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(b) *Upon receipt of final decision.* HUD will send the owner a written notice of the final decision under § 401.645 that will also provide the owner with 10 days to request an administrative appeal of the final decision.

(c) *HUD decision to accelerate the second mortgage.* Upon receipt of notice from HUD of a decision to accelerate the second mortgage under § 401.461(b)(4), the owner may request an administrative appeal in accordance with § 401.651.

[72 FR 66040, Nov. 26, 2007]

§ 401.651 Appeal procedures.

(a) *How to appeal.* An owner may submit a written appeal to HUD, within 10 days of receipt of written notice of the decision described in § 401.650, contesting the decision and requesting a conference with HUD. At the conference, the owner may submit (in person, in writing, or through a representative) its reasons for appealing the decision. The HUD or PAE official who issued the decision under appeal may participate in the conference and submit (in person, in writing, or through a representative) the basis for the decision.

(b) *Written decision.* Within 20 days after the conference, or 20 days after any agreed-upon extension of time for submission of additional materials by or on behalf of the owner, HUD will review the evidence presented for the administrative appeal and, using the standard of whether the determination of the final decision was reasonable, will advise the owner in writing of the decision to terminate, modify, or affirm the original decision. HUD will act, as necessary, to implement the decision, for example, by offering a revised Restructuring Commitment to the owner.

(c) *Who is responsible for reviewing appeals?* HUD will designate an official to review any appeal, conduct the conference, and issue the written decision. The official designated must be one who was neither directly involved in, nor reports to another directly involved in, making the decision being appealed.

[65 FR 15485, Mar. 22, 2000, as amended at 72 FR 66040, Nov. 26, 2007]

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§ 401.652 No judicial review.

The reviewing official's decision under § 401.651 is a final determination for purposes of section 516(c) of MAHRA and is not subject to judicial review.

PART 402—SECTION 8 PROJECT-BASED CONTRACT RENEWAL UNDER SECTION 524 OF MAHRA

Sec.

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AUTHORITY: 42 U.S.C. 1437(c)(8), 1437f note, and 3535(d).

SOURCE: 63 FR 48953, Sept. 11, 1998, unless otherwise noted.

§ 402.1 What is the purpose of part 402?

This part sets out the terms and conditions under which HUD will renew project-based assistance contracts under the authority provided in section 524 of MAHRA.

[71 FR 2121, Jan. 12, 2006]

§ 402.2 Definitions.

(a) *Terms defined in part 401.* In this part, the following terms have the meanings given in § 401.2 of this chapter: affiliate, disabled family, elderly family, eligible project, HUD, MAHRA, owner, PAE, Restructuring Plan, and section 8.

(b) *Terms defined in MAHRA.* In this part, the following terms have the meanings given in section 512 of MAHRA: expiration date, fair market rent, renewal, and tenant-based assistance.

(c) *Other defined terms.* In this part, the term—

Comparable market rents means rents determined in accordance with section 524(a)(5) of MAHRA and HUD's instructions.

Large family means a family of five or more persons.

OCAF means an operating cost adjustment factor established by HUD, which may not be negative, that is applied to the existing contract rent (less the portion of that rent paid for debt service).

Portfolio Reengineering demonstration authority means the authority specified in section 524(e)(2)(B) of MAHRA.

Project-based assistance means the types of assistance listed in section 512(2)(B) of MAHRA, or a project-based assistance contract under the Section 8 program renewed under section 524 of MAHRA.

Project eligible for exception rents means a project described in section 524(b) of MAHRA.

SRO contract and SRO project mean, respectively, a project-based assistance contract for single-room occupancy dwellings under section 441 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11401), and a project with units covered by such a contract.

[71 FR 2121, Jan. 12, 2006]

§ 402.3 Contract provisions.

The renewal HAP contract shall be construed and administered in accordance with all statutory requirements, and with all HUD regulations and other requirements, including changes in HUD regulations and other requirements during the term of the renewal HAP contract, unless the contract provides otherwise.

[71 FR 2121, Jan. 12, 2006]

§ 402.4 Contract renewals under section 524(a)(1) of MAHRA.

(a) *Initial renewal.* (1) HUD may renew any expiring section 8 project-based assistance contract at initial rents that do not exceed comparable market rents.

(2) *Procedure for projects eligible for Restructuring Plan.* (i) If an owner requests renewal of a contract under this section for a project that is eligible for

a Restructuring Plan under the Mark-to-Market program under part 401 and that has not been rejected under that part, HUD or a PAE will determine whether renewal under this section, instead of through a Restructuring Plan under part 401 of this chapter, would be sufficient. Renewal without a Restructuring Plan will be considered sufficient if the rents after renewal would be sufficient to maintain both adequate debt service coverage on the HUD-insured or HUD-held mortgage and necessary replacement reserves to ensure the long-term physical integrity of the project, taking into account any comments received under § 401.502(c) of this chapter.

(ii) If HUD or the PAE determines that renewal under this section would be sufficient, HUD will not require a Restructuring Plan.

(iii) If HUD or the PAE determines that renewal under this section would not be sufficient, HUD or the PAE may require a Restructuring Plan before the owner's request for contract renewal will be given further consideration. If the owner does not cooperate in the development of an acceptable Restructuring Plan, HUD will pursue whatever administrative actions it considers necessary.

(b) [Reserved]

[65 FR 15498, Mar. 22, 2000, as amended at 71 FR 2121, Jan. 12, 2006]

§ 402.5 Contract renewals under section 524(b) or (e) of MAHRA.

