distributions.

- G) Subsequent Amendment. After transfer of the Notes pursuant to Debt Relief, the holder of the Note may make such amendments, including, without limitation, cancellation or forgiveness of the debt, as the holder may determine to be appropriate.

Section 4. HUD Action Upon Default at Maturity

4.1. Default at Maturity. If a M2M Note or Demo Note has reached maturity and the Owner has not repaid the remaining principal and accrued interest due on the Note at such time, the Note shall be in default pursuant to the terms of the applicable Note and associated collateral documents. Any delay by HUD in the exercise of its remedies shall be considered a forbearance, and not a waiver of such rights. The Owner may avoid or delay HUD's exercise of such remedies by repaying the Note in full or requesting from HUD a work-out of the defaulted Note.

4.2. Repayment in Full. Full repayment of the Note does not need to be evaluated by HUD and does not need a waiver approval. The Project will remain subject to the M2M Use Agreement and applicable rent restrictions.

4.3. Work-Outs. In the event the Owner requests a work-out of the Note, HUD may offer options short of foreclosure for resolving defaults at maturity. The primary option shall be approval of a refinance or sale of the Project with an extension of the loan maturity, although HUD may consider other options. Work-outs are expected to minimize the cost to the Government of resolving troubled loans or loans in imminent default. They should only be utilized if it is likely that the borrower will be able to make the payments specified by the terms of the work-out and if the anticipated debt recovery to the Government as a result of the work-out is greater than the anticipated recovery in the event of default or foreclosure.

- A) The Owner may submit a waiver request as part of a refinance or sale of the Project. If HUD agrees to entertain such a work-out, the Owner shall submit all applicable materials to Recap and the Multifamily Regional Center pursuant to the terms of this Notice.
- B) If the Owner is unable or unwilling to structure a viable refinance or sale of the Project at maturity, the Owner may request an alternative work-out plan for the preservation of the Project and well-being of the current and future residents, such as a repayment, refinance, or sale at a future date. If HUD agrees to entertain such a work-out plan, the Owner must make a formal request in writing to Recap and the Multifamily Regional Center detailing why the Project cannot support an immediate refinance or sale and detailing the steps to implement the proposed work-out plan. HUD shall review, at a minimum, annual financial statements, prior year surplus cash payments, ownership performance, management performance, physical conditions, and potential future recapitalization plans when evaluating the justification for an alternative work-out plan. Recap and the Multifamily Regional Center shall confer and, if the plan is acceptable in concept, shall authorize the Project Owner to proceed to implement the plan as proposed. While HUD evaluates the Owner's work-out plan, HUD may forbear in the enforcement of its remedies.

- C) At the time HUD approves the alternative work-out plan in concept, HUD shall determine the time frame necessary for the Project Owner to implement the plan and may, in its sole discretion, either forbear in the enforcement of its remedies or grant an extension of the Note to temporarily cure the default. The Project Owner must diligently prosecute implementation of the plan according to the timetable agreed to by HUD. If the Project Owner is undertaking diligent efforts to implement the work-out plan and yet is unable to meet the agreed timetable, HUD may, at its sole discretion, extend the forbearance period and/or grant one or more additional extension(s) of the Note to provide the Project Owner additional time. In no event shall the cumulative period reflected in all such forbearance periods and short-term extensions exceed three (3) years beyond the maturity date of the Note. If the work-out plan has not been fully implemented or the contemplated transaction has not closed upon expiration of any forbearance periods or short-term extensions, HUD shall enforce its remedies under the Note and any associated security instrument. The Multifamily Regional Center shall process and execute all documents pertaining to any approved extension(s) of the Note(s) pursuant to a transaction-specific memorandum issued by Recap or any applicable administrative guidance issued by the Deputy Assistant Secretary from time to time. The Project will remain subject to the Project's Use Agreement and applicable rent restrictions.
- D) HUD may condition any short-term extension or work-out plan approval on additional oversight requirements or on other modifications of the terms of the Note and associated documents. Any applicable Return to Owner shall be suspended during any short-term extension period and may be permanently modified in conjunction with final closing of the work-out transaction. HUD may also require the Owner to pay an annual servicing fee for the Note during the extended term of the Note.

