

or contract with other qualified entities to perform those functions.

#### § 401.300 What is a PRA?

A PRA is an agreement between HUD and a PAE that delineates rights and responsibilities in connection with development and implementation of a Restructuring Plan. The PRA must contain or incorporate by reference the matters required by section 513(a)(2) of MAHRA and §§ 401.301 through 401.314, as well as other terms and conditions required by HUD.

#### § 401.301 Partnership arrangements.

If the PAE is in a partnership, the PRA must specify the following:

- (a) The responsibilities of each partner regarding the Restructuring Plan;
- (b) The resources each partner will provide to accomplish its designated responsibilities; and
- (c) All compensation to each partner, whether direct or indirect.

#### § 401.302 PRA administrative requirements.

(a) *Inapplicability of certain requirements.* Part 200 of 2 CFR and contract procurement requirements do not apply to a PRA.

(b) *Recordkeeping.* The PAE must keep complete and accurate records of all activities related to the PAE's performance under the PRA. The PAE must retain the records for at least 3 years after the PRA terminates.

(c) *Inspection of records and audit.* Upon reasonable notice, the PAE must permit the Comptroller General of the United States and HUD (including representatives of the HUD Office of Inspector General) to inspect, audit, and copy any records required to be retained under this section.

[65 FR 15485, Mar. 22, 2000, as amended at 80 FR 75936, Dec. 7, 2015]

#### § 401.303 PRA indemnity provisions for SHFAs and HAs.

When a PRA requires HUD to indemnify a PAE in accordance with section 513(a)(2)(G) of MAHRA, any payment under this indemnity is contingent upon the availability of funds that are permitted by law to be used for this purpose.

#### § 401.304 PRA provisions on PAE compensation.

(a) *Base fee.* (1) The PRA will provide for base fees to be paid by HUD.

(2) HUD will establish a substantially uniform baseline for base fees for public entities. The base fee for a PAE will be adjusted, if necessary, after the first term of the PRA.

(3) Private PAEs will be compensated based on the results of a competitive bid process which evaluates bidders' capability, timeliness, ability to work with tenant and community groups, and cost.

(b) *Incentives.* The PRA may provide for incentives to be paid by HUD. While individual components may vary between PAEs (both public and private), the total amount potentially payable under the incentive package will be uniform. Objectives may include maximizing savings to the Federal Government, timely performance, tenant satisfaction with the PAE's performance, the infusion of public funds from non-HUD sources, and other benchmarks that HUD considers appropriate.

(c) *Expenses.* The PRA will identify expenses incurred by the PAE that will qualify for reimbursement by HUD. Limits on these expenses will be established annually by HUD, but HUD may waive the limits for high-cost areas.

(d) *Other matters.* HUD will retain the right of final approval of any fee schedule. HUD will publish the standard form of PRA and the compensation package annually on its Internet Web site.

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

#### § 401.309 PRA term and termination provisions; other provisions.

(a) *1-year term with renewals.* The PRA will have a term of 1 year, to be renewed for successive terms of 1 year with the mutual agreement of both parties. The PRA will provide for HUD to pay final compensation to the PAE and to assign responsibility for continuing activities if the PRA is not renewed.

(b) *Termination for cause or convenience of Federal Government—(1) Termination for cause.* HUD may terminate a PRA at any time for cause, with payment required by HUD as provided in

## § 401.310

## 24 CFR Ch. IV (4–1–21 Edition)

the PRA only for matters authorized by the PRA and performed by the PAE to the date of termination. HUD will retain the right of set-off against any payments due as well as such other rights afforded at law and in equity.

(2) *Termination for convenience of Federal Government.* HUD may terminate a PRA, and may remove an eligible property from a PRA, at any time in accordance with the PRA or applicable law, regardless of whether the PAE is in default of any of its obligations under the PRA, if such termination is in the best interests of the Federal Government. The PRA will provide for payment to the PAE of a specified percentage of the base fee authorized by § 401.304(a) and amounts for reimbursement of third-party vendors to the PAE authorized by § 401.304(c).

(3) *Transfer to another PAE; temporary waiver of rights.* If a PRA is terminated:

(i) HUD may order an immediate transfer of some or all of the PAE's duties to another PAE designated by HUD; and

(ii) HUD may temporarily waive its right of immediate termination in order to allow an orderly transfer of duties and responsibilities under a PRA, without waiving the right of termination after the transfer has been completed to HUD's satisfaction.

(c) *Liability for damages.* During the term of a PRA, and notwithstanding any termination of a PRA, HUD may seek its actual, direct, and consequential damages from any PAE for failure to comply with its obligations under PRA.

(d) *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.

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

### § 401.310 Conflicts of interest.

(a) *Definitions*—(1) *Conflict of interest* means a situation in which a PAE or other restricted person:

(i) Has a financial interest, direct or indirect, that prevents or may prevent the PAE or other restricted person from acting at all times in the best interests of HUD;

(ii) Has one or more personal, business, or financial interests or relationships that would cause a reasonable person with knowledge of the relevant facts to question the integrity or impartiality of those who are or will be acting under the PRA; or

(iii) Is taking an adverse position to HUD or to an owner whose project is covered by a PRA in a lawsuit, administrative proceeding, or other contested matter.

(2) *Control* means the power to vote, directly or indirectly, 25 percent or more of any class of the voting stock of a company; the ability to direct in any manner the election of a majority of a company (or other entity's) directors or trustees; or the ability to exercise a controlling influence over the company or entity's management and policies. For purposes of this definition, a general partner of a limited partnership is presumed to be in control of that partnership.

(3) *Restricted person* means a PAE; any management official of the PAE; any legal entity that is under the control of the PAE, is in control of the PAE, or is under common control with the PAE; or any employee, agent or contractor of the PAE, or employee of such agent or contractor, who will perform or has performed services under a PRA with HUD.

(b) *General prohibitions.* (1) The PAE may not permit conflicts of interest to exist without obtaining a waiver in accordance with this section.

(2) The PAE must establish procedures to identify conflicts of interest and to ensure that conflicts of interest do not arise or continue, subject to waiver under paragraph (c) of this section.

(3) HUD will not enter into PRAs with potential PAEs who have conflicts of interest associated with a particular project, or permit PAEs to continue performance under existing PRAs when such PAEs have conflicts of interest, unless such conflicts have been eliminated to HUD's satisfaction by the PAE or potential PAE or are waived by HUD.

(4) The PAE has a continuing obligation to take all action necessary to