



OFFICE OF HOUSING

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-8000

Special Attention of:	Notice:	H 2024-05
Multifamily Regional Directors	Issued:	February 29, 2024
Multifamily Asset Management Division Directors	Expires:	This Notice remains in effect until amended, superseded, or rescinded
Multifamily Asset Management Branch Chiefs		
Multifamily Asset Management Staff		
Regional Administrators		
Performance Based Contract Administrators		
Property Owners		

TITLE

Budget-Based Rent Adjustments for Mark-to-Market Properties

SUBJECT

This Notice describes the framework the Department of Housing and Urban Development's (HUD's) Office of Multifamily Housing Programs will use to process budget-based rent adjustments (BBRAs) for Section 8 project-based rental assistance (PBRA) housing assistance payment (HAP) contracts at properties subject to a Mark-to-Market program (M2M) use agreement.

BACKGROUND

Enacted as part of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA), the M2M program was designed to preserve the affordability of low-income multifamily rental properties with loans insured by the Federal Housing Administration (FHA) and to introduce administrative efficiencies in the multifamily FHA-insured Section 8 portfolio. M2M allows HUD to adjust the rents down to market on certain projects that have above-market project-based Section 8 contract rents. Through the M2M restructuring, HUD may also restructure debt that is FHA-insured or Secretary-held to ensure that the owner has a first mortgage loan that is supportable at the new rents. While a core part of the M2M restructuring is the adjustment of rents, not all owners seek to restructure the debt.

After restructuring, rent adjustments for M2M properties have historically been limited to the Operating Cost Adjustment Factor (OCAF) pursuant to Section 514(e)(2) of MAHRA. The OCAF is a factor that is established and published by HUD annually in the *Federal Register* for

each state and territory and is applied to the existing contract rent, less the portion of rent that is paid for debt service.

While the OCAF has been adequate for some properties, there are many M2M properties that have rents that are below market and inadequate to cover the properties' operating expenses. Providing BBRA ensures that project income can cover project operating expenses and can support debt service sufficient to perform necessary rehabilitation and recapitalization.

Section 236 of the Department of Housing and Urban Development Appropriations Act, 2023, amends MAHRA to grant to the Secretary of HUD the authority to adjust rents or renew contracts at rent levels that are equal to the lesser of budget-based rents or comparable market rents in certain circumstances. HUD published a Final Rule in the Federal Register revising 24 CFR part 401 to implement this new authority on February 28, 2024, at 89 FR 14588. This Notice provides guidance on the eligibility requirements and conditions required by the statute and regulation as well as other terms and conditions.

ORGANIZATION AND EXPLANATION OF MAJOR PROVISIONS

This Notice includes the following Sections:

- Section 1 provides an overview of how properties will be prioritized for consideration of a BBRA.
- Section 2 provides definitions for terms used in this Notice.
- Section 3 sets forth the eligibility requirements for requesting and finalizing a BBRA pursuant to this Notice, including requirements applicable at major stages of processing.
- Section 4 describes how HUD will prioritize properties for consideration of a BBRA considering limited funding availability.
- Section 5 establishes which priority properties may request a BBRA immediately.
- Section 6 describes the submission requirements for requesting a BBRA and the review and approval process.
- Section 7 sets forth additional terms and conditions associated with accepting the BBRA.

EFFECTIVE DATE

This Notice is effective immediately upon publication.

FURTHER INFORMATION

Questions concerning this notice should be submitted by email to BBRA@HUD.gov.

PAPERWORK REDUCTION ACT

The information collection requirements contained in this document have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB control number 2502-0533, 2502-0505, 2502-0029, and 2502-0324. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

Julia R. Gordon
Assistant Secretary for Housing –
Federal Housing Commissioner

BUDGET-BASED RENT ADJUSTMENTS FOR MARK-TO-MARKET PROPERTIES

Section 1. Overview.

BBRAs are available for properties that lack sufficient project income to operate and maintain the property on a sustainable basis for the long-term. In some cases, rehabilitation may be required to achieve long-term sustainability. The BBRA would increase housing assistance payment contract rents to levels that can support property expenses, including debt service coverage and deposits into a reserve for replacements.

Since the statute limits the frequency of BBRAs calculated under this Notice to not more often than once every 10 years, HUD has designed the BBRA process to consider factors reasonably likely to impact the property’s financial and physical stability for the long-term. As such, the BBRA process includes a review of the current and anticipated capital needs of the property to ensure a rent that can adequately fund necessary deposits to the reserve for replacements in addition to debt service payments.

The funding available for BBRAs may be limited and should be directed where HUD determines the need to be great. HUD will prioritize the limited resources available for BBRAs to assist owners whose properties are in operational and/or financial distress or have avoided such distress due to voluntary owner contributions to the property. In this Notice, HUD establishes a prioritization structure informed by property conditions (see the definitions of Group A Properties, Group B Properties, Group C Properties, and Group D Properties, and Section 4, below) and by the relationship between the contract rents for the property and the “fair market rent” (see the definitions of Weighted Rent and Weighted FMR, and Section 4, below). Table 1 provides an illustration of the prioritization structure described in Section 4, below.

Table 1: Illustration of Prioritization of Properties.

Property Group	Rent at the Property Relative to the FRM				
	< 70% FMR	70%-79% FMR	80%-89% FMR	90%-99% FMR	100%-140% FMR
A	1 st Priority				
B	2 nd			4 th	
C	3 rd				
D	5 th	6 th	7 th	8 th	9 th

This table seeks to provide a visual representation of the text contained in Section 4.2 to assist the reader’s comprehension. It has been simplified for the purpose of presentation (for example “less than 90% of the Weighted FMR” is recorded as “89% FRM”). Where there is a distinction between the table and the text, the text shall govern. Criteria for Groups A through D are set forth in Sections 2.9 through 2.12.

The prioritization structure determines when owners are invited to make an initial submission (see Section 6.3), providing basic property information, and requesting a BBRA for the applicable property. On a first come, first served basis, informed by the extent of funds available to HUD, owners will then be invited to complete and submit applicable due diligence (such as a capital needs assessment and a rent comparability study) as required by Section 6.4. Owners that

commission these due diligence documents prior to being invited to submit the due diligence do so at their own risk, as some of these materials could become stale before HUD is able to consider their BBRA request.

The BBRA review and approval process does not take the place of other HUD-required approvals which may be necessary to implement contemporaneous events at the property. All Office of Multifamily Housing Program asset management requirements associated with such events must be processed by the appropriate HUD office, including without limitation, any waivers of the M2M due sale or refinance clause, any Transfer of Physical Assets or HAP Contract assignment or renewal, applicable previous participation review, applicable environmental review, revised HUD-1044 if there is a HUD Service Coordinator Grant at the Property, and any other applicable HUD requirement. The Owner is responsible for securing all necessary transaction approvals.

