

6. A suspension invoked by another agency for any of the causes described in N.J.A.C. 5:80-18.2(a)1-13 may be the basis for the imposition of a concurrent suspension by the Agency, which suspension may be imposed when found to be in the best interest of the State.

**5:80-18.7 Procedures; period of suspension; scope of suspension affecting the suspension of a person(s)**

(a) The following provisions regarding procedures, period of suspension and scope of suspension shall be adhered to by the Agency.

1. Upon approval of the Attorney General, the Agency, may suspend a person or his affiliates, provided that within 10 days after the effective date of the suspension, the Agency, provides such party with a written notice:

- i. Stating that a suspension has been imposed and its effective date;
- ii. Setting forth the reasons for the suspension to the extent that the Attorney General determines that such reasons may be properly disclosed;
- iii. Stating that the suspension is for a temporary period pending the completion of an investigation and such legal proceedings as may ensue; and
- iv. Indicating that, if such legal proceedings are not commenced or the suspension removed within 60 days of the date of such notice, the party will be given either a statement of the reasons for the suspension and an opportunity for a hearing if he so requests, or a statement declining to give such reasons and setting forth the Agency's position regarding the continuation of the suspension. Where a suspension by another agency has been the basis for suspension by the Agency, the latter shall note that fact as a reason for its suspension.

2. A suspension shall not continue beyond 18 months from its effective date unless civil or criminal action regarding the alleged violation shall have been initiated within that period, or unless debarment action has been commenced. Whenever prosecution or debarment action has been initiated, the suspension may continue until the legal proceedings are completed.

3. A suspension may include all known affiliates of a person, provided that each decision to include an affiliate is made on a case by case basis after giving due regard to all relevant facts and circumstances.

4. The offense, failure or inadequacy of performance of an individual may be imputed to a person with whom he is affiliated, where such conduct was accomplished within the course of his official duty or was effectuated by him with the knowledge or approval of such person.

Amended by R.1985 d.559, effective November 4, 1985.  
See: 17 N.J.R. 1174(b), 17 N.J.R. 2607(a).  
(a)3 substantially amended; (a)4 added.

**5:80-18.8 Prohibited activities of persons; reporting requirement**

(a) In order to ensure that all persons meet a standard of responsibility which assures the Agency, the State and its citizens that such persons will both compete and perform honestly in their dealings with the Agency and avoid conflicts of interest, all persons are prohibited from engaging in the following activities:

1. No person shall pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any Agency member or employee or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13i, of any such member or employee, or to any partnership, firm, or corporation with which such member, employee or member of their immediate family is employed or associated, or in which such member or employee has an interest within the meaning of N.J.S.A. 52:13D-13g.

2. No person shall, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such person to, any Agency member or employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to the Agency. No person shall, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such person to any individual, firm or entity with which such member or employee is employed or associated or has an interest within the meaning of N.J.S.A. 52:13D-13g. Any relationships subject to this provision shall be reported in writing forthwith to the Executive Commission on Ethical Standards, which may grant a waiver of this restriction upon application of the member or employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest.

3. No person shall influence, or attempt to influence or cause to be influenced, any Agency member or employee in his official capacity in any manner which might tend to impair the objectivity or independence of judgment of said member or employee.

4. No person shall cause or influence, or attempt to cause or influence, any Agency member or employee to use, or attempt to use, his official position to secure unwarranted privileges or advantages for the person or any other individual or entity.

(b) All persons shall report to the Attorney General of New Jersey and the Executive Commission on Ethical Standards the solicitation of such persons of any fee, commission, compensation, gift, gratuity or other thing of value by an Agency member or employee.

(c) The prohibited activities in (a)1 through 4 above shall not be construed to prohibit a person from offering or giving gifts to or contracting with an Agency member or employee, nor be construed to prohibit an Agency member or employee from receiving gifts from or contracting with a person, and shall not be grounds for debarment pursuant to N.J.A.C. 5:80-18.2(a)15, provided that such activities are offered or made under the same terms and conditions that are available to members of the general public and are consistent with any rules promulgated by the Executive Commission on Ethical Standards.

(d) The Agency shall include the prohibited activities and reporting requirements in (a) and (b) above in requests for proposals by the Agency and in all contracts with every person.

New Rule, R.1990 d.247, effective May 21, 1990.

See: 21 N.J.R. 3350(a), 22 N.J.R. 1556(b).

Amended by R.2000 d.132, effective March 20, 2000.

See: 32 N.J.R. 191(a), 32 N.J.R. 1065(a).

In (a)2, substituted "shall" for "may" following "person" throughout.

#### Case Notes

Cited as former codification N.J.A.C. 5:80-4.8. New Jersey Housing Finance Agency v. Canino, 7 N.J.A.R. 182 (1983).

