

PART 801**PROMPT PAYMENT POLICY OF THE NEW YORK STATE HOMELESS
HOUSING AND ASSISTANCE CORPORATION**

(Statutory authority: Public Authorities Law. § 2880; Private Housing Finance Law. § 45-c)

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	Pan (§§801:1-801.11) tiled Sept. 4. 1992 eff. Sept. 23. 1992.

§ 801.1 Purpose.

It is the purpose of this Part to establish a prompt payment policy for the Homeless Housing and Assistance Corporation (corporation), to set forth the standards for the payment of bills by the corporation within specific periods of time and to prescribe interest penalties in situations where payments do not conform to these standards.

Sec. tiled Sept. 4. 1992 eff. Sept. 23. 1992.

Historical Note

§ 801.2 Prompt payment policy.

It is the policy of the corporation to process contract payments efficiently and expeditiously so as to assure payment in a timely manner to contractors which do business with the corporation and to avoid, to the greatest extent practicable, the payment of interest in cases where prompt payment does not occur as provided in this Part.

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Historical Note

§ 801.3 Definitions.

The following terms have the following meanings, unless the context clearly indicates otherwise:

(a) **Contract** means an enforceable agreement entered into between the corporation and a contractor.

(b) **Contract payment** means a payment to a contractor pursuant to a written contract or an amendment thereto, signed by an authorized officer of the corporation and of the contractor, a fully executed change order or an executed purchase order.

(c) **Contractor** means a person, partnership, private corporation or association:

- (1) selling materials, equipment, or supplies or leasing property or equipment to the corporation:
- (2) constructing, reconstructing, rehabilitating or repairing facilities or making other improvements for or on behalf of the corporation: or
- (3) rendering or providing services to the corporation pursuant to a contract.

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(d) **Designated payment office** means the office designated by the corporation to which a proper invoice is to be submitted by a contractor.

(e) **Prompt payment** means payment of a debt due and owing by the corporation before interest accrues thereon pursuant to this Pan and section 2880 of the Public Authorities Law (PAL).

(f) **Proper invoice** means a written request for a contract payment that is submitted by a contractor setting forth the description, price and quantity of goods, property, or services delivered or rendered, in such form and supported by such other documentation as the corporation may reasonably require.

(g) **Receipt of an invoice** means:

- (1) the date on which a proper invoice is actually received in the designated payment office; or
- (2) the date on which the corporation received the purchased goods, property, or services covered by the proper invoice, whichever is later.

Historical Note

Sec. tiled Sept. 4, 1992 eff. Sept. 23, 1992.

§ 801.4 Prompt payment procedure.

(a) Each contractor requesting payment from the corporation must submit to the designated payment office of the corporation a proper invoice and adequate documentation to support the payment for goods or services furnished to the corporation. A proper invoice will be paid no later than 30 calendar days, excluding legal holidays, after receipt by such office. The corporation will submit a warrant for payment *of* a proper invoice to the Department of Taxation and Finance within 30 days *of* receipt of said proper invoice.

(b) If the corporation fails to submit a warrant for payment of a proper invoice to the Department of Taxation and Finance within the 30-day period described in subdivision (a) of this section, such payment will be subject to interest at a rate equal to the overpayment rate set by the State Tax Commission for corporate taxes pursuant to section 1096(e)(1) of the Tax Law.

(c) The corporation is not liable for payment of interest when such interest as computed pursuant to the provisions *of* paragraph (b) of this subdivision is less than \$10.

(d) The corporation will pay interest with monies drawn from interest earnings on investments, or from other available sources of funds.

Historical Note

Sec. filed Sept. 4, 1992 eff. Sept. 23, 1992.

§ 801.5 Extension of prompt payment date.

The date by which a proper invoice may be paid without the accruing of interest may be extended beyond the payment date specified in section 801.4(a) of this Part when any of the following facts or conditions exists:

- (a) the contractor fails to comply with the terms of its contract;
- (b) the corporation, in accordance with the terms of its contract with the contractor, finds it to be necessary or desirable to conduct an inspection, test, audit or review of contract activity to determine whether such activity for which payment is requested has been performed in accordance with the terms of the contract;
- (c) the necessary State appropriation or advance required to authorize payment has not been enacted or provided to the corporation;
- (d) proper invoice must be examined by the Federal government prior to payment; or
- (e) the date by which payment must be made is modified in accordance with section 801.7 of this Part.

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The corporation is not responsible for the processing time taken by the State Department of Taxation and Finance, the State Division of the Budget, the Office of the State Comptroller, or any external entity not under the corporation's control that is required by statute, regulation or agreement to approve or process corporation payments.

Historical Note Sec. filed

Sept. 4, 1993 eff. Sept. 3, 1992.

§ 801.6 Interest eligibility and computation.