Section 2. Definitions.

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

2.1. BBRA. Budget-based rent adjustment as described in this Notice.

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

2.3. Closing. The date on which HUD finalizes a HAP Contract amendment establishing the amount of the BBRA and the effective date of the BBRA. In the event other actions are conditions to the approval of the BBRA, such as a change in the property management company, a sale or transfer of the Property, or a financial transaction sufficient to permit a rehabilitation of the Property, the transaction documents governing such other event must be entered into and effective simultaneously with the date on which HUD's determination of the BBRA becomes binding. The BBRA shall take the place of the otherwise-applicable OCAF-based annual contract rent adjustment on the anniversary date of the HAP Contract. Consequently, the effective date of the BBRA itself must coincide with the HAP Contract anniversary date.

2.4. Debt Service Coverage Ratio. The Debt Service Coverage Ratio measures whether a property's annual income is sufficient to pay both operating expenses and required amortizing debt obligations. The Debt Service Coverage Ratio is calculated by dividing the Property's Net Operating Income by the Property's annual total of required monthly payment obligations on amortizing mortgage debt, including both principal and interest and not including any balloon or due on sale, refinance, or maturity obligations.

2.5. FASS. The Financial Assessment Subsystem for FHA-administered housing implemented pursuant to the Uniform Financial Reporting Standards, 24 CFR part 5, subpart H and administered by REAC.

2.6. FHA. The Federal Housing Administration within the U.S. Department of Housing and Urban Development.

2.7. Final Submission. Documentation submitted to HUD for review to demonstrate that a BBRA for the Property is justified pursuant to the terms of this Notice. The detailed contents of the Final Submission are set forth in Section 6.4.

2.8. Financial Statements. Annual, audited financial statements prepared in accordance with Generally Accepted Accounting Principles (GAAP) and the guidance contained in HUD Handbook 4370.1, *Reviewing Annual and Monthly Financial Reports*, HUD Handbook 4370.2, *Financial Operations and Accounting Procedures for Insured Multifamily Projects*, and HUD Handbook 2000.04 Rev-2, *Consolidated Audit Guide for Audits of HUD Programs*, as such handbooks may be amended from time to time.

2.9. Group A Properties. Any property that meets one (1) of the criteria set forth below (as may be subsequently modified following publication posted on www.hud.gov/program_offices/housing/mfh/presrv/presmfh/aboutm2m/postm2m) at the time of Initial Submission shall be considered a “Group A Property”:

- A) In the most recent REAC inspection, the Property received an aggregate score below 30.
- B) In each of the last two REAC inspections, the Property received an aggregate score below 60. The two inspections may not occur within ten (10) months of each other. If two inspections occur within ten (10) months, the latter will generally be considered for this purpose. In the event of a dispute, request for adjustment, or appeal, the score representing the final disposition of the dispute, adjustment, or appeal will be used.
- C) The Financial Statements for the Property’s most recent fiscal year indicate that the Property’s Operating Cost Coverage Ratio (defined below) is less than 1.0.
- D) The Financial Statements for the Property indicate that the Owner has made Owner Contributions in excess of \$3,000 per unit in the most recent fiscal year or in excess of \$1,500 per unit in each of the last three (3) fiscal years.
- E) The first mortgage debt on the Property has been acquired by HUD through a payment of claim on a loan insured by the Federal Housing Administration; the Property has been acquired by HUD through foreclosure; the Property has received a notice of a pending foreclosure issued by the lender or HUD; the Property is being transferred from the borrower to a third party in lieu of foreclosure pursuant to a transfer of physical assets consistent with a plan approved by OAMPO’s Property Disposition Division; or the Property is

otherwise subject to a property disposition action administered by OAMPO's Property Disposition Division.

- F) The average physical vacancy rate of the residential units at the Property has exceeded or equaled 25% for the most recent 24-month period.

2.10. Group B Properties. Any property that meets two (2) of the criteria set forth below (as may be subsequently modified following publication posted on www.hud.gov/program_offices/housing/mfh/presrv/presmfh/aboutm2m/postm2m) at the time of Initial Submission and is not a Group A Property shall be considered a "Group B Property":

- A) In the most recent REAC inspection, the Property received an aggregate score equal to or greater than 30 but less than 60.
- B) The Financial Statements for the Property's most recent fiscal year indicate that the Property's Debt Service Coverage Ratio is less than 1.0.
- C) The Financial Statements for the Property indicate that the Owner has made Owner Contributions in excess of \$1,500 per unit in the most recent fiscal year or in excess of \$750 per unit in each of the last three (3) fiscal years.
- D) The average physical vacancy rate of the residential units at the Property has exceeded or equaled 15% for the most recent 24-month period.
- E) The local municipal government has issued to the Property a notice of one or more substantial code violations that the Owner cannot reasonably resolve based on the Property's available resources absent an Owner Contribution. "Substantial code violation" is defined as a compliance action received by the Owner where non-compliance was found that materially impacts the health or safety of residents.
- F) The rent assistance provided through the Property's HAP Contract is being paid on temporary relocation units pursuant to a HUD-approved "pass through" of the rent assistance (*see* HUD Handbook 4350.1 *Multifamily Asset Management and Project Servicing*, Chapter 38 *Multifamily Emergency/Disaster Guidance*, Section 38-32.C *Section 8 Pass Through* found at HUD Handbook 4350.1) due to a Presidentially declared disaster or due to a casualty event not caused by the Owner at the Property.
- G) Twenty percent (20%) or more of the residents of the Property have been displaced from the Property for more than sixty (60) days, resulting in the vacancy of such units, as the result of a Presidentially declared disaster or due to a casualty event not caused by the Owner at the Property.
- H) HUD staff have notified the Owner, in writing with a specific reference to eligibility for a budget-based rent adjustment under this Notice, that i) the Property has been severely damaged by a Presidentially declared disaster or due

to a casualty event not caused by the Owner, and ii) the Owner is actively implementing appropriate repairs to the Property.

