

**CHAPTER 80
NEW JERSEY HOUSING AND MORTGAGE
FINANCE AGENCY**

Authority

N.J.S.A. 55:14K-5g.

Source and Effective Date

R.1995 d.281, effective June 5, 1995.
See: 27 N.J.R. 986(a), 27 N.J.R. 2190(a).

Executive Order No. 66(1978) Expiration Date

Chapter 80, New Jersey Housing and Mortgage Finance Agency, expires on April 17, 2000.

Chapter Historical Note

Chapter 80, New Jersey Housing and Mortgage Finance Agency, was originally titled "Housing Finance Agency" and became effective March 4, 1977 as R.1977 d.71. See: 9 N.J.R. 62(c), 9 N.J.R. 164(c). Amendments were filed and became effective May 30, 1980 as R.1980 d.234. See: 12 N.J.R. 170(c), 12 N.J.R. 388(a). The Housing Finance Agency and the Mortgage Finance Agency merged and N.J.A.C. 19:1 was incorporated under this chapter, effective May 20, 1985 as R.1985 d.241. See: 17 N.J.R. 505(a), 17 N.J.R. 1258(b). Chapter 80 was readopted without change as R.1990 d.248. See: 22 N.J.R. 277(b), 22 N.J.R. 1556(a). Chapter 80 was readopted as R.1995 d.281, effective June 5, 1995. Subchapter 33 was adopted as R.1995 d. 281, effective June 5, 1995. See: 27 N.J.R. 986(a), 27 N.J.R. 2190(a). See: Source and Effective Date.

See subchapter and section levels for further amendments.

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SUBCHAPTER 1. GENERAL PROVISIONS

5:80-1.1 Authority

These regulations are issued under and pursuant to the authority of the New Jersey Housing and Mortgage Finance Agency Law of 1983 constituting Chapter 530 of the Laws of 1983, N.J.S.A. 55:14K-1 et seq.; specifically N.J.S.A. 55:14K-5(g).

5:80-1.2 Purpose and objective

(a) These regulations are established to effectuate and shall be applied to accomplish the general purposes of the New Jersey Housing and Mortgage Finance Agency including:

1. Assuring the availability of rental and owner occupied housing;
2. Stimulating the construction, rehabilitation and improvement of adequate and affordable housing in the State so as to increase the number of housing opportunities for New Jersey residents particularly those of low and moderate income;
3. Enhancing the production capacity of the private sector in meeting the housing needs of residents of New Jersey;

4. Assisting in the revitalization of the State's urban areas; and

5. Responding to changing housing demographic and economic circumstances for the development of innovative and flexible financing vehicles.

5:80-1.3 General definitions

"Act" shall mean the New Jersey Housing and Mortgage Finance Agency Law, N.J.S.A. 55:14K-1 et seq.

"Collateral" shall mean with respect to any Loan those securities, mortgages or other instruments defined as eligible pursuant to the terms of the Assignment of Collateral and Trust Agreement relating to such Loan.

"Collateral Requirement" shall mean, as of any date of calculation and with respect to any Loan, the amount at which Collateral securing such Loan is required to be maintained pursuant to the terms of the Assignment of Collateral and Trust Agreement relating to such Loan.

"Home Improvement Loan Program Commitment" shall mean the aggregate unpaid principal amount of Home Improvement Loans which a Mortgage Seller offers to deliver and sell to the Agency and the Agency agrees to purchase, such sale and purchase to be made under a Note Purchase Agreement.

"Housing Project" or "Project" shall mean any work or undertaking other than a continuing care retirement community, whether new construction or rehabilitation which is designed for the primary purpose of providing rental housing of more than 25 dwelling units.

"Housing Sponsor" shall mean any person, partnership, corporation or association to which the Agency has made or proposes to make a loan, either directly or indirectly through an institutional lender, for a Housing Project.

"Mortgage Purchase Agreement" shall mean an agreement, entered into between a Mortgage Seller and the Agency, under which the Mortgage Seller agrees to deliver and sell to the Agency and the Agency agrees to purchase Mortgage Loans.

"Mortgage Servicing Agreement" shall mean an agreement entered into between a Mortgage Seller or other person acceptable to the Agency, under which the Mortgage Seller or other person agrees to service the Mortgage Loans purchased by the Agency from such Mortgage Seller under a Mortgage Purchase Agreement.

"Note Purchase Agreement" shall mean an agreement, entered into between a Mortgage Seller and the Agency, under which the Mortgage Seller agrees to deliver and sell to the Agency and the Agency agrees to purchase single-family home improvement loans.

"Notice of Acceptance" shall mean the Notice of Acceptance by the Agency to the mortgage Seller of an Application.

"Primarily residential in character" as set forth in N.J.S.A. 55:14K-3(e) shall mean:

1. With regard to an individual unit, structure, or property, that at least 60 percent of the net sheltered area, not including areas for circulation, utilities and common space, is or will be upon completion of scheduled improvements used exclusively as a residence for one or more persons; or

2. With regard to a Project or area, that at least 60 percent of the properties in the area or 60 percent of the floor area in the Project, not including areas for circulation, utilities, and open space, consists of units, properties, or structures devoted primarily to residential use.

"Single family mortgage loan" shall mean any mortgage loan for a structure which contains no more than four dwelling units at least one of which is owner-occupied and may include an owner-occupied single dwelling unit within a condominium or cooperative apartment. Those areas which are non-residential in use shall not exceed those specified by the Federal Housing Administration Property Standards for one or two living units as in effect from time to time.

"Single family home improvement loan" shall mean an eligible loan for the rehabilitation or improvement of a unit or structure which contains no more than four dwelling units where at least 90 percent of said structure or single dwelling unit is devoted to residential use, and at least one such dwelling unit is owner-occupied.

"Term sheet" shall mean the statement of terms, constituting part of the Notice of Acceptance of a Commitment, governing the sale and purchase of Mortgage Loans pursuant to a Commitment.

5:80-1.4 Regulations regarding Housing Projects

(a) All Agency financing in connection with Housing Projects, including eligible loans and loans to lenders made with regard to Housing Projects, shall be subject to the regulations in subchapters 2 through 9, 17 and 18. Where appropriate, other regulations within this chapter are specifically made applicable to Housing Projects. The regulations of subchapters 2 through 9, 17 and 18 shall not apply to:

1. The construction or rehabilitation of:
 - i. Continuing care retirement communities;
 - ii. Nonresidential facilities or structures (other than those permitted within a housing project);
 - iii. Boarding houses;
 - iv. Residential developments having 25 dwelling units or less; or

2. The improvement, acquisition, operation, maintenance or repair of Housing Projects or any other structure or improvement financed by the Agency (other than that determined by the Agency to constitute substantial reha-

bilitation). Notwithstanding the foregoing the Agency may require applicable provisions of N.J.A.C. 5:80-4 to apply to any such improvement, maintenance or repair, if it deems such application necessary; or

3. Any Housing Project for which construction or substantial rehabilitation commenced more than one year prior to the actual date of the Agency's having provided financing for the project.

SUBCHAPTER 2. ACTIONS REGARDING HOUSING SPONSORS

5:80-2.1 Rights of housing sponsors

(a) Wherever possible, the Agency will permit, provide for and encourage the right of local housing sponsors to exercise their own initiative and competence in the administration of their assets and the conduct and operation of housing projects, and exercise their rights and responsibilities to the fullest extent permitted by law.

(b) The provisions of the Act pertaining to the regulation and assumption of powers and duties of housing sponsors shall be for the purposes of protecting the collateral for any loan or loans; implementing or enforcing any condition, requirement or criterion for loans or any agreement between the housing sponsor and the Agency; securing the rights and remedies of lenders and bondholders; and protecting the interests of tenants at the projects.

5:80-2.2 Consultation with housing sponsors

(a) Prior to the adoption, amendment, or repeal of any rule governing the operation of Agency-financed housing projects, the Agency shall:

1. Submit a proposed form of the rule to be adopted, amended or repealed to the Office of Administrative Law for publication in the New Jersey Register for a 30 day public comment period, in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.; and

2. Give housing sponsors or their agent(s) written notice of the proposed rule to be adopted, amended or repealed. The notice shall be given prior to or simultaneously with the date the proposed rule will be published in the New Jersey Register for public comment.

(b) The notice to housing sponsors shall consist of a copy of the proposed rule to be adopted, amended or repealed and shall indicate the date the 30-day public comment period expires, as published in the New Jersey Register.

(c) Any housing sponsor wishing to submit data, views, or arguments concerning the proposed rule may do so in writing prior to the expiration of the public comment period as established in the New Jersey Register.

(d) The Agency will consider all timely submitted data, views or arguments from housing sponsors before taking final action on the rule to be adopted, amended or repealed.

(e) The Agency shall respond in writing to each housing sponsor, submitting data, views, or arguments concerning the proposed rule.

(f) No rule governing the operation of a housing project shall be effective unless adopted in substantial compliance with N.J.A.C. 5:80-2.

(g) Upon substantial compliance with N.J.A.C. 5:80-2, the Agency may approve the proposed rule for final adoption. Once the Agency approves the final version of the rule, it will be submitted to the Office of Administrative Law for publication and adoption in the New Jersey Register.

(h) The Agency also shall give direct notice concerning the adoption, amendment or repeal of any rules to any interested party who annually files a request for such information with the Executive Director.

(i) Whenever feasible, the Agency will circulate to housing sponsors notices of proposed changes in Federal Regulations that would affect the operation of Agency financed housing projects on which the Agency intends to rely. The sponsor may submit comments or opinions on any proposed changes to the Executive Director of the Agency for possible inclusion in the Agency comments. All comments will be forwarded to the office or the individual that the Federal Government designates in the notice.

Amended by R.1991 d.408, effective August 5, 1991.

See: 22 N.J.R. 3669(b), 23 N.J.R. 2306(b).

Added new (a)1; clarified length of comment period and promulgation process throughout section.

5:80-2.3 Temporary appointment of Agency representative to perform functions on behalf of housing sponsors

(a) The Agency will exercise its remedies and powers under N.J.S.A. 55:14K-7b(6) only with regard to material violations and after reasonable notice and reasonable opportunity to correct the violation is provided to the housing sponsor in accordance with the procedures set forth below.

(b) General areas in which material violations could result in Agency action include:

1. A material violation by the housing sponsor of the terms of any mortgage, mortgage note or regulatory agreement between the Agency and the housing sponsor;

2. A material violation by the housing sponsor of an agreement with the municipality under which it has been granted tax exemption;

3. A material violation by the housing sponsor of the Act or any rules and regulations of the Agency;

4. A determination by the Agency that any loan or advance from the Housing Development Fund pursuant to N.J.S.A. 55:14K-30 is in jeopardy of not being repaid.

(c) Specific material violations of the Act shall include, but are not limited to the following events, which shall generally be sufficient to give rise to the exercise of remedies under N.J.S.A. 55:14K-7b(6) in accordance with the procedure noted in (e) below. The time periods specified here relate solely to initiating action under N.J.S.A. 55:14K-7b(6) and are in no way intended to waive or supersede any time period specified in any other contract, policy or procedure and all obligations of the housing sponsor and any rights and remedies of the Agency with regard thereto remain unchanged.

1. Violation of subsidy contract as declared by HUD which is not corrected to HUD's satisfaction within the time frame as established by HUD;
2. Failure to submit final cost certification within seven months of substantial completion of construction;
3. Failure to submit a rent determination and annual operating budget at least 30 days prior to the end of the fiscal year;
4. Failure to submit the proposed name of a qualified management firm at least 30 days prior to the end of an existing contract or 120 days prior to initial occupancy of the project;
5. Failure to submit an accountant engagement agreement at least 30 days prior to the end of the fiscal year and/or failure to submit the certified annual audit within five months after the close of the fiscal year;
6. Three months arrears of debt service;
7. Failure to maintain at required levels any reserve account required by the Agency in conjunction with the operation of the Project;
8. Failure to correct a physical condition which jeopardizes the safety of tenants or the public or the integrity of any primary building system;
9. Failure to pay any utility bill after a receipt of written notice indicating that service would be terminated;
10. Failure to pay any lien or judgement, including municipal liens, which could jeopardize the financial viability of the development.

(d) It is the obligation of the Agency to give written notice to a sponsor that a condition exists which is of sufficient gravity to warrant exercise of remedies, under N.J.S.A. 55:14K-7b(6). The Agency will provide written notice of the specific material violation(s) to the sponsor, and may suggest courses of action to correct the violation(s).

