

Chapter 6

Approval, Ineligibility, and Appeals

Executive Summary

Section 6-1

This chapter describes the completion of processing for M2M debt restructuring transactions. First, for approvable transactions, the PAE works with the owner and develops a proposed Restructuring Plan. The PAE submits the Restructuring Plan package to the OAHP Preservation Office for review and approval. The OAHP Preservation Office reviews and approves the Plan. Based on the above Plan, the PAE will create a Restructuring Commitment and submit it to the OAHP Preservation Office Director for signature. The Restructuring Commitment is returned to the PAE who presents the approved Restructuring Commitment to the owner and diligently pursues owner execution. This presentation and discussion with the owner, leading to execution of the Restructuring Commitment, is the fundamental task of the M2M program. (Success is greatly increased if the PAE carefully negotiates the terms with the owner prior to submission to OAHP.)

Second, this chapter addresses the identification and completion of transactions where the owner will not execute the Restructuring Commitment, where the owner or property is found ineligible, or where the transaction will otherwise not proceed.

In each case, this chapter addresses appeals of the conclusions reached and requirements for notification to stakeholders of those conclusions.

Owner Involvement in the Development of the Restructuring Plan

Section 6-2

- A. **General Guidance.** In general, OAHP expects that PAEs will contact owners early in the restructuring process and will engage in an ongoing dialogue regarding the property and its debt restructuring. The PAE will send at least the following information to the project owner (and, if applicable, purchaser) during the restructuring process:

1. A copy of the PAE's appraisal, not later than 30 days after the PAE receives the final appraisal report.
 2. A copy of the PAE's PCA, not later than 30 days after the PAE receives the final PCA report.
- B. **Draft Restructuring Plan.** At the time the PAE presents the draft Restructuring Plan (or a term sheet for discussion that would form the basis of the Restructuring Plan) to the owner, the PAE will also provide such additional information as necessary to allow the owner to understand the basis for the PAE's conclusions. Such information will include, at a minimum:
1. The PAE's analysis supporting its market rent conclusions.
 2. The PAE's analysis supporting its conclusions on physical condition, reserve needs, any critical repairs and/or any repair/rehabilitation escrow.
 3. Appropriate pages from the underwriting model, showing the PAE's recommended restructuring.
- C. **OAHP Review of Terms.** Any Restructuring Plan is subject to final review by OAHP. Prior to presentation of a draft plan to the owner, the PAE may, as it considers appropriate, obtained OAHP review of all or a portion of the terms being presented to the owner. If not reviewed by OAHP, the PAE must be especially diligent in assuring that the owner is aware that the Plan has not yet been reviewed by OAHP.
- D. **Meeting with the Owner.** If the owner requests a face-to-face meeting to discuss the PAE's conclusions, OAHP strongly encourages the PAE to agree to hold such a meeting at a location acceptable to the PAE.
- E. **Owner Input to the Draft Restructuring Plan.** The PAE should consider any specific additional information that the owner submits and may find it appropriate to make adjustments in the draft of the Restructuring Plan. Where a viable Restructuring Plan is possible, the PAE should promptly complete the draft Restructuring Plan (and present it at a second tenant meeting), even where all owner concerns cannot be accommodated.
- F. **Tracking Owner Review Time.** The PAE should assure that the owner has adequate time to review the material supplied by the PAE (generally, no more than 30 calendar days). However, the PAE must work closely with the owner and assure that if the owner does not reply in a timely manner, that the completion of a viable plan, or a recommendation of ineligibility, proceeds promptly thereafter.