2.11. Group C Properties. Any property that meets three (3) of the criteria set forth below (as may be subsequently modified following publication posted on www.hud.gov/program_offices/housing/mfh/presrv/presmfh/aboutm2m/postm2m) at the time of Initial Submission and is not a Group A Property or a Group B Property shall be considered a “Group C Property”:

- A) In the most recent REAC inspection, the Property received an aggregate score equal to or greater than 30 but less than 70.
- B) The Financial Statements for the Property’s most recent fiscal year indicate that the Property’s Operating Cost Coverage Ratio is equal to or greater than 1.0 and less than 1.1.
- C) The Financial Statements for the Property’s most recent fiscal year and unaudited financial reports for the end of the month immediately prior to the Initial Submission both indicate that the Property’s Reserve for Replacements account balance is less than \$1,000 per unit.
- D) The Financial Statements for the Property’s most recent fiscal year indicate that the accounts payable, exclusive of payables to related entities, exceeds 10% of the monthly gross potential residential rental revenue.
- E) The Financial Statements for the Property’s most recent fiscal year indicate that the Property’s Debt Service Coverage Ratio is greater than or equal to 1.0 but less than 2.0, and the debt service coverage ratio has declined by 0.25 or more relative to the Debt Service Coverage Ratio reflected in the Financial Statements for the Property’s prior fiscal year.
- F) The Financial Statements for the Property indicate that the Owner has made Owner Contributions in excess of \$1,500 per unit in the most recent fiscal year or in excess of \$750 per unit in each of the last three (3) fiscal years.
- G) The Property is subject to the FHA-insured loan that pre-dated or was entered into simultaneous with the M2M restructuring.
- H) The average physical vacancy rate of the residential units at the Property has exceeded or equaled 15% for the most recent 24-month period.
- I) The local municipal government has issued to the Property a notice of one or more substantial code violations that the Owner cannot reasonably resolve based on the Property’s available resources absent an Owner Contribution. “Substantial code violation” is defined as a compliance action received by the Owner where non-compliance was found that materially impacts the health or safety of residents.

- J) The rent assistance provided through the Property’s HAP Contract is being paid on temporary relocation units pursuant to a HUD-approved “pass through” of the rent assistance (*see* HUD Handbook 4350.1 *Multifamily Asset Management and Project Servicing*, Chapter 38 *Multifamily Emergency/Disaster Guidance*, Section 38-32.C *Section 8 Pass Through* found at [HUD Handbook 4350.1](#)) due to a Presidentially declared disaster or due to a casualty event not caused by the Owner at the Property.
- K) Twenty percent (20%) or more of the residents of the Property have been displaced from the Property, resulting in the vacancy of such units, as the result of a Presidentially declared disaster or due to a casualty event not caused by the Owner at the Property.
- L) HUD staff have notified the Owner, in writing with a specific reference to eligibility for a budget-based rent adjustment under this Notice, that i) the Property has been severely damaged by a Presidentially declared disaster or due to a casualty event not caused by the Owner, and ii) the Owner is in progress implementing appropriate repairs to the Property.

2.12. Group D Properties. Any property that is subject to a M2M Use Agreement and is not a Group A Property, a Group B Property, or a Group C Property.

2.13. Group Status. The status of a Property as a Group A Property, a Group B Property, a Group C Property, or a Group D Property. Considering that funding available for BBRA’s may be limited from time to time, HUD is using the Group Status, together with the ratio between the Weighted Rent and the Weighted FMR, to prioritize the demand for BBRA’s and to set the order in which Owners may offer an Initial Submission.

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

2.15. Initial Submission. Documentation submitted to HUD to place the Property on the list for consideration of a BBRA. The detailed contents of the Initial Submission are set forth in Section 6.3.

2.16. iREMS. HUD’s Integrated Real Estate Management System.

2.17. LIHTC. The Low-Income Housing Tax Credit pursuant to 26 U.S.C. §42.

2.18. 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.

- 2.19. Management Agent. The entity under contract with the Owner to provide property management services to the Property after Closing.
- 2.20. Management and Occupancy Review or MOR. The reports issued pursuant to OAMPO's monitoring for each of HUD's assisted properties conducted annually or less frequently based on a risk assessment. Details on MORs can be found in HUD Handbook 4350.1 *Multifamily Asset Management and Project Servicing*, Chapter 6 *Project Monitoring* found at [HUD Handbook 4350.1](#).
- 2.21. 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.
- 2.22. 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 a M2M restructuring.
- 2.23. Net Operating Income. A measure of the resources available to a property to pay required amortizing debt obligations. Net Operating Income is calculated by subtracting the Property's operating expenses from Project Income. Financial expenses such as repayment obligations on debt shall be excluded from the operating expense figure. Authorized withdrawals from and required deposits into the reserve for replacements or any operating reserves shall be excluded from both the Project Income and the operating expense figures.
- 2.24. OAMPO. The Office of Asset Management and Portfolio Oversight, within the Office of Multifamily Housing Programs, Office of Housing, within the U.S. Department of Housing and Urban Development.
- 2.25. Operating Cost Coverage Ratio. A measure of whether a property is generating sufficient income to cover operating expenses excluding debt service. The Operating Cost Coverage Ratio shall be calculated by dividing Project Income by the Property's operating expenses. Financial expenses such as repayment obligations on debt shall be excluded from the operating expense figure. Authorized withdrawals from and required deposits into the reserve for replacements or any operating reserves shall be excluded from both the Project Income and the operating expense figures.
- 2.26. 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." In the event of an anticipated sale or transfer in conjunction with the Closing, the term "Owner" shall also refer to the post-Closing ownership entity.
- 2.27. Owner Contributions. The Owner's advance of funds to support Property operations, as documented in the Financial Statements. Owner Contributions may include accrued but unpaid reimbursement for property management site staff salaries and accrued but unpaid reimbursement for the fees pursuant to a property management contract with an affiliated property management agent provided that such fees do not exceed six percent (6%) of Project Income. Owner Contributions shall not include any equity investment at the time of a

recapitalization transaction, nor any fees payable to entities affiliated with the owner of any share or interest in the Owner other than the fees set forth above. In general, Owner Contributions shall not refer to investments in capital expenditures unless approved by HUD.

2.28. Project Income. The Property’s annual income from all sources including residential rental revenue and any additional revenue generated by the Property including, without limitation, commercial space rental revenue, rooftop leases, cell tower leases, amenity fees, supplemental equipment fees (e.g., for window air conditioners), and laundry income. Authorized withdrawals from any reserve for replacements or operating reserves and any interest income on reserves which remain in the reserves shall be excluded from Project Income. Project Income shall also exclude special or one-time income such as forfeited security deposits or insurance proceeds.

2.29. Property. A multifamily housing building or complex of buildings (including ancillary buildings or amenities) under common ownership and subject to a HAP Contract.

2.30. Program Obligations. “Program Obligations” means (a) all applicable statutes and any regulations that apply to the Property, 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 Property, 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 Property only to the extent that they interpret, clarify, and implement terms of the Property’s contractual agreements with HUD rather than add or delete provisions from such documents.¹

2.31. REAC. The Real Estate Assessment Center, within the Office of Public and Indian Housing, within the U.S. Department of Housing and Urban Development or, as applicable in the context, inspections conducted by REAC either directly or through one or more contractors, using either the National Standards for the Physical Inspection of Real Estate (NSPIRE) or its predecessor standards, as applicable.

2.32. Recap. The Office of Recapitalization, within the Office of Multifamily Housing Programs, Office of Housing, within the U.S. Department of Housing and Urban Development.

