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3 **SECTION 1. OVERVIEW AND ELIGIBILITY**  
4

5 **2.06.1 INTRODUCTION**

6 A. **Applicability.** The guidance in this chapter applies to the project type programs  
7 listed below:

- 8 1. Section 8 Project-based Rental Assistance  
9 a. New Construction  
10 b. State Agency Financed  
11 c. Substantial Rehabilitation  
12 d. Section 202/8  
13 e. Rural Housing Services (RHS) Section 515/8  
14 f. Loan Management Set-Aside (LMSA)  
15 g. Property Disposition Set-Aside (PDSA)  
16 2. Section 101 Rent Supplement  
17 3. Section 202/162 Project Assistance Contract (PAC)  
18 4. Section 202 Project Rental Assistance Contract (PRAC)  
19 5. Section 811 PRAC; Project Rental Assistance (PRA)  
20 6. Section 236  
21 7. Section 236 Rental Assistance Payments (RAP)  
22 8. Section 221(d)(3) Below Market Interest Rate (BMIR)

23 **Purpose.** Section 524 of MAHRA authorizes HUD to renew expiring project-based  
24 section 8 HAP contracts and to restructure the rents that may be charged. Renewal  
25 rents are based on the statutory formula for the renewal option that the owner selects.  
26 For HAP contracts renewed under section 524(a), (b)(1), or (e)(2) of MAHRA with a  
27 multi-year contract, rents are to be adjusted on the anniversary of the HAP contract by  
28 OCAF, or, at the owner's request and subject to HUD approval, on the basis of a  
29 budget<sup>1</sup>.

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<sup>1</sup> MAHRA Section 524(c) ("Rent Adjustments After Renewal of Contract"). See also 24 CFR §402.5(c). Section 524(c) requires that rent adjustments be by OCAF but authorizes HUD to provide a Budget Based rent adjustment instead if requested by the owner.

1 At the owner's request, 236, 221 (d)(3)<sup>2</sup>, 202/8, 811 and 202<sup>3</sup>, Rent Supplement rents  
2 may be adjusted on the basis of budget subject to project business agreements and  
3 HUD approval. In preparing the procedures and guidance in this chapter certain  
4 references are made to the Section 8 Renewal Policy Guidebook (Guide) for detailed  
5 guidance on processing rent adjustments on Section 8 contracts under MAHRA.  
6 Chapter Two of the Guide provides instructions for processing either OCAF or budget  
7 based rent adjustment requests for expiring section 8 Housing Assistance Payment  
8 (HAP) contracts.

9  
10 1. Annual adjustments<sup>4</sup> to contract rents that occur during the term of a multi-  
11 year contract are called rent adjustments. The method of adjusting rents by  
12 application of AAF is not covered in this Chapter Please refer to HUD H 2002-  
13 10<sup>5</sup>.application of the published OCAF or, if applicable, a budget-based request  
14 of the owner and subject to approval by HUD.

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16 A. **Exception** processes to 1. above:

17 1. See Section 2.17. B.4<sup>6</sup>. for additional instructions for Option One, and  
18 Option Two.

19  
20 2. Title II and Title VI preservation projects discussed in Chapter 7,  
21 Option  
22 Five – Renewal of Portfolio Reengineering Demonstration or  
23 Preservation Projects. The rent adjustment mechanism is spelled out in  
24 the individual project's Plan of Action (POA) and/or Use Agreement.  
25 These documents may permit other rent adjustment mechanisms.

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28 HUD's prime interest is to ensure the efficient management and continued  
29 financial viability of its projects, along with compliance with relevant tenant  
30 participation requirements.

31  
32 A. **Overview.** This chapter provides procedures for processing rent adjustments in  
33 certain HUD projects defined in Section 2.06.1 above and outlines guidance in  
34 the calculation of utility allowances<sup>7</sup>, adjustments to Reserve for Replacement,

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<sup>2</sup> 24 CFR §245.10.

<sup>3</sup> Regulations for Supportive Housing for the Elderly and Persons with Disabilities (202 and 811) are found at 24 CFR §891 Subpart B; and 24 CFR§ 891 Subpart C; and 202/8's at 24 CFR §891 Subpart E; 202/162 at 24 CFR §891.655.

<sup>4</sup> Section 2.13 of the Guide.

<sup>5</sup> This Notice may be amended or superseded by a more current version.

<sup>6</sup> Section 2.17.B.4 of the Guide.

1 and charges for commercial facilities and services provided in those projects.  
 2 The chapter also includes guidance on relevant tenant participation procedures  
 3 which must be followed when applicable. Section 2 of this chapter provides  
 4 specific guidance to owners for submitting complete and compliant packages  
 5 when requesting a rent adjustment. In Section 3, the chapter includes guidance  
 6 to HUD’s Regional Centers and Satellite Offices, as well as Contract  
 7 Administrators also referred to as ‘reviewers’, on how to evaluate a rent  
 8 adjustment request, while ensuring that the adjusted rents and fees provide  
 9 adequate funding for the projects, when operated effectively and efficiently.  
 10 Sections 4 and 5 outline the implementation and appeals procedures for both  
 11 owners and reviewers. The appendices to the chapter include step-by-step  
 12 procedures, along with standardized checklists and templates, designed to  
 13 facilitate consistency and comprehensiveness in submissions, reviews and  
 14 approvals of rent adjustments. The following **Figure 1** provides a roadmap to  
 15 owners and reviewers regarding the relevant guidance contained in this chapter  
 16 and its appendices.

17  
 18 **Figure 1 – Roadmap to the Chapter**

Sections & Paragraphs	Topic	Primary Stakeholder(s)	
		Owner / Agent	HUD / CA Reviewer
<b>Section 1</b> Paragraphs 2.06.1 – 2.06.3	Introduction, Eligibility and Type of Rent Adjustment Requests	✓	✓
<b>Section 2</b> Paragraphs 2.06.4 – 2.06.12	Owner’s Submission Requirements	✓	
<b>Section 3</b> Paragraphs 2.06.13 – 2.06.21	Review of the Owner’s Submission		✓
<b>Section 4</b> Paragraphs 2.06.22 – 2.06.23	Notification and Implementation	✓	✓
<b>Section 5</b> Paragraphs 2.06.24 – 2.06.26	Appeal Procedures	✓	✓
<b>Appendix 2.06-1</b>	Summary of Resources	✓	✓

<b>Appendix 2.06-2</b>	Glossary of Key Terms	✓	✓
<b>Appendix 2.06-3</b>	Guidance to Owners	✓	
<b>Appendix 2.06-4</b>	Guidance to Reviewers		✓
<b>Appendix 2.06-5</b>	Historical Guidance	✓	✓

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**2.06.2 ELIGIBILITY**

**Reasons for Rent Adjustment.** Owners may only charge the rents that were authorized by HUD in their most recently approved rent schedule (Form HUD-92458). Owners submit rent adjustment requests to cover the increase in the cost of operations. Should the owner choose not to submit rent adjustment requests when warranted, it could compromise the owner’s ability to maintain the property in an acceptable condition. Therefore, owners assess their operating costs annually.

**Timing for Budget Submissions.** Owners are generally limited to one rent adjustment per year. For HAP contracts renewed under section 524(a), (b)(1), or (e)(2) of MAHRA with a multi-year contract, rents are to be adjusted on the anniversary of the HAP contract by OCAF, or, at the owner’s request and subject to HUD approval, on the basis of a budget. Owners should refer the Guide for the timing of requests<sup>8</sup>. Other eligible projects as defined in Section 2.06.1 should submit the request for an increase in the maximum permissible rents to the assigned HUD office as their operational needs demand and, in cases where tenant notice is required, should submit to HUD upon issuance of that notice and again after the review of tenant comments.

A. Regulatory Agreements require cooperative projects to submit their operating budgets annually, as well as obtain HUD approval of carrying charges. HUD and CA reviewers must enforce this requirement for cooperative projects in lieu of the requirement that budgets be submitted only when the owner believes a rent adjustment is needed. For Section 202 and 811<sup>9</sup> projects, owners prepare and maintain budgets every year, but submission of the budget to HUD is only required when an adjustment is requested. In accordance with the regulatory agreement requirement for annual budget submissions, the owner must include any information required by Section 2 of this Chapter.

B. **Eligibility Requirements Regarding Owner’s Good-Standing.** For the

<sup>8</sup> The Section 8 Renewal Policy Guide as amended.  
<sup>9</sup> Refer to H 2002-17 and H 2006-06. This Notice may be amended or superseded by a more current version.

1 Department to consider an owner's request to adjust project's rents, the owner  
2 must be in compliance with all business agreements with the Department and  
3 project operations must meet HUD standards as demonstrated by:

- 4 1. **Physical Condition.** The project must have a current REAC PASS score of  
5 60 or above. If the score was below 60. The owner agrees to operate and  
6 maintain the units and related facilities so as to provide safe, decent and  
7 sanitary housing has defined by HUD.
- 8 2. **Management Reviews.** The project must have received a *Satisfactory*  
9 *Management and Occupancy Review (MOR)* rating for the prior review.  
10 Except that if the project received a less than satisfactory rating in any  
11 section of its last MOR, HUD may consider an adjustment if the owner  
12 provides acceptable written comments regarding the status of any  
13 improvement action plan in progress, the other corrective actions taken, and  
14 target dates for completing these actions.
- 15 3. **Financial Statements.** The owner must be current in the filing of the HUD  
16 Annual Financial Statements (AFS) required by the Department, as well as  
17 the monthly accounting reports, if required by HUD.
- 18 4. **Excess Income.** Owners of Section 236 projects must be in compliance with  
19 all Excess Income requirements. If an owner is not in compliance with all  
20 Excess Income requirements but is in compliance with an approved  
21 correction plan, HUD may consider a rent adjustment request.
- 22 5. **Defaults and Violations.** The property should have no outstanding notices  
23 of default or violation of business agreements. Except that HUD may, in its  
24 discretion, approve an improvement action plan that incorporates an owner's  
25 proposal for a rent adjustment.

### 27 **2.06.3 RENT ADJUSTMENT REQUESTS**

28 **Maximum Allowable Rent Potential (MARP).** As a result of reviewing a budget based  
29 rent adjustment request, the reviewer computes a new maximum annual rent for the  
30 project, also referred to as the *Maximum Allowable Rent Potential (MARP)*. Note, the  
31 Guide requires certain MAHRA budget based adjustments are subject to a RCS (Refer  
32 the Guide Chapter 2-15 and 2-17 if applicable). Also refer to 24 CFR §245.10; and  
33 section 2.06.1 above. For Section 202 and 811<sup>10</sup> projects, owners prepare and maintain  
34 budgets every year, but submission of the budget to HUD is only required when an  
35 adjustment to the rents is requested.

36  
37 MARP establishes the maximum rent level that an owner may charge. The actual rents  
38 authorized by HUD and charged by owners must either be equal to or less than the

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<sup>10</sup> Refer to H 2002-17 and H 2006-06. This Notice may be amended or superseded by a more current version.

1 project's MARP. When processing a budget based rent adjustment, reviewers will  
2 provide the MARP and the authorized rents in their notification letter to the owner and  
3 on the approved Rent Schedule (Form HUD-92458).

