



REGULATORY INTERPRETATION 2005-RI-02

October 4, 2005

Subject:

Retention Period for Owner-Occupied Projects Assisted Under the Affordable Housing Program (AHP) and USDA Rural Development Section 502 Program (Section 502 Program).

Request Summary:

A Federal Home Loan Bank (Bank) has requested a Regulatory Interpretation confirming that, for owner-occupied projects involving new construction of units whose purchasers receive both AHP assistance and mortgage loans for the acquisition of the land and construction of the unit on that land under the USDA Rural Development Section 502 Program, the AHP retention period commences on the date of closing on the Section 502 Program mortgage loan, and not on the date of completion of construction.

Conclusion:

For owner-occupied projects involving new construction of units whose purchasers receive both AHP assistance and Section 502 Program mortgage loans for the acquisition of the land and construction of the unit on that land, the AHP retention period commences on the date of closing on the Section 502 Program mortgage loan, and not on the date of completion of construction.

Background:

The Bank has provided AHP assistance to owner-occupied projects involving new construction of units whose purchasers also received Section 502 Program mortgage loans for the acquisition of the land and construction of the unit on that land. According to the Bank, the HUD-1 closing statements evidence that the closing on the Section 502 Program mortgage loans occurs at the start of construction of the units, at which time the homebuyer takes title to the land and subsequent improvements. This contrasts with the more conventional situation where the closing on the sale of a new home occurs at completion of construction. Although the Section 502 Program mortgage loan is administered by USDA as a construction loan that is subsequently converted into a permanent loan following completion of construction, this administrative conversion procedure does not involve any additional settlement or transfer of title.

Discussion:

Under the AHP regulation, the AHP “retention period” for AHP-assisted owner-occupied units is defined as five years from closing for the unit.¹ In the AHP-assisted owner-occupied projects described above, the homebuyer takes title to the land and subsequent improvements at the closing on the Section 502 Program mortgage loan, which occurs at the start of construction. Accordingly, the AHP retention period for such projects commences on the date of closing on the Section 502 Program mortgage loan, and not on the date of completion of construction.

¹ See 12 C.F.R. § 951.1 (definition of “retention period”); Questions and Answers Regarding the Affordable Housing Program - Part 2, 64 Fed. Reg. 12079, Q5 (March 11, 1999). By contrast, the AHP regulation defines the retention period for an AHP-assisted rental project as 15 years from the date of project completion. 12 C.F.R. § 951.1 (definition of “retention period”).

A Regulatory Interpretation is subject to modification or rescission by action of the Board of Directors of the Finance Board. 12 C.F.R. part 907.
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