2.33. Rent Comparability Study (RCS). A Rent Comparability Study conducted in accordance with Chapter 9 of the *Section 8 Renewal Policy: Guidance for the Renewal of Project-Based Section 8 HAP Contracts*.²

¹ 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).

² https://www.hud.gov/sites/dfiles/Housing/documents/Section_8_Renewal_Guidebook-%20March_2023.pdf.

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

2.35. Weighted FMR. The monthly gross rent potential of all the units under the HAP Contract assuming each unit were to receive the “Fair Market Rent,” divided by the number of units at the Property. The Fair Market Rent refers to the cost in a particular housing market area of privately owned, decent, safe, and sanitary rental housing as established by HUD pursuant to 24 C.F.R. Part 888 subpart A for dwelling units of varying sizes for each geographic area, including the cost of tenant-paid utilities. For purposes of the Weighted FMR, HUD shall use the FMR applicable to the metropolitan statistical area.

2.36. Weighted Rent. The monthly gross rent potential of all the units under the HAP Contract, assuming each unit were to receive the rent authorized under the HAP Contract plus any applicable utility allowance, divided by the number of units at the Property.

Section 3. Eligibility Requirements.

Properties are eligible for a BBRA if all the following conditions are met. The threshold eligibility requirements set forth in this Section 3 must be met at each of Initial Submission, Final Submission, and Closing, unless otherwise noted.

3.1. M2M Property. The Property must have an active M2M Use Agreement and must be subject to a Full Mark-to-Market Renewal Contract, an Interim (Full) Mark-to-Market Renewal Contract, or an Interim (Lite) Mark-to-Market Renewal Contract, all established pursuant to MAHRA.³

3.2. Statutory Eligibility. At Final Submission (documented in the Owner Narrative required pursuant to Section 6.4(B)(i)) and at Closing (documented in the certification required pursuant to Section 6.5(C)(v)(g)), the Owner must demonstrate that one of the following conditions exist:

- A) Project Income is insufficient to operate and maintain the Property, and no rehabilitation is currently needed, or
- B) The BBRA is necessary to support commercially reasonable financing (including any required debt service coverage and any necessary deposits into a reserve for replacements) for rehabilitation necessary to ensure the long-term sustainability of the Property.

3.3. Contract Rents. At Final Submission and Closing, the rent for all units on the HAP Contract at the Property must be less than comparable market rents, as defined by an RCS.

³ Eligibility is not defined by whether the M2M restructuring was a “Full Restructure” (in which the owner elected to couple the “Full Mark-to-Market Renewal Contract” with a restructuring of the FHA-insured mortgage debt pursuant to a full restructuring plan addressing both rents and debts) or a “Lite Restructure” (in which the owner elected to enter into an Interim (Full) Mark-to-Market Renewal Contract or an Interim (Lite) Mark-to-Market Renewal Contract, based on streamlined underwriting and without restructuring the mortgage debt).

3.4. FASS Findings. At Final Submission and Closing, all findings recorded in the FASS with respect to the Property must resolved to HUD's satisfaction or subject to a HUD-approved action plan which action plan is in a current status, without open notices of delinquency or breach.

3.5. MOR Status.

- A) At Final Submission, the Property must have been subject to an MOR review within the three (3) years prior to the Initial Submission or after the Initial Submission, unless otherwise approved by HUD.
- B) At Final Submission and at Closing, with respect to the Property's most recent MOR, one of the following conditions must be met:
 - i) The Property received a rating of Satisfactory (70-79), Above Average (80-89); or Superior (90-100); or
 - ii) The Property received a rating of Below Average (60-69) or Unsatisfactory (59 and below) and all findings from the MOR:
 - a) Have been resolved to HUD's satisfaction;
 - b) Remain open and HUD determines the findings are due to physical condition issues at the Property that the Owner could not reasonably correct due to the low monthly residential rental revenue at the Property stemming from the current rent levels; or
 - c) Remain open and HUD determines the findings are reasonably likely to be resolved by a Management Agent unrelated to the pre-Closing property management agent and unrelated to the pre-Closing Owner. If there is a sale or transfer of the Property to a new Owner in conjunction with the Closing, which new Owner is unrelated to the pre-Closing Owner, HUD may approve a Management Agent related to the new Owner. Unless otherwise approved by HUD, the Management Agent must assume property management responsibilities after such HUD approval and before or simultaneous with the Closing.

3.6. Good Standing.

- A) At Closing, the post-Closing Owner of the Property and the Management Agent must be in good standing with HUD, defined as:

- i) All principals have a Previous Participation Certification on file in the Active Partners Performance System (APPS) (formerly referred to as HUD Form 2530);⁴
 - ii) All principals are not debarred, suspended, or subject to a Limited Denial of Participation;
 - iii) Any flags in the APPS/2530 system are resolved or any open flags are accepted by HUD primarily on the basis that the flag(s) will be addressed by the events associated with a Closing.
- B) At Closing, the Management Agent's property management portfolio must have acceptable MOR ratings, as defined below. HUD may elect to rely on the Management Agent's certification for this purpose. For purposes of this requirement, HUD shall consider all properties under property management by the Management Agent that are also under asset management oversight by OAMPO (including any entity under contract or cooperative agreement with HUD and delegated to conduct asset management activities under OAMPO's supervision) provided that the properties have been under property management by the Management Agent for six (6) months or more at the time of the applicable property's MOR. An acceptable MOR rating shall mean:
- i) Satisfactory (70-79), Above Average (80-89), or Superior (90-100); or
 - ii) Below Average (60-69) or Unsatisfactory (59 and below) and all findings from the applicable MORs:
 - a) Have been resolved to HUD's satisfaction; or
 - b) Remain open and HUD determines the findings are due to physical condition issues at the Property that the Owner could not reasonably correct due to the low monthly residential rental revenue at the Property stemming from the current rent levels
- C) At Closing, the Owner has submitted all required Financial Statements.
- D) At Closing, the Owner and the Property must 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 contract with HUD.

⁴The APPS/2530 applies to all FHA transactions and transactions in which 20% of the units at the Property will be covered under a PBRA contract. For LLCs and LPs, members and partners, respectively, with 25% or more of the ownership interests are subject to approval provided that for LIHTC transactions, limited partners or investment members are exempt. For non-profit entities, 2530s are required for Board Officers but not Board Members. Management agents are subject to APPS/2530 unless wholly-owned.

3.7. Compliance with Fair Housing Requirements. At Closing, the post-Closing Owner must not have any outstanding violations of fair housing laws in connection with any Property owned by such 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).