- 4
- 5 A. **Type of Rent adjustment.** An owner may later request higher rents that are  
6 below or equal to the last MARP<sup>11</sup>, or higher than the last MARP (which will  
7 require the establishment of a new MARP). As shown in **Figure 2** and described  
8 in Section 2, the type of rent adjustment requested by the owner, determines the  
9 scope of submission and processing requirements.

10

11 **Figure 2 – Types of Rent Adjustment Requests**

Type of Rent adjustment	Description
1. Proposed Rent is <b>Less than or Equal to Last MARP</b>	Some properties, especially those without income-based subsidy for tenants, may implement rents that are significantly less than their last MARP. In such situations, these properties may follow a streamlined process as outlined in paragraph 2.06.4 but may not decrease the utility allowance without triggering the tenant comment procedures in paragraph 2.06.6.
2. Proposed Rent <b>Exceeds the Last MARP</b>	In cases when the owner's requested rent adjustment exceeds the project's last MARP, owners must follow up with a new BBRA submission, as outlined in paragraph 2.06.5, requesting the establishment of a new MARP. The submission requirement and timelines differ for this type of rent adjustment if the project is subject to tenant comment procedures as described in paragraph 2.06.6.

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<sup>11</sup> The last MARP is the Maximum Authorized Rent Potential most recently calculated by HUD or the CA. It can be found on the last Rent Computation Worksheet or the current approved Rent Schedule Form HUD-92458.

1                                   **SECTION 2: OWNER’S SUBMISSION REQUIREMENTS**  
2

3 This section of the chapter provides guidance to owners on submission requirements for  
4 rent adjustments. It also provides background on requesting adjustments to utility  
5 allowances<sup>12</sup> and/or reserve for replacement deposits. Additionally, it provides general  
6 guidance for Section 236 and Section 221(d)(3) BMIR properties, as well as information  
7 on commercial and other charges.  
8

9                   **2.06.4 PROPOSED RENT IS LESS THAN OR EQUAL TO LAST MARP**

- 10       A. **Background.** When projects such as Section 202, 236 and 221(d)(3) BMIR were  
11 originally established, assistance was provided through the project’s financing  
12 structure, and tenants paid proportionate operating expenses and debt service.  
13 Consequently, adjustment in operating expenses resulted in higher rents for  
14 tenants, since their subsidy was not limited to a rent burden of 30% of monthly  
15 adjusted income. Rent adjustments created a hardship to tenants and caused  
16 increased tenant turnover and rent delinquency. To mitigate these negative  
17 outcomes, some owners chose to “phase in” rent adjustments over two or more  
18 years. If owners chose not to implement the full authorized rent adjustment at  
19 one time, they were able to implement the remainder of the previously authorized  
20 rent adjustment under a simplified process. In such cases, owners are eligible to  
21 request a rent adjustment within or up to the previously authorized Maximum  
22 Allowable Rent Potential (MARP).
- 23       B. **Submission Requirement.** If the proposed rent adjustment is less than or equal  
24 to the last MARP, owners must submit a new Rent Schedule (Form HUD-92458),  
25 found in Appendix 2.06-1. The owner must complete all parts of the Rent  
26 Schedule except for parts F and I. Other submission requirements outlined in  
27 **Figure 3** do not apply for such rent adjustment requests. If the owner is also  
28 requesting an adjustment related to utility allowances and/or reserve for  
29 replacement deposits, the owner must follow the requirements outlined in  
30 paragraphs 2.06.7 (Adjustments to Utility Allowances) and 2.06.8 (Adjustments to  
31 Reserve for Replacement). The owner should be aware that additional requests,  
32 such as a reduction in utility allowances, could prompt tenant comment  
33 requirements, and must follow the requirements outlined in paragraph 2.06.6  
34 (Projects Subject to Tenant Comment Procedures).
- 35       C. **Timing Requirement.** For HAP contracts renewed under section 524(a), (b)(1),  
36 or (e)(2) of MAHRA with a multi-year contract, rents are to be adjusted on the  
37 anniversary of the HAP contract by OCAF, or, at the owner’s request and subject  
38 to HUD approval, on the basis of a budget. Owners should refer to the Guide for  
39 the timing of requests; or annual rent adjustments at the MAHRA contract  
40 anniversary for an annual rent adjustment at least 120 days but no earlier than

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<sup>12</sup> Refer to H-2015-04. This Notice may be amended or superseded by a more current version.

180 days before the anniversary date of the HAP contract. The reviewer will complete their review to return the signed Rent Schedule in accordance with the established operating procedures.

### 2.06.5 PROPOSED RENT EXCEEDS LAST MARP

**A. Submission Requirement.** If the proposed rent exceeds the last MARP, the owner must submit the relevant materials listed in **Figure 3** for review and approval. This figure identifies the relevant appendices that contain suggested formats and templates to assist the owner in preparing the submission package.

**Figure 3 – Owner’s Submission Requirements**

#### FOR ALL PROJECTS

Required Materials	Description	Appendix
1 <b>Owner’s Cover Letter</b>	Must describe: 1. The reasons why a rent adjustment is needed and the date the adjustment will be effective. 2. The project’s physical condition and any improvements that have been budgeted for. 3. Any proposed change in services equipment or charges and the reasons for the change.	2.06-3. B
2 <b>Budget Worksheet</b> (Form HUD-92542.06-A)	Must provide income and expenses: 1. From the current HUD annual financial statement (AFS) 2. Current year to date 3. Projected for 12 months following anticipated effective date of the proposed rent adjustment. Note: Appendix 2.06-1 provides a link to HUD form, Appendix 2.06-3. C. provides link to Excel-based budget worksheet	2.06-1 2.06-3.C
3 a) Supporting Narrative b) Supporting Documentation	a) Must provide a brief statement explaining the basis for any adjustment in the expense line items that is greater than or equal to \$500. b) Must provide supporting documentation for any adjustment in the expense line items that is greater than or equal to \$500 AND that is greater than or equal to 5 percent of prior year’s actual.	2.06-3.C
4 <b>Owner’s Certification</b>	An executed copy certifying Purchasing Practices and Reasonableness of Expenses	2.06-3. D
5 <b>Energy Conservation</b>	Follow current OAMPO guidance as required	



Required Materials	Description	Appendix
Plan Status Report (if applicable) <sup>13</sup>		

1 **FOR PROJECTS SUBJECT TO TENANT COMMENT PROCEDURES**

Required Materials	Description	Appendix
6 Copy of Tenant Notice	Annotate it to show where and how the Notice was distributed.	2.06-3. E.
7 Certification of Compliance with Tenant Comment Procedures	An executed copy certifying compliance with tenant comment procedure requirements	2.06-3. F.
8 Copy of Tenant Comments with Evaluation	If tenant comments were received, a copy of all comments must be provided with the owner's final submission after the tenant comment period has ended. The submission must include an evaluation of the comments received.	2.06-1

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**FOR PROJECTS REQUESTING ADJUSTMENT TO THE REPLACEMENT RESERVE**

Required Materials	Description	Appendix
9 Request to Revise Reserve Deposits	A signed request for a change in the reserve for replacement deposit if such a change is contemplated as part of the rent adjustment request.	2.06-3. H.
10 Reserve Analysis	An analysis must be performed if an owner wishes to adjust the reserve deposits. See paragraph 2.06.8 of this chapter.	2.06-1

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**The U.S. Department of Energy (DOE) and the U.S. Department of Housing and Urban Development (HUD)<sup>14</sup> have partnered to expand the *Better Buildings Challenge (Challenge)* to the multifamily residential sector. The *Challenge* will now support residential,**

<sup>13</sup> This applies only to Section 236 and Section 221(d)(3) BMIR projects, projects that receive Rent Supplement Assistance and projects that converted from Rent Supplement to rental housing assistance.

<sup>14</sup> DOE and HUD Better Building Challenge - Energy Plan Info  
[http://portal.hud.gov/hudportal/HUD?src=/states/new\\_york/stories/multifam\\_energy\\_savings](http://portal.hud.gov/hudportal/HUD?src=/states/new_york/stories/multifam_energy_savings)

as well as, commercial and industrial building owners by providing technical assistance and proven solutions to energy efficiency. The project also provides a forum for matching Partners and Allies to enhance collaboration and problem solving in energy efficiency. Participating residential building owners and managers will commit to reducing energy consumption by at least 20 percent over 10 years, which can lead to an annual energy savings of almost 350 trillion Btu. The expansion of the *Better Buildings Challenge* project is part of President Obama's Climate Action Plan, and recognizes the role that increased energy efficiency can play in reducing carbon pollution, fostering healthy communities, and improving the financial stability of housing assets.

For more information, please go to the U.S. Department of Energy's [link](#).

May be amended or superseded by a more current version.

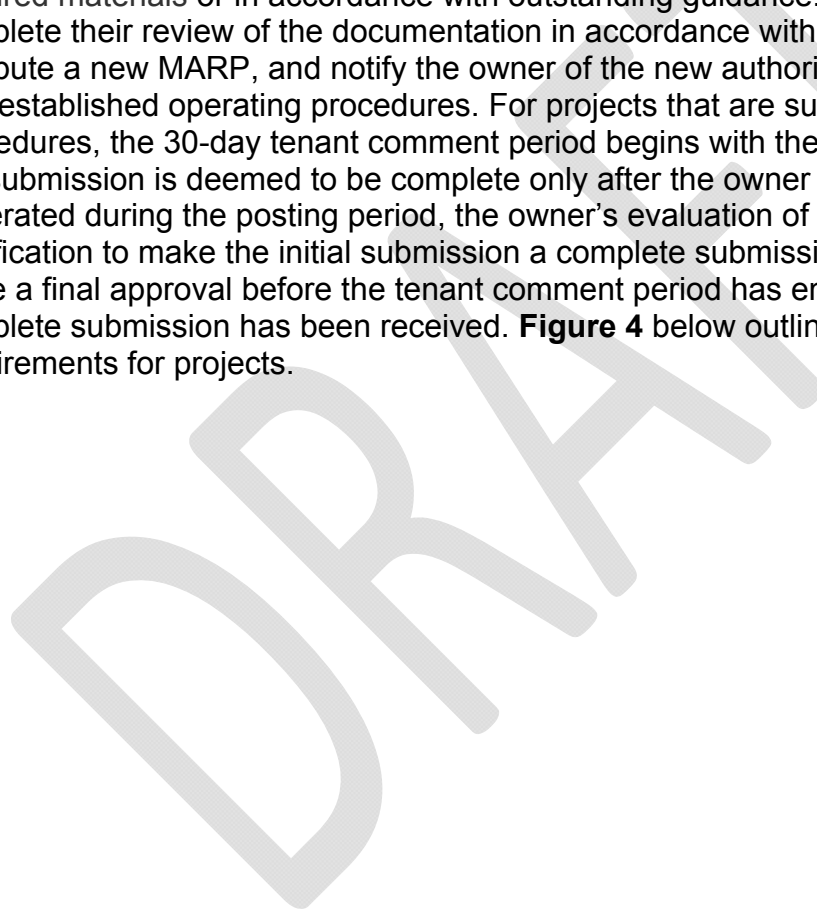
### FOR PROJECTS WITH UTILITY ALLOWANCES

Required Materials	Description	Appendix
11 <b>Utility Allowance Recommendation</b>	A recommendation regarding what utility allowance is appropriate for each unit type and a summary of how the owner arrived at that amount with appropriate recommendation.	2.06-3. G.
12 <b>Utility Allowance Analysis</b>	A baseline utility analysis is required every three years. For the next two years, owners may submit a factor-based utility analysis.	2.06-1

B. **Preparing BBRA Submissions.** Owners must submit accurate and complete materials. Incomplete submissions are the most common reason for delays in processing. It is important that owners complete the budget worksheet (Form 92547-A) accurately and carefully, avoiding over or under estimations or computational errors. Appendix 2.06-1 provides a link to Form HUD-92547-A. Owners are encouraged to prepare and submit an Excel-based version of the budget worksheet to HUD, provided as a link under Appendix 2.06-3. C. Owners must explain all adjustments that are greater than or equal to \$500 in a supporting narrative. For expense adjustments greater than or equal to 5 percent and \$500, owners must provide supporting documentation such as copies of contracts, real estate bills, and published adjustments in utility rates. Where it is not practical to provide supporting documentation (i.e., a part-time employee will be moved to full-time when the adjustment is implemented), owners should clearly state the basis for the adjustment in their narrative. Appendix 2.06-3. C. also provides a link to the current Chart of Accounts that owners can use for line item definitions when preparing a budget worksheet.

