

CHAPTER 80

**NEW JERSEY HOUSING AND MORTGAGE
FINANCE AGENCY**

Authority

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

Source and Effective Date

R.2000 d.132, effective February 28, 2000.
See: 32 N.J.R. 191(a), 32 N.J.R. 1065(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 80, New Jersey Housing and Mortgage Finance Agency, expires on August 27, 2005.
See: 37 N.J.R. 970(a).

Chapter Historical Note

Chapter 80, Housing Finance Agency, was adopted as R.1977 d.71, effective march 4, 1977. See: 9 N.J.R. 62(c), 9 N.J.R. 164(c).

Chapter 80, New Jersey Housing and Mortgage Finance Agency, was adopted as R.1985 d.241, effective May 20, 1985. See: 17 N.J.R. 505(a), 17 N.J.R. 1258(b).

Pursuant to Executive Order No. 66(1978), Chapter 80, New Jersey Housing and Mortgage Finance Agency, was readopted as R.1990 d.248, effective April 20, 1990. See: 22 N.J.R. 277(b), 22 N.J.R. 1556(a).

Pursuant to Executive Order No. 66(1978), Chapter 80, New Jersey Housing and Mortgage Finance Agency, was readopted as R.1995 d.247, effective April 17, 1995. See: 27 N.J.R. 265(a), 27 N.J.R. 1977(a).

Subchapter 33, Low Income Housing Tax Credit Qualified Allocation Plan, was adopted as 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Subchapter 33, Low Income Housing Tax Credit Qualified Allocation Plan, was repealed and Subchapter 33, Low Income Housing Tax Credit Qualified Allocation Plan, was adopted as new rules by R.1996 d.255, effective June 3, 1996. See: 28 N.J.R. 1443(b), 28 N.J.R. 2843(a).

Pursuant to Executive Order No. 66(1978), Chapter 80, New Jersey Housing and Mortgage Finance Agency, was readopted as R.2000 d.132, effecting February 28, 2000. See: Source and Effective Date. See, also, section annotations.

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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

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

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

"Assisted living" means a coordinated array of supportive personal and health services, available 24 hours per day, to residents who have been assessed to need these services, including residents who require formal long-term care. Assisted living promotes resident self direction and participation in decisions that emphasize independence, individuality, privacy, dignity, and homelike surroundings.

"Assisted living residence" (ALR) means a housing project which is a facility licensed by the Department of Health and Senior Services to provide apartment-style housing and congregate dining and to assure that assisted living services are available when needed, for four or more adult persons unrelated to the proprietor. Apartment units offer, at a minimum, one unfurnished room, a private bathroom, a kitchenette and a lockable door on the unit entrance.

"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, improvement, rehabilitation or acquisition of existing buildings or units, which is designed for the primary purpose of providing multi-family rental housing or acquisition of sites for future multi-family rental housing, including an assisted living residence.

“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.

“Special needs project” means a project serving special needs populations under the developmental disability housing programs, transitional housing revolving loan programs, shelter plus care programs, HIV/AIDS programs, and similar special needs housing programs, the primary purpose of which is to provide certain types of homes and/or community-based supportive services to individuals and families who are in need of such homes and/or services. Supportive services range across a wide continuum of care and will vary from person to person depending on their particular physical, psychosocial, and/or mental limitations, and may vary for one person over time. Examples of targeted populations that fall within a special needs project are:

1. Persons with AIDS/HIV-related illness;
2. Homeless;
3. Mentally ill;
4. Frail elderly;
5. Alcohol and/or substance abusers;
6. Persons with physical disabilities;
7. Mentally retarded/developmentally disabled;
8. Pregnant/parenting teens;
9. Victims of domestic violence; or
10. Orphans, children in foster care, and children who are wards of the Division of Youth and Family Services (DYFS).

“State” shall mean the State of New Jersey.

“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.

Amended by R.1998 d.80, effective February 2, 1998.
See: 29 N.J.R. 3214(a), 30 N.J.R. 539(b).

Inserted “Assisted living”, and “Assisted living residence”; and rewrote “Housing Project” or “Project”.

Amended by R.1999 d.329, effective October 4, 1999.
See: 30 N.J.R. 3355(a), 31 N.J.R. 2878(b).

Inserted definition of “Special needs project”.
Amended by R.2000 d.132, effective March 20, 2000.
See: 32 N.J.R. 191(a), 32 N.J.R. 1065(a).

Rewrote “Special needs project”; and inserted “State”.

5:80-1.4 Regulations regarding Housing Projects

(a) All Agency financing in connection with Housing Projects having more than 25 units, including eligible loans and loans to lenders made with regard to Housing Projects, shall be subject to N.J.A.C. 5:80-2 through 9, 17, 18, 20, and 29 through 32. Where appropriate, other regulations within this chapter are specifically made applicable to Housing Projects. N.J.A.C. 5:80-2 through 9, 17, 18, 20, and 29 through 32 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
 - v. Special needs projects;
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 rehabilitation). 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.

Amended by R.1998 d.80, effective February 2, 1998.
See: 29 N.J.R. 3214(a), 30 N.J.R. 539(b).

In (a), inserted “having more than 25 units,” following “Projects”, and inserted references to subchapters 20, 29 and 30 through 32.
Amended by R.1999 d.329, effective October 4, 1999.
See: 30 N.J.R. 3355(a), 31 N.J.R. 2878(b).