Section 4. Prioritization of Properties

4.1. Generally.

Considering that funding available for BBRA's may be limited and that such limited funding should be directed where HUD has determined the need to be great, HUD has developed priority categories as set forth in this Section. HUD will communicate to Owners by Notice published on the HUD website indicating that Properties falling within specified priority categories are eligible to request a BBRA. The priority categories are based on the Property's current rent levels relative to HUD's published metropolitan statistical area Fair Market Rents and on four qualitative groupings (Groups A, B, C, and D, as defined in Sections 2.9 through 2.12.). A table illustration of the property groupings is provided as Appendix 1.

HUD's Notice inviting Owners to apply for a BBRA will identify the priority categories then eligible to provide an Initial Submission pursuant to Section 6.3. Only Properties that are in a priority category specified in a published Notice are invited to submit a request for a BBRA pursuant to this Notice. Submissions will be processed on a first-come, first-served basis as set forth in Section 6.3, to the extent of available funds. HUD's priority categories are designed to minimize the need for an Owner to commission due diligence reports until such time as the Owner is reasonably likely to secure a BBRA for its Property.

4.2. Priority Ranking. Prioritization for a BBRA shall be in the following order. A table illustration of the priority rankings is provided as Table 1 (in Section 1 of this Notice).

- A) First Priority shall be Group A Properties.
- B) Second Priority shall be Group B Properties with a Weighted Rent less than 90% of the Weighted FMR.
- C) Third Priority shall be Group C Properties with a Weighted Rent less than 90% of the Weighted FMR.
- D) Fourth Priority shall be Group B Properties and Group C Properties with a Weighted Rent equal to or greater than 90% of the Weighted FMR and less than 140% of the Weighted FMR.
- E) Fifth Priority shall be Group D Properties with a Weighted Rent less than 70% of the Weighted FMR.

- F) Sixth Priority shall be Group D Properties with a Weighted Rent equal to or greater than 70% of the Weighted FMR and less than 80% of the Weighted FMR.
- G) Seventh Priority shall be Group D Properties with a Weighted Rent equal to or greater than 80% of the Weighted FMR and less than 90% of the Weighted FMR.
- H) Eighth Priority shall be Group D Properties with a Weighted Rent equal to or greater than 90% of the Weighted FMR and less than 100% of the Weighted FMR.
- I) Ninth Priority shall be Group D Properties with a Weighted Rent equal to or greater than 100% of the Weighted FMR and less than 140% of the Weighted FMR.
- J) Tenth Priority shall be all other eligible Properties.

Section 5. Invitation to Submit Request for BBRA

Following the publication of this Notice, any Property meeting the first priority ranking criteria as set forth in Sections 4.2(A) of this Notice is invited to submit an Initial Submission as set forth in this Notice. The Property must meet such criteria at the time of the Property's Initial Submission. All Initial Submissions received at or before 11:59 p.m. Eastern time on the twenty-eighth (28th) calendar day following publication of this Notice shall be deemed received simultaneously. Initial Submissions received by HUD thereafter shall be ordered according to the date and time stamp. Submissions received simultaneously shall be ordered by random lottery.

Section 6. Submission Requirements

6.1. Generally. Requesting a BBRA is a two-step process, consisting of an Initial Submission and Final Submission. The Initial Submission allows HUD to determine that the Property qualifies for the priority category that was invited to request a BBRA. Based on the Initial Submissions, HUD will estimate the funding necessary to support the requested BBRAs. The date and time stamp for receipt of the Initial Submission shall establish the order, on a first-come, first-served basis, in which HUD will invite Owners to provide the Final Submission. The Final Submission shall contain all the necessary documentation to confirm eligibility and to allow HUD to conduct a complete evaluation of the project and assess the needed BBRA.

6.2. Submission Method.

- A) Owners shall deliver the Initial Submission to HUD on a form provided by HUD, which shall be available at https://www.hud.gov/program_offices/housing/mfh/presrv/presmfh/aboutm2m/po stm2m. The HUD Initial Submission form shall include detailed submission instructions regarding both the Initial Submission and the Final Submission. Receipt will be recorded with a date and time stamp.

- B) Provided a submission is consistent with the priority categories that have been invited to request a BBRA, a Property's priority category shall have no impact on the ordering of its Initial Submission. For example, if HUD has invited Properties in the first and second priority categories to request a BBRA, a Property that fits the 2nd priority category criteria shall be ordered before a Property submitted at a later date that fits the 1st priority category criteria.

6.3. Initial Submission.

- A) A Property Owner is responsible for ensuring that the Initial Submission is complete. If the Initial Submission is incomplete or further information is needed, HUD will email the owner requesting corrections or explanation using the contact information provided in the Initial Submission. The Owner must resubmit a complete Initial Submission. The order of review will be determined by the date and time stamp of the resubmission.
- B) The Owner's Initial Submission shall consist of the information and/or documents set forth below:
 - i) Owner and Property information, specifically the Property name, the Property address, the iREMS number for the Property, the HAP Contract number(s) for the Property, contact information for the Owner's primary representative, contact information for the Owner's backup representative, and the date of the Property's most recent MOR.
 - ii) A statement, certified by the Owner, that the Property meets, to the best of the Owner's knowledge, one of the two conditions for statutory eligibility set forth in Section 3.2(A) or (B). Backup documentation for this certification need not be provided with the Initial Submission. Backup documentation is required at the time of Final Submission, at which time HUD will validate the Property's statutory eligibility for a BBRA under this Notice.
 - iii) A request for an MOR, if the Property has not been subject to an MOR within the three (3) years prior to the Initial Submission, which request may be included in the letter of interest.
 - iv) The unit mix (specifically, the number of units of each bedroom size/amenity type) covered by the applicable HAP Contract, the rent and utility allowance schedule for each unit type, the Weighted Rent, and the Weighted FMR.
 - v) The Owner's determination of the Property's Group Status.
 - vi) A statement, certified by the Owner, explaining why the Property qualifies, to the best of the Owner's knowledge, for the requested Group Status at the time of the Initial Submission. The Owner must include documentation in support of the Owner's certification if such documentation is not otherwise

available to HUD (in a HUD system, for example). HUD will provide guidance in the Initial Submission form regarding which criteria can be verified through HUD systems.

- vii) The Owner's reasonable estimate of market rent by unit size. The Owner should not incur the expense of an RCS at the Initial Submission stage. This figure will be used for rough budgeting purposes and HUD will evaluate the market rents and utility allowances based on the RCS submitted as part of the Final Submission.
- C) HUD will review the Initial Submission to determine whether the eligibility requirements applicable at Initial Submission pursuant to Section 3.1 have been met, to confirm that the Property qualifies for the requested Group Status, and to confirm that the Property fits the prioritization categories invited to submit a BBRA request at that time. If HUD determines the Property is not currently eligible pursuant to the applicable HUD notices (for example, due to not meeting the requested Group Status), HUD will notify the Owner.
- D) HUD will calculate an estimate of the budgetary impact of the BBRA request informed by the Owner's reasonable estimate of market rent by unit size and by such other information as HUD may deem necessary or appropriate. When HUD determines it is likely to have sufficient funds to accommodate the request for the BBRA considering the order of requests established pursuant to Section 6.2(B), HUD will invite the Owner to assemble and deliver the Final Submission. Please note that HUD cannot assure any specified turnaround time between Initial Submission and Final Submission. Owners may wish to compile the documents that encompass the Final Submission to expedite the process but should exercise caution commissioning the RCS or other documents that may become stale; Owners commission such documents at their own risk.

