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HUD Publishes New Guidance for Mark-to-Market (“M2M”) Project Owners to Apply for Budget-Based Rent Adjustments



HUD issued a Final Rule in the Federal Register on February 28, 2024 (89 FR 14588) (the “Rule”), and an accompanying Notice the day thereafter (H 2024-05) (the “Notice”), providing an opportunity for certain Mark-to-Market (“M2M”) projects to apply for budget-based rent adjustments (“BBRAs”).

The Rule is intended to ensure the long-term financial and physical stability of M2M properties, which have historically been limited to Operating Cost Adjustment Factor (“OCAF”) rent increases and thus lacked rents sufficient to support the properties’ operational and financial needs. In response, the BBRA will attempt to set eligible M2M properties’ rents at levels that allow for adequate debt service and sufficient payments for repairs and replacement needs (capped at comparable market rents). In exchange for enhanced rent adjustments, an M2M property awarded a BBRA will become subject to an additional 20-year affordability and use restriction and must agree to extend their HAP Contracts for the same period.

Below, we have summarized which M2M properties will be eligible for the BBRA, HUD’s priorities for awarding BBRA funding, and the BBRA application process.

Eligibility:

Under the Rule, BBRAs will only be available to M2M properties satisfying all of the following criteria (as further specified in the Notice):

1. The property is subject to an active M2M Use Agreement and is subject to a M2M Renewal Contract (Full, Interim or Lite).
2. The owner has demonstrated that either (a) the property’s income is insufficient to operate the property and no rehabilitation is currently needed, or (b) the BBRA is necessary to support commercially reasonable financing for rehabilitation necessary to ensure long-term viability.
3. The rents for all units under the HAP Contract are lower than comparable market rents.
4. All Financial Assessment Subsystem (FASS) findings are resolved to HUD’s satisfaction (or subject to a HUD-approved action plan).
5. The property must have been subject to a Management and Occupancy Review (MOR) within the past 3 years (or after initial submission of the application). Properties with an MOR rating of 69 or below must demonstrate that the



identified issues have been resolved or the owner could not correct due to insufficient revenue or the need for a management change.

6. The owner and management agent are in good standing with HUD, as defined in the Notice.
7. The owner does not have any outstanding violations of fair housing laws.

In addition to meeting each of the criteria identified above, BBRA's are generally limited (at least initially) to M2M projects that have experienced operational and/or financial distress or have avoided such distress due to voluntary owner contributions to the property. Properties receiving BBRA's become eligible to re-apply for additional BBRA's once every ten years.

Evaluation of Applicants' Need:

HUD emphasizes that due to its limited funding, BBRA's will be awarded only to M2M properties with the greatest need, which will be determined by placing properties into one of four categories (Group A, B, C, and D), and then evaluating each Group based on the relationship between the current rents and the "Weighted FMR." For example, "first priority" is given to the "Group A Properties" that (i) meet certain specific distressed property criteria (e.g., a most recent REAC score below 30; two most recent REAC scores below 60; Operating Cost Coverage Ratio less than 1.0; Owner Contributions over \$3,000 per unit in most recent fiscal year); and (ii) have rents less than 140% of the Weighted FMR. It will not be until HUD gets to the "ninth priority" that HUD addresses M2M projects that (at least from HUD's perspective) may not have significant financial or operational needs.

Application Process:

In a phased approach, HUD invites only eligible owners in Group A to apply now. Owners in the subsequent Groups may apply if invited by HUD in a later notice.

Applicants will follow a two-step application process. At the "Initial Submission" stage, owners will submit property and owner-specific information and related certifications. At the "Final Submission," the owner must submit, among other things, a narrative description; a "Good Standing Justification;" a CNA (using the CNA eTool); a Budget Worksheet; an Operating Pro Forma; and an RCS.

Group A owners may now apply through HUD's BBRA landing page [here](#). All those who apply by March 28th are considered to have submitted simultaneously, which is helpful in this first-come, first-served process.

Additional Information:

HUD is planning a training on the notice on March 12th at 1PM EST. Use this [registration link](#) to enroll.

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