(e) The housing sponsor shall take the following corrective actions:

1. Within 15 days of the receipt of the notice described in (d) above, the sponsor shall submit a statement to the Director of Management of the Agency setting forth its proposal for curing the violations indicated and a definite time schedule for the corrective actions.

2. If the sponsor is unable to develop a statement within 15 days, it shall submit a written request for an extension of time to prepare the plan to the Director of Management within the 15 day period.

3. The Director of Management may grant extensions of time for up to an additional 30 days for submission of the statement outlining the actions that the sponsor intends to take.

4. During the time allowed for submission of the statement, the Agency staff shall be available to meet with the sponsor in order to assist him in the development of a program of corrective actions. If no proposal is submitted by the sponsor then the Director of Management shall propose a corrective plan to the sponsor.

5. Upon receipt of the proposal from the sponsor, the Director of Management may either accept the plan or suggest alternatives or modifications to the plan in writing to the sponsor.

6. If the sponsor is unwilling to accept the modifications or plan suggested by the Director of Management, then the sponsor may request in writing within 10 days that the matter be referred to the Executive Director of the Agency or his or her designee, for decision on the plan.

7. Once the commitments by the sponsor are accepted by the Agency, or an agreement is reached between the Agency and the sponsor, or a decision is made by the Executive Director, the sponsor shall immediately implement the corrective actions within the time period specified in the plan.

(f) Any violations of or failure to implement the corrective plan shall be subject to the following:

1. The Executive Director shall bring the matter of such failures and a recommendation of remedy to the Members of the Agency Board at the next public meeting scheduled to allow sufficient time for seven days written notice to the sponsor that the failure to implement or abide by the recommended corrective actions is being brought to the attention of the Members of the Agency Board and that suspension of the sponsor may be requested.

2. The Members shall hear the information provided by the Executive Director along with any information presented by the housing sponsor at a public meeting prior to taking any action pursuant to N.J.S.A. 55:14K-7b(6). The Members may, however, wish to discuss the matter among themselves at a session closed to the public if permitted by N.J.S.A. 10:4-1 et seq.

3. The decision by the Members of the Agency shall be final subject only to review by a court of competent jurisdiction.

(g) Pursuant to the Act, persons appointed to administer the affairs of the project after suspension of the housing sponsor shall only serve for a period co-existent with the duration of the original violation giving rise to the need for the corrections or until the Agency is assured in a satisfactory manner that the violation or violations of a similar nature will not recur. Upon correction of the violation in a reasonable and satisfactory manner, the housing sponsor may submit a request to the Agency for restoration of control back to sponsors. The Agency will respond to such request within 30 days. During that period in which the Agency is considering the housing sponsor's request, the term of the persons appointed to administer the affairs of the project will continue.

(h) The regulations in this subchapter are intended to be in addition to other powers and remedies which the Agency may have at law or by agreement and shall not be deemed to abridge any other rights or remedies of the Agency or the sponsor.

(i) Upon a vote by the members of the Agency Board that there is an immediate need to take action and a finding that failure to take immediate action could jeopardize the health and safety of tenants at the housing project or cause substantial harm to the financial viability or physical structure of the project, the Agency may waive the regulations set forth above and immediately implement appropriate action.

SUBCHAPTER 3. RETURN ON EQUITY

5:80-3.1 Authority

This subchapter is promulgated pursuant to authority of N.J.S.A. 55:14K-5g and N.J.S.A. 55:14K-7a(6).

5:80-3.2 Housing projects prior to January 17, 1984

(a) For all eligible loans for Housing Projects made by the Agency prior to January 17, 1984, the rate of return on its investment in the housing project, as determined by the Agency ("stated equity"), which can be paid or earned by the Housing Sponsor of the property and improvements or its principals or stockholders shall not exceed eight percent per year on a cumulative but not compounded basis. This restriction shall apply for the full term of the Agency's loan and shall apply to return on investment earned or received upon construction and rehabilitation of the housing or from the operations of the housing or upon the sale, assignment or lease of the housing subject only to the applicable provisions, if any, of the Agency's regulations concerning the

sale of projects owned by nonprofit sponsors and transfer of ownership interests.

(b) Housing Sponsors who have agreed to an annual rate of return of less than eight percent may request an increase in the rate to a maximum of eight percent upon meeting the following criteria:

1. The housing project has funds, including Development Cost (DCE) or Community Development (CDE) Escrows operating, savings and investment accounts and all other funds, accounts and escrows of the project, of an amount equal to three months of operating expenses (for senior citizens projects) or six months of operating expenses (for family projects) which includes debt service and reserve payments of the Agency-approved annual budget in effect at the time of the request and after deducting the following:

- i. Debt service arrearages;
- ii. Current unpaid invoices;
- iii. Fully-funded tax, insurance, reserve for repair and replacement and all other escrow accounts except the DCE and CDE;
- iv. The amount of anticipated or proposed repairs or capital improvements; and
- v. Any other current obligation of the project.

2. The housing project has been current in all escrow and debt service payments for the three fiscal years prior to the request.

3. The requirements at (b)1 and 2 above need only be met at the time the sponsor seeks approval of the increased rate of return. Once the sponsor qualifies and receives approval of the increased rate of return, future distributions of return on equity shall be governed by the rules at N.J.A.C. 5:80-3.4.

(c) Housing Sponsors who meet the criteria in (b) above, shall be granted an increase in the annual rate of return, up to eight percent, subject to the following conditions:

1. The increased rate of return shall be prospective only which includes the year in which the sponsor applies;
2. Payment of a \$3,500 processing fee;
3. Payments of the increased return on equity shall be subject to this subchapter; and
4. Amendments will be made to the appropriate mortgage documents to reflect the conditions in (c)1 and 3 above.

Amended by R.1994 d.398, effective August 1, 1994.
See: 26 N.J.R. 1186(a), 26 N.J.R. 3163(b).

5:80-3.3 Housing projects on or after January 17, 1984

(a) For each eligible loan made by the Agency on or after January 17, 1984 for a Housing Project, the Agency shall determine, at the time of initial mortgage closing, the investment made by the Housing Sponsor.

1. Investment shall include:

i. Actual cash or cash equivalent as determined by the Agency;

ii. Professional fees pledged toward approved project cost;

iii. Any grants and/or loans procured by the Sponsor to the extent they are applied to Agency approved project costs and to the extent they are not repayable from project funds;

iv. Any additional cash contributions made by the Housing Sponsor subsequent to initial closing if such contributions were utilized for project costs approved by the Agency.

2. Increases in project value, as determined by an Agency approved appraisal, may also be recognized as part of this investment.

3. The Housing Sponsor shall be entitled to return on its investment except for funds procured through grants or loans at rates established in accordance with (b) or (c) below. It shall earn a return on any cash portion of its investment from the date it is actually contributed and on the non-cash portion of its investment from the date it is utilized towards approved project costs.

(b) For housing projects which receive a loan from the Agency under the New Jersey Urban Multi-family Production Program, the rate of return on investment may not exceed 12 percent.

(c) For Housing Projects which receive a loan from the Agency on or after January 17, 1984, the Agency shall fix, at the time of the making of the loan, the rate of return which may be earned or received by the Housing Sponsor on its investment on a cumulative but not compounded annual basis from the development, operation, sale, assignment or lease of the Housing Project according to the following schedule:

1. The Base Rate to be used in calculating the return on equity pursuant to 2 through 6 below, shall be equal to the rate being paid on 30-year treasury bonds at the time of the mortgage closing. This Base Rate will be determined by the Agency in its sole discretion using any reasonable source of information;

2. For units occupied by individuals or families who at the time of occupancy have a household income which is less than 50 percent of the median income for the area in which the project is located, the annual rate of return on investment may not exceed the then applicable base rate plus six percent;

3. For units occupied by families or individuals who at the time of occupancy had a total household income of less than 80 percent of the median income for the area, the annual rate of return on investment may not exceed the base rate plus four percent;

4. For all other units financed by the Agency, the annual rate of return on investment may not exceed the base rate plus two percent;

5. For developments which have a mix of units serving populations with an assortment of income ranges, the Agency shall determine the limit on the rate of return which may be earned by the Housing Sponsor by prorating the rate of return based upon the number of units devoted to the various income levels;

6. If the Agency determines that as a result of restrictions on development costs, rents or other factors, that the actual amount of return on equity which can be paid in any year will be significantly below that allowed by the Agency pursuant to 2 through 5 above, the Agency may set a return on equity limit which may be paid or earned on an annual, cumulative but not compounded basis, not to exceed the base rate plus 10 percent.

Amended by R.1989 d.259, effective May 15, 1989.

See: 21 N.J.R. 94(a), 21 N.J.R. 1331(b).

Redesignated old (b) as (c) with no change in text and added new (b) regarding loans made under the New Jersey Urban Multi-Family Production Program.

Case Notes

Tax abatement did not violate constitutional profits and dividends limitation. *Township of North Bergen v. City of Jersey City*, 232 N.J.Super. 219, 556 A.2d 1255 (A.D.1989), certification denied 117 N.J. 632, 569 A.2d 1334.

5:80-3.4 Conditions required for distribution

(a) The following conditions must be met before a return on equity will be authorized by the Agency:

1. A final mortgage closing must be held, unless a waiver is granted in accordance with (b) below;

2. The project must be current in all financial obligations including debt service, repair and replacement reserve, tax and insurance escrows;

3. All required reports and statements must be submitted by the Housing Sponsor;

4. Surplus cash must be available at the time of the request;

5. The Housing Sponsor must utilize forms as required by the Agency when requesting a return on equity;

(b) The requirement of a final mortgage closing prior to receiving a return on equity may be waived by the Executive Director of the Agency if it is determined that the closing is being delayed due to circumstances beyond the control of the Housing Sponsor, (for example, construction litigation). In addition to the need for such a determination, in order to have such requirement waived, the Housing Sponsor must complete the following to the satisfaction of the Executive Director of the Agency.

- 1. Submission of Development Cost Certification.
- 2. Submission of Bank Statements on the Construction Loan Account.
- 3. Execution of a Memorandum of Understanding setting forth agreement as to the final mortgage amount including any funds necessary for final construction payment and any additional development costs which are approved by the Agency; and agreement, if applicable, regarding a reduction in the original mortgage loan amount.

5:80-3.5 Waiver

If the Agency grants any waiver pursuant to N.J.A.C. 5:80-19 which by its nature affects a rate of return established by this subchapter, then the Agency in granting such waiver will establish a revised rate of return for any affected project.

SUBCHAPTER 4. (RESERVED)

SUBCHAPTER 5. TRANSFER OF OWNERSHIP INTERESTS

5:80-5.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

“Agency” is the New Jersey Housing and Mortgage Finance Agency.

“Cash proceeds” means that portion of the purchase price paid by the buyer to the seller in cash equivalent acceptable to the agency at closing or in successive years following the closing as determined by the agency.

“Closing” means the date on which title or other interest in the housing project is transferred from seller to buyer.

“Conversion” means transfers involving sale of the housing project owned by a nonprofit corporation to an ownership entity having profit motivated status such as a limited partnership.

“Portfolio Reserve Account” means that fund established pursuant to N.J.A.C. 5:80-5.9(b) intended primarily for financial support for any housing project financed by the agency.

“Purchase price” includes the cash proceeds plus secondary financing, if any, plus existing mortgage(s) assumed by the buyer.

“Secondary financing”, both secured and unsecured, as any portion of the purchase price which is not paid in cash proceeds or by assuming an existing indebtedness. Secondary financing will be permitted as set forth in N.J.A.C. 5:80-5.7.

“Seller” is the existing mortgagor and owner of the housing project having a loan from the New Jersey Housing and Mortgage Finance Agency.

Amended by R.1990 d.504, effective October 15, 1990.
See: 22 N.J.R. 1971(a), 22 N.J.R. 3220(a).

Definition for conversion amended; definitions for development costs, housing project, limited dividend corporation, net proceeds, resyndication and transaction cost deleted.

5:80-5.2 General policy

(a) To be effective, all proposed changes in ownership interests of an agency financed housing project must receive the prior review and written approval of the Agency’s executive director.

(b) The prior specific review and approval of the Agency members is required if a proposed change involves a general partner, or shareholder with more than a 10 percent interest, or where the change involves a transfer of control of the housing sponsor.