4.4. Other Defaults. This provision applies only to defaults caused by failure to pay the Note in full upon maturity. HUD shall implement standard remedies available to it in all other instances of an event of default under the loan documents.

Section 5. Section 8(bb) Transfers

5.1. Generally. The Section 8(bb) Notice provides background information and establishes HUD's governing policies, procedures, and comprehensive guidance for preservation transactions under Section 8(bb) that result in the termination of a HAP Contract by mutual agreement. To accommodate scenarios in which the goal is to retain a portion of the HAP Contract (e.g., Contract A) at the project ("Project A"), the Section 8(bb) Notice also contemplates the subdivision of a HAP Contract (e.g., into Contract A1, Contract A2, etc.), the termination by mutual agreement of one of the resulting contracts (e.g., Contract A2), the transfer of the budget authority remaining on the terminating contract at the time of its termination to another HAP Contract ("Contract B") at another project ("Project B"), and the retention of Contract A1 at Project A. However, because of the complexity of M2M transactions, including the additional considerations that the M2M Use Agreement and any remaining M2M debt present, Section III.F.7 of the Section 8(bb) Notice excludes proposals involving a project that is subject to a Full M2M Renewal Contract from its applicability "until

additional guidance is released.” This Section supplements the Section 8(bb) Notice and serves as that additional guidance and does not supersede the Section 8(bb) Notice except where specifically noted. Notwithstanding that the scope of the guidance in this Notice is limited to Projects with existing M2M subordinate debt, Projects that have already satisfied their M2M subordinate debt obligation, but still have a M2M Use Agreement and a Full M2M Renewal Contract, may rely on the guidance in this Notice with respect to Section 8(bb) transfers of budget authority.

This Section uses terms defined in Section IV of the Section 8(bb) Notice (“Definitions”) and assumes a working knowledge of the policies and procedures established in the Section 8(bb) Notice. This Section applies only to proposals in which (1) Project A or Project B is subject to an existing Full M2M Renewal Contract; (2) Contract A, or a portion of it that results from its subdivision, will be terminated by mutual agreement; and (3) the budget authority remaining on the terminated contract (e.g., Contract A, if terminated in its entirety; Contract A2, if Contract A is first subdivided) will be transferred to Contract B. Proposals that meet these criteria, should be initiated with the Multifamily Regional Center, which will organize a concept call, inclusive of OAMPO and Recap, prior to the Section 8(bb) submission to determine compliance with the Section 8(bb) Notice and this Section. The Multifamily Regional Center will transmit the Section 8(bb) submission package, with their recommendation, to OAMPO and Recap for review and approval. OAMPO and Recap shall confer, and OAMPO will then communicate the approval, conditional approval, or denial representing the OAMPO-Recap consensus to the Multifamily Regional Center for communication to the Owner.

Notwithstanding Section III.F.7 of the Section 8(bb) Notice, all transactions that HUD approves under this Section will be subject to and governed by the Section 8(bb) Notice. Unless otherwise stated in this Section, Owners and all interested parties must comply with the requirements in Section V (“Project A”), Section VI (“Project B”), Section VII (“Tenant Procedures and Protections”), and Section VIII (“Multifamily HUB/PC Responsibilities”) of the Section 8(bb) Notice. In addition, for any Section 8(bb) transaction approved under this Section, HUD requires the use of the contract amendment forms designated as Appendix Two-A (Form HUD-93185a) and Two-B (Form HUD-93185b) of the Section 8(bb) Notice and of the Preservation Exhibit (which is designated as Appendix Three), as applicable and as directed in Sections V and VI of the Section 8(bb) Notice and in this Section. In addition to the terms and conditions set forth in the Section 8(bb) Notice and this Section, HUD may prescribe additional requirements as conditions of HUD approval.

Under Section 8(bb), HAP Contract budget authority is transferred to a different HAP Contract. Section 8(bb) does not authorize the transfer of a HAP Contract itself.