Possible Transaction Outcomes

Section 6-3

- A. **PAE's Alternatives.** When the PAE completes its analysis of the asset, it may:
1. Recommend a Restructuring Plan. See Section 6-4.
 2. Recommend that the Asset be Found Ineligible. (Grounds for mandatory and optional determinations of ineligibility are discussed in Section 6-6) or Not Qualified (See Section 6-5).
 3. Recommend that Development of a Restructuring Plan be Discontinued. This recommendation is appropriate only where the PAE determines that no acceptable Restructuring Plan will move forward. See Section 6-7.
- B. **Problem Transactions.** As noted in paragraph A of this section, certain transactions, including ones where a Restructuring Plan is approved but the Commitment is not executed by the owner, present special difficulties. OAHP expects PAEs to be creative in addressing any case that may not proceed, including by providing advice and guidance to the owner in finding a purchaser or other resources. PAE's should consider the options and issues in Section 6-8, Meeting the Goals of M2M in Problem Situations, in addressing such transactions.

PAE Recommends a Restructuring Plan to OAHP

Section 6-4

- A. **OAHP Review and Approval.** OAHP will review each Restructuring Plan Package submitted and approve a proposed Restructuring Plan that:
1. Provides a reasonable basis for restructuring the rents and debt within the resources available to the M2M program.
 2. Provides for the long-term physical, financial and managerial integrity of the property.
 3. Is internally consistent and adequately documented.
 4. Reasonably conforms to applicable OAHP guidance.
- B. **OAHP Identification of Issues.** OAHP will review the submission and document the analysis using an OAHP Review/Approval of Full Transaction Review form. If there are any issues that preclude OAHP from approving the proposed Restructuring Plan, including reconciliation of the mortgagee name, servicer name, and unpaid principal balance of the existing mortgage as documented in HUD's F47 System, OAHP will endeavor to resolve these issues with the PAE as promptly as possible. OAHP's approval of the proposed Restructuring Plan may be conditioned upon the PAE making

specified modifications to the proposed Plan. In these cases, the PAE will make any necessary modifications and the transaction will proceed through the remaining approval steps below.

- C. **Review by OAHP Loan Committee.** To assist in ensuring significant issues are addressed in Restructuring Plans, OAHP has implemented a Committee process to review and discuss restructuring plans. OAHP will complete any Loan Committee Review in as timely a manner as possible. OAHP's goal is to approve all submissions that do not require return to the PAE for clearing significant omissions, within 30 days.
- D. **Special Conditions.** During OAHP's review and approval process Special Conditions may be identified that must be cleared before a Restructuring Commitment is prepared or that must be included in any Restructuring Commitment offered to the owner. The PAE and OAHP Office must ensure all conditions are appropriately addressed.
- E. **Review and Approval of Environmental Evaluation.** The OAHP Preservation Office will complete the environmental evaluation, based on the Form 4.4 submitted with the PCA, and will sign the HUD Form 4128. This sign-off of HUD Form 4128 is required prior to execution of the Restructuring Commitment.
- F. **Notification of Conversion to Tenant-based Assistance.** If an approvable Plan includes a recommendation for conversion to tenant-based Section 8 assistance, the OAHP Preservation Office should, before final approval, alert the appropriate HUD Multifamily Hub or Program Center, Public Housing Office, and Public Housing Authority of the pending request.
- G. **OAHP Review of the Restructuring Commitment.** Once a Restructuring Plan has been approved, the PAE will prepare a Restructuring Commitment that reflects the terms and conditions of the Restructuring Plan as approved by OAHP. The Restructuring Commitment will be submitted to the OAHP Preservation Office. Once the Restructuring Commitment is signed by the Preservation Office Director it will be returned to the PAE. (Form 6.1)
- H. **PAE Presents Approved Plan and Commitment to the Owner.** Approval of the Restructuring Plan is the first step in completing the M2M process. Owner execution of the Commitment and prompt pursuit of closing are central to the success of the program.

Promptly after receipt of the approved Restructuring Plan and the OAHP executed Commitment, the PAE should use Form 6.2 to provide the Plan and Commitment to the Owner for execution and to explain the appeal procedures (see Section 6-9). The PAE may also wish to use a teleconference or meeting to explain the Plan and

answer any questions the owner may have developed since the last discussion. In any case, the PAE should work very closely with the owner through this process to assure that the transaction proceeds promptly to Commitment execution and closing, or to the less desirable resolution of reduced rents without the needed restructuring.