In (a), updated references, and added (a)1v.

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.

(d) For assisted living residences (ALRs) which receive a loan from the Agency, the housing sponsor may receive a return on investment annually as follows:

1. The first 20 percent annual return on investment;

2. When an ALR realizes a greater than 20 percent annual return on investment in any given year, a special service subsidy fund (Fund) shall be established and held by the Agency in which the next 10 percent or any part thereof above the first 20 percent return on investment shall be placed for the sole purpose of subsidizing rent and services to the low and/or moderate income residents of the ALR who may need assistance;

3. The housing sponsor may receive any and all annual return on investment which is greater than 30 percent for that calendar year in which it is earned.

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.

Amended by R.1998 d.80, effective February 2, 1998.

See: 29 N.J.R. 3214(a), 30 N.J.R. 539(b).

Added (d).

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 and tax and insurance escrows. For purposes of this paragraph, project reserve accounts shall be considered current if they are funded to an acceptable level, as determined by the Agency, in accordance with the Agency's funding schedule;

3. Compliance with all repairs required by the Agency based upon the Agency's most recent physical inspection report;

4. All required reports and statements must be submitted by the housing sponsor;

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

6. 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.

(c) In addition to the conditions listed in (a) above, the following conditions shall be met by assisted living residences (ALRs) before return on investment shall be approved by the Agency and disbursed to the housing sponsor:

1. The ALR shall have a sustaining occupancy for two full consecutive years; and

2. The operating reserve fund established pursuant to N.J.A.C. 5:80-1.4(c)3 shall be fully funded with 75 days worth of operating expenses, including expenses of tenants' meals and basic services.

Amended by R.1998 d.80, effective February 2, 1998.

See: 29 N.J.R. 3214(a), 30 N.J.R. 539(b).

Added (c).

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), added the last sentence in 2, inserted a new 3, and recodified former 3 through 5 as 4 through 6.

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;

4. In the case of proposed changes or transfers of ownership of assisted living residences (ALRs), if any provision(s) of this chapter are in conflict with any provision(s) of N.J.A.C. 8:36 the provision(s) of N.J.A.C. 8:36 shall govern.

(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.

Amended by R.1998 d.80, effective February 2, 1998.

See: 29 N.J.R. 3214(a), 30 N.J.R. 539(b).

In (a), added 4.

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;
4. A change in general partners or management control of the owner.

(b) In other cases, the Agency in its discretion may conduct a modified review.

5:80-5.6 Required documents

(a) Required documents for a modified review must be satisfactory to the Agency and include at least the following:

1. Administrative questionnaires for buyer;
2. Complete description as to the nature of the transition;
3. Copy of Partnership Certificate with proposed revisions;
4. Any other documents determined by the Agency to be necessary.

(b) The following additional documents may be required for full review.

1. Previous Participation Certificates (form 2530) for buyer;
2. Experience questionnaire for buyer;
3. Buyer's certified financial statements;
4. Legal opinion from seller's attorney and, if requested by the Agency, for buyer's attorney;
5. Appraisal of property;
6. Physical inspection report approved by the Agency;
7. Financial report on project operations approved 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).
Section substantially amended.

5:80-5.7 Secondary financing

(a) Secondary financing, representing a portion of the purchase price may be permitted by the Agency. However, the following limitations exist where secondary financing is an element of the transaction:

1. The Agency will review and may restrict all secondary financing particularly where the secondary financing is secured by a lien on the project;
2. Repayment of secondary financing cannot be taken into consideration in determining the rents to be charged tenants;
3. The second mortgage, security agreement, or any other debt instrument must be subordinate to any existing mortgage of the agency;
4. In the event of a declaration of default on any existing mortgage held by the Agency, the secondary financing debt and all rights thereunder to rent or any other project income or assets shall be assigned to the Agency.

5:80-5.8 Return on equity

(a) The buyer shall assume the same rate of return on equity that the seller had. The buyer's equity in the housing project shall be determined in accordance with N.J.A.C. 5:80-3.3(a).

(b) The seller shall be limited to a cumulative, but not compounded, return on its equity, from project operations or sale, at the rate of return as determined by N.J.A.C. 5:80-3 and set forth in the mortgage and other contractual documents between the seller and agency.

1. Upon sale or other disposition of the project or any interest therein, the seller shall be entitled to a return of its equity in the project and any accrued but undistributed return on its equity. Such return shall be conditioned upon the Agency's mortgage and any other supplemental project financing from the Agency or other governmental agency or department being assumed by the buyer, and further conditioned upon the making of any required project repairs or improvements, pursuant to N.J.A.C. 5:80-5.4(d), and the payment of all amounts due the Agency and the funding of reserves pursuant to N.J.A.C. 5:80-5.4(e). The seller shall not be entitled to or paid any return until such conditions have been met. The seller's equity in the project shall be determined in accordance with N.J.A.C. 5:80-3.3(a).

2. Upon sale or other disposition of the project or any interest therein, the seller is not entitled to and may not retain or be paid any more than its equity in the project plus any accrued but undistributed return on its equity. Any amounts realized in excess of the aforementioned amounts less the total of the amounts listed below shall be paid into the Multi-family Rental Investment Program:

- i. Any amount of the purchase price which is paid or escrowed in an Agency controlled account for repairs or improvements pursuant to N.J.A.C. 5:80-5.4(d);
- ii. Any amounts paid to fund reserves pursuant to N.J.A.C. 5:80-5.4(e); and
- iii. Any mortgages or other supplemental financing from the Agency or other governmental agency or department which are paid or assumed upon transfer.

