



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

OFFICE OF MULTIFAMILY HOUSING ASSISTANCE RESTRUCTURING

Signed 4.22.2002

**MEMORANDUM FOR:** All Multifamily Hub Directors  
All Multifamily Program Center Directors  
All OMHAR Regional Office Directors  
All OMHAR Participating Administrative Entities  
All Performance-Based Contract Administrators

**FROM:** Frederick Tombar III, Acting Deputy Assistant Secretary for  
Multifamily Housing Programs, HT

Barbara Chiapella, Acting Director, Office of Multifamily  
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**SUBJECT:** Implementation of Statutory Authority for Continuing Mark to Market Eligibility - (Look-Back Projects)

The Mark to Market (M2M) Extension Act of 2001(Public Law No. 107-116, January 10, 2002) provides authority to restructure debt for properties with rents at or below market rents, so long as the rents were above market at the time of the initial Section 8 HAP contract renewed under the Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437f note) (MAHRA) (i.e., those renewed after October 1, 1998), and the properties are otherwise eligible for M2M.

The relevant statutory language regarding continuing eligibility reads as follows:

“(f) **LOOK-BACK PROJECTS.** --Section 512(2) of MAHRA is amended by adding after the period at the end of the last sentence the following:

*“Notwithstanding any other provision of this title, the Secretary may treat a project as an eligible multifamily housing project for purposes of this title if (I) the project is assisted pursuant to a contract for project-based assistance under section 8 of the United States Housing Act of 1937 renewed under section 524 of this Act, (II) the owner consents to such treatment, and (III) the project met the requirements of the first sentence of this paragraph for eligibility as an eligible multifamily housing project before the initial renewal of the contract under section 524.”*

The applicable definition at 24 CFR 401.2, *Eligible Project* (3) will be revised to reflect this statutory

change. In the meantime, this memorandum implements the above noted statutory change.

**Applicability.** The provision in the statute applies to any property that had above market rents at the time of initial renewal under the Multifamily Assisted Housing Reform and Affordability Act of 1997, but whose rents are now at or below market, so long as they are otherwise eligible for OMHAR, and the owner has now requested a debt restructuring. Such properties include:

- 1) Properties on the Watch List where restructuring was discontinued but are now receiving market rents under their Watch List or subsequent contracts;
- 2) Properties that were previously given a Potentially Troubled Contract and have since received a Section 8 renewal;
- 3) Properties that completed OMHAR rent restructures (“Lites”); or
- 4) Properties where Field Offices processed Section 8 renewals since October 1, 1998 (including those that received a reduction in the rents associated with these renewals).

Properties that no longer have project-based Section 8 HAP contracts or no longer have FHA insured or HUD held mortgages cannot be considered. Properties in which OMHAR made “bad owner” or “bad project” determinations pursuant to Section 516 of MAHRA will generally not be considered. However, Multifamily HUB or Program Center Directors may request reconsideration of the debt restructuring if specific circumstances of the property or owner have changed (e.g., the owner has agreed to a transfer of physical assets).

**Procedure.** The owner elects to pursue debt restructuring by filing a Contract Renewal Request Form, checking Owner Option 3B<sup>1</sup> (debt restructuring) with the HUD Field Office and completing the Renewal Worksheet For Option Three. Owners may revise the certifications in the Worksheet to clarify that rents were above market. Owners may submit this form at any time during the term of the contract or at the time of renewal. Properties submitting request forms prior to the expiration of their Section 8 contracts are OMHAR eligible as “out-year” contracts.

OMHAR must determine and document that the project had above market rents at the time of the initial expiration prior to assigning the property to a PAE.

HUD staff should contact their Headquarters Desk Officers in Asset Management or the appropriate OMHAR Relationship Manager with any questions or concerns.

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<sup>1</sup> The Request Form (including Worksheets and instructions) can be found in the *Section 8 Renewal Policy Guide* as Attachment 3A-2. Option Three – *Referral To OMHAR* is discussed in Chapter 5 of the Guide.

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