- I. **Owner Acceptance.** If the owner accepts the Restructuring Commitment (either without appeal, or after resolution of any appeal), the PAE will:
 1. Initiate preparations for closing. (See Chapter 7)
 2. Notify Stakeholders in accordance with Section 6-12 below.
 3. Advise the owner to complete the following tasks within 30 days. (Failure to complete these tasks in a timely manner may constitute failure to cooperate with the restructuring process as discussed in Section 6-6.)
 4. Execute the Restructuring Commitment, and transmit the executed Restructuring Commitment to the PAE, and
 - a) For §223(a)(7) take-out financing, request that the new lender cooperate with the PAE in processing a Firm Commitment, See Appendix N, or
 - b) For other first mortgage financing, provide evidence of the availability and terms of the financing to the PAE.
- J. **Owner Refusal to Execute a Restructuring Commitment.** If the owner refuses to execute the Restructuring Commitment (reflecting the original Plan or a Plan revised after appeal), and the time for appeal (and administrative review) has passed or any appeal (and administrative review) has been concluded, the PAE will inform OAHP who will prepare a Watch List Contract. The PAE will then provide the owner with a Section 8 Contract Watch List contract prepared by OAHP. The PAE should use Form 6.9 to transmit the Section 8 Watch List Contract to the owner. The PAE will then follow the procedures in Section 6-10.

Property is Not Qualified for OAHP

Section 6-5

If a PAE determines that a property is "Not Qualified" for reasons such as contract rents below market, no FHA insured debt, or state and local bond financing that prohibits restructuring, the PAE should contact the OAHP Preservation Office. Possible outcomes may include:

- A. If the PAE concludes contract rents are below market, the rent determination should be reviewed by OAHP, and once approved, the

Multifamily Hub or Field Office will be notified by OAHP that the property is ineligible for processing by OAHP. See Form 6.10.

- B. If the property currently has no FHA insured debt, a determination must be made as to when the FHA insured debt was paid off. If the debt was paid off prior to the first expiration of the HAP contract after October 1, 1998, then the property should be returned to the Multifamily Hub or Field Office. If the loan paid off subsequent to the first HAP contract expiration after October 1, 1998, then the PAE should determine market rents for review by OAHP. Once the market rents are approved by OAHP, OAHP will provide the owner a Section 8 Watch List contract.
- C. If the property is considered ineligible or exempt from OAHP due to state or local bond financing or similar reasons, the PAE should contact OAHP and determine the appropriate course of action. Options may include putting the restructuring on Hold until circumstances may change to make the property eligible or to return the property to the field office and continuation of above market rents.

PAE Recommends a Determination of Ineligibility to OAHP

Section 6-6

The PAE is responsible for making an ongoing assessment of the eligibility of the owner and property throughout the restructuring. If at any time the PAE, in its own judgment, concludes that any material grounds for ineligibility exist, the PAE should write to the OAHP Preservation Office as soon as possible. (The PAE is encouraged to discuss such situations with OAHP prior to making a formal recommendation.)

- A. **Determination of Ineligibility.** Owners and Affiliates. Various grounds exist for determinations of ineligibility of owners or affiliates. These are:
 - 1. Suspension or debarment of the owner where the owner is unwilling to transfer the property or suspension or debarment of a purchaser. This is the only grounds for a mandatory determination of ineligibility.
 - 2. Suspension or debarment of an affiliate of the owner as defined in Section 516(a) of MAHRA;
 - 3. With respect to the property being restructured, or with respect to other properties of the owner or purchaser that are federally assisted or financed with a loan from, or mortgage insured or guaranteed by, an agency of the Federal Government, the owner or purchaser of the property, or an affiliate of either, has engaged in material adverse financial or managerial actions or omissions.

(Material adverse financial or managerial actions or omissions are defined in Section 516 of MAHRA).

