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CHAPTER 15. REFUNDING OF TAX-EXEMPT MULTIFAMILY REVENUE BONDS

SECTION 1. GENERAL

- 15-1. PURPOSE. Some projects whose mortgages are financed with tax-exempt bonds are experiencing physical and/or financial difficulty, threatening default of the bonds. In many cases the existing tax exempt bonds can be refunded, thereby providing a long-term solution by decreasing payment obligations and/or infusing cash to satisfy the physical and/or financial needs of the project.
- 15-2. AUTHORITY.
- a) The Director of the Housing Management Division in HUD Field Offices may authorize refunding of tax-exempt bonds for insured multifamily housing projects when:
- 1) The project is financially troubled as evidenced by a notice of default, financial statement demonstrating the projects' inability to make debt service payments, or analyses revealing significant physical improvement needs beyond the availability of the project's cash flow.
  - 2) The proposal meets the criteria for Field Office authorization in Appendix 1, Bond Refunding Worksheet (Form HUD-92572).
- b) There are other bond transactions involving current loans, defeasance of existing bonds, etc., which are not subject to this delegation. If applications for other refundings not meeting the criteria for Field Office authorization in Appendix 1 are received, contact your Desk Officer in Headquarters, Operations Division, Office of Multifamily Housing Management.
- 15-3. APPLICABILITY.
- a. This chapter covers fixed-rate, fixed-term bond refundings for insured multifamily housing projects (including hospitals and group practice facilities) which are in default under the mortgage.

NOTE: Consult with the office of Multifamily Housing Management, Operations Division, Headquarters

on refundings for housing projects and group practice facilities. For refundings involving hospitals, consult with the Director of Hospital Mortgage Insurance Staff, office of Housing, Headquarters.

- b. This chapter permits proposals that include non-asset bonds (i.e., "taxable tail) to pay for costs of issuance A "taxable tail" is composed of taxable bonds sold in connection with the non-taxable issue that not secured by the HUD project. The amortization period for non-asset bonds normally permitted is 60 months or less. The Regional Director of Housing may authorize a non-asset band amortization period of up to 84 months.

NOTE: In reviewing a proposal which includes a "taxable tail", make sure that the blended note rate is no greater than what is needed to amortize both the asset and non-asset bonds. Also, be prepared to modify the mortgage interest rate when the non-asset bonds have been retired.

- c. This chapter DOES NOT cover Section 8 Financing Adjustment Factor (FAF) refundings; 103(b) or 11(b) refundings or Non-FAF advance/current refundings. (Advance refundings occur 91 days before the first call date and current refundings occur within 91 days of the first call date.) Consult with the Financial Services Division, Office of Evaluation, Office of the Housing-FHA Comptroller, on how to process the refundings in this paragraph
- d. Debenture locks for insured properties are not acceptable.
- e. This chapter does not cover new mortgage insurance commitments under Sections 223(a)(7) and 223(f) of the National Housing Act. Consult with the Office of Multifamily Housing Development on processing applications under these programs.

## SECTION 2. BOND REFUNDING PROPOSALS AND HUD REVIEW

### 15-4. SUBMISSION OF PROPOSALS.

- a. Field Office staff should instruct owners to submit bond refunding proposals covered by this chapter to

the HUD Office having jurisdiction over the project, Attention: Director of Housing Management.

- b. Refunding proposals for hospital bonds must be submitted simultaneously to the Assistant Secretary for Housing - Federal Housing Commissioner, Attention: Director of Hospital Mortgage Insurance Staff, Office of Housing and the appropriate Regional Office of the Division of Facilities Loans, U.S. Public Health Service, Department of Health and Human Services.
- c. HUD Field Offices must assure appropriate review and analyses to determine that:
  - 1) Initial income, expense and vacancy factors are accurate and appropriate for determining base year Net Operating Income.
  - 2) Projections for increases/decreases in expenses, income and vacancy rates are realistic, given the state of the economy in the project vicinity; AND
  - 3) The refunding and modification when closed will cure the project's financial and physical problems into the foreseeable future.

