



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 2011-32

Issued: November 22, 2011

Expires: November 30, 2012

Cross References: HUD Handbook 4350.1,
Multifamily Asset Management and Project
Servicing

Subject: Collection Procedures for Delinquent Section 202 Direct Loans

A. Purpose

This Notice provides new procedures for collecting delinquent Section 202 mortgage payments and describes the actions that must be taken to bring all Section 202 loans current. It is the Department's policy that any Section 202 loan that is not brought current or in a Workout Agreement within 90 days of a default will be recommended for foreclosure.

B. Instructions for Collecting Section 202 Delinquencies

The Office of the Chief Financial Officer's (OCFO) Accounting Center in Fort Worth, Texas, maintains the financial systems that keep track of Section 202 mortgage payments and the financial information regarding mortgage delinquencies and defaults. Effective as of the date of this Notice, Hub Directors and Operations Officers will receive Section 202 delinquent mortgage reports directly from the OCFO's Accounting Center on the first business day of each month. These reports will 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 mortgage delinquency within 5 business days of receiving the OCFO's report. The Delinquency Letter instructs the Owner to bring the mortgage current within 30 days or to contact the Project Manager to discuss what options are available if he/she cannot do so.¹ The Delinquency Letter also informs the Owner that it is the Department's policy to begin foreclosure proceedings on any Section 202 loan that is not brought current or in a Workout Agreement within 90 days of a default.

¹ Project Managers should inform Owners with delinquent Section 202 loans that in cases where Section 8 funds are used to make debt service payments (Section 8 Offset), circumstances may arise where there may not be sufficient Section 8 funds to cover the full debt service payment. In these cases, additional funds must be added to the Section 8 offset to make the full monthly debt service payment.

In some circumstances, HUD may agree to a workable plan to stabilize a delinquent Section 202 property both financially and physically in order to minimize losses to the Department. One way to accomplish this objective is to enter into a “Workout Agreement” that provides the Borrower with debt service relief for a limited period of time. Owners who are unable to bring their mortgage current within 30 days should submit a request for relief to their Hub or Program Center Director following the Guidance provided in HUD Handbook 4350.1, Multifamily Asset Management and Project Servicing, Chapter 11, Section 11-10, “Owner Request for Relief.” See Section D below for guidance on what to do if an Owner submits a request to enter into a Workout Agreement.

If the Owner does not bring the mortgage current or contact the Project Manager to discuss other 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 must reference the appropriate paragraph of the Regulatory Agreement and inform the Owner that, if default is not cured within 30 days of the date the notice is mailed (or within such further time as HUD determines is necessary to correct the violation), HUD may, without further notice, declare a default under the Regulatory Agreement on the effective date of such declaration of default. The Declaration of Default must also inform the Owner of what actions HUD may take as defined in the Regulatory Agreement, including declaring the whole indebtedness immediately due and payable and proceeding with the foreclosure of the mortgage. If the Owner does not respond to the Declaration of Default within 30 days by bringing the mortgage current or stating his/her intent to enter into a Workout Agreement, the Hub Director should commence the foreclosure process discussed in Section C below. Attachment 2 provides a flow chart showing what actions a Project manager should take depending on the number of days the loan is delinquent.

The Department may also pursue other enforcement actions such as a Limited Denial of Participation, Debarment or Suspension from HUD 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.

C. Foreclosure

If a Section 202 loan cannot be brought current within 90 days and a Workout Agreement is not feasible, the Hub Director must follow the procedures for initiating foreclosure found in Sections II through X of the May 31, 2006, memorandum from former Deputy Assistant Secretary for Multifamily Programs, Charles H. Williams captioned, “Fiscal Year 2006 Property Disposition Program.” This memorandum can be found on the hud@work web site at:

<http://hudatwork.hud.gov/po/h/hm/fog/docs/pdmemo2006.pdf>.

Program Centers will forward a complete foreclosure package to the Hub Director. After reviewing the foreclosure package, the Hub Director will either concur in the foreclosure recommendation and forward it to the appropriate Property Disposition Center, or return it to the Program Center for additional information /documentation. The Property Disposition Center

will review the foreclosure package for completeness and accuracy and, if in agreement with the recommendation, will issue the foreclosure-hearing letter to the Owner(s) of the property. A copy of the foreclosure hearing letter (also known as a 21-day letter) will be sent to the appropriate Program Center and Hub Director. The Hub or Program Center must provide the OCFO Accounting Center in Fort Worth with a copy of this letter so that the delinquent Section 202 loan is removed from the next Section 202 delinquency report. The Hub or Program Center Director should also inform the OCFO Accounting Center that the Owner(s) of the property being recommended for foreclosure should be referred to the standard credit bureaus and to the Credit Alert Verification Reporting System (CAIVRS).²

Incomplete or inaccurate foreclosure recommendation packages will be returned by the Property Disposition Center to the Hub Director within 10 days of receipt, and the Hearing Letter will not be issued until a complete foreclosure recommendation package is received and accepted by the Property Disposition Center. See Section II of the May 31, 2006, memorandum from former Deputy Assistant Secretary for Multifamily Programs, Charles H. Williams captioned, "Fiscal Year 2006 Property Disposition Program," for a complete list of the documents that make up a complete foreclosure recommendation package.

D. Workout Agreements

If the Owner of a delinquent Section 202 mortgage contacts the Project Manager to inform him/her that it is not possible to bring the loan current within 30 days and expresses an interest in entering into a workout arrangement, the Project Manager must ask the Owner to execute the "Pre-Workout Waiver Letter" and begin doing a thorough analysis of the financial and physical condition of the property. The "Pre-Workout Waiver Letter" sets out the specific terms and conditions that the Borrower must agree to before the Department will begin negotiations regarding forbearance of the Borrower's obligations under the loan documents. The template for the "Pre-Workout Waiver Letter" is found in HUD Handbook 4350.1, "Multifamily Asset Management and Project Servicing," Chapter 11, Appendix 12.