(a) *Renewal of projects eligible for exception rents at owner's request.* HUD will offer to renew project-based assistance for a project eligible for exception rents under section 524(b) of MAHRA at rent levels determined under this section instead of § 402.4, except as provided in § 402.7, but the owner of a project other than a project with assistance under the Section 8 moderate rehabilitation program may request renewal under § 402.4.

(b) *Rent levels for projects eligible for exception rents.* HUD will renew the contract with rent levels at the least of:

(1) Existing rents adjusted by an OCAF;

(2) A budget-based rent determined in accordance with instructions issued by

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HUD, subject to a determination by HUD that such a rent level is appropriate; or

(3) In the case of a contract under the Section 8 moderate rehabilitation program (other than an SRO contract), the lesser of existing rents adjusted by an OCAF, fair market rents (less any amounts for tenant-purchased utilities), or comparable market rents, as provided in section 524(b)(3) of MAHRA.

(c) *Rent adjustments.* (1) After rents have been established under this section, rent adjustments will comply with section 524(c) of MAHRA except as otherwise required by paragraph (d)(1) of this section for preservation projects.

(2) Rent adjustments for projects assisted under the Section 8 moderate rehabilitation program, other than projects assisted under the moderate rehabilitation single-room occupancy program, shall be determined in accordance with section 524(b)(3) of MAHRA.

(d) *Preservation projects and demonstration projects.* (1) Notwithstanding any other provision of this part except § 402.7, upon expiration of a section 8 contract for a project subject to an approved plan of action under the Emergency Low-Income Housing Preservation Act of 1987 (ELIHPA) or the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (LIHPRHA), the Secretary will provide benefits that are comparable to those provided under such plan of action. This paragraph (d)(1) applies only to the extent amounts are specifically made available in appropriations acts.

(2) Notwithstanding any other provision of this part except § 402.7, upon expiration of a Section 8 contract entered into pursuant to a Portfolio Reengineering demonstration authority for which HUD made a determination that debt restructuring is inappropriate, and the owner of the project executed a Portfolio Reengineering Demonstration Program Use Agreement, the Secretary will provide the owner, at the request of the owner, with benefits comparable to those provided under the contract that is expiring. This paragraph (d)(2) applies only to

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the extent amounts are made available in appropriations acts.

[71 FR 2122, Jan. 12, 2006]

§ 402.6 What actions must an owner take to request section 8 contract renewal under this part?

(a) *In general.* An owner requesting contract renewal under this part must submit to HUD or HUD's designee, at least 120 days before the termination or expiration date of any project-based assistance contract, all documents or information prescribed by HUD.

(b) *Subsequent renewals.* A contract that was initially renewed under MAHRA will be renewed at the owner's request under any renewal option for which the project is eligible. However, in the case of a project that is eligible for a Restructuring Plan under § 401.100, HUD or a PAE will determine whether renewal with a Restructuring Plan under part 401, or without a Restructuring Plan under this part, is necessary.

[71 FR 2122, Jan. 12, 2006]

§ 402.7 Refusal to consider an owner's request for a Section 8 contract renewal because of actions or omissions of owner or affiliate.

(a) *Determination of eligibility.* Notwithstanding 24 CFR part 2424, HUD may elect to not consider a request for renewal of project-based assistance, if at any time before contract renewal:

(1) The owner or an affiliate is debarred or suspended under part 24 CFR part 2424;

(2) HUD determines that the owner or an affiliate has engaged in material adverse financial or managerial actions or omissions as described in section 516 of MAHRA, including any outstanding violations of civil rights laws, or has failed to certify to compliance with the nondiscrimination requirements of 24 CFR 5.105(a), in connection with any project of the owner or an affiliate; or

(3) The project does not meet the physical condition standards in 24 CFR 5.703 of this title, unless HUD determines that the project will meet the standards within a reasonable time after renewal.

(b) *Dispute and appeal.* An owner may dispute a rejection under this section and seek administrative review under

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the procedures in subpart F of part 401 of this chapter.

[71 FR 2122, Jan. 12, 2006, as amended at 72 FR 73496, Dec. 27, 2007]

§ 402.8 Tenant protections if a contract is not renewed.

(a) *Notice of termination.* An owner who is not eligible for a Restructuring Plan under part 401 of this chapter, or who is eligible but does not request restructuring, and who does not renew a contract, must provide one year's notice to tenants, to HUD, and to the contract administrator as provided in section 8(c)(8)(A) of the United States Housing Act of 1937.

(b) *If an owner does not give timely notice.* If an owner does not give one year's notice of termination as described in paragraph (a) of this section, the owner must permit the tenants in assisted units to remain in their units at a rental rate no higher than the tenant rent payable for the tenants' last month of assisted occupancy under the

terminated HAP contract until one year after notice is given, even if HUD does not continue to make housing assistance payments with respect to such units.

(c) *If an owner opts out or fails to renew.* In the case where a contract for Section 8 rental assistance for a project is terminated or expires, an assisted family may elect to remain in the project and, if eligible, receive tenant-based Section 8 assistance under Section 8(t) of the United States Housing Act of 1937.

[71 FR 2122, Jan. 12, 2006]

§ 402.9 Waivers and delegations of waiver authority.

All waivers of provisions of this part, and delegations of the authority to waive provisions of this part, are governed by § 5.110 of this title.

[71 FR 2123, Jan. 12, 2006]

PARTS 403–499 [RESERVED]