REQUIREMENTS FOR PROPOSALS. The owner/underwriter must submit an original and two copies of the following information:

- a) A short letter specifically describing the bond refunding transaction and how it will remedy the physical and financial problems being experienced by the project.
  - b) The sources and uses of funds contained in the bond prospectus including:
    - 1) Sources and uses of the existing bond debt projected if there is no refunding;
    - 2) Determination of outstanding existing bond debt to be called;
    - 3) The cost, including credit enhancements, if required, to call these bonds and the cost of issuance and asset activity report; and
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- 4) A cash sufficiency report showing the effect of the refunding.
- c. Cash flow and net operating income projections demonstrating the project's ability to perform as a viable project over a ten-year period from the date of closing of the bonds and the modified mortgage. The projections are to be based on realistic assumptions of occupancy, income and expenses in light of the economic and market conditions in the area where the project is located. All assumptions for projections must be clearly described in footnotes on the same page.
- d. An unaudited update of the most recent audited financial statement of the project certified by the owner when more than four months have elapsed since the end of the project's fiscal year.
- e. A written opinion from Bond Counsel that the refunding is permitted under the terms of the existing Indenture and applicable tax laws.

SECTION 3. HUD FIELD OFFICE REVIEW

- 15-6. COORDINATION. The Director of Housing Management or his/her designee must immediately notify Headquarters by FAX transmission when a bond refunding proposal is received. Send this notification to the Office of Multifamily Housing Management, Attention: Operations Division. This notification is necessary to coordinate the bond refunding with the election to assign. (FAX: 202-401-3270)
- 15-7. LOAN MANAGEMENT ACTION.
  - a. Immediately review the proposal and request the owner to provide any missing information.
  - b. Immediately upon determining that the bond refunding proposal is complete, forward a copy of the complete refunding proposal to the appropriate chief counsel in the field for concurrent review.
  - c. Review the information provided by the owner in paragraph 15-5 and the following information in the project file:

- 1) Physical inspection reports;
  - 2) Annual financial statements for the last 3 years; and
  - 3) Current cash flow analysis and performance statement using HUD 92547-A, Budget Worksheet and Income and Project Expenses
- d. Complete the review procedures set forth in Appendices 1 and 2 for each proposal (Forms 92572 and 92572-A).
- e. Forward proposals to Headquarters as instructed in Appendices 1 and 2--Attention: Director, Operations Division, Office of Multifamily Housing Management, along with the following:
- 1) a copy of the bond refunding proposal submitted by the owner and
  - 2) an analysis of the proposal, covering the items reviewed in paragraph 15-7.
- f. Authorize or reject the proposal in accordance with paragraph 15-9.

15-8. LEGAL REVIEW. Counsel will:

- a. Review the legal documents to see that they conform to the terms of the authorization letter.

NOTE: HUD Counsel relies on bond counsel to provide an opinion that the bond refunding is permissible under the existing bond indenture.

- b. When received, review the HUD documents that will be used at the closing of the bonds and mortgage. The Authorization Letter requires the owner to submit these documents at least 15 working days before the scheduled closing. (See Appendix 3 Authorization Letter.)
- c. Assure that the owner obtains a date down title insurance endorsement to assure that there are no equal or superior liens. It may be necessary that a pro forma or specimen title policy be submitted to HUD Counsel for review and approval. If such liens or encumbrances exist they must be resolved to the satisfaction of HUD Counsel.

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- d. Approve requests for subordination of the HUD-insured mortgage to a tax regulatory agreement only for the limited purpose of preserving the tax-exempt status of the bonds.

15-9. AUTHORIZING/REJECTING BOND REFUNDING

- a. When all of the HUD reviews, with the exception of the legal review in paragraph 9 above, are complete, the Director of Housing Management or his/her designee may write an Authorization Letter using the format in Appendix 3.
- b. Forward a copy of the Authorization Letter in Appendix 3 to Headquarters Office of Multifamily Housing Management, Attention: Operations Division.
- c. Where a refunding proposal requires Headquarters' action, the Office of Multifamily Housing Management, will issue the Authorization Letter with a copy to the Field Office.
- d. For all proposals for which The Director of Housing Management recommends rejection, s/he must forward the proposal, along with a completed Appendix 2 and the details regarding the reasons for rejection to Headquarters, Office of Housing Management, Attention Operations Division. This is for informational purposes only.

