



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-8000

ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

Special Attention of

All Multifamily Hub Directors
All Multifamily Program Center Directors
All Multifamily Operations Officers
All Multifamily Directors of Project Management
All Multifamily Field Counsel

Notice H 2013-02

Issued: January 31, 2013

Expires: This Notice remains in effect until amended, superseded or rescinded.

Cross References: HUD Handbook 4350.1, Multifamily Asset Management and Project Servicing; HUD Handbook 4355.1, Flexible Subsidy; Notice H 2011-05 Policies and Procedures for the Deferred Repayment of Operating Assistance Flexible Subsidy Loans; Notice H 2012-14 Use of "New Regulation" Section 8 Housing Assistance Payments (HAP) Contracts Residual Receipts to Offset Project-Based Section 8 Housing Assistance Payments

SUBJECT: Collection Procedures for Delinquent Section 201 Flexible Subsidy Loans

A. Purpose

This Notice provides new procedures for collecting delinquent Section 201 loan payments, commonly referred to as Flexible Subsidy Loans, and describes the actions that must be taken to bring all delinquent Section 201 loans current. It is the Department's policy that any Section 201 loan that is not brought current or payment is not renegotiated within 90 days of delinquency will be reported to the Credit Alert Verification Reporting System (CAIVRS) (a federal government database of delinquent federal debtors that allows federal agencies to reduce the risk to federal loan and loan guarantee programs) and applicable action will be taken to collect on the loan immediately.

This Notice applies to all current and future delinquencies of Section 201 Flexible Subsidy Operating Assistance (OA) and Capital Improvement (CI) Loans

B. Background

Section 201 of the Housing and Community Development Amendments authorized the Department to provide assistance to restore or maintain the financial, managerial, and physical integrity of certain HUD-assisted and HUD-insured projects. The statute authorizes the Secretary to require the benefiting project to be maintained for low- and moderate-income persons for the remaining useful life of the property.

There are two Flexible Subsidy Loan types: 1) Operating Assistance (OA) and 2) Capital Improvement (CI) Loans. As the projects have aged, many owners are attempting to prepay their HUD-insured mortgage, mortgages are maturing, mortgage insurance is terminating, or projects are being sold, requiring the repayment of the Flexible Subsidy Loan.

OA loans are non-amortizing and provide temporary funding to replenish project reserves, cover operating costs, and pay for limited physical improvements. OA loans must be paid in full if the property is sold, the mortgage insurance is terminated, the mortgage matures, or the mortgage is paid off. Notice H 2011-05, *Policies and Procedures for the Deferred Repayment of Operating Assistance Subsidy Loans*, provides eligible Owners the opportunity to request deferred repayment of an Operating Assistance Flexible Subsidy Loan; however, in no case will the Department forgive a Flexible Subsidy Loan. A small universe of Operating Assistance Flexible Subsidy Loans has been deferred and amortization schedules established under Notice H 2011-05. This number will continue to grow as Operating Assistance Flexible Subsidy Loans are deferred due to prepayment or maturity of the associated mortgage. For these Operating Assistance Flexible Subsidy Loans, the delinquency collection procedure outlined in this Notice will apply.

CI loans are amortizing (and in some instances non-amortizing) loans to assist projects with the cost of major capital improvements. CI loan payments begin immediately after the loan proceeds are distributed and these loans cannot be extended beyond the maturity date of the original mortgage or, with respect to non-insured projects, the remaining period during which the owner is under an obligation to provide for low-income families.

Several Flexible Subsidy Loans have become delinquent and this Notice serves to establish a process for the immediate collection of these delinquencies and, if that is not possible, the process that must be followed for expeditious repayment of the delinquency.

C. Collecting Delinquent Section 201 Capital Improvement (CI) Loans

Upon receipt of a CI loan, the Owner is “required to execute a note evidencing the capital improvement loan, which generally must be secured,” (24 CFR 219.320(c) (1995)). According to *HUD Handbook 4355.1 Flexible Subsidy*, regulating Flexible Subsidy Loans, the CI loan must be secured by the property. This requires the owner to “execute a Capital Improvement Mortgage which incorporates by reference a Use Agreement that would ensure the continuation of the character of the project if the underlying first note and mortgage are prepaid.” If the property’s first mortgage was insured, the Capital Improvement Mortgage was not recorded unless written consent was obtained from the insured mortgagee who held the first mortgage. If the insured mortgagee who held the first mortgage refused to record the Capital Improvement Mortgage, the mortgagor

was required to execute a Capital Improvement Note and Capital Improvement Mortgage (or Deed of Trust) in recordable form and a Deferred Recordation Agreement. The Deferred Recordation Agreement allows the Capital Improvement Mortgage to be recorded when the first mortgagee gives approval or when the mortgage is assigned to HUD.

