OAHP M2M Operating Procedures Guide

Document needs some form of transmittal from the A/S for Housing-FHC in order to officially approve release. This document should clearly spell out the differences between this version, and previous versions.

Do not note any updated change sections within the document. If there are areas that have been modified since official last release, these need to be highlighted in conformance with Handbook HUD 000.2 (Admin Handbook – HUD Directives Processing).

OMB approvals for information collections approved within the OPG, should be prominently displayed on the TOC, Foreword, or other location that users generally would look on as they utilize the document.

Ensure that the following highlighted items are included in the revised information collection burden estimates under OMB 2502-0533.

Page D-2 :

* + 1. **Final TPA Approval (Full TPAs only).** Based on the PAE’s certification that the transfer closed in accordance with the Preliminary Approval, the PO will grant Final TPA Approval after TPA closing has occurred. This approval may be given at the closing table, after all requirements have been satisfied.

1. **Objectives of TPA Review.** The PAE’s recommendation for OAHP approval is based on the PAE’s determination that the proposed TPA will satisfy each of the following objectives:
   1. **Purchaser Suitability.** The purchaser has the capabilities necessary to own the property successfully.
      1. Prospective owners / managing general partners must satisfy the PAE that they have sufficient experience to operate the property. A troubled property may require an owner/managing general partner who has demonstrated the ability to successfully own and manage troubled multifamily properties.
      2. If the purchaser is not clearly suitable, the PAE must discuss the purchaser with the Hub or Program Center to assess the purchaser’s performance on other HUD properties.
      3. The proposed management agent must satisfy the PAE that he/she has sufficient experience to enable him/her to successfully manage the project. The type and length of experience required will vary depending upon the degree of difficulty of managing the particular project.

Page D-15

1. **Legal Status Documents**.
   1. Certification of Change in Documents. The purchaser’s attorney must certify that, prior to final execution and recordation, any OAHP required changes and no others were made to the documents. See ***Purchaser’s Attorney's Certification of Changes***. Provide an original certificate and one conforming copy.
   2. Title Policy - Provide an original and one copy of title policy or endorsement, as appropriate. If the mortgagor-seller is to be released, a proposed title binder or letter from the company issuing the original mortgagee’s policy shall show that after the transfer the mortgage will remain a first lien on the property and the mortgagee will still be protected by a mortgagee’s title policy.
   3. Attorney’s Opinion - Attorney’s Opinion stating that the transaction has been legally consummated and that the purchaser is legally authorized to operate the project and is obligated to abide by the terms of the Regulatory Agreement. The opinion must also state that the documents that were executed and/or recorded are the same, in form and content, as those approved by OAHP in the preliminary review process. The attorney shall not have an identity of interest with the purchaser or seller.

Is there an Appendix F? Does not seem to be one in the CD provided.

Sample Form 7-3 PAE to OAHP – Where is OMB approval?

Appendix M

Page M-1:

**B Reporting Requirements**. The PAE must report semi-annually to OAHP on those projects that either:

* 1. Renew project-based assistance despite tenant support for tenant-based assistance during the tenant consultation process, or
  2. Renew with tenant-based assistance.

OMB Approval for appMForm?

OMB Approval for appMProj?

OMB Approval for appMTent?

OMB Acknowledgement of appNewI1? This item in not burden approval, but asking OMB to acknowledge an industry standard. Please consult LaJuan Gladden for follow up, and processing.

OMB Approval of apnewM1?

OMB Approval of apnewM2?

OMB Approval of apdp904?

OMB Approval of apdq904?

Chapter 5

Page 5-2:

**D MIS Input**. The Model creates an extract file that must be uploaded to the M2M MIS in order to complete the required electronic submissions to OAHP.

## Page 5-18:

## Subsidy Layering Review

Section 5-15

1. **Overview**. A subsidy layering review is a review to determine that multiple funding sources on a transaction do not overlap. The purpose is to ensure the efficient allocation of scarce governmental subsidy resources so that no project receives more subsidy dollars than necessary. The PAE will do the subsidy layering reviews for the M2M program and certify to OAHP that every Restructuring Plan submitted for approval meets HUD’s “subsidy layering” requirements. In general, completion of the Restructuring Plan in accordance with the M2M program standards assures such overlaps do not occur. Forms 5-4 and 5-5 need OMB approval, likely under 2502-0533.

CHAPTER 7:

1. **PAE Responsibilities**. The PAE business staff and PAE closing attorney are responsible for the following:
2. Business Staff
3. Overall coordination of the closing of each mortgage restructuring transaction
4. Select Closing Attorney
5. Select Closing Escrow Agent (in conjunction with Closing Parties)
6. Work with closing parties to select Title Company
7. Review and approve Closing Attorney’s work product; including review of all legal documents for accuracy, compliance with the approved deal, and consistency with the Form 7.19 Official Term Sheet, and Restructuring Commitment
8. Verify that the mortgagee, servicer, and unpaid balance information in HUD’s F47 System is correct and, if not, that the discrepancy has been reconciled and approved by the Preservation Office Closing Coordinator and the Headquarters Closing Specialist.
9. Provide the initial (and any revisions) Official Term Sheet to the PAE Attorney and OAHP Preservation Office
10. Work with PAE Attorney in the preparation and full execution of the Restructuring Commitment and Amendments
11. Fax copy of fully executed Restructuring Commitment and all Amendments to OAHP HQ Closing
12. Coordinate preparation of and receipt of the Section 223(a)(7) Firm Commitment Application Package from the New Mortgagee
13. Review and recommend approval of Section 223(a)(7) Firm Commitment Application (pursuant to Appendix N)
14. Coordinate the execution of the Section 223(a)(7) Firm Commitment, and any subsequent amendments, with the OAHP Preservation Office Director
15. If the Firm Commitment is assigned by Mortgagee prior to closing, review new Mortgagee entity for acceptability and prepare assignment documentation for Preservation Office Director approval, send copy to Closing Coordinator for update to DAP
16. Prepare and distribute Closing Parties Checklist (Form 7.7) to all parties
17. Provide formal notification to existing mortgagee of pending restructure (Form 7.9) and provide copy of Restructuring Commitment
18. Coordinate receipt of necessary closing information and documentation from existing mortgagee
19. Coordinate preparation of Section 8 HAP Contract by OAHP Preservation Office
20. Notify Multifamily Hub or Program Center of need for reservation of Section 8 HAP funds
21. Coordinate the full execution of Section 8 HAP Contract by Multifamily Hub or Program Center Director and Owner to ensure timely closing
22. Arrange for Rehabilitation Escrow Deposit Agreement (if applicable) including selecting the Contractor responsible for the cash management and repair review and providing for payment
23. Prepare and forward Partial Payment of Claim/Closing package to the OAHP Closing Coordinator at least eighteen (18) days prior to scheduled closing date, and coordinate with OAHP HQ Closing staff. Closing Packages for HUD-held or other non-PPC loans that do not contain TPA to QNP with debt relief, Additional Funds, 236 or subordinate debt features may be submitted to the OAHP Closing Coordinator least seven (7) days prior to scheduled closing date
24. Prepare and provide Closing Sources and Uses statement (Exhibit F) to Closing Escrow Agent and OAHP HQ Closing staff and coordinate with Closing Escrow Agent the preparation of the Final Settlement Statement, Final Disbursement Statement and Form 7.21
25. Coordinate with the Multifamily Hub or Program Center the transfer of Section 8 contract administration responsibility, when appropriate
26. Forward electronic copy of final underwriting model to OAHP Preservation Office Data Integrity Person immediately upon closing, and upload model into M2M MIS
27. Update the M2M MIS in a timely fashion
28. Send copies of the fully executed documents listed on the top of Forms 7.5, 7.12 or 7.13 to the OAHP HQ Post-Closing Specialist immediately, but no later than 5 days after closing (unrecorded mortgages are acceptable at this time). These documents include:

* Executed new first lien Note, if applicable
* Executed mortgage restructuring note and mortgage
* Executed contingent repayment note and mortgage
* Final sources and uses (Exhibit F)
* Property tax bill (if there is no new takeout financing)
* IRS Form W-9 prepared and signed by the owner entity
* OAHP Form 7.16 Mortgagor Information Certification
* Final or Interim Settlement Statement (signed by escrow agent)
* Final or Interim Form 7.21 (signed by escrow agent and PAE or PAE attorney)
* Closing Escrow Instructions
* Executed Rehab Escrow Deposit Agreement (to be provided directly to the REAT Specialist)
* Executed 236 Grant Agreement with old and new IRP schedules (if 236 IRP Re-Use to reserves)

The PAE may choose to have their attorney or the escrow agent provide some of these items but is ultimately responsible for making certain that all required items are received by HQ Post Closing within 5 days of closing.

2. PAE Attorney

1. Work with PAE business staff in the preparation (and full execution) of the Restructuring Commitment and Amendments
2. Using the Official Term Sheet (Form 7.19), review and certify that the Restructuring Commitment:
3. accurately reflects the approved restructuring plan and terms
4. the form has not been altered, and
5. any changes to the form have been approved in writing by OAHP HQ
6. Draft M2M loan documents pursuant to the Restructuring Commitment, Official Term Sheet (Form 7.19), the Instructions to PAE Attorneys in Appendix F, and this chapter
7. Review closing documents prepared by new take-out Lender’s attorney for conformance with 223(a)(7) Firm Commitment and program requirements
8. Coordinate with Multifamily Hub or Program Center attorney to ensure a simultaneous closing when take-out financing is insured under Section 221(d)(4) or 223(f)
9. Draft closing instructions for the Closing Escrow Agent (see 7-9A6)
10. Provide title company with title instructions pursuant to Appendix F Title Instructions, and review pro forma title report
11. Coordinate review of the M2M loan documents by OAHP Preservation Office Director
12. Coordinate execution of restructuring documents by Preservation Office Director
13. Review new title policy for accuracy pursuant to OPG Appendix F prior to closing
14. When requesting review of all legal documents and execution of loan documents by OAHP Preservation Office Director, provide the Official Terms Sheet (Form 7.19), a checklist of documents requiring execution and a letter (Form 7.3), the first of four certifications submitted by the PAE Attorney, certifying the following:
15. the closing documents accurately reflect the approved Restructuring Plan and the Official Term Sheet
16. the standard legal forms have not been altered, and
17. any changes to the forms have been approved in writing by the OGC attorney assigned to OAHP
18. In a Section 223(a)(7) transaction, provide to the OAHP Preservation Office Director the original executed new FHA-insured Note and submit the second of four certifications submitted by the PAE Attorney, a Certification of Closing Attorney (Form 7.8), to the OAHP Preservation Office Director requesting Endorsement of the new FHA-insured Note
19. When requesting a Partial Payment of Claim authorization from the OAHP Preservation Office Director, provide the third of four certifications submitted by the PAE attorney, a Certificate of Closing Attorney (Form 7.11), certifying that the loan documents have been recorded, all funds except the FHA claim have been deposited with the Closing Agent, and that title policies have been issued.

In a restructuring of a HUD-Held Note, or a non-HUD-held restructuring that does not require a 541(b) payment, provide to the OAHP Preservation Office a Certification of Closing, (Form 7.14) in lieu of Form 7.11.

1. The Certification of Closing Attorney (Form 7.8) and request for authorization for Partial Payment of Claim (Form 7.11) must not be submitted until the following have occurred, without exception:
2. Loan documents have been recorded (or in New York, submitted for recording)
3. Verification that all required funds except FHA claim have been deposited with Closing Escrow Agent
4. Title policies have been issued
5. Provide instruction to the OAHP Preservation Office Director regarding the faxing and forwarding of the original endorsed note to the new mortgagee
6. Prepare the IRP reuse documentation for HUD Accounting as required in Appendix Q and forward a copy of the package to OAHP HQ and the new first lender or HUD’s Servicer (currently Data Prompt Services) as applicable
7. Provide to OAHP Preservation Office Director a final certification (the fourth and final certification, either Form 7.11 or 7.14) on letterhead stating that all required actions have been taken, the Closing has been consummated and the Restructuring has been completed according to the guidelines and approved terms
8. In conjunction with the Closing Escrow Agent and the PAE, prepare and execute the final Form 7.21 and Final Settlement Statement to provide OAHP HQ Closing written verification when all funds have been disbursed from the Closing Escrow
9. Prepare and distribute the Closing Docket pursuant to guidance in Chapter 8, if selected to do so by the PAE
10. **Closing Escrow Agent (Third Party Fiduciary) Responsibilities**. The Closing Escrow Agent will be selected by the PAE with the approval of all parties. The Closing Escrow Agent must be an experienced third party fiduciary, be bonded and insured, and have multifamily real estate closing experience. The Closing Escrow Agent must have an arms length relationship with all parties to the closing. It is recommended that the Closing Escrow Agent be part of a major title company. If not part of a major title company, the closing escrow agent must execute a Closing Protection Service Letter. The Closing Escrow Agent expense may be included in the transaction costs.

The following list identifies usual responsibilities of the Closing Escrow Agent. It is not all-inclusive and is intended as information only. The Closing Escrow Instructions prepared by the PAE Attorney will provide deal specific directions (see 7-9 A.6).