SECTION 4. CLOSING

15-10. TIMING. The closing of the bonds and the mortgage must take place no later than 90 days from the date of the Authorization Letter, unless an extension is granted under paragraph 15-11.

15-11. EXTENSIONS. The Regional Director of Housing may approve an extension of the closing on the bonds and the mortgage beyond the initial 90 days set forth in paragraph 15-10, provided that the delay is not due to the fault of the owner and the extension is determined by the Regional Director of housing to be warranted and justified.

- a. The extension may be granted for no longer than 60 days.

- b. Extensions beyond the first 60 day extension may be approved only by the Regional Director of Housing in writing, or if Headquarters is reviewing the proposal, by the Director of the Office of Multifamily Housing Management, Operations Division, provided there are no adverse effects resulting from the delay.
- 1) In reference to a mortgage insurance claim that has been paid prior to the completion of a bond transaction, the owner must provide HUD with a cash deposit to be held by the trustee when the mortgage note rate is less than the debenture interest rate. This deposit must equal the difference between the note rate and the debenture rate for each day granted under the extension to protect HUD from further loss.
  - 2) Field Office staff should consult with the Operations Division, Office of Multifamily Housing Management in Headquarters, for the amount of the cash deposit in paragraph 1) above.

#### SECTION 5. MONITORING

- 15-12. MONITORING COMPLIANCE WITH THE AUTHORIZATION LETTER PROVIDED UNDER PARAGRAPH 15-9 PRIOR TO CLOSING. The owner must close the refunding within 90 days from the date of the Authorization Letter or within an approved extension. If it does not close within this timing, the Field Loan Specialist must prepare a letter for the Director of Housing Management canceling the authorization.
- 15-13. MONITORING AFTER CLOSING OF THE BONDS.
- a. Monitor the project to assure compliance with all terms and conditions of the Authorization Letter.
  - b. If the Field Office's monitoring reveals any noncompliances, its loan servicer must prepare a letter for the Director of Housing Management demanding immediate corrective action.







following terms and conditions:

- o The Sources and uses of Funds Statement of the refunding shows no disbursement of funds to the owner. The Sources and Uses of Funds Statement must also be signed by the owner below the following statement and provided to our office:

"Warning: It is a crime to knowingly make false statements to a federal agency. Penalties upon conviction can include a finding and imprisonment. For details, see Title 18, U.S. Code 1001 and 1010."

- o There is no partial payment of claim.
- o All escrows are fully funded at closing as deemed appropriate by the HUD Field Office (e.g., taxes and insurance).
- o All reserves are fully funded (as deemed appropriate by the HUD Field office, including new bond debt service reserve).
- o There are no liens created that are equal or superior to the insured mortgage other than the tax-exempt regulatory agreement for the limited purpose of preserving the tax-exempt status of the bonds.
- o A written opinion from Bond Counsel to HUD stating that the refunding of the bonds as proposed is allowable under the existing bond indenture, applicable laws and the new bond resolution/trust indenture.
- o A certification from the bond counsel that all of the documents submitted for closing conform to the terms and conditions of the Authorization Letter.
- o All legal documents to be reviewed by HUD to complete the refunding must be received by the Chief Counsel in the HUD Office having jurisdiction over the project in complete and acceptable form at least 15 working days before the expected closing date.
- o All fiscal information required must be in HUD's Office of Mortgage Insurance, Accounting and Servicing (MIAS) at least 10 working days prior to closing.
- o If the mortgagee/trustee requests an extension of the prepayment

restrictions, the following applies. "Notwithstanding any prepayment prohibition imposed and/or premium required by the

note with respect to the first ten (10) loan years following final endorsement, the indebtedness may be prepaid in whole or in part without the consent of the holder and without prepayment premium if HUD determines that prepayment will avoid a mortgage insurance claim and is therefore in the best interest of the government. IMPORTANT: An addendum to the mortgage note must contain this language.

