



OFFICE OF HOUSING

# Budget-Based Rent Adjustments for Mark-to-Market Properties

OFFICE OF MULTIFAMILY HOUSING PROGRAMS

Office of Recapitalization

March 2024

# Agenda



1. Background
2. Eligibility Requirements
3. BBRA Prioritization
4. Submission Requirements
5. Application Processing (Review, Approval and Closing)
6. Appeals Process
7. Terms & Conditions
8. Questions

# Background

- The Mark-to-Market (M2M) program was authorized in 1997 by the Multifamily Assisted Housing Reform and Affordability Act (**MAHRA**).
- The M2M program objectives are:
  - ✓ Reduce the subsidy costs in FHA-insured properties with project-based Section 8 that had above market rents.
  - ✓ Preserve the affordable housing stock.
  - ✓ Introduce administrative efficiencies in the multifamily FHA insured Section 8 portfolio.

# Background

- A Section 8 property with above-market subsidized rents would, at the expiration of a Section 8 contract, have rents reduced to market or near-market levels.
- For the property to continue to make debt service payments on its FHA-insured mortgage, HUD required the debt be refinanced with a new, first mortgage loan, sized by the new market rents:
  - ✓ HUD pays off the existing FHA-insured first mortgage through a Partial Payment of Claim on behalf of the Property Owner.
  - ✓ An owner's obligation to repay the claim is evidenced by a Mortgage Restructuring Note **(MRN)** and/or a Contingent Repayment Note **(CRN)**.

# Background

- **MAHRA § 514(e)(2)** requires that during the term of the M2M Use Agreement (minimum 30 years), properties are eligible for annual rent increases of OCAF only. No other renewal option is available.
- While the OCAF has been adequate for some properties, many M2M properties have rents that are below market and the annual OCAF adjustments have been inadequate to cover the properties' operating expenses.

# Background

- In FY 2023, Section 236 of the Department of Housing and Urban Development (HUD) Appropriations Act amended MAHRA to grant the Secretary of HUD the authority to adjust rents or renew contracts at rent levels that are **equal to the lesser of budget-based rents or comparable market rents** in certain circumstances.
- HUD published a Final Rule in the Federal Register revising 24 CFR part 401 to implement this new authority on February 28, 2024, at [89 FR 14588](#).
- Housing Notice [2024-05](#) implements this authority as it pertains to Budget Based Rent Adjustments (BBRA), setting forth the eligibility requirements, process and conditions required by the statute.

# Eligibility Requirements (Section 3)

## 1. M2M PROPERTY

- Active M2M Use Agreement
- Full M2M Renewal contract

## 2. STATUTORY ELIGIBILITY

- Project income is insufficient to operate and maintain the property and no rehabilitation is currently needed; or
- BBRA is necessary to support commercially reasonable financing for rehabilitation necessary to ensure the long-term sustainability of the property.

## 3. CONTRACT RENTS

- The rent for **all units** on the HAP contract must be less than comparable market rents, as defined by a Rent Comparability Study (RCS).

# Eligibility Requirements (Section 3)

## 4. FASS FINDINGS

- All FASS findings for the property must be resolved to HUD's satisfaction or subject to a HUD-approved action plan.
- The action plan must be in current status, without open notices of delinquency or breach.

## 5. MOR STATUS

- The property must have been subject to a MOR review within the three (3) years prior to the Initial Submission or after the Initial Submission, unless otherwise approved by HUD.
- MOR Requested (if condition above is not satisfied)



# Eligibility Requirements (Section 3)

## 6. Good Standing

- The Owner and Management Agent must be in good standing with HUD, defined as:
  - Previous Participation Certification on file in the Active Partners Performance System (APPS),
  - All principals are not debarred, suspended or subject to a Limited Denial of Participation.
  - Any flags in APPS are resolved or any open flags are accepted by HUD.
- The Management Agent's portfolio must have acceptable MOR ratings.
- The Owner must have submitted all required Financial Statements.
- The Owner and Property must be in full compliance with Program Obligations and have no defaults.

