



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

ASSISTANT SECRETARY FOR HOUSING-  
FEDERAL HOUSING COMMISSIONER

**Special Attention of:**

All Regional Directors, Multifamily Hub  
Directors, Multifamily Program Center  
Directors, Supervisory Project Managers,  
Project Owners and HUD-Approved  
Mortgagees

**Notice: H 2012-10**

Issued: May 9, 2012

Expires: This notice remains in effect until  
amended, revoked, or superseded

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Cross Reference:  
Notice H 2010-22

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**SUBJECT:** Guidelines for Assumption, Subordination, or Assignment of  
Mark-to-Market (M2M) Loans in Transfer of Physical Assets (TPA)  
and Refinance Transactions

This Notice updates and restates HUD's guidelines dated September 30, 2010, issued through Housing Notice 10-22, "Guidelines for Assumption, Subordination, or Assignment of Mark-to-Market (M2M) Program Loans in Transfer of Physical Assets (TPA) and Refinance Transactions" (Guidelines). The Guidelines apply to any request (Request) to assume and/or subordinate a loan evidenced by a Note (defined below) originated under M2M, or its predecessor program, the Portfolio Reengineering Demonstration Program (Demonstration or Demo Program), and to waive the due on sale or refinance clause contained therein. The Guidelines also apply to any Request to provide Debt Relief (assignment, modification or forgiveness) with respect to a Note originated under the M2M program. The Guidelines contained in this Notice are effective immediately for all such transactions.

This Notice outlines a request process and review criteria for owners who seek to refinance or sell a property (Property) that has received the benefits of a debt restructuring under M2M or the Demonstration Program. Loans originated under those programs are evidenced by a Mortgage Restructuring Note (MRN), a Contingent Repayment Note (CRN), or a Demo Note (as further defined below), that will be assumed and/or subordinated in the proposed transaction. The Notice also applies when HUD evaluates requests for debt assignment, modification or forgiveness (Debt Relief) with respect to an MRN or CRN for a qualifying nonprofit purchaser. All requests may be approved, rejected or modified by HUD. This Notice only applies if the MRN, CRN, or Demo Notes will not be paid in full at the consummation of the sale or refinance of the Property, and if HUD is the holder of the MRN, CRN, or Demo Note(s). Capitalized terms may be further defined below.

This Notice makes the following updates to Housing Notice 10-22:

- 1) Removes the so-called "three-year policy" for qualified non-profit purchasers to request Debt Relief upon acquisition of M2M restructured properties.

- 2) Specifies the review criteria for determination of preservation needed for the Office of Affordable Housing Preservation's (OAHP) approval for Debt Relief.
- 3) Adds additional considerations for preservation projects meeting certain criteria, including treatment of developer fees in preservation transactions, and treatment of incentive fees in green rehabilitation transactions.
- 4) Removes the use of Makeup Payments: Transactions will not be approved if they will result in the reduction of the net present value of the MRNs, CRNs, and Demo Notes; and
- 5) refines and adds defined terms.

### **Defined Terms**

- 1) "Assignment" - Transfer of an MRN and/or CRN to a qualified non-profit entity (see QNP). This process does not apply to Demo Notes.
- 2) "Assumption" - Transaction in which a purchaser will assume a seller's obligations under the loans evidenced by MRN, CRN, or Demo Note(s).
- 3) "CRN(s)" - A Contingent Repayment Note originated under M2M, secured by a mortgage that is usually in a third lien position encumbering a Property, as defined below.
- 4) "CRP" - Capital Recovery Payment, an incremental repayment of an owner's required contribution toward M2M rehabilitation and transaction costs, with a market rate of return and subject to conditions specified in M2M legal documents.
- 5) "Debt Relief" - The forgiveness, assignment, or modification of an MRN and/or CRN, together with the security instruments that secure such Note(s), which may be provided in response to a QNP Request, as defined below.
- 6) "Demo Note(s)" - Notes originated under the Demonstration Program, typically secured by mortgages in a second or third lien position encumbering a Property.
- 7) "Identity of Interest" or "IOI" - Any relationship based on family or other interpersonal ties or shared financial or other beneficial interests that would reasonably give rise to a presumption that the parties may operate in collusion in establishing the purchase price of the Property, the cost of the rehabilitation or the terms of the financing. OAHP may determine on a case-by-case basis that an IOI relationship exists whenever the facts and circumstances cause OAHP to question whether parties in a transaction are operating independently of such relationships. These relationships include but are not limited to:
  - a. the seller and the purchaser of a Property,
  - b. the owner and/or general contractor, subcontractor, material or labor supplier or equipment lessor involved in the rehabilitation of the Property,