(c) Changes in ownership processed under these rules shall not result in a modification of the statutory, regulatory or contractual requirements governing the housing sponsor and housing project except as may be provided in cases of prepayment pursuant to N.J.A.C. 5:80-5.10.

(d) The Agency is under no obligation to approve the transfer or resale, unless the proposed buyer has the financial sufficiency, organizational capabilities, background and previous housing experience which will help ensure that the buyer will be capable of operating the project.

(e) The approval of the Public Housing and Development Authority must be obtained where necessary pursuant to N.J.S.A. 55:16-1 et seq.

Amended by R.1990 d.504, effective October 15, 1990.
See: 22 N.J.R. 1971(a), 22 N.J.R. 3220(a).

Text at (b) amended to include shareholder and transfer of control exception added to (d); provision on general partner’s withdrawal Federal subsidy contract deleted at (e) and (g).
Amended by R.1995 d.247, effective May 15, 1995.
See: 27 N.J.R. 265(a), 27 N.J.R. 1977(b).

5:80-5.3 Applicability

(a) The regulations in this subchapter are applicable in their entirety to all proposed changes or transfers of ownership interests except the following:

1. Changes or transfers which are fully encompassed by the separate regulations involving nonprofit conversions (N.J.A.C. 5:80-6). The conversion regulation shall be applicable to transfers involving conversions unless the Agency determines that such treatment would jeopardize the viability of the housing project, in which case the Agency, in its discretion, may apply these regulations to such conversion. In the event, however, of any conflict or inconsistency between the provisions of these regulations and N.J.A.C. 5:80-6 as it applies to such conversion, the provisions N.J.A.C. 5:80-6 shall control;

2. Changes or transfers which represent the first sale of partnership or shareholder interests in order to provide syndication proceeds on nonprofit conversions provided such sale occurs within nine months of the conversion closing;

3. Changes or transfers for projects which had profit motivated ownership status at initial mortgage closing and where such changes or transfers occur within three months of the Agency's recognition of completion of construction or rehabilitation of the project, for projects receiving both construction and permanent financing or within three months following the mortgage closing for projects receiving permanent financing only.

(b) Changes or transfers which fall within (a)2 and 3 above shall be governed by the general policy as set forth in N.J.A.C. 5:80-5.2 as well as the required documents submission set forth in N.J.A.C. 5:80-5.6(a) for a modified review. In addition, the fee set forth at N.J.A.C. 5:80-5.9(a)3 shall apply except that in no event shall the fee be less than \$1,000.

(c) The rules within this subchapter shall also be applicable to changes or transfers in ownership in cooperative or condominium projects financed by the Agency.

Amended by R.1985 d.241, effective May 20, 1985.
See: 17 N.J.R. 505(a), 17 N.J.R. 1258(b).

Old text deleted and new text substituted.

Amended by R.1990 d.504, effective October 15, 1990.
See: 22 N.J.R. 1971(a), 22 N.J.R. 3220(a).

Examples deleted from (a); exception at (a)3 clarified; lower limit of fee in (b) set at \$1,000; (c) added.

5:80-5.4 Procedure

(a) The seller must initially submit to the executive director of the Agency a written request for approval of any proposed change in ownership. The request must contain a detailed description of the terms of sale or other ownership changes and a statement of the reasons for the proposed sale. The seller must also identify in detail and in a written report, the present physical, financial, management and tenant needs of the housing project. The Agency will review this report for completeness and accuracy, may require additional information or revisions to the report and may conduct its own review of the housing project's condition and operation.

(b) All essential parties within the seller's organization documents must approve the transfer or sale. An affidavit and opinion of the seller's legal counsel must be submitted to the Agency as proof of the legality of the transfer pursuant to the seller's Partnership Agreement or any other document and all applicable laws and regulations. An opinion of the buyer's legal counsel may also be requested by the Agency.

(c) In selecting the prospective buyer, the seller may solicit as many proposals as it deems necessary. Bidding is not required. The seller may negotiate among prospective buyers to obtain the best financial package/offer. Full and complete disclosure as to the nature and amount of the transaction must be made in writing to the Agency.

(d) As a condition of approving the transfer, the Agency will require that the housing project be restored to sound physical condition in accordance with the report submitted by the seller and the independent review by the Agency. Deferred maintenance must be corrected at the time of transfer unless otherwise approved by the Agency. Necessary repairs and capital improvements must be completed within a time frame acceptable to the Agency. A schedule for performing the work and a letter of credit or bond in the amount needed to complete the work must be provided to the Agency at closing.

(e) Cash contributions must be sufficient to fund both immediate and anticipated reserve needs. The mortgage and all fees and charges due the Agency must be current at the time of closing. All housing project reserve accounts must be funded to an acceptable level, as determined by the Agency, within 12 months from the date of transfer in accordance with the Agency's repair and replacement funding schedule.

(f) Contributions toward the purchase price from any sources other than cash proceeds, must be identified.

(g) Upon assignment and assumption of the Agency's mortgage, modifications shall be made to the mortgage clearly specifying the Agency's right to enforce these regulations.

5:80-5.5 Scope of review

(a) The scope of the Agency's review of transfer depends on the nature of the interest to be transferred. A transfer of 90 percent or more of the ownership interest requires full review. Full review is also required in the following instances.

1. Transfer of title from the seller to any other party;
2. Any conveyance or attempted conveyance by land contract;
3. Transfer of 90 percent or more of the interest in the partnership/owner within a five year period;

"Minority" is a household of which one or more of whose members are either Black, Hispanic, American Indian or Oriental. A white person would be considered a minority if he were living in a predominantly black neighborhood.

5:80-7.2 General policy

(a) The process of screening applicants and selecting future residents is a crucial one. On one hand, a housing owner must keep units occupied to minimize vacancy loss and maintain cash flow. On the other hand, the owner must also take the time to screen applicants and to select only those applicants who will be responsible residents and meet HUD eligibility requirements.

(b) Careless selections can result in vandalism, high repair costs, costly evictions and increases in vacancies. To avoid such problems as much as possible, each owner should develop reasonable tenant selection procedures.

(c) The procedures should be designed to select applicants who will not only meet the tenant eligibility requirements for HUD's subsidy programs but will also be responsible tenants. The procedures should instruct project staff on at least:

1. How to screen tenants;
2. Fair Housing and Equal Opportunity laws;
3. Required preferences and economic mixes;
4. Limitations on admission of single persons and over-income applicants; and
5. How to select tenants from among eligible applicants.

5:80-7.3 Screening criteria

(a) The Agency supports the owner's desire to select responsible tenants.

(b) Owners are expected to exercise sound judgment in the tenant selection process. The fact that an applicant qualifies for program benefits does not mean that he or she is a suitable tenant.

(c) Owners may consider the following factors when screening applicants. These factors are not all inclusive and the absence of any of these factors is not sufficient reason to reject an applicant. Costs of credit checks and home visits may be charged as a project expense.

1. Demonstrated ability to pay rent and make timely payment.
2. Comments from prior landlords: Tenants with histories of damaging units are obviously high risks. The endorsement of at least two prior landlords is preferable over the judgment of a present landlord. A responsible tenant may receive a bad recommendation just as a bad tenant might receive a good recommendation from the

present landlord. The other landlord's interests are not always the same as the owner's interests.

3. Good credit references: Although the benefits of a credit check are debatable, credit checks may be useful when no rent-paying history is available. However, the lack of a credit history may not automatically disqualify an applicant.

4. Housekeeping habits: So-called "home visits" can be particularly valuable to make certain that the applicant maintains his or her housing unit in an acceptable manner.

5:80-7.4 Non-discrimination

(a) Owners must comply with all Federal, State or local fair housing and civil rights laws and regulations and with all equal opportunity requirements set forth in N.J.S.A. 55:14K-1 et seq., Agency regulations, and HUD's administrative procedures. Federal and State laws provide that owners may not discriminate based upon race, color, creed, religion, sex, national origin, age or handicap. Any complaints alleging violations of civil rights laws will be referred to the Agency or to HUD's Regional Offices of Fair Housing and Equal Opportunity for possible compliance actions.

(b) Owners must also comply with requirements imposed in Agency and HUD program statutes, regulations and administrative procedures. These administrative requirements prohibit restrictions on certain classes of persons. Examples of prohibited practices are shown in Exhibit A. This figure is not intended to be all inclusive.

(c) Owners are subject to all civil rights laws and Agency and HUD administrative requirements on non-discrimination. These civil rights laws and administrative requirements apply to the process of accepting applications and selecting tenants from among eligible applicants as well as to the process of assigning units. Under civil rights laws, an owner may not place minority tenants in one part of the project and non-minority tenants in another part.

(d) In partially assisted Section 8 projects (that is, those with less than 100 percent of the units under a Section 8 contract), HUD administratively requires that assisted tenants must be dispersed throughout the project. Note: In projects designed for both elderly and non-elderly families, owners may place elderly and non-elderly families in separate areas of the project.

5:80-7.5 Priorities and preferences

(a) Owners may give priority or preference for admission to otherwise eligible applicants in (b) and (c) below so long as such priorities and preferences are consistent with the fair housing laws and the owner's Affirmative Fair Housing Marketing Plan.

(b) Handicapped, disabled, displaced and substandard housing applicants shall be treated as follows:

1. For all units, owners must give preference to applicants who are either living in substandard housing or are displaced by government action or activity.

2. For all units designed specifically for the elderly, owners must give priority to elderly, handicapped and disabled applicants on an equal basis.

3. For all barrier free or partially barrier free units designed specifically for handicapped or disabled persons, owners must give first priority to handicapped or disabled persons who need the modified design to permit them to operate independently with comparative ease under normal circumstances. All other handicapped or disabled persons will be given second priority. The elderly will be given third priority.

(c) Residency preference shall be as follows:

1. While owners may not require local residency as a pre-requisite for admission, with Agency and HUD approval, owners may give priority to residents of the municipality (here defined as the smallest unit of government, that is, town, city, county) in which the project is located.

2. The Agency will approve the use of local residency preferences only if such preferences will not be inconsistent with equal opportunity requirements or frustrate achievement of the goals of the Affirmative Fair Housing Marketing Plan. For example, if the Agency determines that affirmative marketing goals and objectives cannot reasonably be achieved with a residency preference for all units, the Agency may deny a request for use of residency preferences or approve it for only a portion of the units. For example, where the affirmative marketing goal is five or 10 percent of the units in a project, the agency may approve a residency preference for only 95 or 90 percent of the units. Residency preferences may be used during initial rent-up and to fill vacancies occurring subsequent to the rent-up period.

i. When applying residency preferences, persons expected to reside in the municipality as a result of current or planned employment must be counted as residents. "Planned employment" means that an individual has a bona fide offer to work in the municipality.

ii. If there are applicants on the chronological waiting list, the owner may select a resident over a non-resident even if the non-resident is higher on the waiting list or exhibits greater need. However, if there are no eligible residents on the waiting list, an owner cannot hold a unit open until an eligible resident is found.

iii. If certain categories of applicants are targeted on the Affirmative Fair Housing Marketing Plan and if there are insufficient numbers of such applicants who are residents of the municipality, then the owner must solicit those applicants from outside the municipality.

5:80-7.6 Limitations on admission of over-income tenants

(a) When applicants who are income-eligible and otherwise qualified are available, the owner may not lease any unit to an applicant whose income exceeds the applicable income limit.

(b) The owner may lease such units to over-income applicants only after he or she has exerted good faith effort to attract income-eligible applicants and such applicants are not available.

(c) Under no circumstances may an owner lease more than 10 percent of the units to over-income applicants without the prior written approval of the Agency.

(d) At BMIR, rent supplement or 236 projects, an owner also must obtain the prior written approval of the HUD or the Contract Administrator.

(e) At Section 8 projects, an owner also must obtain prior written HUD approval, except in older projects where the Section 8 Contract allows up to 20 percent.

(f) Before admitting any over-income applicant in accordance with these regulations, the owner must certify in writing that:

1. He or she has made all assisted units committed under the contract available for occupancy by eligible families;

2. He or she had taken all reasonable steps to attract income-eligible applicants;

3. No income-eligible applicants were available when the over-income applicant was selected for admission.

(g) The owner must retain this certification in the over-income tenant's file.