## 7. Fair Housing

- Owner must not have any outstanding violations of fair housing laws in connection with any Property owned by the owners, unless otherwise approved by FHEO.

# Prioritization of Properties (Section 4)

- **Funding available for BBRAs is limited** and will be directed to M2M properties where HUD determined the need to be the greatest.
- HUD has established a prioritization structure informed by
  1. property conditions (Group A, Group B, Group C, and Group D) and
  2. the relationship between the contract rents for the property and the Fair Market Rent (FMR).
- The prioritization structure determines when owners are invited to make an initial submission for the applicable property.

# Prioritization of Properties (Section 4)

Property Group	Rent at the Property Relative to the FMR				
	< 70% FMR	70%-79% FMR	80%-89% FMR	90%-99% FMR	100%-140% FMR
A	1 <sup>st</sup> Priority				
B	2 <sup>nd</sup>			4 <sup>th</sup>	
C	3 <sup>rd</sup>				
D	5 <sup>th</sup>	6 <sup>th</sup>	7 <sup>th</sup>	8 <sup>th</sup>	9 <sup>th</sup>

# Property Group Definitions (Appendix 1)

<b>Group A Properties</b> Must meet one (1) of the following criteria	<b>Group B Properties</b> Must meet two (2) of the following criteria	<b>Group C Properties</b> Must meet three (3) of the following criteria
<ul style="list-style-type: none"> <li>• REAC score &lt; 30</li> <li>• 2 consecutive REAC scores &lt; 60</li> <li>• Operating Cost Coverage Ratio &lt; 1.0</li> <li>• Owner Contributions of over \$3,000 per unit in the last year or a 3-year record of Owner Contributions over \$1,500 per unit per year</li> <li>• Property is with the Multifamily Property Disposition Center</li> <li>• Vacancy Rate &gt;= 25% for 24-months</li> </ul>	<ul style="list-style-type: none"> <li>• REAC score is 30-59</li> <li>• Debt Service Coverage Ratio &lt; 1.0</li> <li>• Owner Contributions of over \$1,500 per unit in the last year or a 3-year record of Owner Contributions over \$750 per unit per year</li> <li>• 25% &gt; Vacancy Rate &gt;= 15% for 24-months</li> <li>• Substantial open code violation issued by the local government</li> <li>• Pass-through due to disaster</li> <li>• 20% of residents displaced due to disaster</li> <li>• Property identified by HUD staff as severely damaged due to disaster and repairs are in progress</li> </ul>	<ul style="list-style-type: none"> <li>• REAC score is 30-69</li> <li>• 1.0 &lt;= Operating Cost Coverage Ratio &lt; 1.1</li> <li>• Reserve for Replacements &lt; \$1,000/unit</li> <li>• Accounts payable, exclusive of payables to related entities, exceed 10% of the monthly gross potential residential rental revenue</li> <li>• 1.0 &lt;= Debt Service Coverage Ratio &lt; 2.0 and has declined by a material amount (0.25 or more) from prior year</li> <li>• Owner Contributions of over \$1,500 in the last year or a 3-year record of Owner Contributions over \$750 per year</li> <li>• An FHA mortgage that dates from time of the M2M restructure</li> <li>• 25% &gt; Vacancy Rate &gt;= 15% for 24-months</li> <li>• Substantial open code violation issued by the local government</li> <li>• Pass-through due to disaster</li> <li>• 20% of residents displaced due to disaster</li> <li>• Property identified by HUD staff as severely damaged due to disaster and repairs are in progress</li> </ul>

Group D Properties are not reflected in the table as Group D covers all eligible properties not captured by Groups A, B, and C.

