
FREQUENTLY ASKED QUESTIONS

HOUSING NOTICE H 2012-10

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

(June 11, 2012)

ASSUMPTION/SUBORDINATION

Q1. What is the primary impact of this Housing Notice H 2012-10 (Notice) for Assumption/Subordination Transactions?

A The Notice clarifies the treatment of certain elements such as developer fees, incentive fees and makeup payments in HUD's review of requests for assumption and/or subordination of M2M Notes in connection with Transfers of Physical Assets (TPAs) and refinance requests.

Q2. When is the Notice effective for Assumption/Subordination Transactions?

A The Notice is effective immediately as of the date of its publication (May 9, 2012) and does not have an expiration date. All transactions will be reviewed in accordance with this Notice, whether the transaction is already being evaluated by HUD or is to be submitted in the future.

DEBT RELIEF (QUALIFIED NON PROFIT)

Q1. What is the primary impact of this Notice for QNPs?

A Prior to the publication of this Notice, no request for debt relief would be considered if the request was submitted more than 3 years after the Mark-to-Market (M2M) Closing for the project. The only exception to this "three-year policy" was when a Purchase and Sale Agreement (P&S) had been executed by all parties within 3 years of the M2M Closing and remained in effect from the date of execution through the time of the request for debt relief.

The Notice removes the "three-year policy" in its entirety and substitutes " Preservation Criteria" designed to determine the need for preservation of the property. These criteria address the need for the housing as well as the financial performance of the property.

Q2. What is the effective date of this Notice for QNPs?

A The Notice has the same application to requests for debt relief as for other assumption/subordination transactions, with one exception. Projects t closed under M2M within 3 years of the publication of this Notice (May 9, 2012) **AND** for which a request for debt relief is received by HUD within 3 years of M2M Closing, will be reviewed in accordance with the prior Notice.

Q3. Do QNPs involved in the M2M Restructuring Closing have to meet the requirements of this Notice?

A No. This Notice applies only to QNP transactions after the M2M Closing. The additional financial requirements contained in the Notice would be addressed as part of the M2M underwriting.

Q4. Are Demonstration Projects eligible for debt relief?

A No. Demonstration Projects are not eligible for debt relief.

Q5. Does this Notice apply to projects previously approved for debt relief when approval of a change in ownership is requested according to the terms of the accommodation agreement?

A No. Such applications will continue to be reviewed and evaluated under Appendix C of the OAHF Operating procedures Guide.

Q6. Does a project need to meet all of the preservation criteria listed in the Notice in order to qualify for debt relief?

A The examples are just that: examples of the types of criteria HUD will use in its evaluation. Those examples are not intended to be exhaustive or comprehensive. The overall point of these examples is that HUD will evaluate matters such as the physical condition of the property, financial performance as shown by the ability of the project to meet expenses and size of reserves, the amount of community support for preserving the project, and the degree of commitment demonstrated in the provision of financial resources by sources outside of HUD,.

Q7. Is community support the same as what is contained in Appendix C for debt relief?

A No. A project qualifying for debt relief will have to meet the requirements of Appendix C, but the community support required in the Notice is in addition to the requirements of Appendix C. Community support satisfying the requirements of the Notice might include written support from the city in which the project is located, for example.

Q8. In order to eliminate treatment of the developer's fee as Proceeds, does the Owner have to agree to the extension of affordability to 50 years?

A No. The extension of affordability to 50 years only applied to applications for debt relief.

Q9. If an acquiring entity qualifies as a QNP under this Notice, will that QNP still be subject to a potential paydown of the MRN and/or CRN?

A Qualification as a QNP does not affect the need for OAHF to perform its financial analysis to determine if a pay down of the MRN and/or CRN will be required.

Q10. Subsequent transfer of MRN/and/or CRN to a new note holder: 1) can owner of property own MRN/CRN; 2) can a non-community based housing non-profit own/hold the MRN/CRN; and 3) can the MRN/CRN be bifurcated?

A Subsequent transfers of MRN/CRN are not covered by the Notice, but as there is no FAQ for debt forgiveness under Appendix C, the answers to these questions are as follows: 1) The Owner can hold the MRN/CRN, however, in many jurisdictions, the effect of the Owner of the property both owning the property and holding the notes will extinguish the Notes under the legal doctrine of Merger; 2) The holder of the Note must be a non-profit (recognized as a 501(c)(3) by the IRS, but need not be community based (However, the non-profit in control of the Acquiring Entity, however, must meet all the requirements of Appendix C which include a community representation requirement); and 3) The MRN and CRN could potentially be bifurcated as long as each holder of the notes meets HUD requirements.