6.4. Final Submission

- A) The Owner is responsible for ensuring that the Final Submission is complete. HUD will not review incomplete Final Submissions. If HUD determines the Final Submission is incomplete, HUD will notify the Owner of the deficiencies. Once HUD confirms that all required documents have been received, HUD will begin its review. While evaluating and underwriting the Final Submission, HUD may request additional information or explanations. These underwriting inquiries do not indicate that the Final Submission was incomplete.
- B) The Owner's Final Submission shall consist of the following documents:
 - i) **Owner Narrative.** The Owner must provide a brief statement indicating which of the statutory eligibility conditions set forth in Section 3.2 apply and justifying the Property's statutory eligibility for a BBRA based on the selected condition. The Owner narrative must also explain the basis for the

requested BBRA and outline the Owner's strategy to stabilize the physical and financial condition of the Property.

- a) If justified based on Section 3.2(A), which states "Project Income is insufficient to operate and maintain the Property, and no rehabilitation is currently needed," the Owner must document that one of the following is true:
 - 1) The Operating Cost Coverage Ratio is less than 1.0,
 - 2) The Debt Service Coverage Ratio is less than 1.1, or
 - 3) The Project Income is less than the sum of a) the Property's annual operating expenses, b) the Property's required annual payment obligations on amortizing mortgage debt, including both principal and interest and not including any balloon or due on sale, refinance, or maturity obligations, and c) the Property's required annual deposit to a reserve for replacements.
 - b) If justified based on Section 3.2(B), which states "The BBRA is necessary to support commercially reasonable financing (including any required debt service coverage and any necessary deposits into a reserve for replacements) for rehabilitation necessary to ensure the long-term sustainability of the Property," the Owner must document, based on the CNA described in Section 6.4(B)(iv), below, that the property's 20-year capital needs cannot be addressed based on the anticipated reserve for replacement balances available when such needs arise.
 - c) While not a required element of the Owner narrative, the Owner may wish to briefly identify in the narrative which specific documents or excerpts of documents contained in the Final Submission are particularly relevant for making this determination.
 - d) The basis for the requested BBRA must reference the Property's operating expenses, debt service, and necessary reserve deposits as informed by the CNA.
- ii) **Organizational Chart.** The Owner must provide a graphic indicating the relationship among the parties comprising the Owner. If a sale or transfer of the Property is anticipated, the organizational chart for both the existing and proposed Owner must be submitted.
 - iii) **Good Standing Justification, if applicable.** The Owner must provide a narrative discussion of any open flags in the APPS/2530 system and must provide justification to proceed sufficient for HUD to determine that the flag(s) will be addressed by the events associated with a Closing.

- iv) **Capital Needs Assessment (CNA), inclusive of a Green Analysis.** Owners requesting a BBRA for a Property must submit a CNA using the CNA eTool based on a detailed physical inspection of the Property. The short-term rehabilitation needs and long-term capital needs reflected in the CNA must be addressed through any combination of a recapitalization transaction at Closing, an initial deposit to a reserve for replacements, or annual deposits to a reserve for replacements. The submission must include a 20-year reserve for replacements schedule. The CNA must have been completed no earlier than 180 days prior to the Final Submission, except with HUD approval.
- v) **MOR Corrective Action Plan, if applicable.** If the Property received an MOR rating of Below Average (60-69) or Unsatisfactory (59 and below) and any of the findings remain marked as open within iREMS, the Owner must submit documentation evidencing either a) that the findings remain open due to physical condition issues at the Property that the Owner could not reasonably correct due to the low monthly residential rental revenue at the Property stemming from the current rent levels and that the transaction anticipated at Closing will address the findings; or b) that the findings will be resolved by a new Management Agent and that the Owner has engaged an acceptable replacement Management Agent.
- vi) **Development Budget (Sources & Uses of Funds).** If a rehabilitation is proposed in conjunction with the Closing, the Owner must submit a development budget showing both sources and uses of funds.
- vii) **Financing Commitments.** If a rehabilitation is proposed in conjunction with the Closing, the Owner must provide evidence of preliminary commitments or letters of intent provided by the third-party(ies) extending funds for the proposed transaction. Any commitment must describe the allowed uses of the funds, the term for which the commitment is valid, and any repayment terms. The Final Submission shall be considered complete if preliminary commitments representing 85% of the funding needed for the transaction are provided and such commitments may include tentative language based on the uncertainty regarding the BBRA. However, prior to Closing, the Owner must have supplemented the Final Submission with firm commitments sufficient to cover all anticipated and necessary sources of funds.
- viii) **Vacancy/Occupancy Report.** The Owner must provide a vacancy/occupancy report for the Property. The vacancy/occupancy report must reflect the Property condition on a date no earlier than 60 days prior to the Final Submission. If the physical vacancy rate exceeds 10%, the Owner must include a narrative regarding how the Owner will resolve the vacancy issue and the Owner's anticipated timeline to implement the resolution.

- ix) **Audited Annual Financial Statements.** The Owner must provide copies of audited Financial Statements for the Property's three (3) most recently completed fiscal years. The Owner may supplement this material with unaudited quarterly reports if appropriate to inform the operational needs of the Property, and HUD may request such reports at its discretion.
- x) **Budget Worksheet, HUD Form 92547.** The Owner must provide income and expense projections for the property and an explanation, with supporting documentation as appropriate, for any expense line item that increases by the greater of 5% or \$500.
- xi) **Operating Pro Forma.** The Owner must provide the most recent full year operating expense budget, an operating expense budget showing the averages over the past three years, the proposed operating expense budget assuming adjusted rents, and a 20-year Operating Pro Forma expense budget projection assuming adjusted rents that is consistent with local standards for federally assisted housing and otherwise complies with the following standards:
 - a) Rents shall not exceed the amounts permitted under applicable program rules.
 - b) All sources of income other than residential rental revenue must be justified if they exceed the average for the last three (3) years. Interest income on reserves which must remain in the reserves shall not be included.
 - c) Vacancy loss shall be no less than the greater of the average over the past three (3) years or 3%.
 - d) Allowance for bad debt shall be no less than the greater of the average over the past three (3) years or 2%.
 - e) All operating expenses shall be reasonable, with decreases justified and generally no less than 85% of the average for the last three years;
 - f) The annual deposit to the reserve for replacements shall equal or exceed the amount which, if deposited annually, would be sufficient to fund all capital needs, as identified in the CNA, arising during the 20 years after Closing and otherwise not addressed at Closing in either the rehabilitation or an initial deposit to the reserve for replacements. The Owner should use reasonable estimates for inflation. HUD may consider alternative arrangements if risks to the Property can be adequately mitigated. The annual deposit to the reserve for replacements must be sufficient to maintain a minimum balance at the end of each year in accordance with Appendix 5, Section A.5.7.4.3D, "Minimum Balances," of Housing Guidebook 4430.G, *Multifamily Accelerating Processing (MAP) Guide*.