1. Capture all closing documents, including specific HUD documents, as listed in the Closing Documents Checklist (Form 7.2)
2. Provide recording instructions to the title company
3. Prior to authorizing the 541(b) claim payment, an OAHP HQ Closing representative will call the Closing Escrow Agent to:
4. Verify that ALL required funds from all other parties have been received,
5. Confirm wiring instructions, and
6. Confirm amount anticipated from HUD.
7. Receive and disburse all funds from the Closing Escrow. The only exceptions are funds that will be paid outside of closing (POC) such as escrows from old lender to new lender.
8. Prepare and submit to PAE Attorney and HQ Closing a disbursement statement and/or settlement statement reflecting the flow of funds through the closing escrow (refer to Section 7-5 below). Label the statement as Interim or Final depending on whether all funds have been received/disbursed.

6. In conjunction with the PAE and their Attorney, complete and execute Form 7.21 and Final Settlement Statement, providing OAHP HQ Closing written notification when all funds have been received and disbursed and the Closing Escrow has been closed out. Attach Final Settlement Statement to 7.21 (and Final Disbursement Statement if applicable).

1. **Owner and Owner’s Attorney’s Responsibilities**.
2. Owner initiates start of closing by executing the Restructuring Commitment
3. Owner is first to execute closing documents
4. Owner’s attorney issues Opinion of Owner's Counsel (Form Legal Opinion in Appendix F) and, if applicable, FHA Opinion of Owner’s Counsel
5. Owner pays into the Closing Escrow the required owner contribution reflected on Exhibit F and in the Closing Escrow Instructions (e.g., owner’s portion of rehabilitation and transaction costs and any other owner funded items)
6. Owner executes final closing documents

Page 7-15

**D PAE Notice to the Existing Mortgagee of Debt Restructuring**. The PAE must provide formal notification (Form 7.9) to the existing mortgagee of the debt restructuring, stating that the Restructuring Commitment constitutes authority for the existing mortgagee to accept prepayment conditioned on completion of restructuring and execution and recordation of the Use Agreement. Authority to accept prepayment expires simultaneously with the expiration of the Restructuring Commitment. A copy of the executed Restructuring Commitment is part of the formal notification. Further, the PAE should provide information regarding the closing escrow and request that the existing mortgagee provide the following to the closing escrow:

1. Executed Application for Section 541(b) Payment (Form 7.6)
2. Authorization for payment of claim to be made to the Closing Escrow Agent (or other) and official corporate resolution naming corporate officers (Authorization should be typed on mortgagee’s letterhead and signed by authorized party.)
3. Executed Release of Deed of Trust/Mortgage

Section 7-6

OAHP requires a Final Form 7.21 and Settlement Statement after closing a M2M transaction to document the actual flow of funds at Closing, enabling OAHP to book the transaction and track payments due to HUD from Closing Escrows. Deadlines established herein for submission of settlement statement documents and closing out the closing escrows refer to the date of “Closing”. In this context, “Closing” refers to the date the PAE Attorney signs the Attorney’s Certification, forms 7.8, 7.11 and/or 7.14 as appropriate.

The PAE must assure that these requirements related to Interim and Final Settlement Statements are addressed in the Closing Escrow Instructions. Refer also to the Resource Desk for additional Questions and Answers to further clarify these requirements.

1. **Disbursement Statement and/or Settlement Statement**. Settlement Statements, documenting the actual flow of funds at Closing, are generally prepared by Closing Escrow Agents. If the PAE Attorney prepares a Settlement Statement instead, OAHP requires that the Closing Escrow Agent provide OAHP and the PAE a copy of their Disbursement Statement immediately (within 5 days) after closing. Using that Disbursement Statement, the PAE Attorney may then prepare the detailed Settlement Statement required to be submitted to HQ Closing within 5 days of closing. The combination of the two documents will provide a good roadmap of the transaction, so HUD can book the transaction and track payments due to HUD from Closing Escrows.
2. Disbursement Statement (optional). This is an optional document prepared and signed by the Closing Escrow Agent showing the accounting of funds in and out of the Closing Escrow. A Disbursement Statement often shows the gross amounts of funds in and out of the escrow (no items paid outside of closing (POC)), with lump sum check amounts and payees. Using the Disbursement Statement, RC and Closing Escrow Instructions, the PAE attorney should then prepare the Settlement Statement and attach both to the Form 7.21 (see below).
3. A separate disbursement statement is required only if the Closing Escrow Agent does not prepare and sign a Settlement Statement.
4. A Disbursement Statement alone is not acceptable at interim or final submission.
5. The Closing Escrow Agent must sign the Form 7.21, even if they sign a Disbursement Statement in lieu of a Settlement Statement.
6. Settlement Statement (SS) – This is a summary statement prepared and signed by PAE Attorney and/or Closing Escrow Agent reflecting the flow of funds into and out of the escrow as well as funds that will be Paid Outside of Closing (POC) either from old lender to new lender, or from old lender to the Closing Escrow Agent, following closing. This statement must be consistent with the escrow Disbursement Statement (if applicable) but must provide a much more detailed summary and breakout of the individual line items that were included in a given check to a payee (or funds received from another source).
7. For example, the Disbursement Statement might show a check # XX was sent on 9/14/2004 to “Old Lender” in total amount of $XXX. The Settlement Statement must provide a breakout of how that figure was arrived at, such as: principal XXX, + interest XXX, + prepayment premium XX, - existing tax XXX, - ins XXX, - residual receipts XXX, - R4R XXX and -MIP XXX escrow balances. The SS must reflect the actual flow of funds through the escrow in accordance with the Closing Escrow Instructions from the PAE attorney to the Closing Escrow Agent.
8. The Settlement Statement must include a separate line item for each source and disbursement so that the flow of funds can be traced.
9. **Interim and/or Final Statements**.Statements must be clearly labeled interim or final, reflecting whether the closing escrow has been closed out and all funds disbursed.
10. Interim Settlement Statement (and Disbursement Statement, if applicable). If funds in the closing escrow remain undisbursed and/ or have not yet been received, within 5 days of Closing, the Closing Escrow Agent must submit an interim statement to HQ Closing identifying funds disbursed, received and remaining in the escrow. The document must be clearly identified as an Interim Settlement Statement (or Interim Disbursement Statement). A separate Interim statement is not required if the escrow has been closed out and there are no undisbursed funds. Instead, submit only a Final Settlement Statement immediately (5 days) after closing.
11. Final Settlement Statement (and Disbursement Statement if applicable). A Final Settlement Statement (FSS) must be provided once the Closing Escrow has been closed out and all funds have been disbursed. If all funds are disbursed at the closing table, a FSS must be submitted within 5 days and an interim statement is not required. Regardless, a FSS must be provided within 5 days of final disbursement. The PAE Attorney and Closing Escrow Agent must both sign the FSS (and/or escrow agent may sign Final Disbursement Statement if applicable).
12. Format for Interim/Final Settlement Statement. OAHP encourages, but does not require, use of the HUD1 or HUD 1A for the Final Settlement Statement. It is essential that the Statement be accurate and unambiguous to those of us using it at OAHP. In lieu of mandating a specific OAHP format for the FSS, we developed Form 7.21 (see D) below, that must now be signed and submitted to HQ Closing by the Closing Escrow Agent AND PAE or PAE Closing Attorney with the Interim/FSS immediately after closing (within 5 days).

## Partial Payment of Claim (PPC) and the PPC Package

Section 7-7

The 541(b) claim payment is the most important part of closing the full restructuring transaction and the most difficult to implement in a timely manner. The following process was developed to ensure all necessary information has been provided and authority given to request payment from the FHA insurance fund. The information compiled for the Multifamily Claims Branch must be in the HQ Closing section office no later than fifteen (15) days prior to the funding request. If the information is not received by that time or is incomplete, the funding and/or closing date of the transaction will be adjusted accordingly. If there is no 541(b) claim payment as part of the transaction, refer to Section 7-11, HUD-held Notes or 7-12, Non-HUD-held/Non-541(b) Restructurings, as appropriate.

1. **Preparation of Partial Payment of Claim Package and Other Internal Control Documents**. HUD's Multifamily Claims Branch must have sufficient advance notice of the Section 541(b) Claim.
2. Immediately following the owner’s execution of the Restructuring Commitment, the PAE notifies the existing mortgagee of the debt restructuring, provides a copy of the Restructuring Commitment, and requests the necessary information and documentation.
3. The existing mortgagee should provide the requested information within a few weeks of the request. At least 45 days prior to closing, if necessary, the PAE should follow up with the existing mortgagee in order to ensure timely receipt of the information. The existing mortgagee should submit the documents directly to the Closing Escrow Agent, with a copy of the package to the PAE via mail or fax. The Closing Escrow Agent will arrange with the PAE for the delivery of the appropriate documents for inclusion in the Partial Payment of Claim Package.
4. At Least Eighteen (18) Days Prior to Closing. The PAE business staff assembles the Partial Payment of Claim Package which contains the documents listed in the Claim Payment Checklist (Form 7.4):
5. Form 7.4 Claim Payment Checklist with attachments
6. Form 7.5 Claim Payment Summary
7. Form 4.11 F47 Clearance Certification or Form 4.12 F47 Reconciliation Form, whichever is applicable
8. Restructuring Commitment, including Sources and Uses and Special Terms and Conditions
9. Certification of Mortgage Balance (from existing mortgagee)
10. Mark to Market Payment Information Form (Form 7.25)
11. Written Authorization from Existing Mortgagee for Payment to be Sent to Servicer or Other Entity and official corporate resolution naming corporate officers
12. Form 7.6 Application for Section 541(b) Claim Payment
13. Insurance Termination Request for Multifamily Mortgage (HUD 9807)

## Closing Document Preparation, Execution, and Recordation

Section 7-8

The PAE attorney, working with the Closing Escrow Agent, the owner, the owner’s attorney, an attorney for the existing mortgagee (in the case of a loan modification) or the new mortgagee, and Multifamily Hub or Program Center if FHA-insured (in the case of 221(d)(4) or 223(f) take-out financing), must oversee the completion of all closing documents and provide copies and the Certification of Closing Documents (Form 7.3) to the OAHP Preservation Office Director. For more specific guidelines for completing the legal documents, see Closing Instructions to PAE Attorney in Appendix F of this OPG.

* 1. Timing. Document preparation starts as soon as the owner receives closing instructions from the PAE. It should take no more than forty-five (45) days. All documents should be completed and submitted to the PAE (or the Closing Escrow Agent, as applicable) at least ten (10) days prior to closing, with the exception of the HUD Multifamily Claims documents. (See Section 7-8 above for a detailed explanation of the claim payment process.)
  2. Legal Requirements.

1. **Hiring an Attorney**. The PAE should use an attorney experienced in multifamily restructuring finance (including FHA insurance programs) to complete the closing documents. Any outside attorney will be subject to the conflict of interest rules. The PAE Attorney is responsible for drafting all M2M legal documents and for reviewing all legal documents in the closing.
2. **Paying Attorney's Costs**. Attorney fees will be recognized to the extent allowed in the Portfolio Restructuring Agreement (PRA).
3. **Using Standardized Documents**. The PAE attorney shall use the standard form closing documents provided by OAHP and HUD that are appropriate to the transaction under the terms of the Restructuring Commitment. “Standard form closing document” means that neither the PAE attorney nor any other party is permitted to alter the document, except for changes required to conform with the terms of the RC (e.g. boilerplate language in standard FHA mortgages that call for payments to be made on a monthly basis must be changed to conform to the terms of the M2M debt) as well as changes necessary under state law, such as notary acknowledgments.
4. **Using Form 7.3**, the PAE attorney must certify that all standard form legal documents are complete, accurate, executed, and consistent with the terms of the Restructuring Commitment as shown on the Official Term Sheet (Form 7.19) and with the other documents.
   1. General Instructions for Completing Closing Documents. The PAE attorney has primary responsibility for preparing the OAHP legal documents and in completing or reviewing Section 223(a)(7) required closing documents. For additional guidance, see Form 7.2 Closing Document Checklist, and Closing Instructions to PAE Attorney in Appendix F.
5. **FHA Number**. If there will be FHA-insured take-out financing, the new FHA Project Number should be typed on each take-out financing closing document if not otherwise included in the document. (The PAE is provided the new FHA number by the Preservation Office Closing Coordinator.) The old FHA number should be typed on each OAHP closing document. In most cases, the first five digits of the FHA# should be identical to the existing FHA#. In all cases, the last three digits should be higher than the existing FHA#.
6. **Specific State and Local Requirements**. Any changes in the forms required by state or local law must be set out in an addendum to the document with a statement clarifying that the change is required by State or local law and must include specific citations to the state or local law requiring the change.
7. **Recorded Documents**. The PAE Attorney is responsible for capturing all recorded documents after recordation. Each recorded document must contain the return address of the PAE Attorney.
   1. Cooperating with the Owner’s and Mortgagee’s Attorneys. The PAE attorney should work closely with the owner’s attorney and mortgagee’s (or loan servicer’s) attorneys to complete the closing documents.
   2. Wiring Instructions and Address for Disbursements. The PAE should obtain instructions from all working parties expecting payments from the M2M closing and address them in the Closing Escrow Instructions (see E below). HUD must be included as the primary recipient for excess funds after final settlement and the funds must be sent to HUD (see paragraph 7-5E). Instructions should include the following information:
8. Wiring numbers for lenders or servicers
9. Names, addresses, telephone numbers and points of contact
10. Tax identification numbers
    1. Closing Escrow Instructions from the PAE Attorney to the Closing Escrow Agent. About forty-five (45) days prior to closing, the PAE attorney is responsible for drafting instructions for the Closing Escrow Agent who will be responsible for the closing escrow. The instructions must include specific information in order to close the escrow correctly and expeditiously. It is suggested that all parties utilize the closing escrow instructions to include their triggers and facilitate clear coordination of effort. The instructions should include the following information:

Names, addresses, points of contact, and other contact information for all parties to the escrow, including HUD departments;

Wiring instruction or payment information from all parties as applicable (reminder, HUD is usually the recipient of any excess funds after final settlement so instructions for wiring or other payment to HUD must be included, see paragraph 7-5E);

All required executed and miscellaneous documents (including Section 8 documents);

All sources of funds (including other sources when processed in accordance with OPG Appendix R as an Additional Funds transaction);

All disbursements of funds and specific information regarding the timing and recipient of funding;

Identify any funding sources that will not be available at the time of closing that have been accepted by OAHP (specifically addressed in the RC for delayed pay-in);

Specific funding instructions if all funds will not be funneled through the escrow (e.g., notification of receipt of funds from the mortgagee, etc.);

If take-out financing includes construction financing (draws up to a maximum amount over time in lieu of a permanent loan all disbursed at closing) address requirements documenting availability of funds;

Specific requirements relative to application of any excess funds (see 7-5C.2.);

The order in which documents must be recorded; and a clause stating that the executed Release of Mortgage will not be recorded until the disbursement to the existing mortgagee has been made.