The corporation will be liable for the payment of interest if the corporation has failed to submit a warrant for payment of a proper invoice to the Department of Taxation and Finance within the 30-day period described in section 801.4(a) of this Part, except when the contract payment is subject to the conditions set forth in section 801.5 of this Part. Any time taken to satisfy any of the conditions set forth in section 801.5 of this Part will extend by an equal period of time the date by which contract payment must be made in order for the corporation to be liable for interest payments. The corporation is not liable for payment of interest with respect to requests for payments of an advance. Furthermore, the corporation is not liable for payment of interest with respect to any payment to a contractor which does not exceed the contractor's current outstanding advance balance. In the event a request for payment submitted by a contractor exceeds the outstanding advance balance of the contractor, any interest due to late payment will be calculated only on the amount of the request for payment which exceeds the advance balance.

Historical Note

Sec. tiled Sept. 4, 1992 eff. Sept. 23, 1993.

§ 801.7 Notification of defects.

The corporation *will* have 15 calendar days after receipt of an invoice by the designated payment office to notify the contractor of:

- (a) defects in the delivered goods, property, or services;
- (b) defects in the invoice; or
- (c) suspected improprieties of any kind.

The existence of such defects or improprieties *will* delay the commencement of the time period specified in section 801.4 of this Part until such defects or improprieties are corrected. Notification to contractors under this section must be in the form of a standardized letter. If the corporation fails to notify a contractor of such defects or suspected improprieties within 15 calendar days of receiving the invoice, the number of days allowed for payment of the corrected proper invoice will be reduced by the number of days between the 15th day after receipt of the original invoice and the day that notification was transmitted to the contractor. If the corporation fails to provide reasonable grounds for its contention that a defect or impropriety exists, the date by which the contract payment must be made in order for the corporation not to become liable for interest payments will be calculated from the date of receipt of a proper invoice.

Sec. filed Sept. 4, 1992 eff. Sept. 13, 1992.

Historical Note

§ 801.8 Pre-determined interval payments.

A proper invoice submitted by the contractor will be required to initiate any payment by the corporation, except where the contract provides that the contractor will be paid at pre-determined intervals without having to submit an invoice for each such scheduled payment. For the purpose of determining eligibility for payment of interest and subject to the provisions of sections 801.5 and 801.6 of this Part, the date by which contract payment **must be made in order for** the corporation not to be liable for interest payments will be the payment due date specified in the contract.

Historical Note

Sec. filed Sept. 1, 1991 eff. Sept. 1, 1992.

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§ 801.9 Inapplicability.

The provisions of this Part do not apply to payments due and owing by the corporation:

- (a) under the Eminent Domain Procedure Law;
- (b) as interest allowed on judgments rendered by a court pursuant to any provision of law other than section 2880 of the PAL; and
- (c) to the Federal government; to any State agency or its instrumentalities, to any duly constituted unit of local government including, but not limited to, counties, cities, towns, villages, school districts, special districts, or any of their related instrumentalities; to any other public authority or public benefit corporation; or to its employees when acting in, or incidental to, their public employment capacity.

In addition, the provisions of this Part do not apply in situations where the corporation exercises a legally authorized setoff against all or part of a payment due a contractor.

Historical Note

Sec. filed Sept. 4, 1992 eff. Sept. 23, 1992.

§ 801.10 Reports.

(a) *Statement filing.* The corporation **will**, within 30 days after adoption of this Part, file a copy of such Part, and any amendments thereto, with the State Comptroller, the Director of the Budget, the Chairman of the Senate Finance Committee, and the Chairman of the Assembly Ways and Means Committee.

(b) *Annual report.* Within 90 days after the end of each fiscal year, the corporation will prepare an annual report on the scope and implementation of this prompt payment policy. The report will include, but not be limited to, the following:

- (1) a listing of the types or categories of contracts which the corporation entered into during the 12-month period of the report with an indication whether each such contract was subject to the prompt payment requirements, and if not, why not;
- (2) the number and amount of interest payments made for contracts, arranged according to each such type or category;

(3) the number of interest chargeable days, and the total number of days taken to process each late contract payment: an

(4) summary of the principal reasons why such late payments had to be made.

Copies of this report must be filed with the State Comptroller, the Director of the Budget, the Chairman of the Senate Finance Committee and the Chairman of the Assembly Ways and Means Committee.

Historical Note

Sec. filed Sept. 4, 1992 eff. Sept. 23, 1992.

§ 801.11 Miscellaneous provisions.

(a) *Statement amendment.* The corporation has the power to amend this policy statement by promulgating amended regulations at any time.

(b) *Contract incorporation.* The policy statement contained in this Part which is in effect at the time of the creation of a contract which is to be executed by the corporation and a contractor is hereby incorporated into and made a part of that contract.

(c) *Public access.* The corporation must make copies of this policy statement, as well as the annual report, available to the public upon reasonable request at the corporation's main office. In addition, the corporation must provide a copy of this policy statement to each contractor.

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(d) *Legal processes.* The corporation is under no liability to pay interest pursuant to section 2880 of the PAL after a contractor has filed a claim or given notice of an intention to file a claim or commenced legal action for payment of interest.

Historical Note