

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