Provide specific instructions for remitting any funds to HUD (reflecting each appropriate (different) mailing address as specified in 7-6E)

Require preparation, execution and submission of the interim/final settlement documentation including the Form 7.21 as required in 7-6 above

Require preparation and submission of Closing Escrow Agent’s disbursement statement within 3 days of Closing or within 3 days of final disbursement if funds were undisbursed at the earlier submission.

Require that all funds be disbursed and the closing escrow closed out immediately after Closing but in no event greater than 30 days after Closing. If funds remain undisbursed at that time, the PAE attorney must instruct the Closing Escrow Agent to remit all excess funds to HUD, unless HQ Closing has approved in writing (in advance) an extension to the Closing Escrow term.

Method of unwinding the escrow if the closing does not occur.

At least thirty (30) days prior to closing, the Closing Escrow Agent should execute the Escrow Instructions and return them to the PAE attorney.

Prior to execution of documents, the owner must execute the Escrow Instructions. The unwind feature of the escrow instructions will have no value if the owner has not agreed in writing prior to closing.

* 1. **Managing Closing Document Execution**.

1. PAE Attorney’s Central Coordinating Role. The PAE attorney manages closing document execution and confirms that the appropriate parties receive, execute, notarize (as needed), and return all documents to the appropriate parties. All documents may be forwarded to the PAE, who in turn will ensure that the Closing Escrow Agent receives the documents in a timely manner. The exception to this rule is the existing mortgagee. In order to minimize confusion, the existing mortgagee is requested to forward all documents directly to the Closing Escrow Agent. The Closing Escrow Agent will coordinate with the PAE Attorney regarding documents requiring PAE administration.
2. Preparation, Execution and Distribution of Closing Documents. The Closing Document Checklist (Form 7.2) provides required standard form closing documents for most financing arrangements. (If a specific financing arrangement is not listed, contact OAHP HQ Closing for assistance.) The PAE Attorney prepares the M2M closing documents, reviews the documents for accuracy, completeness, compliance with the Official Term Sheet (Form 7.19), and the Restructuring Commitment; arranges for PAE business staff and OAHP Preservation Office review of the documents; arranges for execution of the documents; reviews take-out financing loan documents for consistency with the Restructuring Commitment, the 223(a)(7) Commitment (if applicable) and the Official Term Sheet (Form 7.19), and coordinates the closing date and closing structure with the Closing Parties.
3. Title Insurance. With respect to the status of title to a project, for review and certification purposes, the PAE and PAE Attorney may rely upon such title reports, title commitments, new title policies, or other endorsements to an existing title policy provided by the title company. See Title Instructions in Appendix F of this OPG for specific title requirements.
   1. **Review and Certification of Legal Documents**.
4. When the owner, new mortgagee and existing mortgagee have properly executed all relevant closing documents, the PAE Attorney must review them to ensure they are complete, have not been altered, and conform to the terms and conditions of the Official Term Sheet (Form 7.19), Restructuring Commitment and Firm Commitment for FHA Insurance, if applicable. At least nine (9) days prior to closing, after the appropriate parties have executed the closing documents, and the PAE Attorney has approved them, the PAE Attorney should forward the partially-executed closing documents that require OAHP’s execution to the OAHP Preservation Office with the following information:
5. Certification of Closing Documents (Form 7.3)
6. Legal Opinion of Owner’s Attorney (Appendix F)
7. Review by OAHP Preservation Office. The OAHP Preservation Office staff will conduct a full detailed review of the documents to ensure that all appropriate documents are included (using the Closing Document Checklist, Form 7.2) and all documents are consistent, comply with the approved deal as revealed by the Official Term Sheet (Form 7.19), and Restructuring Commitment, are correct, complete and properly executed.
8. Execution by OAHP Preservation Office. The OAHP Preservation Office Director should execute the appropriate closing documents as outlined in the Closing Documents Checklist (Form 7.2), and as advised by the PAE Attorney.
9. Returning Documents to the Closing Escrow Agent. The OAHP Preservation Office Director should return the executed closing documents directly to the Closing Escrow Agent, or as instructed by the PAE Attorney, at least five (5) days prior to closing by overnight mail, and notify the PAE that this has been completed. The PAE Attorney should determine the logistics of this action based on the Closing Escrow instructions.
   1. **Closing Escrow Agent Document Holding**. The Closing Escrow Agent captures all closing documentation from the PAE, the OAHP Preservation Office, and the existing mortgagee, whether or not the document requires recordation. The Closing Escrow Agent will capture all funds from applicable parties, disburse funds as instructed, and ensure the recordation of all necessary documents in the appropriate order. The Closing Escrow Agent will provide to the PAE or PAE Counsel all remaining unrecorded, executed documents to be filed in the appropriate closing dockets.
   2. **Setting Closing Date and HUD Funding Date**. The PAE, the title company, and the Closing Escrow Agent must coordinate with one another, as well as the OAHP Preservation Office, the OAHP Closing Coordinator, and any other interested parties, to set a closing date. At least thirty (30) business days prior to closing, the PAE should work with all parties to set a target closing date. In addition, when a 541(b) Claim payment is required, the PAE must coordinate with OAHP HQ Closing to obtain a slot on the funding calendar that will work with the schedule for document execution and recordation. The requested funding date must be included in the Partial Payment of Claim Package.
   3. **Transmitting Closing Information from the PAE to All Working Parties**. After coordinating reviews and establishing the closing date, the PAE should prepare and send a transmittal letter to all working parties. The letter should: 1) be sent within five (5) days of the final closing date; 2) advise that the closing documents are complete and conform to the Restructuring Commitment and the Firm Commitment (if applicable); 3) indicate the final date of closing; and 4) provide instructions for completing an escrow closing.
   4. **Recordation and Effective Date of Closing**.
10. Recordation. The order of recordation shall be:
11. Release of Regulatory Agreement;
12. M2M Use Agreement;
13. Section 236 Use Agreement, if there is no new take-out financing; if there’s new take-out, record after the UCC for the new take-out financing.
14. Subordination Agreement of Existing FHA-insured Mortgage (if loan modification);
15. New First Mortgage, Modification of FHA-insured Mortgage, or Modification and Subordination of HUD-held Mortgage;
16. New FHA First Mortgage Regulatory Agreement with M2M Rider;
17. UCC Financing Statements for first Mortgage Note (recorded with appropriate governmental agency(ies))
18. Mortgage Restructuring Mortgage/Deed of Trust with M2M Rider;
19. Appropriate FHA Regulatory Agreement with M2M Rider for Mortgage Restructuring Mortgage;
20. UCC Financing Statements for Mortgage Restructuring Note (recorded with appropriate governmental agency(ies))
21. Contingent Repayment Mortgage with M2M Rider;
22. Appropriate FHA Regulatory Agreement with M2M Rider for Contingent Repayment Mortgage;
23. UCC Financing Statements for Contingent Repayment Note (recorded with appropriate governmental agency(ies))
24. Subordination Agreements for existing debt
25. Release of existing Mortgage/Deed of Trust
26. Release of existing Security Agreement (if applicable)
27. UCC Termination Statements
28. Closing Completed. Closing is complete when the PAE attorney notifies OAHP HQ Closing that the Closing Escrow is closed out, all funds have been disbursed and a Final Settlement Statement and Form 7.21 have been provided to OAHP HQ Closing.
29. Critical Documents. The Closing Escrow Agent or PAE must fax to OAHP HQ Closing the following copies of the documents listed on the top of Forms 7.5, 7.12 or 7.13 to the OAHP HQ Post-Closing Specialist immediately, but no later than 5 days after closing (unrecorded mortgages are acceptable at this time). These documents include:

* Executed new first lien Note, if applicable
* Executed mortgage restructuring note and mortgage
* Executed contingent repayment note and mortgage
* Final sources and uses (Exhibit F)
* Property tax bill (if there is no new takeout financing)
* IRS Form W-9 prepared and signed by the owner entity
* OAHP Mortgagor Information Certification (Form 7.16)
* Final/ Interim Settlement Statement (signed by escrow agent)
* Final/Interim Form 7.21 (signed by escrow agent and PAE)
* Closing Escrow Instructions
* Copy of the signed Rehab Escrow Deposit Agreement (to be provided directly to the REAT Specialist)
* 236 Grant Agreement with old and new IRP schedules (if 236 IRP Re-Use to Reserve for Replacements)

The PAE may choose to have their attorney or the Escrow Agent provide some of these items but is ultimately responsible for making certain that all required items are received by HQ Post Closing within 5 days of closing.

* 1. **Endorsement for Full Mortgage Insurance under Section 223(a)(7)**.

1. Conditions for Endorsement. The OAHP Preservation Office Director will endorse the Note for full mortgage insurance when all of the following have occurred:
2. All required Section 223(a)(7) insured mortgage closing documents, and all M2M required closing documents to consummate the restructuring transaction, have been properly executed, notarized, as needed, and recorded.
3. All of the conditions of the Firm Commitment have been satisfied.
4. All of the conditions of the Restructuring Commitment have been satisfied.
5. The mortgagee has paid the initial mortgage insurance premium, in the case of Section 223(a)(7) mortgage insurance.
6. Request for Final Endorsement of Credit Instrument (FHA Form 92023) has been executed by the new mortgagee and mortgagor and delivered with the Note to be endorsed for FHA mortgage insurance. The mortgagee must make appropriate arrangements for handling the original promissory Note, both before and after endorsement.
7. The Title Policy for the Section 223(a)(7) insured mortgage has been issued as per the Title Insurance Instructions set out in Appendix F of this OPG.
8. Required Actions Immediately Following Endorsement. Immediately following endorsement for full FHA mortgage insurance, the OAHP Preservation Office should:
9. Follow the established procedures for paying mortgage insurance fees and premiums (see Section 7-5.B.2.a.)
10. Fax a copy of the endorsed note to the insured mortgagee and deliver the original endorsed Note directly to the insured mortgagee in accordance with the arrangements made in advance by the mortgagee
11. Fax a copy of the endorsed note to the HQ Tracking Representative, who will generate the 290 closing memorandum in DAP
12. Forward the signed Closing Memorandum (HUD Form 290) and backup documentation (the endorsed 223(a)(7) note, the Official Receipt (Form HUD 27038), a copy of the MIP check, the HUD 9807 if not HUD-held, and the Restructuring Commitment and all amendments), to the OAHP Closing Specialist in OAHP HQ no more than 2 days post closing.
    1. **Endorsement under Section 542(c) HFA Risk-Sharing or Section 542(b) GSE Risk-Sharing**. If the new mortgagee is providing refinancing under the Section 542(c) HFA Risk-Sharing program, the HFA will present to the local Multifamily Hub or Program Center for endorsement at closing: (1) the closing Risk-Sharing docket, and (2) evidence that the initial mortgage insurance premium has been paid to the Mortgage Insurance Operations Branch in the FHA Comptroller’s Office in headquarters. Under Section 542(b) GSE Risk-Sharing program, Government-sponsored enterprises (GSEs) that have entered into Risk-Sharing Agreements with HUD may reinsure project mortgages and present mortgage notes to the Multifamily Hub or Program Center for endorsement after the loan has closed. GSEs are prohibited from refinancing their own loans without prior HUD approval.
13. Conditions for Endorsement. If the Multifamily Hub or Program Center determines that all documentation and certifications are complete and in conformance with the terms and conditions of the Restructuring Commitment and Lender’s Risk Share Commitment, the Multifamily Hub or Program Center Director will endorse the Note for mortgage insurance and forward it to the Closing Escrow Agent for distribution.
14. Required Actions Immediately Following Endorsement. Within two (2) days of escrow closing, the PAE must provide complete closing documents to the Multifamily Hub or Program Center with jurisdiction. The Multifamily Hub or Program Center delivers the completed closing memorandum (HUD Form 290) package to the Mortgage Insurance Operations Branch in the FHA Comptroller’s Office in headquarters (see Chapter 8 Internal Documentation Distribution).

## Section 221(d)(4) Substantial Rehabilitation or Section 223(f) Refinancing

Section 7-9

The closing process for properties with new FHA insured loans under Section 221(d)(4) and Section 223(f) mortgage insurance follows the closing guidance above, with the exception of the process for closing the first mortgage. The OAHP Preservation Office, Multifamily Hub or Program Center, PAE, new mortgagee, and owner will follow HUD’s current procedures for closing on a first mortgage with a Firm Commitment for FHA mortgage insurance under Section 221(d)(4) or Section 223(f) with the exception that the loan closes concurrently with the Mark-to-Market closing. This Operating Procedures Guide does not include detailed instructions for the first mortgages under these sections.