Section 8(bb) does not apply when an Owner requests a transfer of statutorily required low-income and very low-income use restrictions, such as the M2M Use Agreement, and/or HUD-held or HUD-insured debt. HUD may administratively require that some or all of the outstanding balance under the Notes be moved to Project B. In such situations, another statutory transfer authority may be applicable, depending on the availability of such authority under law

and on whether all conditions of that authority can be satisfied.⁹ The provisions of this Notice shall govern with respect to the Notes and related obligations to the extent this Notice can be implemented consistent with any other available statutory transfer authority.

Any transfer authority implemented pursuant to the terms of this Notice shall result in rental assistance associated with specific units approved by HUD. Rental assistance transferred hereunder may not be applied to “floating” units.

5.2. Factual Scenarios of Proposals under this Section. HUD anticipates that the structure of most proposals under this Section will align substantially with one of the two scenarios addressed below. The core requirements under both scenarios are summarized and illustrated with examples in Appendix A of this Notice. HUD will consider proposals that present any other factual scenarios on a case-by-case basis.

- A) Scenario 1. Project A is subject to an original HAP Contract that is either still in effect or that has expired and been renewed with a non-M2M renewal contract (i.e., an Option One, Two, Four, or Five renewal contract), as authorized under Section 524 of MAHRA (Contract A).¹⁰ Project B is subject to an original HAP Contract that previously expired, underwent M2M debt-restructuring, and was renewed with a Full M2M Renewal Contract (Contract B). Project B is either partially assisted or fully assisted but, if fully assisted, will undergo construction or improvements resulting in additional units that will be ready for occupancy before the Section 8(bb) transaction is finalized. The proposal contemplates the termination by mutual agreement of Contract A, or a portion of Contract A that results from its subdivision (e.g., Contract A2), and the immediate transfer of the budget authority remaining on the terminated contract to Contract B for the purpose of assisting all or a portion of the units at Project B that had previously been unassisted or were newly constructed, thus increasing the total number of units covered by Contract B. The budget authority transferred from the terminated contract may be used only to support existing or newly constructed units that were not previously covered by Contract B.
- i) Requirements for Project A. All requirements in Section V (“Project A”) of the Section 8(bb) Notice shall apply to Project A.

⁹ A provision authorizing transfers of use restrictions subject to various conditions and requirements has appeared in HUD’s appropriations acts since Fiscal Year 2008 and may be available while this Notice is in effect depending on the fiscal year in which any such request is made.

¹⁰ The Section 8 Renewal Guide refers to the menu of renewal contracts available under MAHRA by “Option” numbers that the Office of Multifamily Housing assigned to each of the five renewal options available under MAHRA in the years following its enactment on October 27, 1997. Options One, Two, Four, and Five are authorized under Section 524 of MAHRA. Option Three (“Referral to Recap”), which often results in renewal with a Full M2M Renewal Contract, is authorized under Section 515 of MAHRA. See generally, Section 8 Guidebook, Section 1-1 (issued June 30, 2017).

- ii) Requirements for Project B. All requirements in Section VI (“Project B”) of the Section 8(bb) Notice shall apply to Project B unless otherwise noted below.
- a) Units. The M2M Units located at Project B remain subject to Contract B. The Section 8(bb) Units proposed for Project B shall be added by amendment to Contract B (which, in this scenario, is the Full M2M Renewal Contract).¹¹
 - b) Immediately Subsequent Renewal of Contract B. Section VI.B.6 of the Section 8(bb) Notice states in part, “Owner B must submit a request for the immediate renewal of Contract B . . . *under any MAHRA renewal option for which Contract B is eligible*” (emphasis added). Because Option Three B (i.e., renewal with a Full M2M Renewal Contract) is the only subsequent renewal option for which Contract B is eligible while the M2M Use Agreement is in effect, Contract B must be renewed under Option Three B (i.e., using another Full M2M Renewal Contract).¹²
 - c) Immediately Subsequent Renewal Term of Contract B. In general, the term of a Full M2M Renewal Contract may not exceed the term of the M2M Use Agreement. The term of the new Full M2M Renewal Contract shall be determined by Owner B, subject to the following constraints:
 - 1) If Project B received a Full M2M Renewal Contract with Exception Rents upon completion of the M2M debt-restructuring, HUD will not extend the term of the M2M Use Agreement beyond 30 years from the date of closing of the M2M restructuring transaction.¹³ The term of the new Full M2M Renewal Contract shall equal or exceed the remaining term on Contract B prior to the renewal referenced in subparagraph (b), above. In no event shall the term of the newly renewed Full M2M Renewal Contract exceed the lesser of (a) 20 years (the maximum term of a MAHRA renewal contract that HUD is authorized to enter into) or (b) the number of years remaining on the M2M Use Agreement.

