



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

ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

Mortgagee Letter 04-41

October 12, 2004

TO: ALL APPROVED MORTGAGEES

SUBJECT: Revisions to Mortgagee Letter 87-9, Multifamily Accelerated Processing (MAP) Guide and HUD Handbook 4430.1 REV-1 Limitations on Lockout Periods Permitted on Refinanced FHA-Insured Mortgages and Loan Modifications Subject to an OMHAR/Office of Affordable Housing Preservation Restructuring

This Mortgagee Letter modifies provisions of Mortgagee Letter 87-9 dated February 20, 1987, the Multifamily Accelerated Processing (MAP) Guide and HUD Handbook 4430.1 REV-1, relative to refinance transactions and/or loan modifications on Federal Housing Administration (FHA)-insured mortgage loans. Specifically, these instructions limit the prepayment restriction period which may be imposed on refinanced FHA-insured mortgages and/or loan modifications, for Section 8 assisted properties which in the future would be subject to a market rent determination and rent reduction under the Multifamily Assisted Housing Reform and Affordability Act. (MAHRA). A limit on the term of the lockout period is needed to facilitate potential future restructuring of the project's financing due to rents being marked to market in accordance with objectives of MAHRA once the project based housing assistance contract expires.

Refinancing and loan modifications provide an opportunity for owners of existing FHA-insured properties to lower interest rates, reduce debt service and to generate additional mortgage funds for repairs; however, the new FHA refinanced mortgage or loan modification often includes new lockout terms of up to ten years. Many of these projects have housing subsidy contracts that will expire during the lockout period. Once the housing subsidy contract expires, if rents are above comparable market rents and not otherwise exempt, it is mandatory for the project to be referred for rent determination and potential reduction. Consequently, the lockout provisions and prepayment penalties inhibit the preservation of the project through a financial restructure based upon market rents as set forth by MAHRA and the Mark-to-Market program.

Current Policy

Currently, when projects are funded from state, local and other bond obligations or Government National Mortgage Association (GNMA) Mortgage-Backed Securities, HUD permits mortgagees to set a lockout period during which the mortgage cannot be prepaid. HUD also permits the mortgagee to charge penalties when a prepayment is made after the expiration of the lockout period. The specific conditions and requirements for permitted lockout restrictions are set forth in Mortgagee Letter 87-9, Chapter 12.1.4.H.2 and 12.1.4.H.3 of the MAP Guide, and Paragraph 1-21 of Handbook 4430.1 Rev-1.

Revised Policy

Effective immediately, on project loans refinanced or undergoing loan modifications with FHA multifamily mortgage insurance which will be the subject of a rent determination under MAHRA, HUD will only permit lockout or prepayment penalty provisions that expire on or before the date that the project based Section 8 housing assistance contract expires.

In no cases may the term of a lockout or prepayment penalty provision extend beyond the expiration of the project based Section 8 housing assistance contract.

Please contact the HUD Field Office with jurisdiction where your projects are located for assistance.

John C. Weicher
Assistant Secretary for Housing –
Federal Housing Commissioner