(h) If an owner fails to comply with the provision of this section, the Agency may invoke any remedies available under N.J.S.A. 55:14K-1 et seq. or Agency regulations. In addition, the HAP contract and/or Section 8 regulations provide that HUD may reduce the number of units under the HAP contract, invoke other remedies available under the contract or consider such failure as grounds for suspension or debarment from HUD programs.

5:80-7.7 Non-immigrant student aliens

(a) The Housing and Community Development Act of 1980 prohibits HUD from making housing assistance available to non-immigrant student aliens.

(b) A non-immigrant student alien is a person who:

1. Has a foreign residence which he or she has no intention of abandoning;

2. Is a bona fide student qualified to pursue a full course of study; and

3. Was admitted to the United States temporarily and solely for the purpose of pursuing a full course of study at an established institution of learning or other recognized place of study in the United States, particularly designed by him or her and approved by the Attorney General after consultation with the Department of Education of the United States.

(c) Non-immigrant student alien also means the alien spouse and alien minor children of such student as long as the spouse's and children's right to be in the United States depends on the alien's right.

(d) If an applicant identifies himself or herself or his or her spouse as a student the owner must request proof of United States citizenship, and ask the applicant to sign a statement certifying that he or she is not a non-immigrant student alien. An example certification form may be found as Exhibit B.

5:80-7.8 Prohibited conditions for admission

(a) In screening applicants for admission, owners may not impose irrelevant admissions criteria that are used to screen out otherwise eligible applicants.

(b) Physical examination: Owners may not routinely require that all elderly applicants undergo physical examinations as a condition of admission. However, if the owner has reason to believe that the applicant's physical condition is such that his or her admission might have an adverse impact on the rights of other tenants to enjoy their units, or that he or she might not be able to care for the unit and carry out his or her obligations under the lease, the owner may require the applicant to furnish evidence of his or her ability to live independently (with or without attendant care).

(c) Donations or contributions: Owners of rental projects may not require a donation, contribution or membership fee as a condition of admission. Of course, owners of cooperative housing projects may charge membership fees.

**HOUSING AND MORTGAGE FINANCE AGENCY
EXHIBIT A
EXAMPLE OF PROHIBITED DISCRIMINATION
PRACTICES**

Class	Civil Rights Laws and Regulations	HUD Statutes, Regulations and Administrative Requirements
Religion, Race, Color, Creed, National Origin	No priorities or application criteria, (e.g. variations in charges or deposits) based upon race, creed, color, religion, or national origin	
Sex	No renting units to single persons of one sex and not the other	In elderly housing, no discrimination against females/males because disproportionate mixture of sexes
Age	No minimum or maximum ages unless necessary to normal operation (e.g. elderly project), or required by State or local law	No maximum age for elderly. In housing for disabled and handicapped minimum age is 18; no minimum may be set above age 18

Children	In family housing no discrimination against families with children
Class Membership	No discrimination against socio-economic classes (e.g. welfare recipients, single parent households, etc.)
Membership in Sponsoring Organization	No priority to members of sponsoring organizations. No discrimination against nonmembers
Handicapped	No discrimination solely because of handicap

Agency Statutes, Regulations and Administrative Requirements

No person shall be discriminated against because of race, religious principles, color, national origin or ancestry by the agency, any housing sponsor, any institutional lender, or any loan originator or agent or employee thereof in connection with any housing project or eligible loan. No persons shall be discriminated against because of age in admission to, or continuance of occupancy in any housing project receiving assistance under this act except for any housing project constructed under a governmental program restricting occupancy of at least 90 percent of the dwelling units to persons 62 years of age or older and any members of their immediate households or their occupant surviving spouses, or constructed as a retirement subdivision or retirement community as defined in the "Retirement Community Full Disclosure Act", P.L. 1968, c.215 (C.45:22A-1 et seq.). Any person who violates the provisions of this section is a disorderly person.

**EXHIBIT B
FORMAT OF ADDENDUM TO APPLICATION
FOR HOUSING ASSISTANCE**

By law, housing assistance cannot be provided to any nonimmigrant student-alien or the alien spouse and minor children of such alien (Section 1436a of Title 42, U.S.C.).

Definition of Nonimmigrant Student-Alien: (1) an alien having a residence in a foreign country which he or she has no intention of abandoning, who is a bona fide student qualified to pursue a full course of study and who is admitted to the United States temporarily and solely for the purpose of study at an established institution of learning or other recognized place of study in the United States, particularly designated by him or her and approved by the Attorney General after consultation with the Department of Education of the United States, which institution or place of study shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant student and if any such institution of learning or place of study fails to make reports promptly the approval shall be withdrawn, and (2) the alien spouse and minor children of any such alien if accompanying him or her or following to join him or her.

I certify that I have read the information above and that I am not a nonimmigrant student-alien, and that no others in my household are nonimmigrant student-alien.

Applicant Date

WARNING: Section 1001 of Title 18 U.S.C. provides: "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies . . . a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than five years, or both."

SUBCHAPTER 8. OCCUPANCY REQUIREMENTS REGARDING INCOME

5:80-8.1 General applicability

(a) The rules within this subchapter shall apply to all Agency financed housing projects except as provided in (b) below.

(b) For housing projects assisted by subsidies from the United States Department of Housing and Urban Development, or financed with the proceeds of tax exempt bonds pursuant to the Internal Revenue Code or financed by a loan which is insured or guaranteed by the United States or any agency thereof or financed or assisted, in whole or in part under any program of the United States (collectively "Federal Programs"), the rules, regulations and/or requirements under the Federal Programs for occupancy requirements regarding income shall be used in addition to or in place of, as appropriate, the rules within this subchapter. Reference to any statutes, State or Federal, shall include any amendments or reenactments which have been or may be made as to such statutes.

(c) For purposes of this subchapter, "Family" shall be defined as follows:

1. For projects receiving subsidies under Section 236 or Section 8 Programs, family shall be as defined under the applicable Section 236 or Section 8 rules, regulations or requirements.

2. For all other projects, two or more persons who live or expect to live together as a single household in the same dwelling unit or an individual at least 18 years of age who is not a full-time student.

R.1977 d.71, effective March 4, 1977.

See: 9 N.J.R. 62(c), 9 N.J.R. 164(c).

Amended by R.1983 d.470, effective November 7, 1983.

See: 15 N.J.R. 1212(a), 15 N.J.R. 1860(a).

Increased maximum gross aggregate family income from \$26,850 to \$45,000. Also added new (b).

Amended by R.1985 d.241, effective May 20, 1985.

See: 17 N.J.R. 505(a), 17 N.J.R. 1258(b).

Subsections (c) through (f) added.

New Rule, R.1986 d.258, effective July 7, 1986.

See: 17 N.J.R. 1620(a), 18 N.J.R. 1373(b).

Amended by R.1994 d.300, effective June 20, 1994.

See: 26 N.J.R. 8(a), 26 N.J.R. 2569(a).

5:80-8.2 Maximum gross aggregate family income

(a) Admission to housing projects shall be limited to families whose gross aggregate family income at the time of admission does not exceed six times the annual rental or carrying charges approved by the Agency except for families with three or more dependents whose incomes may be up to seven times the annual rental or carrying charges. Annual rental or carrying charges shall include the value or cost of heat, light, water, sewerage, parking facilities and cooking fuel which are provided to or incurred by the family in connection with its occupancy of a dwelling. In addition, carrying charges include rent normally associated with rental projects as well as other costs associated with cooperative apartments. There may also be included an amount equal to six percent of the original cash investment of the family in a mutual or cooperative housing project and the value or cost of repainting and replacing any fixtures or appliances.

(b) Notwithstanding (a) above, the Agency, in conjunction with any financing, may impose income limits at levels lower than those set forth above.

New Rule, R.1985 d.241, effective May 20, 1985.

See: 17 N.J.R. 505(a), 17 N.J.R. 1258(b).

Amended by R.1986 d.258, effective July 7, 1986.

See: 17 N.J.R. 1620(a), 18 N.J.R. 1454(b).

Recodified from section 1 and substantially amended.

Amended by R.1994 d.300, effective June 20, 1994.

See: 26 N.J.R. 8(a), 26 N.J.R. 2569(a).

5:80-8.3 Occupancy requirements for housing projects financed pursuant to Section 103(b)(4) of the Internal Revenue Code

For housing projects financed by the Agency with the proceeds of bonds where the interest is exempt from Federal taxation, and where the Project must contain a certain number of units to be occupied by individuals of low and moderate income pursuant to Section 103(b)(4) of the Internal Revenue Code, at all times during the qualified project period, as defined in Section 103(b)(12)(b), at least 23 percent of the units shall be occupied by individuals of low and moderate income as defined in Section 103(b)(12)(c), except in the case of target area projects where at least 18 percent of the units shall be occupied by individuals of low and moderate income. In allocating the units in a project which shall be occupied by individuals of low and moderate income, the Agency may require the distribution of low and moderate income units among the different sized units to reflect the same percentage distribution as the number of different sized units bears to the total number of units. A greater percentage of the low and moderate income units may, however, be allocated to the larger units. Additionally, low and moderate income units shall be distributed throughout the project such that the tenants of such units will have equal access to and enjoyment of all common facilities of the project. If there are changes in Federal law or in the internal revenue code or regulations with regard to the above-referenced matter, the Agency may adjust the above requirements accordingly.

New Rule, R.1985 d.241, effective May 20, 1985.

See: 17 N.J.R. 505(a), 17 N.J.R. 1258(b).

Amended by R.1986 d.258, effective July 7, 1986.

See: 17 N.J.R. 1620(a), 18 N.J.R. 1373(b).

Recodified from section 2 and substantially amended.

5:80-8.4 Special Multiple Family Unit within Housing Projects located in municipalities affected by casino gaming

(a) Special Multiple Family Units may be approved and designated by the Agency in accordance with this Section on application by the Housing Sponsor where the Agency determines the municipality wherein the project is located is experiencing housing shortages as a result of the authorization of casino gaming.

(b) A Special Multiple Family Unit is a dwelling unit specifically designed to accommodate two or more families as defined in N.J.A.C. 5:80-8.1(c), and which has been so certified by the Agency after adequately meeting the following minimum criteria:

1. The dwelling unit has separate sleeping areas, each with adequate privacy, for each family; and
2. The dwelling unit has separate full bathrooms, each with adequate privacy, for each family; and
3. The rental of the dwelling unit complies with all relevant State and local occupancy laws.

(c) For purposes of determining income eligibility for admission into a Special Multiple Family Unit, the gross aggregate family income of each family is to be considered separate and apart from the gross aggregate family income of the other family or families occupying the unit. The full rental and carrying charges of the unit are to be used in determining each family's eligibility for admission, notwithstanding each family's planned or actual percentage contribution toward those charges, provided there is a written consent in the lease holding each family jointly and severally liable for these charges.

(d) A single family is deemed to exist among two or more individuals if those individuals have a joint personal economic relationship, other than their mutual interest in renting the same dwelling unit. Joint ownership of personal assets, commingling of personal accounts, economic dependency among the individuals, and/or the joint filing of income tax returns shall be evidence of a joint personal economic relationship.

(e) The rental of units to families must be consistent with Federal housing and tax laws and/or regulations, where such laws or regulations apply to government-financed developments or Agency tax-exempt bond financing of such developments.

(f) The rental of Special Multiple Family Units, irrespective of the income levels of tenants therein, shall not be considered the rental of units to low and moderate income

families for purposes of meeting Federal and State requirements to provide a certain percentage of units for those of low and moderate income, pursuant to N.J.A.C. 5:80-8.3.

New Rule, R.1986 d.258, effective July 7, 1986.

See: 17 N.J.R. 1620(a), 18 N.J.R. 1373(b).

Amended by R.1994 d.300, effective June 20, 1994.

See: 26 N.J.R. 8(a), 26 N.J.R. 2569(a).

5:80-8.5 Recertification of income

The procedure for calculation and certification of gross aggregate family income in determining a family's eligibility for admission to a housing project as required under this subchapter shall be conducted as set forth in N.J.A.C. 5:80-20.

Amended by R.1986 d.258, effective July 7, 1986.

See: 17 N.J.R. 1620(a), 18 N.J.R. 1373(b).

Recodified from section 3 and substantially amended.

Amended by R.1994 d.300, effective June 20, 1994.

See: 26 N.J.R. 8(a), 26 N.J.R. 2569(a).