- c. the seller, purchaser and/or owner and the provider of any professional services used in the course of the acquisition, management, operations and financing or other functions required by the Property,
  - d. the owner and the lender, and/or
  - e. other parties involved in a transaction and identified by OAHP as IOI participants.
- 8) “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, which established M2M.
- 9) “Modification” - Change(s) made to loan documents that evidence or secure a Note. All assumptions, subordinations, or assignments under this Notice will include certain minimum modifications to loan documents in order to evidence the change in responsible parties and eliminate the CRP (when applicable, as defined in the M2M loan documents). As a defined term used throughout this Notice, however, Modification means changes made to a Note or the other documents that further evidence or secure a Note beyond the minimum modifications, such as a change to the term, interest rate, payment terms, cash flow or surplus cash splits, and/or other changes consistent with this Notice, and in a form and substance as specified by OAHP.
- 10) “MRN(s)” - A Mortgage Restructuring Note originated under M2M that is secured by a mortgage in a first or second lien position encumbering a Property.
- 11) “Net Proceeds” - Proceeds as defined below, reduced by any expenses incurred for the sale or purchase of the Property that are paid by the seller or by the purchaser and approved by OAHP as legitimate and reasonable expenses of the proposed transaction. These might include third party brokerage fees, local and state transfer taxes, legal and title and other costs of the sale or purchase of the Property, but they will exclude all IOI payments.
- 12) “Note(s)” - MRN, CRN, and/or Demo note(s).
- 13) “Pay-down” - The payment calculated under the process described in section “Evaluation and Approval Criteria” under subsection “Determine Net Proceeds” below. The purpose of the Pay-down is to reduce the outstanding amount of the Notes when the transaction proposed involves Proceeds that will benefit the seller or purchaser.
- 14) “Proceeds” - All cash, fees and other considerations paid to or on behalf of the seller or seller’s related entities, including IOI entities, or to or on behalf of the purchaser or purchaser’s related entities, including without limitation of developer and other fees, deferred payments, project accounts, including operating or replacement reserves, escrows, security deposits and allocations of accounts payable, or other reductions in the party’s liabilities, whether paid now or to be paid in the future.

- 15) "Property" or "Properties" - The multifamily rental property for which the Request is made.
- 16) "QNP" or "Qualified Non-Profit" - A non-profit entity or public agency whose Request involves the acquisition of a Property, pursuant to and as more particularly defined in OAHP's Operating Procedures Guide, Appendix C. A QNP is the same as a Priority Purchaser under 24 CFR 401.2.
- 17) "QNP Request" - A request for OAHP's approval as a Qualified Non Profit purchaser and for Debt Relief, made in conjunction with a Request.
- 18) "Request" - An owner's request for HUD to waive the "due on sale or refinancing" clause in a Note and allow the Assumption and/or Subordination of such Note, or in the case of a QNP Request, provide Debt Relief in connection with a TPA and/or refinance transaction.
- 19) "Subordination" - Transaction in which the loan(s) evidenced by a Note will be subordinated to a new first mortgage loan.
- 20) "Surplus Cash" - Cash remaining at the end of each fiscal year from the operations of the Property after payment of:
  - A. All sums due or currently required to be paid under the terms of
    - (i) a fully amortizing loan secured by a first lien encumbering the Property, and
    - (ii) any subordinate FHA-insured or HUD-held mortgages with cash flow priority to the Note(s);
  - B. all amounts required to be deposited in the reserve fund for replacements;
  - C. all other obligations of the Property, unless funds for payment are set aside or deferment of payment has been approved by the Secretary; and
  - D. Capital Recovery Payments and Incentive Performance Fees, if any, as defined and set forth in the loan documents that further evidence or secure an MRN or CRN.
- 21) "Transfer of Physical Assets" or "TPA" - The sale or transfer of a Property or a transfer of an interest in the entity that owns a Property, directly or indirectly. Also used to refer to the process through which OAHP reviews such transfers.