¹¹ See Section VI.B.5 of the Section 8(bb) Notice, including the reference to HAP Contract Amendment form 93185b (Appendix Two-B to the Section 8(bb) Notice).

¹² The applicability of Option Three B is determined by statute. See MAHRA, Section 515(b). See, in addition, Section 8 Renewal Guide, Section 5-5 B which currently reads: “When a Mark-to-Market debt restructuring is completed, an initial Full Mark-to-Market Renewal Contract is executed generally for a term of 20 years (the term maybe 1 to 20 years), and is to be subsequently renewed under Option Three B up to the remaining term of the Use Agreement (which, by operation of Section 514(e)(6) of MAHRA, must be at least 30 years).”

¹³ This is consistent with Section 5-5 D of the Section 8 Renewal Guide, which contemplates the early termination of a Full M2M Renewal Contract with Exception Rents to facilitate a refinancing. Section 5-5 D currently reads: “In no event will a contract with MAHRA Section 514(g) ‘Exception Rents’ be renewed with a term that extends beyond the original term of the Use Agreement; the term of the Use Agreement on such properties will not be extended beyond 30 years from the date of the Mark-to-Market [debt] restructuring.”

- 2) If Project B received a Full M2M Renewal Contract with Market Rents upon completion of the M2M debt-restructuring, Contract B will be for a term equal to or exceeding the remaining term on Contract B prior to renewal but no longer than 20 years.
- d) Rent Levels under Contract B.
- 1) M2M Units. The rent level for the existing M2M units will remain the same. Rents will be adjusted only in accordance with the terms of the new Full M2M Renewal Contract (i.e., on that contract's anniversary date, by OCAF).¹⁴ No rents for M2M units covered by Contract B, as renewed, will be adjusted as the result of the Section 8(bb) transaction.
 - 2) Section 8(bb) Units. The rents for the Section 8(bb) Units under Contract B, as renewed, may not exceed the comparable market rents, based on an RCS. Rents for the Section 8(bb) Units may differ from the rents for the existing M2M units. The rents for the Section 8(bb) Units under Contract B shall be reflected on an "Exhibit A1" rent schedule to Contract B. Rents will be adjusted only in accordance with the terms of the new Full M2M Renewal Contract (i.e., on that contract's anniversary date, by OCAF).
 - 3) Fewer than 10 Section 8(bb) Units. For transactions in which Project B received a Full M2M Renewal Contract with Market Rents and in which budget authority supporting fewer than ten Section 8(bb) Units is transferred from Contract A (or Contract A2) to Contract B, the Owner may request to forgo the requirement of an RCS. If granted by the Multifamily Regional Center, the rents for the Section 8(bb) Units will be set at the level of the existing M2M units. Contract B will be amended to add the Section 8(bb) units, then terminated by mutual agreement and renewed in accordance with this Section 5.2(A)(ii).
- e) Affordability Restrictions at Project B. If Project B received a Full M2M Renewal Contract with Exception Rents, the term of the M2M Use Agreement may not be extended.¹⁵ If Project B received a Full M2M Renewal Contract with Market Rents, the term of the M2M Use Agreement must be coterminous with the new Full M2M Renewal Contract.
- f) Preservation Exhibits. Contract A shall be subject to a Preservation Exhibit to the extent required in the Section 8(bb) Notice. Notwithstanding the last sentence of Section VI.B.6 of the Section 8(bb)

¹⁴ See Sections VI.B.5 and VI.B.6 of the Section 8(bb) Notice.

¹⁵ See footnote 11.

Notice (or successor provision), no Preservation Exhibit is required for Contract B.