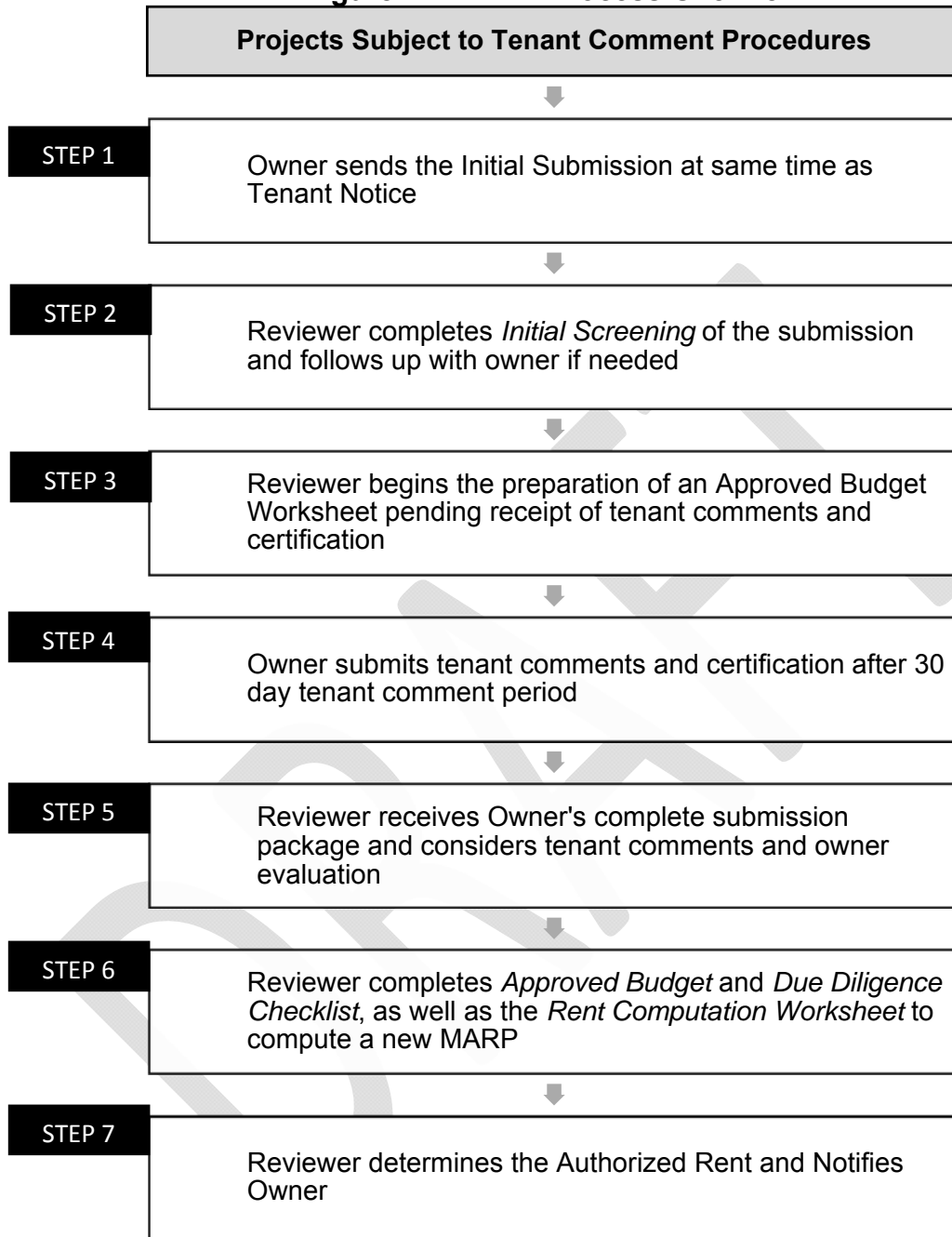
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**Timing Requirement.** Owners of projects subject to a rental assistance contract covered by the Guide Chapter 2-17. Projects subject to 24 CFR §245 Subpart D should submit their request for rent adjustment upon expiration of the period for tenant comments required in the notice format in 24 CFR §245.310 and after review of the comments submitted to the mortgagor, the mortgagor must submit to the assigned HUD office, in addition to the materials enumerated in 24 CFR §245.315 and any revisions thereto, the request for an increase in the maximum permissible rents, together with the required materials or in accordance with outstanding guidance. The reviewer will complete their review of the documentation in accordance with guidance in Section 3, compute a new MARP, and notify the owner of the new authorized rent in accordance with established operating procedures. For projects that are subject to tenant comment procedures, the 30-day tenant comment period begins with the initial submission and the submission is deemed to be complete only after the owner sends the comments generated during the posting period, the owner’s evaluation of the comments and a certification to make the initial submission a complete submission. The reviewer cannot issue a final approval before the tenant comment period has ended and the owner’s complete submission has been received. **Figure 4** below outlines the processing requirements for projects.



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**Figure 4 – BBRA Process Overview**



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1 **2.06.6 PROJECTS SUBJECT TO TENANT COMMENT PROCEDURES**  
2

- 3 A. **Applicability.** The requirements of this paragraph (2.06.6) affect only those  
4 owners whose requested rent potential would exceed the last MARP or who are  
5 requesting approval of a covered action, such as a reduction in utility allowance.  
6 If the proposed rent potential is less than or equal to the last MARP, the tenant  
7 comment procedures outlined in this paragraph do not apply. The properties  
8 subject to tenant comment procedures are listed in **Figure 5**. Tenant comment  
9 procedures for the rent adjustment <sup>15</sup>process are provided for in Section  
10 202(b)(1) of the 1987 Housing and Community Development Amendments  
11 (HCDA) and Section 329(F) of the 1981 HCDA. Regulations at 24 CFR §245 set  
12 the Department’s policy on the subject (Appendix 2.06-1 provides a link to the  
13 regulations and directions to a sample notice). Specifically, the Federal  
14 regulations for Tenant Comment Procedures during the BBRA process can be  
15 found in Subpart D (Procedures for Requesting Approval of an Adjustment in  
16 Maximum Permissible Rents). Owners of applicable projects requesting  
17 conversion from project-paid to tenant-paid utilities or a reduction in utility  
18 allowance are also required to follow tenant comment procedures; these  
19 regulations are found in 24 CFR §245 Subpart E. Owners of Section 236 non-  
20 insured properties requesting conversion from project-paid utilities to tenant-paid  
21 utilities or a reduction in tenant utility allowances<sup>16</sup> are subject to 24 CFR  
22 §245.435. (Procedures for Requesting Approval of a Covered Action).
- 23 B. Subpart D and E do not apply to cooperatives whose residents elect a Board of  
24 Directors which must approve any proposed adjustment in carrying charges.

25 **Figure 5**

<b>Properties Subject to Tenant Comment Procedures</b>
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<sup>15</sup> Also refer to Guide Section 2.15 G.

<sup>16</sup> Refer to H-2015-04. This Notice may be amended or superseded by a more current version.

- Insured or HUD –Held Mortgage assisted under:
  - 236
  - 221(d)(3) BMIR
  - Rent Supplement (RS)
  - Section 8 LMSA (886) converted from RS; or
- Formerly assisted under the above and acquired by HUD and sold under a low and moderate income use restriction that survives
- State or local housing finance agency non-insured project assisted under RS or 236<sup>17</sup>
- Project-based assistance under Section 8 of the United States Housing Act of 1937
- 202, 202 Supportive Housing or Section 811

1  
2 C. **Notice to Tenants.** Owners must issue a Notice to Tenants<sup>18</sup> for any rent  
3 adjustment request<sup>i</sup> or covered action, such as a reduction in utility allowances<sup>19</sup>.  
4 The Notice must contain all the information included in the sample notice shown  
5 in Appendix 2.06-3. E. The owner must make the initial request to the reviewer at  
6 the same time the Notice is given to the tenants. The date of the Notice must  
7 reflect the date when Notices were hand carried, mailed, and/or initially posted.  
8 The Notice date marks the beginning of the 30-day comment period.

- 9 1. **Delivery.** For all projects, other than High-Rise, owners must "deliver" the  
10 Notices. The owner may mail a copy of the Notice to each tenant or  
11 preferably, hand deliver it directly to each unit. Owners are required to also  
12 deliver the Notice to those tenants who pay market rent, as well as tenants  
13 who would not be affected by an adjustment because they pay a percentage  
14 of income.
- 15 2. **Posting.** For High-Rise projects, owners have the option to "post" (24CFR §  
16 245,15(a)) or "deliver" (hand-deliver) the Notice to each tenant. If applicable,  
17 the owner must post the Notice in at least three (3) visible places in each  
18 high-rise building in which dwelling units are located and in one (1) visible

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<sup>17</sup> For State and Local Agency non-insured property rent adjustments the agency receives and processes the owner application. If the agency determines to approve some or all of the adjustment, the agency must submit that to HUD for review. HUD must process and notify the agency of HUD's approval, modification or disapproval within 30 calendar days.

<sup>18</sup> Sections 2-15G and 2-17. C.1 Guide - Tenant Notifications are not required for OCAF rent adjustments but are required for budget-based rent adjustments or for any adjustment where the utility analysis results in a possible decrease in the utility allowance.

<sup>19</sup> Refer to H-2015-04. This Notice may be amended or superseded by a more current version.

1 place at the address where the submission material will be available for  
2 tenant review and copying. Owners must keep the posted Notices in place  
3 and in legible form for the entire 30 days of the tenant comment period.

4 C. **Tenant Review and Comment.** During the 30 days following the date when the  
5 Notice to Tenants was given, the owner must make all of the materials and  
6 additional information used to justify the requested adjustment, as listed in  
7 **Figure 3**, available to tenants or their representatives to review and/or copy. The  
8 owner must make materials available at least during normal business hours.

