

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

section 514(g)(2) of MAHRA if the PAE determines that project income under the rent levels established under § 401.410 would be inadequate to meet the costs of operating the project as described in paragraph (b) of this section and that the housing needs of the tenants and the community could not be adequately addressed.

(2) In any fiscal year, the PAE may not request HUD to approve Restructuring Plans with exception rents for more than 20 percent of all units covered by the PRA, except that HUD may approve a waiver of this 20 percent limitation based on the PAE's narrative explanation of special need.

(b) *How are exception rents calculated?* Exception rents must be set at a level sufficient to support the costs of operating the project. The PAE must take into account the cost items listed in section 514(g)(3)(A) through (E) of MAHRA, except that debt service is limited to payment of the second mortgage under § 401.461(a) or a rehabilitation loan included in the Restructuring Plan. The exception rent must not exceed 120 percent of the Fair Market Rent for the market area, except that HUD may approve an exception rent greater than 120 percent of Fair Market Rent, based on a narrative explanation of special need submitted by the PAE, subject to the 5 percent limitation in section 514(g)(2)(A) of MAHRA.

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§ 401.412 Adjustment of rents with operating cost adjustment factor (OCAF).

(a) *OCAF required for Restructuring Plan.* The Restructuring Plan must provide for annual adjustment of the restructured rents by an OCAF determined by HUD and applied as provided in this section. An OCAF may be positive or negative.

(b) *Application of OCAF.* HUD will apply the OCAF to the previous year's contract rent less the portion of that rent paid for debt service. Paragraph (b) of this section applies to renewals of contracts in subsequent years which receive restructured rents under either section 514(g)(1) or (2) of MAHRA.

§ 401.420 When must the Restructuring Plan require project-based assistance?

(a) *Criteria in MAHRA.* The Restructuring Plan must provide for the section 8 contract to be renewed as project-based assistance, subject to the availability of funds for this purpose, if the PAE determines that one or more of the circumstances described in section 515(c)(1)(A), (B), or (C) of MAHRA exists.

(b) *Meaning of "predominant".* For purposes of section 515(c)(1)(B), project has a predominant number of units occupied by elderly families, disabled families, or elderly and disabled families if at least 50 percent of the units are occupied by these families.

(c) *Tight rental market.* The conditions of section 515(c)(1)(A) are met if the PAE determines that there is a market-wide vacancy rate of 6 percent or less.

§ 401.421 Rental Assistance Assessment Plan.

(a) *Plan required.* For any project not subject to mandatory project-based assistance under § 401.420, the PAE must develop a Rental Assistance Assessment Plan in accordance with section 515(c)(2) of MAHRA to determine whether assistance should be renewed as project-based assistance or whether some or all of the assisted units should be converted to tenant-based assistance.

(b) *Matters to be assessed.* The PAE must consider the cost of providing assistance, comparing the applicable payment standard for tenant-based assistance to the project's adjusted rent levels determined under § 401.410 or § 401.411. In addition, the PAE must consider the other matters listed in section 515(c)(2)(B) of MAHRA to be assessed as part of the Plan, and the applicable Consolidated Plan developed under part 91 of this title.

(c) *Conversion may be phased in.* Any conversion from project-based assistance to tenant-based assistance may occur over a period of not more than 5 years if the PAE decides the transition period is needed for the financial viability of the project.

(d) *Reports to HUD.* The PAE must report to HUD on the matters specified