# Prioritization of Properties (Section 4)

See criteria:  
"Property Group  
Definitions"

$$\frac{[\text{Weighted contract rent}]}{[\text{Weighted FMR}] * 100} = \%$$

Ex: Weighted contract rent = \$1,000  
Weighted FMR = \$1,100  
% of FMR = 91%

Property Group	Rent at the Property Relative to the FMR				
	< 70% FMR	70%-79% FMR	80%-89% FMR	90%-99% FMR	100%-140% FMR
A	1 <sup>st</sup> Priority				
B	2 <sup>nd</sup>			4 <sup>th</sup>	
C	3 <sup>rd</sup>				
D	5 <sup>th</sup>	6 <sup>th</sup>	7 <sup>th</sup>	8 <sup>th</sup>	9 <sup>th</sup>

# Properties Eligible to Apply Now! (Section 5)

- Owners with properties meeting the **1st Priority** ranking criteria are invited to submit an Initial Submission at the publication of this notice.
- Properties must meet the priority ranking criteria at Initial Submission.

Property Group	Rent at the Property Relative to the FMR				
	< 70% FMR	70%-79% FMR	80%-89% FMR	90%-99% FMR	100%-140% FMR
A	<b>1<sup>st</sup> Priority</b>				
B	2 <sup>nd</sup>			4 <sup>th</sup>	
C	3 <sup>rd</sup>				
D	5 <sup>th</sup>	6 <sup>th</sup>	7 <sup>th</sup>	8 <sup>th</sup>	9 <sup>th</sup>

# Submission Requirements (Section 6)

- Requesting a BBRA is a two-step process, consisting of the **Initial Submission** and **Final Submission**.
- Initial Submissions are now being accepted in the [Multifamily Preservation Desk](#) for properties that meet Group A criteria and notice eligibility requirements only.
- Requests will be reviewed on a first-come first-served basis, but applications received within 28 calendar days after the publication of the notice (before 11:59 PM EST on March 28, 2024), shall be deemed received simultaneously.

# Submission Requirements (Section 6)



- Dedicated [website](#)<sup>1</sup> for the latest information on BBRA for M2M Properties
- BBRA for M2M website provides:
  - ✓ The latest property group eligible to apply for a BBRA
  - ✓ Link to Housing Notice 2024-05
  - ✓ Training
  - ✓ FAQs

## Overview

BBRAs are available for existing M2M properties that lack sufficient project income to operate and maintain the property on a sustainable basis for the long-term. BBRAs are to increase housing assistance payment contract (HAP) rents to levels that can support property expenses, including debt service coverage and deposits into a reserve for replacements. Properties will be prioritized based on its condition and the relationship between the property's contract rents and the Fair Market Rent, due to limited funding.

## What's New

- HUD published [Housing Notice 2024-05](#), which implements the Department's authority to make BBRAs.
- [Register now](#) for training on the notice that is scheduled for March 12, 2024, at 1:00 PM EST.

## Apply Now

Initial Submission are now being accepted in the Multifamily Preservation Desk for properties that meet Group A criteria and notice eligibility requirements only. Requests will be reviewed on a first-come-first served basis, but applications received within the next 28 days (before 11:59 PM EST on March 28, 2024,) shall be deemed received simultaneously. Please submit any questions to [bbra@hud.gov](mailto:bbra@hud.gov).

[Apply for a BBRA](#)

## Group A Properties (must meet one (1) of the following criteria):

- REAC score < 30
- 2 consecutive REAC scores < 60

<sup>1</sup>URL for BBRA website: [https://www.hud.gov/program\\_offices/housing/mfh/presrv/presmfh/aboutm2m/postm2m](https://www.hud.gov/program_offices/housing/mfh/presrv/presmfh/aboutm2m/postm2m)



# Multifamily Preservation Desk



## Multifamily Preservation Resource Desk

U.S. Department of Housing and Urban Development  
Secretary Marcia Fudge

[Post M2M BBRA](#)

[CONTACT RESOURCE DESK](#)

### Welcome to the Budget-Based Rent Adjustments for Mark-to-Market Properties

This Resource Desk is designed for owners that will be requesting a budget-based rent adjustment for their Mark-to-Market Properties. To submit a Post Mark-to-Market (PM2M) BBRA request, please create a new account for your BBRA requests.)

If you are not submitting a PM2M BBRA request but have questions concerning the BBRA requests, please use the Contact Resource Desk link above to submit your question to the Multifamily Preservation Resource Desk.