SUBCHAPTER 9. RENTS

5:80-9.1 Purpose

It is the express purpose of the following regulations to promote the statutory functions and obligations of the Agency by ensuring that the rents and/or carrying charges applied in housing projects are sufficient to pay normal operating, maintenance and utility costs; provide an adequate rate of return to individuals or corporations that provide capital to assist in the development of housing projects; provide debt service payments adequate to protect the financial interest of the Agency and its bondholders; provide reserves for repair and replacement; and ensure adequate, safe and sanitary housing for the low and moderate income families that the Agency was created to serve.

Amended by R.1991 d.334, effective July 1, 1991.

See: 22 N.J.R. 2389(b), 23 N.J.R. 2055(a).

Specification added.

Case Notes

Rent increase at housing project was adequate and not excessive. In the Matter of the Application for a Rental Increase at Jasontown II Apartments, 96 N.J.A.R.2d (HFA) 1.

5:80-9.2 Applicability

The rules within this subchapter shall apply to all housing projects. In the event the housing project is assisted, directly or indirectly, by the Department of Housing and Urban Development (HUD) or is financed by a loan from the Agency which is insured or guaranteed by the United States, or any agency thereof, the Agency may utilize the rent regulations, requirements or criteria for such project which is prescribed, utilized or required by HUD or such guarantor or insurer. In the event there are any inconsis-

tencies between these rules and the regulations, requirements or criteria of HUD or other United States agency insuring or guaranteeing the Agency loan, the latter shall prevail.

New Rule, R.1991 d.334, effective July 1, 1991.

See: 22 N.J.R. 2389(b), 23 N.J.R. 2055(a).

Old section 9.2, "Rent determination" was recodified to 9.3.

5:80-9.3 Rent determination

(a) At least once each year, each housing sponsor shall make a determination of the rents and/or carrying charges to be applied in the housing project. Hereinafter, the term "rent" shall be construed to include carrying charges and the term "housing sponsor" shall be construed to include a properly authorized representative of the housing sponsor. An annual rent determination shall be made regardless of whether or not a rent increase is being requested.

(b) The rent determination shall be in the form of a resolution or letter from the sponsor.

Amended by R.1991 d.334, effective July 1, 1991.

See: 22 N.J.R. 2389(b), 23 N.J.R. 2055(a).

Text on supporting documentation recodified to 9.4; text on rent determination recodified from 9.2; determination to occur once, at any time, during each year.

Case Notes

Proposal for rent increase procedures cited (11 N.J.R. 304); rent varying power under former N.J.A.C. 5:18-1.2; rent control ordinance cannot restrict rent increase approved by State agency for a State financed, supervised and regulated housing project. *Overlook Terrace Management Corp. v. Rent Control Board of West New York*, 71 N.J. 451, 366 A.2d 321 (1976).

5:80-9.4 Rent increase application

(a) Housing sponsors desiring to implement a rent increase shall submit a rent increase application to the Agency's Director of Management. The application shall consist of the rent determination and the following supporting documents:

1. Name of sponsor, location of housing project, number of apartments of each type;
2. Date of initial occupancy;
3. For Section 236 developments, a status report on the housing project's implementation of its current energy conservation plan;
4. A narrative statement of the reasons for the rent increase;
5. Most recent certified audit report prepared in accordance with Agency regulations;
6. Summary of income and expenses for the preceding 12 month period prepared on an accrual basis for non-federally subsidized housing projects. For all projects with Federal subsidy, monthly operating reports will be required for the preceding three months;

7. Annual budget on which the requested rent increase is based;

8. Copy of notice to tenants in accordance with 5:80-9.6;

(b) In housing projects where there is a valid Housing Assistance Payments contract, in accordance with which rents are or may be adjusted, the sponsor is not required to submit a rent increase application. Rents will be adjusted in accordance with the contract without resort to the rules within this subchapter, except that the sponsor shall still be obligated to make the rent determination as required by N.J.A.C. 5:80-9.3.

Amended by R.1991 d.334, effective July 1, 1991.

See: 22 N.J.R. 2389(b), 23 N.J.R. 2055(a).

Text on notice to tenants and cooperators recodified to 9.6; text on supporting documentation recodified from 9.3 and renamed rent increase application; text from old 9.8, on automatic annual adjustments added at (b).

5:80-9.5 Additional rent increases in given fiscal year

The submission of a rent increase application for any given fiscal year shall not preclude any sponsor from making additional or revised rent increase applications in the same fiscal year, provided that they are submitted in accordance with all the procedures set forth in this subchapter.

Repeal and New Rule, R.1991 d.334, effective July 1, 1991.

See: 22 N.J.R. 2389(b), 23 N.J.R. 2055(a).

5:80-9.6 Notice to tenants and cooperators

(a) Prior to or simultaneous with the submission of the rent increase application to the Agency, each housing sponsor shall provide, in writing, to each tenant and cooperator and conspicuously post at the housing project, a notice, in a form prescribed by the Agency, setting forth the following:

1. The rent determination;
2. A statement that the rent determination is subject to the review and approval of the Agency and, if applicable, subject to the review and approval of HUD;
3. Reasons for the increase;
4. A statement that tenants and cooperators will have 30 days to inspect the rent increase application submitted by the housing sponsor pursuant to N.J.A.C. 5:80-9.4(a); and
5. A statement that written comments on the proposed rents may be submitted to the housing sponsor, managing agent or the Agency's Director of Management, at their current address within 30 days of the rent increase application being available for review.

(b) Upon expiration of the comment period, the housing sponsor shall submit a certification to the Agency, in the form prescribed by the Agency, that it has complied with the requirements of N.J.A.C. 5:80-9.6(a).

(c) If the housing sponsor fails to substantially comply with the notice requirement of (a) above, the Agency shall withhold processing of the rent increase application until there is substantial compliance with such requirements.

Amended by R.1991 d.334, effective July 1, 1991.
See: 22 N.J.R. 2389(b), 23 N.J.R. 2055(a).

Text on rent schedules approvable by the Department of Housing and Urban Development repealed; text on notice to tenants and cooperators recodified from 9.4; submission attachments specified; (c) added.

5:80-9.7 Agency review

(a) The Agency will review the rent increase application to verify the need for the rent increase requested. If the application contains errors or omissions of a material nature, the Director of Management shall require the housing sponsor to submit the corrected or omitted material and provide tenants and cooperators with notice that they will have 15 days to inspect and comment upon the corrected or omitted material.

(b) Within 10 business days after receipt of the complete rent increase application and any comments thereto, the Agency shall:

1. For housing projects receiving subsidies under HUD, submit the rent increase application to HUD for approval pursuant to N.J.A.C. 5:80-9.8;
2. For all other projects, process the application in accordance with N.J.A.C. 5:80-9.9 and, if applicable, 5:80-9.10. The 10 business day requirement in (b) above shall not apply to rent increases subject to a hearing as provided by N.J.A.C. 5:80-9.10.

(c) Prior to submission of any rent increase application to HUD, the Agency may attach its comments and recommend a rent increase different from that requested by the housing sponsor. If the Agency reduces or eliminates that portion of the requested increase that would provide return on owner's equity, written notice of such reduction or elimination will be provided to the housing sponsor by the Executive Director of the Agency.

Amended by R.1991 d.334, effective July 1, 1991.
See: 22 N.J.R. 2389(b), 23 N.J.R. 2055(a).

Application procedure specified further; tenants given 15 days to inspect documents.

5:80-9.8 Rent increases approvable by the Department of Housing and Urban Development

(a) In all housing projects receiving subsidies under the Section 236 Interest Reduction Payments Program or Section 8 Housing Assistance Payments Program, rent increase applications shall be submitted to and are subject to approval by HUD, unless the rent increase is automatically authorized pursuant to N.J.A.C. 5:80-9.4(b).

(b) Upon verification of the completeness, accuracy and validity of the rent increase application pursuant to its review under N.J.A.C. 5:80-9.7, the Agency will forward the rent increase application to HUD for final action. The Agency will notify the housing sponsor of HUD's final decision.

Repeal and New Rule, R.1991 d.334, effective July 1, 1991.
See: 22 N.J.R. 2389(b), 23 N.J.R. 2055(a).

5:80-9.9 Increases approved by Agency

(a) If the rents are not subject to review and approval by HUD nor subject to automatic annual adjustments pursuant to a valid Housing Assistance Payments contract, then the Executive Director may make or approve a rent increase without a hearing as long as the resulting rents do not exceed the rents in effect for the same units in the housing project at any time in the previous 12 months by more than the combined percentage of paragraphs 1 and 2 below:

1. The percentage increase in the Consumer Price Index for rent and utilities for the most recently preceding 12 month period for which information has been published by the United States Department of Labor; plus
2. Either of:
 - i. The percentage, up to a maximum of 12 percent annually, needed to fund operating deficits, debt service arrears or reserves for repair and replacement incurred at the housing project during the preceding 12 months, provided that no part of the rent increase includes an amount allocated toward providing a return on equity to the sponsor; or
 - ii. The percentage, up to a maximum of six percent annually, needed to offset an inability to provide a return on equity and to offset operating deficits, debt service arrears or reserves for repair and replacement delinquencies incurred during the preceding 12 months, if all or a portion of the requested increase is intended to pay return on equity.

(b) For housing projects receiving subsidies under the New Jersey Urban Multi-Family Production Program (JUMPP), the Agency shall consider the amount by which the JUMPP subsidy decreases annually, as well as any operating deficits existing after distribution of the annual JUMPP subsidy, in determining the amount of rent increase needed pursuant to (a) above.

(c) The Agency shall provide the housing sponsor with a copy of its calculations done pursuant to (a) above.

Amended by R.1991 d.334, effective July 1, 1991.
See: 22 N.J.R. 2389(b), 23 N.J.R. 2055(a).

Stylistic changes.
Amended by R.1991 d.335, effective July 1, 1991.
See: 23 N.J.R. 646(a), 23 N.J.R. 2058(a).

Clarification of application of requirements to JUMPP added at (b).

Case Notes

Citation to former N.J.A.C. 5:80-1.9; defense of rent increase unconscionability not available to tenant in summary dispossession action; agency approval of rent increase can only be reviewed by Appellate Division. *Marine View Housing Co. No. 1 v. Benoit*, 188 N.J. Super. 539, 457 A.2d 1241 (Law Div.1982).

5:80-9.10 Increase subject to hearing

(a) In projects not subject to HUD approval nor subject to automatic annual adjustments, if the Executive Director of the Agency approves a rent increase which exceeds the amounts specified in N.J.A.C. 5:80-9.9(a), in order to cover any purpose including but not limited to operating deficits, debt service arrears, reserves for repair and replacement delinquencies incurred during the preceding 12 months, inability to pay return on equity, increases in permitted return on equity and accelerated amortization of any supplemental financing, then any person, association or corporation aggrieved by such determination may file for a hearing by submitting a written request to the Executive Director. Housing sponsors shall give written notice to all tenants and cooperators affected by such rent increase approved by the Executive Director and of their opportunity to request a hearing. Persons, associations or corporations aggrieved by the increase must file their request for a hearing within 21 days of said notice.

(b) Upon receipt of a request for a hearing or upon his or her own initiative, the Executive Director shall request that the Office of Administrative Law conduct same. All hearings shall be conducted according to the procedures established by the Office of Administrative Law pursuant to N.J.S.A. 52:14B-10. When the date of the hearing has been established, housing sponsors shall provide notices, in a manner approved by the Agency, of the date, time, place and nature of said hearing to all tenants, cooperators and other persons requesting notice of said hearing. The scope of the hearing shall be limited to consideration of the amount in excess of the increases approvable by the Executive Director under N.J.A.C. 5:80-9.9(a). Upon review of the record submitted by the administrative law judge, the Agency members shall adopt, reject or modify the recommended decision and issue a final written order.

(c) The request for a hearing, or the hearing itself, shall in no way affect or delay the authority of the Executive Director to approve increases up to the amounts specified pursuant to N.J.A.C. 5:80-9.9(a). If the Executive Director approves an amount equal to or less than the amount calculated in accordance with N.J.A.C. 5:80-9.9(a), then no hearing is required.

Amended by R.1991 d.334, effective July 1, 1991.
See: 22 N.J.R. 2389(b), 23 N.J.R. 2055(a).

Hearing circumstances specified further; tenant notice requirement added.