1. **Document Execution**. The PAE attorney and business staff will review all mortgage Restructuring documents and ensure consistency between the terms of the FHA mortgage insurance closing and the terms of the Restructuring Commitment and the Official Term Sheet (Form 7.19) before submitting them to the OAHP Preservation Office.
2. **Internal Control**. The internal control process will be the same as with other first mortgage financing alternatives. The Section 221(d)(4) and 223(f) closings should be simultaneous with the Mark-to-Market closing. The closing escrow instructions should include the needs of all parties to ensure an accurate, smooth closing. All funds should flow through the M2M Closing Escrow Agent, including the full loan disbursement from the new FHA insured lender. The HUD attorney closing a Section 221(d)(4) or Section 223(f) loan handles only the new insured take-out – the PAE is still responsible for closing the restructuring and must coordinate the entire process. Contact OAHP HQ Closing if there are questions regarding roles and responsibilities.

## HUD-Held Notes

Section 7-11

HUD-held notes are formerly FHA-insured notes, which have already been through the FHA claim process, which are now properties owned by HUD. An M2M restructuring of a HUD-held note does not require a partial payment of claim at closing. A Closing Escrow Agent is still required to act as third party fiduciary. As mortgagee, HUD must issue a final Payoff Demand. The Payoff Demand must be fully satisfied through the Restructuring.

* 1. **Closing.** The OAHP Preservation Office Director must receive required PAE Attorney Certifications and must authorize closing by reviewing for accuracy, comparing with the payoff demand to ensure the existing obligation will be fully resolved and assuring all necessary funds are in the closing escrow. Preservation Office Directors must notify the HQ Closing Department by phone and by email when they have the signed attorney certification in hand (the Form 7.14) and are authorizing the closing. Until this step is completed, the closing is not official. If the closing date is delayed, additional per diem interest will be due to HUD and could result in a shortfall at the closing table. Closing guidance in the balance of Chapter 7 is applicable for HUD-held loans, as modified in this section.
  2. **Closing Escrow Agent**. The Closing Escrow Agent is a vital part of this closing process and acts as the third party fiduciary. The Closing Escrow Agent has the same responsibilities in the closing as it would for any other closing. A final Settlement Statement is required and must provide sufficient information to resolve the HUD payoff demand and any/all funds in the escrow (see comment in A. above regarding shortfalls if the closing date is delayed). The PAE Attorney and Closing Escrow Agent must sign the Settlement Statement. See Section 7-7 for guidelines on preparing the Settlement Statement.

1. **Multifamily Notes Servicing**. Since HUD acts as the lender on existing HUD-held notes, the Preservation Office Closing Coordinator must request and receive a final and unqualified Payoff Demand from Multifamily Notes Servicing via fax (Debbie Courtright, Multifamily Notes Servicing Branch Manager, Fax 202 708 619-8408) prior to closing. In addition, Notes Servicing:
2. Verifies current escrow balances,
3. Permits no escrow disbursements without prior OAHP HQ Closing approval (after issuance of Payoff Demand letter), and
4. Disburses funds from existing HUD-held escrows to set up new post-closing escrows (if necessary), based on deal specific instruction from HQ Closing.
5. **Legal Documentation**. The legal documentation, title insurance and title requirements are the same as a restructuring requiring a claim payment. The Closing Document Checklist (Form 7.2) is provided to assist in determining appropriate documentation in various financing alternatives.
6. **PAE Attorney Certifications**. The PAE attorney provides to the OAHP Preservation Office Director all four Certifications to direct the Closing sequence (when the Restructuring Commitment is ready to execute, when the legal documents are ready to execute, when the closing is ready to consummate and when the closing is complete).
7. **HUD-Held Closing Package and Form 7.12**. A HUD-Held Restructuring Summary (Form 7.12) (the counterpart to the Claim Payment Summary Form 7.5), Restructuring Commitment with Exhibit A and Exhibit F, HUD Payoff Statement, the HUD-Held or Non-Claim/Non-HUD-Held Restructuring Summary Checklist (Form 7.4a) (the counterpart to the Claim Payment Checklist (Form 7.4)) and Closing Parties Checklist (Form 7.7) must be prepared and submitted by the PAE to the OAHP Preservation Office Director for execution prior to closing. These documents and attachments (the Closing Package) must be submitted to OAHP HQ Closing at least 2 days prior to Closing if there are no TPAs, QNPs, 236, subordinate financing, or additional funds. In closings that have these features, the non-claim closing packages must be submitted to OAHP HQ Closing at least 15 days prior to the closing date.
8. **Upon receipt of the Certification of PAE Attorney (Form 7.14)**, the Preservation Office Director must verify that the transaction is ready to close and contact the HQ Closing Department Manager by phone and email, and trigger the closing (same process as if a claim were involved).
9. **Projects with both a HUD-Held and HUD Insured Loan**. Projects with more than one loan, where at least one loan is still HUD insured and one is HUD-held, require an ad hoc edit to the model. Contact the Resource Desk for assistance. Generally, in such a situation, the project number assigned to the MRN and CRN should match the previously HUD-held FHA project number. Contact HQ Closing for further assistance.
10. **FHA-Insured Take-out Financing**. If the take-out financing is a FHA insured Section 223(a)(7) loan, the processing is the same as any other Section 223(a)(7). The PAE Attorney will provide a Certification Form 7.8, and the Preservation Office Director will trigger the closing by contacting the HQ Closing Department Manager and triggering the closing, just as if a claim is involved.
11. **Payments to HUD**. When the existing loan is HUD-held, in addition to routine payments (of excess funds) to HUD from a Closing Escrow, the Closing Escrow Agent must disburse to HUD any funds that are to be applied to the existing HUD-held Note or to fund new HUD-held escrows (if no take-out financing – HUD is in first position after closing again). Those payments must be sent to the HUD Multifamily Notes Servicing Branch. Refer to paragraph 7-5E for address and wiring instructions.
12. A transmittal memo must accompany wires and checks, identifying the original FHA project name and number, the reason for the payment and how funds are to be applied (M2M restructuring, apply to the existing HUD-held debt).
13. The OAHP PO Closing Coordinator is responsible for submitting a completed Form 7.12 that provides the M/F Notes Servicing Branch all required information to resolve the HUD-Held obligation and address application of all existing escrows being held in trust for the owner. To do this accurately, the Form 7.12 and Exhibit F Sources and Uses must reflect both the existing and new escrow account balances post closing.
14. **Disbursements by HUD from Existing HUD-held Escrows**. Application of any existing HUD-held escrow balances must be addressed by the PAE in condition #38 of the Restructuring Commitment (and addressed in Closing Escrow Instructions and in Exhibit F Sources and Uses). Refer to paragraph 7-5A.3.above. When the existing loan is HUD-held, the PAE should generally include the language in #38A.i.of the RC (Escrows to be Deducted from Payoff Amount).
15. After the M2M closing, OAHP HQ Closing staff will review the closing escrow agent’s final Settlement Statement and provide specific instructions to HUD for application of the existing escrows. Often the total of the new loan take-out and owner contribution (in Sources) are adequate to fund all the new escrows and funds will be disbursed to the new lender from the closing escrow agent for those escrows. If HQ Closing determines additional funds are needed, it will instruct HUD how existing escrow balances are to be disbursed to the new lender and how remaining funds (if any) are to be applied. Generally, if there are funds remaining, they are applied to reduce the write off of the existing HUD-held note.
16. It is essential that Exhibit F Sources and Uses reflect both existing (Sources) and new (Uses) escrow balances so funds can be properly reconciled.
17. Sometimes new lenders may insist they want the existing escrowed funds deposited in the closing escrow account and disbursed at closing to ensure that the new escrows are fully funded. We do not recommend this for HUD-held loans. Such requests must generally be submitted at least one week in advance of closing in order for the funds to be received on the scheduled closing date and it’s not uncommon (with M2M Closings), for there to be changes in the identified closing escrow agent (agent name, account number, etc.) immediately prior to closing. This type of change could be very problematic if the escrow funds have already been sent (to the wrong place), and could delay closing. PAEs need to explain these issues and concerns to new lenders.
18. **Closing Wrap-Up**.
19. The effective date of closing will be the date the documents have been executed and recorded (see 7-9G), the title policies have been issued, funds have been captured and disbursed by the Closing Escrow Agent and HQ Closing has been notified by phone and email. Since a claim payment is not required, a slot on the funding calendar is not required even though HQ Closing must be notified of the scheduled closing date. The PAE must request a revised payoff from HUD if the closing date slips (will affect per diem interest and possibly other costs).
20. Closing Closing is complete when the PAE attorney notifies OAHP HQ Closing that the Closing Escrow is closed out, all funds have been disbursed and a Final Settlement Statement and Form 7.21 have been provided to OAHP.
21. Immediate Closing Submissions to OAHP. Immediately after closing (within 5 days), the Closing Escrow Agent and/or PAE must fax to OAHP Closing a copy of the signed settlement statement documentation (see 7-6), the endorsed first lien note, the M2M notes and mortgages, final Exhibit F, Form 7.16, W-9, and, if there is no take-out financing, a copy of the most recent tax bill.

## Non-HUD-Held/Non-541(b) Restructurings – Full Restructurings with no 541(b) Payment

Section 7-12

For transactions with existing FHA-insured Notes that will not require a Section 541(b) Payment, the PAE business staff and PAE attorney should coordinate the transaction with OAHP HQ Closing. For example, a large balance in the residual receipts account (available to reduce the Section 541(b) Payment amount when it is part of a M2M FULL debt restructuring) may eliminate the 541(b) Payment entirely, instead of just reducing it.

The closing requirements for these are the same as HUD-held and 541(b) transactions, with the exception of the closing authority. Closing guidance in the balance of Chapter 7 is applicable, as modified in this section. Prior to closing, the PAE must provide to the OAHP Preservation Office Director for execution and submission to HQ Closing to request authorization to close the transaction: Form 7.13 Non-HUD-held / Non-PPC Closing Summary (and attachments), and Form 7.4a HUD-Held or Non-Claim/Non-HUD-Held Restructuring Summary Checklist.

1. **Excess Residual Receipts and/or other escrows.** In some instances, there will be excess funds in the residual receipts and/or reserve for replacement account after restructuring. Disbursement of those excess reserve funds must be addressed in the Restructuring Commitment and Closing Escrow Instructions. If the RC requires payment of the funds to HUD, the Closing Escrow Agent should disburse in accordance with the instructions in paragraph 7-5E. except that the transmittal should indicate that the funds are to be applied to either:
2. HUD’s Miscellaneous Income Account when the project is under the New Section 8 Regulations (New Reg) for Residual Receipts (that would belong to HUD at HAP expiration).
3. The MRN when the project is under the Old Section 8 Regulations (Old Reg) for Residual Receipts (that would belong to the owner at HAP expiration).
4. Refer to the Resource Desk for questions regarding Old Reg/New Reg Residual Receipts.

## Business Forms, Legal Forms and Appendices

Section 7-13

**Chapter 7 Business Forms**

1. Transmittal Letter from PAE or PAE Attorney to Owner with Closing Instructions
2. Closing Documents Checklist
3. Certification of Closing Documents from PAE Attorney to OAHP Preservation Office Director
4. Certification of Transfer of Physical Asset Documents from PAE to OAHP Preservation Office Director
5. Claim Payment Checklist
6. HUD-Held or Non-Claim/Non-HUD-Held Restructuring Summary Checklist
7. Claim Payment Summary
8. Application for Claim Payment
9. Closing Parties Checklist
10. Certification of Closing Attorney – with 223(a)(7) Take-out (execute Form 7.11 or 7.14 in addition, as appropriate)
11. Notification Letter from PAE to Existing Mortgagee
12. Reserved
13. Certificate of Closing Attorney –with 541(b) Payment (execute 7.8 in addition if 223(a)(7) Take-out)
14. HUD-Held Closing Summary
15. Non HUD-Held/Non-PPC Closing Summary
16. Certification of Closing Attorney - No 541(b) Claim (execute 7.8 in addition if 223(a)(7) Take-out)
17. Authorization for Write-Off of M2M Notes and Release of Legal Documentation (OPG Appendix C)
18. Certification of Mortgagor Information
19. Docket Review Checklist
20. Authorization for Assignment of M2M Notes (OPG Appendix C)
21. Official Term Sheet – located in Underwriting Model
22. Reserved
23. Transmittal and Certification of Interim/Final Settlement Statement and Closing Escrow Instructions

**List of Legal Forms**

For a complete list of Legal Forms, see Form 7.2 Closing Document Checklist in Appendix F.

**Appendices**

Appendix C addresses sales to qualified non-profits and related forgiveness or assignment of M2M debt.

Appendix D contains HUD requirements for TPAs

Appendix F contains the following information:

Guide to PAE Attorney - Closing Documentation

Title Instructions

Mark-to-Market Closing Checklist for Section 223(a)(7)

Standard Form Legal Documents (available on the OAHP web site)

Appendix N describes the HUD requirements for processing a Section 223(a)(7) FHA-Insured Loan

Appendix P addresses requirements when a project has existing Flexible Subsidy Loans including subordination issues to be dealt with at Closing.

Appendix Q describes the requirements for processing IRP re-use for a 236 project and includes language for the Restructuring Commitment and documenting the re-use.

