

§ 401.312

(4) Make any unauthorized promise or commitment on behalf of HUD.

(b) *18 U.S.C. 201.* Pursuant to 18 U.S.C. 201, whoever acts for or on behalf of HUD in connection with the matters covered by this part is deemed to be a public official. Public officials are prohibited from soliciting or accepting anything of value in return for being influenced in the performance of official actions. Violators are subject to criminal sanctions.

(c) *18 U.S.C. 1001.* Pursuant to 18 U.S.C. 1001, whoever knowingly and willingly falsifies a material fact, makes a false statement or utilizes a false writing in connection with a PRA is subject to criminal sanctions. Other Federal civil statutes also apply to making false statements to the United States.

(d) *18 U.S.C. 207.* Former Federal Government employees are subject to the prohibitions in 18 U.S.C. 207.

§ 401.312 Confidentiality of information.

A PAE and every other restricted person (as defined in § 401.310) has a duty to protect confidential information, except as provided in §§ 401.500 through 401.503, and to prevent its use to further a private interest other than as contemplated by the PRA. As used in this section, confidential information means information that a PAE or other restricted person obtains from or on behalf of HUD or a third party in connection with a PRA but does not include information generally available to the public unless the information becomes available to the public as a result of unauthorized disclosure by the PAE or another restricted person.

§ 401.313 Consequences of PAE violations; finality of HUD determination.

(a) *Effect on PRA.* If a PAE, potential PAE or other restricted person (as defined in § 401.310) violates §§ 401.310, 401.311, or 401.312, HUD may:

(1) Find the potential PAE unqualified to enter into a PRA;

(2) Find the PAE unqualified to receive additional projects for restructuring under an existing PRA;

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(3) Find the PAE in default under an existing PRA with the right of termination for cause under § 401.309; or

(4) Seek from a PAE or other restricted person HUD's actual, direct, and consequential damages resulting from the violation.

(b) *Cumulative remedies.* The remedies under this section are cumulative and in addition to any other remedies or rights HUD may have under the terms of the PRA, at law, or otherwise.

(c) *Finality of determination.* Any determination made by HUD pursuant to this section is at HUD's sole discretion and is not subject to further administrative review.

§ 401.314 Environmental review responsibilities.

HUD will retain all responsibility for environmental review under part 50 of this title. Compliance with part 50 of this title will be completed before any HUD approval of the Restructuring Commitment under § 401.405.

Subpart C—Restructuring Plan

§ 401.400 Required elements of a Restructuring Plan.

(a) *General.* A PAE is responsible for the development of a Restructuring Plan for each project included in its PRA.

(b) *Required elements.* The Restructuring Plan must contain a narrative that fully describes the restructuring transaction. The Restructuring Plan must include the elements required by section 514(e) of MAHRA. The Restructuring Plan must describe the use of any restructuring tools listed at sections 517(a) and (b) of MAHRA, and must contain other requirements as determined by HUD.

§ 401.401 Consolidated Restructuring Plans.

A PAE may request HUD to approve a Consolidated Restructuring Plan that presents an overall strategy for more than one project included in the PRA. HUD will consider approval of a Consolidated Restructuring Plan for projects having common ownership, geographic proximity, common mortgagee or servicer, or other factors that contribute to more efficient use of the

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PAE's resources. Notwithstanding the more efficient use of a PAE's resources, HUD will not approve any Consolidated Restructuring Plans that have a detrimental effect on tenants or the community, or a higher cost to the Federal Government. HUD's decision to approve or disapprove a Consolidated Restructuring Plan will be made on a case-by-case basis.

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

§ 401.402 Cooperation with owner and qualified mortgagee in Restructuring Plan development.

A PAE must comply with section 514(a)(2) of MAHRA by using its best efforts to seek the cooperation of the owner and qualified mortgagee or its designee in the development of the Restructuring Plan. If the owner fails to cooperate (as demonstrated by reasonable progress in development of a Restructuring Plan) to the satisfaction of the PAE and HUD agrees, the PAE must notify the owner that the PAE will not develop a Restructuring Plan. This notice will be subject to dispute and administrative appeal under subpart F of this part. If the qualified mortgagee does not cooperate in modifying the mortgage, the PAE and owner may continue to develop a Restructuring Plan to restructure the loan using alternative financing.

§ 401.403 Rejection of a request for a Restructuring Plan because of actions or omissions of owner or affiliate or project condition.

(a) *Ongoing determination of owner and project eligibility.* Notwithstanding an initial determination to accept the owner's request for a Restructuring Plan, the PAE is responsible for a further more complete and ongoing assessment of the eligibility of the owner and project while the Restructuring Plan is developed. The PAE must advise HUD if at any time any of the grounds for rejection listed in paragraph (b) of this section exist.

(b) *Grounds for rejection*—(1) *Suspension or debarment.* Neither a PAE nor HUD will continue to develop or consider a Restructuring Plan if, at any time before a closing under § 401.407,

the owner is debarred or suspended under 2 CFR part 2424.

(2) *Other grounds.* HUD may elect not to permit continued consideration of the Restructuring Plan at any time before closing under § 401.407, if:

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

(ii) HUD or the PAE determines that the owner or an affiliate has engaged in material adverse financial or managerial actions or omissions as described in section 516(a) of MAHRA, including any outstanding violations of civil rights laws in connection with any project of the owner or affiliate; or

(iii) HUD or the PAE determines (under § 401.451(c) or otherwise) that the project does not meet the housing quality standards in § 401.558 and that the poor condition of the project is not likely to be remedied in a cost-effective manner through the Restructuring Plan.

(3) *Exception for sale.* This paragraph does not apply (except (2)(iii)) if a sale or transfer is proposed under § 401.480.

(c) *Dispute and appeal.* An owner may dispute a rejection under this section and seek administrative review under the procedures in subpart F of this part.

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

§ 401.404 Proposed Restructuring Commitment.

A PAE must submit a Restructuring Plan and a proposed Restructuring Commitment to HUD for approval, prior to submitting the Commitment to the owner for execution. The submission may not occur earlier than 10 days after the public meeting required by § 401.500(d). The proposed Restructuring Commitment must be in a form approved by HUD, incorporate the Restructuring Plan, and include the following:

(a) The lender, loan amount, interest rate, and term of any mortgages or unsecured financing for the mortgage restructuring and rehabilitation, and any credit enhancement;

(b) The amount of any payment of a section 541(b) claim;

(c) The type of section 8 assistance and the section 8 restructured rents;