Case Notes

Defense of rent increase unconscionability not available to tenant in summary dispossess action; objection of unconscionable rent increase proper at hearing under former N.J.A.C. 5:80-1.10; agency approval of rent increase can only be reviewed in Appellate Division. *Marine View Housing Co. No. 1 v. Benoit*, 188 N.J.Super. 539, 457 A.2d 1241 (Law Div.1982).

5:80-9.11 Notice of final approval

(a) Upon final action by HUD or the Agency, the Agency will provide written notice to the housing sponsor of the finally approved rent increase. Such notice will set forth in writing the reasons for the Agency's decision with regard to the finally approved rent increase.

(b) The housing sponsor shall provide written notice of the finally determined rent increase and the reasons for the Agency's decision with regard thereto and, if applicable, the Agency's calculations pursuant to N.J.A.C. 5:80-9.9(a) to all tenants and cooperators, as well as all other interested parties. Written notice shall be provided to each tenant by mail or by hand delivery to the tenant/cooperator's apartment or by personal service and shall be posted in conspicuous places throughout the housing project. Other interested parties may receive a copy of the final notice if they provide a written request for same to the sponsor.

Amended by R.1991 d.334, effective July 1, 1991.
See: 22 N.J.R. 2389(b), 23 N.J.R. 2055(a).

Text on notice of hearing repealed; text on notice of final approval recodified from 9.12 and reference to 9.9 added.

5:80-9.12 Effective date of increase

The new rents shall be effective on the first day of the month following one calendar month's written notice to the tenants, cooperators and other interested parties which submitted a written request for the notice.

Amended by R.1989 d.591, effective December 4, 1989.
See: 21 N.J.R. 2160(a), 21 N.J.R. 3748(a).

Changed text from "following the mailing of ..." to "following written" notice.

Amended by R.1991 d.334, effective July 1, 1991.
See: 22 N.J.R. 2389(b), 23 N.J.R. 2055(a).

Text on notice of final approval recodified to 9.11; text on effective date of increase recodified from 9.13.

5:80-9.13 Rent increases for low and/or moderate income projects without Federal project-based rent subsidies

(a) Sponsors of housing projects without project-based Federal rent subsidies may elect to implement rent increases in accordance with the rules in this section rather than those in N.J.A.C. 5:80-9.1 through 9.12. The rules within this section may be used only after the owner demonstrates that at least 10 percent of the units are rented to low income families and the balance rented to moderate income families. HUD's definition of low and moderate income families shall be used for the purposes of the following:

1. Sponsors shall submit a written request to the Agency, accompanied by the most recent HUD median income figures and the maximum rents corresponding to the median income figures. The Agency will review and verify the information contained therein and, if accurate, approve the rent increase, up to a maximum of 10 percent for low income units and 20 percent for moderate income units. The Agency will provide written notice of the approval to the Sponsor.

2. Upon approval from the Agency, the Sponsor shall notify tenants in writing. Notice shall be by mail or hand delivery to each tenant's unit or by personal service. The notice shall include the calculation of how the increase was determined pursuant to HUD's increase in median income.

3. The new rents shall be effective on the first day of the month following one calendar month's written notice to the tenants.

(b) Sponsors of projects without project-based Federal rent subsidies, which do not meet the low and moderate income unit distribution set forth in (a) above, may elect to convert their project to that unit distribution and thereby be subject to (a)1 through 3 above.

1. Sponsors who elect to convert shall get credit toward the 10 percent low income, 90 percent moderate income unit distribution for any existing tenants meeting such standard. As vacancies occur, the units shall first be rented to fulfill the 10 percent low income requirement and then 90 percent to moderate income families.

2. In the event that any of the 90 percent moderate income units have current rents at less than the maximum moderate income rent, rent increases for the first five years following conversion shall be permitted up to 20 percent per year (without regard to HUD increases in median income) until HUD's maximum moderate income rent is reached. Thereafter, rents shall be implemented pursuant to (a)1 through 3 above.

(c) Low income units shall revert to moderate income units 15 years after the conversion. At such time, rent increases for the next five years shall be permitted up to 10 percent per year (without regard to HUD increases in median income) until HUD's maximum moderate income rent is reached. Thereafter, rents shall be implemented pursuant to (a)1 through 3 above.

(d) When calculating the maximum rent for low and moderate income units, sponsors shall use the following formula for determining family size:

1. For efficiency units, family size shall be based on a one person household.
2. For all other units, family size shall be based on one and one-half persons per number of bedrooms in the unit.

(e) Sponsors who wish to implement rent increases in excess of those permitted in (a) and (b) above may request such increase in writing. The excess rent increase amount shall be subject to the procedures at N.J.A.C. 5:80-9.4 through 9.12. The entire rent increase amount shall be considered for determining whether or not a hearing is required pursuant to N.J.A.C. 5:80-9.10. No increase may be approved which would increase rents in excess of those permitted by other applicable rent restrictions, for example,

low income tax credit restrictions, tax-exempt bond financing restrictions.

New Rule, R.1994 d.301, effective June 20, 1994.
See: 26 N.J.R. 1188(a), 26 N.J.R. 2570(a).

SUBCHAPTER 10. LOANS TO LENDERS FOR SINGLE FAMILY MORTGAGE LOANS

5:80-10.1 Authority

This subchapter is promulgated pursuant to the authority of N.J.S.A. 55:14K-11(b), whereby the Agency may make loans to institutional lenders in order to furnish funds to make eligible loans, provided such loans are authorized by Federal Taxation Laws.

5:80-10.2 Requests for loans

(a) The Agency shall provide a loan application to each mortgage lender located within any particular area of the State for which the Agency has determined that there is an inadequate supply of single family mortgage loans. Alternatively, the Agency may notify mortgage lenders of a proposed loan program and provide a loan application only to those mortgage lenders requesting the same. Such application shall be sent to mortgage lenders at least 14 days in advance of the date all such applications must be submitted to the Agency. The loan application shall be in the form prescribed by the Agency and shall contain, among other things:

1. Provision for the mortgage lender to state the maximum amount of loan requested;
2. The date by which the loan application must be submitted so as to be considered for an allocation of loan funds and the date upon which loans will be awarded by the Agency;
3. Provision for the mortgage lender to furnish information regarding the mortgage lender's deposit and mortgage activity during a time period prescribed by the Agency;
4. The terms and conditions of the loan including, among others, the maximum interest rate, the term, the percentage of the principal to be paid each year or the manner of determining principal payments, and the prepayment terms;
5. The terms and conditions of the reinvestment of the loan proceeds, including:
 - i. The type of single family mortgage loan;
 - ii. Maximum sales price or loan amounts;
 - iii. Minimum or maximum mortgage terms;

iv. Maximum income levels for owners or occupants;

v. Location;

vi. Loan to ratio value; and

vii. Number of units;

6. The schedule of any fees and charges of the Agency with respect to loans; and

7. An undertaking by the mortgage lender to take any loan granted by the Agency up to the amounts specified in the application and providing for liquidated damages or other remedies in the event that the mortgage lender does not take such loan.

5:80-10.3 Allocation of loans

In allocating funds available for loans, the Agency shall consider, among other things, the credit worthiness of the mortgage lender submitting loan applications, the adequacy of supply of single family mortgage loans in the areas in which the mortgage lender operates, and the mortgage and deposit activity reported in the loan application. Allocations of loan funds by the Agency shall be conclusive.

5:80-10.4 Award of loans

The amount of loan awarded to each mortgage lender shall be promptly confirmed by the Agency to such Mortgage Lender. Thereupon each such mortgage lender shall be obligated to take such loan in accordance with the terms thereof. The obligations of the Agency to make any loan or loans shall be, in each case, subject to the sale and issuance of bonds of the Agency within the period prescribed by the loan application in an amount sufficient to make the loans which shall be awarded.

5:80-10.5 Interest and other terms of loan

Loans shall bear interest at a rate which shall not exceed the maximum rate of interest specified in, or determined in accordance with the provisions of the loan application. Other terms of the loans shall comply with the loan application, the Act and the provisions of any contract with holders of outstanding bonds of the Agency. Each loan shall be evidenced by a note in the forms prescribed by the Agency.

5:80-10.6 Collateral for loans

(a) As security for the payment of the principal of an interest on each loan to a mortgage lender, collateral in an amount at least equal to the collateral requirement shall be assigned in trust to the Agency and maintained by such mortgage lender, all in accordance with an assignment of collateral and trust agreement in the form prescribed by the Agency which shall be entered into by the mortgage lender with the Agency at such time as the Agency shall require.

(b) The collateral for each loan to a mortgage lender may be held by such mortgage lender in accordance with and subject to the terms of the Act and said assignment of collateral and trust agreement.

(c) Each mortgage lender shall service or cause to be serviced and preserve the collateral securing its loan or loans from the Agency at its own expense in accordance with said assignment of collateral and trust agreement.

(d) The collateral shall be valued periodically by the Agency or a person or institution designated by the Agency in accordance with the provision of the assignment of collateral and trust agreement relating to such collateral.

5:80-10.7 Application of loan proceeds; restriction as to single family mortgage loans

(a) The terms of each loan shall require that the proceeds thereof paid to the mortgage lender be segregated from its other funds, and that such mortgage lender shall, within the time period specified in the loan agreement relating to such loan, make and disburse from such loan proceeds, single family mortgage loans to individuals only. The Agency may require that such new single family mortgage loans be restricted in certain areas of the State if the Agency determines that such areas are in particular need of loan funds.

(b) Each such single family mortgage loan shall comply with such terms and conditions as shall be prescribed by the Agency in connection with the loan application therefor.

(c) The aggregate principal amount of such single family mortgage loans made by a mortgage lender from such loan proceeds shall at least equal the amount of such loan proceeds. All such single family mortgage loans shall be made pursuant to written commitments issued subsequent to the date of the submission by the mortgage lender of its loan application. Such written commitments shall specify the maximum interest rate which will be borne by the single family mortgage loan and must state that such loan covered by the commitment is to be funded out of the proceeds of a loan from the Agency. Reports by mortgage lenders as to the application of loan proceeds shall be made at such time and in such manner as shall be provided by the terms of the loan.

(d) Such single family mortgage loans may be made by the mortgage lender either directly or through one or more agents. All loans made by a mortgage lender through an agent shall be made pursuant to a written agreement between such mortgage lender and such agent which agreement shall have been approved in writing by the Agency. The Agency may decline to approve any such agreement for any reason which it, in its sole discretion, deems sufficient. The Agency may require any such agreement to provide, among other things, the following:

6. Confirmation of income from assets (for example, bank statements).

(b) In addition to documentation required pursuant to (a) above, any family applying for admission to or occupying a unit within a housing project assisted by subsidies provided by HUD, such as Section 8 and 236, and/or financed pursuant to Section 103(b)(4) of the Internal Revenue Code, may be required to submit additional documentation as required by Federal regulations regarding certification and recertification of income.

5:80-20.4 Calculation of income

(a) For families applying for admission to or occupying a unit which is assisted by HUD subsidies such as Section 8 and 236 or families occupying a unit within a housing project financed pursuant to Section 103(b)(4) of the Internal Revenue Code, where such unit is restricted to families of low and moderate income as defined in Section 103(b)(12)(c), gross aggregate family income shall be calculated in accordance with applicable Federal regulations.

(b) For all other families, gross aggregate family income shall be calculated by the total annual income of all family members, from whatever source derived, including but not limited to pension, annuity, retirement and social security benefits. However, the calculation for gross aggregate family income shall not include such income as the Agency determines may be excluded. Such excludable income shall include but is not limited to the following:

1. Income from a dependent minor under 18 years of age, who is not the head of household or spouse of the head of household;
2. Lump-sum additions to family assets such as inheritances, capital gains, insurance payments included under health, accident, hazard or worker's compensation policies, and settlements for personal or property losses;
3. For income from dependents who are secondary wage earners but who are not included within (b)1 above, such wages up to a maximum of \$3,000.

(c) The calculation of gross aggregate family income with regard to (b) above, shall include an allowance of \$480.00 for each dependent minor under 18 years of age who is not the head of household or spouse of the head of household.

5:80-20.5 Recertification periods and procedures

(a) Family income shall be recertified on an annual basis for:

1. Families occupying a unit which is assisted by HUD subsidies, such as Section 8 and 236.
2. Families occupying a unit within a housing project financed under Section 103(b)(4) of the Internal Revenue Code where such unit is restricted to families of low and moderate income as defined in Section 103(B)(12)(c).