9 D. **Comment Submission.** Tenants may submit written comments on the rent  
10 adjustment request to the owner and/or send it directly to the HUD or CA  
11 reviewer. The owner must review and evaluate all tenant comments, and forward  
12 the comments and evaluation to the HUD or CA reviewer after the 30-day tenant  
13 comment period as part of the complete rent adjustment request.

14 E. **Changes to Supporting Documentation.** If during the 30-day comment period,  
15 the owner makes a material change in any of the documents submitted in  
16 support of the adjustment, the owner must notify the tenants of the change(s) in a  
17 new Notice to be distributed in the exact same manner as the original Notice to  
18 Tenants. The owner must make the revised materials available for the tenants to  
19 review and/or copy for the greater of (i) 15 days after the revised Notice was  
20 given, or (ii) the days remaining in the initial 30-day comment period.

21 F. **Complete Submission.** At the conclusion of the tenant comment period, the  
22 owner must forward the tenant comments and evaluations (if any), as well as an  
23 executed copy of the owner's Certification as to Compliance with 24 CFR §245  
24 Review and Comment Procedures (a sample Certification is provided in  
25 Appendix 2.06-3. F. to the reviewer. The submission will then be considered  
26 complete and will be processed for budget approval and for the computation of  
27 the new MARP. The reviewer will notify the owner of the new MARP and  
28 authorized rents in accordance with the established operating procedures.

## 30 **2.06.7 ADJUSTMENTS TO UTILITY ALLOWANCE**

31 A. **Applicability.** An adjustment to the utility allowance is required at the time of the  
32 annual adjustment of contract rents and when utility rate change results in a  
33 cumulative adjustment of 10 percent or more from the most recently approved  
34 utility allowance. Owners must refer to HUD Notice H-2015-04<sup>20</sup>, Methodology for  
35 Completing a Multifamily Housing Utility Analysis (link provided in Appendix 2.06-  
36 1), for guidance on establishing utility allowances. This HUD Notice provides  
37 detailed instructions to owners for guidance on completing utility analysis. Rent  
38 adjustment requests that include a request for utility allowance adjustment, will

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<sup>20</sup> This Notice may be amended or superseded by a more current version.

1 not be processed if owners do not comply with HUD requirements as per the  
2 current guidance.

3 B. **Procedures.** The HUD Notice H-2015-04<sup>21</sup> outlines adjustment request  
4 procedures such as time considerations, tenant notice, and implementation  
5 guidelines, as well as sample reference documents. The owners are also  
6 required to notify the tenants of any proposed utility allowance adjustments, as  
7 per 24 CFR §245 Subpart E. For owners requesting a decrease in utility  
8 allowances, separate tenant notice requirements apply. In addition, HUD requires  
9 that certain utility allowance decreases must be phased-in, as outlined in the  
10 HUD Notice.

11 C. **Submission Requirements.** Each owner must submit:

12 1. A utility allowance recommendation (as shown in Appendix 2.06-3. G.) that  
13 outlines the following:

14 a. The type of utilities covered by the utility allowance (e.g., gas for  
15 heating).

16 b. States whether any utility rate adjustments or decreases were  
17 implemented during the past 12 months or are expected to be  
18 implemented during the next 12 months and the amount of those  
19 adjustments or decreases.

20 c. States how any energy conservation initiatives have impacted or will  
21 impact consumption.

22 2. A baseline analysis (required every three years) or a factor-based analysis  
23 (permitted for years 2 and 3, between baseline analyses). Sample analysis  
24 methodology can be found in HUD Notice H 2015-04, or most current  
25 guidance.

26

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<sup>21</sup> This Notice may be amended or superseded by a more current version.



## 2.06.8 ADJUSTMENTS TO RESERVE FOR REPLACEMENT

**Overview.** The Reserve for Replacement account is established for the purposes of providing a source of capital to defray costs to replace structural components and mechanical equipment of the property. Projects subject to 24 CFR §245 Subpart D should submit their request for rent adjustment including required materials for a reserve for replacement adjustment upon tenant notice for comments required in the notice format in 24 CFR §245.310 and after review of the comments submitted to the mortgagor. Regulatory Agreements require cooperative projects to submit their operating budgets annually, as well as obtain HUD approval of carrying charges for expense. Per 24 CFR §880.602(a)(1) the R for R balance is to be adjusted each year by the automatic annual adjustment factor (AAF). However, per 24 CFR §880.602(a)(1)(ii), HUD has the discretion to reduce the rate of deposit if HUD deems that the balance is sufficient to meet projected requirements.

- A. Owners may request revisions in deposits to reserves, as part of rental adjustment processing based on project type business agreement (e.g. regulatory agreement; use agreement; mortgage note) and / or assistance type and rules and requirements governing the reserve for replacement as required by HUD.

Examples of Requirements:

24 CFR §880.602 Replacement reserve.

(a) A replacement reserve must be established and maintained in an interest-bearing account to aid in funding extraordinary maintenance and repair and replacement of capital items.

(1) 24 CFR §880 and 24 CFR §881 projects.

(a) This reserve amount will be adjusted each year by the amount of the automatic annual adjustment factor.

(b) In the case of HUD-insured projects, the provisions of this section will apply instead of the otherwise applicable mortgage insurance provisions, except in the case of partially-assisted insured projects which are subject to the applicable mortgage insurance provisions.

(2) 24 CFR §883, subpart D

(a) For projects approved under 24 CFR §883, subpart D, this amount may be adjusted each year by up to the amount of the automatic annual adjustment factor. For all projects not approved under 24 CFR §883, subpart D, this amount must be adjusted each year by the amount of the automatic annual adjustment factor.

(b) The reserve must be built up to and maintained at a level determined to be sufficient by the to meet projected requirements. Should the reserve achieve that level, the rate of deposit to the reserve may be reduced with the approval of the Agency.

1 (c) HUD may exempt partially-assisted projects approved under 24 CFR §883,  
2 subpart D, from the provisions of this section. All partially-assisted projects not  
3 approved under the Fast Track Procedures formerly in 24 CFR §883, subpart D,  
4 are exempt from the provisions of this section.

5 **(2) 24 CFR §891.605**

6 **(a).** The Borrower shall establish and maintain a replacement reserve to aid in  
7 funding extraordinary maintenance, and repair and replacement of capital items.

8 **(b) Deposits to reserve.** The Borrower shall make monthly deposits to the  
9 replacement reserve in an amount determined by HUD. Further requirements  
10 regarding the amount of the deposits for projects funded under 24 CFR §891.655

- 11 B. **Procedures and Submission.** If an adjustment is needed, owners must submit  
12 a signed request for a change in the Reserve or Replacement as of the rent  
13 adjustment request (a sample request is provided in Appendix 2.06-3. H.). For  
14 new projects, owners are required to submit a Physical Capital Needs  
15 Assessment (PCNA)<sup>22</sup> and periodic updates to establish proper levels and  
16 usage. Owners must refer to current guidance, Mortgagee Letter 2012-25, HUD  
17 Notice 2012-27<sup>23</sup> for further guidance<sup>24</sup> on adjustments to Reserve for  
18 Replacement. Owners should be aware that this guidance may be amended and  
19 reissued from time to time (Appendix 2.06-1 provides links to relevant current  
20 guidance).

21  
22 **2.06.9 SERVICE COORDINATORS, ELDERLY CARE AND CONGREGATE**  
23 **SERVICES**

- 24 A. **Service Coordinators Overview.** A Service Coordinator (SC) is a social service  
25 person hired, contracted, or retained by the assisted housing owner or its  
26 management company, who assists residents in identifying, locating and  
27 acquiring supportive services necessary for elderly persons to live independently  
28 and age in place in that development. The SC position and related project costs  
29 are eligible operating expenses in certain housing developments that are  
30 targeted to elderly persons. Owners should include a SC position in their  
31 operating budget at any time after the project is fully occupied. When a current  
32 operating budget is not sufficient to cover SC-related costs, owners may request  
33 a rent adjustment to meet this need. Statutorily, any cost associated with the  
34 employment or otherwise retaining a SC in Section 202 housing supported by a  
35 PRAC must be considered an eligible cost.

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<sup>22</sup> Refer to Guide 2.16.

<sup>23</sup> This Notice may be amended or superseded by a more current version.

<sup>24</sup> Refer to MAP Guide

[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/administration/hudclips/guidebooks/hsg-GB4430](http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/guidebooks/hsg-GB4430) and Handbook 4460.1 Rev-2 Chapter 5 for PCNA Guidance. Both may be amended or superseded by a more current version.

1        **B. Eligible Developments**

2        Authority for eligible costs for service coordinators for elderly or disabled families  
3        in eligible housing projects is addressed in Sections 671, 672, 674, 676 and 677  
4        of the Housing and Community Development Act of 1992 (42 U.S.C. 13631 and  
5        13632).

6  
7        a. Be assisted or financed through any of the following projects:

8        (1) Section 202 Direct Loan;

9        (2) Project-based Section 8 (including Section 8 Moderate Rehabilitation), or

10       (3) Section 221(d)(3) below-market interest rate and Section 236 (insured or  
11       assisted).

12       b. Have frail or at-risk elderly residents and/or non-elderly residents with  
13       disabilities who together total at least 25 percent of the building's residents. (For  
14       example, if a property has 52 total residents, at least 13 residents must be frail,  
15       at-risk, or non-elderly people with disabilities.)

16       c. Were designed or designated for the elderly or persons with disabilities and  
17       continue to operate as such. This includes any building within a mixed-use  
18       development that was designed for occupancy by elderly persons or persons  
19       with disabilities at its inception and continues to operate as such, or consistent  
20       with title VI, subtitle D of the Housing and Community Development Act of 1992  
21       (Pub. L. 102-550). If not so designed, a property in which the owner gives  
22       preferences in tenant selection (with HUD approval) to eligible elderly persons or  
23       nonelderly persons with disabilities for all units in that property.

24       d. If FHA insured or financed with a Section 202 Direct Loan, are current in  
25       mortgage payments or are current under a workout agreement.

26       e. Meet HUD's Uniform Physical Conditions Standards (codified in 24 CFR § 5,  
27       subpart G), based on the most recent physical inspection report and responses  
28       thereto, as evidenced by a score of 60 or better on the last physical inspection or  
29       by an approved plan for properties scoring less than 60.

30       f. Are in compliance with their regulatory agreement, Housing Assistance  
31       Payment (HAP) Contract, and any other outstanding HUD grant or assistance  
32       contract document.

33       g. Have no available project funds (i.e., Section 8 operating funds, residual  
34       receipts, or excess income) that could pay for a Service Coordinator. ("Available  
35       funds" are those that require HUD approval for their use and are not needed to  
36       meet critical property needs.) Assigned HUD staff will make this determination  
37       based on financial records maintained by the Department and information  
38       provided by the applicant in the grant application.

