

and owner may continue to develop a Restructuring Plan to restructure the loan using alternative financing.

§401.403 Rejection of a request for a Restructuring Plan because of actions or omissions of owner or affiliate or project condition.

(a) *Ongoing determination of owner and project eligibility.* Notwithstanding an initial determination to accept the owner's request for a Restructuring Plan, the PAE is responsible for a further more complete and ongoing assessment of the eligibility of the owner and project while the Restructuring Plan is developed. The PAE must advise HUD if at any time any of the grounds for rejection listed in paragraph (b) of this section exist.

(b) *Grounds for rejection.* HUD may elect not to permit continued consideration of the Restructuring Plan if at any time before closing under §401.407:

(1) The owner or an affiliate is debarred or suspended under part 24 of this title;

(2) HUD or the PAE determines that the owner or an affiliate has engaged in material adverse financial or managerial actions or omissions as described at section 516(a) of MAHRA, including any outstanding violations of civil rights laws in connection any project of the owner or affiliate; or

(3) HUD or the PAE determines that the project does not meet the housing quality standards in §401.453 and that the poor condition of the project is not likely to be remedied in a cost-effective manner through the Restructuring Plan.

(c) *Dispute and appeal.* An owner may dispute a rejection under this section and seek administrative review under the procedures in subpart F of this part.

[63 FR 48943, Sept. 11, 1998; 63 FR 71373, Dec. 28, 1998]

§401.404 Proposed Restructuring Commitment.

A PAE must submit a Restructuring Plan and a proposed Restructuring Commitment to HUD for approval, prior to submitting the Commitment to the owner for execution. The proposed Restructuring Commitment must be in a form approved by HUD,

incorporate the Restructuring Plan, and include the following:

(a) The lender, loan amount, interest rate, and term of any mortgages or unsecured financing for the mortgage restructuring and rehabilitation, and any credit enhancement;

(b) The amount of any payment of a section 541(b) claim;

(c) The type of section 8 assistance and the section 8 restructured rents;

(d) The rehabilitation required, the source of the owner contribution, and escrow arrangements;

(e) The uses for project accounts;

(f) The terms of any sale or transfer of the project; and

(g) A schedule setting forth all sources and uses of funds to implement the Restructuring Plan, including setting forth the balances of project accounts before and after restructuring; and

(h) Other terms and conditions prescribed by HUD.

§401.405 Restructuring Commitment review and approval by HUD.

HUD will either approve the Restructuring Commitment as submitted, require changes as a condition for approval, or reject the Plan. If the Plan is rejected, HUD will inform the PAE of the reasons for rejection. HUD's rejection of the Plan is subject to the dispute and administrative appeal provisions of subpart F of this part.

§401.406 Execution of Restructuring Commitment.

When HUD approves the Restructuring Commitment, the PAE will deliver the Restructuring Commitment to the owner for execution. The Restructuring Commitment becomes binding upon execution by the owner. An owner who does not execute the Restructuring Commitment may appeal its terms and seek modification under subpart F of this part.

§401.407 Closing conducted by PAE.

After the owner has executed the Restructuring Commitment, the PAE must arrange for a closing to execute all documents necessary for implementation of the Restructuring Plan. The PAE must use standard documents approved by HUD, with modifications

only as necessary to comply with applicable State or local laws, or such other modifications as are approved in writing by HUD.

§ 401.408 Affordability and use restrictions required.

(a) *General.* The Restructuring Plan must provide that the project will be subject to affordability and use restrictions in a Use Agreement acceptable to HUD. The Use Agreement must be recorded and in effect for at least 30 years. It must include at least the provisions required by this section.

(b) *Use restriction.* The project must continue to be used for residential use with no reduction in the number of residential units without prior HUD approval.

(c) *Affordability restrictions.* Except during a period when at least 20 percent of the units in a project receive project-based assistance:

(1) At least 20 percent of the units in the project must be leased to families whose adjusted income does not exceed 50 percent of the area median income as determined by HUD, with adjustments for household size, at rents no greater than 30 percent of 50 percent of the area median income; or

(2) At least 40 percent of the units in the project must be leased to families whose adjusted income does not exceed 60 percent of the area median income as determined by HUD, with adjustments for household size, at rents no greater than 30 percent of 60 percent of the area median income.

(d) *Comparable configuration.* The type and size of the units that satisfy the affordability restrictions of paragraph (c) of this section must be comparable to the type and size of the units for the project as a whole.

(e) *Owner obligation to accept assistance.* Subject to the availability of appropriated funds, the owner of the project must accept any offer of project-based or tenant-based assistance renewal or extension so long as the offer is in accordance with the terms and conditions specified in the Restructuring Plan.

(f) *Reporting.* The Use Agreement must contain appropriate financial and other reporting requirements for the owner.

(g) *Enforcement and amendment.* The Use Agreement will be enforceable by interested parties to be specified in the Agreement, which may include HUD, the PAE, project tenants, organizations representing project tenants, and the unit of local government.

(h) *Modifications.* HUD will retain the right to approve modifications of the Use Agreement agreed to by the owner without the consent of any other party, including those having the right of enforcement.

§ 401.410 Standards for determining comparable market rents.

(a) *When are comparable market rents required?* The Restructuring Plan must establish restructured rents at comparable market rents unless the PAE finds that exception rents are necessary under § 401.411.

(b) *Comparable market rents defined.* Comparable market rents are the rents charged for properties that the PAE determines to be comparable properties as defined in section 512(1) of MAHRA, except that projects assisted under part 891 of this title may not be taken into account. For purposes of section 512(1), other relevant characteristics include any applicable rent control and other characteristics determined by the PAE.

(c) *Methodology for determining comparable market rents.* If the PAE is unable to identify at least three comparable properties within the local market, the PAE may:

(1) Use non-comparable housing stock within that market from which adjustments can be made; or

(2) If necessary to go outside the market, use comparable properties as far outside the local market as it finds reasonable, from which adjustments can be made.

(d) *Using FMR as last resort.* If the PAE is unable to identify enough properties under paragraph (c) of this section, the rents must be set at 90 percent of the Fair Market Rents for the relevant market area.

§ 401.411 Guidelines for determining exception rents.

(a) *When do exception rents apply?* (1) The Restructuring Plan may provide for exception rents established under