
CHAPTER 4. REPAYMENT, CANCELLATION OF REPAYMENT
AND LOAN INCREASES

4-1. REPAYMENT AND ACCOUNTING REQUIREMENTS.

- a. Anticipated Repayment Date. It is expected that all portions of the "seed money" loan which have been disbursed as well as the Borrower's share will normally be repaid at the initial closing of the Section 202 loan. The initial closing cannot be completed unless the Section 106(b) Borrower has given the Field Office an accounting of all "seed money" expenditures as of the date of closing. (See Appendix 6.) This accounting must be submitted to the Field Office at least ten (10) days prior to the scheduled initial closing.
- b. Evidence of "Seed money" Expenditures. All expenditures must be supported by a listing of checks written on an account for the Borrower's share and the Trust Account. These shall be listed by date, check number, amount, payee and purpose. The listing must be categorized by line items shown on Form HUD 92290, and supported by copies of receipts. The Borrower must certify that the information provided is true and correct to the best of the Borrower's knowledge.
- c. Actions Prior to Scheduled Initial Closing Date. Prior to initial closing of the Section 202 loan this accounting of expenditures must be reviewed for accuracy in conjunction with the first construction draw by the MCS. Unless a request for deferment or cancellation of repayment has been made, the full Section 106(b) loan amount which is outstanding must be repaid at initial closing. The Field Office shall approve the full amount of the first advance of mortgage proceeds rather than deduct the Section 106(b) loan amount. The Borrower shall, in turn, write a check to the Department of Housing and Urban Development for the loan amount being repaid, and deliver such check to the HUD-closing attorney at initial closing, before any other checks are written against the first Section 202 disbursement.

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d. Handling of Check as Repayment of "Seed Money" Loan. The Field Office shall deposit the check under the accounting code fund symbol 86X4042 and notify the Director, FAID, OFA, of the deposit by memorandum identifying the Section 106(b) loan. The Field Office shall provide evidence of the transaction covering the deposit by transmitting with the memorandum copies of the completed Forms FHA-2006, Official Receipt; FHA-906, Schedule of Collections, and the confirmed copy of Form S.F.-215, Deposit Ticket. To avoid depositing the check in a wrong account with Treasury, it is imperative that the above forms clearly show the appropriate accounting codes. Since these forms are not specifically designed for the Section 106(b) program, it will be necessary for the Field Office to adjust the forms in the following manner to reflect the correct code numbers.

- (1) Deposit Ticket, Form S.F.-215. This form contains two (2) preprinted numbers which are inappropriate for the Section 106(b) program. The Field Office must delete the preprinted numbers in Block 3 and Block 6 of this form and instead insert the code numbers 86-01-0300 and 86X4042, respectively (see Appendix 7).
- (2) Official Receipt, Form FHA-2006. To ensure crediting to the proper account, it is necessary for the Field Office to insert in the Block headed "Acctg. Code", the accounting code fund symbol 86X4042 (see Appendix 7).
- (3) Schedule of Collections. Form FHA-906. To adjust this form for the Section 106(b) program, the Field Office must delete any one of the preprinted programs appearing under the column headed "Insuring Sections", and insert "106(b)". The Field Office must also include the accounting code fund symbol 86X4042 on this form. Further, the official receipt number, which is preprinted on Form FHA-2006, must be accurately recorded on the Schedule of Collections in the Block headed "Receipt Numbers Used" (see Appendix 8).

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e. Requests for Cancellation of Payments. Requests for cancellation of repayments of "seed money" loans may be accepted by the Field Office only if the amount which may be recovered from the Section 202 loan is less than the amount of the "seed money" loan and if the Borrower has no other funds to repay the

loan. Funds recovered from Section 202 loans are to be applied first to the Section 106(b) loan and then to the Borrower's share of the "seed money" expenses. Few, if any, requests for cancellation or deferral are expected with regard to projects which reach initial closing.

4-2. RELEASE OF LIENS.