Appendix R describes the requirements for processing a M2M project when new sources of funds are brought to the deal, generally to achieve a greater level of up-front rehab than possible under a standard M2M transaction. These transactions typically involve multiple funding sources with special conditions for funding approval. These conditions must be reviewed and addressed early as they can affect the M2M Closing. Early coordination between the PAE Closing Attorney, OAHP Closing Coordinator, and owner and lender attorneys is essential.

## Internal Document Distribution

Section 8-2

The various HUD Divisions with an interest in Mark-to-Market restructurings will not need a full closing docket, however, specific internal administrative forms need to be distributed in a timely manner after closing, as follows:

1. **OAHP HQ Closing Department.** The PAE or PAE’s designee must deliver the following fully executed documents to the HQ Closing/Post-Closing Reviewer within three days of closing:
2. Form 7.16
3. Endorsed 1st lien Note (if applicable)
4. Mortgage Restructuring Note and Mortgage
5. Contingent Repayment Note and Mortgage
6. Final, signed Settlement Statement
7. W-9 Form
8. 236 Grant Agreement w/ old and new IRP re-use schedules (if appl.)
9. Tax bill (if HUD is in 1st lien position)
10. **Multifamily Insurance Operations**. The following items must be sent immediately (within three (3) days, except as noted in d. below) after closing by the PAE or PAE's designee to the OAHP HQ Closing Team. The OAHP HQ Closing Team will ensure that the items are received by Multifamily Insurance Operations.
    1. When FHA-insured restructuring results in a first mortgage insured under Section 223(a)(7):
       1. Copy of the executed Restructuring Commitment including Exhibit A and Amendments
       2. Copy of the Request for Firm Commitment/Risk Sharing Authorization or Credit Subsidy Obligation
       3. Copy of the executed new first Mortgage Note
       4. Original executed HUD 290 Closing Memorandum (this item is sent to the Preservation Office Closing Coordinator within one (1) day of closing. The Closing Coordinator reviews it and obtains the Preservation Office Director’s signature, then sends it to the HQ Closing Department within two (2) days of closing).
       5. Copy of the Initial Mortgage Insurance Premium Receipt
       6. Original executed HUD 9807
    2. When FHA-insured restructuring does not result in FHA-insured take-out financing, an original executed HUD 9807 should be sent to Multifamily Insurance Operations (not applicable to HUD-helds).

## Document Docket Preparation and Distribution

Section 8-3

1. **General Responsibilities**. The PAE is responsible for preparing the Closing Docket for each full restructuring. Prior to preparing the Closing Docket, the PAE is required to review the documents and other contents of the docket, to ensure the information therein is complete, correct, and complies with the approved restructuring, the Official Term Sheet and the guidelines for legal documentation and requirements in Chapter 7 of this Procedures Guide. The Closing Docket must contain all required documents/forms generated by the closing. The PAE is responsible for distributing the Closing Docket to the proper parties as noted below. Each of these parties must acknowledge receipt of the documents and agree to fulfill assigned responsibilities. (See Form 8.1) The PAE must maintain the receipts and a copy of the Closing Docket in its project file.
2. **Recipients of Closing Dockets**. Closing Dockets are to be prepared for the following recipients:
3. Washington D.C., Attention Closing/Post-Closing Department Manager (contains original documents)

Note: (The Section 223(f) and 221(d)(4) Closing Docket will be prepared by the field office’s OGC, however; Closing Dockets for the OAHP part of the closing should include photocopies of the 223(f) or 221(d)(4) transaction documents)

1. OAHP Preservation Office
2. PAE
3. OAHP Post-Closing Portfolio Manager
4. HUD MF Hub or Program Center Director
5. Owner (if requested)
6. **Preparation of Closing Dockets**. The PAE will prepare complete sets of closing dockets, one (1) of which contains original documents, for distribution to designated recipients. Other dockets may be prepared at the request and expense of the owner/owner’s attorney.
7. Using the Closing Documents Checklist (Form 7.2) as a source of information, add any additional documents relevant to each closing in the corresponding location (first mortgage documents, include in the first mortgage documents section; second mortgage documents, include in second mortgage documents section, etc.). Prepare a Table of Contents that lists and numbers each item consecutively from 1 to last number. Do not number each section separately.
8. Each docket will contain all of the legal documents and required forms listed in the final Closing Documents Checklist.
9. The documents should be placed in a 9” x 14” top fastening folder with each document placed under a numbered tab corresponding to the Table of Contents with a label on the front listing Project Name, City, State, Closing Date, existing FHA#, and REMS ID. Dockets that are more than three inches thick should be divided in to two separate binders.
10. Due to the nature of document recording, there will usually be documents that trail after the closing. Forward original trailing documents to the party in possession of the Closing Docket as soon as possible after receipt. Depending on the timing, the Closing Docket may be in the process of review and approval and be in the possession of the PAE, the HQ Post-Closing Department, or the PO Closing Coordinator; or it may be approved and all copies may have been distributed to the appropriate parties. Copies of trailing documents must be placed in every copy of the Closing Docket. If copy dockets have already been distributed, forward copies of trailing documents to each recipient with instructions regarding where the documents should be inserted into the docket including an updated Table of Contents if necessary.
11. Closing Dockets may not be distributed until they are complete. The only ‘trailing’ documents that will be accepted are those that were delayed by the recording process. The exception is trailing documents for Closing Dockets for a Full Transfer of Physical Assets (TPA) transaction. For Full TPAs, the Closing Docket can be submitted in advance of the Final TPA Approval Letter, with the Final TPA Approval letter arriving as a trailing document. For Full TPAs processed by the HUD Field Office, the PAE must request the Final TPA Approval Letter from the Field Office, but should not delay submission of the Docket waiting for it. In such cases, the PAE should have a cover memorandum to the Closing Docket that clearly indicates it is a HUD Field Office processed TPA and does not currently contain a Final TPA Approval Letter. If the PAE is unable to obtain the Final TPA Approval Letter, the Post-Closing Reviewer will make an attempt to obtain it. For Full TPAs processed by the PAE, the Docket is to be provided within the required timeframe with or without the Final TPA Approval Letter. If the Final TPA Approval Letter is not included, the PAE should have a cover memorandum to the Closing Docket that clearly indicates what requirements of the Final TPA Approval Letter are pending and that the Final TPA letter will be sent to HQ Closing when received. A Modified TPA Approval generally occurs at or before the closing of the M2M restructuring and all documentation associated therewith must be included in the Docket for the restructuring.
12. **Distribution Timeframe**. One original Closing Docket must be submitted to the HQ Post-Closing Department within 65 days of the closing date. Once the PAE has been notified that the Form 8.1 has been approved, copies of the Closing Docket can be made and distributed as noted in the following paragraph. When dockets for Full TPAs processed by the PAE are received without a Final TPA Approval Letter, the HQ Post Closing Department will authorize distribution of the copies of the Closing Docket, but the Form 8.1 will not be approved until the Final TPA Approval Letter is provided. The Final TPA Approval Letter is required within 90 days of closing and it should be handled as a trailing document. All requirements for Modified TPA Approvals are expected to be included in the Docket and submitted within the 65 day requirement. When dockets for Full TPAs processed by the Field Office are received without a Final TPA Approval Letter, the HQ Post Closing Department will make one attempt to collect the Final Approval. After this attempt, the Post Closing Department will authorize distribution of the copies of the Closing Docket, and the form 8.1 will be approved. It is then the Field Office responsibility to insert the Final Approval letter in to the copy docket and to distribute copies to all other parties in receipt of closing dockets. In other instances, HQ Post Closing may authorize distribution of incomplete copy dockets to the HUD Field Office prior to approval of the Form 8.1. In these cases, any outstanding documents, recorded or not recorded, are treated as trailing documents.

The Closing Dockets must be distributed even if the recorded documents cannot be obtained prior to receipt of the Form 8.1. In this circumstance, the PAE must insert photocopies of the fully executed documents in their respective locations and notate the Table of Contents that the original recorded documents are “trailing.” Note, however, the restriction at 8-3(C)(5) above. Copies of all trailing documents must be delivered to all parties who currently possess a docket.

1. **Distribution of Closing Dockets**.

Distribute the Closing Dockets as follows:

|  |  |
| --- | --- |
| Washington D.C. | OAHP HQ Closing/Post-Closing Department Manager  451 7th Street SW, Room 6222  Washington, DC 20410 |
| OAHP Post-Closing Portfolio Manager | Post-Closing Portfolio Manager Contractor  451 7th Street SW, Room 6222  Washington, DC 20410 |
| MF Hub or Program Center | MF Hub or Program Center Director |
| Owner, if requested | Owner |
| OAHP Preservation Office | Preservation Office Director |
| PAE | PAE |

## Post-Closing Internal Review by PAE and OAHP

Section 8-4

A post-closing internal review will be conducted at the PAE to compare the Final Administrative Amendment of the approved restructuring plan with the closing docket. The review will encompass compliance with the delegated authority, and with the OPG.

1. **Requirements for Closing Dockets**. The PAE may not distribute the Closing Docket until its own internal review has been completed. Closing Dockets may not be distributed until they are complete, with the exception of the Final TPA Approval Letter (Full TPAs only; Modified TPAs are generally approved at or before closing). No "trailing documents" will be allowed except those documents that were delayed by the recording process and the Final TPA Approval Letter. For transactions involving post-M2M FHA-insured financing, the Closing Docket must contain a copy of the fully executed 290 Closing Memorandum. (Note, however, the timeframes for the 290, as described in section 8-2.B. above, and Appendix N, Attachment 7). One original Closing Docket must be submitted to OAHP within 65 days of closing, with the Form 8.1 attached. When the PAE receives the Form 8.1 signed by OAHP, the PAE may then proceed to make and distribute the other copies. In some instances, most commonly for Full TPAs processed by the PAE and for which the Final TPA Approval Letter is not included in the Closing Docket, OAHP will authorize the distribution of the copies of the Closing Docket but will not approve the Form 8.1 until the Final TPA Approval Letter, or other outstanding documents, are provided to all Closing Docket holders.
2. **Form 7.19 Official Term Sheet**. The final Official Term Sheet is required as a checklist *in addition to* the Closing Checklist, Form 7.2, to verify the consistency and completeness of the Closing Docket, final underwriting model, and executed Restructuring Commitment (as amended).
3. **Acceptance of the Washington D.C. Closing Docket**. The HQ Post-Closing Department will complete its review of the Washington D.C. Closing Docket within 15 days of receipt. Upon approval of the Closing Docket, the HQ Post-Closing Department will provide the PAE with a signed Form 8.1 that will authorize payment of the final installment of the PAE base fee. To ensure the final portion of the base fee is payable, a copy of the signed revised Form 8.1 must be attached to the invoice. In the event of a Full TPA processed by a PAE, where the Final TPA Approval Letter is a trailing document, the Form 8.1 will be approved upon receipt and satisfactory review of the Final TPA Approval Letter by the HQ Post-Closing Reviewer.
4. **Tracking of Docket Receipt and Discrepancies**. The Preservation Office Closing Coordinator will follow up with the PAE if the Closing Docket is not received within the 65-day time frame. Similarly, if the Closing Docket is not complete or correct, the HQ Post-Closing Department will note the reconciliation items, and notify the Preservation Office Director and Closing Coordinator. The Closing Coordinator will follow-up with the PAE to correct the docket. The PAE will provide the corrections to the Preservation Office Closing Coordinator, who then reviews and confirms the corrections, and returns the corrected Docket to the HQ Post-Closing Department. Corrected documents should be submitted to the party that currently holds the docket, either the PAE, the Preservation Office or HQ Post-Closing. If the PAE or Preservation Office are in receipt of the docket, they should ensure that all correctional documents are placed behind the appropriate tabs and that the Table of Contents is updated as needed. Documents should not be sent to HQ Post-Closing if the docket is not in their possession. In addition, if the docket has been returned to the Preservation Office for correction, it should not be resubmitted to HQ Post-Closing until all deficiencies have been corrected.

## Post-Closing M2M MIS and Model Data

Section 8-5

Revision 4.0 (and later) to the M2M underwriting model provides for an electronic transfer of data from the final (as-closed) underwriting model to the M2M MIS. Immediately after closing, the final underwriting model must be loaded and saved in the M2M MIS Closing Module.

The Data Integrity Person in the Preservation Office is responsible for reviewing the final model, approving the MIS, and generally, for producing the Transmission memo. The Form 8.3 M2M Debt Restructuring Post Closing Transmission Memo is produced from the approved MIS and Model by the Preservation Office.

Post-Closing adjustments to the final model will require the PAE to re-transfer data to the M2M MIS and re-load the final version of the model to the M2M MIS and may result in the need for a revised Transmission Memo to be generated and sent to the HUD Field Office.

## Post-Closing Post-Closing Data Reconciliation

Section 8-6

The responsibility for tracking the resolution of post-closing reconciliation items contained in the Closing Dockets, the M2M MIS, the Underwriting Model and the Transmission Memo, rests with the Post-Closing Department for closings that occurred prior to July 1, 2002, and with the OAHP Preservation Offices for closings that occurred thereafter. The PAE is ultimately responsible for completing the corrections needed to properly document the transaction, regardless of closing date.