Once the Owner executes the "Pre-Workout Waiver Letter," the Hub or Program Center must perform a detailed analysis of the project's problems and develop a workout plan following Section 11-11 of the same Handbook to determine if the workout agreement is in the Department's best interest. The Hub Director may approve and execute a Workout Agreement for a property with a Section 202 Direct Loan if he/she believes that the Workout Agreement is in the Department's best interest and the terms of the Workout Agreement to not deviate from those dictated by Chapter 11 of HUD Handbook 4350.1. Workout Agreements that deviate from the terms specified in Chapter 11 of HUD Handbook 4350.1 must be sent to the Director, Office of Asset Management in Headquarters for review and approval. Once the Workout Agreement is approved, the Project Manager must scan the executed agreement and send it to the OCFO Accounting Center so that they can remove the property from the Section 202 Delinquency Report and monitor the new repayment terms. The OCFO Accounting Center will provide a

² CAIVRS is used to determine if a potential borrower has a Federal debt that is currently in default or foreclosure or has had a claim paid by the reporting agency within the last three years. Federally approved lenders use CAIVRS to prescreen all applicants for federally insured loans.

separate report for Section 202 properties that are delinquent under the terms of a Workout Agreement.

E. Questions Regarding Delinquent Principal and Interest

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 Officer 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>.

F. Default Servicing of Section 202 Projects

In some circumstances the Hub may be able to forestall or cure a default without entering into a Workout Agreement. Chapter 10, Section 7, of HUD Handbook 4350.1, entitled, "Default Servicing of Section 202 Projects," points out that in some cases the Hub or Program Center can forestall or cure a default by waiving the monthly deposits to the Reserve for Replacement deposits or by authoring a release from a Debt Service Reserve Account. However, Chapter 10, Section 7 also states that before granting any relief or waivers the Hub Director must determine the sponsor's ability to advance funds to cure the default and insure that:

1. Except for the mortgage delinquency/default, the Borrower is operating in compliance with the Mortgage, Loan Agreement and Regulatory Agreement;
2. Project management is satisfactory;
3. Rents are at a sustaining level;
4. The physical condition of the property is satisfactory with the last physical inspection score being 60 or above; and
5. The default is not the result of any deliberate or voluntary action on the part of the Borrower.

The Project Manager must determine that the project meets these criteria before granting any relief or a waiver.

If you have any questions regarding this guidance, please contact the Office of Asset Management, Business Relationships and Special Initiatives Division in Headquarters, at (202) 402-2629. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information relay service at (800) 877-8339.

/s/

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

Owner Name
Owner Address

SUBJECT: Delinquent Amount on Section 202 Direct Loan
FHA Loan No.: XXX-EHXXX
Property Name:
Location:

Dear Sir or Madam,

The U.S. Department of Housing and Urban Development’s Chief Accounting Officer’s (CFO) Accounting Center has notified us that your Section 202 Loan no. XXX-EHXXX for the property referenced above is delinquent by:

Principal Amount: \$ _____
Interest Amount: \$ _____
Total Delinquency: \$ _____

Please bring your mortgage current by paying the delinquent amount shown above within 30 days. All payments must be made through Pay.gov at <https://www.pay.gov/paygov/>. Pay.gov provides detailed instructions on how you can make your payment.

If you disagree or have questions about the amount of the delinquency shown above, please contact your HUD Project Manager, **[Insert Name]**, in our Multifamily Hub/Program Center, at **[Contact Information]**.

If you cannot bring the mortgage current within the 30 day time frame, please contact the HUD Project Manager who services your project, **[Insert Name]**, at **[Contact Information]** to inquire about other mitigation options. Failure to bring this loan current may result in the Department seeking foreclosure and/or other enforcement actions including suspension or debarment from participating in HUD programs. It is the Department’s policy to begin foreclosure proceedings on any Section 202 loan that is not brought current or in a Workout Agreement within 90 days of a default. Failure to bring this loan current may also result in the Department referring your loan information to the standard credit bureaus and to the Federal Government’s Credit Alert Verification Reporting System (CAIVRS).

Sincerely,

Collection Procedures for Delinquent Section 202 Direct Loan Flow Chart

Days Loan Delinquent	Action Required
Loan becomes delinquent for 30 days	OCFO sends monthly delinquency report and Project Manger sends Owner the Delinquency Letter in attachment 1.
Owner does not bring the loan current or contact Project Manager to discuss Workout Agreement within 30 days of the date the Delinquency Letter was mailed – Loan 60 days delinquent.	The Project Manger sends Owner Declaration of Default Letter giving the Owner 30 days to enter into a Workout Agreement or to bring the loan current.
Owner does not respond to the Declaration of Default letter by bringing the loan current or entering into a workout agreement within 30 days – Loan 90 days in default.	If the Owner does not respond to the Declaration of Default within 30 days, the Hub or Program Center must initiate the foreclosure process by forwarding a complete foreclosure package to the Hub Director within 10 business days of the expiration of the 30 day cure period referenced in the Declaration of Default.
Hub Director receives foreclosure package – Loan 100 days in default.	The Hub Director must review and concur with the foreclosure recommendation and forward it to the appropriate Property Disposition (PD) Center or return it for additional information/documentation within 10 business days of receipt.
PD Center receives foreclosure recommendation package – Loan 110 days in default	The PD Center will review the foreclosure package for completeness and accuracy and, if in agreement with the recommendation, issue the foreclosure hearing letter to the owner.