## **Background**

M2M is administered by HUD's Office of Affordable Housing Preservation (OAHP). The primary objective of an M2M rent and debt restructuring is to reposition a Property financially and physically to provide long-term affordable housing, with the resources available to operate the Property. M2M allows HUD to restructure the debt that is FHA-insured or Secretary-held on certain properties with above market project-based Section 8 contract rents. At the conclusion of an M2M rent and debt restructuring, above-market rents are reduced to comparable market rents and generally, an owner obtains a new first mortgage loan that is supportable at those market rents.

M2M underwriting incorporates statutory requirements designed to encourage owners to operate their restructured Property efficiently and undertake needed repairs. The underwriting establishes reserves to maintain the Property through repair escrows and increased reserve deposits, and incorporates a debt service coverage cushion. The result of a successful restructuring is a Property that is financially and physically viable at market rents, benefiting the owner, tenants and other stakeholders. To achieve these goals, generally the existing mortgage is refinanced with a new, first mortgage loan, sized to be serviceable by the market rents; HUD pays off the existing FHA-insured first mortgage through a claim on behalf of the Property owner under the existing mortgage insurance contract. An owner's obligation to repay the claim is evidenced by an MRN and/or a CRN, or a Demo Note. The existing repayment terms of the MRN, CRN, and Demo Notes include a "due on sale or refinance" clause. In order to transfer a Property and allow an Assumption and/or Subordination, or to refinance a Property and allow a Subordination to the new financing, an owner must obtain a waiver of the due on sale or refinance clause from OAHF if the Notes are not fully satisfied as part of the transaction.

There is a statutory mandate for including due on sale or refinance provisions in the MRNs pursuant to MAHRA, Sec. 517(a)(4). Nevertheless, HUD maintains some discretionary enforcement flexibility, and in certain instances, it may be in HUD's best interests to waive the due on sale or refinance requirement contained in a Note. For example, HUD may consider waiving the due on sale or refinance requirement and may agree to accept a Pay-down rather than requiring payment in full in the event of a TPA or refinancing, when:

- 1) A Property is to be sold to acceptable ownership, and the current owner is unwilling or unable to perform its obligations to HUD;
- 2) the income-based use restriction encumbering the Property will be significantly extended;
- 3) non-HUD funds are to be provided for additional rehabilitation beyond the scope of rehabilitation provided under the M2M or Demonstration Program rent and debt restructuring; and/or
- 4) a TPA will resolve other ownership and/or Property related issues identified by HUD.

For HUD to elect not to enforce its rights under the due on sale or refinancing provision, HUD will consider whether, under the terms of the proposed transaction:

- (a) The Property remains financially viable,
- (b) the financial value of the Note(s) is maintained,
- (c) HUD receives a Pay-down of the Note(s) from transaction Proceeds in an amount determined by HUD, and/or
- (d) the transaction is otherwise in HUD's best interests.

The goal of this Notice is to maintain at least the same financial footing and preservation goals that were established at the time of the debt restructuring under M2M and Demonstration Programs, and to ensure repayment of the Notes. Repayment of the Notes is not required in the case of debt relief available to certain Qualified Non-Profits (QNP) as described below, where HUD obtains an extended 50-year Use Agreement as well as a 10-year prohibition on sale of the project to entities that are not QNPs.

Notwithstanding OAHP's agreement to waive the due on sale or refinance clause contained in the Note(s) in connection with a particular transaction:

- (a) repayment terms and the due on sale or refinance clause in the Note(s) otherwise remain in full force and effect;
- (b) any remaining balance on the Note(s) remains due and payable in accordance with its respective terms, and continues to encumber the Property in a manner satisfactory to OAHP; and
- (c) any future sale or refinance of the Property is subject to this Notice.

### **General Requirements**

All applicants must fully disclose all Proceeds. As part of the Request, the owner and purchaser, if there is a TPA, should certify to this disclosure, and renew and update such certified disclosure through the date of closing of the TPA or refinancing. In transactions where there are no Proceeds and there will be no Modification other than to memorialize a change in responsible parties, OAHP will consider the Requests without a Pay-down of the Note(s).

