

**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 opportuni-

ties 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:

5. Preparation and review of contracts and purchase orders concerning the housing project;

6. Advising the sponsor and managing agent with regard to tenant and lease matters, but not including summary dispossession actions; and

7. Such other services as the sponsor may direct to be performed in connection with and respecting the operations of the project.

(b) Sponsors may engage the services of an attorney to perform tenancy related court actions including the enforcement of leases, collection of rent and dispossession of tenants. For cooperative or condominium projects, sponsors may engage the services of an attorney to perform court actions related to the collection of association dues or carrying charges and the enforcement of subscription agreements, stock certificates or other forms of agreements related to the cooperative or condominium project.

(c) Sponsors may engage the services of an attorney to perform services outside the scope of services in (a) and (b) above, as the need arises for the project. Such services include, but are not limited to, litigation, mortgage loan close-outs, conversion closings and issues requiring special expertise.

5:80-31.3 Maximum fees

(a) The maximum fees which can be paid from project funds for Agency approved attorney services are as follows:

1. General legal matters ... up to \$125.00/hour.
2. Tenancy actions, as follows:
 - i. For each of the first two cases (requiring court appearance) on the same day ... up to \$100.00;
 - ii. For each additional case presented on the same day ... up to \$75.00;
 - iii. For each case prepared for trial but resolved prior to actual court appearance ... up to \$50.00;
3. General litigation, as follows:
 - i. Non-trial hours ... up to \$175.00/hour;
 - ii. Trial hours ... up to \$200.00/hour.

(b) For conversion closing, mortgage close-outs, special expertise and all other matters not covered by (a) above, housing sponsors shall submit a fee structure to the Agency for approval.

(c) Paralegal and secretarial services in connection with (a) and (b) above shall be included within the fees outlined above. No additional fees will be paid for paralegal or secretarial services.

(d) Additional compensation may be paid for reasonable out-of-pocket expenses, approved by the Agency, including

copying, travel, postage, filing fees, transcripts, and expert witnesses, etc.

(e) The above fees may not exceed fees charged to other clients for comparable work.

5:80-31.4 Agency approval

(a) Housing sponsors desiring to engage the services of an attorney pursuant to the rules within this subchapter shall obtain the written approval of the Agency. Sponsors shall submit a proposal outlining the scope of services to be performed by the attorney.

(b) The Agency shall approve the engagement of attorney services provided the services and fees to be charged fall within those permitted by N.J.A.C. 5:80-31.2(a) or (b) and 31.3, respectively. For services outlined in N.J.A.C. 5:80-31.2(c), the Agency shall approve the engagement of an attorney provided the services are necessary or beneficial to the project, as determined by the Agency, and there are sufficient project funds to pay for such services. The Agency does not guarantee the availability of funds.

(c) All sponsors shall enter into a written attorney engagement agreement using forms approved by the Agency.

SUBCHAPTER 32. HOUSING INVESTMENT SALES

5:80-32.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings:

“Available cash” means all the cash available to an eligible LD sponsor upon the closing of a housing investment sale (after payment of all transaction costs), including, but not limited to:

1. The cash portion of the purchase price paid by the buyer; and
2. Any accumulated residual receipts, as defined in N.J.A.C. 5:80-30.1, that are not subject to recapture by the United States Department of Housing and Urban Development.

“Eligible LD sponsor” means a for-profit corporation or partnership organized under, and remaining subject to, the Limited Dividend Law, L. 1949, c.184, § 1 et seq., as amended (N.J.S.A. 55:16-1 et seq.), that owns and operates an Agency-financed, multifamily, rental housing project that, in each of the three fiscal years preceding the housing investment sale, has:

1. Produced a positive cash flow from operations; and

2. Been current in all debt service and escrow payments required by the Agency.

“Housing investment sale” means a transaction that promotes the provision or maintenance of low and moderate income housing, as defined pursuant to the Fair Housing Act, through the sale by an eligible LD sponsor of an Agency-financed, multifamily, rental housing project to a qualified housing sponsor upon the following terms:

