

(1) The property must maintain at least a 90 percent level of occupancy for low-income families. The income test will be conducted only at the time of entry for each available unit or rehabilitation of occupant-owned home. If the grantee cannot find a qualifying tenant to lease the unit, the unit may be leased to a family whose income is above the income threshold to qualify as a low-income family but below the median income for the area. Leases for tenants with higher incomes will be limited to one or two years. The leases provided to tenants with higher incomes will not be subject to the termination clause that is described in paragraph (b)(2) of this section.

(2) The property owner must not terminate the tenancy or refuse to renew the lease of a tenant occupying a residential rental housing unit constructed or rehabilitated using YouthBuild funds except for serious or repeated violations of the terms and conditions of the lease, for violation of applicable Federal, State or local laws, or for good cause. Any termination or refusal to renew the lease must be preceded by not less than a 30-day written notice to the tenant specifying the grounds for the action. The property owner may waive the written notice requirement for termination in dangerous or egregious situations involving the tenant.

(c) All transitional or permanent housing for homeless individuals or families or low-income families must be safe and sanitary. The housing must meet all applicable State and local housing codes and licensing requirements in the jurisdiction in which the housing is located.

(d) For sales or rentals of residential housing units constructed or rehabilitated using YouthBuild funds, YouthBuild grantees must ensure that owners of the property record a restrictive covenant at the time that an occupancy permit is issued against such property which includes the use restrictions set forth in paragraphs (a), (b) and (c) of this section and incorporates the following definitions at § 672.110: Homeless Individual; Low-Income Housing; and Transitional Housing. The term of the restrictive covenant must be at least 10 years from the time of the issuance of the occupancy permit, unless a time period of more than 10 years has been established by the grantee. Any additional stipulations imposed by a grantee or property owner should be clearly stated in the covenant.

(e) Any conveyance document prepared in the 10-year period of the restrictive covenant must inform the

buyer of the property that all residential housing units constructed or rehabilitated using YouthBuild funds are subject to the restrictions set forth in paragraphs (a), (b), (c), and (d) of this section.

Signed at Washington, DC, this 19th day of August 2010.

**Jane Oates,**

*Assistant Secretary, Employment and Training Administration.*

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### 24 CFR Part 401

[Docket No. FR-5304-P-01]

RIN 2502-AI75

### Multifamily Housing Reform and Affordability Act: Projects Eligible for a Restructuring Plan; When Eligibility Is Determined

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Proposed rule.

**SUMMARY:** HUD seeks public comment on HUD's determination of the point in time at which an assisted project covered by the Multifamily and Assisted Housing Reform and Affordability Act is eligible for restructuring. Additionally, HUD proposes to amend its regulation, which provides a cross-reference to the statutory list of the types of projects that are eligible for mortgage restructuring, to incorporate that list into the regulation. HUD is initiating this rulemaking in accordance with a court decision.

**DATES:** *Comments Due Date:* October 26, 2010.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410-0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410-0500.

2. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at <http://www.regulations.gov>. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the <http://www.regulations.gov> Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

**Note:** To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

*No Facsimile Comments.* Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the Federal Information Relay Service, toll free, at 800-877-8339. Copies of all comments submitted are available for inspection and downloading at <http://www.regulations.gov>.

#### FOR FURTHER INFORMATION CONTACT:

Theodore Toon, Deputy Assistant Secretary, Office of Affordable Housing Preservation (OAHP), Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6230, Washington, DC 20024, telephone number 202-708-0001 (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at 800-877-8339.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The Multifamily Assisted Housing Reform and Affordability Act (42 U.S.C. 1437f note) (MAHRA) introduced a Mark-to-Market program designed to preserve housing affordability, while