- a. Determining Existence of Mortgage Liens. Prior to the scheduled initial closing of the section 202 loan, the MCS shall review the project file to determine whether the Section 106(b) loan is secured by a mortgage lien on the site. If so, it shall review the accounting of all "seed money" expenditures submitted by the Borrower together with Form FHA-2283, Financial Requirements for Closing, and the Borrower's first requisition for Section 202 loan proceeds, Form HUD 92289, to determine whether the Section 106(b) loan can be repaid at initial closing.
- b. Alerting the Area Counsel. The MCS shall prepare a memorandum from the Area Manager/Service Office Supervisor to the Area Counsel directing that the lien be released provided the review performed by the MCS discloses that:
 - (1) The "seed money" loan can be repaid from the proceeds of the Section 202 loan at initial closing;
 - (2) The "seed money" loan will be repaid from other sources at or prior to initial closing of the Section 202 loan; or
 - (3) The portion of the "seed money" loan which was disbursed for the purchase of land can be repaid at initial closing, and the Area Manager/Service Office Supervisor plans to recommend cancellation of the balance of the "seed money" loan.

- c. Area Counsel Responsibility. The Area Counsel shall take the necessary actions to release the lien.

4-3. DEFERMENT OF REPAYMENT AND SUBORDINATION OF LIENS.

- a. Deferment of Repayment. If the MCS determines that sufficient funds will not be available to the Borrower from the proceeds of the Section 202 loan at initial closing to repay the Section 106(b) loan, it shall prepare a memorandum to the Area Manager/

Service Office Supervisor recommending deferment of repayment of the Section 106(b) loan until final closing. The Area Manager/Service Office Supervisor shall advise the Area Counsel to amend the Section 106(b) loan closing documents accordingly.

- b. Subordination of liens. In the event the Section 106(b) loan is secured by a mortgage lien on the site and the MCS determines that a deferment of repayment should be granted, it shall prepare a memorandum to the Area Manager/Service Office Supervisor recommending deferment of repayment of the Section 106(b) loan and advising that the mortgage lien relating to the Section 106(b) loan must be subordinated to the lien which will be created securing the Section 202 loan. The Area Manager/Service Office Supervisor shall refer the matter to the Area Counsel for proper action.

4-4. REQUESTS FOR CANCELLATION.

- a. Determining Valid Cancellation Request. Subsequent to initial closing and prior to final closing in cases where a deferment of repayment of the Section 106(b) loan has been granted, the MCS shall contact the Borrower to ascertain how the Borrower plans to repay the Section 106(b) loan. If it becomes clear that sufficient funds will not be available from the proceeds of the Section 202 loan or from other sources to repay the Section 106(b) loan and provided the conditions cited in paragraph 4-5 of this Handbook are met, the MCS shall advise the Borrower that it may submit a request for cancellation of repayment.

- b. Submission of Supporting Documentation. Together with its letter requesting cancellation of repayment of the Section 106(b) loan, the Borrower must submit a listing certified by the Borrower to be true and correct of all expenditures from the account for its cash share and from the trust account by check number, date, amount, payee and purpose. Checks listed must be supported by bills and receipts. The list must be categorized by line items shown in Block 8 of Form HUD 92290 and must be submitted in accordance with the format found in Appendix 6 of this Handbook.

4-5. CONDITIONS OF CANCELLATION. HUD may cancel the repayment of all or any portion of the "seed money" loan provided the following conditions are met:

- a. Compliance Under the Contract. The Borrower must be in full compliance with the provisions of the Loan Contract and Trust Agreement, the approved loan application, the provisions of this Handbook and the Regulations.
- b. Non-Recovery and Infeasible Section 202 Proposals. Where it is shown that either monies sufficient to repay the Section 106(b) loan cannot be recovered from the Section 202 loan for the project or the project proposed by the Borrower has proven to be infeasible as determined by HUD and that neither the Borrower nor any other entity intends to proceed with the project using a method of financing other than Section 202, HUD may consider cancelling all or a portion of the "seed money" loan.
- c. Partial Recovery. The amount of the debt which may be canceled must be based upon the amount of approved "seed money" expense that was not recovered and repaid from the proceeds of the construction or permanent loan or from the sale of the Borrower's assets as provided in paragraph 4-5d hereunder or from any other source. In the event of partial recovery of approved "seed money" expenditures, the amount recovered must be applied first to the repayment of any outstanding "seed money" loan obligations.

- d. Sale of Borrower's Assets. In cases where the "seed money" loan is secured by a lien on the site or where a site or other assets were purchased in part or totally with "seed money", and such site or assets are not used by the Borrower for a project eligible for Section 106(b) assistance, such site or assets must be sold by the Borrower at fair market value as determined by HUD and the net proceeds (sales price less indebtedness and sales expense) used to repay the "seed money" loan to the extent possible. Any excess shall be retained by the Borrower.
- e. Certification by Borrower. The Borrower must certify that the "seed money" loan proceeds have not been used for expenses other than allowable "seed money" expenses for proposed projects approved for Section 106(b) assistance.
- f. Borrower's Contribution. That losses of "seed money" are first covered by the Borrower's share. Example: Assume a Borrower's share of \$12,500, a loan amount of \$50,000 and a loss of \$14,500. The Borrower would lose \$12,500. HUD would consider cancellation of \$2,000 of the loan amount and the Borrower would

repay at least \$48,000 of the loan amount.