3. Funds paid into the Multi-family Rental Investment Program shall be used as provided therein or in the case of a housing sponsor organized under N.J.S.A. 55:16-1 et seq., such excess shall be distributed pursuant to said Act. The funds deposited into this program shall be used for the purpose of providing loans to rental projects meeting low and moderate income needs.

4. In cases where the sale or other disposition of the project includes a permitted prepayment of the Agency mortgage, return on equity shall be governed by the provisions of N.J.A.C. 5:80-5.10(b).

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

References to rate of return on equity amended to conform to applicable statutes, in accordance with New Jersey Supreme Court holding in *Lower Main Street Associates v. New Jersey Housing and Mortgage Financing Agency*, 114 N.J. 226 (1989).
Amended by R.1995 d.247, effective May 15, 1995.
See: 27 N.J.R. 265(a), 27 N.J.R. 1977(b).

5:80-5.9 Required payment and repayments

(a) At closing, the following payments and repayments are required:

1. The buyer shall pay to the Portfolio Reserve Account a sum amounting to 3.25 percent of the purchase price.

2. The buyer shall submit with its request for review, a non-refundable fee of \$5,000 which will be applied at closing toward any payment or repayments due.

3. The seller shall pay to the Agency, as a processing fee, an amount as determined by the Agency, to reimburse the Agency for its administrative cost in processing the seller's request to transfer ownership of the project or any interest therein.

4. Any outstanding supplemental financing must be paid at closing, unless the Agency determines the financial viability of the project is not jeopardized by the continuation of such supplemental financing and the buyer assumes all supplemental financing.

(b) The Portfolio Reserve Account is a fund established by the Agency to provide support for any project financed by the Agency which is in need of financial assistance. The Portfolio Reserve Account, and any interest or investment income earned thereon, may be used, at the Agency's discretion, to fund debt service arrears and other operating deficits, capital improvements, and repairs of any project which cannot fund these items from normal project income. The Portfolio Reserve Account will enable the Agency to assist projects in maintaining physical and fiscal viability so as to preserve the housing units at rents which are affordable to low- and moderate-income families. Eligibility for assistance from the Portfolio Reserve Account shall be subject to the terms and conditions as determined by the Agency.

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

References to fees amended to conform to applicable statutes, in accordance with New Jersey Supreme Court holding in *Lower Main Street Associates v. New Jersey Housing and Mortgage Financing Agency*, 114 N.J. 226 (1989); contribution to Portfolio Reserve Account required in (b).

Case Notes

Regulation limiting profits on project financed by state Housing and Mortgage Finance Agency was invalid. *Lower Main Street Associates v. New Jersey Housing and Mortgage Finance Agency*, 114 N.J. 226, 553 A.2d 798 (1989).

Regulation imposing fees on sellers was invalid. *Lower Main Street Associates v. New Jersey Housing and Mortgage Finance Agency*, 114 N.J. 226, 553 A.2d 798 (1989).

Prepayment regulations do not violate the terms of the N.J. Housing and Mortgage Finance Agency, are statutorily authorized, and do not violate plaintiff's constitutional rights; regulation imposing closing fees is unreasonable and thus invalid. *Lower Main Street Assoc. v. N.J. Housing and Mortgage Finance Agency*, 219 N.J. Super. 263, 530 A.2d 324 (App.Div.1987) affirmed in part, reversed in part 114 N.J. 226, 553 A.2d 798.

5:80-5.10 Prepayment

(a) Prepayment of the mortgage loan made by the Agency is prohibited, except as permitted in (b) below.

(b) Prepayment of the Agency mortgage loan will be permitted, with the prior written approval of the Agency, provided all of the following conditions are met:

1. Sponsors of projects may prepay the mortgage at any time following the 20-year period following the date of the mortgage closing. However, any such prepayment shall be conditioned upon the Housing Sponsor's agreement that: The Agency policies on tax, insurance and repair and replacement reserves; The provisions of N.J.S.A. 55:14K-7b; and The statutory provisions at N.J.S.A. 55:14K-1 et seq. and the corresponding rules under this chapter regarding tenant income eligibility, tenant selection, rent increases, certification/recertification of income, affirmative fair housing marketing, and transfer of ownership interests shall continue to be applicable in their entirety to the sponsor, project and tenants residing therein until the original expiration date of the original mortgage loan. Such prepayment shall also be conditioned upon the agreement of the Sponsor to pay the servicing fees and charges currently being paid by the Sponsor under the mortgage documents, through the remainder of the original mortgage term, in order to cover the administrative costs of the Agency in monitoring the statutory and regulatory controls that will continue to apply to the project. The Agency may require Housing Sponsors to execute a deed restriction or other appropriate agreement upon prepayment whereby the Sponsor acknowledges the continuing statutory and regulatory control of the Agency and its obligation to pay fees and charges determined by the Agency.

2. Any repairs or improvements pursuant to N.J.A.C. 5:80-5.4(d) must be made prior to prepayment or an amount sufficient to fund such repairs or improvements must be paid into an Agency controlled escrow account upon prepayment.