- B) Scenario 2. Project A is subject to an original HAP Contract that previously expired, underwent M2M debt-restructuring, and was renewed with a Full M2M Renewal Contract (Contract A). Project B is either (a) unassisted, or (b) subject to an original HAP Contract that is either still in effect or that has expired and been renewed with a non-M2M renewal contract. If Project B is already subject to a HAP Contract, the project is either partially assisted or fully assisted but, if fully assisted, will undergo construction or improvements resulting in additional units that will be ready for occupancy before the Section 8(bb) transaction is finalized. The proposal contemplates the termination by mutual agreement of Contract A, or a portion of Contract A that results from its subdivision (e.g., Contract A2), and the immediate transfer of the budget authority remaining on the terminated contract. If Project B is unassisted, the process and procedures established in Section VI.B.7 of the Section 8(bb) Notice shall apply, including the execution of a new regulation Part 880 HAP Contract on the contract form at Appendix One of that Notice (Form HUD-52522a). If Project B is already subject to a HAP Contract, the budget authority from Contract A is transferred to the existing Contract B, the process and procedures established in Sections VI.B.5 and VI.B.6 of the Section 8(bb) Notice shall apply, and, as a result of the steps taken pursuant to this Notice and the Section 8(bb) Notice, units that had previously been unassisted or were newly constructed on the Project B site shall become assisted, thus increasing the total number of Section 8 contract units at Project B.
- i) Requirements for Project A when Contract A is Terminated in Whole. If the proposal contemplates the termination of Contract A in whole, all the requirements in Section V.A (“Project A – Request to Transfer All Remaining Budget Authority”) of the Section 8(bb) Notice shall apply. As a condition of the transaction, Owner B must assume the Note(s), and Project B must become encumbered by all mortgage liens associated with the Note(s) in a lien priority acceptable to HUD. HUD will release the M2M mortgage liens from Project A. The Return to Owner, Surplus Cash, and the resulting payments to HUD under the Note(s) shall be calculated based on the entirety of Project B. Pursuant to the terms of the M2M Use Agreement, when Contract A is terminated, the property remains subject to one of the affordability requirements set forth in the M2M Use Agreement, as selected by Owner A. Section 8(bb) does not provide authority for transfer of the M2M Use Agreement. If Owner A wishes to transfer the M2M Use Agreement to Project B, the parties must identify an available statutory transfer authority and satisfy all conditions of that authority.
- ii) Requirements for Project A when Contract A is Terminated in Part. If the proposal contemplates the subdivision of Contract A (e.g., into Contract A1 and Contract A2), the termination of Contract A2, and the transfer of the budget authority remaining on Contract A2 to Contract B, all requirements in Section V.B (“Project A – Request to Transfer Part of the Remaining

Budget Authority”) of the Section 8(bb) Notice shall apply to Project A unless otherwise noted below.

- a) Immediately Subsequent Renewal of Contract A1. Section V.B.3 of the Section 8(bb) Notice states in part “Owner A must submit a request for the immediate renewal of Contract A1 ... *under any MAHRA renewal option for which Contract A1 is eligible*” (emphasis added). Because Option Three B (i.e., renewal with a Full M2M Renewal Contract) is the only subsequent renewal option for which Contract A is eligible while the M2M Use Agreement is in effect, Contract A1 must be renewed under Option Three B (i.e., using another Full M2M Renewal Contract).¹⁶
- b) Immediately Subsequent Renewal Term of Contract A1. In general, the term of a Full M2M Renewal Contract may not exceed the term of the M2M Use Agreement. The term of the new Full M2M Renewal Contract executed as Contract A1 shall be determined by Owner A, subject to the following constraints.
 - 1) If Project A received a Full M2M Renewal Contract with Exception Rents upon completion of the M2M debt-restructuring, HUD will not extend the term of the M2M Use Agreement beyond 30 years from the date of closing of the M2M restructuring transaction.¹⁷ The term of the new Full M2M Renewal Contract shall equal or exceed the remaining term on Contract A1 prior to the renewal referenced in subparagraph (a), above. In no event shall the term of the newly renewed Full M2M Renewal Contract exceed the lesser of (a) 20 years (the maximum term of a MAHRA renewal contract that HUD is authorized to enter into) or (b) the number of years remaining on the M2M Use Agreement.
 - 2) If Project A received a Full M2M Renewal Contract with Market Rents upon completion of the M2M debt-restructuring, Contract A1 will be renewed for a term equal to or exceeding the remaining term on Contract A1 prior to renewal but no longer than 20 years.
- c) Rent Levels under Contract A1. The rent level for the existing M2M units will remain the same. Rents will be adjusted only in accordance with the terms of the new Full M2M Renewal Contract (i.e., on that contract’s anniversary date, by OCAF). No rents for units covered by

¹⁶ See footnote 10.