(b) Family income shall be recertified at least every three years but not more than once each year, for all other families not included within (a)1 or 2 above.

(c) Housing sponsors shall notify each family in writing, not more than 100 days and not less than 91 days prior to expiration of a family's lease, that they must recertify family income. Such notification shall include but is not necessarily limited to:

1. A statement that families must recertify within 30 days of the notice;
2. A list of the documentation required for recertification;
3. A statement that families who fail to recertify income are subject to provisions set forth in N.J.A.C. 5:80-20.6, such statement including a description of such provisions;
4. A statement that after recertification, families whose income is in excess of the Federal or Agency maximum income limit may be subject to provisions set forth in N.J.A.C. 5:80-20.7, such statement including a description of such provisions.

(d) After recertification, Housing Sponsors shall calculate a family's gross aggregate family income. If there will be an adjustment in HUD subsidy or imposition of a surcharge as provided by N.J.A.C. 5:80-20.7, sponsors shall provide families with notice at least 30 days prior to the expiration of the lease. If requested by families, Sponsors shall provide an explanation of how they calculated the family's income and arrived at the adjustment of subsidy or imposition of a surcharge. Housing sponsors must submit all family recertification calculations and supporting documents to the Agency at least 30 days prior to the expiration of a family's lease.

(e) The Agency shall review the recertification calculations and supporting documents and notify the Housing Sponsor of its approval or any adjustments to the calculations within 30 days of receipt. If the review results in an adjustment which will decrease or further decrease a family's HUD subsidy or impose or increase a surcharge, Housing Sponsors shall provide the family with an additional 30 days notice prior to implementing such adjustment.

(f) Failure of the housing sponsor to comply with the time requirements in (c) and (d) above shall not relieve families of their obligation to complete their recertification within 30 days of receiving notice to recertify.

(g) Housing sponsors shall provide a written acknowledgment indicating the documents submitted, if requested at the time of submission.

Case Notes

Regulations requiring housing project sponsor to follow specific procedure in notifying tenants about recertifying their income and possibility of eviction upon failing to do so did not apply only to

noncertifying tenants whose income made them ineligible to remain tenants. N.C. Housing Associates, No. 100 v. Hightower-Cooper, 281 N.J.Super. 317, 657 A.2d 478 (L.1995).

5:80-20.6 Failure to recertify

(a) Any family which fails to recertify income after notification pursuant to this subchapter shall be subject to the following:

1. For families occupying a unit which is assisted by HUD subsidies, such as Section 8 and 236, such subsidies shall be terminated as needed to comply with applicable Federal regulations.

2. For all other families, they shall be subject to imposition of surcharges pursuant to N.J.A.C. 5:80-20.8, and may also be subject to eviction pursuant to N.J.A.C. 5:80-20.9.

(b) Families subject to the provisions in (a) above, upon satisfactory completion of recertification, may have subsidies restored, provided said subsidies are available, or may, with Agency approval, have surcharges removed. Surcharges paid to the Agency for failure to recertify, as required by N.J.A.C. 5:80-20.8(d) may be returned, with Agency approval, if satisfactory completion of recertification is made within six months of the notice to recertify. Neither the Agency or the Sponsor is responsible for return of surcharges paid to the municipality.

5:80-20.7 Adjustments in tenancy

(a) For families occupying a unit assisted by HUD subsidies such as Section 8 and 236, upon recertification, families whose income is in excess of the maximum income limit under applicable federal regulations are subject to adjustment or termination of HUD subsidies as needed to comply with applicable Federal regulations.

(b) For all other families, upon recertification, those whose income is in excess of the maximum income limit under N.J.A.C. 5:80-8.2 may be subject to surcharges pursuant to N.J.A.C. 5:80-20.8, and may also be subject to eviction pursuant to N.J.A.C. 5:80-20.9.

(c) Upon recertification, Housing Sponsors must assure that the project contains the required number of low and moderate income families as required by N.J.A.C. 5:80-8.3.

5:80-20.8 Surcharges

(a) Upon recertification, if the gross aggregate family income exceeds the maximum income limit pursuant to N.J.A.C. 5:80-8.2 by 25 percent or less, the family shall continue to occupy the unit without the imposition of any surcharges. If the gross aggregate family income exceeds the maximum income limit by more than 25 percent, the family may continue to occupy the unit, subject to payment of a surcharge as outlined in (c) below. Such surcharges may only be imposed with approval of the Agency. When imposing surcharges, housing sponsors shall give families notice that they may be subject to eviction if their income continues to exceed the maximum income limit for six months from the expiration of the family's lease.

(b) Families subject to surcharges for failing to complete the recertification process (see N.J.A.C. 5:80-20.6) shall be surcharged at the maximum rate outlined in (c) below and may also be subject to eviction in accordance with N.J.A.C. 5:80-20.9. Sponsors shall provide families with notice at least 30 days prior to the expiration of the lease that a surcharge will be imposed for failure to recertify. Such surcharges or eviction actions require Agency approval.

(c) Surcharges imposed shall be based upon a family's unit rent in accordance with the following schedule:

Percentage that Gross Aggregate Income exceeds the Maximum Income Limit	Surcharge on Unit Rent
Up to and including 125%	None
In excess of 125% up to and including 130%	5%
In excess of 130% up to and including 135%	10%
In excess of 135% up to and including 140%	15%
In excess of 140% up to and including 145%	20%
In excess of 145% up to and including 150%	25%
In excess of 150%	30%

(d) Housing sponsors shall pay the surcharge to the municipality granting tax exemption to the project but only up to an amount that, together with payments made to the municipality in lieu of taxes and for any land taxes, equals 25 percent of the total rents or carrying charges of the project for the current and any prior years that the project has been in operation. For projects on which the Agency has made a loan, financed with the proceeds of bonds issued prior to January 1, 1973 any remainder of the surcharge or the total surcharge, if tax exemption has not been granted, shall be paid into the Agency's housing finance fund securing the bonds issued to finance the project. For projects financed on or after January 1, 1973, any remainder of the surcharge or the total surcharge, if tax exemption has not been granted, shall be paid to the Agency.

(e) Surcharges shall be imposed upon expiration of the lease provided families have received 30 days notice pursuant to N.J.A.C. 5:80-20.5. Families which have not received 30 days notice prior to lease expiration shall not have surcharges imposed until the 30 day notice has expired.

5:80-20.9 Eviction

(a) Families who fail to recertify income following notification pursuant to N.J.A.C. 5:80-20.5 may, with Agency approval, be evicted by the housing sponsor if such failure continues for at least six months from expiration of lease.

(b) Upon recertification, families whose gross aggregate family income exceeds the maximum income limit pursuant to N.J.A.C. 5:80-8.2 by more than 25 percent and continues to do so for at least six months after expiration of the lease may, with Agency approval, be evicted by the housing sponsor.

(c) Prior to eviction under this section, Housing Sponsors must provide families with written notice at the end of the six month period indicating that eviction procedures will begin unless they recertify within 10 days of the notice and show that family income has decreased below the maximum income limit. Families who fail to recertify within the 10 days or upon recertification are in excess of the maximum income limit may be evicted by following the provisions of N.J.S.A. 2A:18-61.1 et seq.

5:80-20.10 Confidentiality

Housing Sponsors shall maintain files on the certification and recertification of family income at the project. Such files are to be kept as confidential and shall not be accessible to nor shall information contained therein be disclosed to any person except authorized representatives of the Housing Sponsor, Agency, HUD. Housing Sponsors shall require identification from each person claiming authority to review such confidential files and maintain a list of individuals who have been provided access to same. If a Housing Sponsor is not satisfied that a person requesting review has proper authority, review shall be denied and the matter referred to the Agency for final determination. Any copies of family files sent to the Agency pursuant to the certification or recertification process shall be maintained in the same confidential manner. If requested by a family at the time of submission, submitted material shall be returned to a family, when it is no longer needed.

SUBCHAPTER 21. TRANSFER OF SERVICING OF SINGLE FAMILY MORTGAGE LOANS

5:80-21.1 General applicability

(a) The rules set forth within N.J.A.C. 5:80-21.1 through 21.4 shall apply to all servicers of Agency single family mortgage program loans upon:

1. Sale or transfer of a majority interest in the servicing company or entity;
2. Sale or transfer of a majority ownership interest of the holding company;
3. Sale or transfer of the portfolio of Agency loans to another service; or
4. Merger.

(b) The rules within this subchapter shall also apply to any change in the servicer's organizational structure, which in the Agency's determination, amounts to the type of transfer specified in (a) above. In determining whether a change in the servicer's organizational structure is a transfer subject to these rules, the Agency may consider:

1. Name change of servicer;

2. Change of location of servicer;
3. Staff changes by servicer;
4. Legal or other significant organizational changes in the servicer's structure; and
5. Compensation paid to the servicer.

(c) The rules within this subchapter shall not apply to loan originators who are not servicers or to newly originated loans that are being transferred from the originating lender to an approved servicer.

Amended by R.1997 d.523, effective December 15, 1997.
See: 28 N.J.R. 4833(a), 29 N.J.R. 5285(a).

Rewrote (a)1 through (a)3, inserted (a)4 and (b)5; and in (c), extended the exception to newly originated loans transferred to an approved servicer.

5:80-21.2 Agency review and approval of transfer

(a) No servicer may enter into any transfer as specified in N.J.A.C. 5:80-21.1 without obtaining prior written consent of the Agency. Approval of all transfers shall be made by the Executive Director of the Agency.

(b) In order for a transfer to be approved, the successor servicer must meet all of the following requirements:

1. Is a currently approved Agency seller/servicer and has a demonstrable ability to service an Agency portfolio, of the size to be transferred;
2. Have a net worth consistent with the standards set forth by the Federal National Mortgage Association (FNMA) and acceptable to bond insurers, where applicable;
3. Have a servicing portfolio of at least \$25 million dollars in total outstanding principal balances;
4. Be an approved servicer for the FNMA or Federal Home Loan Mortgage Corporation (FHLMC). If the servicer is not FNMA/FHLMC approved, the Agency reserves the right to make its own determination;
5. Have current certified financial statements and servicing and delinquency statistics that are satisfactory to the Agency;
6. Completion of the participation application to the satisfaction of the Agency;
7. Completion of the Agency's Questionnaire for Servicing Transfers to the satisfaction of the Agency. This form must also be completed by the transferring servicer;
8. Evidence of fidelity insurance, errors and omission insurance and other insurance required by the Agency;
9. If a successor servicer is an existing Agency servicer, there must be a record of acceptable servicing performance, as determined by the Agency; and

10. Be approved by any entity which has provided insurance for the specified bonds, if required by that entity.

(c) In addition to the requirements in (b) above, the successor servicer shall meet all requirements of the Agency's General Resolution and other documents issued in connection with the sale of bonds from which the financing for the serviced loans has been provided.

Amended by R.1997 d.523, effective December 15, 1997.
See: 28 N.J.R. 4833(a), 29 N.J.R. 5285(a).

Renamed the section; rewrote (b)1 and (b)2; in (b)3, deleted the requirement that the servicing portfolio contain at least 200 loans, and increased the minimum portfolio size to \$25 million dollars; and added (b)10 and (c).

5:80-21.3 Compensation adjustment due on transfer

(a) The compensation paid to the Agency shall be adjusted upon sale or transfer by a servicer of Agency loans. At the time of the transfer, the servicer shall pay to the Agency an amount equal to three times the service fee earned for the month during which the transfer occurs.

(b) Compensation adjustment shall not be paid on loans in foreclosure or loans in default over 60 days.

(c) The compensation adjustment set forth in (a) above shall not apply to:

1. Newly originated loans sold or transferred by sellers (originators) who are not Agency approved servicers;
2. Servicers of portfolios with 150 loans or less that are transferring their entire Agency portfolio;
3. Servicers who are subject to a servicer's agreement that provides for compensation adjustment of amounts less than those provided by these rules; and
4. Loan sale or organizational transactions for which no compensation is involved.

Amended by R.1997 d.523, effective December 15, 1997.
See: 28 N.J.R. 4833(a), 29 N.J.R. 5285(a).

Renamed the section; rewrote (a); in (b) substituted "Compensation adjustment" for "A transfer fee" and added (c).

5:80-21.4 Subsequent transfers

(a) The rules within this subchapter and all terms and conditions of the then current agreements between the Agency and the transferring servicer shall apply in their entirety to any subsequent transfers by servicers who became successor servicers under the provisions of these rules.

