

760 CMR 21

760 CMR 21.00:

TAX EXEMPT LOCAL LOANS TO ENCOURAGE RENTAL HOUSING PROGRAM - TELLER PROGRAM

21.01: Applicability

21.02: Definitions

21.03: Approval Process

21.04: Fees

21.05: Counsel

21.06: Regulatory Agreement

21.01: Applicability

(1) 760 CMR 21.00 shall apply to any project the construction, Rehabilitation, or acquisition and Rehabilitation of which is financed in whole or in part by a loan of the proceeds of the sale of bonds issued by Local Housing Authorities pursuant to M.G.L. c. 121B, § 26(m) as amended by St. 1984, c. 233, § 36. The program utilizing the issuance of such bonds is known as the Tax Exempt Local Loans to Encourage Rental Housing (TELLER) Program. 760 CMR 21.00 may be supplemented by written guidelines issued by the Department.

(2) The Director may waive any provision of 760 CMR 21.00 when, in the Director's opinion, compliance with such provision would result in undue hardship, and a waiver would serve the public interest and not be inconsistent with the purposes or requirements of M.G.L. c. 121B, §§ 25 and 26(m) and other applicable law.

(3) At its discretion a LHA may impose additional requirements upon Owners and Projects other than those contained in 760 CMR 21.00 provided that these additional requirements are consistent with the housing needs of its community and with applicable state and federal statutes, regulations, and guidelines.

(4) 760 CMR 21.00 replaces 760 CMR 35.00 and is effective on December 13, 1996. 760 CMR 21.00 does not change construction began before December 13, 1996. The provisions of Regulatory Agreements entered before December 13, 1996 shall remain in full force and effect according to their terms.

21.02: Definitions

Ancillary Commercial Facilities - commercial facilities included in a Project which in the aggregate do not exceed 35% of the total rentable area of the Project.

Blighted Open Area shall have the meaning set forth in M.G.L. c. 121B, § 1.

Bonds - mean any bonds, notes, or other obligations of a LHA issued pursuant to M.G.L. c. 121B, § 26(m), substantially all of the proceeds of which are used to make a Loan for the purpose of financing or refinancing all or any part of the cost of the construction, Rehabilitation, or acquisition and Rehabilitation of one or more Projects.

Code - mean the Internal Revenue Code of 1986, as amended, and all regulations thereunder.

Decadent Area shall have the meaning set forth in M.G.L. c. 121B, § 1.

Department - the Department of Housing and Community Development.

Income - adjusted income from all sources of each member of the household determined in a manner consistent with Section 142(d) of the Code, and computed in the manner prescribed by applicable Treasury regulations.

Limited Dividend Organization - a corporation, partnership, or other organization, other than a public agency, which by its governing articles or organization or partnership agreement prohibits distribution with respect to any one year of operation of more than 10% of owner's equity in the Project.

Loan - a loan made to or on behalf of an Owner to finance or refinance all or any part of the costs of construction, Rehabilitation, or acquisition and Rehabilitation of one or more Projects.

Loan Security - a mortgage secured by a lien on the real property, a security interest in the personal property included in a Project, and/or any other property, note, bond, letter of credit, guarantee, agreement, covenant, or other obligation or credit facility given, pledged, granted or made by or on behalf of an Owner to secure the repayment of a Loan.

Local Housing Authority (LHA) - any housing agency created pursuant to M.G.L. c. 121B, § 3 or 3A or by applicable prior law or special act.

Lock-In Period - the period of time beginning on the Occupancy Date and ending on the latest of:

- (a) the date 15 years after the date on which 50% of the Units are first occupied,
- (b) the first day on which no tax-exempt private activity bonds issued with respect to the Project are outstanding, or
- (c) the date on which any assistance provided with respect to the Project under Section 8 of the United States Housing Act of 1937, as amended, terminates.

Low or Moderate Income Person or Family - an individual or family whose Income is less than 80% of Median Income (or such lower percentage of Median Income as is required by Section 142(d) of the Code); the determination of Low or Moderate Income Persons or Families shall be made in a manner consistent with

determinations of low income families under Section 8 of the United States Housing Act of 1937, as amended, including adjustments for family size, except that the percentage of Median Income which qualifies as low or moderate income shall be less than 80% (or such lower percentage of Median Income as is required by Section 142(d) of the Code). The determination whether a person or family is a Low or Moderate Income Person or Family shall be made at the time of initial occupancy and at least annually thereafter. Existing Low or Moderate Income Persons or Families shall continue to be counted as such unless their income exceeds 140% of the otherwise applicable ceiling.