1. The buyer executes a deed restriction (and such other instruments reasonably required by the Agency) to ensure that the project will remain subject to Agency restrictions regarding tenant income eligibility, tenant selection, project reserves, return on equity and rent increases for 35 years after the expiration of the term of the project mortgage at the closing of the housing investment sale. The foregoing documents shall also provide for the payment of a servicing fee to the Agency for monitoring the restrictions that apply to the project. Such fee shall not be less than the servicing fee being paid by the eligible LD sponsor seller at the time of the housing investment sale; and

2. The eligible LD sponsor invests an amount equal to 50 percent of the maximum additional return in the MAR Revolving Account.

“MAR Revolving Account” means an account established under the Agency’s administrative fund. Moneys on deposit in the account may be used, at the Agency’s sole discretion, to provide loans or grants that will promote the provision or maintenance of low and moderate income housing as defined pursuant to the Fair Housing Act.

“Maximum additional return” means the additional return payable to the owners of an eligible LD sponsor under the Limited Dividend Law but not under the Housing and Mortgage Finance Agency (HMFA) Law, N.J.S.A. 55:14K-1 et seq., consisting of:

1. Cash invested by the owners in the eligible LD sponsor that has not previously been recognized by the Agency as investment in a housing project;

2. A cumulative annual return of eight percent on the investment described in 1 above;

3. If project revenues representing the return described in 2 above have been invested in the project’s residual receipts account or otherwise, any income earned on said annual return;

4. Moneys realized through reduction or amortization of the principal owing on the eligible LD sponsor’s mortgage loan from the Agency; and

5. Moneys representing an increase in the market value of the eligible LD sponsor’s realty and tangible personalty during the period such assets were owned by the eligible LD sponsor, such increase to be determined by subtracting from the purchase price for those assets:

i. The eligible LD sponsor’s investment in the project as determined by the Agency under the HMFA Law; and

ii. The original principal amount of the eligible LD sponsor’s mortgage indebtedness to the Agency.

“Purchase price” means, in a housing investment sale, and must be comprised of cash and assumption of indebtedness equal, in the aggregate, to the fair market value of the realty and tangible personalty transferred to the buyer in the sale.

5:80-32.2 Realization of maximum additional return

Upon the approval of its members in the exercise of their authority under the Fair Housing Act, N.J.S.A. 52:27D-321f, the Agency shall waive any or all of the investment-return restrictions imposed under the HMFA Law, N.J.S.A. 55:14K-1 et seq., in order to permit an eligible LD sponsor to realize, from available cash upon the closing of a housing investment sale, a maximum additional return, as well as any return otherwise allowable under the HMFA Law. Sponsors who agree to comply with the requirements of this subchapter will meet the waiver criteria.

5:80-32.3 Application procedure

(a) The eligible LD sponsor proposing to sell its project in a housing investment sale must submit to the Executive Director of the Agency a written request for approval of the sale, containing a detailed description of the terms of the sale. The request must also include a detailed project report presenting the current physical, financial, management and tenant needs of the housing project. The Agency will review this report for completeness and accuracy, may require additional information and may conduct its own review of the housing project’s condition and operation. Full and complete disclosure of all material facts relating to the proposed sale must be made to the Agency in the request for approval, and the seller and all other parties to the transaction shall be under a continuing obligation to disclose such material facts through the closing of the sale.

(b) In selecting the prospective buyer for the project, 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 offer.

(c) The housing investment sale shall include an assignment from the seller and an assumption by the buyer of all existing project indebtedness. If the sale includes any supplemental financing, the amount of such financing shall not exceed the debt that the project can reasonably sustain from project income through the remainder of the Housing Assistance Payments (HAP) contract or, if no HAP contract exists, through the remainder of the original mortgage term, without jeopardizing the viability of the project as a low-income project for the remainder of the original mortgage term. The Agency's approval of a sale requiring supplemental financing shall be subject to the receipt of an opinion by nationally recognized bond counsel, in form and substance satisfactory to the Agency and the Attorney General, that such financing does not adversely affect the Federal and State tax treatment of any outstanding bonds, notes or other obligations of the Agency. The cost of such opinion shall be borne by the seller.