#### Registered Users Log On:

Username:   
Password:

[Log On](#)

[Forgot your username?](#)  
[Forgot your password?](#)

#### Request a User Account:

[New User](#)



## Multifamily Preservation Resource Desk

U.S. Department of Housing and Urban Development  
Secretary Marcia Fudge

[Post M2M BBRA](#)

[CONTACT RESOURCE DESK](#)

### Post Mark-to-Market BBRA Resource Desk - Set Up User Account

* First Name: <input type="text"/>	* User Name: <input type="text"/>
* Last Name: <input type="text"/>	* Password: <input type="password"/>
* Email: <input type="text"/>	* Re-enter Password: <input type="password"/>
Alt Email #1: <input type="text"/>	
Alt Email #2: <input type="text"/>	
Alt Email #3: <input type="text"/>	
* Telephone: <input type="text"/>	
* User Type: <input type="radio"/> <a href="#">Owner/Applicant submitting a PM2M BBRA Request/Application</a>	
<input type="radio"/> HUD Staff	
<a href="#">Register</a>	

Post M2M BBRA copyright 2013-2024



URL for Multifamily Preservation Desk: <https://pm2mbbra.hudmfpreservation.net/login.cfm>

- Create a new account for BBRA requests
- Select "Request a User Account"
- User Type: "Owner/Applicant submitting a PM2M BBRA Request/Application"

# Multifamily Preservation Desk

**BASIC PROPERTY INFORMATION**

iREMS Property ID:

Property Name:

Property Address:

City/State/Zip:

HAP Contract Number(s):

Contract Expiration:

Property Information has been changed/updated

Initial Submission Submitted:

Owner's Primary Representative's Contact Information:

Name:

Address:

City/State/Zip:

Phone Number:

Email:

Owner's Back-up Representative's Contact Information:

Name:

Address:

City/State/Zip:

Phone Number:

Email:

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**PROPERTY GROUP REVIEW**

Owner's Determination of Property Group:

- Enter iREMS Property ID and the property information will pre-populate
- Select the Property Group (e.g., Group A) to see criteria

# Submission Requirements (Section 6)

## Initial Submission Documentation

Basic Owner and  
Property Information

Statutory Eligibility

MOR or Request for an  
MOR

Rent/Utility Allowance  
Schedule for Each Unit  
Type, Weighted Rent,  
and Weighted FMR

Owner's Determination  
of the Property's Group  
Status

Certified Owner  
Statement Explaining  
why the Property  
Qualifies for the  
Requested Group Status

Owner's Reasonable  
Estimate of Market Rent  
by Unit Size

# Submission Requirements (Section 6)

- HUD will review the Initial Submission to determine:
  - ✓ Whether the eligibility requirements applicable at Initial Submission have been met.
  - ✓ Confirm that the Property qualifies for the owner requested Group Status.
  - ✓ Confirm that the Property fits the prioritization categories invited to submit a BBRA request at that time.
- If HUD determines the Property is not currently eligible pursuant to the applicable HUD notices, HUD will notify the Owner.
- HUD will calculate an estimate of the budgetary impact of the BBRA request informed by the Owner's reasonable estimate of market rent by unit size.

# Submission Requirements (Section 6)

- HUD will invite the Owner to assemble and deliver the **Final Submission** when HUD determines it is likely to have sufficient funds to accommodate the BBRA request.
- **HUD cannot assure any specified turnaround time between Initial Submission and Final Submission.**
- Owners may be tempted to compile the documents for the Final Submission to expedite the process but should exercise caution commissioning the RCS or other documents that may become stale; Owners commission such documents at their own risk.