In transactions where there are Proceeds and/or a proposed Modification, OAHP will review and either approve, modify, or deny the Request. OAHP will determine the amount of the Pay-down required as a condition of such approval. If approval is conditioned upon a Pay-down, the remaining balance due on the Note(s) remains due and payable in accordance with its terms.

OAHP will review and approve, modify or deny all QNP Requests for Debt Relief. If the TPA to a QNP is approved and Proceeds will be paid to the seller and/or QNP purchaser, the transaction will be reviewed and approved in accordance with this Notice prior to providing the Debt Relief.

MRNs, CRNs, and Demo Notes, together with the obligations contained in the documents that further evidence or secure these Note(s), can be assumed only as part of the TPA, except for MRNs and CRNs in a conveyance to a QNP, in which event the Property may be conveyed "subject to" the Note(s) and other loan documents. All TPAs involving a Property with an encumbrance securing a Note are subject to approval under this Notice and remain subject to all other statutory, regulatory, and administrative requirements.

## **Evaluation and Approval Criteria**

In most instances, OAHP will apply the following three evaluation criteria when reviewing and evaluating Requests for all of the Notes, but may apply different, additional or fewer criteria when OAHP determines such action is justified by the particular circumstances of individual transactions. Exceptions occur primarily for QNP transactions, and these are noted below.

- 1) **Maintain Property Viability:** In reviewing Requests, OAHP will use applicable underwriting standards from the originating program to test the ongoing viability of the Property, and to determine whether or not the proposed transaction negatively impacts the physical or financial viability of the Property for the term of the existing Use Agreement, or in cases of Debt Relief, for the extended term of the Use Agreement.
  - a. Approvable proposed transactions generally will be those with first mortgage debt service coverage equal to or greater than 1.20, as determined by OAHP.
  - b. Approvable proposed financing generally will be committed, permanent first mortgage financing that is fully amortizing over its term and has a fixed rate of interest.
  - c. The original M2M underwriting required an adequate “operating expense cushion,” normally between 7% and 10% of the total expense. This expense cushion is the amount of funds remaining when projected operating expenses, deposits to reserves, and debt service have been paid, stated as a percentage of total expenses. The Request should demonstrate to OAHP’s satisfaction that the proposed operating expense levels are adequate and that the original operating expense cushion requirement continues to be met in the underwriting for any proposed new financing.
  - d. The Request should demonstrate to HUD’s satisfaction, the adequacy of the proposed Reserve for Replacements account, operating accounts and vacancy estimates.

**NOTE:** In Debt Relief transactions, any new first mortgage debt service coverage should not be less than 1.20, and any refinancing during the term of the extended Use Agreement should also maintain a minimum 1.20 debt service coverage ratio. In addition, the operating expense cushion described above should be satisfied in the underwriting for any proposed new financing. In most instances HUD retains control over the Reserve for Replacement account, although HUD will consider other arrangements, for example, if the owner provides assurances that withdrawals from the Reserve for Replacement account will be made and used only in accordance with the Section 8 contract, applicable rules and regulations, and with the HUD Regulatory Agreement, even if, in the event of refinancing with a conventional lender, the lender’s guidelines and approval standards differ from HUD’s guidelines and approval standards.

- 2) **Maintain Value of the Note(s) (Valuation Analysis):** The proposed transaction should not result in a negative financial impact to the value of the MRN, CRN or Demo Note(s), measured by the present value of the expected payments on the Note(s) as originally underwritten compared to the payments anticipated under the proposed transaction. If a proposed transaction involving an MRN, CRN or Demo Note shows a decrease in the net present value of the cash flow stream from the Note(s) when compared to the payment stream from the original M2M or Demo underwriting, OAHP will reject the Request.

**NOTE:** This criterion is deemed satisfied if there are no Modifications to the Note(s) or to the existing first mortgage.

**NOTE:** This criterion is deemed satisfied for a transaction where (1) the Property is not performing on its Note(s) due to circumstances beyond owner control, and (2) for which HUD approves the forgiveness or assignment of debt to a QNP, subject to the criteria outlined in this Notice.