- g) The debt-coverage ratio should not be less than 1.11 over a ten-year period using 2% growth in revenue and 3% growth in expenses. If there is no amortizing first mortgage debt, the stabilized cash flow should not be less than \$15 per unit per month.
 - xii) **Rent Comparability Study.** The owner must submit an RCS that will be used to determine market rents for each unit type in the Property. The RCS must have been completed no earlier than 90 days prior to the Final Submission, except with HUD approval.
 - xiii) **Statement of Compliance with Fair Housing and Civil Rights.** The Owner must submit a written statement certifying that it is in compliance with Section 3.6 of this Notice.
 - xiv) **Resident Notification.** The Owner must provide evidence of 30 days' notification to the residents of a request for a BBRA, evidence of public posting of such notice pursuant to the procedures set forth in HUD Handbook 4350.1 *Multifamily Asset Management and Project Servicing*, Chapter 7 *Processing Budgeted Rent Increases*, Section 7-5, and the Owner's certification of compliance with the provisions of 24 C.F.R. Part 245. Further, the Owner must provide copies of all tenant comments received regarding the BBRA, together with the Owner's response to such comments, which shall be submitted as part of this Final Submission in lieu of being submitted to the asset management staff in the Office of Multifamily Housing Programs' regional office.
 - xv) **Service Coordinator Budget, HUD Form 91186A, if applicable.** The Owner must provide a Service Coordinator Budget on HUD Form 91186A and evidence that the Service Coordinator is registered and reporting in HUD's Standards for Success system⁵ if the project has as Service Coordinator funded from Property operating funds or a HUD Service Coordinator Grant.
 - xvi) **UEI Number.** Evidence that the Property's UEI number is active in www.SAM.gov.
- C) In preparing the Final Submission, the Owner may use its requested BBRA amount in its financial projections. Prior to Closing, HUD will communicate the anticipated BBRA amount and, if different, may require the Owner to update any impacted Final Submission documents. In addition, HUD may require the Owner to provide other documentation as necessary to complete its review of the request

⁵ The Standards for Success reporting requirements are set forth at [Multifamily Housing Service Coordinator Program and SfS - HUD Exchange](#). Additional information is available at [Tracking Performance | HUD.gov / U.S. Department of Housing and Urban Development \(HUD\)](#).

for a BBRA, which documents must be submitted before the Final Submission can be approved. HUD may require updates to the Final Submission documents at Closing.

6.5. Review, Approval, and Closing.

- A) When the Final Submission is received, Recap, in consultation with asset management staff in the Office of Multifamily Housing Programs' regional office with applicable asset management supervisory authority, will evaluate the request for a BBRA pursuant to the procedures set forth in HUD Handbook 4350.1 *Multifamily Asset Management and Project Servicing*, Chapter 7 *Processing Budgeted Rent Increases* found at [HUD Handbook 4350.1](#). However, HUD will also consider the following when evaluating the requested BBRA:
- i) HUD shall review the request considering all eligibility requirements and other requirements set forth in this Notice, including whether the BBRA request is timely considering the prioritization structure described above.
 - ii) HUD shall review the request to ensure the rent adjustment will not have a significant effect of permitting a cash-out refinancing, accelerating the payment of contingent notes payable to the extent of available cash flow, proceeds to a seller after repayment of debt and transaction costs, or other improper removal of funds from the Property.
 - iii) Recap will evaluate the totality of the Property's operational and physical needs over the short- and long-term. HUD's approval will be informed by whether the BBRA and any associated transaction comprehensively addresses any current or reasonably anticipated issues at the Property. HUD reserves the right to reject the BBRA if HUD determines that it, together with other actions to which the Owner will be contractually obligated at Closing, is inadequate to stabilize and preserve the Property for at least ten (10) years and, considering other recapitalization options which would likely be available thereafter, for a total of twenty (20) years after the Closing.
 - iv) The Property rents at Closing as adjusted by the BBRA may not exceed comparable market rents, must be justified by both the budget worksheet (HUD Form 92547) and by the RCS, and must comply with all applicable program rules.
- B) From time to time, the financing strategy necessary to meet a Property's rehabilitation needs, as required by this Notice, may dictate that the rehabilitation occur in two or more phases. To effectuate such a strategy, the HAP Contract may need to be bifurcated into HAP Contracts corresponding with each phase. If an Owner is seeking a BBRA for a Property that will undergo a multi-phase implementation, the Final Submission must be aligned with the phased financial transaction. HUD's conditional approval must align with the transaction structure

to be implemented at Closing, with a separate conditional approval for each financial transaction, and the bifurcation must be complete before Closing. However, the Owner may submit a single Initial Submission for the entire Property. The eligibility determination and the date and time stamp of the Initial Submission shall apply to all the resulting phases.

- C) Upon completion of Recap's review, HUD will issue a conditional approval of new rents for the Property or provide to the Owner an explanation of the barriers to such an approval. Owners may charge only the rent which has been authorized by HUD for the applicable unit size. Conditional approval is authority to use the new rents only after all conditions in the conditional approval have been confirmed by HUD and the effective date of the BBRA has occurred. HUD's conditional approval will include the following information:
- i) The anticipated effective date of the BBRA and the projected rent schedule for the units covered by the HAP Contract, specifying the rent and utility allowance for each unit type.
 - ii) The required project improvements and scope of work which the Owner must contractually agree to undertake as a condition of receiving the rent increase, and the time frame(s) by which the scope of work must be complete.
 - iii) The amount and effective date of any revised deposit to the reserve for replacements, including any authority for a suspension of the deposits to the reserve for replacements during a construction period. The HUD Form-9250, communicating the change to the owner, the mortgagee, and the Management Agent shall be signed and distributed at the Closing.
 - iv) Identification of documents which must be reviewed or conditions which must be satisfied to proceed to Closing, including legal review of Closing documentation and simultaneous consummation of any sources of funds sufficient to implement the required scope of work.
 - v) Identification of documents that must be prepared prior to and signed at Closing. At a minimum, the documents at Closing include:
 - a) The HUD Form 92458 Rent Schedule signed by the Owner and prepared for HUD signature noting the effective date which must correspond to the HAP contract anniversary date.
 - b) An amendment to the HAP Contract specifying the adjusted contract rents and articulating the terms set forth in Sections 7.1, 7.2, and 7.4, below.
 - c) An amendment to the M2M Use Agreement memorializing the Owner's contractual agreement to the extension of the affordability and use restrictions referenced in Section 7.4, below.

