

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 200

[Docket No. FR-4792-I-01]

RIN 2502-AH91

Distribution of Tax Credit Proceeds

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

ACTION: Interim rule.

SUMMARY: This interim rule amends the Department's regulations with respect to funding for project completion. The current regulations require that funds provided by the mortgagor must be disbursed in full for project work, material, and incidental charges and expenses before any disbursement of the mortgage proceeds. An exception is made for federal, state, or local government or instrumentality grants or loans. These grants or loans need not be fully disbursed before the disbursement of mortgage proceeds, upon approval of the Assistant Secretary for Housing-Federal Housing Commissioner. This interim rule adds to the exception. This rule provides that the mortgagor's equity from the sale of low-income housing tax credits or historic tax credits, or both, need not be fully disbursed before the distribution of mortgage proceeds.

DATES: *Effective date:* August 29, 2003.

Comment Due Date: September 29, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500. Communications should refer to the above docket number and title. Facsimile (Fax) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Michael McCullough, Director, Office of Multifamily Development, Office of the Deputy Assistant Secretary for Multifamily Housing, Room 6148, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-8000. Telephone (202) 708-1142, ext. 5426 (this is not a toll-free number). Hearing- or speech-impaired persons may access this number by calling the Federal Information Relay Service at 1-800-877-8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

The Department's regulations at 24 CFR 200.54 describe the project funding completion requirements with respect to FHA insured multifamily projects. Paragraph (a) of § 200.54 states that funds provided by the mortgagor must be disbursed in full for project work, material, and incidental charges and expenses before disbursement of any mortgage proceeds. The existing regulations at § 200.54(b) provide that, with the approval of the Assistant Secretary for Housing-Federal Housing Commissioner, funds provided by a grant or loan to the mortgagor from a governmental agency do not have to be fully disbursed to complete a project before disbursement of the mortgage proceeds. A grant or loan from a federal agency does not include the proceeds from the sale of low-income housing tax credits or historic tax credits. Historic tax credit proceeds are generated from the financing of the preservation of historic properties that receive special tax treatment under the Internal Revenue Code. Syndication involves sale of historic properties to investors who share in the tax benefits that accrue to each investor in proportion to his/her investment in the property. The investors' cash investment is used to fund the preservation costs (*i.e.*, the cost of rehabilitating an historic property).

Tax credits are usually syndicated and sold to investors. The proceeds from the sale of low-income housing tax credits often amount to between forty and fifty percent of the cost of construction of the project. Because of the large amount of equity resulting in a substantially reduced mortgage, rents can be fixed at levels that may make them affordable to very low-income families. Historic tax credits are given for up to twenty percent of the cost of rehabilitation of a qualified historic building, thus encouraging the rehabilitation and preservation of historic buildings.

Investors in Ginnie Mae securities anticipate a date certain for initial distribution of mortgage proceeds. If the mortgagor's equity is substantial and it must be fully distributed before distribution of mortgage proceeds, as is currently required, then the distribution of mortgage proceeds will not begin until months after the date of closing. With delayed distribution of mortgage proceeds, the borrower would have to pay extension fees to the Ginnie Mae investor. These extension fees can be expensive. By allowing the pro-rata distribution of the required borrower equity and of the mortgage proceeds,

this rule helps to meet the Secretary's goal of simplifying the use of tax credits with the FHA mortgage insurance programs.

To mitigate the effects of the delayed distribution of mortgage proceeds, the Assistant Secretary for Housing has issued over a dozen waivers this year to permit the pro-rata distribution of tax credits equity and the FHA mortgage insurance proceeds. The availability of funds for completion of the project is assured because the borrower equity, including tax credit proceeds, and the FHA mortgage proceeds, are placed into the lender's escrow account from which advances of the mortgage proceeds may be made only with the approval of the Multifamily Hub or Multifamily Program Center. If the borrower defaults and the lender files a claim for insurance benefits, all funds remaining in the lender's escrow are used to offset the claim.

II. This Interim Rule

This interim rule would amend 24 CFR 200.54(b) to allow the proceeds from syndication of low-income housing tax credits and historic tax credits to be treated in the same manner as loan or grant funding provided through federal, state, or local government agencies. This amendment eliminates the need for a waiver of the regulation as obtained in the past, thereby eliminating the additional cost to the project resulting from the delays associated with receiving a waiver of the regulation. As amended, § 200.54(b) reads as follows:

(b) Low-income housing tax credit syndication proceeds, historic tax credit syndication proceeds, or funds provided by a grant or loan from a federal, state, or local governmental agency or instrumentality under requirements of this section need not be fully disbursed before the disbursement of mortgage proceeds, where approved by the Commissioner in accordance with terms, conditions, and standards established by the Commissioner.

III. Findings and Certifications

Justification for Interim Rulemaking

In general, HUD publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking at 24 CFR part 10. Part 10, however, does provide for exceptions from that general rule where HUD finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when the prior public procedure is "impracticable, unnecessary, or contrary to the public interest" (24 CFR part 10).

HUD finds that good cause exists to publish this interim rule for effect without first soliciting public comment, in that prior public procedure is contrary to the public interest. The reason for HUD's determination is that this rule eliminates the need for projects funded with tax credits to seek a waiver from HUD to allow mortgage proceeds to be disbursed before the distribution of the mortgagor's equity from the sale of low-income housing tax credits or historic tax credits. This change will result in savings in time and money for projects funded with tax credits, thereby making rents more affordable in these projects.

Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 (entitled "Regulatory Planning and Review"). OMB determined that this rule is a "significant regulatory action" as defined in section (3)(f) of the Order (although not an economically significant regulatory action under the Order). Any changes made to this rule as a result of that review are identified in the docket file, which is available for public inspection in the Regulations Division, Room 10276, 451 Seventh Street, SW., Washington, DC 20410-0500.

Environmental Review

A Finding of No Significant Impact with respect to the environment for this rule has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410-0500.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This interim rule does not impose a federal mandate that will result in expenditure by state, local, or tribal governments, within the meaning of the Unfunded Mandates Reform Act of 1995.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities. There are no anti-competitive discriminatory aspects of the rule with regard to small entities, and there are no unusual procedures that would need to be complied with by small entities. Although HUD has determined that this interim rule will not have a significant economic impact on a substantial number of small entities, HUD welcomes comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

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 Order. This interim rule does not have federalism implications and will not impose substantial direct compliance costs on state and local governments nor

preempt state law within the meaning of the Order.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for 24 CFR part 200 are 14.135 and 14.139.

List of Subjects in 24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Housing standards, Lead poisoning, Loan programs-housing and community development, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements.

■ Accordingly, for the reasons described in the preamble, HUD amends 24 CFR part 200 to read as follows:

PART 200—INTRODUCTION TO FHA PROGRAMS

■ 1. The authority citation for 24 CFR part 200 continues to read as follows:

Authority: 12 U.S.C. 1702-1715z-21; 42 U.S.C. 3535 (d).

■ 2. Amend § 200.54 by revising paragraph (b) to read as follows:

§ 200.54 Project completion funding.

* * * * *

(b) Low-income housing tax credit syndication proceeds, historic tax credit syndication proceeds, or funds provided by a grant or loan from a federal, state, or local governmental agency or instrumentality under requirements of this section need not be fully disbursed before the disbursement of mortgage proceeds, where approved by the Commissioner in accordance with terms, conditions, and standards established by the Commissioner.

Dated: June 30, 2003.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner.

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