

# 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).