- o Default on the mortgage must not cause a default on the non-asset bonds.
- o Costs of issuance permitted in non-asset bonds do not exceed the amount permitted by the Department. Amounts in excess must be paid with the owner's out-of-pocket funds. Such amounts may not be a project obligation in any form.

Times frames must be observed or the closing will be delayed. A closing date must be arranged with HUD. In order to schedule a date for the closing, you (or your representative) must contact \_\_\_\_\_ at the following number \_\_\_\_\_ (insert either the Chief Counsel's Office in the Field Office having jurisdiction over the project or the Operations Division, Office of Multifamily Housing Management, depending on whether the Field or Headquarters will be authorizing the refunding.)

The authorization of the bond refunding is good for 90 days from the date of this letter. Failure to close within this period or an approved extension will make this authorization null and void. HUD Field Counsel will provide you with further instructions about the necessary documents and other closing requirements. Following closing/settlement the trustee must submit the final trustee accounting to the HUD Field Office, Attention: \_\_\_\_\_ (either the Director of Housing Management Division in the HUD Field Office or Director, Operations Division, Office of Multifamily Housing Management in Headquarters, depending on which office authorizes the refunding.)

Under no circumstances may changes be made to the documents reviewed other than to conform with the above terms and conditions, without HUD's specific approval in writing.

Sincerely,

Director of Housing Management

NOTE: The actual letter does not have to be in this format.

Department of HUD  
Address

Subject: Tax-Exempt Bond Refunding  
Project Name:  
Tax Project Number:  
Project Location:

Dear \_\_\_\_\_:

This firm represents the mortgagor of the above referenced project. This letter is submitted in connection with an application for a refunding of the tax-exempt bonds of the project.

I hereby certify that the following documents submitted for your review (list all documents) are in the form as submitted with the refunding application to HUD on \_\_\_\_\_ and also conform to the terms and conditions listed in your authorization letter dated \_\_\_\_\_.

Sincerely,

Attachments

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APPENDIX 5

BOND REFUNDING SOURCES AND USES OF FUNDS

- a. The owner must present a clear statement of the sources and uses of all funds involved in the transaction, including all escrow accounts (taxes, reserve for replacement, insurance, debt service reserve, operating deficit, etc.). The bond prospectus should contain this statement.

EXAMPLES: SOURCES

EXAMPLES: ELIGIBLE USES

	Project and Bond Needs	Transaction Costs
Gross proceeds	Delinquency payments to HUD	Consultant Fees (list all)
Owner's Capital	Repairs (list, separating hard and soft costs.*	Bond Refunding Costs including Underwriters Fees (list all)
Reserves	Reserve for Replacement Escrow	Bond Counsel
Trust Accounts	Operating Deficit Escrow	Individual Counsel
Mortgage Receipts	Escrow Deposits (list all)	Printing
Existing Debt Service Reserve	New bond debt service reserve	Trustee
Other(specify all)		Rating Agency
		Accounting Service
		Owner Expense

Mortgage Receipts	(list all)
Other (specify exactly)	Amounts due HUD** Other (specify exactly)

- b. The statement must be in sufficient detail to allow the reviewer to fully understand the transaction.
  - c. Unidentified amounts, such as miscellaneous categories, are not acceptable.
  - d. An addendum to the statement must clearly define all of the parties to the transaction and identify all identity-of-interest participants.
  - e. Transaction costs may not exceed the amount determined in accordance with Appendix 6.
  - f. The debt service reserve is determined by whether or not the bond is credit enhanced and by who the bond rating agency is. This amount is in addition to the amount determined in Appendix 6, Determining Allowable Transaction Costs.
  - g. In some rare occasions, when a project is in the development phase, bonds may be issued in a face amount exceeding the mortgage amount at final endorsement. Normally, trustees retire the excess bonds. However, in some cases the bonds were not retired. If such situations arise, please contact your Desk Officer in the Office of Multifamily Housing Management in Headquarters.
- \* Repairs should be approved and prioritized by the HUD Field Office  
 \*\* Because bonds are usually issued in blocks of \$5,000, the amount due to rounding goes back to HUD.