4. The owner, purchaser, or an affiliate of either has any outstanding violations of Civil Rights laws in connection with any project of owner, purchaser or an affiliate of either. Outstanding violations of Civil Rights Laws are also considered material adverse financial or managerial actions whether associated with the property being restructured or with other properties of the owner or purchaser that are federally assisted or financed with a loan from, or mortgage insured or guaranteed by, an agency of the Federal Government. The PAE may become aware of such violations either through a flag received in running Social Security or Tax ID numbers through HUD's 2530 system, or it may be advised of such violations by the Hub or Program Center.

B. PAE Assessment of Ineligibility Issues. Based on the factors listed above under 6-6-B, the PAE may conclude that there are grounds for a finding that the owner is ineligible for a restructuring, (even if the property might benefit from a restructuring). The PAE should document the reason for a recommendation of ineligibility and forward the recommendation to the OAHP Preservation Office.

Notwithstanding the PAE's recommendation to OAHP that the owner is ineligible, OAHP may request that a draft Restructuring Plan be completed.

The OAHP Preservation Office will review the PAE's recommendation. Prior to reaching a decision, the OAHP Preservation Office will consult with the PAE, the appropriate HUD Hub or Program Center, and the applicable Property Disposition Office where appropriate. As appropriate, OAHP may also discuss the recommendation with stakeholders and solicit their input and assistance in addressing the issue. Where a recommendation for ineligibility would affect more than one property, the OAHP Preservation Office will also consult with OAHP HQ, who will discuss the issue with the Multifamily HQ.

The determination of ineligibility must be reviewed and approved by the Preservation Office Loan Committee (or a higher level Loan Committee at the Preservation Office's request). If OAHP upholds the PAE's recommendation, OAHP will use Form 6.4 or 6.11 to notify the owner of the rejection and describe the opportunity to appeal in accordance with Section 6-9.

Form 6.11 should be used in cases where a viable restructuring plan might be possible if there were a change in ownership. Unless requested by the owner, no Restructuring Commitment should be prepared with any special conditions related to ownership.

If agreed with the Multifamily Hub or Program Center (and if the rents have not previously been reduced), OAHP will provide the owner with a "Watch List" Section 8 HAP Contract reflecting the market rents. The HAP Contract will be effective at the month following the ineligibility determination. If appropriate, the paragraph in the Contract relating to continued eligibility should be deleted. Subject to completion of any appeal and administrative review, OAHP will direct the PAE to complete processing in accordance with Section 6-10.

C. Grounds for a Determination of Ineligibility - Non-cooperation.

The owner is required to cooperate in the restructuring process. If the PAE concludes that the owner has failed to cooperate in the restructuring process, the PAE must provide the owner notice (with a record of receipt) of the problem and provide 10 business days to correct the problem. The notice must indicate to the owner that failure to cooperate, after this notice and opportunity to cure, constitutes grounds for an ineligibility determination. Examples of non-cooperation include:

1. failure at any point in processing to supply information needed to complete the restructuring process,
2. failure to respond in a timely manner to the PAE's proposed Restructuring Plan,
3. failure to address critical repair issues in a timely manner, and

The determination of ineligibility must be reviewed and approved by the Preservation Office Loan Committee (or a higher level Loan Committee at the Preservation Office's request). If OAHP upholds the PAE's recommendation, OAHP will use Form 6.4 to notify the owner of the rejection and describe the opportunity to appeal in accordance with Section 6-9.

If agreed with the Multifamily Hub or Program Center (and if the rents have not previously been reduced), OAHP will provide the owner with a Section 8 Watch List Contract reflecting the market rents. The HAP Contract will be effective at the month following the ineligibility determination. If appropriate, the paragraph in the Contract relating to continued eligibility should be deleted. Subject to completion of any appeal and administrative review, OAHP will direct the PAE to complete processing in accordance with Section 6-10.

