

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

515(c)(4) of MAHRA will apply except for families already receiving tenant-based assistance when the project-based assistance terminates.

**§ 401.607 Contract term.**

The term of the initial and subsequent contract renewals under this part, whether for project-based or tenant-based assistance, will be determined by the appropriate HUD official.

**Subpart F—Owner Dispute of Rejection and Administrative Appeal**

**§ 401.645 How does the owner dispute a notice of rejection?**

(a) *Notice of rejection.* HUD will notify the owner of the reasons for a rejection under §§ 401.101, 401.402, 401.403, 401.405 or 401.451. An owner will have 30 days from receipt of this notice to provide written objections or to cure the underlying basis for the objections. If the owner does not submit written objections or cure the underlying basis for the objections during that period, the decision will become a final determination under section 516(c) of MAHRA and is not subject to judicial review.

(b) *Final decision after objection; right to administrative review.* If an owner submits written objections or asserts that the underlying basis for the objections is cured, after consideration of the matter HUD will send the owner a final decision affirming, modifying, or reversing the rejection and setting forth the rationale for the final decision.

**§ 401.650 When may the owner make an administrative appeal of a final decision under this subpart?**

The owner has a right to make an administrative appeal of the following:

- (a) A final decision by HUD under § 401.645(b) (including a final decision under § 402.7 of this chapter);
- (b) A decision by HUD and the PAE to offer a proposed Restructuring Commitment that the owner does not execute; and
- (c) A decision by HUD to accelerate the second mortgage under § 401.461.

**§ 401.651 Appeal procedures.**

(a) *How to appeal.* An owner may submit a written appeal to HUD, within 10 days of receipt of written notice of the decision, contesting the decision and requesting a conference with HUD. At the conference, the owner may submit, in person, in writing, or through a representative, its reasons for appealing the decision. The HUD or PAE official who issued the decision under appeal may participate in the conference and submit in person, in writing, or through a representative, the basis for the decision.

(b) *Written decision.* Within 20 business days after the conference, or 20 business days after any agreed upon extension of time for submission of additional materials by or on behalf of the owner, HUD will advise the owner in writing of the decision to terminate, modify, or affirm the original decision.

(c) *Who is responsible for reviewing appeal?* HUD will designate an official to review any appeal, conduct the conference and issue the written decision. The official designated must be one who was neither involved in, nor reports to another involved in, making the decision being appealed.

**§ 401.652 No judicial review.**

The reviewing official's decision under § 401.651 is a final determination for purposes of section 516(c) of MAHRA and is not subject to judicial review.

**PART 402—PROJECT-BASED SECTION 8 CONTRACT RENEWAL WITHOUT RESTRUCTURING (UNDER SECTION 524(a) OF MAHRA)**

Sec.

- 402.1 What is the purpose of part 402?
- 402.2 Definitions.
- 402.3 Contract provisions.
- 402.4 Contract renewals under section 524(a)(1) of MAHRA.
- 402.5 Contract renewals under section 524(a)(2) of MAHRA.
- 402.6 What actions must an owner take to request section 8 contract renewal under this part?
- 402.7 Refusal to consider an owner's request for a section 8 contract renewal because of actions or omissions of owner or affiliate.