3. All fees and charges due the Agency must be paid prior to prepayment.

4. All supplemental financing on the project provided by the Agency or other State agency must be prepaid, unless prohibited by the terms of that supplemental financing or by (c) below or any other applicable law or regulation.

5. After prepayment, in implementing the provisions of N.J.S.A. 55:14K-7b, the Agency will initially require the following:

- i. Submission of an annual budget;
- ii. Submission of annual audited financial statements;
- iii. Annual physical inspections conducted by the Agency.

6. The Agency reserves the right to implement any of the additional provisions of N.J.S.A. 55:14K-7b, if determined by the Agency to be needed to preserve the financial viability of the project or its status as a low and

moderate-income project, to maintain the physical condition of the project or to help ensure the safety and well-being of the tenants residing at the project.

7. After prepayment, return on equity rules at N.J.A.C. 5:80-3 shall continue until the expiration of the original mortgage term or until the owner funds an operating reserve account, whichever is sooner. Upon funding of an operating reserve account, return on equity rules shall terminate. The operating reserve shall be equal to three months of operating expenses (for senior citizen projects) or six months of operating expenses (for family projects), which includes debt service and reserve payments. The three/six months of operating expenses shall be calculated based on the Agency-approved annual budget. Once established, interest earned on a fully-funded operating reserve account may be withdrawn by the owner upon written request to and verification by the Agency that the account is fully-funded. If the operating reserve is thereafter used, return on equity rules shall be reinstated until the operating reserve is again fully-funded. The determination of a fully-funded operating account after its initial establishment shall be based on the Agency-approved budget in effect at the time the project first established the operating reserve account.

(c) Notwithstanding (b) above, prepayment shall not be approved or permitted in cases that would:

1. Cause the Agency to be in default under its obligations to the bondholders of the bonds issued to finance the project;
2. Jeopardize the continuing tax exempt status of the bonds; or
3. Reduce or terminate subsidies to the project such as the United States Department of Housing and Urban Development Section 8 or Section 236, unless a reduction or termination is imposed by the United States Department of Housing and Urban Development or other issuing authority and results in a renewal of the subsidy to the project that will be sufficient to maintain the financial viability of the project through the end of the original mortgage term.

(d) Upon prepayment of the Agency mortgage as provided in (b) above, the Agency will endorse the mortgage for cancellation so the Sponsor may cancel it of record. In addition, upon prepayment, the statutory and regulatory controls of the Agency at N.J.S.A. 55:14K-1 et seq. and this chapter shall terminate for the Housing Sponsor and project, except for those preserved by (b)1 above. The termination of the Agency's statutory and regulatory controls shall not affect the requirements, restrictions and obligations of Housing Sponsors as mandated by N.J.S.A. 55:16-1 et seq. or any other applicable statute under which the corporate entity of the Housing Sponsor was created.

(e) The provisions of this section regarding prepayment shall not apply to projects financed under the Agency's New Jersey Urban Multi-Family Production Program (JUMPP).

(f) The provisions of this section that impose conditions on prepayment regarding Agency policies on the insurance and repair and replacement reserves, the provisions of N.J.S.A. 55:14K-7b, and the regulations on transfer of ownership interests and return on equity shall not be applicable to projects financed between October 15, 1990 and January 17, 1995.

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

Exceptions to prepayment prohibition added, in accordance with New Jersey Supreme Court holding in *Lower Main Street Associates v. New Jersey Housing and Mortgage Finance Agency*, 114 N.J. 226 (1989).
Amended by R.1995 d.20, effective January 17, 1995.

See: 26 N.J.R. 1187(a), 27 N.J.R. 321(b).

Amended by R.1995 d.247, effective May 15, 1995.

See: 27 N.J.R. 265(a), 27 N.J.R. 1977(b).

Amended by R.2003 d.88, effective March 3, 2003.

See: 34 N.J.R. 3415(a), 35 N.J.R. 1267(b).

In (c), rewrote 3.

Amended by R.2005 d.197, effective June 20, 2005.

See: 37 N.J.R. 569(a), 37 N.J.R. 2203(a).

In (b), rewrote 4; in (c), substituted "that" for "which" following "permitted in cases" in the introductory paragraph; in (f), substituted "that" for "which" preceding "impose conditions on prepayment".

Case Notes

Regulation preventing prepayment of mortgage loans without agency approval was invalid. *Lower Main Street Associates v. New Jersey Housing and Mortgage Finance Agency*, 114 N.J. 226, 553 A.2d 798 (1989).

Prepayment regulations do not violate the terms of the N.J. Housing and Mortgage Finance Agency, are statutorily authorized, and do not violate plaintiff's constitutional rights; regulation imposing closing fees is unreasonable and thus invalid. *Lower Main Street Assoc. v. N.J. Housing and Mortgage Finance Agency*, 219 N.J.Super. 263 (App.Div. 1987), affirmed in part, reversed in part 114 N.J. 226, 553 A.2d 798.

5:80-5.11 Approval and disclosure requirements

(a) The Agency specifically reserves the right to investigate and disapprove any prospective buyer or any other party involved in the transaction including without limitation all limited and general partners, attorneys, syndicators, brokers or consultants, as well as any partners or shareholders thereof. Prior to its approval, the Agency may require any party to disclose such information as may be reasonably related to the transaction and may require any party to sign such waivers, releases or affidavits as may be necessary to authenticate or investigate the information requested.