D. Grounds for a Determination of Ineligibility - Property Condition.

If the PAE finds that the property is in such poor physical condition that it cannot be brought to a safe and decent condition in a cost effective manner through an acceptable

Restructuring Plan, the PAE may recommend that OAHP determine the property ineligible.

The determination of ineligibility must be reviewed and approved by the Preservation Office Loan Committee (or a higher level Loan Committee at the Preservation Office's request). If OAHP upholds the PAE's recommendation, OAHP will use Form 6.4 to notify the owner of the rejection and describe the opportunity to appeal in accordance with Section 6-9.

If agreed with the Multifamily Hub or Program Center (and if the rents have not previously been reduced), OAHP will provide the owner with a Section 8 Watch List Contract reflecting the market rents. The HAP Contract will be effective at the month following the ineligibility determination. If appropriate, the paragraph in the Contract relating to continued eligibility should be deleted. Subject to completion of any appeal and administrative review, OAHP will direct the PAE to complete processing in accordance with Section 6-10.

- E. **Determination of Eligibility - OAHP.** If OAHP does not concur with the PAE's recommendation for a determination of ineligibility, or if OAHP concurs with the PAE's determination that, while some grounds might exist, or appear to exist, for a determination of ineligibility, the transaction should proceed. In this case, OAHP may provide some conditions under which the transaction may proceed or concur with conditions proposed by the PAE.

PAE Recommends to OAHP that Development of a Restructuring Plan be Discontinued

Section 6-7

- A. **PAE Recommendation To Discontinue Restructuring.** If the PAE concludes that a Restructuring Plan should not move forward (for reasons other than ineligibility, discussed in Section 6-6 above), the PAE will discuss this conclusion with the owner and provide OAHP with an explanation and justification for this conclusion. (The PAE is encouraged to discuss such situations with OAHP prior to making a formal recommendation.)

Examples where this action may be appropriate include a case where high exception rents are needed but the property is not sufficiently "preservation worthy" (e.g. the property is functionally obsolete to the point that it is unmarketable) or a case where a property is located in an area where the demand for the housing is so reduced that the property could not be made financially viable.

- B. **OAHP Review.** OAHP will review the PAE's recommendation and may ask the PAE for further specific analysis and information. Prior

to reaching a final conclusion, the OAHP Preservation Office will consult with the PAE, the applicable HUD Hub or Program Center, and the applicable Property Disposition Office, if appropriate, and may discuss the recommendation with any other stakeholders determined appropriate. The Preservation Office's conclusion must be reviewed and approved by the Preservation Office Loan Committee (or a higher level Loan Committee at the Preservation Office's request).

- C. **OAHP Concurrence.** If an alternative cannot be identified that, in OAHP's judgment, would permit the transaction to proceed to closing (and that is in compliance with the statute and goals of this program), the OAHP Preservation Office will use Form 6.5 to notify the owner of the determination and to describe the opportunity to appeal in accordance with Section 6-9. If agreed with the Hub or Program Center (and if the rents have not previously been reduced), OAHP will provide the owner with a Section 8 Watch List Contract reflecting the market rents. The HAP Contract will be effective at the month following the ineligibility determination. If appropriate, the paragraph in the Contract relating to continued eligibility should be deleted. OAHP will direct the PAE to complete processing in accordance with Section 6-10.
- D. **OAHP Non-concurrence.** If OAHP does not concur with the PAE's recommendation, it will request the PAE to complete a Restructuring Plan and will provide guidance as necessary.

Meeting the Goals of M2M in Problem Situations

Section 6-8

OAHP strongly supports the structuring of sound transactions even where the immediately available tools of the M2M program are inadequate alone to resolve a difficult issue. To assist in finding appropriate resolutions, we are implementing the following procedures.

- A. **Completion of Restructuring Plans.** A viable Restructuring Plan cannot be completed where a transaction is unable to proceed because of ineligibility or because it is determined that development of a Restructuring Plan should be discontinued. However, in these cases, the PAE should prepare as complete a Restructuring Plan as possible, identifying problem areas and briefly identifying what, if anything, would resolve the problem. This permits the owner, possible purchasers, and other stakeholders to identify issues and possible solutions more readily. This "currently non-viable" Restructuring Plan should be provided to the owner, submitted to OAHP along with the PAE's recommendations under Section 6-6 and 6-7, and provided to stakeholders as part of the notification

process under Section 6-12. (Note the restrictions on tenant and public access to documents listed in Appendix E.)

An example of when a "currently non-viable" Restructuring Plan should be developed: a property is in need of rehabilitation in an amount that cannot be appropriately supported even by exception rents. An infusion of \$200,000 would solve the problem but the funds are not available.

- B. **Stakeholders.** "Stakeholders" may include local government, an HFA that is not the PAE, a public housing authority, interested purchasers, local or national non-profit groups, as well as tenants. OAHP supports the involvement of any stakeholders that can contribute to the achievement of developing viable Restructuring Plans. Typically, a second tenant meeting should be held prior to the PAE recommending a Restructuring Plan be rejected or otherwise discontinued. OAHP will continue to seek ways to enhance the stakeholders' contribution and encourages PAEs to support this process.
- C. **Consultations with Hub/Program Centers; Smooth Transitions.** Wherever a viable Restructuring Plan is unlikely, OAHP will consult with the applicable Multifamily Hub or Program Center to assure that all available options and consequences have been considered in attempting to meet the program goal of maintaining affordable housing. Where no viable options appear under M2M, or through stakeholders, OAHP will also alert the applicable HUD Property Disposition Office, with the Multifamily Hub or Program Center, if possible, to assure an orderly transition will occur where failure of the property seems likely. OAHP will assure that the Multifamily Hub or Program Center and the Property Disposition Office, as appropriate, is provided with the "currently non-viable" Restructuring Plan to inform their decisions.

Appeals and Administrative Reviews

Section 6-9

- A. **Initial Owner Appeal.** An Owner may request that the OAHP Field Preservation Office reconsider each of the following decisions:
 - 1. a decision that the Owner or project is not eligible for the Mark to Market Program or that the Owner has failed to cooperate in the development of a restructuring plan, or
 - 2. a decision to offer a proposed restructuring commitment that the Owner does not execute. (Any review sought under this provision shall result in either (a) a revised restructuring commitment or (b) notification from the Field Preservation Office to the Owner that the decision not to modify the

restructuring commitment is a Final Decision and is subject to administrative review as provided herein.)

3. an Owner may cure the underlying basis for the decision, or request a Preservation Office Review by submitting a written request for Review, which must be received by the Preservation Office within 30 days of receipt by the owner of the decision for which Review is sought.

B. Written Appeal. An Owner may request an opportunity to present evidence that the underlying basis for a decision under Section 6-9(A), above, has been cured or request a Preservation Office Review by submitting a written request, which must be received by the Field Preservation Office within 30 days of receipt of the decision for which Review is sought. A request for Review must specify in writing:

1. the reasons for the Owner's objections to the decision of the Preservation Office or the evidence that the Owner has cured the basis for the decision for which Review is being sought; and
2. any information in support of the objections that the Owner wishes to be considered.
3. If the Review is requested for a proposed restructuring commitment under Section 6-9(A)(2), above, the request for Review must also specify each item in the restructuring commitment to which the Owner objects.

C. Preservation Office Appeal. The Preservation Office Review will be performed by the Preservation Office Director or designee. At the sole discretion of the Preservation Office Director or designee, the scope of Review can be expanded beyond the issues raised by the Owner. The Preservation Office Director or designee may review and modify any term within the restructuring commitment, without regard to whether the Owner has raised an objection to that term, including but not limited to adjustments to rents or expenses as underwritten by the PAE.

D. Final Decision. The Preservation Office's determination is OAHP's Final Decision (and is the final decision referenced in 24 CFR 401.645.b). Unless the deadline is extended by mutual agreement, the Preservation Office shall issue a Final Decision within 30 days of receipt of the Owner's request.

1. The Final Decision shall be sent to the Owner, and shall:
 - a) affirm the Preservation Office's prior decision;
 - b) modify the Preservation Office's prior decision and, with respect to Reviews of restructuring commitments, OAHP will issue an amended or restated restructuring commitment that incorporates the Final Decision ; or

- c) reverse the prior decision, which may include termination of a restructuring commitment.
 2. If the Owner either fails to (a) request timely a Preservation Office Review of a decision, or (b) execute timely a restructuring commitment (either when first offered or after the offering of a restructuring commitment that incorporates the Final Decision), the Preservation Office will send a letter to the Owner stating that the Preservation Office's decision was the Final Decision. The Owner may, in the case a restructuring commitment has been offered, accept the restructuring commitment within 10 days of Owner's receipt of the Final Decision or seek administrative review of the Final Decision by delivering notice to OAHP Headquarters as provided below.
- E. **Request for Headquarters Preservation Office Review.** The Owner may request an administrative review of a Final Decision by providing a written request for administrative review, which must be received at OAHP Headquarters within 10 days of the Owner's receipt of the Final Decision.
 1. The request should be addressed to the Bonds and Appeals Manager, Office of Affordable Housing Preservation, 451 7th St., SW, Room 6222, Washington DC 20410.
 2. OAHP suggests that the request specify in writing:
 - a) the reasons for the Owner's objections to the decision of the Preservation Office;
 - b) any information in support of the objections that the Owner wishes to be considered; and
 - c) if the Review is requested for a proposed restructuring commitment, each item in the restructuring commitment to which the Owner objects.
- F. **Headquarters Preservation Office Review (Administrative Review)**
 1. Scope of Review. The scope of administrative review regarding a Final Decision will be limited to a determination of whether the Final Decision is:
 - a) reasonable in light of the facts and circumstances; and
 - b) in accordance with all applicable statutes and regulations.
 2. Conference: the Deputy Assistant Secretary for OAHP or designee will offer to schedule a conference with the Owner.
 - a) The Deputy Assistant Secretary for OAHP or designee will endeavor to hold the conference no later than 20 days after

the date of receipt of a request for an administrative review submitted by an Owner to OAHP.

- b) The conference (in person or through a representative either telephonically or in writing) will provide the Owner or its representative the opportunity to present the grounds for Review.
- c) In the event no conference is held, the Deputy Assistant Secretary for OAHP or designee may make such inquiry of the Preservation Office, the PAE or others as is deemed appropriate.
- d) The Preservation Office and the PAE will receive notice of the date of the conference and may participate in the conference at the request of either the Owner or the Hearing Officer, or on their own initiatives.

G. Final Determination. The outcome of the administrative review shall be called the "Final Determination."

- 1. The Final Determination shall be communicated to the Owner in writing. If appropriate, notice may consist of the issuance of a revised or reissued restructuring commitment consistent with the terms of the Final Determination, which shall provide the Owner with a 10-day period of time after receipt to accept.
- 2. During the administrative review, if the Deputy Assistant Secretary for OAHP or designee determines that there is new or supplemental information being proffered that may be material to the Final Decision and which the Preservation Office has not previously considered, the Deputy Assistant Secretary for OAHP or designee will either consider such information or terminate the administrative review without prejudice. In the case of termination, the Preservation Office shall consider such information and re-issue a Final Decision.
- 3. No further appeal or review of a Final Determination shall be allowed.

Completion Procedures for Transactions That Do Not Close

Section 6-10

- A. **Applicability.** These procedures apply to all transactions that do not close.
- B. **Timing.** The PAE will track the appeal and response periods for all transactions where the OAHP Preservation Office has rejected a Restructuring Plan, or has concurred with a recommendation of ineligibility or of a determination to discontinue or where an owner

has refused to execute a viable Restructuring Plan. When all appeals and responses are complete, or the time for an appeal has passed without an appeal (as determined after discussion with the applicable OAHP office), the PAE will follow the procedures below.