# Submission Requirements (Section 6)

## Final Submission Documentation

Owner Narrative	Organizational Chart	Good Standing Justification	Capital Needs Assessment, Inclusive of a Green Analysis
MOR Corrective Action Plan, if applicable	Development Budget	Financing Commitments	Vacancy/Occupancy Report
Audited Annual Financial Statements (3 Yrs)	Budget Worksheet, HUD Form 92547	Operating Proforma	Rent Comparability Study
Statement of Compliance with Fair Housing and Civil Rights	Resident Notification	Service Coordinator Budget, HUD Form 91186A, if applicable	UEI Number

# Submission Requirements (Section 6)

- Recap, in consultation with regional asset management staff, will evaluate the request.
- HUD Handbook 4350.1 *Multifamily Asset Management and Project Servicing*, Chapter 7 *Processing Budgeted Rent Increases* ([HUD Handbook 4350.1](#))

Consider all eligibility and other requirements set forth in this Notice.

No significant effect of permitting a cash-out refinancing, accelerating the payment of HUD-held debt, seller proceeds after repayment of debt and transaction costs, or other improper removal of funds from the Property.

Evaluate the totality of the Property's operational and physical needs over the short- and long-term.

Ensure the BBRA may not exceed comparable market rents, must be justified by both the budget worksheet (HUD Form 92547) and by the RCS.

# Submission Requirements (Section 6)

- **Phased Submissions:** A financing strategy necessary to meet a Property's rehabilitation needs and the rehabilitation will occur in two or more phases.
  - ✓ HAP Contract may need to be bifurcated into HAP Contracts corresponding with each phase.
  - ✓ Final Submission must be aligned with the phased financial transaction.
  - ✓ HUD's conditional approval must align with the transaction structure to be implemented at Closing, with a separate conditional approval for each financial transaction, and the bifurcation must be complete before Closing
- The Owner may submit a single Initial Submission for the entire Property.
- **The eligibility determination and the date and time stamp of the Initial Submission shall apply to all the resulting phases.**



# Review, Approval, Closing (Section 6)

- Upon completion of Recap's review, HUD will issue a **conditional approval** of new rents for the Property.
- Authority to use the new rents only after all conditions in the **conditional approval** have been confirmed by HUD and the effective date of the BBRA has occurred.

Anticipated effective date of the BBRA and the projected rent schedule for the units covered by the HAP Contract.

Required project improvements and scope of work which the Owner must contractually agree to undertake, and the time frame(s) by which the scope of work must be complete.

Amount and effective date of any revised deposit to the reserve for replacements, including any authority for a suspension of the deposits to the reserve for replacements during a construction period.

Identification of documents or conditions which must be satisfied to proceed to Closing, including legal review of Closing documentation and simultaneous consummation of any sources of funds sufficient to implement the required scope of work.

Identification of documents that must be prepared prior to and signed at Closing.