(b) All reviews, inspections, reports and other determinations received pursuant to these regulations shall be subject to final review, approval and determination by the Agency.

SUBCHAPTER 6. SALE OF PROJECTS OWNED BY NONPROFIT CORPORATIONS TO LIMITED PARTNERSHIPS

5:80-6.1 Definitions

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

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

“Cash proceeds” means that portion of the purchase price paid by the partnership to the nonprofit in cash at closing or in successive years following the close.

“Closing” means the date on which title to the development or project is transferred from the nonprofit to the partnership.

“Commitment Letter” means the initial proposal or letter of intention submitted by the prospective purchaser which outlines the parameters of the transaction and the offer.

“Community Development Escrow” (CDE) means that fund established pursuant to N.J.A.C. 5:80-6.5(a)2 or 5:80-6.6(b)4 primarily for use in assisting community improvements or services related to the development.

“Conversion” means the overall transaction in which ownership is transferred from the nonprofit to a partnership.

“Development Cost Escrow” (DCE) means that fund established pursuant to N.J.A.C. 5:80-6.5(a)1 intended primarily for use in improving or supporting the project itself.

“Gross syndication proceeds” means the sum of all capital contributions.

“Multi-Family Rental Investment Program” means the program funded through the use of Agency administrative funds and through payments as provided by N.J.A.C. 5:80-6.4 for the purpose of providing loans to rental projects meeting low and moderate income housing needs.

“Net proceeds” means the gross proceeds of the syndication, which are received from investor limited partners, less the costs of the syndication. The net proceeds include all payments made to or on behalf of the nonprofit and may include interest due on deferred payments. The net proceeds may not be used for any purpose other than to pay transaction costs or to fund the DCE or CDE unless otherwise expressly authorized by the Agency. Net proceeds does not include secondary financing granted on the sale from the nonprofit to the partnership.

“Nonprofit” means the nonprofit owner of the project that is conveying its interest in the profit and assigning its Agency mortgage on the premises to the partnership.

“Operating deficits” means all obligations, to the extent such obligations have not or will not be paid in full out of operating income, arising out of the management and operation of the project including without limitation:

1. Reserves, escrows or fees required by the Agency or by law;
2. Taxes or payments in lieu of taxes;
3. Utility bills;
4. Legal, accounting and other professional fees incurred by the partnership which have received prior approval by the Agency;
5. Insurance premiums; and
6. Judgments or settlements approved by the Agency.

“Original Mortgage Amount” means the amount of the loan which was made to the nonprofit or its predecessors by the Agency for development costs and was financed by bonds issued by the Agency.

“Partnership” means the limited partnership, which qualifies as a limited dividend housing association pursuant to N.J.S.A. 55:16-1 et seq., which takes title to the project from the nonprofit.

“Portfolio Reserve Account” (PRA) means that fund established by the Agency for the primary purpose of funding debt service arrearages, and other operating deficits or capital improvements of any project financed by the Agency that cannot fund these items from normal project income. Funds deposited in the PRA and the investment income earned thereon will be available for use by the Agency for the aforesaid purposes.

“Project Subsidy Reserve Fund” (PSR) means that fund established pursuant to N.J.A.C. 5:806.6(b) intended primarily for maintaining the operative viability of the Section 236 developments.

“Purchase price” means the total amount of capital pledged to the nonprofit sponsor including cash proceeds and secondary financing.

“Stated equity” means an amount equal to 10 percent of the revised total development cost determined by the Agency pursuant to N.J.A.C. 5:80-6.3.

“Surplus cash” means funds, including funds in the DCE and CDE accounts, available after payment of equity distributions, project expenses, operating deficits, including the full funding of all required reserve accounts and proposed capital improvements plus:

1. Two to six months of the annual budgeted project expense for senior citizen projects; or
2. Four to 12 months of the annual budgeted project expense for family projects.

"Syndication" means the admission of limited partners to the Partnership through the sale of partnership interests.

"Transaction cost" means those costs related directly to the sale of the project which are paid by or on behalf of the nonprofit. All transaction costs must be approved by the Agency and include with limitation required fees and payments specified in N.J.A.C. 5:80-6.4 as well as professional fees of the nonprofit and title insurance.

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

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

Added definition "Commitment Letter".

Amended by R.1989 d.524, effective October 2, 1989.

See: 21 N.J.R. 1509(b), 21 N.J.R. 3090(a).

Added new definitions: "Multi-Family Rental Investment Program" and "Surplus cash."

Revised "Portfolio Reserve Account" definition by specifying the purpose of PRA fund. Added new language: "for the primary ... aforesaid purposes."

5:80-6.2 Procedures

(a) The sale of a nonprofit sponsored development to a limited partnership is a complex transaction and involves substantial sums of money. Accordingly, the procedures in this section governing the transaction are intended to insure the integrity of the process and the protection of the nonprofit.

(b) The nonprofit may obtain such legal, financial and other professional services as are necessary to investigate, process and complete the transaction. The scope of all services and compensation for same must be approved by the Agency in advance. The amounts which can be paid for all such professional services may not exceed limits and hourly rates established from time to time by the Agency. If for any reason the conversion is not completed and approved services have been provided to the nonprofit, then the Agency may, if requested by the nonprofit, approve payment for professional services out of other assets of the nonprofit including operating income.

