

## § 401.101

(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;

(5) Not be a project that is described in section 514(h) of MAHRA; and

(6) Otherwise meet the definition of "eligible multifamily housing project" in section 512(2) of MAHRA or meet the following three criteria:

(i) The project is assisted pursuant to a contract for Section 8 assistance renewed under section 524 of MAHRA;

(ii) It has an owner that consents for the project to be treated as eligible; and

(iii) At the time of its initial renewal under section 524, it met the requirements of section 512(2)(A), (B), and (C) of MAHRA.

(b) *When is eligibility determined?* Eligibility for a Restructuring Plan under paragraph (a) of this section is determined by the status of a project on the earlier of the termination or expiration date of the project-based assistance contract, which includes a contract renewed under section 524 of MAHRA, or the date of the owner's request to HUD for a Restructuring Plan. Eligibility is not affected by a subsequent change in status, such as contract extension under § 401.600 or part 402 of this chapter.

[71 FR 2121, Jan. 12, 2006]

### § 401.101 Which owners are ineligible to request Restructuring Plans?

(a) *Mandatory rejection.* The request of an owner of an eligible project will not be considered for a Restructuring Plan if the owner is debarred or suspended under 2 CFR part 2424.

(b) *Discretion to reject.* HUD may also decide not to accept a request for a Restructuring Plan if:

(1) An affiliate is debarred or suspended under 2 CFR part 2424; or

(2) HUD notifies the owner that HUD is engaged in a pending suspension, debarment or other enforcement action against an owner or affiliate, and the grounds for the pending action are included in § 401.403(b)(2)(ii).

(c) *Exception for sale.* This section does not apply if a sale or transfer of the property is proposed in accordance with § 401.480.

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(d) *Notice to tenants.* The PAE or HUD will give notice to tenants of a rejection in accordance with §§ 401.500(f)(2), 401.501, and 401.502.

[65 FR 15485, Mar. 22, 2000, as amended at 72 FR 66038, Nov. 26, 2007; 72 FR 73496, Dec. 27, 2007]

### Subpart B—Participating Administrative Entity (PAE) and Portfolio Restructuring Agreement (PRA)

#### § 401.200 Who may be a PAE?

A PAE must qualify under the definition in section 512(10) of MAHRA. It must not have any outstanding violations of civil rights laws, determined in accordance with criteria in use by HUD. If the PAE is a private entity, whether nonprofit or for-profit, it must enter into a partnership with a public purpose entity, which may include HUD. A PAE may delegate responsibilities only as agreed in the PRA.

#### § 401.201 How does HUD select PAEs?

(a) *Selection of PAE.* HUD will select qualified PAEs in accordance with the criteria established in 513(b) of MAHRA and criteria established by HUD. The selection method is within HUD's discretion, including but not limited to a request for qualifications.

(b) *Priority for public agencies.* HUD will provide a one-time priority period for State housing finance agencies and local housing agencies to qualify as the PAEs for their jurisdictions. If more than one agency qualifies for the same jurisdiction, HUD will provide an opportunity for the agencies to allocate responsibility for projects in the jurisdiction. If the agencies are unable to agree, HUD will choose a PAE in accordance with section 513(b)(2) of MAHRA.

(c) *Qualification for PAE by nonprofit and for-profit entities.* After the priority period expires, HUD will consider other eligible entities as PAEs for jurisdictions in which no public agency has qualified as the PAE, or for projects that have not been assigned to a qualified public agency.

(d) *No PAE for project.* If HUD does not select a PAE for a project, HUD may perform the functions of the PAE,