

§ 401.410

as determined by HUD, with adjustments for household size, at rents no greater than 30 percent of 60 percent of the area median income.

(d) *Comparable configuration.* The type and size of the units that satisfy the affordability restrictions of paragraph (c) of this section must be comparable to the type and size of the units for the project as a whole.

(e) *Nondiscrimination against voucher holders.* An owner must comply with the nondiscrimination provisions of § 401.556.

(f) *Enforcement.* The Use Agreement must contain remedies for breach of the Use Agreement, including monetary damages for non-compliance with paragraphs (c) and (g) of this section.

(g) *Compliance with physical condition standards.* The Use Agreement must require that the property be maintained in compliance with the requirements of § 401.558.

(h) *Reporting.* The Use Agreement must contain appropriate financial and other reporting requirements for the owner. These reports must comply with the Real Estate Assessment Center protocol or subsequent standards required by HUD.

(i) *Enforcement and amendment.* The Use Agreement will be enforceable by interested parties to be specified in the Agreement, which will include HUD, the PAE, project tenants, organizations representing project tenants, and the unit of local government. The Use Agreement must require the party bringing enforcement action to give the owner notice and a reasonable opportunity to cure any violations.

(j) *Modifications.* HUD will retain the right to approve modifications of the Use Agreement agreed to by the owner without the consent of any other party, including those having the right of enforcement. The owner must post prominently on project property notice of any modifications approved by HUD.

(k) *Owner obligation to accept project-based assistance.* Subject to the availability of appropriated funds, the owner of the project must accept any offer of renewal of project-based assistance if the offer is in accordance with

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the terms and conditions specified in the Restructuring Plan.

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

§ 401.410 Standards for determining comparable market rents.

(a) *When are comparable market rents required?* The Restructuring Plan must establish restructured rents for project-based assistance at comparable market rents unless the PAE finds that exception rents are necessary under § 401.411.

(b) *Comparable market rents defined.* Comparable market rents are the rents charged for properties that the PAE determines to be comparable properties (as defined in section 512(1) of MAHRA, but also excluding section 202 or section 811 projects assisted under part 891 of this title). For purposes of section 512(1), other relevant characteristics include any applicable rent control and other characteristics determined by the PAE. The PAE may make appropriate adjustments when needed to ensure comparability of properties.

(c) *Methodology for determining comparable market rents.* If the PAE is unable to identify at least three comparable properties within the local market, the PAE may:

(1) Use non-comparable housing stock within that market from which adjustments can be made; or

(2) If necessary to go outside the market, use comparable properties as far outside the local market as it finds reasonable, from which adjustments can be made.

(d) *Using FMR as last resort.* If the PAE is unable to identify enough properties under paragraph (c) of this section, comparable market rents must be set at 90 percent of the Fair Market Rents for the relevant market area.

§ 401.411 Guidelines for determining exception rents.

(a) *When do exception rents apply?* (1) The Restructuring Plan may provide for exception rents established under section 514(g)(2) of MAHRA for project-based assistance if the PAE determines that project income under the rent levels established under § 401.410 would be