

**Subpart D—Implementation of the Restructuring Plan After Closing****§ 401.550 Monitoring and compliance agreements.**

(a) *Compliance agreements.* The PAE must ensure long-term compliance by the owner with MAHRA, this part, and the Restructuring Plan. As part of this responsibility, the PAE must require each owner with an approved Restructuring Plan to record and execute a Use Agreement that satisfies the requirements of § 401.408.

(b) *Periodic monitoring and inspection.* At least once a year for the term of the Use Agreement, a PAE must review the status of each project for which it developed an approved Restructuring Plan. Monitoring must include on-site inspections.

(c) *HUD acting instead of PAE.* HUD will perform, or contract with other parties to perform, the PAE's functions under this section if:

(1) The project is subject to a PRA with a PAE that is not qualified to be a section 8 contract administrator; or

(2) There is no PAE because the project is not currently subject to a PRA.

**§ 401.552 Servicing of second mortgage.**

HUD or its designee will be responsible for servicing the second mortgage, including determining the amounts receivable by the owner under § 401.461(b)(3)(ii)(A). HUD may designate the PAE, with the PAE's consent, as servicer for the second mortgage.

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**§ 401.554 Contract administration.**

HUD will offer to any PAE that is qualified to be the section 8 contract administrator the opportunity to serve as the section 8 contract administrator for a project restructured under the Mark-to-Market Program. Qualifications will be determined under both statutory requirements and requirements issued by the appropriate office within HUD, depending on the type of section 8 assistance that is provided.

**Subpart E—Section 8 Requirements for Restructured Projects****§ 401.595 Contract and regulatory provisions.**

The provisions of chapter VIII of this title will apply only to the extent, if any, provided in the contract. Part 983 of this title will not apply.

**§ 401.600 Will a section 8 contract be extended if it would expire while an owner's request for a Restructuring Plan is pending?**

If a contract for an eligible project would expire before a Restructuring Plan is implemented, the contract may be extended at current rents for up to the earlier of 1 year or closing on the Restructuring Plan under § 401.407, with a provision for earlier termination if the PAE or HUD determines that an owner is not cooperative under § 401.402 or if an owner's request is rejected under § 401.403 or § 401.405. Any extension of the contract beyond 1 year for a pending Plan must be at comparable market rents or exception rents. An extension at comparable market rents or exception rents under this section will not affect a project's eligibility for the Mark-to-Market Program once it has been initially established under this part.

**§ 401.601 Consideration of an owner's request to renew an expiring contract without a Restructuring Plan.**

(a) *Applicability of part 402.* If HUD or the PAE determines that renewal at rents that do not exceed comparable market rents under § 402.4 of this chapter would be sufficient to maintain both adequate debt service coverage on the HUD-insured or HUD-held mortgage and necessary replacement reserves to ensure the long-term physical integrity of the project, the project-based assistance will be renewed under § 402.4 of this chapter (subject to § 402.7 of this chapter) without developing a Restructuring Plan.

(b) *When Restructuring Plan needed.* If HUD or the PAE determines that renewal at market comparable rents under § 402.4 of this chapter would not be sufficient to maintain adequate debt service coverage and reserves, HUD or

the PAE may require a Restructuring Plan before the owner's request will be given further consideration. If HUD or the PAE determines that the project's continued operation without a Restructuring Plan is not feasible and the owner does not cooperate in the development of an acceptable Restructuring Plan, HUD will pursue whatever administrative actions it considers necessary.

**§ 401.602 Tenant protections if an expiring contract is not renewed.**

(a) *Notice of non-renewal or rent increase.* (1) The owner of an eligible project who has requested a Restructuring Plan and later fails to extend or renew an expiring contract, except due to a rejection under § 401.101, § 401.403 or § 401.405, must provide a 12-month notice of contract non-renewal to tenants and HUD as provided in section 514(d) of MAHRA and a 90-day notice of any rent increase to tenants as provided in section 8(c)(8) of the United States Housing Act of 1937. HUD may prescribe the form of the notices. If the owner gives such 12-month notice, the owner is not required to give a separate 180-day notice of contract non-renewal under section 8(c)(9) of the United States Housing Act of 1937.

(2) The owner of an eligible project who has not requested a Restructuring Plan, or an owner who requested a Restructuring Plan but who has been rejected under § 401.101, § 401.403, or § 401.405, must provide 180-day notice of contract non-renewal to tenants and HUD under section 8(c)(9) of the United States Housing Act of 1937 and 90-day notice of any rent increase to tenants under section 8(c)(8) of that Act. If the owner gives such 180-day notice, the owner is not required to give a separate 12-month notice of non-renewal under section 514(d) of MAHRA.

(b) *If owner does not give notice.* If an owner described in paragraph (a)(1) or (a)(2) of this section does not give timely notice of non-renewal, the owner must permit the tenants in assisted units to remain in their units for the required notice period (either 12 months or 180 days, as applicable) with no increase in the tenant portion of their rent. This period will begin on the earlier of the date notice of non-re-

newal was given to the tenants and HUD or the date of expiration for the contract. If an owner described in paragraph (a) of this section does not give timely notice of any rent increase, the owner must permit the tenants in assisted units to remain in their units for 90 days with no increase in the tenant portion of their rent. This period will begin on the earlier of the date notice of any rent increase was given to the tenants or the date of expiration for the contract. The 90-day period will run concurrently with any applicable 12-month or 180-day period.

(c) *Availability of tenant-based assistance.* Subject to the availability of amounts provided in advance in appropriations, HUD will make tenant-based assistance available under the following circumstances:

(1) If the owner of an eligible project does not extend or renew the project-based assistance, any tenant residing in an assisted unit on the date of contract expiration will be eligible to receive assistance on the later of the date of expiration or the date the owner's obligations under paragraph (b) of this section expire; and

(2) If a request for a Restructuring Plan is rejected under § 401.101, § 401.403, or § 401.405, any tenant who is a low-income family or who resides in a project-based assisted unit on the date of Plan rejection will be eligible to receive assistance on the later of the date the Restructuring Plan is rejected, or the date the owner's obligation under paragraph (b)(2) of this section expires.

**§ 401.605 Project-based assistance provisions.**

The project-based assistance rents for a restructured project must be the restructured rents determined under the Restructuring Plan in accordance with §§ 401.410 or 401.411.

**§ 401.606 Tenant-based assistance provisions.**

If the Restructuring Plan provides for tenant-based assistance, each assisted family residing in a project-based assisted unit when the project-based assistance terminates must be offered tenant-based assistance under part 982. The rent levels provided in