

§ 401.471

24 CFR Ch. IV (4-1-08 Edition)

administrative appeals procedure in subpart F of this part, unless HUD acts on the basis of the grounds specified in sections 517(a)(4)(A) or (B) of MAHRA.

(5) HUD will consider modification, assignment to the acquiring entity, or forgiveness of all or part of the second mortgage, if: The Secretary holds the second mortgage; and if the project has been sold or transferred to a tenant organization or tenant-endorsed community-based nonprofit or public agency that meets eligibility guidelines determined by HUD; accepts additional affordability requirements acceptable to HUD; and requests such modification, assignment, or forgiveness. A community-based nonprofit group or public agency demonstrates that it is tenant-endorsed in accordance with § 401.480(e).

(c) *Additional mortgage to HUD.* (1) A Restructuring Plan shall require the owner to give an additional mortgage on the project to HUD in an amount that:

(i) For the restructuring of a mortgage insured by HUD, does not exceed the difference between:

(A) The amount of a section 541(b) claim paid under § 401.471 increased by any residual receipts, pursuant to 24 CFR 880.205(e), 881.205(e), or 883.306(e); and

(B) The principal amount of the second mortgage; or

(ii) For the restructuring of a mortgage held by HUD, does not exceed the difference between:

(A) The principal amount of a restructured HUD-held mortgage and the sum of, as applicable, a restructured HUD-held first mortgage at reduced principal amount, new mortgage funds paid to HUD at closing, and surplus project accounts other than residual receipts, pursuant to 24 CFR 880.205(e), 881.205(e), or 883.306(e); and

(B) The principal amount of the second mortgage.

(2) HUD may approve a Plan that does not require an additional mortgage, or provides for less than the full difference to be payable under the additional mortgage, or allows for subsequent modification, assignment, or forgiveness of the additional mortgage under any of the following circumstances:

(i) The anticipated recovery on the additional mortgage is less than the servicing costs; or

(ii) HUD has approved modification, assignment, or forgiveness of the second mortgage, pursuant to paragraph (b)(5) of this section.

(3) With respect to the second mortgage required by paragraph (a) of this section, any additional mortgage must:

(i) Be junior in priority;

(ii) Bear interest at the same rate; and

(iii) Require no payment until the second mortgage is satisfied, at which time it will be payable upon demand of HUD or as otherwise agreed by HUD.

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

§ 401.471 HUD payment of a section 541(b) claim.

HUD will pay a section 541(b) claim from the appropriate insurance fund to the insured mortgagee on behalf of the mortgagor. The mortgagee must use the claim payment to prepay the principal balance of the insured mortgage, in whole or in part, as provided in the Restructuring Plan. All section 541(b) claims will be paid in cash. Part 207 of this title and sections 207(g) and 541(a) of the NA do not apply to a section 541(b) claim.

§ 401.472 Rehabilitation funding.

(a) *Sources of funds—(1) Project accounts.* The Restructuring Plan for funding rehabilitation must include funds from the project's residual receipts account, surplus cash account, replacement reserve account, and other project accounts, to the extent the PAE determines that those accounts will not be needed for the initial deposit to the reserves.

(2) *Debt restructuring.* The Restructuring Plan may provide for funding of rehabilitation through a new first mortgage in conjunction with a payment of a section 541(b) claim. The payment of claim may be in an amount necessary to facilitate the funding of the rehabilitation, by reducing the existing first mortgage debt to make refinancing proceeds available to fund rehabilitation.

(3) *Section 236(s) rehabilitation grant.* The Restructuring Plan may include a