Low or Moderate Income Unit - a Unit which is either occupied by a Low or Moderate Income Person or Family, or designated from time to time by the Owner as one which is available for such occupancy.

Market Area Rental - the maximum annual rental which could be obtained for a Unit in light of the rentals charged for comparable units within the same market area, which amount shall be no more than that determined by the Unit Appraisal.

Median Income - the median gross income for the area in which the Project is located as determined from time to time by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937, as amended, including adjustments for family size.

Occupancy Date - the later of the first day on which at least 10% of the Units in the Project are occupied or the date of the issuance of the bonds to provide financing for the project.

Owner - any partnership, profit or non-profit corporation, Limited Dividend Organization, trust, public agency, individual or any other person or entity which is the owner of the Project for Federal income tax purposes.

Project - a building or structure, together with any functionally related and subordinate facilities, containing one or more Similarly Constructed units. It does not include any building which contains fewer than five Units one of which is occupied by the Owner of the Units that will be rented or available for rental during the Lock-In Period. A Project may consist of more than one building if they are located on a single tract of land, owned for Federal tax purposes by the same person, and financed pursuant to a common plan of financing. Facilities that are functionally related to a Project include facilities which are reasonably required for the project and may include swimming pools, other recreational facilities, parking areas, the Units for resident managers or maintenance personnel, and other such facilities. A Project may also include Ancillary Commercial Facilities.

Regulatory Agreement - the agreement between a LHA and the Owner containing the terms and conditions set forth in 760 CMR 21.06.

Rehabilitation - the replacement or substantial restoration of at least one major structural element or system in a Project.

Similarly Constructed Units - Units of similar quality and type of construction, number of rooms, amount of floor space, and location within the market area.

Substandard Area - have the meaning set forth in M.G.L. c. 121B, § 1.

Unit - a dwelling unit containing facilities for living, sleeping, eating, cooking, and sanitation.

Unit Appraisal - an appraisal of the maximum rental value of a Unit in the Project (other than Low or Moderate Income Units) as determined by a study of current rents for Similarly Constructed Units by a qualified professional appraiser, and updated on at least a triennial basis by a study conducted by or on behalf of the Owner, pursuant to standard appraisal methods and procedures.

21.03: Approval Process

(1) Initial Application. The Owner shall apply to the LHA by filing an Initial Application, which shall include a request for the LHA to grant Official Action Status on a proposed Project. The Initial Application shall include the following information:

(a) a description of the proposed Project, including the number of Units, the estimated total development cost for the Project, the proposed Loan amount to be supported by Bonds issued under the TELLER Program, and the proposed Loan Security to be provided for the Loan;

(b) a description of the Owner of the proposed Project and the other development and financing team for the Project;

(c) a description of the site for the Project, including the status of control of the site by the owner and the status of all permits for construction or Rehabilitation of the Project;

(d) estimated operating expenses, including Loan amortization expenses, and anticipated rents for all Units in the Project;

(e) a request, if so desired, that the site be declared a Blighted Open Area, a Decadent Area, or a Substandard Area;

(f) other relevant Project information as required by the Department.

(2) Official Action Status. Upon receipt of an Initial Application, the LHA shall promptly review the Application and the accompanying information to determine if the Application contains adequate information. The LHA shall

act on the request for Official Action Status for the Project once the application is found by the LHA to be complete. The LHA may grant Official Action Status to a Project if it finds that:

(a) it appears that the Project will serve to meet the housing needs of the community;

(b) it is reasonable to expect that the Project will be able to comply with the requirements of the TELLER Program; and

(c) the Owner and the development/financing team appear to be capable of carrying out the construction, Rehabilitation, or acquisition and Rehabilitation, and operation and management of the Project.

(3) Notice to the Department. Within five days after granting Official Action Status to a Project, the LHA (or the Owner on behalf of the LHA) shall submit a copy of the Initial Application, along with all accompanying information and a certified copy of the grant of Official Action resolution, to the Department. The Initial Application, shall be available at the Department for review for a period of 30 days following receipt of the Initial Application by the Department (the "Review Period"). Interested parties may submit written comments on the proposed Project to the Department. The Department shall maintain a file of comments received on each proposed Project and, after the completion of the Review Period, the Department shall forward to the LHA a copy of all comments received.

(4) Public Hearing, Review and Comment on Proposed Projects. Following the Review Period the LHA shall hold a public hearing on the Project, including the questions whether to issue Bonds to finance the Project and whether the site is a Blighted Open Area, a Decadent Area or a Substandard Area (if a declaration of such has been requested). Notice of the public hearing shall be given in such manner, and the hearing shall be held at such place and in such manner, as shall be necessary to give reasonable notice to the public and to comply with the Code. Notice of the public hearing shall also be given to the Department. The Initial Application, along with accompanying documents, shall be available for review by the public prior to the hearing.