(c) No member of the nonprofit, its employees or professional advisors shall receive any fees in conjunction with the transaction other than those disclosed to and approved by the Agency. The president of the nonprofit, its attorney, the purchaser and the purchaser's attorney shall all provide affidavits at closing stating that to the best of their knowledge, no fees or payments have been made nor will be made to any member of the nonprofit corporation, employees or professional advisors other than those approved by the Agency.

(d) Since the nonprofit may become a partner with the purchaser of the development, the selection of same will be primarily in the hands of the nonprofit. However, the following procedures must be incorporated into the selection process:

1. While public bidding procedures are not required, equal information and opportunity must be provided to all potential purchasers.

2. Initial proposals must be solicited from as many interested parties as possible including all those on a list of interested parties maintained by the Agency.

3. All responses to proposals must be made in writing and should be submitted in a sealed envelope directly to a specific designee of the nonprofit on or prior to a certain date. No proposals shall be opened prior to the specified time and after the time set for submission of proposals, no new proposals should be accepted.

4. Upon opening the proposals, the nonprofit's designee shall immediately forward copies of all proposals to the Agency.

5. The nonprofit shall evaluate the proposals taking into account the initial purchase price offered, the amount of secondary financing involved in the transaction; the residual value to be returned to the nonprofit, if any; management support and control; and a variety of other business considerations. In evaluating all financial considerations, present value calculations should be included.

6. Upon the determination by the nonprofit as to choice of purchaser, it should submit a recommendation to the Agency along with a full report on the reasons behind the decision and an affidavit as to compliance with the procedures described in this section. As mortgagee, final approval of the transaction shall rest with the Agency.

(e) Within 21 days of the Agency's approval of the proposed sale of the project, the prospective purchaser shall deliver to the Agency security, in the form of cash, bond or letter of credit, in an amount equal to five percent of the cash proceeds. This security will be held by the Agency until the purchaser has fulfilled its obligations under the Commitment Letter, subject to terms and conditions approved by the Agency. If the purchaser does not fulfill its obligations in accordance with the Commitment Letter as approved by the Agency within six months of the approval, then the security funds shall be deposited by the Agency into a Project Subsidy Reserve or Development Cost Escrow established in the name of the nonprofit. If the proposed purchaser demonstrates its willingness and ability to perform its obligations in accordance with the Commitment Letter, and the transaction is not completed within six months of the Agency's approval, the security shall be returned to the proposed purchaser except for an amount not to exceed \$15,000 to reimburse the nonprofit for its actual costs incurred in the attempted conversion.

(f) At closing, the purchaser must provide cash or letter of credit in an amount equal to 30 percent of the cash proceeds. The difference between the amount provided at

closing and the stated equity amount must be funded at closing with cash or equivalents acceptable to the Agency.

(g) At closing, the purchaser shall deposit with the Agency a deed transferring title in the property back to the nonprofit. This deed will be held in escrow by the Agency subject to an agreement which authorizes the Agency to record the deed if the purchaser fails to pay any installment of the cash proceeds within 120 days of the date due.

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

Deleted "purchase agreement" and substituted "Commitment Letter".

5:80-6.3 Determination of total development cost

Prior to granting its approval of the sale of the project, the Agency will make a determination as to the total development cost of the project. The total development cost shall include the original mortgage loan amount and may include any supplemental financing provided by the Agency or the State of New Jersey and any additional funds to be paid out of the net proceeds which the Agency has determined to be reasonable and necessary for the development or financial viability of the housing project.

5:80-6.4 Required fees and repayments

(a) The following fees and repayments shall generally apply to all sales. However, where the nonprofit can demonstrate that the payment of such fees would be detrimental to the viability of the project these provisions may be waived, adjusted or deferred.

1. At closing, the nonprofit shall pay to the Agency a processing fee of one-half of one percent of the cash proceeds including cash, existing indebtedness assumed and secondary financing.

2. At closing, the nonprofit will pay to the Agency for return to the Revolving Housing Demonstration Fund interest on any seed money originally loaned to the nonprofit. Such interest shall be calculated at a rate of one percent above the prime interest rate as reasonably determined by the Agency for each given year on the amount of outstanding principal from the date on which any disbursement is made until the time of repayment.

3. At closing, for projects subsidized under Section 236 the nonprofit shall pay 10 percent of the cash proceeds received and for projects subsidized under Section 8 the nonprofit shall pay 15 percent of the cash proceeds received into the Portfolio Reserve Account established by the Agency. Funds deposited in the Portfolio Reserve Account and the investment income earned on those funds will be used by the Agency to fund debt service arrearages, operating deficits or essential capital improvements of any project financed by the Agency that cannot fund these items from normal project income.

4. Any supplemental mortgages or advances made by the Agency to the nonprofit shall be repaid at closing.

5. There shall be paid from the interest income on the escrow accounts a yearly Agency administrative fee of \$3,500 per project which shall be assessed proportionately against the respective accounts for the project to the extent available.

6. In determining whether required fees and payments pursuant to this section are to be waived, adjusted or deferred or in determining the amount of funds which may be allocated to a CDE on Section 236 projects, the Agency will consider the factors set forth in (a)6i-iv below. Accordingly, the nonprofit shall submit detailed information on the following matters:

- i. Operating revenue and expense projections for five years.
- ii. The rents expected to be charged at the development assuming reasonable annual increases for five years.
- iii. The rents charged and expected to be charged at comparable developments.
- iv. The effect on the requested action on (a)6i and ii above.