reducing the long-term costs of Federal assistance. Section 514 of MAHRA provides for mortgage restructuring and rental adjustment via an Operating Cost Adjustment Factor (OCAF). Section 524 of MAHRA deals specifically with renewals of project-based Section 8 assistance without mortgage restructuring. Section 512(2) of MAHRA requires that an eligible multifamily housing project be subject to one of eight different types of rental assistance contracts and further requires that (i) project rents be above-market and (ii) the project be subject to FHA-insured or HUD-held financing. Essentially, these eligible projects are: (1) Those with rents that on average exceed the rents of comparable properties in the same market area; (2) multifamily properties consisting of more than four dwelling units; (3) financed by a mortgage held or insured by HUD; and (4) covered in whole or part by a contract for assistance under one of several specified programs. These specified programs include current and former programs authorized under the following authorities: (1) Section 8 of the U.S. Housing Act of 1937 (42 U.S.C. 1437f); (2) section 23 of the U.S. Housing Act of 1937 as in effect before January 1, 1975 (the Section 23 Leased Housing program, found at section 103 of the Housing and Urban Development Act of 1965 (Pub. L. 89-117, approved August 10, 1965), which was the predecessor to the current Section 8 program); (3) Rent Supplements under 12 U.S.C. 1701s; and (4) the Section 8 program following its conversion from the Rent Supplement program.

On September 11, 1998, HUD issued an interim rule implementing the Mark-to-Market program in 24 CFR parts 401 and 402 (63 FR 48943). HUD accepted public comments on this interim rule as a basis for future rulemaking on this subject. HUD issued a subsequent final rule on March 22, 2000 (65 FR 15485), primarily to make regulatory changes regarding procedures other than the renewal procedures in section 524 of MAHRA, which were left to future rulemaking. On January 12, 2006, HUD issued a final rule, amending its regulations in 24 CFR parts 401 and 402 (71 FR 2120).

The regulatory definition of an eligible project was originally codified at 24 CFR 401.100. The version of § 401.100 published in the 1998 interim rule was a more succinct and general regulatory provision than that published in the later January 2006 final rule. The variation between the 1998 codification and the later codification of § 401.100 was due in part to the fact that a portion of the regulation that became part of

§ 401.100 was contained in the definition of “eligible project,” published as part of the 1998 interim rule (63 FR 48944). As published in the 1998 interim rule, the definition of “eligible project” read:

*Eligible project* means a project with a mortgage insured or held by HUD, project-based assistance expiring on or after October 1, 1998, and rents for assisted units exceeding comparable market rents; and otherwise meeting the definition of “eligible multifamily housing project” in section 512(2) of MAHRA.

Section 401.100 of the 1998 interim rule read:

\* \* \* Which projects are eligible for a Restructuring Plan under this part?

General eligibility. A Restructuring Plan may be requested by an owner of an eligible project that:

- (a) Has project-based assistance with an expiration date of October 1, 1998, or later;
- (b) Has 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; and
- (c) Is not described in section 514(h) of MAHRA.

A HUD final rule published on March 22, 2000 (65 FR 15480) removed § 401.100 and entirely placed the material in the definition section, combining it with the definition of ‘eligible project’ in § 401.2(c). Consequently, the March, 2000 definition of “eligible project” reads as follows:

- Eligible project means a project that:
- (1) Has a mortgage insured or held by HUD;
  - (2) Receives project-based assistance expiring on or after October 1, 1998;
  - (3) Has 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) Has a first mortgage that has not previously been restructured under this part or under a Reengineering demonstration program;
  - (5) Is not described in section 514(h) of MAHRA; and
  - (6) Otherwise meets the definition of “eligible multifamily housing project” in section 512(2) of MAHRA.

As provided in the March 2000 final rule, the list of eligible multifamily housing projects is provided in the regulation by cross reference to the statutory provision, section 512(2) of MAHRA.

The preamble to the March, 2000 final rule stated that further changes to 24 CFR part 402 would be forthcoming based on the public comments on the 1998 interim rule (65 FR 15476). The final rule published on January 12, 2006 made these changes. Additionally, this January 2006 final rule reinstates 24

CFR 401.100 instead of locating the material related to project eligibility entirely in the definition section. Section 401.100(a), rather than cross-referencing section 512(2) of MAHRA, lists the types of eligible projects.

