

Housing and Multifamily Housing Assistance Restructuring, HUD

§ 401.480

direct grant from HUD under section 236(s) of the NA made in accordance with § 401.473, to the extent that HUD has determined that funding is available for such a grant.

(4) *Section 8 budget authority increase.* The Restructuring Plan may include funding of rehabilitation from budget authority provided to HUD for increases in section 8 contracts, to the extent that HUD has determined that funding from this source is available.

(b) *Statutory restrictions.* Any rehabilitation funded from the sources described in paragraph (a) of this section is subject to the requirements in section 517(c) of MAHRA for an owner contribution.

(1) *Addition of significant features.* With respect to significant added features, the required owner contribution will be as proposed by the PAE and approved by HUD, and not to exceed 20 percent of the total cost. Significant added features include the addition of air conditioning (including conversions from window air conditioning to central air conditioning), an elevator, or additional community space.

(2) *Cap on owner contribution.* If a restructuring plan includes additions other than those specified, and the PAE considers the additions significant, the PAE may propose to make those additions subject to the cap on owner contribution. In general, the owner will contribute 3 percent toward the cost of each significant addition. The PAE may propose a lower or higher owner contribution, not to exceed 20 percent, with respect to significant additions.

(3) *Other rehabilitation.* With respect to other rehabilitation, the required owner contribution will be calculated as 20 percent of the total cost of rehabilitation, unless HUD or the PAE determines that a higher percentage is required. The owner contribution must include a reasonable proportion (as determined by HUD) of the total cost of rehabilitation from nongovernmental resources.

(4) *Cooperatives.* The PAE may exempt housing cooperatives from the owner contribution requirement.

(c) *Escrow agent.* The Restructuring Plan must provide for progress payments for rehabilitation, which must

be disbursed by an acceptable escrow agent subject to PAE oversight or as otherwise provided by HUD.

[65 FR 15485, Mar. 22, 2000, as amended at 72 FR 66039, Nov. 26, 2007]

§ 401.473 HUD grants for rehabilitation under section 236(s) of NA.

HUD will consider a direct grant for rehabilitation under section 236(s) of the NA only if the owner provides an acceptable work schedule and cost-analysis that is consistent with the owner's evaluation of physical condition under § 401.450, as certified by the PAE. The owner must execute a grant agreement with terms and conditions acceptable to HUD. If the PAE is a State or local government, or an agency or instrumentality of such a government, the PAE and HUD may agree that the PAE will be delegated the responsibility for the administration of any grant made under this section. HUD may make grant funding available for the cost of administration if HUD has determined that such funding is available.

§ 401.474 Project accounts.

(a) *Accounts from other projects.* The accounts listed in § 401.472(a)(1) may be used for other eligible projects only if:

(1) The projects are included in a Consolidated Restructuring Plan under § 401.401; and

(2) The funds are used for rehabilitation or to reduce a section 541(b) claim paid by HUD under § 401.471.

(b) *Distribution to owner.* The Restructuring Plan may provide for a one-time distribution to the owner, not to exceed 10 percent of the excess funds in project accounts, to be released after completion of the rehabilitation required by the Restructuring Plan.

§ 401.480 Sale or transfer of project.

(a) *May the owner request a Restructuring Plan that includes a sale or transfer of the property?* The owner may request a Restructuring Plan that includes a condition that the property be sold or transferred to a purchaser acceptable to HUD in a reasonable period needed to consummate the transaction. The failure to consummate a sale or transfer of the property requested under paragraph (a) of this section will

neither adversely affect an owner's eligibility for a Restructuring Plan nor exempt the owner from the requirements of § 401.600. There are no priority purchaser requirements for a voluntary sale or transfer by an owner that is eligible for a Restructuring Plan.

(b) *When must the restructuring plan include sale or transfer of the property?* If the owner is determined to be ineligible pursuant to § 401.101 or § 401.403, or if the property is subject to an approved plan of action under the Emergency Low Income Housing Preservation Act of 1987 or the Low Income Housing Preservation and Resident Homeownership Act of 1990, as described in section 524(e)(3) of MAHRA, the property must be sold or transferred as a condition of implementation of a restructuring plan, which must include a condition that the owner sell or transfer the property to a purchaser acceptable to HUD, in accordance with paragraph (c) of this section. Such sale or transfer shall be a condition to the implementation of the Restructuring Plan.

(c) *Owner's notice of intent to sell or transfer.* (1) The owner must provide notice to the PAE affirming the owner's intent to sell or transfer the property. This notice must be received by the PAE no later than 30 days after a notice of rejection under § 401.101 or § 401.403 has become a final determination under subpart F of this part.

(2) The owner must cooperate in selling or transferring the property. Failure to do so will result in the PAE's determination to reject the owner's request for a Restructuring Plan. The owner must distribute and publish, in an appropriate publication, a notice to potential purchasers that describes the property, proposed terms of sale, and procedures for submitting a purchase offer. The notice in form and substance must be acceptable to HUD, and must inform potential offerors of a preference for priority purchasers.

(3) During a period to be determined by HUD that begins when the owner gives notice of intent to sell or transfer, an owner may accept an offer only from a priority purchaser.

