

*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; 71 FR 2120, Jan. 12, 2006; 72 FR 66038, Nov. 26, 2007]

#### § 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]

#### § 401.100 Which projects are eligible for a Restructuring Plan under this part?

(a) *What are the requirements for eligibility?* To be eligible for a Restructuring Plan under this part, a project must:

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

(2) Be covered in whole or in part by a contract for project-based assistance under—

(i) The new construction or substantial rehabilitation program under section 8(b)(2) of the U.S. Housing Act of 1937 as in effect before October 1, 1983;

(ii) The property disposition program under section 8(b) of the U.S. Housing Act of 1937;

(iii) The moderate rehabilitation program under section 8(e)(2) of the United States Housing Act of 1937;

(iv) The loan management assistance program under section 8 of the United States Housing Act of 1937;

(v) Section 23 of the United States Housing Act of 1937 as in effect before January 1, 1975;

(vi) The rent supplement program under section 101 of the Housing and Urban Development Act of 1965;

(vii) Section 8 of the United States Housing Act of 1937, following conversion from assistance under Section 101 of the Housing and Urban Development Act of 1965; or

(viii) Section 8 of the U.S. Housing Act of 1937 as renewed under section 524 of MAHRA;

(3) Have 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) 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;

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(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.

(d) *Notice to tenants.* The PAE or HUD will give notice to tenants of a rejection

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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, or contract with other qualified entities to perform those functions.