(5) Final Application. Following the public hearing the Owner shall submit a Final Application to the LHA, which shall take account of the comments at the public hearing. The Final Application shall include the information required for the initial application updated and amended as appropriate, together with:

(a) The proposed Regulatory Agreement;

(b) all proposed documents to be used as part of the Bond financing or to provide Loan Security;

(c) a Relocation Plan if any existing occupants or tenants at the site of the Project will be displaced by construction or Rehabilitation of the Project; and

(d) such other relevant information as may be required by the Department. The LHA may also require the submission of such additional information as part of the Final Application as it shall deem relevant to the Project.

(6) Approval of the Project and Issuance of the Bonds. Following receipt of the Final Application, the LHA may approve the Project and, as the issuing agency, the issuance of Bonds to finance the construction, Rehabilitation, or acquisition and Rehabilitation of a Project upon the following findings:

(a) that the Final Application for the Project is complete and acceptable;

(b) that the Project documents, including the Regulatory Agreement, provide that until the expiration of the Lock-in Period not less than 20%, or such higher percentage as may be required by the LHA, of the total number of Units in the Project will be Low or Moderate Units;

(c) that Low or Moderate Income Persons or Families can afford the rentals, including the provision of heat, electricity and hot water, of those project units designated by the Owner as Low or Moderate Income Units on the basis of the use of not more than 30% of their annual income (a LHA may find this determination satisfied if it determines that the Code provisions for determining rentals for Low or Moderate Income Units in the Project have been satisfied);

(d) if a declaration that the site is a blighted open area, a decadent area or a substandard area has been requested, that the site is such an area:

(e) if the site is not a blighted open area, a decadent area or a substandard area that the Project is located in a Housing Development Area; or that the Project documents, including the Regulatory Agreement, satisfy all applicable Code requirements for rentals, including rentals of any market rate units at no more than the Market Area Rentals.

(f) that the issuance of the Bonds will not involve a pledge of the faith and credit of the LHA, the Commonwealth, or any political subdivision thereof.

(g) that the Relocation Plan, if any, for the Project adequately addresses the relocation of any tenants or other occupants of the Project site to be displaced by construction or Rehabilitation of the Project;

(h) that the Project will serve to meet the housing needs of the community and will serve to foster the balanced growth and development of the community; and

(i) that the qualifications and experience of the Owner and development/financing team indicate that they will be able to fulfill all commitments contained in the Final Application.

(7) Disapproval of the Project. If a LHA decides not to approve a Project it shall inform the Owner in writing of such action, citing the findings which it did not make.

(8) State Approval. Following final approval by the LHA and the Applicable Elected Representative (as determined in the Code), the LHA (or the Owner on behalf of the LHA) shall submit to the Department the Final Application, together with all supporting documentation, along with the record from the public hearing, all applicable board votes and findings of the LHA granting approval, and the written approval of the Applicable Elected Representative. Following review of this material, the Department may approve the issuance of the Bonds if the Department determines:

(a) that all necessary and appropriate documentation, including the Regulatory Agreement, has been submitted and is acceptable;

(b) that the findings of the LHA contained in its approval are supported by substantial evidence;

(c) that the issuance of the Bonds will not involve a pledge of the faith and credit of the LHA, the Commonwealth or any political subdivision thereof and that such issuance appears to be fiscally prudent for the LHA;

(d) that Private Activity Exempt Bond Volume Cap is available and should be approved for the bonds for the Project.

(e) that the Project will serve to meet unsatisfied housing needs in the Commonwealth and will serve to foster the balanced growth and development of the Commonwealth.

(9) State Disapproval. The Department may decide to disapprove a Project, and if so, it shall inform the Owner and the LHA in writing of such action, citing the findings which it did not make.

21.04: Fees

In conjunction with the issuance of Bonds, the Owner shall pay $\frac{1}{2}$ of a fee to the Department and half to the LHA in an aggregate amount equal to $\frac{1}{2}$ of 1% of the principal amount of the Bonds issued; provided that, if the Owner is a non-profit corporation, the fee shall be set at an amount equal to one-quarter of one percent of the principal amount of the Bonds. The Department may establish in its guidelines a schedule of additional fees, including reimbursement of attorney's fees; fees for services relating to the approval of a Project and to the issuance of Bonds and fees for ongoing monitoring to ensure that the Project is properly managed and operated in compliance with program regulations, guidelines, and regulatory agreements.