39  
40       Note: If development eligibility status changes during the course of the Service  
41       Coordinator grant term, making it ineligible to receive a grant (e.g., due to  
42       prepayment of mortgage or sale of property) notification is required to HUD.  
43

- 1 C. **Service Coordinator Request.** Owners requesting a budget adjustment to cover  
2 the cost of a SC project must submit the following documents, in accordance with  
3 current guidelines and timeframes as specified by HUD (Refer to Section 2  
4 above):
- 5 1. A copy of the project's current or proposed operating budget, using Form  
6 HUD-92547-A, Budget Worksheet Income and Expense Projections.
- 7 2. Multifamily Housing Service Coordinator Funding Request, Form HUD-  
8 91186-A.
- 9 3. Evidence of at least three comparable salaries that are consistent with  
10 salaries and cost of similar projects in the jurisdiction of the property's HUD  
11 Regional Center.
- 12 4. Narratives detailing:
- 13 a. A plan to provide sufficient on-site private office space for the SC. Such  
14 office space shall be provided as a permanent private office with a door,  
15 ceiling and four walls to allow for confidential meetings with residents. If  
16 construction is involved, owner must include a plan and a cost estimate.
- 17 b. An explanation of proposed Quality Assurance (QA) activities and an  
18 itemized list of estimated expenses, since HUD does not permit on-site  
19 housing management staff to perform QA work. QA activities are  
20 expected to evaluate the project and assure that the position and the  
21 project are being effectively implemented. The owner should indicate the  
22 type of professional or entity who is expected to perform this work, if  
23 known in advance, and also include the qualifications of the QA provider,  
24 such as education or licensing in either social work or a related health  
25 care field.
- 26 c. A Supportive Service Plan that identifies short and long term project  
27 outcomes to help measure project performance.
- 28 D. **Income.** Subject to HUD approval, projects for the elderly may have additional  
29 income and expenses that are not found in other projects. Multifamily Housing  
30 does not administer nursing homes or assisted living facility mortgage insurance  
31 projects. When completing the HUD Budget Worksheet, Form HUD-92547-A,  
32 owners must use line item 5300 to record revenues related to elderly care  
33 services (such as revenues from meal projects and housekeeping keeping  
34 services). The 5300-line item corresponds to accounts 5300-5390 provided in  
35 HUD Handbook 4370.2. All HUD funding received for a Service Coordinator  
36 should also be included in the 5300-line item.
- 37 E. **Expenses.** The owner should reflect HUD-covered Elderly Care expenses in  
38 account line item 6900 of the Budget Worksheet, Form HUD-92547-A. The  
39 owner should include only the approved HUD-covered expenses on the budget

1 worksheet. HUD Notice H 1998-12<sup>25</sup> or most current guidance, provides detailed  
2 information regarding HUD-funded elderly care expenses for Section 202 PRACs  
3 that have prior approval to use operating funds to pay up to 15% of a service  
4 package needed by a resident. The owner must include the elderly care and  
5 congregate service expenses in line item 6900, including the salary of a HUD-  
6 funded Service Coordinator which is found in line item 6990 of the current AFS.  
7 Other examples of expenses captured under line 6900 include dietary salaries,  
8 food, dietary supplies, and recreation and rehabilitation. Owners should refer to  
9 their service agreements for specific services covered by HUD when budgeting  
10 for line item 6900.

- 11 F. **Effect on Budget Based Rents.** Certain properties with Section 202 PRACs  
12 may have prior approval to use operating funds to pay up to 15% of a service  
13 package needed by a resident (as per HUD Notice H-1998-12 or most current  
14 guidance). For all other projects, HUD does not support assisted living activities  
15 from operational funds and any such activities should not affect the budget. HUD  
16 expects such projects to be self-sufficient through grants (including HUD grants),  
17 service enhanced housing or assisted living conversion projects or permissible  
18 use of residual receipts. Owners are required to document any permission or  
19 funding received from HUD for assisted living activities.

#### 21 **2.06.10 PROJECTS WITH COMMERCIAL SPACE**

22 The term "Commercial" is applied to any space or facility permitted and acceptable for  
23 "Nonresidential Use" from which income is derived or anticipated. Owners must not  
24 include income from residents for the use of facilities such as community rooms and  
25 parking, as these are not considered commercial income even though fees may be  
26 collected. Some properties with Section 236, 202 and 220, that were provided with  
27 rental housing assistance may request a budget based rent adjustment with commercial  
28 income included in the budget. HUD does not establish market rates for commercial  
29 spaces. If the lease arrangement is something other than a triple net lease or is with a  
30 related party, owners must be careful in including these charges. Owners can refer to  
31 HUD Notice H-2011-10 <sup>26</sup> on the Requirements for Documenting the Review and Setting  
32 of Rents for Commercial Space in HUD Properties at Appropriate Levels as Approved  
33 by HUD.

#### 35 **2.06.11 PROJECTS WITH FACILITIES AND SERVICES SUBJECT TO CHARGE**

- 36 A. **Overview.** Owners may not charge the tenants separately for equipment and  
37 services that are included in the rent. Owners may offer congregate services only  
38 on terms that have been approved by HUD. All income derived from service and

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<sup>25</sup> This Notice may be amended or superseded by a more current version.

<sup>26</sup> This Notice may be amended or superseded by a more current version.

1 facility charges must be deposited in the project operating account. Owners can  
2 find the HUD approved amounts for services and equipment included in rent in  
3 Part B of the Rent Schedule, and the amounts approved in addition to rent in Part  
4 C. Owners may charge tenants for other services or facilities only if all of the four  
5 (4) conditions listed below are met:

- 6 1. The services, facilities and charges have been included in Part C of the most  
7 recently approved Rent Schedule;
- 8 2. A schedule of those charges has been posted or distributed to the tenants;
- 9 3. Use of those facilities or services is optional on the part of the tenant; and
- 10 4. If not previously authorized, the charges must be approved by HUD prior to  
11 implementation.

12 **B. Parking Charges.** Owners can charge for parking only in unsubsidized projects  
13 where HUD previously approved it. The owner can charge for car heaters in both  
14 subsidized and unsubsidized projects in cold climates where parking spaces are  
15 so equipped.

#### 16 **2.06.12 SECTION 221(d)(3) BELOW MARKET INTEREST RATE PROPERTIES**

- 17 A. **Applicability.** For Section 221(d)(3) that are below market interest rate (BMIR)  
18 properties, HUD approves the rents as with other subsidized projects. BMIR  
19 projects that are housing cooperatives are not subjected to tenant comment  
20 procedures.
- 21 B. **Utility Allowances.** Utility allowances<sup>27</sup> are not allowed for units without income  
22 based subsidies if the properties were built with tenant-paid utilities. However, if  
23 the project has rental housing assistance (a Loan Management Set Aside  
24 contract) or Rent Supplement, the tenants receive a utility allowance.
- 25 C. **Monthly Schedule.** BMIR mortgagors must complete a monthly schedule -  
26 Schedule of Computation of Rental Income in Excess of BMIR Rent Paid by Over  
27 Income Tenants, in order to compute the amount of rent in excess of BMIR rent  
28 paid by over-income tenants (once initially approved, tenants are grandfathered  
29 in). Owners are required to deposit these funds to the residual receipts account if  
30 the project has a surplus cash position at the end of the fiscal year. Unless  
31 requested by the HUD or CA reviewer, the owner must retain this form as part of  
32 the owner's record.

### 33 **SECTION 3: REVIEW OF THE OWNER'S SUBMISSION<sup>28</sup>**

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<sup>27</sup> Refer to HUD H-2015-04

<sup>28</sup> For projects subject to Tenant Comment Procedures, the initial submission is sent for review on the first day of the tenant comment period. The initial submission does not include the certification and received tenant comments until after the 30-day tenant comment period. However, the initial submission should

1  
2 This section provides reviewers with guidance on processing (approving, modifying or  
3 denying) a request to budget based rental adjustment, as well as, requests to revise  
4 utility allowances and reserve for replacement deposits. The section also outlines  
5 guidance regarding the different review requirements based on the rent adjustment type  
6 requested, program type and if tenant comment procedures apply. Also included in this  
7 section are directions to reviewers for evaluating and approving the Budget Worksheet,  
8 in addition to conducting the necessary due diligence prior to computing the new  
9 Maximum Allowable Rent Potential (MARP) and establishing the authorized rents.  
10 Reviewers must use the guidance in Appendix 2.06-4 for approving the Budget  
11 Worksheet and calculating MARP.<sup>29</sup>

12

### 13 **2.06.13 PROCESSING REQUESTS LESS THAN OR EQUAL TO LAST MARP**

14 A. **Processing the Request.** For requests with proposed rent less than or equal to  
15 last MARP, tenant comment procedures do not apply and the reviewer must  
16 review the owner's submitted Rent Schedule (Form HUD-92458) following the  
17 guidance below:

- 18 1. The reviewer must check the accuracy and completeness of the owner's  
19 entries in the submitted Rent Schedule using the Initial Screening Checklist  
20 (provided in Appendix 2.06-4. A.).
- 21 2. The reviewer must obtain the last MARP from the last Rent Computation  
22 Worksheet (or Part F of the last approved Rent Schedule) completed for the  
23 project, and enter this amount in Part F of the Rent Schedule.
- 24 3. The reviewer must ensure that parts D and E of the submitted Rent Schedule  
25 agree with the assumptions made on the last Rent Computation Worksheet,  
26 with respect to non-revenue producing space and commercial space.
- 27 4. The reviewer must sign and date the Rent Schedule in Part I of the Rent  
28 Schedule and notify the owner as directed in Section 4.
- 29 5. For owner requests that also include adjustments to utility allowances and/or  
30 reserve for replacement,<sup>30</sup> the reviewer must follow the HUD's requirements  
31 in this chapter (see paragraphs 2.06.12.06 and/or 2.06.18 respectively).  
32 Reviewers should note that certain covered actions in 24 CFR §245 Subpart  
33 E, such as the reduction of utility allowances, prompt tenant comment  
34 procedures, as discussed paragraph 2.06.16 of this chapter.

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still be reviewed for completeness and the reviewer should request other outstanding documents before the end of the 30-day tenant comment period.

<sup>29</sup> Refer to Chapter 2 of the Guide and 24 CFR §245 as applicable.

<sup>30</sup> Refer to Chapter 2 of the Guide as applicable.

- 1 B. **Timing.** The HUD or CA reviewer will complete the processing of the owner's  
2 request in accordance with the established operating procedures, and notify the  
3 owner following the procedures outlined in Section 4 of this chapter.  
4

5 **2.06.14 PROCESSING REQUESTS WHEN PROPOSED RENT EXCEEDS LAST**  
6 **MARP<sup>31</sup>**

- 7 A. **Processing the Request.** The **Figure 4** in Section 2 of this chapter, provides an  
8 overview of the process for projects subject to tenant comment procedures when  
9 proposed rents exceed the last MARP. Each of the steps in the review process is  
10 discussed in detail below.

- 11 B. **Timing.** The HUD or CA reviewer must complete an initial review upon receiving  
12 the owner's submission (or *initial* submission<sup>32</sup> for projects subject to tenant  
13 comment procedures). Note that for projects subject to tenant comment  
14 procedures, the full review cannot be completed until after the owner provides  
15 the required documentation as per paragraph 2.06.16.