- 3) **Determine Net Proceeds:** If there are Net Proceeds available from the proposed transaction after satisfying the criteria described in 1) and 2) above, OAHP may condition approval on a Pay-down of the Note(s) based on Proceeds. A Pay-down enables HUD to recover a portion of the value created through the M2M or Demo debt restructuring. The determination of Proceeds is as follows:
- a. OAHP's Determination of Proceeds and Net Proceeds: OAHP will identify and closely examine Proceeds and identify legitimate and reasonable expenses of the proposed transaction that are born by the purchaser and seller that may be deducted from Proceeds to calculate Net Proceeds. Transaction related payments to IOI entities of the owner/seller or the purchaser, however, will not be deducted from proceeds.
  - b. Net Proceeds to be Applied to Note(s): OAHP may require, as a condition of approval, that part of the Net Proceeds be applied as a Pay-down to be determined on a case-by-case basis. Generally, however, OAHP may condition its approval upon repayment of the greater of:
    - i. An amount equal to one-half of the Net Proceeds otherwise being paid to the seller/affiliate; or
    - ii. An amount equal to one-third of the sum of the Net Proceeds being paid to or realized by the seller/affiliates and by the purchaser/affiliates.

Factors OAHP will consider in its determination of conditions for Pay-down may include:

- i. An analysis of whether and how the proposed transaction furthers the affordable housing preservation mission of HUD;
- ii. review of the owner/seller's current legal and financial obligations under the legal documents executed as part of the Demo or M2M restructuring;



- iii. the agreed-upon owner/HUD cash flow split from Surplus Cash, as documented in the Demo or M2M restructuring;
- iv. the strength of the proposed transaction relative to current Property performance; and/or
- v. The extent to which the availability of Proceeds results from the M2M debt restructuring.

Additionally, OAHP will review all Requests to ensure to HUD's satisfaction that the proposed transaction continues to promote HUD's policy and property performance goals, including preservation of affordable housing and responsible utilization of Government resources. HUD may conclude that there are material grounds for determining ineligibility if the owner, purchaser, or an affiliate of either has any outstanding violations of Civil Rights laws in connection with any project of the owner, purchaser or affiliate of either.

### **Consideration for Preservation Transactions**

HUD's review of Requests provides an opportunity for HUD to favorably consider a Request for a Property that HUD considers to be particularly important to preserve, and Properties that will be made "green" as a result of extensive retrofitting to be completed in the proposed transaction. Additional considerations include:

- 1) **Strategic Community Properties.** Certain Requests involve Properties that meet a pronounced affordable housing preservation need within the subject community. Proposed transactions are generally determined to meet this need if they meet all of the criteria outlined below for evaluation of preservation need (under transactions requesting Debt Relief when transferring a restructured Property to a QNP purchaser).

On proposed transactions that in HUD's determination generally meet these criteria, whether or not they are transactions with Debt Relief, HUD will eliminate the proposed developer fee from the calculation of Proceeds.

- 2) **Green Properties.** Requests involving Properties that will undergo significant rehabilitation and meet established green standards may also request an increase in the amount of the Property's Incentive Performance Fee or "IPF" for the remainder of the IPF term under the terms detailed in the M2M restructuring.

If approved in the course of OAHP's review of a Request, this consideration allows for a fifty percent (50%) increase in the original IPF percentage. To obtain this incentive, the Property must achieve LEED Certification, Enterprise Green Communities Certification or other equivalent certification proposed by the owner and approved by OAHP. Owners of M2M properties may apply for this green incentive as part of their Request, and additional documentation will be required to demonstrate to OAHP's satisfaction that the green standards will be achieved through the proposed transaction. The IPF will be raised following completion

of the rehabilitation, on submission of evidence that the OAHF-approved applicable green standard has been achieved.

**Note:** Properties with Demo Notes are not eligible for this consideration because they have no IPFs.

### **QNP Debt Relief Criteria and Approvals**

Non-profit purchasers qualified by HUD as “Qualified Non-Profits” or “QNPs” may request Debt Relief in the course of the acquisition of an M2M restructured Property. **This Notice removes the “three-year policy” for qualified non-profit purchasers to receive Debt Relief upon acquisition of M2M restructured Properties, making all properties restructured under M2M eligible for such acquisitions, regardless of restructuring date.** However, such purchasers and Properties must continue to meet certain criteria described in Appendix C of the Mark-to-Market Operating Procedures Guide. Such purchasers and Properties must also meet the preservation criteria exemplified below, and enable HUD to make a determination that:

- (1) Such a transfer will benefit the long term preservation and affordability of the subject Property, and
- (2) the value of the Note(s) and any FHA-insured notes on the Property is maintained, as determined through HUD’s valuation analysis.

