

§ 401.473

24 CFR Ch. IV (4-1-02 Edition)

The PAE may exempt housing cooperatives from the owner contribution requirement.

(c) *Escrow agent.* The Restructuring Plan must provide for progress payments for rehabilitation, which must be disbursed by an acceptable escrow agent subject to PAE oversight or as otherwise provided by HUD.

§ 401.473 HUD grants for rehabilitation under section 236(s) of NA.

HUD will consider a direct grant for rehabilitation under section 236(s) of the NA only if the owner provides an acceptable work schedule and cost-analysis that is consistent with the owner's evaluation of physical condition under § 401.450, as certified by the PAE. The owner must execute a grant agreement with terms and conditions acceptable to HUD. If the PAE is a State or local government, or an agency or instrumentality of such a government, the PAE and HUD may agree that the PAE will be delegated the responsibility for the administration of any grant made under this section. HUD may make grant funding available for the cost of administration if HUD has determined that such funding is available.

§ 401.474 Project accounts.

(a) *Accounts from other projects.* The accounts listed in § 401.472(a)(1) may be used for other eligible projects only if:

(1) The projects are included in a Consolidated Restructuring Plan under § 401.401; and

(2) The funds are used for rehabilitation or to reduce a section 541(b) claim paid by HUD under § 401.471.

(b) *Distribution to owner.* The Restructuring Plan may provide for a one-time distribution to the owner, not to exceed 10 percent of the excess funds in project accounts, to be released after completion of the rehabilitation required by the Restructuring Plan.

§ 401.480 Sale or transfer of project.

(a) *May the owner request a Restructuring Plan that includes a sale or transfer of the property?* The owner may request a Restructuring Plan that includes a condition that the property be sold or transferred to a purchaser acceptable to HUD in a reasonable period

needed to consummate the transaction. The failure to consummate a sale or transfer of the property requested under paragraph (a) of this section will neither adversely affect an owner's eligibility for a Restructuring Plan nor exempt the owner from the requirements of § 401.600. There are no priority purchaser requirements for a voluntary sale or transfer by an owner that is eligible for a Restructuring Plan.

(b) *When must the Restructuring Plan include a sale or transfer of the property?* If the owner is determined ineligible pursuant to § 401.101 or § 401.403, the Restructuring Plan must include a condition that the owner sell or transfer the property to a purchaser acceptable to HUD in accordance with paragraph (c) of this section.

(c) *Owner's notice of intent to sell or transfer.* (1) The owner must provide notice to the PAE affirming the owner's intent to sell or transfer the property. This notice must be received by the PAE no later than 30 days after a notice of rejection under § 401.101 or § 401.403 has become a final determination under subpart F of this part.

(2) The owner must cooperate in selling or transferring the property. Failure to do so will result in the PAE's determination to reject the owner's request for a Restructuring Plan. The owner must distribute and publish, in an appropriate publication, a notice to potential purchasers that describes the property, proposed terms of sale, and procedures for submitting an purchase offer. The notice in form and substance must be acceptable to HUD, and must inform potential offerors of a preference for priority purchasers.

(3) During a period to be determined by HUD that begins when the owner gives notice of intent to sell or transfer, an owner may accept an offer only from a priority purchaser.

(4) No sale or transfer to a non-priority purchaser will be approved without evidence of tenant support.

(d) *Informing PAE; approval required.* The owner must inform the PAE of any offer to purchase the property and the owner must advise the PAE of the substance and on-going status of the owner's discussions with any prospective purchaser. The owner's acceptance of

the offer must be subject to PAE approval, and HUD approval of the Restructuring Plan.

§ 401.481 Subsidy layering limitations on HUD funds.

(a) *PAE subsidy layering certification required for Restructuring Plan.* The PAE must certify to HUD that any Restructuring Plan for which it submits a proposed Restructuring Commitment meets the requirements of either paragraph (d) or (e) of this section.

(b) *Purpose of subsidy layering certification.* The purpose of the subsidy layering certification is to ensure that any HUD assistance provided to the owner of a project pursuant to a Restructuring Plan is no more than is necessary to permit the project to continue to house tenants with an income mix comparable to the income mix of the project before the Restructuring Plan is implemented, after taking into account other Government assistance described in section 102(b)(1) of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545(b)(1)). This section does not limit a PAE from presenting for approval a Restructuring Plan that includes project reconfiguration (e.g., conversion of efficiency units to one-bedroom units) where necessary to meet the needs of the community, provided the conditions of § 401.452 are also met.

(c) *Relationship to section 102(d) of HUD Reform Act.* HUD is not required to perform a separate subsidy layering analysis under section 102(d) of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545(d)), section 911 of the Housing and Community Development Act of 1992 (42 U.S.C. 3545 note), or § 4.13 of this title for any HUD assistance that is included in the Restructuring Plan. HUD will adopt the PAE certification under this section if a HUD certification otherwise would be required under section 102(d).

(d) *Certification under existing HUD guidelines.* If the PAE has delegated authority from HUD to make section 102(d) subsidy layering certifications in accordance with section 911 of the Housing and Community Development Act of 1992, the PAE may comply with this section by using a procedure sub-

stantially similar to the procedure described in the Administrative Guidelines published on December 15, 1994 (59 FR 64748), or any subsequent procedure adopted by HUD to implement section 911.

(e) *Other procedures.* If the PAE does not have the delegated authority described in paragraph (d) of this section, the PAE must submit to HUD for approval proposed procedures for making the subsidy layering certification under this section. Any procedures must conform to the procedures described in paragraph (d) of this section to the extent feasible and appropriate.

§ 401.500 Required notices to third parties and meeting with third parties.

(a) *General.* The PAE must solicit, and document the consideration of, tenant and local community comments. As a minimum, the notices described in paragraphs (b), (c) and (f) of this section, in form and substance acceptable to HUD, must be provided. The PAE may require the owner to give the notices if permitted by HUD.

(b) *Notice of intent to restructure and consultation meeting.* (1) This notice must include at a minimum:

(i) The project, including its name and FHA Project Number;

(ii) The responsible PAE and contact person, including the address and telephone number;

(iii) The owner's notice of intent to restructure through the Mark-to-Market Program; and

(iv) The date of expiration of the project-based assistance.

(2) This notice must state how comments may be provided to the PAE regarding any of the following: the physical condition of the property, whether the rental assistance should be tenant-based or project-based, any proposed sale or transfer of the property, and other matters regarding the property and its management. The notice must establish the date, time, and place for a public meeting to be held no sooner than 20 days and no later than 40 days following the date of this notice. The public may provide written comments up to the date of the meeting.

(c) *Access to Restructuring Plan.* (1) The PAE must make the Restructuring