- 16 C. **Performing the Initial Screening.** The reviewer must use the Initial Screening  
17 Checklist provided in Appendix 2.06-4. A. to perform a completeness and  
18 eligibility assessment of the owner's submission for a BBRA. The objective of  
19 performing the initial screening is to ensure that all required materials were  
20 submitted in a complete and timely manner. If the reviewer identifies significant  
21 deficiencies in the BBRA submission during the initial screening, the reviewer  
22 must follow up with the owner in writing. Guidelines for performing the initial  
23 screening include:

- 24 1. The reviewer must call or email the owner and ask them to submit any  
25 missing materials if the submission is determined to be incomplete or if the  
26 reviewer has other questions.
- 27 2. Before requesting additional materials, the reviewer should determine if the  
28 items in questions will have significant monetary impact on the new MARP.  
29 The reviewer may require additional submissions only if the actual or  
30 projected estimates appear to be excessive and the narrative or supporting  
31 documentation provided do not adequately justify the requested expense  
32 levels. For projects subject to tenant comment procedures, material changes  
33 to the initial submission must comply with the requirements outlined in  
34 paragraph 2.06.16.
- 35 3. Once the submission is verified as complete, the reviewer can move to the  
36 processing stage which involves preparing the HUD approved budget  
37 worksheet to determine the authorized rents.

- 38 D. **Preparing the HUD Approved Budget.** The reviewer should evaluate and

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<sup>31</sup> Refer to 24 CFR 245 as applicable.



1 analyze the owner’s projected income and expenses in order to prepare a HUD  
2 approved budget using the tool provided in Appendix 2.06-4. A. The reviewer  
3 must carefully evaluate the reasonableness of the project’s income and  
4 expenses following the detailed line by line guidance outlined in Appendix 2.06-4.  
5 B., as well as the general guiding principles listed below:

- 6 1. **Review Owner’s Estimates.** Reviewers must be careful that expenses are  
7 not underestimated as it may indicate deferred maintenance or result in a  
8 default. Similarly, if expenses are overestimated, it may lead to higher rents  
9 resulting in HUD paying unnecessary subsidy.
- 10 2. **Assess Reasonableness.** Reviewers must assess whether the actual  
11 expense base is reasonable for the level of maintenance expected during the  
12 next year. Reviewers must also assess whether the project is taking  
13 reasonable efforts to control costs and is complying with the terms of the  
14 Certification to Reasonable Purchasing Practices in Appendix 2.06-3. D. If  
15 the prior period's actual expenses were unusually high due to special  
16 circumstances, the reviewer should consider this when making adjustments  
17 for the budgeted period.
- 18 3. **Document Adjustments and Justifications.** The reviewer must document  
19 all adjustments and approvals in the “Approved” column of the HUD  
20 approved budget worksheet tool. The reviewer must document justifications  
21 for line item approvals, especially for those greater than or equal to \$500 and  
22 5% of prior year’s actuals, in the “Comments” column of the HUD approved  
23 budget. The worksheet tool facilitates documentation of reviewer’s analysis  
24 while preparing the approved budget worksheet.
- 25 4. **Due Diligence.** The reviewer must then comprehensively evaluate the  
26 approved budget by evaluating the aggregate numbers in the context of prior  
27 year’s actuals and owner’s budgeted cost of operations. The reviewer should  
28 consider the physical and financial condition of the property and whether or  
29 not the owner's submission as well as past performance support the  
30 requested adjustment. The purpose of performing this due diligence check is  
31 to ensure that the “allowed expenses” (as discussed in item 2.06.14. E.3.  
32 below) are appropriately approved prior to computing a new MARP.

- 33 E. **Compute New MARP.** Once the reviewer determines an approved budget and  
34 completes the due diligence checklist, the reviewer must compute the new  
35 MARP using the Rent Computation Worksheet (RCW) tool (provided in Appendix  
36 2.06-4. A.). Reviewers should refer to Appendix 2.06-4. C. for step-by-step  
37 guidance on computing the new MARP using the Excel-based RCW tool. 2.06 It  
38 is critical that the reviewer computes the correct MARP in order to authorize the  
39 appropriate rent adjustment that does not result in undue rent burden on  
40 residents or HUD over-subsidizing the properties. The five main factors  
41 influencing MARP are discussed below. The reviewer must ensure the accuracy  
42 of these items prior to computing the new MARP.

- 1           1.   **Debt Service.** Reviewers must use the current debt service in computing the  
2           new MARP for projects with mortgages, unless the project requirements  
3           specify that another debt service<sup>33</sup> must be used. In approving the budget  
4           and incorporating debt service into the rent calculation, the reviewer must  
5           ensure that the project’s current debt service and debt service coverage  
6           requirement are reflected. Reviewers must ensure that the debt service  
7           coverage ratio do not exceed a maximum of 1.2 when computing MARP. In  
8           the context of a refinancing transaction and a renewal of the rental housing  
9           assistance contract to preserve the project, “current debt service” is the  
10          amount that will take effect when the new loan closes. If the debt service  
11          associated with the refinancing changes before the contract renewal, HUD  
12          retains the right to revise the budget.
- 13          2.   **Distributions.** Reviewers must determine the appropriate distribution  
14          amount based on the business agreements governing the specific project.  
15          Reviewers should note that the currently allowed distribution may vary from  
16          the original allowed distribution due to several factors such as change of  
17          ownership type, infusion of additional equity and/or as of preservation  
18          transactions where owners were provided an adjusted distribution as an  
19          incentive in return for maintaining long-term affordability.<sup>34</sup>
- 20          3.   **Allowed Expenses.** For the purposes of computing new MARP, “Allowed  
21          Expenses” is comprised of four items – (i) Total Administrative Expenses, (ii)  
22          Total Utilities Expenses, (iii) Total Operating and Maintenance Expenses,  
23          and (iv) Total Taxes and Insurance. Reviewers must obtain these four items  
24          from the HUD approved budget worksheet. Reviewers may also include  
25          elderly care in Allowed Expenses, when applicable and in accordance with  
26          the guidance in paragraph 2.06.19.
- 27          4.   **Management Fee.** In computing the new MARP, reviewers must deduct the  
28          management fee<sup>35</sup> from the Allowed Expenses. Management Fee is used for  
29          computing the “factor” when determining the new MARP<sup>36</sup>. Reviewers must  
30          ensure that they utilize the correct management fee from the most recently  
31          approved Management Certification, Form HUD-9839. If the fee is not  
32          capped, the reviewer must utilize the approved fee to establish the factor for  
33          determining the MARP. Reviewers must note that Management fee  
34          percentages that are too high or too low can cause rents to exceed or fall  
35          short of operating expenses.
- 36          Multifamily Housing has established a management add- on fee incentive to  
37          address one of the market and policy barriers that Owner and Agents

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<sup>33</sup> Refer to business agreements for use of debt service such as IRP de-couplings.

<sup>34</sup> Guide Section 2-12.

<sup>35</sup> Chapter 3.2 Types of Management Fees.

<sup>36</sup> The guidance presented HUD Handbook 4381.5 to management agents of both HUD-insured and HUD-assisted properties. Figure 1-2 of 4 381.5 lists the different types of HUD properties subject to their provisions.

1 experience in greening their projects and achieving of Better Building  
 2 Challenge. Participation in this incentive is limited to only those projects by  
 3 Better Building Challenge Participants, and applies to identity-of-interest,  
 4 independent management agents and owner managed Belter Building  
 5 Challenge multifamily housing projects,

6 Multifamily Better Buildings Challenge Incentive: Link to Allowable  
 7 Management Add on Fees **Multifamily Memorandum**

8 To determine if a fee should be capped, reviewers must reference the  
 9 guidance in **Figure 6** below (from Handbook 4381.5, page 3-35).

10  
 11 **Figure 6 – Management Fee Determinations<sup>37</sup>**

OWNERS REQUESTING FEE PERCENTAGE ADJUSTMENTS		
Post-1986 Agreements Subject to HUD Review	Pre-1986 Fixed Term Agreements	Pre-1986 Open Ended Agreements
Use ranges to determine the approvable fee	Use ranges to determine the approvable fee	Any adjustment in the fee percentage must result in a yield within the range limits.  However, the old percentage may continue to be used, even if the yield exceeds the range limits.

RENEWALS OF PRE-1986 FIXED TERM AGREEMENTS
If the fee percentage is not adjusted but the current fee yield exceeds the range: (1) Cap the yield at the current yield (2) Adjust the fee percentage by dividing the capped PUPM yield by the new net monthly rent potential  <p style="text-align: right;"><i>See paragraph 3.27</i></p>

12  
 13  
 14 **5. Vacancy Rate.** Vacancy rate is used in conjunction with the management  
 15 fee to establish the factor for determining the new MARP. Reviewers must

<sup>37</sup> Handbook 4381.5, page 3-35.

1 ensure that they use the approved vacancy rate when computing the factor.  
2 The reviewers must verify the approved vacancy rate from the business  
3 agreement of the respective project. General guidelines for establishing  
4 vacancy rates are provided below:

- 5 1. Projects with 100 percent Section 8 must include a vacancy loss rate of  
6 3<sup>38</sup> percent in the budget unless as part of a refinancing, the lender  
7 requires a different vacancy rate. Exceptions to the policy are:
  - 8
  - 9 a. Projects with 50 or fewer (which includes both assisted and  
10 unassisted units) units must include a vacancy loss rate of 5  
11 percent in the budget; or
  - 12
  - 13 b. Projects where the assisted units account for 20 percent or less of  
14 the total units must use a vacancy loss rate of 7 percent in the budget.  
15

16 For Section 202/811 projects or projects where 100% of the units are assisted  
17 with PRAC, the standard vacancy rate is 0%, however the owner may include a  
18 vacancy factor not to exceed 3 percent as applicable per HUD Notice H 2011-18  
19 (See appendix 2.06-1) or most current guidance.  
20

21 **F. Determine Authorized Rent.** Once the reviewer computes the new MARP, the  
22 reviewer must determine an authorized rent which may be less than the new  
23 MARP or different from the owner's requested rent. For Section 8 Option 4  
24 renewals, the reviewer must authorize the rents at the lesser of OCAF or budget.  
25 For such renewals, reviewers must not keep the rents at the existing levels if the  
26 budget supports a reduction in the rents. The reviewer should use the RCW tool  
27 provided in Appendix 2.06-4. A., in conjunction with the guidance below, to  
28 determine the authorized rent. Reviewers must follow the guidance below when  
29 authorizing rents. **Figure 7** provides illustrative examples of authorized rents.<sup>39</sup>

- 30 1. The New MARP is less or equal to the Owner's Proposed Rent. When the  
31 rent adjustment percent based on new MARP is less than or equal to the  
32 owner's requested rent adjustment, the reviewer must authorize rents that  
33 are equivalent to the new MARP.
- 34 2. The New MARP exceeds the Owner's Proposed Rent. When the rent  
35 adjustment percent based on new MARP exceeds the owner's requested

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<sup>38</sup> Section 12.15.2 of the Guide.

<sup>39</sup> In rare cases, it may be acceptable to approve an adjustment higher than what the owner requested. For example, if the owner supplemented their original request based on follow-up from the reviewer and provided sufficient supporting documentation for increasing an expense without revising their cover letter, the reviewer may make the appropriate adjustment in the approved budget worksheet. This is subject to Supervisory approval however may not deviate from MAHRA requirements if applicable and should be documented in the approved budget worksheet as well as in the reviewer's summary document.

- 1 rent adjustment, the reviewer must authorize the owner’s proposed rent  
 2 (unless the analysis justifies a higher rent than the owner requested and also  
 3 notify the owner of the new MARP.
- 4 3. The New MARP results in a Rent Decrease. If the new MARP results in a  
 5 reduction to the current rent level, the reviewer should authorize rent  
 6 decrease which is equivalent to the new MARP.