Examples of preservation criteria that will assist HUD with such a determination may include:

- a. Demonstrated preservation need, which may be evidenced by physical and capital needs or obsolescence of the Property, inadequate reserve balances to address physical needs, operating history since restructuring, market demand for affordable units in the local market, etc.
- b. Demonstrated need for additional financing relief based on financial performance of the Property since restructuring, including underperformance or non-performance on the Notes(s) relative to projected performance, due to circumstances beyond owner control and as evidenced by HUD-reviewed Annual Financial Statements, and HUD’s valuation analysis.
- c. Physical and financial stability achieved or maintained by the proposed transaction based on reasonably achievable underwriting assumptions.
- d. Evidence of broad-based community support for the transaction, financial and otherwise, to demonstrate the Property’s particular value to its community.

- e. Significant non-HUD resources being brought into the transaction to enhance the physical condition and operating stability of the Property.
- f. Demonstrated preservation intent and experience of the proposed ownership.
- g. Deferral of a substantial portion of the developer fee (in proposed transactions with developer fees);
- h. Preservation of affordability through extended affordability agreement, pursuant to Appendix C of the Mark to Market Operating procedures Guide.
- i. Such other information as HUD may determine necessary based on the subject Request transaction.

Requests including QNP Requests for review under this authority should include documentation demonstrating to OAHP's satisfaction the way in which these criteria are met. Transactions approved by OAHP for QNP Debt Relief will also be reviewed under all other terms of this Notice, including transaction viability review, debt service coverage criteria for new financing, and Proceeds review for determination of Pay-down.

All QNP Requests involving properties restructured through M2M more than three years prior to issuance of this Notice may be considered in accordance with the preservation criteria described above in this Notice, as will Requests for Properties restructured on or after the issuance date of this Notice. QNP Requests will not be considered in accordance with this preservation review if the Property was restructured within the three years prior to the issuance date of this Notice, provided the QNP Request is received by HUD within three years of the Property restructuring date.

### **Evaluation and Approval Authorizations**

All Requests must be sent to the respective Multifamily Hub/Program Center, including those involving Debt Relief. As described below, certain transactions will be reviewed and approved by the Multifamily Hub/Program Center, while others will be forwarded to OAHP for review and approval.

#### 1) Multifamily Hub/Program Center Review and Approval:

- a. The Multifamily Hub/Program Center has authority to review and approve a Request involving a transfer of a Property or of interests in the ownership of a property, as long as there are:

- i. No proceeds to the seller and/or purchaser,
  - ii. no Modifications to the existing first mortgage, and
  - iii. no Modifications to the Note(s).
- b. The Multifamily Hub/Program Center has authority to review and approve a Request in which the present owner seeks to refinance an existing first mortgage, as long as:
- i. There are no Proceeds to the owner;
  - ii. the new first mortgage is FHA-insured;
  - iii. the debt service payment is not increased;
  - iv. the first mortgage unpaid principal balance is not increased.
  - v. the first mortgage term is not extended; and
  - vi. there are no changes to Property ownership at any level.

Any Request not meeting the criteria in a) or b), above will be forwarded from the Hub/Program Center to OAHP for review.

- 2) OAHP's Review and Approval. OAHP has the delegated responsibility to review and approve:
- a. All Assumptions and Subordinations involving Proceeds and/or Modifications to the existing Note(s) or first mortgage.
  - b. All QNP transactions involving Debt Relief, without exception, will be reviewed and approved by OAHP.

Owners and/or purchasers are encouraged to obtain a *Draft Applicants' Checklist: Request for Waiver of M2M "Due on Sale or Refinancing" Clause* from the Program Manager or from OAHP, as a guide in preparing their Requests.

