

## § 401.1

401.651 Appeal procedures.  
401.652 No judicial review.

AUTHORITY: 12 U.S.C. 1715z-1 and 1735f-19(b); 42 U.S.C. 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 community, or for elected representatives of community organizations that represent low-income tenants.

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*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:

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

(2) Receives project-based assistance expiring on or after October 1, 1998;

(3) Has 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) Has a first mortgage that has not previously been restructured under this part or under a Reengineering demonstration program;

(5) Is not described in section 514(h) of MAHRA; and

(6) Otherwise meets the definition of “eligible multifamily housing project” in section 512(2) of MAHRA.

*HUD* means the Director of OMHAR or a HUD official authorized to act in lieu of the Director, when used in reference to provisions of MAHRA that give responsibilities to the Director, 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.*

*OMHAR* means the Office of Multifamily Housing Assistance Restructuring.

*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]

#### **§ 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]

#### **§ 401.101 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 part 24 of this title.

(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 part 24 of this title; 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.

### **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