(b) Successors servicers shall assume and abide by all the terms, including compensation adjustments, of the applicable mortgage servicing agreements on the loans being serviced unless different terms are agreed to in writing by the successor servicer and the Agency. Portfolio records shall be delivered to the successor, including, but not limited to, current and past status, escrow balances, and prepayment and curtailment information. Transferor and transferee shall fully indemnify the Agency against losses or claims resulting from the transfer.

Amended by R.1997 d.523, effective December 15, 1997.

See: 28 N.J.R. 4833(a), 29 N.J.R. 5285(a).

In (a), inserted a reference to agreements between the Agency and the transferring servicer; and in (b), inserted the second sentence.

5:80-21.5 Termination of servicing by Agency

(a) The Agency may terminate the servicing agreement with a servicer with or without cause. If termination is without cause the Agency shall pay to the servicer 50 basis points of the outstanding principal loan balance of any loan that is less than 84 months old and that is not in default by 60 or more days. No compensation shall be paid for any loan that is older than seven years.

(b) If the Agency terminates the servicing agreement with cause, in accordance with the agreement, no compensation adjustment shall be paid unless the Agency permits the servicer to transfer servicing, in which case the rules set forth in N.J.A.C. 5:80-21.1 through 21.4 shall apply.

(c) In the event that the Agency terminates the servicing agreement, the servicer shall compensate and indemnify the Agency for losses to the Agency or for which the Agency becomes responsible, which are attributable to the servicer. In addition, the servicer shall not receive a compensation adjustment as may have otherwise been provided under (a) above, unless the servicer shall have first made the Agency whole. The servicer shall not be permitted to set off any compensation adjustment under (a) above against its obligations to the Agency.

New Rule, R.1997 d.523, effective December 15, 1997.
See: 28 N.J.R. 4833(a), 29 N.J.R. 5285(a).

SUBCHAPTER 22. AFFIRMATIVE FAIR HOUSING MARKETING

5:80-22.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Applicant" means one or more individuals, corporations, partnerships, associations, labor organizations, or public entities applying for financing or funding assistance from the New Jersey Housing and Mortgage Finance Agency.

"Disabled person" means a person who is unable, due to a physical or mental impairment, to engage in any gainful activity under a disability as defined in section 223 of the Social Security Act or a person who has a "developmental disability" which is mental in nature as defined by the Developmental Disabilities Amendments of 1970 (42 U.S.C. 60001).

“Displaced person” means a family or individual who has been displaced by government action or other formally recognized action pursuant to Federal disaster or otherwise has been involuntarily displaced.

“Eligible household” means a household whose eligibility requirements are determined in accordance with the program regulations under which the project is financed.

“Housing market area” means that geographic region from which it is likely that renters/purchasers would be drawn for a given multifamily rental housing project or single family sales unit. For projects financed under the Affordable Housing Program the housing market area may be considered a housing region as determined by the Council on Affordable Housing. In most instances the housing marketing area consists of the county in which the project or homes will be located.

“Initial rent-up” means that period beginning with the date on which the applicant is granted permission by the local government and the Agency to begin occupancy or rent-up and ending on the date sustaining occupancy (usually 95 percent) is attained.

“Low income housing” means housing affordable according to the Federal Department of Housing and Urban Development or other recognized standards for home ownership and/or rental. Certain housing programs require a portion of the units to be occupied or reserved for occupancy by households with a gross household income equal to 50 percent or less of the median gross household income for households of the same size within the applicable housing market area. Other housing programs require units to be affordable to the aforementioned population.

“Moderate income housing” means housing affordable according to the Federal Department of Housing and Urban Development or other recognized standards for home ownership and/or rental. Certain housing programs require that a portion of the units be occupied or reserved for occupancy by households with a gross household income equal to more

than 50 percent but less than 80 percent of the median gross household income for households of the same size within the applicable housing market area. Other housing programs require units to be affordable to the aforementioned population.

“Minority” means an individual who is a member of one of the following racial or ethnic groups:

1. Black: An individual having origins in any of the Black Racial groups of Africa but not of Hispanic origin;
2. American Indian or Alaskan Native: An individual having origins in any of the original people of North America, and who maintains cultural identification through tribal affiliation or community recognition;
3. Hispanic: An individual of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin regardless of race; or
4. Asian or Pacific Islander: An individual having origin in any of the original peoples of the Far East, Southeast Asia, and the Indian subcontinent, or the Pacific Islands. This area includes, for example, China, India, Japan, Korea, the Philippine Islands, and Samoa.

“Target group” means identifiable segments of the eligible population identified by the applicant as least likely to apply for occupancy. An applicant undertakes special outreach to attract members of these groups to the housing being offered. Examples include specific racial/ethnic groups.

5:80-22.2 Purpose of the Affirmative Fair Housing Marketing Plan

(a) The Affirmative Fair Housing Marketing Plan (the Plan) is a marketing strategy designed to attract buyers and/or renters of all majority and minority groups regardless of sex, to rental projects and sales dwellings, which are being marketed by an applicant. The Plan describes initial advertising and other marketing activities which inform potential buyers and renters of the existence of the units.

(b) More than one Plan may be required in housing developments where there is a combination of market and low and moderate income units or where there is a combination of sales and rental housing.

(c) The Plan remains in force throughout the life of a multifamily project. For single-family dwellings located in subdivisions of five or more units, the Plan remains in effect until all of the dwellings are sold.

(d) No application for Agency assistance may be funded without an approved Plan.

(e) Upon approval, the applicant is required to make good faith efforts to carry out the provisions of the Plan.

(f) In formulating the Plan the applicant shall do the following:

1. Refer to the demographic statistics for the applicable housing market area and identify the segments of the eligible population which are least likely to apply for housing without special outreach because of such factors as neighborhood customs, price, institutionalized discrimination in the housing market and other factors which have the effect of denying housing choice.

2. Design an outreach program which will have the best chance of producing a prospective occupant pool reflective of the racial/ethnic composition of the population of the housing market area and which includes special measures designed to attract those groups identified as least likely to apply and other efforts designed to attract persons from the total eligible population.

3. Establish as one indicator of marketing effectiveness the racial/ethnic composition of the low and moderate income population of the housing market area, and identify any other indicators to be used to measure the effectiveness of the marketing program.

4. Demonstrate capacity to provide training and information to sales and/or rental staff on fair housing laws and objectives.

5:80-22.3 Who submits a plan

(a) The following applicants are required to submit an Affirmative Fair Housing Marketing Plan:

1. Any applicant applying for funding under the Affordable Housing Program;

2. Any applicant applying for funding under the Continuing Care Retirement Community Program;

3. Any applicant applying for funding under the Repair Loan Program;

4. Any applicant applying for funding under the Agency's Policies and Procedures for Housing Projects; and

5. Any applicant applying for funding allocations for special projects consisting of 25 or more units.

(b) Projects receiving assistance from the Federal government are subject to the Affirmative Fair Housing Marketing Guidelines established and enforced by the U.S. Department of Housing and Urban Development. However, copies of the HUD approved Affirmative Fair Housing Marketing Plan must be on file with the Agency prior to the issuance of a "firm commitment."

5:80-22.4 Plan submission deadlines

(a) The Plan must be submitted as part of the application for Agency financing for those projects financed under the Agency's Policies and Procedures for Housing Projects, Repair Loan Program and Continuing Care Retirement Community Program.

(b) For assistance under the Affordable Housing Program, the applicant must submit an approval Plan prior to fund reservation. The Agency will, however, defer to those procedures which are different from those procedures stated herein for projects subject to a court ordered settlement and/or consent order.

5:80-22.5 Format of the Affirmative Fair Housing Marketing Plan

(a) The applicant shall provide the following information:

1. Name and address of both the applicant and the proposed project;

2. Number of units and the application number;

3. Price and/or rent of units and range of affordability by household size of prospective purchasers and/or renters;

4. Census tract or affordable housing region in which the project will be located;

5. The household types to be served by the project, for example, the elderly, non-elderly;

6. The approximate starting date for advertising to target groups and for initial occupancy; and

7. Name of managing/sales agent.

5:80-22.6 Direction of marketing activity

(a) The applicant is responsible for the development and the implementation of the Affirmative Fair Housing Marketing Plan. For projects financed under the Affordable Housing Program, the municipality may work with the applicant to help identify those persons who are least likely to apply. However, the applicant has ultimate responsibility for the units' marketing and sales/rental transactions. Employment of a sales or management agent does not relieve the applicant of these responsibilities and the applicant must assure that such agents will carry out affirmative marketing and non-discrimination requirements.

(b) The applicant shall identify the groups that are least likely to apply for housing. For these groups, special outreach is required to inform them of the upcoming housing opportunities.

(c) The applicant shall describe efforts to reach target groups that are not covered elsewhere in the Plan. Such groups may include female-headed households and the working poor.

(d) If the applicant believes that no single group will need special outreach, the applicant so indicates in the Plan and explains the reasons for such determination.

(e) In determining which groups may require special outreach, the applicant should consider, as appropriate, the following factors:

1. The possible existence of practices or policies of discrimination on the basis of race, color, creed, religion, sex, or national origin, which have historically affected the ability of members of particular groups to obtain the housing of their choice. These practices or policies can include exclusionary zoning practices which may have limited the construction of housing for lower income families; lending and/or appraisal practices and other practices which may have resulted in discrimination on the basis of race, color, creed, sex, or national origin. Information on these practices may be found in court decisions, compliance findings, newspaper articles or other sources which illustrate patterns relating to these practices.

2. Any known fact about the effects of the language barrier upon potential homeseekers and/or renters whose native language is not English. Examples of such homeseekers include Hispanic and Vietnamese.

3. The racial/ethnic composition of defined geographic areas and comparable projects of comparable size within the housing market. Information regarding these factors may be found in the Housing Assistance Plan (HAP), US Census Reports or Regional Housing Needs Reports approved by the Affordable Housing Council. Furthermore, the applicant should consider the income of the eligible population of the housing market area including, where applicable, those persons expected to reside in the community because of planned employment and current employment.

4. Income eligibility requirements affect the selection of tenants/purchasers from the segments of the eligible population that might be targeted for special outreach and effect the marketing technique to be used in attracting such persons to the housing.

5. The racial/ethnic composition of the group of persons who are not residents, but who may reasonably be expected to reside in the community in the future because of present or planned employment.

5:80-22.7 Marketing program

(a) The marketing program shall include the following:

1. The applicant shall describe the marketing program and outline the methods to be used in reaching all segments of the eligible population; and

2. The marketing program must include special outreach steps which will be taken to attract the groups identified in the Plan as persons least likely to apply for housing.

(b) The applicant shall indicate the commercial media to be used, if any, to advertise the availability of housing. The use of commercial media is not required; however, the applicant should publicize the availability of housing through the type of media customarily used by the applicant, including minority publications or other minority outlets which are available in the housing market area.

(c) If the applicant does not intend to use any commercial media, the Plan should explicitly indicate that no commercial media will be used and the reasons for this decision should be attached to the Plan.

(d) The applicant shall indicate the type of media to be used, including:

1. Newspapers for general circulation;
2. Radio stations;
3. Television stations; or
4. Other types of media, including publications of limited circulation such as neighborhood-oriented weekly newspapers, religious publications, and the publications of local real estate industry groups.

(e) For each of the media selected, the applicant shall indicate:

1. The name of the media;
2. The type (for example, classified, display) and size of the newspaper advertisement and the initial date of its appearance. If copies of such advertising are available, the applicant should submit them to the Agency. If no copies are available at the time the Plan is being prepared, the applicant shall submit them as soon as possible after the Plan has been approved;
3. The frequency and length of any radio and/or telephone advertising; and
4. The identity of the racial/ethnic group within the audience or readership of the commercial media to be used.

(f) Applicants are encouraged to use minority-owned and/or operated media as part of their overall marketing program to publicize the housing to both majority and minority persons. Where Blacks, Hispanics, and other racial/ethnic minority groups have been identified as special outreach groups, minority-owned media may be a particularly effective outreach mechanism. Even when such groups are not being specifically targeted for special outreach efforts, the use of minority owned media is recommended as part of the outreach to the general population. In such cases, the applicant may consider factors such as data on the racial/ethnic composition of the majority-owned medias' readership or audience and applicant's past experience in utilizing such media.