4-6. FIELD OFFICE REVIEW.

- a. Review made by MCS. The MCS shall review the request for cancellation to determine whether or not it is reasonable, whether the loan proceeds were used in accordance with the Loan Contract and Trust Agreement, the loan application, this Handbook and the Regulations, whether funds cannot be recovered from the Section 202 loan to repay the "seed money" loan, and whether funds are otherwise unavailable for repayment.
- b. Review for Accuracy. The MCS must review all figures for accuracy and must determine that all payments were made in a timely fashion. The latter is particularly important with regard to payments to the various professionals furnishing services. All payments must have been in accordance with this Handbook and any agreements, contracts or options.

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- c. Unacceptable Items for Cancellation. Unauthorized payments to the various professionals or for eligible "seed money" items which exceed the amounts approved for these parties or items must be borne by the Borrower and will not be considered for cancellation purposes.
 - d. Transmittal of Requests for Cancellation. The Field Office shall transmit the Borrower's request together with a memorandum to the Director, Office of Multifamily Housing Development setting forth its recommendations for or against cancellation as well as the rationale for such recommendation. These documents shall be reviewed by the Loan Assistance Committee to determine whether the request for cancellation shall be approved or disapproved. A copy of the memorandum and the Borrower's request should be forwarded to FAID, OFA.
- 4-7. LOAN ASSISTANCE COMMITTEE.
- a. Committee Members. This Committee shall consist of the following or their designees:

Chairman, Director, Office of Multifamily Housing Development

Director, Office of Policy Development and Evaluation,
Housing

Director, Office of Management, Housing

Representative, Office of Finance and Accounting (by agreement with the Assistant Secretary for Administration).

b. Responsibilities.

- (1) The Committee shall meet as necessary to review and approve or disapprove requests for cancellation of loans.

- (2) The Committee shall notify the Field Office in writing of approval or disapproval and any need for additional information. A copy of the memorandum must be provided to the Director, FAID, OFA, and the Office of Multifamily Housing Development.

4-8. COLLECTION PROCEDURES.

- a. Denial of Request for Cancellation. In the event the Borrower's obligation to repay the Section 106(b) loan is not cancelled by the Loan Assistance Committee, the MCS shall prepare a letter to the Borrower from the Area Manager/Service Office Supervisor requesting immediate repayment of the outstanding balance of the Section 106(b) loan. The letter shall be sent to the Borrower by certified mail, return receipt requested.
- b. Instructions to Borrower. The Borrower will be instructed to make its repayment check payable to the Department of Housing and Urban Development and to forward it to the Field Office to the attention of the Mortgage Credit staff.
- c. Follow-up Procedures. If the payment is not received within fifteen (15) calendar days, the MCS shall prepare a second letter to the Borrower from the Area Manager/Service Office Supervisor advising that repayment of its outstanding Section 106(b) loan is overdue and requesting that the Borrower's check be sent to the office by a specified date (within fifteen calendar days of the date of the letter). The letter shall also state that if the Borrower's check is not received within the allotted period, the matter will be referred to the Claims Collection Officer (CCO) for further action. The letter shall be sent to the Borrower by certified mail, return receipt requested.

- d. Referral to Claims Collection Officer. If the Borrower's payment is not received within the time specified in subparagraph c above the MCS shall prepare a memorandum from the Housing Division Director to the Field Office's CCO outlining

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the MCS' efforts to collect the overdue payments and referring the matter to the CCO for further action. Copies of the returned delivery receipts shall be maintained in the MCS' credit control binder and the originals shall be forwarded with the memorandum to the CCO.

- 4-9. LOAN INCREASES. No increase shall be approved that causes the total aggregate loan amount to exceed \$50,000. Requests for loan increases shall be prepared using the same rules which apply to original applications. The word "INCREASE" must be typed at the top and bottom of the application and the Loan Contract and Trust Agreement. The letter transmitting the application must indicate the reason for the increase and Block 8 of Form HUD 92290 must combine the original loan amount with the amount of the increase. The Borrower must spend or obligate the additional amount of its share before any loan funds can be advanced following approval of the increase.

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