(d) As a condition of approving the sale, the Agency will require that the housing project be restored to sound physical condition in accordance with the report submitted by the seller under (a) above and the independent review by the Agency. Deferred maintenance must be completed no later than the closing of the sale, unless otherwise agreed by the Agency. Necessary repairs and capital improvements must be completed within a time frame acceptable to the Agency.

(e) As a condition of approving the sale, the Agency will also require payment of debt service arrearage, current unpaid invoices, total operating expenses covering three months (for senior citizen projects) and six months (for family projects), full funding of all reserves and any other obligations of the project.

(f) 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.

5:80-32.4 Required documents

(a) To assist the Agency in its review of an eligible LD sponsor's request for approval of a housing investment sale, as described in N.J.A.C. 5:80-32.3(a), the seller shall supply the Agency with the following documents, in form and substance satisfactory to the Executive Director:

1. Administrative questionnaires for the buyer;
2. Copies of the buyer's organizational documents;
3. Any Previous Participation Certificates (form 2530) for the buyer;
4. The buyer's certified financial statement;
5. A physical inspection report approved by the Agency;
6. A financial report on project operations approved by the Agency; and

7. Any other documents or other information requested by the Agency that would reasonably assist it in reviewing the proposed housing investment sale.

5:80-32.5 Fee

The eligible LD sponsor seller shall pay a processing fee to the Agency in such amount, as determined by the Agency, as will reimburse the Agency for its administrative cost (that is, Agency staff time and actual expenses incurred) in reviewing and processing the seller's request to engage in a housing investment sale. With its initial request for approval of the sale, the seller shall submit a non-refundable \$5,000 deposit that shall be credited toward the processing fee. The seller will be billed for any balance due at the closing of the sale, and said balance shall be due and payable at that time.

5:80-32.6 Closing

(a) At the closing of any approved housing investment sale, the following documents, in form and substance satisfactory to the Agency, shall be delivered:

1. Legal opinions from the seller's and buyer's attorneys to the effect that the respective entities' participation in the housing investment sale is fully lawful; and
2. Any legal opinion of nationally recognized bond counsel reasonably required by the Agency relating to the proposed housing investment sale or its effect upon any outstanding obligations of the Agency.

(b) At the closing of any approved housing investment sale, the following shall occur:

1. The eligible LD sponsor shall transfer title to the realty and tangible personalty comprising its project, as well as any required project accounts, escrows and reserves, to the buyer;
2. The buyer shall pay to the eligible LD sponsor the purchase price for the project by assuming the project indebtedness of the eligible LD sponsor and paying the balance of the purchase price in cash; and
3. The Agency shall review and approve the following payments to be made from the available cash of the eligible LD sponsor:
 - i. To the eligible LD sponsor, an amount equal to its investment in the project, as determined under the HMFA Law;
 - ii. To the eligible LD sponsor, an amount equal to 50 percent of its maximum additional return;
 - iii. To the MAR revolving account, an amount equal to 50 percent of the maximum additional return of the eligible LD sponsor;
 - iv. To the State Treasurer, the balance of eligible LD sponsor's available cash, as required under the Limited Dividend Law.

APPENDIX

Example of Application of Subchapter Rules

(a) A group of individuals formed an eligible LD sponsor and invested \$1,500,000 in it: \$1,000,000 was invested in the physical assets of the project (that is, its realty and tangible personalty) and was recognized as investment in the project under the HMFA Law; \$500,000 represented promoters' fees and was not recognized as investment in the project under the HMFA Law. The eligible LD sponsor received a non-recourse loan of \$9,000,000 from the HMFA.

(b) If the Agency had recognized the entire \$1,500,000 as investment in the project, which it was not required to do, the eligible LD sponsor would have been entitled to an additional return on its investment of \$40,000 in each year of operation. For 15 years the project generated revenues sufficient to cover this additional \$40,000. The \$600,000 (15 years x \$40,000) aggregate representing this additional return, along with other surpluses, was invested and earned a total of \$200,000 in interest income over the 15 years.