In compliance with *HUD Handbook 4355.1, Flexible Subsidy*, potential or actual default on CI loans should be addressed in accordance with Chapters Five and Eight of *HUD Handbook 4350.1, Multifamily Asset Management and Project Servicing*. This Notice supplements the *HUD Handbook 4350.1* process for collecting Section 201 CI delinquencies. Delinquent CI loans should be collected in accordance with the process detailed below in Sections D, E, and F of this Notice. Upon maturity of the property's first mortgage, subject to verification of the maturity date of the CI loan, HUD may commence foreclosure proceedings to sell the project in order to repay the Capital Improvement Note, if the loan is not paid in full. If the Capital Improvement Mortgage was not recorded, upon maturity of the property's first mortgage, the Capital Improvement Mortgage will be recorded, and HUD may commence foreclosure proceedings to sell the project in order to repay the Capital Improvement Note, if the loan is not paid in full.

D. Collecting Section 201 Delinquencies

The Office of the Chief Financial Officer (OCFO) is responsible for maintaining the Northridge Loan System (NLS). The Fort Worth Accounting Center uses NLS to track Section 201 Flexible Subsidy Loan collections and delinquencies. Hub Directors and Operations Officers currently receive Section 201 delinquent loan reports directly from the OCFO's Accounting Center on the first business day of each month. These reports include pertinent information regarding the delinquent principal and interest amounts for each delinquent loan for the previous month.

The Project Manager responsible for a delinquent loan listed on the report must send a Delinquency Letter (Attachment 1) by certified mail, return receipt requested, to notify the Owner of the loan delinquency within five (5) business days of receiving the OCFO's report. The Delinquency Letter instructs the Owner to bring the loan current within 30 days or to contact the Project Manager to discuss what options are available if he/she cannot do so. The Delinquency Letter also informs the Owner that it is the Department's policy to begin collection proceedings on any Section 201 loan that is not brought current within 90 days of delinquency. Please see the Flow Chart on page seven of this Notice for a synopsis of the collection process.

E. Owner Responsibilities

If the Owner cannot bring the loan current upon receipt of the Delinquency Letter, the Owner should contact their HUD Project Manager immediately to discuss repayment. If there is already a repayment plan in place in accordance with Housing Notice H 2011-05, the Owner should contact the Project Manager to discuss the status of repayment and if any amendments are needed to ensure timely repayment of the Flexible Subsidy Loan. The Owner must ensure the Flexible Subsidy Loan Use Agreement is recorded, and except when the insured mortgage or other HUD-approved lien takes priority, it must be secured in first position.

Owners who are unable to repay the delinquent portion of the Flexible Subsidy Loan within 30 days

of the Delinquency Letter should submit a request for relief to their Multifamily Hub/Program Center Director within 30 days of receipt of the Delinquency Letter.

F. Repayment Agreement and HUD Responsibilities

In some circumstances, HUD may agree to a Repayment Agreement for those projects where full payment of the delinquent portion of the Flexible Subsidy Loan may destabilize the property.¹ The Multifamily Hub/Program Center must perform a detailed analysis of the owner's request for a Repayment Agreement and determine that the project meets the following criteria before approving a Repayment Agreement:

1. The project owner is in compliance with its business agreements including the applicable recorded Flexible Subsidy Use Agreement, Capital Improvement Note or Deed of Trust (if applicable), Housing Assistance Payments (HAP) Contract, Mortgage, Loan Agreement and/or Regulatory Agreement.
2. Property management is satisfactory as evidenced by the most recent Management and Occupancy Review.
3. Rents are at a sustaining level.
4. The physical condition of the property is satisfactory with the last Real Estate Assessment Center (REAC) physical inspection score being 60 or above.
5. The project owner must certify that they do not owe any additional funds to the Federal Government.

Project owners may not take any otherwise allotted distributions until this debt is paid in full. Surplus cash due to the owner must be applied to the debt until the loan is current. Any surplus cash used to bring the loan current is not cumulative; therefore the owner may not seek reimbursement for funds expended.

Repayment Agreements must be in writing and have a fixed monthly payment amount that will allow for full payment of the delinquent portion of the Flexible Subsidy Loan no later than 12 months from the date the Repayment Agreement is made. Requests for extensions beyond this 12 month timeframe will be considered on a case-by-case basis. The Repayment Agreement must include a Confession of Judgment for the entire amount of the Flexible Subsidy Loan, so that, in the event of a default under the Repayment Agreement, the Department may, at its discretion, confess judgment and create a judgment lien against the property. If the Repayment Agreement matures in more than three years, approval by the Director, Office of Asset Management, in Headquarters is required.

¹ For CI Loans, repayment plans may only extend to the term of the original mortgage (if there is time remaining). Otherwise, the full loan amount will be collected upon mortgage maturity or the Department will initiate foreclosure proceedings to collect monies owed.

A copy of the executed Repayment Agreement must be submitted to the Financial Operations Analyst in the Office of the Chief Financial Officer's (CFO's) Accounting, Monitoring, and Analysis Division Payment Branch and to the Director, Office of Asset Management, both in Headquarters.