#### 5:80-18.9 Extent of debarment and suspension

The exclusion from Agency contracting by virtue of debarment or suspension shall extend to all contracting and subcontracting within the control or jurisdiction of the Agency including any contracts which utilize Agency funds. When it is determined by the members of the Agency, upon their own action or upon recommendation by the Executive Director of the Agency, to be essential to the public interest, and upon filing of a finding thereof with the Attorney General and, in the case of suspension, upon approval of the Attorney General, an exemption from total exclusion may be made with respect to a particular Agency contract.

Amended by R.2000 d.132, effective March 20, 2000.

See: 32 N.J.R. 191(a), 32 N.J.R. 1065(a).

#### 5:80-18.10 Prior notice by the Agency

Insofar as practicable, prior notice of any proposed debarment or suspension shall be given by the Agency to the Attorney General and Treasurer.

#### 5:80-18.11 List of debarred and suspended

The Agency shall supply to the State Treasurer a monthly list of all persons having been debarred or suspended in accordance with the procedures prescribed herein, including the effective date and term, if any, of such debarment or suspension. Such list shall at all times be available for public inspection.

#### 5:80-18.12 Discretion

Nothing contained herein shall be construed to limit the authority of the Agency to contract or to refrain from contracting within the discretion allowed by law.

#### 5:80-18.13 Lists of other agencies

Notwithstanding the failure of the Agency to debar or suspend any person or contractor pursuant to these regulations, whenever the Agency participates in any program financed, issued or guaranteed by any department, agency or instrumentality of the United States Government, it may rely on and distribute lists of persons suspended or debarred by such agency, department or instrumentality and prevent the listed person from participating in that program.

New Rule, R.1985 d.559, effective November 4, 1985.

See: 17 N.J.R. 1174(b), 17 N.J.R. 2607(a).

### SUBCHAPTER 19. WAIVERS

#### 5:80-19.1 Waivers

Any party desiring a waiver or release from the express provisions of any of the regulations in this chapter may submit a written request to the Agency to the attention of the Executive Director. Waivers may be granted only by the Agency Board when such waiver would not contravene the provisions of N.J.S.A. 55:14K-1 et seq. and upon a finding that, in granting the waiver, the Board will be promoting the statutory purposes of the Agency.

### SUBCHAPTER 20. CERTIFICATION AND RECERTIFICATION OF INCOME

#### 5:80-20.1 Authority

This subchapter is promulgated pursuant to the authority of N.J.S.A. 55:14K-8b.

#### 5:80-20.2 General applicability

(a) Regulations within this subchapter shall apply to all housing projects financed by a loan from the Agency.

(b) In addition to (a) above, if a unit within a housing project is assisted by subsidies provided by the United States Department of Housing and Urban Development, (HUD) such as Section 8 (Housing Assistance Payments) and Section 236 (Interest Reduction Payments) of the National Housing Act of 1937, or is financed pursuant to Section 103(b)(4) of the Internal Revenue Code, or is financed by a loan from the Agency which is insured or guaranteed by the United States or any agency thereof, then any additional Federal regulations, if applicable, regarding certification and recertification of income shall also apply to the unit. In such cases, the Housing Sponsor shall notify families that they are residing in housing projects which are subject to such Federal regulation. In the event there are any inconsistencies between the regulations in this subchapter and said Federal regulations, the Federal regulations shall prevail.

(c) References to any statutes, State or Federal, within this subchapter include any amendments which have been or may be made to such statutes.

### 5:80-20.3 Documentation

(a) Each family applying for admission to or occupying a unit within a housing project shall provide information and documentation which verifies, to the satisfaction of the agency, gross aggregate family income. The documentation which the Agency shall require families to submit to housing sponsors may include, but is not necessarily limited to:

1. A copy of the first page of their most recent Federal income tax return, or a signed certification stating that no tax return was filed;
2. Permission for the Agency and Housing Sponsor to contact the Internal Revenue Service for additional information which is necessary to verify gross aggregate family income and/or copies of the first page of a family's income tax returns;
3. Verification of employment;
4. Check stubs from employers, pensions, annuities, social security, unemployment, public assistance and workers' compensation;
5. A copy of any court order for alimony and/or child support;
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.

Amended by R.2000 d.132, effective March 20, 2000.  
See: 32 N.J.R. 191(a), 32 N.J.R. 1065(a).

### 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 fami-

ly 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.

Amended by R.2000 d.132, effective March 20, 2000.  
See: 32 N.J.R. 191(a), 32 N.J.R. 1065(a).

### 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, housing sponsors shall provide families with notice at least 30 days prior to the expiration of the lease. If requested by families, housing 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.

Amended by R.2000 d.132, effective March 20, 2000.  
See: 32 N.J.R. 191(a), 32 N.J.R. 1065(a).

#### 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 nor the housing sponsor is responsible for the return of surcharges paid to the municipality.

Amended by R.2000 d.132, effective March 20, 2000.  
See: 32 N.J.R. 191(a), 32 N.J.R. 1065 (a).

#### 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: