

Sample

Mark-to-Market Form 6.6 OAHP Preservation Office to Owner re: Appeal Decision

From: OAHP Preservation Office
To: Owner
Transmission: Overnight Hard Copy - With Evidence of Receipt
Date: _____
Project Name: _____
FHA Number: _____ REMS ID Number _____
Section 8 HAP Contract Number: _____

Dear (Owner):

This letter is a response to your appeal of our decision dated (*date of OAHP decision letter*) concerning the subject property. After carefully reviewing all the information submitted in support of your appeal we have [*check one*]:

- Made the following modifications to the Restructuring Plan and Commitment or to a prior decision:

- Rejected your appeal for the reasons given below:

The above represents our Final Decision concerning the restructuring of this project. Within 10 business days after your receipt of this letter, you may contest the Final Decision and request a conference with OAHP for an Administrative Review by the Reviewing Official, OAHP Bonds and Appeals Manager:

OAHP Bonds and Appeals Manager
Office of Affordable Housing Preservation
451 7th Street, SW
Room 6222
Washington, D.C. 20410

At the conference, you may submit in person, in writing or through a representative, your reasons for contesting the Final Decision. You are encouraged to provide a written detailed explanation of the grounds for the appeal in advance of the conference.

The OAH Preservation Office Director or designee will participate in any conference and present the basis for the Final Decision. The Reviewing Official will issue a written decision within 20 business days after (or 20 days after any agreed-upon extension of time for submission of additional materials by or on behalf of the owner) terminating, modifying or affirming the original Final Decision. The Reviewing Official's decision constitutes a Final Determination for the purposes of section 516(c) of MAHRA and is not subject to judicial review.

Direct all inquiries concerning this letter to:

(appropriate OAH Preservation Office staff) at (phone number).

Sincerely,

(OAH Preservation Office Director)
(title)

Copy: PAE
OAH HQ
Multifamily Hub or Program Center Director

Enclosed: Appeal Guidance

For owners who intend to appeal:

The PAE has prepared substantial information to support their conclusions on rents, expenses and other aspects of the transaction. Your appeal should include specific information that either (1) refutes the information used by the PAE or (2) provides additional or alternative information that supports the change you desire.

Be specific

Owners should identify the specific points being appealed. It is very difficult for OAHP to address issues identified only as “expenses are too low” or “rents are about \$30 less than they should be”. For example, identify the specific expense line items at issue.

Be precise

Identify the real issue. If you believe that the real problem is that the expenses are not realistic, focus on the expenses. Don’t focus attention on rents (“rents need to be a little higher to cover the expenses and make the property viable”) unless you believe that the market rent conclusion is inadequate. If market rents will not cover realistic expenses, there are usually options in M2M to address this circumstance where warranted. The important thing is getting the expenses “right”.

Provide specific support

Provide specific and verifiable support for appeal issues. The easiest examples are increases in taxes or insurance where invoices and individual contacts for verification can be provided. Where more complex issues are involved, providing specific information from several sources is the most helpful. For example, where the market rent determination is at issue, provide specific rent comps, with addresses and distances from the subject, and as much detailed information as you can regarding the features of these comps. Another example might include expense information from an owners’ association or other sources of which the PAE and OAHP might not have been aware.

Identify any deficiencies

In addition to providing new information, owners should be familiar with the information that the PAEs have used to reach their conclusions on rents and expenses and should indicate where there are any deficiencies in that material. For example, the owner should identify any inadequate or inappropriate rent adjustments to the comps used by the PAE or its appraiser or point out that a comp that was used is actually inappropriate because it is subsidized.

History alone is not adequate

Indicating that a particular expense has always been high in this property is not, in and of itself, adequate evidence that it should continue to be high. One of the goals of the M2M program is to reduce high expenses due to inefficient management. For example, an identity of interest security entity that charges higher than market fees for such services may have been employed for years. In this case, the expense should be lowered to market. The expense should also be lowered if the

cause of the high cost will be changed (for example, by switching to tenant-paid utilities). However, if the expense is high because of some feature that is particular to this property (such as the need to spend additional money on flood insurance) that feature should be specifically identified and the expense supported.

Up to date information

It is most useful to all parties if the information being used is as current as possible. For example, information on recent utilities increases (letters from utility providers, newspaper articles, contacts at utility companies) should be provided as soon as possible.