If the project owner cannot meet the above criteria for a Repayment Agreement, the Multifamily Hub/Program Center Director may consider other repayment options on a case-by-case basis.

The Multifamily Hub/Program Center should ensure that all information regarding the Flexible Subsidy Loan delinquency repayment is reflected in the Integrated Real Estate Management System (iREMS).

G. Enforcement

If the Owner does not bring the loan current or contact the Project Manager to discuss repayment options within 30 days of the date the Delinquency Letter was issued, the Hub Director must issue a Declaration of Default by registered or certified mail, return receipt requested. The Declaration of Default will inform the Owner of what actions HUD may take 30 days after the issuance of the letter, including but not limited to:

- 1) Referring the loan delinquency to the Departmental Enforcement Center (DEC).
- 2) Flagging the Owner in HUD's Active Partners Performance System (APPS).
- 3) Owners may not take a distribution from surplus cash as long as there is a delinquent Section 201 loan.
- 4) Allocating Residual Receipts funds to pay off the debt.
- 5) Reporting the delinquency to CAIVRS.
- 6) For CI loans HUD may begin foreclosure proceedings in accordance with the mortgage note/deed of trust. If the Capital Improvement Mortgage was not recorded, upon maturity of the property's first mortgage, the Capital Improvement Mortgage will be recorded, and HUD may commence foreclosure proceedings to sell the project in order to repay the Capital Improvement Note, if the loan is not paid in full.

The Department may also pursue other enforcement actions such as a Limited Denial of Participation in certain HUD programs or Debarment or Suspension from government programs if the Owner does not bring the loan current and the Department determines that the default was the result of any deliberate or voluntary action on the part of the Borrower.

H. Questions Regarding Delinquent Flexible Subsidy Loans

If the Project Manager or a property Owner has questions that require more detailed information regarding a delinquent loan, the Project Manager should contact the OCFO's Accounting Center and request a detailed payment history. Contact information for the Fort Worth loan staff

responsible for your jurisdiction is posted on the CFO Accounting Center directory on the hud@work webpage under “Funds Control Branch 1” at:
<http://hudatwork.hud.gov/po/f/accounting/funds1.cfm>.

If you have any questions regarding this guidance, please contact your desk officer in the Office of Asset Management’s Field Asset Management Division. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information relay service at (800) 877-8339.

Carol J. Galante
Acting Assistant Secretary for Housing-
Federal Housing Commissioner

The information collection requirements contained in this document have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB control number 2502-0577. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

Delinquent Flexible Subsidy Loan Collection Flow Chart:

Project Manager receives notification that a loan is delinquent based on the monthly report submitted to the field offices by the OCFO.



Within 5 days of receiving OCFO's report, the Project Manager sends a Delinquency Letter by certified mail (return receipt requested) to notify Owner of loan delinquency (see Attachment 1).



If after 30 days, the Owner has not brought the loan current or discussed repayment options with the Project Manager, the Hub Director will issue a Declaration of Default by registered or certified mail (return receipt requested). The Declaration of Default will inform the Owner of what actions HUD may take as a result of the default.



HUD may take the following actions 30 days after issuing the Declaration of Default:

- 1) Referral to DEC
- 2) Owner flagged in APPS
- 3) Surplus cash not released
- 4) Reserve for Replacement and Residual Receipt funds allocated to paying off debt
- 5) Delinquency reported to CAIVRS
- 6) Department may pursue other enforcement actions as needed.

Attachment 1

Owner Name
Owner Address
Property Name

SUBJECT: Collection of Delinquent Flexible Subsidy Loan
Project Name:
FHA Loan No.:
Location:

Dear Sir or Madam,

The U.S. Department of Housing and Urban Development's Chief Financial Officer's (CFO) Accounting Center has notified us that you are delinquent in the payment of a Flexible Subsidy Loan your project received on _____ (date). Based on the information in the Northridge Loan System (NLS) and HUD's Fort Worth Accounting Center, the balance of the delinquent portion of the Flexible Subsidy Loan (including interest) is \$_____.

This amount must be remitted to HUD within 30 days of the date of this letter. All payments must be made through Pay.gov at www.pay.gov. Pay.gov provides detailed instructions on how you can make your payment.

If HUD does not receive payment or you do not contact the HUD Project Manager to discuss repayment within 30 days of this Delinquency Letter the Hub Director will issue a Declaration of Default and after 30 days of that date, the matter will be referred to the Departmental Enforcement Center (DEC) for further action. Enforcement actions, including, but not limited to, Civil Money Penalties, Limited Denial of Participation, Debarment or Suspension from HUD programs may be considered.

The project is prohibited from using excess project funds (surplus cash) for owner distributions, payment of entity expenses, or repayment of related-party advances until the delinquent portion of the Flexible Subsidy Loan is paid.

If you cannot pay monies owed within the 30-day time frame, want to discuss a Repayment Agreement, or have any questions regarding the amount due, please contact [Insert Project Manager Name], at [Contact Information].

Sincerely,