¹⁷ This is consistent with Section 5-5 D of the Section 8 Renewal Guide, which contemplates the early termination of a Full M2M Renewal Contract with Exception Rents to facilitate a refinancing. Section 5-5 D currently reads: “In no event will a contract with MAHRA Section 514(g) ‘Exception Rents’ be renewed with a term that extends beyond the original term of the Use Agreement; the term of the Use Agreement on such properties will not be extended beyond 30 years from the date of the Mark-to-Market [debt] restructuring.”

Contract A1, as renewed, will be adjusted as the result of the Section 8(bb) transaction.

- d) Affordability Restrictions at Project A. If Project A received a Full M2M Renewal Contract with Exception Rents, the term of the M2M Use Agreement may not be extended.¹⁸ If Project A received a Full M2M Renewal Contract with Market Rents, the term of the M2M Use Agreement must be coterminous with the new Full M2M Renewal Contract.
 - e) Notes. HUD may administratively require that some or all of the outstanding balance (including both principal and any accrued interest) under the Note(s) be moved to Project B. HUD will amend and restate the Note(s) to allocate the debt on a pro rata basis according to the number of bedrooms that are covered by Contract A1 and Contract A2, respectively. Owner A will remain obligated under the Note(s) associated with Contract A1 that have been amended and restated pursuant to the preceding sentence. Project A will remain encumbered by all the mortgage liens and use agreements associated with such Note(s). The Return to Owner, Surplus Cash, and the resulting payments to HUD under the Note(s) shall be calculated based on the entirety of the projects encumbered by the mortgage liens associated with the Note(s).
- iii) Requirements for Project B when Contract A is Terminated in Whole or in Part. All requirements of the Section 8(bb) Notice shall apply to Project B under this Scenario, unless otherwise noted below.
- a) Contract B. Upon termination of Contract A or Contract A2, as applicable, if there is no pre-existing Contract B on Project B, a new Section 8 contract for the Section 8(bb) Units proposed for Project B shall be established pursuant to Section VI (“Project B”) of the Section 8(bb) Notice. Upon termination of Contract A or Contract A2, as applicable, if there is a pre-existing Contract B, the Section 8(bb) Units proposed for Project B shall be added by amendment to Contract B. The rents for the Section 8(bb) Units under Contract B shall be reflected on an “Exhibit A1” rent schedule to Contract B. The rents for the Section 8(bb) Units under Contract B may not exceed the comparable market rents, based on an RCS, and shall be subject to comparability rent adjustments as set forth in Contract B.¹⁹
 - b) Notes. As a condition of the transaction, Owner B shall assume the Note(s) associated with Contract A2 that have been amended and

¹⁸ See footnote 11.

¹⁹ See Section VI.B.5 of the Section 8(bb) Notice, including the reference to HAP Contract Amendment form 93185b (Appendix Two-B to the Section 8(bb) Notice).

restated pursuant to Section 5.2(B)(ii)(f). Owner B shall assume or execute new mortgage liens associated with such Note(s) in a lien priority acceptable to HUD.

- iv) Preservation Exhibits. Notwithstanding the last sentence of Section VI.B.6 of the Section 8(bb) Notice (or successor provision), no Preservation Exhibit is required for Contract A. Contract B shall be subject to a Preservation Exhibit to the extent required in the Section 8(bb) Notice.

Contact Information.

If you have questions regarding this Notice, please contact Kara Williams-Kief by email at PM2M@hud.gov, or contact the Account Executive assigned to the Project at the Multifamily Regional Center.