5:80-6.5 Use of funds with regard to projects subsidized under Section 8

(a) While the primary reason for permitting the sale and syndication of Section 8 projects is to insure financial viability of the project, a large portion of the proceeds will be available to the nonprofit to finance community activities. Accordingly, after payment of the amounts required under N.J.A.C. 5:80-6.4, the proceeds of the transaction shall be disbursed in the following manner:

1. There shall be deposited into a Development Cost Escrow (DCE) for the project those funds remaining after transaction costs are deducted from 60 percent of the cash proceeds or the stated equity amount, whichever is greater. With the approval of the Agency, the DCE shall be used to fund debt service arrearages and other operating deficits at the project including appropriate funding of required reserve accounts, as determined by the Agency, and for such other purposes as may be approved by the Agency as will improve the financial viability or physical structure of the project, or increase tenant safety and comfort.

2. The balance of the cash proceeds shall be deposited into a Community Development Escrow (CDE) in the name of the nonprofit. With the approval of the Agency these funds may be utilized by the nonprofit for any use permitted under (a)1 above or to increase amenities of the project; reduce maintenance and replacement costs of the project; provide or assist desirable social services benefiting the residents of the project or the community in which it is located; and finance various community development activities.

Amended by R.1989 d.524, effective October 2, 1989.

See: 21 N.J.R. 1509(b), 21 N.J.R. 3090(a).

Changed text to "project" from "development" throughout.

In (a)1: added "including . . . determined by the Agency."

5:80-6.6 Use of funds with regard to projects subsidized under Section 236 Interest Reduction Program

(a) These regulations recognize the essential difference between the Section 236 and Section 8 Program. In projects subsidized through interest reductions, tenants must bear the full responsibility for all other operating costs. Accordingly after payments required by N.J.A.C. 5:80-6.4, all proceeds of the sale of the project will be primarily pledged to easing the burden on the tenants by subsidizing repair and maintenance or operating costs. If, however, the nonprofit can demonstrate that the project is in sound physical and financial condition and will likely remain so for the foreseeable future, a portion of the proceeds or investment income on the proceeds may be deposited into a CDE.

(b) All cash proceeds received on the sale of a development subsidized under Section 236 shall, after payment required under N.J.A.C. 5:80-6.4 be deposited into a Project Subsidy Reserve (PSR). The income and principal on the PSR may be utilized in the following manner:

1. First to pay any existing operating deficits, including debt service arrearages of the development;
2. To fund any capital improvements or repairs which are required for the viable operation of the project and cannot be funded out of other reserves at the development;
3. To provide an additional source of operating revenue to assist in financing the normal operations of the project including debt service so that future rent increases can be moderated or so that rents may be maintained, to the extent feasible, at a level which is appropriate to the tenant population for which the development is intended;
4. After the nonprofit has demonstrated, based on information required under N.J.A.C. 5:80-6.4(a)6, that the funds in the PSR are not required for any of the purposes listed in (b)1-3 above and will not be required for the foreseeable future, it may request that a portion of these funds or the investment income on these funds be deposited into a CDE as described in N.J.A.C. 5:80-6.5.

Amended by R.1989 d.524, effective October 2, 1989.

See: 21 N.J.R. 1509(b), 21 N.J.R. 3090(a).

In (b): deleted "of the fees" in regard to payments.

5:80-6.7 Investment income earned on the PSR, DCE and CDE

(a) After the payment of the fee specified in N.J.A.C. 5:80-6.4(a)5 the investment income earned on the DCE and CDE may be used:

1. To fund current operating deficits and/or arrearages including debt service arrearages of the development;

2. To pay the partners a return on equity to the extent allowed by law and to the extent not paid from operating revenues of the development, but only if there are no operating deficits or arrearages at the development;

3. In accordance with the designated uses of the accounts or for other purposes requested by the nonprofit and approved by the Agency.

(b) After funding the uses described in N.J.A.C. 5:80-6.6(b)1-3 and the required fee specified in N.J.A.C. 5:80-6.4(a)5, the investment income on the PSR may be utilized in the manner set forth in (a) above.

5:80-6.8 Use of DCE and CDE for development of housing

(a) In addition to uses permitted under N.J.A.C. 5:80-6.5, 6.6, and 6.7, housing sponsors, or the authorized entity within the housing sponsor's organizational structure with financial control over the DCE/CDE accounts, may, with Agency approval, use DCE and CDE funds, and interest thereon, for the development, operation, maintenance, construction, rehabilitation or improvement of or investment in additional housing within the community or in other communities. DCE and CDE funds may only be used for such purposes if the Agency determines that DCE and CDE funds are not needed to insure the financial viability or physical structure of the project. This includes, but is not limited to, a finding by the Agency that the project has surplus cash and that DCE and CDE funds are not needed for providing an additional source of operating revenue to assist in financing any other aspect of the current or future operations of the project.

(b) Housing sponsors, or the authorized entity within the housing sponsor's organizational structure with financial control over the DCE/CDE accounts, may use DCE and CDE funds as specified in (a) above or may deposit DCE and CDE funds with the Agency to be used by the Agency or by the Agency in conjunction with other developers for the purposes and under the conditions outlined in (a) above.