21.05: Counsel

In addition to retaining counsel to receive advice concerning project approvals, upon granting Official Action Status to a Project, each LHA shall also retain special counsel, approved by the Department, to represent and advise the LHA of that Project and its affiliated bond issuance. With the approval of the Owner, such special counsel may also act as bond counsel for the Bonds but shall not otherwise represent the Owner. All fees payable to such special counsel shall be reimbursed from the proceeds of the bonds or as otherwise agreed by the LHA and the Owner.

21.06: Regulatory Agreement

Prior to issuing Bonds to finance a Project, the LHA and the Owner shall formally execute the Regulatory Agreement previously approved by the Department. The Regulatory Agreement shall contain such provisions as may be specified by the LHA and the Department, including provisions that:

- (1) until the expiration of the Lock-In Period, not less than 20%, or such higher percentage as may be required by the LHA, of the total number of Units in the Project shall be Low or Moderate Income Units;
- (2) until the expiration of the Lock-In Period, the annual rentals for the units shall not exceed the amounts permitted by these regulations, the Regulatory Agreement or the amounts necessary to preserve the tax-exempt status of the Bonds under applicable law;
- (3) prior to the initial occupancy of any Units in the Project, the Owner shall adopt and implement a plan for selecting Low or Moderate Income Persons or Families as tenants and an affirmative fair marketing plan for all Units; both the plan for selecting tenants for Low or Moderate Income Units and the affirmative fair marketing plan must be submitted to the Department prior to implementation of the plan. The Department may disapprove a plan which it finds to be deficient, in which event the Owner shall be required to correct the deficiencies;
- (4) the Owner shall enter into a lease subject to approval by the Department with each Tenant of a Low or Moderate Income Unit which shall be for a minimum period of one year and shall provide that no tenant of a Low or Moderate Income unit shall be evicted during the Lock-In Period for any reason other than a substantial breach of a material provision of the lease for a cause specified in M.G.L. c. 139, §19;
- (5) the Owner shall not discriminate against any applicant for housing or employment or against any tenant or employee on the basis of age, race, creed, color, disability, religion, national origin, age, sex, or sexual preference or any other basis prohibited by law;
- (6) during the Lock-In Period, no Unit in the Project shall be converted to condominium or cooperative form of ownership;

(7) if at the end of the Lock-In Period, the Owner of a Low or Moderate Income Unit wishes to convert the Unit to conventional rental housing, each tenant of an affected unit shall be offered the opportunity to rent the unit at the rent to be charged;

(8) At the end of the Lock-In Period the Owner of a Low or Moderate Income Unit wishes to convert to condominium or cooperative ownership, each Tenant of an affected unit shall receive a right of first refusal for purchase of the Unit, which right shall last for a period of not less than six months from receipt of a Notice of Intent; during this period, the Unit shall be offered to the Tenant at a discount of at least 10% from the offering price for the Unit; these terms shall not apply to Tenants who move into a Low or Moderate Income Unit after a Notice of Intent (which may be given within six months of the end of the Lock-In Period) has been given with respect to such Unit;

(9) the Regulatory Agreement shall be recorded in the same place and manner as a mortgage or the Project and, until the end of the Lock-In, the Regulatory Agreement shall continue in force and effect;

(10) any failure by the Owner to perform or comply with any obligation, covenant, or warranty under the Regulatory Agreement shall constitute a default and, upon such default, the LHA, its successors or assigns, may take appropriate legal action, which may include the right to specific performance, foreclosure of any mortgage, acceleration of the Bonds, or as provided in the Loan documents;

(11) the Owner shall provide a Unit Appraisal not less often than every third anniversary of the Regulatory Agreement to the LHA and the Department and an annual balance sheet to the LHA and to the Department on the financial status of the Project with a certification that the terms of the Regulatory Agreement are being complied with;

(12) the Owner shall provide any and all pertinent information with respect to the Project as requested by the LHA or by the Department, provided that the LHA or the Department shall request personal data only when essential to performance of statutory or other lawful obligations; and

(13) The Owner shall notify each tenant of a Low or Moderate Income Unit of the manner of determining the maximum rental amounts for such units. Before increasing those maximums, the Owner shall inform the LHA and all affected tenants of the specific computations used to compute the new maximums;

(14) The Owner shall meet the requirements of 760 CMR 21.00 and shall take all other necessary actions to preserve the tax-exempt status of the Bonds for the Project.

REGULATORY AUTHORITY

760 CMR 21.00: M.G.L. c. 23B, § 6; c. 121B, §§ 25, 26(m), and 29.