7  
 8 **Figure 7 – Examples for Authorizing a New Rent adjustment**

	Proposed Rent	New MARP Adjustment	Authorized Rent
New MARP < Proposed Rent	4%	2%	2%
New MARP > Proposed Rent	4%	6%	4%
New MARP results in Decrease	4%	-2%	-2%

- 9
- 10 G. **Complete Reviewer Summary Memo.** Once the reviewer determines an  
 11 authorized rent, the reviewer must complete the Reviewer Summary Memo (the  
 12 Memo) available in Appendix 2.06-4. D. The reviewer must document a detailed  
 13 summary of adjustments made and issues encountered in the Memo. The  
 14 reviewer must summarize the changes he/she made to the owner’s budget  
 15 (changes to individual budget line item are to be captured in the Approved  
 16 Budget Worksheet) and explain the overall rationale for those changes. Also, any  
 17 significant adjustments made in the Rent Computation Worksheet while  
 18 computing the new MARP, must be documented in the Memo. For example, if  
 19 the debt service provided by the owner was not used in the computations, the  
 20 reviewer must note the reasons in the Reviewer Summary for why the reviewer  
 21 used a different debt service in computing the new MARP. Other items to capture  
 22 in this summary include:
- 23 1. If the owner’s proposed rent adjustment was approved as requested.
  - 24 2. If an adjustment is lower/higher than what the owner requested.
  - 25 3. If processing resulted in a decrease in the MARP.
  - 26 4. If reviewer authorized a rent that is lower than the new MARP.
  - 27 5. The results to the owner’s request for changes to utility allowances, reserve  
 28 deposits, commercial rents and/or other charges.

29 The reviewer must also document how the authorized rent adjustment is to be  
 30 funded. Typically, the adjustment will be funded by rental assistance contract  
 31 funding. However, the reviewer should consider if the adjustment can be funded  
 32 in whole or in part by residual receipts for “New Regulation” rental housing

1 assistance properties subject to Housing Assistance Payment offsets. See HUD  
2 Notice H-2012-14 or most current guidance.

3 The individual performing the computations and processing the rent adjustment  
4 request must sign the Reviewer Summary Memo. The Memo will aid in preparing  
5 the notification letter, discussed in Section 4 of this chapter, as well as serve as a  
6 record-keeping document.

7

### 8 **2.06.15 SECTION 236 PROJECTS**

9 For Section 236 projects, a new MARP is computed as outlined in paragraph 2.06.14.  
10 However, the new maximum unit rents for Section 236 projects are calculated  
11 differently. Rents may vary by floors if these differentials were approved at initial  
12 endorsement. This can be changed only if HUD and the owner think it necessary.  
13 Reviewers must follow the procedures in Box H of the Rent Computation Worksheet.  
14 The Worksheet's procedures give each unit type the same percentage adjustment in  
15 rent. Also, the reviewers must compute new maximum rents and new maximum market  
16 rents. NOTE: The dollar difference between basic rent and market rent may vary from  
17 that set at final endorsement because the interest reduction payments decline over  
18 time. Therefore, reviewers must review the amortization schedule for the budgeted year  
19 to ensure the correct amount is used.

1 **2.06.16 PROJECTS SUBJECT TO TENANT COMMENT PROCEDURES**

- 2 A. **Applicability.** For a list of properties subject to tenant comment procedures see  
3 **Figure 5** in paragraph 7.6. The reviewer must ensure that the applicable  
4 properties follow the tenant comment procedures outlined in 24 CFR §245  
5 Subpart D when requesting approval of an adjustment in maximum permissible  
6 rents and Subpart E when requesting conversion from project paid to tenant paid  
7 utilities or a reduction in utility allowance. Owners of Section 236 non-insured  
8 properties requesting conversion from project-paid utilities to tenant-paid utilities  
9 or a reduction in tenant utility allowances are subject to 24 CFR §245.435.
- 10 B. Reviewers should note that Subparts D and E do not apply to mortgagors who  
11 are cooperative housing corporations or associations. A link to the 24 CFR §245  
12 regulations is provided in Appendix 2.06-1.
- 13 C. **HUD's Role.** In enforcing tenant comment procedures, the reviewer must follow  
14 these general guidelines:
- 15 1. The reviewer must ensure that the tenant notice was delivered, usually hand  
16 delivered, to each tenant. Posting is permissible in high rise buildings (24  
17 CFR §245.15(a)).
  - 18 2. The reviewer cannot process a rent adjustment request until the 30-day  
19 tenant comment period has expired and the owner has submitted a complete  
20 request, evaluating any tenant comments and modifying, if appropriate, the  
21 initial submission.
  - 22 3. For State and Local Agency Section 236 non-insured property rent  
23 adjustments, 24 CFR §245.330 applies for those the agency receives and  
24 processes the owner application. If the agency determines to approve some  
25 or all of the adjustment, the agency must submit the rent adjustment  
26 package to HUD for review, certifying that the owner is in compliance with  
27 tenant comment requirements, HUD<sup>40</sup> must process and notify the agency of  
28 HUD's approval, modification or disapproval within 30 calendar days.
  - 29 4. If a conversion to tenant paid utilities or a reduction in utility allowance was  
30 submitted with the rent adjustment, these actions have separate tenant  
31 comment requirements (outlined in 24 CFR §245 Subpart E) and the  
32 reviewer must ensure that the owner complied with the procedures required  
33 by Subpart E, in addition to the rent adjustment tenant comment procedures.
  - 34 5. When reviewing projects subject to tenant comment procedures, reviewers  
35 must make requests for additional information in writing. The reviewer must  
36 require that the owner makes missing materials available for any required  
37 tenant review. The owner must distribute a second Notice to Tenants, if

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<sup>40</sup> 24 CFR § 245.330(b).

- 1 necessary to comply with the requirements under paragraph 7.6.E.
- 2 (Changes to Supporting Documentation).

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1 **2.06.17 PROCESSING REQUESTS FOR UTILITY ALLOWANCE ADJUSTMENTS**

- 2 A. **Owner's Request.** Owners of eligible projects must follow the requirements of  
3 HUD Notice H-2015-04<sup>41</sup>, Methodology for Completing a Multifamily Housing  
4 Utility Analysis, or most current guidance. Owners must submit a written  
5 recommendation summary that states the type of utilities covered by the utility  
6 allowance (e.g., gas for heating), whether any utility rate adjustments or  
7 decreases were implemented during the past 12 months or are expected to be  
8 implemented during the next 12 months and the amount of those adjustments or  
9 decreases; and how any energy conservation initiatives have or will impact  
10 consumption. A sample owner utility allowance recommendation summary is  
11 provided in Appendix 2.06-3. G.
- 12 B. **Mandatory Utility Analysis.** The owner's request must include either a baseline  
13 utility analysis (required every three years) or a factor-based utility analysis  
14 (acceptable for two years after a baseline is completed) regardless of whether or  
15 not an adjustment is requested. If an analysis is not included, the reviewer must  
16 require the owner to submit the analysis and hold off on the rent adjustment until  
17 it is received. Rent adjustments in such cases can be retroactively implemented.
- 18 C. **Processing the Request.** The reviewer must review the owner's submission to  
19 determine if an adjustment is being requested. If the owner submitted a baseline  
20 analysis, the reviewer must ensure an accurate sample size was used. If the  
21 owner used the factor-based analysis, the reviewer must ensure the calculations  
22 are correct. Finally, the reviewer must review any proposed adjustments to  
23 ensure they are consistent with the analysis provided.

24  
25 **2.06.18 PROCESSING REQUESTS FOR REPLACEMENT RESERVE**  
26 **ADJUSTMENTS**

27 **Reserve Adequacy.** For owner eligible under MAHRA, refer to the Guide Section 2-16.  
28 The owner or lender may request increases in the monthly deposit to the RFR account.  
29 Either the owner or Lender will be required to submit a Project Capital Needs  
30 Assessment (PCNA) or its equivalent. Note: A project that is partially-assisted as  
31 defined in 24 CFR 880.201 with a new regulation Section 8 contract under 24 CFR §  
32 880 or §881 is exempt from the requirement to establish and maintain a RFR account.  
33 (See 24 CFR §880.602(a)(1)(v).) A project that is partially-assisted with a new  
34 regulation Section 8 contract under 24 CFR §883 may be exempt from the requirement  
35 to establish and maintain a RFR account. (See 24 CFR §880.602(a)(2)(v).) For  
36 requests with adjustments to replacement reserve deposits, the reviewer must review  
37 the project's calculated reserve schedule to ensure that the owner's proposed schedule  
38 of deposits results in a minimum balance in the reserve account that is at least 5% of  
39 the total, aggregate, inflation adjusted portion of physical capital needs for the required  
40 period. If not, the owner should adjustment the annual deposits to the reserve. In

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<sup>41</sup> This Notice may be amended or superseded by a more current version.

1 addition to reviewing the reserve balance, reviewers must also consider future physical  
2 capital needs of the project along with other factors, such as wage rates in the area and  
3 the age of the property, which might affect the required minimum balance. Reviewers  
4 can reference on Replacement Reserves in this Handbook for detailed guidance.

5 A. **Processing the Request.** The reviewer must document the approved reserve  
6 for replacement deposit in the Reviewer Summary (provided in Appendix 2.06-4.  
7 D.). In the final notification letter to the owner, the reviewer should confirm the  
8 amount and effective date of any revised replacement reserve deposit. The  
9 reviewer must also complete Form HUD-9250, Funds Authorization form (see  
10 Appendix 2.06-1), working with the owner to assure the correct mortgage  
11 servicer. The reviewer must transmit copies of the Form HUD-9250 to the owner,  
12 mortgagee, and the Management Agent.

### 13 14 **2.06.19 SERVICE COORDINATORS, ELDERLY CARE AND CONGREGATE** 15 **SERVICES**

16 Reviewers must assure that the owner has approval for services and has adopted a  
17 two-tiered budget structure that has supportive service income and expenses  
18 maintained separately and independently from the regular income and expenses of the  
19 applicable project. For detailed guidance, reviewers should refer to paragraph 7.9 in  
20 Section 2.

### 21 22 **2.06.20 PROCESSING REQUESTS WITH COMMERCIAL RENTS**

23 **Reviewing the Request for Commercial Rents.** The reviewer must determine if the  
24 owner's request considered the factors in paragraph 7.10. Generally, the established  
25 commercial rents should cover the commercial space's share of operating expenses  
26 and debt service. If not, the reviewer should review the owner's submission to  
27 determine if there is sufficient documentation to provide an evidence of their efforts to  
28 lease the space and evidence of market rents. Also, the reviewer should consider if the  
29 proposed use of the space provides other benefits to the project. If the owner is  
30 requesting a commercial rent that is less than break-even or less than the market rate,  
31 the owner is required to provide a certification as to whether there is an identity of  
32 interest relationship between the operator of the commercial space and the owner,  
33 agent or principal of either the owner or agent. Conversely, commercial spaces rented  
34 at profitable levels can offset the project's expenses. Refer to HUD Notice H-2011-10  
35 <sup>42</sup>and HUD Notice 2011-23.<sup>43</sup>

### 36 **2.06.21 PROCESSING REQUESTS WITH FACILITIES AND SERVICES SUBJECT TO** 37 **CHARGE**

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<sup>42</sup> This Notice may be amended or superseded by a more current version.