The information collection requirements contained in this Notice have been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB Control Number 2502-0275. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Lopa P. Kolluri
Principal Deputy Assistant Secretary for Housing

Appendix A
Summary of Section 8(bb) Budget Authority Transfers & M2M Policy²⁰

HAP Renewal Type	<p>Scenario 1: Section 8(bb) Units are added by amendment to a Full M2M Renewal Contract (Contract B) to which Project B is already subject. Both the original M2M units and the Section 8(bb) Units are governed by Contract B, as renewed using a new Full M2M Renewal Contract (Option Three-B).</p> <p>Scenario 2: Budget authority associated with M2M units subject to a Full M2M Renewal Contract (Contract A) is transferred pursuant to Section 8(bb) (after termination of Contract A or Contract A2) to assist units at a previously unassisted site under a new Contract B (the Part 880 HAP Contract form at Appendix One of the Section 8(bb) Notice) or to assist previously unassisted units at Project B under an existing Contract B.</p>
Rent Level	<p>Scenario 1: Rent levels for the original M2M units under Contract B remain the same. Section 8(bb) units will be added by amendment to Contract B and set at market based on an RCS. When there are fewer than 10 Section 8(bb) units and the rents under Contract B were established at Market Rents, the owner may request to use the current M2M rents for the Section 8(bb) Units in lieu of commissioning an RCS. All rents under the new Full M2M Renewal Contract, once set, will be adjusted by OCAF on the anniversary of the new Full M2M Renewal Contract.</p> <p>Scenario 2: Rent levels for M2M units remaining at Project A under Contract A1 will remain the same, and future rent adjustments will remain limited to OCAF. Rent levels for the Section 8(bb) units under Contract B may not exceed market based on an RCS. Where the Section 8(bb) units are added to an existing Contract B, rents under Contract B will be adjusted pursuant to the terms (both procedures and timing) of the existing Contract B.</p>
M2M Use Agreement Term	<p>Scenario 1: If rents under Contract B were established based on Exception Rents, the term of the M2M Use Agreement at Project B may not be extended. If rents under Contract B were established based on Market Rents, the term of the M2M Use Agreement must be coterminous with the new Full M2M Renewal Contract for Contract B.</p> <p>Scenario 2: If rents under Contract A were established based on Exception Rents, the term of the M2M Use Agreement at Project A may not be extended. If rents under Contract A were established based on Market Rents, the term of the M2M Use Agreement must be coterminous with the new Full M2M Renewal Contract for Contract A.</p>

²⁰ This Appendix is a reference tool, summarizing the terms of Section 5 of this Notice. In the event of any conflict between this Appendix and the terms of Section 5 of this Notice, Section 5 shall govern.

<p>HAP Contract Term</p>	<p>Scenario 1: If Contract B uses Exception Rents, the term of the new Full M2M Renewal Contract for Contract B shall equal or exceed the remaining term on Contract B prior to renewal, but in no event shall it exceed the lesser of (a) 20 years (the maximum term of a MAHRA renewal contract that HUD is authorized to enter into) or (b) the number of years remaining on the M2M Use Agreement. If Contract B uses Market Rents, the term of the new Full M2M Renewal Contract for Contract B will be equal to or will exceed the remaining term on Contract B prior to renewal but no longer than 20 years. If more than 20 years remain on the M2M Use Agreement, multiple contract renewals will be required.</p> <p>Scenario 2: If the original Project A HAP Contract had Exception Rents, Contract A must have a term equal to or exceeding the remaining term on the original Project A HAP Contract, but not exceeding the lesser of 20 years or the outstanding term of the Use Agreement. If it did not have Exception Rents, Contract A must have a term equal to or exceeding the remaining term on the original Project A HAP Contract, but not exceeding 20 years. If more than 20 years remain on the M2M Use Agreement, multiple contract renewals will be required. Contract B would have a term pursuant to the requirements of the Section 8(bb) Notice.</p>
<p>Preservation Exhibit</p>	<p>The HAP contract providing rental assistance to the site encumbered by a M2M Use Agreement is not subject to a Preservation Exhibit. This refers to Contract B under Scenario 1 and to Contract A under Scenario 2. The standard Section 8(bb) Notice requirements regarding Preservation Exhibits apply when the site is <i>not</i> encumbered by a M2M Use Agreement.</p>