(4) No sale or transfer to a non-priority purchaser will be approved without evidence of tenant support.

(d) *Informing PAE; approval required.* The owner must inform the PAE of any offer to purchase the property and the owner must advise the PAE of the substance and on-going status of the owner's discussions with any prospective purchaser. The owner's acceptance of the offer must be subject to PAE approval, and HUD approval of the Restructuring Plan.

(e) *Tenant endorsement procedure for priority purchaser status.* (1) *Required meeting.* (i) A community-based non-profit or public agency purchaser requesting tenant endorsement to obtain priority purchaser status must conduct an informational meeting with the tenants of the project to disseminate information about both the endorsement request and the purchaser's plans for the project.

(ii) If the purchaser is acting contemporaneously with the Restructuring Plan, the informational meeting must occur at the second meeting of tenants convened by the PAE to discuss the restructuring plan pursuant to § 401.500(d).

(iii) A representative of the purchasing entity must attend the informational meeting to present its plans for the acquisition and improvement of the project and to respond to questions about the purchaser's plans for the property.

(iv) Tenants shall have the opportunity, but are not to be required, to vote for or against the acquisition at the informational meeting.

(v) For the purpose of obtaining tenant endorsement, a purchaser may conduct additional meetings with tenants in accordance with the notice requirements of paragraphs (e)(2) and (e)(3) of this section.

(2) *Parties who must receive notice.* The purchaser must deliver notice of the informational meeting, and any subsequent meeting, to each tenant household in the project and any tenant organization for the project, and post notices of the meeting in the project.

(3) *Notice contents.* The notice must identify the place, date, and time of the informational meeting, and any subsequent meeting. Include a brief description of the purpose of the meeting and provide a narrative outlining the

purchaser's plans for the project, including any request made to HUD for debt relief under § 401.461(b)(5) of the second and any additional mortgage.

(4) *Tenant endorsement.* (i) A purchaser may demonstrate that it is tenant endorsed by submitting documentation to HUD that a majority (51 percent) of the tenant heads of household have given their endorsement in writing. Such documentation may include, but is not limited to, ballots, letters of support, or petitions. The endorsement of tenants who did not attend, or vote at, the informational meeting, or any subsequent meeting, may be sought directly from each of these tenants subsequent to the meeting.

(ii)(A) If the purchaser has made a reasonable effort to obtain the endorsement of a majority (51 percent) of the tenants and the necessary percentage of votes was not obtained, the purchaser may seek HUD approval to obtain endorsement based on a lower percentage of endorsing tenants.

(B) The purchaser must deliver notice to each tenant household that the purchaser is seeking HUD approval of a tenant endorsement based on less than 51 percent of tenant approval and provide tenants with at least 10 days from the date of the notice to submit comments to the purchaser on the approval of endorsement.

(C) The purchaser and/or seller must submit, in writing, to HUD an account of the efforts taken to secure tenant endorsement, the number and percentage of tenants voting for and against endorsement, and any comments received from tenants regarding the approval of endorsement.

(D) HUD will determine whether or not to approve endorsement on the basis of all the information available to HUD and will promptly notify the purchaser of HUD's determination.

[65 FR 15485, Mar. 22, 2000, as amended at 72 FR 66039, Nov. 26, 2007]

§ 401.481 Subsidy layering limitations on HUD funds.

(a) *PAE subsidy layering certification required for Restructuring Plan.* The PAE must certify to HUD that any Restructuring Plan for which it submits a proposed Restructuring Commitment

meets the requirements of either paragraph (d) or (e) of this section.

(b) *Purpose of subsidy layering certification.* The purpose of the subsidy layering certification is to ensure that any HUD assistance provided to the owner of a project pursuant to a Restructuring Plan is no more than is necessary to permit the project to continue to house tenants with an income mix comparable to the income mix of the project before the Restructuring Plan is implemented, after taking into account other Government assistance described in section 102(b)(1) of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545(b)(1)). This section does not limit a PAE from presenting for approval a Restructuring Plan that includes project reconfiguration (*e.g.*, conversion of efficiency units to one-bedroom units) where necessary to meet the needs of the community, provided the conditions of § 401.452 are also met.

(c) *Relationship to section 102(d) of HUD Reform Act.* HUD is not required to perform a separate subsidy layering analysis under section 102(d) of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545(d)), section 911 of the Housing and Community Development Act of 1992 (42 U.S.C. 3545 note), or § 4.13 of this title for any HUD assistance that is included in the Restructuring Plan. HUD will adopt the PAE certification under this section if a HUD certification otherwise would be required under section 102(d).

(d) *Certification under existing HUD guidelines.* If the PAE has delegated authority from HUD to make section 102(d) subsidy layering certifications in accordance with section 911 of the Housing and Community Development Act of 1992, the PAE may comply with this section by using a procedure substantially similar to the procedure described in the Administrative Guidelines published on December 15, 1994 (59 FR 64748), or any subsequent procedure adopted by HUD to implement section 911.

(e) *Other procedures.* If the PAE does not have the delegated authority described in paragraph (d) of this section, the PAE must submit to HUD for approval proposed procedures for making