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 APPENDIX 6

DETERMINING ALLOWABLE TRANSACTION COSTS

HUD Field Offices must determine the maximum allowable transaction costs (costs of issuance) by using the worksheet below or other format that provides the same information. Categories of allowable transaction costs appear in the third column of Appendix 5. When actual transaction costs exceed the amount permitted by the worksheet, refer the bond refunding proposal to Headquarters, along with an itemization of the issuance costs. (See Appendix 1, Item 5.)

WORKSHEET FOR DETERMINING MAXIMUM TRANSACTION COSTS

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Tax-exempt Bonds      \$\_\_\_\_\_

	Taxable Bonds	+	
A.	Total Bond Funds		

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1.		x	5.0%	=	
2.		x	4.0%	=	
3.		x	3.5%	=	
4.		x	3.0%	=	
5.		x	2.5%	=	
6.		x	2.0%	=	
B.	TOTAL				

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(Item B) Total allowable cost of issuance = % cost of issuance  
(Item A) Total bond funds

C. \_\_\_\_\_ % cost of issuance

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APPENDIX 6

DIRECTIONS

- A. Determine the total bond funds (tax-exempt bonds plus non-asset bonds).
- B. Break down the total bond funds (A) into the segments shown in the chart below. (See example following these directions.) This break down is used only for the purpose of determining the allowable costs of issuance. It has no other relationship to the bond transaction.

Segment	Breakdown the Bond Costs into the Following Amounts (Rounded)	Apply the % Shown
#1	0 - \$ 2,000,000	5.0%
#2	2,000,001 - 5,000,000	4.0%
#3	5,000,001 - 15,000,000	3.5%
#4	15,000,001 - 25,000,000	3.0%
#5	25,000,001 - 35,000,000	2.5%
#6	35,000,001 -	2.0%

Multiply each segment above by the corresponding percentage in the table (i.e., take the first segment of the total bond funds (i.e., \$2,000,000) and multiply that amount by 5.0; then take the second segment (i.e., \$3,000,000) and multiply that amount by 4.0%, and so

on until you have performed this step for the total bond funds. The third, fourth, fifth segments are all in \$10,000,000 increments. The sixth and last segment covers amounts above \$35,000,000.

Add up the individual amounts in B to arrive at the total transaction costs allowable.

C. Show the amount in B as a percentage of total bond funds:

$$\frac{\text{Total allowable cost of iss. (B)}}{\text{Total amount of bonds (A)}} = \% \text{ cost of issuance (c)}$$

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APPENDIX 6

EXAMPLE OF DETERMINING TRANSACTION COSTS

Assume a tax-exempt bond issue of \$15,400,000 and a taxable bond issue of \$600,000.

STEP

- A. Determine the total bond funds (\$15,400,000 + \$600,000 = \$16,000,000).
- B. Break down the \$16,000,000 total bond funds into the amounts shown in the table and multiply each amount by the percentage shown.

Segment	Millions (Rounded)	Percentage Ceiling	Maximum Amount (Rounded)
1	\$ 2,000,000	5.0%	= \$100,000
2	3,000,000	4.0%	= 120,000
3	10,000,000	3.5%	= 350,000
4	1,000,000*	3.0%	= 30,000
 Total Bond Funds	 \$16,000,000	 Total Allowable Issuance Costs	 \$600,000

\*Note that the actual amount remaining is used.

C. Translate the allowable cost of issuance into a percentage of total bond funds.

$$\frac{\$ 600,000}{16,000,000} = 3.75\% \text{ (Allowable Cost of Issuance as a Percentage)}$$

Total allowable cost of issuance (Item 3) = % cost of issuance

$$\frac{\text{Total allowable cost of issuance (Item 3)}}{\text{Total amount of bonds (total bond funds)}} = \% \text{ cost of issuance}$$