C. Completion of Processing.

1. The PAE will provide the Multifamily Hub or Program Center, and the Property Disposition Office, if appropriate, with the completed or “currently non-viable” Restructuring Plan including the market rent determination, a copy of the PAE’s submission to OAHP, and any other relevant documents from the processing and any appeal, including the PCA and the Appraisal, to assist Housing in their decision with regard to the property.
2. The PAE will complete the notifications in accordance with Section 6-12 below and provide copies of the completed or “currently non-viable” Restructuring Plan to the stakeholders.
3. The PAE will complete the M2M MIS requirements for the transaction and its conclusion.

D. Conversion to Tenant-based Assistance.

1. Where OAHP and the Hub or Program Center have agreed that the project should be converted to tenant-based assistance, the Hub or Program Center will contact the owner and arrange for an appropriate HAP Contract. (In all other cases, OAHP will have prepared and sent a HAP contract to the owner.)
2. In any circumstance involving a conversion to tenant-based assistance, any otherwise eligible low-income tenant that is receiving Section 8 assistance will be provided with tenant-based assistance, subject to the availability of appropriated funds and HUD’s policies and procedures.

Expiration of Section 8 Contracts

SECTION 6-11

- A. Expiration of Section 8 Contract.** If the 12-month extension of the Section 8 Contract expires during processing or during the appeal process, the rents must be reduced to market except in the case where an extension has been recommended by the PAE or OAHP Preservation Office and approved by the Assistant Secretary/FHA Commissioner. An extension may not be requested if the owner has not cooperated throughout the full period the property has been in the M2M program. Extensions should be requested for a minimum of 3 months and no more than 6 months.

- B. **Procedures.** The Multifamily Hub or Field Office will process all contract extensions while the property is assigned to OMHAR. If the Assistant Secretary/FHA Commissioner has not approved an extension at above market rents, than OAHP should obtain, review and approve (adjust if necessary) the PAE's market rent determination and provide those rents to the Multifamily Hub or Field Office. The Multifamily Hub or Field office should continue the interim contract, but at market rents. The owner should be notified using Form 6.8 that the rents will be reduced, however if during subsequent appeals a new conclusion on market rents is reached, market rents will be adjusted retroactively, subject to the availability of funds.

Notification of Stakeholders

SECTION 6-12

- A. **Notification to Stakeholders if Owner Accepts Commitment.** Within ten (10) days after the owner has executed a Restructuring Commitment, the PAE must prepare a notice that describes the completed Restructuring Plan and Restructuring Commitment.
1. Recipients. The PAE will provide the notice to the parties listed in Section 3-9.
 2. Contents. The notice to tenants should follow Form 3.5.
- B. **Notification to Stakeholders in All Other Cases.** Whenever a restructuring is terminated, regardless of the reason for termination, and approved by OAHP, the PAE will complete the notification to stakeholders listed in Section 3-9 when any appeal is complete or when the time for making an appeal has passed without an appeal being made.

Business Forms

SECTION 6-13

- 6.1 OAHP Preservation Director to PAE Transmitting Executed Restructuring Commitment
- 6.2 PAE to Owner Transmitting Restructuring Plan and Commitment
- 6.3 OAHP Preservation Director to Owner Re: Rejection of Restructuring Plan
- 6.4 OAHP Preservation Director to Owner Re: Determination of Ineligibility
- 6.5 OAHP Preservation Director to Owner Re: Determination to Discontinue Restructuring
- 6.6 OAHP Preservation Director to Owner Re: Final Decision on Appeal
- 6.7 OAHP HQ to Owner Re: Administrative Review Decision
- 6.8 PAE to Owner Indicating reduction to Market Rents

- 6.9 PAE to Owner Transmitting HAP Contract After Failure to Execute Restructuring Commitment
- 6.10 OAHP to OWNER Re; Property Not Eligible for OAHP
- 6.11 OAHP Preservation Director to Owner Re Owner Ineligible