

§ 401.1

24 CFR Ch. IV (4–1–11 Edition)

401.650 When may the owner request an administrative appeal?

401.651 Appeal procedures.

401.652 No judicial review.

AUTHORITY: 12 U.S.C. 1715z–1 and 1735f–19(b); 42 U.S.C. 1437(c)(8), 1437f(t), 1437f note, and 3535(d).

SOURCE: 65 FR 15485, Mar. 22, 2000, unless otherwise noted.

Subpart A—General Provisions; Eligibility

§ 401.1 What is the purpose of part 401?

This part contains the regulations implementing the authority in the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA) for the Mark-to-Market Program. Section 511(b) of MAHRA details the purposes, and section 512(2) details the scope, of the Program.

§ 401.2 What special definitions apply to this part?

(a) *MAHRA* means the Multifamily Assisted Housing Reform and Affordability Act of 1997, title V of Pub. L. 105–65, 42 U.S.C. 1437f note.

(b) *Statutory terms*. Terms defined in section 512 of MAHRA are used in this part in accordance with their statutory meaning. These terms are: comparable properties, expiring contract, expiration date, fair market rent, mortgage restructuring and rental assistance sufficiency plan, nonprofit organization, qualified mortgagee, portfolio restructuring agreement, participating administrative entity, project-based assistance, renewal, State, tenant-based assistance, and unit of general local government.

(c) *Other terms*. As used in this part, the term—

Affiliate means an “affiliate of the owner” or an “affiliate of the purchaser”, as such terms are defined in section 516(a) of MAHRA.

Applicable Federal rate has the meaning given in section 1274(d) of the Internal Revenue Code of 1986, 26 U.S.C. 1274(d).

Community-based nonprofit organization means a nonprofit organization that maintains at least one-third of its governing board’s membership for low-income tenants from the local commu-

nity, or for elected representatives of community organizations that represent low-income tenants.

Comparable market rents has the meaning given in § 401.410(b).

Disabled family has the meaning given in § 5.403(b) of this title.

Elderly family has the meaning given in § 5.403(b) of this title.

Eligible project means a project that meets the requirements for eligibility for a Restructuring Plan in § 401.100.

HUD means a HUD official authorized to act under the provisions of MAHRA, and otherwise has the meaning given in § 5.100 of this title.

NHA means the National Housing Act, 12 U.S.C. 1702 *et seq.*

OAHP means the Office of Affordable Housing Preservation, and any successor office.

Owner means the owner of a project and any purchaser of the project.

PAE means a participating administrative entity as defined in section 512(10) of MAHRA, or HUD when appropriate in accordance with section 513(b)(4) of MAHRA.

PCA means a physical condition assessment of a project prepared by a PAE under § 401.451.

PRA means a portfolio restructuring agreement as defined in section 512(9) of MAHRA.

Priority purchaser means a purchaser of a project, meeting qualifications established by HUD, that is:

(1) A tenant organization;

(2) A tenant-endorsed community-based nonprofit organization or public agency; or

(3) A limited partnership with a sole general partner that itself is a priority purchaser under this definition.

Rental Assistance Assessment Plan means the plan described in section 515(c)(2) of MAHRA.

Restructured rent means the rent determined at the time of restructuring in accordance with section 514(g) of MAHRA.

Restructuring Plan or *Plan* means the Mortgage Restructuring and Rental Assistance Sufficiency Plan described in section 514 of MAHRA.

Section 8 means section 8 of the United States Housing Act of 1937, 42 U.S.C. 1437f.

Section 541(b) claim means a claim paid by HUD under an insurance contract under authority of section 541(b) of the National Housing Act, 12 U.S.C. 1735f-19(b).

Tenant organization of a project means an organization that meets regularly, whose officers are elected by a majority of heads of households of occupied units in the project, and whose membership is open to all tenants of the project.

Unit of local government means the smallest unit of general local government in which the project is located.

Voucher means any tenant-based assistance.

(d) *Conflicts of interest.* Additional definitions applicable to §§ 401.310 through 401.313 appear in § 401.310.

[65 FR 15485, Mar. 22, 2000, as amended at 65 FR 53900, Sept. 6, 2000; 71 FR 2120, Jan. 12, 2006; 72 FR 66038, Nov. 26, 2007]

§ 401.3 Who may waive provisions in this part?

The Assistant Secretary for Housing-Federal Housing Commissioner may waive any provision of this part, subject to § 5.110 of this title.

[68 FR 3363, Jan. 23, 2003]

§ 401.99 How does an owner request a section 8 contract renewal?

(a) *Requesting Restructuring Plan.* An owner may request a section 8 contract renewal as part of a Restructuring Plan by, at least 3 months before the expiration date of any project-based assistance, certifying to HUD that to the best of the owner's knowledge:

(1) Project rents are above comparable market rents; and

(2) The owner is not suspended or debarred or has been notified by HUD of any pending suspension or debarment or other enforcement action, or, if so, a voluntary sale or transfer of the property is proposed in accordance with § 401.480.

(b) *Eligible but not requesting Restructuring Plan.* If an owner is eligible for a Restructuring Plan but requests a renewal of project-based assistance without a Plan, in accordance with the applicable requirements in § 402.6 of this chapter, HUD will consider the request in accordance with § 402.4(a)(2) of this chapter.

(c) *Not eligible for Restructuring Plan.* Section 402.5 of this chapter addresses renewal of project-based assistance for a Restructuring Plan. An owner of such a project may also request renewal under § 402.4 of this chapter.

[65 FR 15485, Mar. 22, 2000, as amended at 65 FR 53900, Sept. 6, 2000]

§ 401.100 Which projects are eligible for a Restructuring Plan under this part?

(a) *What are the requirements for eligibility?* To be eligible for a Restructuring Plan under this part, a project must:

(1) Have a mortgage insured or held by HUD;

(2) Be covered in whole or in part by a contract for project-based assistance under—

(i) The new construction or substantial rehabilitation program under section 8(b)(2) of the U.S. Housing Act of 1937 as in effect before October 1, 1983;

(ii) The property disposition program under section 8(b) of the U.S. Housing Act of 1937;

(iii) The moderate rehabilitation program under section 8(e)(2) of the United States Housing Act of 1937;

(iv) The loan management assistance program under section 8 of the United States Housing Act of 1937;

(v) Section 23 of the United States Housing Act of 1937 as in effect before January 1, 1975;

(vi) The rent supplement program under section 101 of the Housing and Urban Development Act of 1965;

(vii) Section 8 of the United States Housing Act of 1937, following conversion from assistance under Section 101 of the Housing and Urban Development Act of 1965; or

(viii) Section 8 of the U.S. Housing Act of 1937 as renewed under section 524 of MAHRA;

(3) Have current gross potential rent for the project-based assisted units that exceeds the gross potential rent for the project-based assisted units using comparable market rents;

(4) Have a first mortgage that has not previously been restructured under this part or under HUD's Portfolio Re-engineering demonstration authority as defined in § 402.2(c) of this chapter;