- d) Subordination agreements from subordinate lienholders sufficient to demonstrate to HUD's satisfaction that the M2M Use Agreement remains in its senior lien position notwithstanding the modification.
 - e) A title report or title analysis update sufficient to demonstrate to HUD the continued lien priority of the M2M Use Agreement.
 - f) An agreement to implement the scope of work, consistent with the requirement of Section 7.3, below, on such terms and conditions as set forth in such agreement which shall include a requirement to certify and document completion of the work.
 - g) A certification regarding the continued accuracy of representations set forth in the Final Submission and such other certifications as HUD determines necessary for Closing.
 - h) If a rehabilitation transaction is anticipated in conjunction with the Closing, other documents will be necessary.
- vi) Identification of conditions which must be completed prior to Closing including, without limitation, any notices to residents of any increases in rent under the terms of the residents' lease and any tenant consultation requirements under 24 C.F.R. §245.
 - vii) Such other conditions to Closing as HUD may deem necessary or appropriate to comply with this Notice and Program Obligations.
- D) When the Owner has completed all the conditions to Closing to HUD's satisfaction, Recap will issue an authorization to proceed with the Closing. The Closing may take place at any time and need not coincide with the timing of the rent adjustment. The Owner may withdraw its request for a BBRA without prejudice at any time prior to the Closing.
 - E) If an Owner disagrees with any HUD action under this Notice, the Owner may submit an appeal in letter format via email to BBRA@hud.gov. For any final decision by HUD, the Owner must submit the appeal within ten (10) business days of the date of the decision. The appeal must explain the factual basis supporting the owner's reasoning for their appeal, including supporting documentation. HUD will evaluate the appeal and may request additional documentation, if needed. HUD will endeavor to communicate the decision on the appeal within thirty (30) calendar days after receipt of the appeal. Any decision rendered by this appeal process will be considered final.
 - F) A HUD determination that an Initial Submission or a Final Submission cannot proceed to a BBRA at any particular time does not preclude the Owner from requesting a BBRA at a future date based on changes in either the prioritization of properties eligible for the BBRA or changes in the Property conditions.

Section 7. BBRA Terms and Conditions

Projects that receive a BBRA under the terms of this notice are subject to the following terms and conditions:

7.1. The BBRA approved hereunder shall serve as the baseline for future rent adjustments at the Property.

7.2. An Owner may not request a BBRA under this Notice within ten (10) years after the effective date of the Property's approved BBRA rent increase. This prohibition shall have no effect on routine rent adjustments nor on the renewal options which may be applicable to the HAP Contract under standard program requirements.⁶ After this 10-year period has passed, an Owner may be eligible to request an additional BBRA under this Notice for the same Property. However, an Owner may not request a second BBRA for the same Property unless at least three (3) months have passed since HUD published a notice permitting all eligible properties (i.e., in any priority category described in Section 4.2 of this Notice) to request a BBRA. A second BBRA request must also comply with any prioritization in effect at that time.

7.3. The scope of work identified in the Closing documents must be completed. In the event the Owner fails to implement the rehabilitation as required in the Closing documents, HUD may take such action against the Owner as allowed by law.

7.4. The Owner agrees to extend the affordability and use restrictions required under Section 514(e)(6) of MAHRA for an additional twenty (20) years and agrees to execute a HAP Contract amendment including a binding commitment to continue to renew the HAP Contract for and during such extended term, provided that after the affordability and use restrictions required under Section 514(e)(6) have been maintained for a term of 30 years,

- A) An Owner with a HAP Contract for which rent levels were set at the time of its initial renewal under Section 514(g)(1) may renew the HAP Contract under Section 524 of MAHRA for and during such extended term; and
- B) An Owner with a HAP Contract for which rent levels were set at the time of its initial renewal under Section 514(g)(2) shall renew the HAP Contract under Section 524 of MAHRA for and during such extended term.

⁶ Option 3B HAP Contracts must be coterminous with the M2M Use Agreement. For further information regarding renewal requirements and contract forms, please see [Guidance found in Chapter 5 of the Section 8 Renewal Guide](#).

APPENDIX 1

This appendix seeks to provide a visual representation of the text contained in the Group Status definitions set forth in Sections 2.9 through 2.11 to assist the reader's comprehension. It has been simplified for the purpose of presentation. Group D Properties are not reflected in the below appendix as Group D covers all eligible properties not captured by Groups A, B, and C. Where there is a distinction between this appendix and the text, the text shall govern.

<p style="text-align: center;">Group A Properties</p> <p style="text-align: center;">Must meet one (1) of the following criteria</p>	<p style="text-align: center;">Group B Properties</p> <p style="text-align: center;">Must meet two (2) of the following criteria</p>	<p style="text-align: center;">Group C Properties</p> <p style="text-align: center;">Must meet three (3) of the following criteria</p>
<ul style="list-style-type: none"> • REAC score < 30 • 2 consecutive REAC scores < 60 • Operating Cost Coverage Ratio < 1.0 • Owner Contributions of over \$3,000 per unit in the last year or a 3-year record of Owner Contributions over \$1,500 per unit per year • Property is with the Multifamily Property Disposition Center • Vacancy Rate >= 25% for 24-months 	<ul style="list-style-type: none"> • REAC score is 30-59 • Debt Service Coverage Ratio < 1.0 • Owner Contributions of over \$1,500 per unit in the last year or a 3-year record of Owner Contributions over \$750 per unit per year • 25% > Vacancy Rate >= 15% for 24-months • Substantial open code violation issued by the local government • Pass-through due to disaster • 20% of residents displaced due to disaster • Property identified by HUD staff as severely damaged due to disaster and repairs are in progress 	<ul style="list-style-type: none"> • REAC score is 30-69 • 1.0 <= Operating Cost Coverage Ratio < 1.1 • Reserve for Replacements < \$1,000/unit • Accounts payable, exclusive of payables to related entities, exceed 10% of the monthly gross potential residential rental revenue • 1.0 <= Debt Service Coverage Ratio < 2.0 and has declined by a material amount (0.25 or more) from prior year • Owner Contributions of over \$1,500 in the last year or a 3-year record of Owner Contributions over \$750 per year • An FHA mortgage that dates from time of the M2M restructure • 25% > Vacancy Rate >= 15% for 24-months • Substantial open code violation issued by the local government • Pass-through due to disaster • 20% of residents displaced due to disaster • Property identified by HUD staff as severely damaged due to disaster and repairs are in progress