Review and Reconciliation:

1. The Post-Closing Reviewer will review the final model from the MIS, the MIS Closing Module, the Closing Docket, the closing file and the Transmission Memo in order to make certain that they are consistent with each other, and that they are complete and accurate. Any discrepancies will be brought to the attention of the appropriate parties for correction.
2. The OAHP HQ Post-Closing Department will track document discrepancies, coordinate correction of discrepancies and maintain and provide reporting information. For closings that occurred prior to July 1, 2002, the Post-Closing Reviewers are in direct contact with PAEs to obtain necessary corrections. For closings that occurred on or after July 1, 2002, after an initial 15-day review period, the Post-Closing Reviewer will notify the Preservation Office Closing Coordinator of outstanding items and will return the docket to the respective Preservation Office Director. At that point, it is the responsibility of the Closing Coordinator to work with the PAE to obtain the necessary corrections. Corrective documents should be compiled in the Preservation Office until the revised docket is complete. When the Closing Coordinator concurs with the corrections and confirms the docket is complete, the Closing Coordinator will distribute the corrected Docket to the HQ Post-Closing Department for approval.
3. If reconciliation items are identified in the Underwriting model, the validated model must be re-uploaded and saved to the M2M MIS by the PAE. At the conclusion of the reconciliation, and after receipt of the signed Form 8.1, the Data Integrity Person closes out the M2M MIS system.
4. If the Post-Closing Reviewer identifies discrepancies in the Transmission Memo, the Debt Restructuring Specialist and Restructuring Analyst are notified. The Debt Restructuring Specialist must send a revised Transmission Memo to the appropriate HUD Field Office, with a copy to the Post-Closing Reviewer. This reconciliation item will not affect approval of the Form 8.1.

## Business Forms

Section 8-7

1. Letter of Acknowledgement of Document Receipt
2. Sample Table of Contents for Closing Docket

Page 9-2:

C Post-Closing: A Post-Closing Portfolio Management Contractor will be responsible for the following:

1. review and analysis of the AFS and other REAC and Asset Management data for approval criteria for any Capital Recovery Payment and Incentive Performance Fee,
2. review and analysis of AFS for correct calculation of surplus cash and subsequent calculation of mortgage loan payment due to HUD; notifies Cash Manager of amount due,
3. make payment demand in the event the owner fails to make annual payment,
4. review the project financial statements, perform variance analysis of the actual operating expenses against those used in underwriting, develop recommendations for budgets, note payments, capital and maintenance expenditures, and other asset management options,
5. site visits, physical inspections, meeting with tenants, and other actions as requested,
6. maintain appropriate records, and
7. work with the local FHA Asset Manager and Office of Housing personnel to optimize the value of HUD’s interest in the M2M Notes.

## Administering the Rehabilitation Escrow

Section 9-5

1. **Applicability.** This Section applies to M2M debt restructure transactions that use the M2M standard form legal document “Rehabilitation Escrow Deposit Agreement.” (REDA)
2. **Compliance and Monitoring Activities.** The Rehabilitation Escrow Administrator (REA) will oversee administration of the rehabilitation escrow as provided in the REDA, and:
   1. Manage the escrow account, including set-up of the account in a manner that ensures the funds would be available to the Secretary in the event of a bankruptcy filing on behalf of the property, fund investment (ensuring the funds are collateralized/ protected in the event the financial institution fails). Each project’s escrow funds must be maintained in a separate interest-bearing account not commingled with any other funds.
   2. Engage, at the REA’s expense, a qualified third party inspector to verify that work is completed in accordance with the scope of work identified in the REDA. The REDA typically requires that all work be inspected prior to payment. The REA may need to arrange for multiple inspections if multiple invoices are received throughout the rehab period.
   3. Review and approve requests for payment.
   4. Provide OAHP with periodic reporting on the status of the work and or account, up until account closure.
   5. Coordinate, review and submit any requests for extension, scope of work modifications, etc. or final certification of completion to OAHP, using Form 9.10.
   6. Upon completion of work:
      1. Excess Funds. Distribute any excess escrow funds in accordance with the REDA, which provides generally that excess funds are applied as directed by HUD. Typically, HUD will direct that funds be applied to the Mortgage Restructuring Note while HUD is the holder of the MRN (or in the event there is no Mortgage Restructuring Note, the Contingent Repayment Note). Any use of excess escrow fund other than as payment toward MRN/CRN must be approved in advance by OAHP.
      2. Deficit Funds. The owner is responsible for funding any deficits from non-project sources.
   7. If the owner fails to comply with the Rehabilitation Escrow Deposit Agreement (an “Event of Default”), the REA has the following duties:
3. To notify OAHP.
4. To notify the owner.
5. To coordinate with OAHP one or more of the following actions to be taken by HUD (as directed by OAHP):
   1. Issuance of a notification from HUD to the owner in writing that, without limiting HUD’s other remedies, the owner’s failure constitutes a HUD management finding that, until cleared, prevents the owner from paying further Capital Recovery Payments and prevents the owner from earning (or receiving) Incentive Performance Fees.
   2. Inform the responsible HUD Project Manager that the Real Estate Assessment Center’s inspections should be resumed.
   3. Make an entry in the Multifamily APPS system (place a “red flag”) regarding the non-performance of the owner.

**Owner’s Request for a Lite**

SECTION 10-3

Owners who wish to renew Section 8 HAP Contracts at market rents without debt restructuring must select that option using Form HUD-9624 The owner should submit the following attachments to the Multifamily Hub or Program Center no later than 120 days prior to contract expiration:

1. a comparable market rent study;
2. the most recent required fiscal year audited financial statements for the project; and,
3. an owner’s evaluation of physical condition.
4. a statement from the owner that in lieu of submitting its own evaluation of physical condition, the owner will sign a Form 4.7, Owner’s Adoption of the PAE’s PCA/Findings, after reviewing the PAE’s PCA and discussing with the PAE.

Thereafter, the owner must also submit such other documents as the PAE or HUD may require.

**Lite Processing Options**

SECTION 10-5

1. **General: Tiers 1 and 2**. All transactions submitted as Lites will initially be reviewed for financial, physical, and managerial soundness under the basic underwriting standards described below as Tier 1. If the transaction cannot be approved as a Tier 1, the PAE will consider whether the transaction could be approved under the standards for Tier 2.If the PAE determines that the project may be approvable as a Lite Tier 2, it must submit Form 2.16 to the appropriate OAHP Preservation Office briefly justifying its conclusion.
2. **Transactions Found Ineligible as Lites**. Some transactions will be found ineligible as Lites, and the PAE will recommend conversion to Full Debt Restructuring. Where the PAE determines that the transaction does not meet the requirements of section 10-6 or 10-7, as applicable, the PAE will advise the owner that the transaction is ineligible as a Lite. The PAE will use Form 10.6 (a) with a copy of the owner election form, HUD-9624. The notification should be sent as soon as the determination is made and the owner should be encouraged to change his election to a Full restructure as soon as possible, provided that OAHP's restructuring tools under MAHRA have not expired. The PAE should remind the owner that the property is eligible for only one 12-month extension at the current HAP rents.

The PAE will supply the owner with the information it has used to reach its conclusions (the PCA and Market Study, the draft income and expense spreadsheet, and the PAE’s justification for its selection of market rents). These materials should be provided by overnight mail along with Form 10.6(a). A copy should be forwarded to the Preservation Office at the same time.

Where the owner elects to change his or her election to Full Debt Restructuring, the Project Manager will provide a Section 8 HAP Contract extension of sufficient duration to provide a total processing time of 12 months (the time allowed for Full Debt Restructuring transactions).

If the owner refuses Full Debt Restructuring the PAE will complete processing of the transaction at the current Lite tier.

OAHP will review the PAE’s recommendation, obtain any necessary corrections, accept or adjust the market rents, and draft a new Section 8 HAP Contract.

OAHP will provide a Form 10.3(c), Ineligible Lite/ Conversion to Full Refused, to the PAE with the approved market rents and the Section 8 HAP Watch List Contract. OAHP will send a copy of this letter to the HUD Project Manager and Section 8 Contract Administrator. The Multifamily Hub or Program Center will determine whether to continue project-based assistance at the OAHP-approved market rents or whether to issue tenant-based vouchers to residents. If project-based assistance is used, the HUD Project Manager will execute the amended Section 8 HAP Watch List Contract that maintains the owner’s eligibility in OAHP in case the owner at a later date decides to change his election to Full Debt Restructuring. The amended contract stipulates that the project will be placed on the “watch list” for Multifamily Housing to monitor.

The PAE will provide Form 10.8, Notice to Owner/Conversion Refused, to the owner and provide a copy, using cover letter Form 10.4(b), to the HUD Project Manager and Section 8 Contract Administrator. The letter to HUD should include the PAE’s narrative, financial analyses, and PCA to assist HUD in determining whether the HAP Contract should or should not be renewed.

1. **Not Approvable**.In some cases,the PAE may determine that the transaction is basically ineligible for the Mark-to-Market program or cannot achieve managerial, physical and financial soundness under any approach. In cases where the project is ineligible due to market rents that are above current HAP contract rents, the PAE must ensure that the market rents are well supported, and establish whether the property is likely to have sufficient cash flow to support its expenses and meet its debt service obligations in the absence of a restructure. In cases where the project does not appear viable under any approach, the PAE will contact the OAHP Preservation Office to discuss the appropriate approach.
2. **Completion of Work**. The PAE must complete Lite processing by completing the Credit File in accordance with Form 10.9. (However, the invoice for payment may be submitted upon OAHP’s approval of a Tier 1 or 2 Lite work product described in Form 10.1.)

**Lite Tier 1: Review and Underwriting**

SECTION 10-6

1. **Procedures for Review of a Lite Tier 1 Transaction; Underwriting Standards for Tier 1 Transactions**. All transactions submitted as Lites will be reviewed for financial, physical, and managerial soundness. If a transaction is determined (a) physically sound, (b) managerially sound, and (c) financially sound by achieving a 1.20 DSCR of existing debt service using market rents and the limited underwriting described below, the PAE will recommend Section 8 HAP Contract renewal at market rents. The PAE will follow the procedures described below and provide the appropriate support for their conclusions in Form 10.1.
2. **Notification of Tenants**. The PAE must notify, or ensure that the owner notifies, all parties described in Section 3-8.C. that the owner has applied for a Section 8 HAP Contract renewal without mortgage debt restructuring (See Form 10.10). The notice must be provided, in writing, to the tenant of each unit in the project and to any organizations representing project tenants and to any other interested parties. The notice must state that the following information will be made available for inspection:
3. the owner’s evaluation of physical condition (if any) and
4. the owner’s comparable market rent analysis (with addresses identifying data on comparable market rents redacted).

The notice must be posted in the manner provided in Chapter 3, Section 3-8. Tenants and other interested parties may submit comments to the PAE within 30 days of receipt of this notice and the PAE must document and consider these comments. At the option of the PAE, surveys or sampling phone calls may be used to elicit additional tenant input.

1. **Determine Managerial Soundness**. The PAE will consult with HUB or Program Center staff, consider tenant comments, and determine the acceptability of project management, generally as described in Chapter 4, Section 4-8. If the project fails to demonstrate **managerial soundness**, the owner can propose an acceptable new manager and still be processed at Tier 1 or Tier 2, if otherwise appropriate.
2. **Determine Physical Soundness**.
3. The PAE must obtain a PCA (including the environmental checklist) and determine the property’s current condition and its Reserve needs for the forthcoming 20 years. The PAE’s analysis of adequate reserves will cover the lesser of 20 years or the remaining term on the existing insured loan. However, the PCA is always prepared for a 20-year period.
4. The PAE will review the PCA submitted by the physical inspector. The PAE will identify material errors, inconsistencies, or other deficiencies, obtain revisions if necessary and make any needed changes in the projected reserve needs or elsewhere. The PAE must describe any change and provide a clear and specific justification for each. The PAE will also confirm that any tenant and local community group comments on condition have been considered.
5. The property will meet the Physical Soundness criterion if:
6. The PAE determines that the property is currently in acceptable condition and can remain so for the remaining term of the mortgage. The PAE should consider any REAC inspection findings in developing this conclusion. (If the REAC score is lower than 60, the PAE should consult with the appropriate HUD Hub or Program Center)
7. Any Uniform Physical Condition Standards (UPCS) violations or other health and safety items have been cured prior to issuance of any PAE recommendation in favor of Section 8 HAP Contract renewal. The PAE need not reinspect the property but should obtain a statement or invoice from the owner indicating that the work is complete. Upon request of the PAE, the processing “clock” may be stopped if the PAE’s work is complete and the owner has not yet completed the correction of the work item.
8. If the project fails to demonstrate **physical soundness** and all other criteria are met, the PAE should recommend an appropriate approach. One approach that may be appropriate for some transactions is consideration of the property as a Full Debt Restructuring, which would provide funds for rehabilitation. Other alternatives, which would require special procedures and review by the OAHP Preservation Office, are special deposits from the owner to the Reserves for Replacements, or the establishment of a special repair escrow. (Where notable additional work by the PAE is required, the PAE should consider submitting a Form 2.16, requesting the transaction be converted to Tier 2.)
9. **Determine Market Rents**. The PAE should contract with a State-certified “General” Real Estate Appraiser to perform an independent market study as described in Appendix H. (If the PAE can show that the transaction will likely be ineligible as a Lite, the PAE may order a Limited Scope appraisal instead.) In addition to developing an independent market study, the PAE’s appraiser should also review the comparable market rents provided in any owner’s Rent Comparability Study and visit each comparable property selected by the owner’s appraiser. If the PAE’s appraiser disagrees with the selection of comparables and/or the comparability adjustments made by the owner’s appraiser, the report should document why the comparable/adjustment is inappropriate. Rents will be determined based on the “as-is” condition of the property. (Waivers will be considered for projects where financial commitments exist for improvements that would impact the rents.)

The PAE will review the comparable market rent data provided by the appraiser. The PAE should visit the site, all of the comparables submitted by its own appraiser, and the comparables of the owner’s appraiser if conveniently located or if necessary to resolve disputes. The PAE should make any appropriate adjustments and briefly explain the basis for any such adjustments to arrive at the market rents that the property would command on the open market. The PAE should also provide brief support for its final rent determination, indicating which comparables were most heavily relied upon (averaging the rents of the adjusted comparables is generally not appropriate). PAEs must make this determination as carefully as if debt restructuring were involved.

1. **Determine Other Income, Vacancy, and Expense Estimates**. In calculating the adjusted NOI:
2. The PAE will use the commercial income, other income (excluding interest income), vacancy and collection losses, and operating expenses from the most recent annual audited financial statements, **if typical**. Typical means representative of stabilized, ongoing operations of the property. The PAE will determine whether there is reason to conclude that the current year’s financial statements are typical using the property information submitted and the PAE’s own knowledge and analysis, including consultation with Multifamily Hub or Program Center staff (where appropriate). If vacancy and collection losses or expenses are not thought to be typical and additional work is necessary to determine appropriate estimates, the PAE should consider submission of a Form 2.16 requesting that the transaction be converted to Tier 2. For example, (a) if it is learned that the vacancy in the property is steadily increasing, possibly due to reductions in the elderly population in the area, or (b) if commercial income in the past has stemmed from an entity that is no longer renting the space or the space is occupied by an identity of interest entity, it would be appropriate to request conversion to Tier 2 in order to complete a more thorough underwriting.
3. In cases where a typical amount would require a higher vacancy and collection loss factor, a higher operating expense, a lower commercial income, or a lower other income figure ***that can be readily determined,*** the PAE may explain the specific revision and use the resulting typical figure. (For example, if other income on the most recent statement includes a $10,000 rebate of prior years’ overpayments for Workers’ Compensation, that rebate should be excluded in determining typical other income.) If needed, the PAE should obtain two additional prior years’ audited statements from the applicable HUD field office or from the owner.
4. Stabilized operating expenses should be trended to bring the estimate up to the time of underwriting. Income may not be trended.
5. The PAE will determine the annual deposit to the Reserve for Replacements ***that would be needed*** to meet the project’s needs over the term of the loan as identified in the PCA (without ever causing the Reserve balance to fall below the amount of one year’s deposits the property was making prior to the Mark-to-Market Program). In making the calculation below, the PAE will use that assumed annual deposit. (The actual deposits to the Reserves need ***not*** be increased, even if the needs are greater than can be covered by the current Reserve balance and current ongoing Reserve deposits, so long as the property meets the debt service requirements specified in paragraph G below.)

In the rare case where a reduction to the annual deposit to the Reserve for Replacements is contemplated in the underwriting, the PAE should assure that the Project Manager is specifically advised of this circumstance as he/she may wish to reduce the deposit. The PAE should not delay completion of their processing awaiting HUD’s action.

1. **Calculate Adjusted NOI; Determine Financial Soundness**.

The PAE will use the Lite Underwriting Model, available on the HUD website, to calculate Adjusted NOI and determine financial soundness. The PAE will input the determined Market Rents, an appropriate vacancy factor (not less than 5%), Commercial and Other Income (excluding interest income), typical Operating Expenses, and the Annual Reserve deposits needed to cover future capital needs, and the model will calculate Adjusted Net Operating Income and Debt Service Coverage Ratio.

The Lite Underwriting Model will use the following methodology to calculate ANOI:

|  |  |
| --- | --- |
| Take | Gross Potential Market Rents (as determined by the PAE) |
| Minus | 5% vacancy and collection loss factor (or greater, if typical) |
| Plus | Typical Commercial and Other Income (after deducting vacancy and bad debt and excluding interest income) |
| Minus | Operating Expenses (typical, trended if appropriate) |
| Minus | Annual Reserve (assumed) deposits sufficient to cover future capital needs |
| Equals | Adjusted Net Operating Income, for Tier 1 |

If the Adjusted NOI divided by the debt service (Principal, Interest and MIP) for the existing FHA-insured loan produces a DSCR of 1.20 or greater, the property meets the **Financial Soundness** criterion. Whenever the PAE determines that the property is not likely to be successful as a Lite, the PAE should notify the owner immediately and encourage the owner to change his election to a Full restructure. The owner should be made aware as early as possible that the property is eligible for only one 12-month extension at the current HAP rents.

**Lite Tier 2: Review and Underwriting**

SECTION 10-7

1. **Procedures for Review of a Lite Tier 2 Transaction; Underwriting Standards for Tier 2 Transactions**. If a transaction is not approvable under Lite Tier 1, the PAE may recommend to OAHP that a transaction be processed as a Lite Tier 2, if
2. the PAE concludes that it is likely that the expenses or debt service may be able to be reduced sufficiently to achieve financial soundness without restructuring of the debt. If financial soundness can only be achieved through refinancing of existing debt, a substantial reduction in expenses, pay-down of the existing mortgage, or a deposit by the owner to the Reserve for Replacements, the owner must provide a written statement of intent agreeing to the refinancing, reduction, pay down, or deposit before renewal of the new Section 8 HAP Contract.
3. significant additional work must be done to approve a transaction as a Tier 1 Lite. In these cases, the OAHP Preservation Office will determine, when approving the Form 2.16, what parts of this Tier 2 section apply, if any.

In either case, the PAE will complete the process described in this Section and provide the appropriate support for its conclusions in the Form 10.1.

1. **Notification of Tenants**. The Notification of Tenants requirements of Section 10-6 B are also applicable to Tier 2 transactions.
2. **Approvable Lite Tier 2 Projects**. A project is approvable under Tier 2 if it is determined to be physically and managerially sound, and is determined to be financially sound under either of the following standards. Either the property
3. achieves a 1.20 DSCR (using current debt service or a reduced debt service achieved through refinancing of the existing debt with no partial payment of claim) using market rents and the more extensive underwriting described below or
4. is a stronger property (as defined in paragraph F, below) that achieves a 1.10 DSCR (using current debt service or a reduced debt service achieved throughrefinancing of the existing debt with no partial payment of claim) using market rents and the more extensive underwriting described below.
5. **Lite Tier 2 Underwriting Standards**.

To determine if the project meets Tier 2 criteria, the PAE will do the following:

1. Determine Managerial Soundness. The PAE will do the same review and use the same criteria as Tier 1.
2. Determine Physical Soundness. The PAE will do the same review using the same criteria as Tier 1, ***except that, in the case of a Section 223(a)(7) refinancing,*** ongoing deposits to the Reserve for Replacements will be changed, at the refinancing, to the amount assumed in the NOI Calculation in paragraph E, below.
3. Determine Market Rents. The PAE will do the same review and use the same criteria as in Tier 1.
4. Determine Other Income, Vacancy, Expense, and Reserve Estimates.
5. The PAE will ***fully underwrite*** any commercial and/or other income and the vacancy and collection loss for these categories. “Fully underwrite” includes review of the most recent three years of operating statements, analysis of the vacancy trends in the property and market, and analysis of the sources of commercial and other income and the likelihood of the continuance of such income. Where there is notable commercial income, full underwriting would include review of commercial lease provisions and assessment of the likelihood of continuance of this income. The PAE should use no less than a 10% physical vacancy factor and a 5% economic vacancy factor for commercial income.
6. The PAE will also ***fully underwrite*** expenses and discuss the conclusion with the owner. “Fully underwrite” includes review of the most recent three years of operating statements and line by line analysis of significant expense categories and expense trends. Justifications for expense items may commonly be very brief but should be more expansive where historic expenses in that line item have been erratic or contrary to expectation. To the extent possible, expenses should be compared to any other sources of expense information and/or verified with outside sources. If the property has been poorly maintained or poorly managed, the PAE should assure that the expenses estimated for maintenance and management are adequate to provide for good maintenance and management.
7. If the owner agrees that the property can be operated using the expenses determined in the underwriting, the PAE may proceed. If not, the property will be underwritten at a higher level of operating expenses with which the owner does agree.
8. The PAE will use the same assumed annual deposit to the Reserves for Replacement as in Tier 1 Section 10-6 F.4 above.
9. **Calculation of the Adjusted NOI for Tier 2 Transactions**.

The PAE will use the Lite Underwriting Model, available on the HUD website, to calculate Adjusted NOI and determine financial soundness. The PAE will input the determined Market Rents, an appropriate vacancy factor (not less than 5%), Commercial and Other Income (excluding interest income), typical Operating Expenses, and the Annual Reserve deposits needed to cover future capital needs, and the model will calculate Adjusted Net Operating Income and Debt Service Coverage Ratio.

The Lite Underwriting Model will use the following methodology to calculate ANOI:

|  |  |
| --- | --- |
| Take | Gross Potential Market Rents (as determined by the PAE) |
| Minus | 5% vacancy and collection loss factor (or greater, if typical) |
| Plus | Typical Commercial and Other Income (after deducting vacancy and bad debt and excluding interest income) |
| Minus | Operating Expenses (typical, trended if appropriate) |
| Minus | Annual Reserve (assumed) deposits sufficient to cover future capital needs |
| Equals | Adjusted Net Operating Income, for Tier 1 |

If the Adjusted NOI divided by the debt service (Principal, Interest and MIP) for the existing FHA-insured loan produces a DSCR of 1.20 or greater, the property meets the **Financial Soundness** criterion.

1. **Lite Tier 2: Options For Meeting Financial Soundness Test**. If the property does not produce a 1.20 DSCR, the PAE can consider the following four options.
2. *Recommend Approval at Reduced DSCR for Strong Properties*: If the DSCR is **1.10 or greater,** and an adequate case can be made that the property is a strong candidate for long-term successful operations with this reduced DSCR, the PAE may recommend approval. The PAE’s supporting documentation should include consideration of any information provided by REAC and the Hub or Program Center, including prior management reviews. A “strong” property should meet the criteria below. Consideration should also be given to properties that have operated successfully at less than 1.20 DSCR for some time.
3. The property is located in a strong market with little likelihood of a reduction in demand resulting from decreases in the eligible population due to a general population decline, job losses, weaknesses in the predominating industry, increases in the housing stock, or similar conditions.
4. The property is in good condition, as evidenced by the REAC score, PCA, and PAE inspection and the current owners maintain it in acceptable condition.
5. The property has had a comparatively stable rent, vacancy, and expense history over the past three years and there is no reason to believe that this would change in the future as a result of anticipated utility increases, the end of tax abatements, or similar foreseeable factors.
6. Considering tenant comments, prior management reviews and the PAE’s review, the property has sound management with an acceptable history.
7. Based on the PAE’s inspection, the PCA, market study and tenant comments, the property has no features such as extremely small units, poor location, or other factors that would render it non-competitive in a market situation.

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1. *Recommend Approval if the Property* ***Could*** *Produce an Acceptable Debt Service Coverage Ratio (DSCR) with Refinancing of Existing Debt*: If the property **could** produce a DSCR of 1.20 or greater, or a DSCR of 1.10 or greater for a strong property, with a refinancing of the existing debt using generally available rates and terms and FHA mortgage insurance (or risk-sharing), the PAE may recommend approval provided that the owner’s commitment to refinance is satisfactory to the Multifamily Hub or Program Center. Where the property could be viable with a 223(a)(7) refinance, PAEs should refer owners to the local Multifamily Hub or Program Center responsible for processing applications for firm commitment. PAEs are encouraged to assist the local HUD office and lender upon request by providing any relevant data (see also 10-8 A(7).)
2. *Recommend Approval, if Owner Provides Evidence of Financing Commitments Not Involving FHA Mortgage Insurance or Risk-sharing*: If the owner provides evidence of a commitment to refinance the existing FHA-insured loan without using full FHA mortgage insurance or FHA risk-sharing and the PAE, OAHP, and the Multifamily Hub or Program Center find the commitment satisfactory, the PAE may recommend approval. (See also 10-8 A(7).)
3. *Recommend Approval, if Deviations are De Minimis*: If the amount of dollars or percentage points by which the property fails to meet the DSCR criteria is de minimis, recommend approval. Such cases should be discussed with the OAHP Preservation Office before submission.

**Approval of Lites**

SECTION 10-8

1. **Approval as a Lite**. If the PAE determines that the transaction can be approved as a Lite, Tier 1, the following procedures apply.
2. The PAE will complete the electronic submission shown in Form 10.2, Electronic Submission of PAE’s Lite Conclusions.
3. The PAE will submit the narrative and conclusion described in Form 10.1, OAHP Reduction in Rent and Section 8 HAP Contract Renewal Justification and cover page, to OAHP, with a print out of the electronic submission (Form 10.2). This submission should address the issues covered in the Sections that are cited in the Form 10.1. If the owner has not submitted an owner’s PCA, then a signed Form 4.7, Owner’s Adoption of the PAE’s PCA/Findings must be included in the submission.
4. OAHP will review the PAE’s recommendation, obtain any necessary corrections, accept or adjust the market rents, and draft a new Section 8 HAP Contract using the appropriate form. OAHP will estimate the Budget Authority and insert this amount in the new contract as the maximum amount of housing assistance authorized for that contract.
5. OAHP will send the PAE Form 10.3(a), Market Rent Determination, and attach the new Section 8 HAP Contract for execution by the owner.
6. OAHP will also send a copy of the 10.3(a) and the Section 8 HAP Contract to the Project Manager and the Hub or Program Center Director.
7. The PAE will send the Section 8 HAP Contract to the owner using Form 10.4(a), Notification to Owner of Market Rent Determination. The owner must execute the contract by the due date established in the letter (10 days from issuance) and provide the executed contract to the Project Manager. Owners must also provide a new rent schedule reflecting the approved rents and gross rent change certifications for tenants to the Project Manager. Gross rent changes do NOT require recertification of tenant income or expenses and do not affect annual recertification schedules (see Handbook 4350.3, Chapter 3 and Appendix 11). If the Section 8 HAP contract is not executed by the due date, HUD will be unable to honor the owner’s vouchers under the higher rents and will have no choice but to assume that the owner intends to opt out of the Program.

This notice includes guidance to the owner on appeals. Execution of the contract does not interfere with the owner’s ability to appeal.

The PAE will use the Form 10.4(b) cover letter, Notification to Project Manager of Market Rent Determination, to provide a copy to the Project Manager of the Notification to the Owner, so that the existing HAP Contract can be terminated and the fund reservation process for the new HAP Contract can begin. The PAE should provide an additional copy, including the cover letter, to the Section 8 Contract Administrator and the OAHP Preservation Office.

The PAE will assure that the M2M MIS system data is complete. This includes entering the date the Section 8 HAP Contract was sent to the owner and the date the PAE received a copy of the Section 8 HAP Contract signed by the owner.

1. In the event that a Tier 2 Lite is approved subject to refinancing in accordance with section 10-7 F(2) and F(3) above, the owner will be given 60 days after approval to obtain a Firm Commitment for financing. If the owner has failed to obtain a Firm Commitment at the end of 60 days, the PAE will process the transaction as an Ineligible Lite, as described above in section 10-5 B.
2. Upon request, the PAE will supply the owner with the information it has used to reach its conclusion (the PCA and Market Study, the draft income and expense spreadsheet, and the PAE’s justification for its selection of market rents). These materials should be provided by overnight mail.
3. The Project Manager will: (a) terminate the existing Section 8 HAP Contract as of the expiration date listed in the Notification to Owner as described in Form 10.4(b) and (b) prepare to complete the fund reservation and execution process for the new Section 8 HAP Contract when received from the owner. The Project Manager will also update the REMS system when processing is completed. **These Section 8 HAP Contract execution procedures should proceed regardless of any appeals process**.
4. The **owner should execute** the Section 8 HAP Contract, prepare a new rent schedule reflecting the approved rents and gross rent changes for tenants in the project and provide this to the Project Manager with a copy to the PAE.
5. If the **owner fails to execute** the contract, future owner vouchers for Section 8 funding under the existing contract will not be paid. OAHP will inform the Project Manager that a copy of the new Section 8 HAP Contract has not been received by the PAE by the due date and to assume that the owner intends to opt out. If tenant-based assistance to the tenants is required, the Project Manager will provide the owner with a short-term renewal in order to comply with the one year notice requirements to tenants and/or to provide sufficient time to process tenant vouchers.
6. If there is an **appeal** (See Section 10-9), OAHP will discuss the appeal with the PAE and reach a final determination. If the appeal:
7. **results in an increase** in the market rents, OAHP will provide a revised Form 10.3(a) and a revised Section 8 HAP Contract to the PAE (with a copy to the Project Manager and the Section 8 Contract Administrator). The PAE will send Form 10.5, Notification to the Owner of Results of Appeal of Market Rent Determination, with the revised Section 8 HAP Contract indicating that rents have been increased and the appeals process is complete. The PAE should provide a copy of the notice, using the Form 10.4(b) cover letter, Notification to Project Manager of Market Rent Determination, to the Project Manager, with a copy to the Section 8 Contract Administrator and the OAHP Preservation Office.
8. **does not result in an increase** in the determination of market rents, OAHP will notify the owner, using Form 10.7(a), Notification to Owner of Failure of Appeal, with a copy to the Project Manager, Section 8 Contract Administrator, and the PAE, that the review is finished and the appeals process is complete.

**Appeal Process for Lites**

SECTION 10-9

The owner has **one** opportunity to appeal the OAHP decision related to the determination of market rents. The PAE will notify the owner of its appeal rights as part of the form notification letters. Please refer to Section 6-9 for appeal procedures.

**List of Business and Legal Forms**

SECTION 10-11

No. Title

|  |  |
| --- | --- |
| 10.1 | OAHP Reduction of Rent and Section 8 HAP Contract Renewal Justification and Cover Page |
| 10.2 | Electronic Submission of PAE’s Lite Conclusions |
| 10.3(a) | Market Rent Determination; Transmittal of Section 8 HAP Contract |
| 10.3(b) | No longer in use |
| 10.3(c) | Ineligible Lite/Conversion to Full Refused; Market Rent Determination; Transmittal of Section 8 HAP Contract |
| 10.4(a) | Notification to Owner of Market Rent Determination; Transmittal of Section 8 HAP Contract |
| 10.4(b) | Notification to Project Manager of Market Rent Determination; Transmittal of Section 8 HAP Contract |
| 10.4(c) | Notification to Project Manager of Ineligibility for M2M/Market Rent Determination |
| 10.5 | Notification to Owner of Results of Appeal of Market Rent Determination; Transmittal of *Increased* Market Rents and Revised Section 8 HAP Contract |
| 10.6(a) | Notification to Owner of Ineligibility as a Lite; Transmittal of Form HUD-9624 for Re-Election |
|  |  |
| 10.7(a) | Notification to Owner of Failure of Appeal |
| 10.7(b) | Notification to Owner of Failure of Appeal; Transmittal of Form HUD-9624 for Re-Election |
| 10.8 | Notice to Owner / Conversion Refused; Determination of Market Rents |
| 10.9 | Lite Credit File Checklist |
| 10.10 | Notice of Rent Reduction Without Debt Restructuring |

Rent Comparability Reviews

## Referral to OAHP and Assignment to PAE

Section 11-1

1. **Referral to OAHP from Multifamily Hub or Program Center**. When an owner determines the Section 8 contract rents are at or below-market, and is seeking Section 8 contract renewal without restructuring or a reduction in rents, the Multifamily Hub or Program Center may request an OAHP determination of market rents. For purposes of Mark-to-Market eligibility, OAHP will presume the project’s rents are above-market, based on the Multifamily Hub or Program Center’s concerns.
2. **Assignment to PAE**. OAHP will assign the project to a PAE. At the time of assignment, OAHP Headquarters will notify the owner, with a copy to the Multifamily Hub or Program Center and the PAE, that Multifamily has referred the project to OAHP for a rent comparability review.

## General Owner/Project Eligibility Requirements

Section 11-2

1. **Commissioning the Market Rent Study**. The PAE will contract for a Market Rent Study, to determine market rents in accordance with “Statement of Work A - Rent Comparability Studies,” in Appendix H.
2. **PAE Review**. The PAE will perform a desk review of the Rent Comparability Study prepared by their Appraiser and of any Owner’s submission. In preparing the Rent Comparability Review Report to OAHP (Form 11.1), the PAE is not required to conduct a site visit. A site visit will be required if, and when, the property status subsequently changes to a Lite, or a Full debt restructuring.
3. **PAE Conclusions**. The PAE will document its Rent Comparability Review conclusions and submit them to the OAHP Preservation Office using Form 11.1 within 75 days of property assignment. The PAE will discuss their analysis with the Multifamily Hub or Program Center if requested.
4. **OAHP Review**. OAHP will review the PAE’s market rent determinations and either accept or request additional information substantiating the PAE’s conclusions. When the PAE’s recommendation is approved, the OAHP Preservation Office will notify the Multifamily Hub or Program Center, and the PAE, of the market rent conclusions, by sending Form 11.2 and a copy of the Rent Comparability Grid.
5. **Owner Notification**. The Multifamily Hub or Program Center will transmit the OAHP market rent determination to the owner.

## Processing Upon Completion of Review

Section 11-3

1. **Rents At or Below-Market**. If rents are determined to be at, or below-market, the property is not eligible for M2M.
2. **Rents Above-Market**. If rents are determined to be above-market, and the property is eligible for M2M, the Multifamily Hub or Program Center will provide the owner with the opportunity to submit an amended election (under Housing Notice 99-36, and subsequent guidance).
3. **Owner Opts for Full Restructuring. If the owner requests a full debt restructuring, OAHP will assign the project to the PAE for processing and the PAE will request the appraiser to upgrade its Market Rent Study to a Limited Scope Appraisal. (Whenever possible, the PAE should develop prior agreements with the appraiser for expeditious upgrading of a market rent study to a limited scope appraisal.)**
4. **Owner Opts for Contract Renewal at Reduced Rents without Debt Restructuring. If the owner requests Section 8 contract renewals at reduced rents, without debt restructuring (i.e., a Lite), OAHP will assign the project to the PAE for processing and the previously completed Market Rent Study will be used for the rent restructuring.**
5. **Owner does not submit an election. If the owner elects not to submit an amended election and the Multifamily Hub or Program Center elects to renew the Section 8 contract, the new contract will be renewed at the OAHP approved reduced rents.**

## Appeal Process for Rent Comparability Review

Section 11-4

1. **General**. The owner has **one** opportunity to appeal the OAHP decision related to the Rent Comparability Review. The Multifamily Hub or Program Center will notify the owner of its appeal right when providing the owner with the market rent determination.
2. **Content and Timing of Owner Appeal**. If the owner elects to dispute OAHP’s conclusion of the comparable market rents, the owner has 20 business days from notification by the Multifamily Hub or Program Center, to submit an appeal letter with supporting documentation to the OAHP Preservation Office Director. The appeal should address all points of disagreement (e.g., selection of comparables, rent adjustments, etc.) with OAHP’s conclusions. The owner should also provide a copy of the appeal letter to the Multifamily Hub or Program Center.
3. **OAHP Review**. The OAHP Preservation Office will review the appeal, and respond within 30 calendar days of receipt of the owner’s appeal.
4. **Owner Notification**. The OAHP Preservation Office will notify the owner, the PAE, and the Multifamily Hub or Program Center of its decision after reviewing the owner’s appeal.

## Business Forms

1. PAE Rent Comparability Review Report
2. OAHP Rent Comparability Review Determination

Chapter 12 MIS Reporting Requirements

## General

Section 12-1

PAEs are required to report to OAHP the status of their portfolios. An Internet based MIS system was developed to meet that requirement and to create a consistent reporting method for all the PAEs’ portfolios. This data is what is used to produce reports to Housing, OAHP management plus the Reports to Congress and OMB.

PAEs must obtain user ids for the Secure Systems at HUD to gain access to the Mark-to-Market MIS system (M2M system) via the Internet. To register, the PAE user should go to the OAHP website (www.hud.gov/offices/hsg/OAHP/) and select “online systems” then click on the link: “HUD Secure Internet Systems Registration”. A registration form needs to be filled out. System problems can be reported to [m2minfo@hud.gov](mailto:m2minfo@hud.gov).

## Input Requirements

Section 12-2

The PAEs update the following 3 modules in the M2M system:

* Critical Dates Tracking
* Restructuring Plans
* Closing

1. **Critical Dates.** There are predetermined milestones that require completion dates input for Comp Reviews, Lites (Rent Reduction Only) and Fulls (Mortgage Restructurings). PAEs are required to update these milestones in Critical Dates for each of the properties in their portfolio. See the following sections for detailed descriptions on each of the 3 Critical Dates Tracking Input Screens and who is responsible for entering in the dates (PAE or OAHP).
2. **Restructuring Plans.** Captures the synopsis of the Recommendations for Lites (Form 10.2) and the Restructuring Plans (Form 5.2) for the Fulls (rents, loan terms, dscr, etc.). Forms 10.2 and 5.2 are online in this module. The PAE electronically submits the completed forms to OAHP via the system (this automatically updates the Critical Dates Tracking date field for Submission Date for the 10.2 and 5.2 forms). As part of the 5.2 submission the Excel underwriting model must be uploaded to the system. OAHP Preservation Office submits the decision electronically by selecting: “Approve” or “Return for Revision” after a submission and review has occurred. (This date populates the Critical Dates Tracking dates, too). Once a deal has been approved the Preservation Office will upload the approved Excel underwriting model to the system. See the following sections for detailed descriptions on each of the 2 online forms - 5.2 and 10.2.
3. **Closing Module.** Is for the PAEs to confirm the terms at closing for final reporting purposes (Loan terms, final rents determined, sources & uses). In other words, 5.2 form data is displayed and confirmed or corrected by PAEs after closing. No special instructions are included since this page displays the same 5.2 data format and just requires the PAE’s confirmation. Furthermore, the as closed Excel underwriting model must be uploaded to the system within five days of closing.

Detailed documentation on the input fields and who the responsible party for entering in specific critical dates in the Critical Dates Tracking (Comp Reviews, Rent Reductions Only (Lites) and Full Mortgage Restructurings can be found on the OAHP website: www.hud.gov/offices/hsg/OAHP/ by clicking on “online systems”).

GENERAL NOTES on PRA: All forms that do not have OMB PRA approval, which originate from Owner, Tenants, PAE, Lender, Servicer must be updated to reflect OMB approval. For items that are standard business practice, the estimated number of respondents, and the estimated time per response must be identified, and added to the matrix (generally for 2502-0533), as standard industry practice requirements. Green highlighted items above reflect unapproved collection items, or items which appear to be industry standard that do not have OMB acknowledgment of that status at this time.