Section 401.100(b) established the point in time at which a project is judged to be eligible or ineligible for restructuring. Both §§ 401.100(a) and 400.100(b) as promulgated in the 2006 final rule included matters that HUD believed were simply interpretive rules not requiring public comment.

However, § 401.100(b) was successfully challenged in the case of *Steinhorst Associates v. Preston*, 572 F.Supp.2d 112, 122, 124 (D.D.C. 2008) on the basis that “HUD promulgated the regulation without following notice-and-comment procedures.” (See *Steinhorst* at 124.) The District Court vacated § 401.100(b) and remanded it to HUD for further proceedings “consistent with this opinion.” (See 572 F.Supp.2d at 125). Since the failure to follow notice-and-comment procedures was found by the court to have made the rule defective, the appropriate remedial action for HUD is to propose the rule for notice and public comment.

Accordingly, HUD is proposing 24 CFR 401.100(b) for public comment. Since 24 CFR 401.100(a) has a similar procedural history, even though that section was not challenged in the *Steinhorst* case, HUD is also reopening public comment on § 401.100(a). HUD will consider all public comments and reach a *de novo* determination about the content of these regulatory sections.

## II. Findings and Certifications

### *Environmental Impact*

A Finding of No Significant Impact with respect to the environment was previously made regarding this rule in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) (See 71 FR 2120). The initial finding of no significant impact remains applicable, and is available for public inspection between 8 a.m. and 5 p.m. weekdays in the office of the Regulations Division, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410-0500.

### *Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and subject to comment rulemaking requirements, unless the

agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule affects only multifamily Section 8 owners. There are very few multifamily Section 8 owners that are small entities. Therefore, this rule would not affect a substantial number of small entities within the meaning of the RFA.

Accordingly, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities. Notwithstanding HUD's determination that this rule will not have a significant effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in the preamble to this rule.

#### *Executive Order 13132, Federalism*

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This proposed rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

#### *Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This proposed rule does not impose any Federal mandates on any State, local, or tribal government, or on the private sector, within the meaning of UMRA.

#### **List of Subjects in 24 CFR Part 401**

Grant programs—Housing and community development, Housing, Housing assistance payments, Housing standards, Insured loans, Loan programs—Housing and community development, Low and moderate income housing, Mortgage insurance, Mortgages, Rent subsidies, Reporting and recordkeeping requirements.

The Catalogue of Federal Domestic Assistance number for the programs affected by this rule is 14.871.

Accordingly, for the reasons stated in the preamble, HUD proposes to amend 24 CFR part 401 as follows:

#### **PART 401—MULTIFAMILY HOUSING MORTGAGE AND HOUSING ASSISTANCE RESTRUCTURING PROGRAM (MARK-TO-MARKET)**

1. The authority citation for part 401 continues to read as follows:

**Authority:** 12 U.S.C. 1715z–1 and 1735f–19(b); 42 U.S.C. 1437f(c)(8), 1437f(t), 1437f note, and 3535(d).

#### **Subpart A—General Provisions; Eligibility**

2. Revise § 401.100 to read as follows:

#### **§ 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 Reengineering demonstration authority as defined in § 402.2(c) of this chapter;

(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.

Dated: July 15, 2010.

**David H. Stevens,**

*Assistant Secretary for Housing—Federal Housing Commissioner.*

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#### **ENVIRONMENTAL PROTECTION AGENCY**

#### **40 CFR Part 2**

[EPA–HQ–OAR–2009–0924; FRL–9193–7]

**RIN 2060–AQ04**

#### **Supplemental Proposal to the Proposed Confidentiality Determinations for Data Required Under the Mandatory Greenhouse Gas Reporting Rule**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Extension of public comment period.

**SUMMARY:** On July 27, 2010, EPA published a Supplemental Proposal that proposed confidentiality determinations for certain data elements contained in proposed revisions to the Mandatory Greenhouse Gas Reporting Rule. In this action, EPA is extending the comment period for the Supplemental Proposal until September 7, 2010.

**DATES:** *Comments.* This document extends the comment period for the Supplemental Proposal to the Proposed Confidentiality Determinations for Data Required under the Mandatory