(c) Fifteen years after the formation of the eligible LD sponsor, a qualified housing sponsor proposes to buy the physical assets of the eligible LD sponsor in a housing investment sale. At the time of the sale, the eligible LD sponsor has repaid \$1,800,000 of the HMFA loan and has received the full annual return on investment permitted under the HMFA Law. At the closing of the housing investment sale, the project's residual receipts, as defined in N.J.A.C. 5:80-30.1 were \$2,200,000. The purchase price paid by the buyer to the eligible LD sponsor is \$10,900,000, paid by assuming the \$7,200,000 mortgage loan still outstanding and paying \$3,700,000 cash at closing.

(d) At the closing of the house investment sale, \$200,000 of the purchase price is applied to transaction costs. Thus, the available cash of the eligible LD sponsor is \$5,700,000, computed as follows: \$3,500,000 (the cash portion of the Purchase Price, \$3,700,000, less \$200,000 in transaction costs), plus \$2,200,000 (the residual receipts). (See N.J.A.C. 5:80-32.1, "available cash".)

(e) The maximum additional return is \$4,000,000, computed as follows:

1. \$500,000 cash invested by the owners of the eligible LD sponsor that was not recognized as investment in the project (see N.J.A.C. 5:80-32.1, "maximum additional return" paragraph 1), plus
2. \$600,000 representing cumulative annual return on the \$500,000 described in (e)1 above (see N.J.A.C. 5:80-32.1, "maximum additional return" paragraph 2), plus
3. \$200,000 investment income earned on the \$600,000 described in (e)2 above (see N.J.A.C. 5:80-32.1, "maximum additional return" paragraph 3), plus

4. \$1,800,000 representing amortization of principal on the Agency's mortgage loan (see N.J.A.C. 5:80-32.1, "maximum additional return" paragraph 4), plus

5. \$900,000 in market appreciation of realty and tangible personalty (that is, the purchase price of \$10,900,000 less investment in the project of \$1,000,000 and original mortgage loan of \$9,000,000, as provided in N.J.A.C. 5:80-32.1, "maximum additional return" paragraph 5).

(f) At closing, the following payments are made from the available cash:

1. To the eligible LD sponsor, \$1,000,000, representing its investment in the project, as determined under the HMFA Law (see N.J.A.C. 5:80-32.6(b)3i);
2. To the eligible LD sponsor, \$2,000,000, representing 50 percent of its maximum additional return (see N.J.A.C. 5:80-32.6(b)3ii);
3. To the MAR Revolving Account, \$2,000,000 representing 50 percent of the maximum additional return (see N.J.A.C. 5:80-32.6(b)3iii); and
4. To the State Treasurer, \$700,000, representing the balance of available cash (see N.J.A.C. 5:80-32.6(b)3iv).

SUBCHAPTER 33. LOW INCOME HOUSING TAX CREDIT QUALIFIED ALLOCATION PLAN

Authority

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

Source and Effective Date

R.1996 d.255, effective June 3, 1996.
See: 28 N.J.R. 1443(b), 28 N.J.R. 2843(a).

Subchapter Historical Note

Subchapter 33, Low Income Housing Tax Credit Qualified Allocation Plan, was adopted as new rules by R.1995 d.281, effective June 5, 1995. See: 27 N.J.R. 986(a), 27 N.J.R. 2190(a). Subchapter 33, Low Income Housing Tax Credit Qualified Allocation Plan, was repealed and a new Subchapter 33, Low Income Housing Tax Credit Qualified Allocation Plan, was adopted by R.1996 d.255, effective June 3, 1996. See: Source and Effective Date.

5:80-33.1 Introduction

(a) The New Jersey Housing and Mortgage Finance Agency ("NJHMFA") is the designated agency for the State of New Jersey to be responsible for the oversight of the Federal Low Income Housing Tax Credit Program. This oversight includes the allocation of the tax credits to qualified applicants and the monitoring of those projects for compliance with Section 42 of the Internal Revenue Code ("Code").