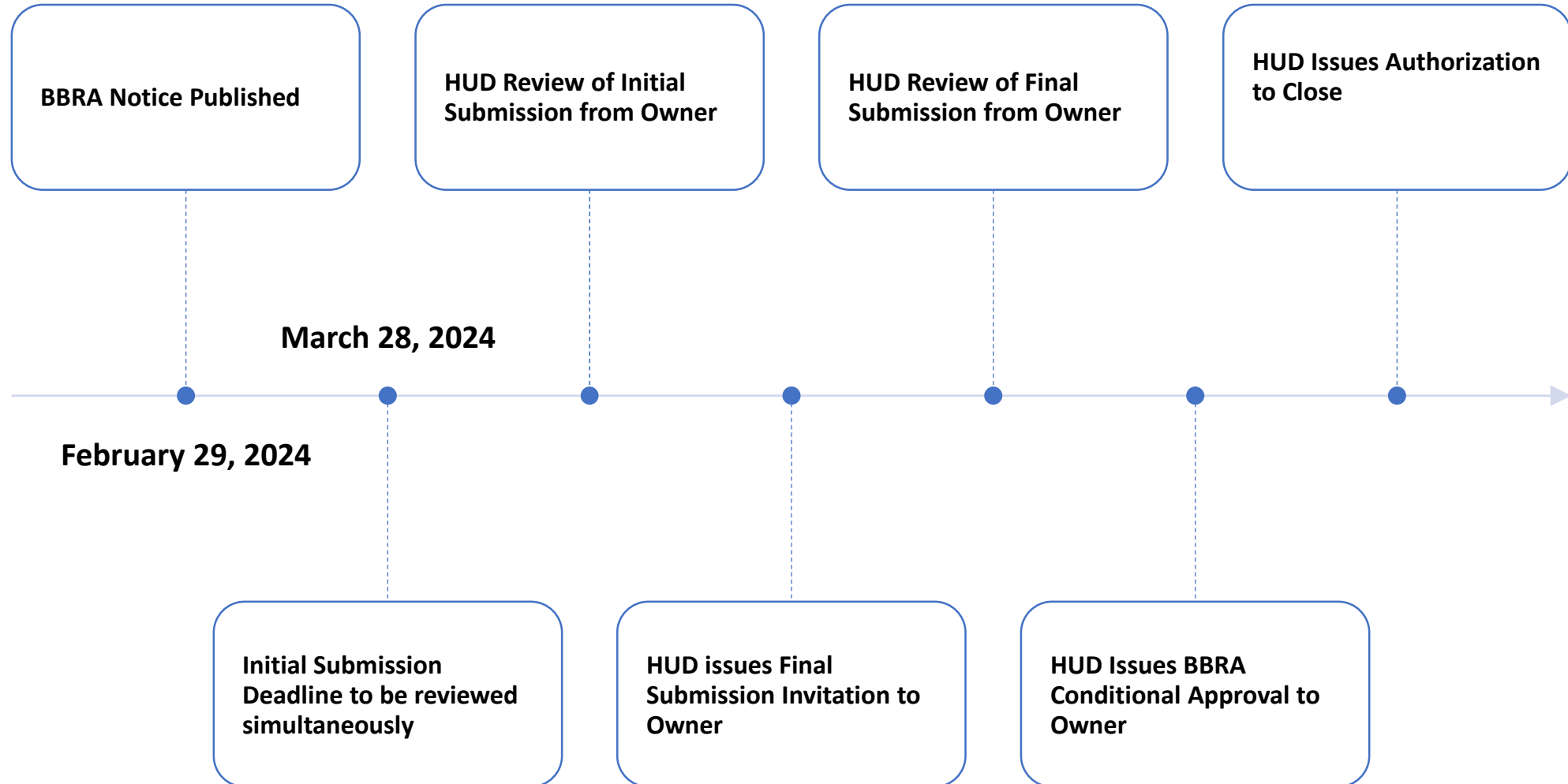
Notices to residents of any increases in rent under the terms of the residents' lease and any tenant consultation requirements under 24 C.F.R. §245.

Any other conditions deemed necessary or appropriate to comply with this Notice and Program Obligations.

# Review, Approval, Closing (Section 6)

- When the Owner has completed all the conditions to Closing to HUD's satisfaction, Recap will issue an **authorization to proceed with the Closing**.
- The Closing may take place at any time and need not coincide with the timing of the rent adjustment.
- A HUD determination that an Initial Submission or a Final Submission cannot proceed to a BBRA does not preclude the Owner from requesting a BBRA at a future date based on changes in either the prioritization of properties eligible for the BBRA or changes in the Property conditions.

# Review, Approval, Closing (Section 6)



# Terms & Conditions (Section 7)

Projects that receive a BBRA under this Notice are subject to the following terms and conditions:

- ✓ The approved BBRA serves as the baseline for future rent adjustments at the property.
- ✓ Owner may not request a BBRA under this Notice within 10-years after the effective date of the property's approved BBRA rent increase. No effect on routine rent adjustments or renewal options which are applicable under standard program requirements.
- ✓ Scope of work identified in the Closing documents must be completed.
- ✓ The Owner agrees to extend the affordability and use restrictions required under Section 514(e)(6) of MAHRA for an additional twenty (20) years and agrees to execute a HAP Contract amendment including a binding commitment to continue to renew the HAP Contract for and during such extended term, provided that after the affordability and use restrictions required under Section 514(e)(6) have been maintained for a term of 30 years.



Email: [BBRA@hud.gov](mailto:BBRA@hud.gov)

**Questions?**