### **Evaluation and Approval Processing Conditions**

- 1) The Multifamily Hub/Program Center will apply the following conditions in reviewing and approving Requests:
- a. TPAs. In all cases, TPAs will be processed and approved by the Multifamily Hub/Program Center according to established procedures, including collection of a TPA transfer fee in accordance with 24 CFR 200.40(h). All TPAs must be processed with a full review pursuant to Handbook 4350.1, Rev.1, including the determinative criteria. The exception to this rule is for TPAs involving transfers to QNPs with non-FHA-insured first mortgage loans, which require Hub/Program Center approval of the purchaser through the prior participation APPS/2530 process as well as OAHP approval of the QNPs.

- b. Outstanding Surplus Cash Note(s) Payments from Prior Fiscal Years: Upon receipt of a Request, OAHP will confirm that all Surplus Cash payments due on Note(s) for all completed fiscal years have been received by HUD. The owner will remit all outstanding Surplus Cash payments to HUD prior to approval of the Request. If there are disputed Surplus Cash payments, if not otherwise required under this Notice, the Request will be referred to OAHP for approval.
  - c. Anticipated Note(s) Payments for the Partial, Current Fiscal Year: As a condition of approval, an estimated partial-year Surplus Cash payment to the Note(s) for the current year, up to the proposed closing date is to be paid at closing. (For Demo Notes, an estimated partial year payment will be calculated based upon the specific payment terms of the Notes.)
  - d. Property Accounts in a Sale Transaction: HUD generally requires the Replacement for Reserve account to be transferred in full to a new Property account of the purchaser. The Other Property accounts such as operating accounts, security deposits, tax and insurance escrows, etc., should also be transferred with the Property in full, although some adjustments may be made by new lenders to tax and insurance escrows if the first mortgage is refinanced. If any Property accounts are paid out to the seller instead, all funds from those accounts will be treated as Proceeds and the purchaser will reestablish and fund all such accounts in the amounts required by new lenders and approved by the Field Office.
- 2) OAHP will apply the following procedures in reviewing and approving Requests:
- a. Assumption/Subordination Loan Committee: OAHP and the Multifamily Office of Asset Management will meet as an Assumption/Subordination Loan Committee to review and approve, reject or modify all Requests with Proceeds or Modifications. The Assumption/Subordination Loan Committee structure will mirror HUD delegated authorities: Multifamily Office of Asset Management will be a voting member for cases involving assumption and/or subordination of Notes, but it will be a non-voting member for cases involving debt assignment or forgiveness to QNPs. The Committee will:
    - i. determine the acceptability of the proposed transaction, and the amount of any required Pay-down, as described above; and
    - ii. advise the requesting Multifamily Hub/Program Center of the approval, rejection, or modification of the Request.
- 3) Outstanding Note(s) Payments from Prior Fiscal Years: Upon receipt of a Request, OAHP must confirm that all payments from Surplus Cash due on the Note(s) for all completed fiscal years have been received. The owner must remit all outstanding Surplus Cash payments to HUD prior to OAHP's approval of the Request.

- c. Anticipated Note(s) Payments for the Partial, Current Fiscal Year: OAHP may also require, as a condition of approval, to be paid at closing, an estimated partial-year Surplus Cash payment to the Note(s) for the current year, up to the proposed closing date. (For Demo Notes, an estimated partial-year payment will be calculated based upon the specific payment terms of the Notes.)
- d. Elimination of Capital Recovery Payments: As a condition of HUD's approval to waive the due on sale or refinance terms and allow assumption of the Note(s), the CRP will be eliminated as an eligible Property expense.

### 3) Processing Requirements

- a. The owner/seller and purchaser must provide a release that authorizes HUD to provide information regarding the transaction to the owner and prospective purchaser.
- b. If the owner has not completed the rehabilitation work funded by M2M, the owner must complete the work prior to the closing, or the remaining balance of the rehabilitation escrow must be transferred to the purchaser and the purchaser must provide a proposed rehabilitation plan incorporating the work as part of the Request.

**NOTE: HUD's objective is to complete the review and approval process within 60 days of OAHP's receipt of a complete Request.**

If you have questions regarding these Guidelines, please contact Lynn Wehrli, by email at [Lynn.Wehrli@hud.gov](mailto:Lynn.Wehrli@hud.gov), or by phone at 202 402-5210, or contact the assigned Project Manager at the Multifamily Hub/Program Center.

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

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Carol J. Galante  
Acting Assistant Secretary for Housing – Federal  
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