<sup>43</sup> This Notice may be amended or superseded by a more current version.

1     **A. Reviewing the Request for Changes to Facilities and Services Subject to**  
2     **Charge.** The reviewer must ensure owner's confirmation for the following:

- 3             1. The services, facilities and charges have been included in Part C of the most  
4             recently approved Rent Schedule.
- 5             2. A schedule of those charges has been posted or distributed to the tenants.
- 6             3. Use of those facilities or services is optional on the part of the tenant.
- 7             4. If not previously authorized, the charges must be approved by HUD prior to  
8             implementation.

9     **B. Parking Charges.** Owners can charge for parking only in unsubsidized projects  
10     where HUD previously approved such a charge. The owner can charge for car  
11     heaters in both subsidized and unsubsidized projects in cold climates where  
12     parking spaces are so equipped.

13

14                     **SECTION 4: NOTIFICATION AND IMPLEMENTATION**

15

16 This section discusses the timing requirements for notifying an owner once a decision  
17 has been reached on the owner's request. It also provides information on what should  
18 be included in the notification letter as well as special requirements for HUD-held  
19 mortgages that are delinquent.

20

21     **2.06.22 NOTIFICATION OF RENT ADJUSTMENT**

22     **A. Notifying the Owner.** The HUD or CA reviewer will notify the owner of the  
23     decision on the rent request in writing by a notification letter in accordance with  
24     established operating procedures. The reviewer must send the original letter to  
25     the owner and a copy to the management agent, unless the owner has requested  
26     a different distribution. For State and Local Agency non-insured property rent  
27     adjustments, HUD notifies the agency of its approval, adjustment upward or  
28     downward or disapproval of the proposed rent adjustment as set out in 24 CFR  
29     §245.330(b). The Agency notifies the owner of the final disposition of the rent  
30     adjustment request and the reasons therefore. The owner gives notice to the  
31     tenants, including the reasons behind the decision.

32     **B. Notification Letter.** The HUD or CA reviewer must use the sample provided in  
33     Appendix 2.06-4. E. to prepare their notification letter. Note, HUD will remind  
34     owners who are subject to 24 CFR, Part 245 tenant comment procedures to  
35     notify tenants of HUD's decision, regardless of the adjustment decision. The  
36     notification letter must:

- 37             1. Identify the authorized rent(s) and the newly-computed MARP.
- 38             2. Explain the reasons for the decision to approve the adjustment or to deny all

- 1 or part of the adjustment. The adjustment approved can be greater than what
- 2 the owner requested if justified by the analysis and properly documented.
- 3 3. Outline any adjustments made to the owner's submitted budget worksheet.
- 4 4. Identify any project improvements for which funds were budgeted on the
- 5 Rent Computation Worksheet.
- 6 5. Confirm the amount and effective date of any revised replacement reserve
- 7 deposit and request that the owner complete a Form HUD-9250, Funds
- 8 Authorization form. The reviewer must transmit copies of the Form HUD-
- 9 9250 to the owner, the mortgagee, and the Management Agent.
- 10 6. Require the owners to give tenants 30-day written notice of any adjustment in
- 11 the tenant's rent under the terms of the lease.
- 12 7. Remind owners who are subject to 24 CFR §245 tenant comment
- 13 procedures, to notify tenants of HUD's decision regardless of the decision.
- 14 8. Require the owner to complete parts A and F of the Form HUD-92458 Rental
- 15 Schedule reflecting unit rents not to exceed the MARP, and transmit the
- 16 original and one copy to HUD for signature. The reviewer must return a
- 17 signed copy of this form to the owner.
- 18 C. **Notifying Office of Asset Management and Portfolio Oversight (OAMPO).** If
- 19 the mortgage is HUD-held and delinquent, the reviewer sends the following to the
- 20 assigned desk officer in the OAMPO, or as per current established procedures.
- 21 1. The decision notification letter;
- 22 2. Rent Schedule; and
- 23 3. Rent Computation Worksheet.

## 25 **2.06.23 IMPLEMENTATION OF THE RENT ADJUSTMENT**

- 26 A. **Owner Requirements for Implementation.** Owners may implement the HUD
- 27 approved adjustments to rents or utility allowances only after they have:
  - 28 1. Completed Parts A and F of the Form HUD-92458 Rental Schedule,
  - 29 reflecting unit rents not to exceed the MARP, and transmit the original and
  - 30 one copy to HUD for signature;
  - 31 2. Complied with tenant notice requirements; and
  - 32 3. Completed Forms HUD-50059 or HUD-50059 Worksheet required by
  - 33 Handbook 4350.3, Occupancy Requirements of Subsidized Multifamily
  - 34 Housing Projects (These forms are not required for Section 231 or Section
  - 35 202 tenants who do NOT receive tenant-based subsidies).
- 36 B. **Implementing Utility Allowance Adjustment.** Owners must implement the new
- 37 utility allowances for all tenants within 75 days after HUD approves the

1 adjustment. Owners may not stagger implementation to coincide with tenant's  
2 annual re-certifications. Owners should be aware that some utility allowance  
3 decreases may need to be phased-in. Detailed guidance on adjustments,  
4 including when decreases need to be phased in, can be found in HUD Notice H  
5 2015-04<sup>44</sup> or most current guidance (Appendix 2.06-1).

6 **C. Notifying Tenants.** If the authorized rent causes the Tenant Rent to adjustment,  
7 the owner must give the tenant at least 30-day advance written of the  
8 adjustment. Also, as required by 24 CFR §245.405(a) and §245.410, a minimum  
9 of 30-day notice must be provided to tenants for any utility allowance decrease.  
10 Owners of Section 236 non-insured projects must comply with 24 CFR  
11 §§245.405 through 245.425 except as modified by §245.435. The Notice must  
12 specify the reduction in utility allowance and/or the new Tenant Rent, as well as  
13 the corresponding effective date(s).

14 **D. Notifying Tenants for Projects Subject to Tenant Comment Procedures.**  
15 Owners must notify tenants of the HUD or CA reviewer's decision through a  
16 written Notice. The owner must ensure that the Notice:

- 17 1. Is distributed in the manner required by paragraph 2.06.6.
- 18 2. Informs tenants the HUD approved rents and utility allowances, the reasons  
19 for the adjustment or disapproval, the effective date, and any special  
20 conditions HUD imposed on the adjustment (e.g., completion dates for  
21 project improvements required of the management agent).
- 22 3. Owners of Section 236 non-insured projects must comply with 24 CFR  
23 §245.435(d).

## 24 **SECTION 5: APPEAL PROCEDURES**

25  
26  
27 Owners may appeal the HUD or CA's decision of their rent adjustment request through  
28 two levels of appeals. (Note: Appeal procedures do not apply to owners of Section 236  
29 non-insured projects). In the first level, the appeal is reviewed by Department staff at  
30 least one administrative level above the reviewer who made the contested rent  
31 adjustment decision (for example, if the contested rent decision is approved by the  
32 Account Executive Branch Chief, then the first level of appeal is reviewed by the  
33 Director, Asset Management Division). The final level of appeal is to the Director,  
34 Multifamily Regional Center. Owners are permitted to delay implementation of rent  
35 adjustments while the appeal is being processed. Any decision rendered by the  
36 Regional Director of Housing in the final level of appeal, will not be subject to further  
37 appeal.  
38

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<sup>44</sup> This Notice may be amended or superseded by a more current version.

1 **2.06.24 INITIAL APPEAL**

- 2 A. **All Projects.** The owner must submit their appeal in writing and postmark it  
3 within 30 days of the date the owner received the Notification letter regarding  
4 rental rate adjustment. At a minimum, the owner must include in the written  
5 appeal:
- 6 1. An explanation for why the owner disagrees with HUD's decision and state  
7 the rents being sought in the appeal.
  - 8 2. All information required in the initial submission in accordance with Section 2.
- 9 B. **For Projects Subject to Tenant Comment Procedures.** If the owner makes  
10 any material change in any documents submitted in the initial submission, the  
11 owner's submission no longer constitutes an appeal, but is instead considered a  
12 new rent adjustment request and must be compliant with the procedures and  
13 requirements in this chapter including tenant notification, tenant comment, as  
14 well as submission materials.

15  
16 **2.06.25 FINAL APPEAL**

- 17 A. **Process.** If the owner does not agree with the initial appeal decision, the owner  
18 may submit a final appeal to the Director, Multifamily Regional Center. The owner  
19 may, but is not required to, implement the rent adjustments while the final appeal  
20 is being processed. After the final decision is made, if that decision results in a  
21 rent adjustment, the tenant must be given a 30-day notice before the new rents  
22 are effective.
- 23 1. The final appeal must be in writing and postmarked within 30 days of the  
24 date of the initial appeal decision letter.
  - 25 2. The owner must send the Director, Multifamily Regional Center the following:
    - 26 a. A copy of the original decision letter, accompanied by any supporting  
27 documentation sent with the original request or involved in the original  
28 decision; and
    - 29 b. A letter explaining why the owner disagrees with the decision on the  
30 initial appeal.
  - 31 3. The owner must send an additional copy of the letter explaining why the  
32 owner disagrees with the decision on the initial appeal (as discussed in item  
33 2.06.26.2.B. above) to the HUD or CA reviewer that processed the contested  
34 decision.
  - 35 4. The owner may request a meeting with the Director, Multifamily Regional  
36 Center but such a meeting must be requested and completed during the 30-  
37 day final appeal period.
- 38 B. **Timeline.** The owner may, but is not required to, implement rent adjustments  
39 while the Regional Center reviews the appeal. When the Regional Center issues

1 a decision on the final appeal, rents must be implemented as described under  
2 paragraph 2.06.22.

3  
4 **2.06.26 IMPLEMENTATION OF CHANGES IN RENT FROM APPEAL PROCESS**

5 **Implementation of Results from Appeal.** Owners must implement rents resulting from  
6 the appeal process, as follows:

- 7 1. **Projects with 100 percent Rental Housing Assistance.** Since these tenants  
8 are not affected by the adjustment in gross rents, there is no need for the owner  
9 to provide the normal 30-day notification period to market rate tenants, unless the  
10 owner is subject to tenant comment procedures in 24 CFR §245. Owners may bill  
11 HUD for the new rental housing assistance rents on the next regular billing cycle  
12 under that contract. Owners must also comply with HUD Handbook 4350.3,  
13 Occupancy Requirements of Subsidized Multifamily Housing Projects by  
14 completing a new Form HUD-50059 and appropriate worksheet.
- 15 2. **Projects Subject to 24 CFR §245 Tenant Comment Procedures.** Owners may  
16 implement HUD approved changes in rents only after they have complied with  
17 tenant notice requirements and completed Form HUD-50059 or equivalent  
18 worksheet required by HUD Handbook 4350.3.
- 19 3. **All other Projects.** The owner must give the tenant 30-day advance written  
20 notice to tenants if the appeal results in an adjustment to the Tenant Rent. The  
21 Notice must specify the new Tenant Rent and date it will be effective.
-