New Rule, R.1989 d.524, effective October 2, 1989.

See: 21 N.J.R. 1509(b), 21 N.J.R. 3090(a).

Renumbered 5:80-6.8, "Additional terms of purchase," to 6.9.

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

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

5:80-6.9 Additional terms of purchase

(a) The terms and conditions between the selling nonprofit and the purchasing partnership may vary from transaction to transaction. However, the following matter should be considered:

1. The role of the nonprofit in the purchasing partnership must be determined based on the past performance record of the nonprofit and the extent to which it desires to remain actively involved in the development;
2. Deferred purchase payments in the form of a debt owed by the purchaser to the nonprofit will only be

permitted to the extent allowable under applicable bond resolutions and shall incorporate at least the following provisions:

i. That the second mortgage, security agreement, or any other debt instrument must be subordinate to any existing mortgage of the Agency;

ii. That in the event of declaration of a default on any existing mortgage of the Agency, the debt and all rights thereunder to rent or any other project income or assets shall be assigned to the Agency;

3. Upon sale or refinancing of the development, or upon termination of the mortgage other than by default, any remaining assets of the development may be shared among the nonprofit, other partners, the Agency and municipality to the extent allowed by law.

Renumbered from 5:80-6.8 by R.1989 d.524, effective October 2, 1989. See: 21 N.J.R. 1509(b), 21 N.J.R. 3090(a).

5:80-6.10 Tax obligations

(a) The partnership shall be responsible for all tax consequences arising out of the sale of the profit.

(b) All existing contractors shall be notified of the sale and of the fact that they shall be responsible for the payment of all New Jersey sales tax and other taxes arising out of the loss of nonprofit status by the owner from the date of closing forward.

Renumbered from 5:80-6.9 by R.1989 d.524, effective October 2, 1989. See: 21 N.J.R. 1509(b), 21 N.J.R. 3090(a).

5:80-6.11 Approval and disclosure requirements

The Agency specifically reserves the right to investigate and approve any party involved in the transaction including without limitation all limited and general partners, attorneys, syndicators, brokers or consultants, as well as any partners or shareholders thereof. Prior to its approval the Agency may require any party to disclose such information as may be reasonably related to the transaction and may require any party to sign such waivers, releases or affidavits as may be necessary to authenticate or investigate the information requested.

Renumbered from 5:80-6.10 by R.1989 d.524, effective October 2, 1989. See: 21 N.J.R. 1509(b), 21 N.J.R. 3090(a).

5:80-6.12 Request for use of escrow funds

All uses of escrow funds or the investment income earned thereon must receive written approval by the Agency in accordance with procedures adopted from time to time by the Agency.

Renumbered from 5:80-6.11 by R.1989 d.524, effective October 2, 1989. See: 21 N.J.R. 1509(b), 21 N.J.R. 3090(a).

5:80-6.13 (Reserved)

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

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

Renumbered from 5:80-6.12 by R.1989 d.524, effective October 2, 1989.

See: 21 N.J.R. 1509(b), 21 N.J.R. 3090(a).

SUBCHAPTER 7. TENANT SELECTION STANDARDS

5:80-7.1 Definitions

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

“Affirmative Fair Housing Marketing Plan” is a plan to attract those people who would least likely apply for residence.

“Disabled person” is a person who is 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 Developmental Disabilities Amendments of 1970 (42 USC 60001).

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

“Elderly family” is one in which the head of household, spouse or sole member is 62 years of age or older, handicapped or disabled.

“Family” is two or more persons sharing residency and related by blood, marriage or operation of law, or who demonstrate a stable relationship which has existed over a period of time.

“Handicapped” is a person having a physical or mental impairment which is expected to be of long continued and indefinite duration and which substantially impedes his or her ability to live independently and which is of such a nature that such ability could be improved by more suitable housing conditions.

“Household” is one or more persons which share or will share a residence.

“Housing needs” is circumstances beyond the control of a family which are not one of the priorities set forth such as substandard housing, overcrowding, living with family or others, dangerous neighborhood, housing unsuitable because of medical reasons, etc.

“HUD” is the United States Department of Housing and Urban Development.

“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.

(d) In the case of assisted living residences (ALRs), all ALRs are subject to the New Jersey Department of Health and Senior Services screening requirements as set forth in N.J.A.C. 8:36 and the requirements of the New Jersey Department of Health and Senior Services, Division of Consumer Support and/or the New Jersey Department of Human Services, Division of Medical Assistance and Health Services.

Amended by R.1998 d.80, effective February 2, 1998.
See: 29 N.J.R. 3214(a), 30 N.J.R. 539(b).
Added (d).

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.

(d) In the case of assisted living residences (ALRs), preferences and priorities may be set according to the New Jersey Medicaid procedures and guidelines or the guidelines of any other insurer that may be paying for the costs of services to the applicant.

Amended by R.1998 d.80, effective February 2, 1998.

See: 29 N.J.R. 3214(a), 30 N.J.R. 539(b).

Added (d).

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.

(i) In the case of assisted living residences (ALRs), where the owner has made a good faith effort to attract income-eligible applicants as provided in (b) above but there is no income-eligible applicant available, an ALR owner may be permitted to rent an income-restricted unit to an over-income applicant, provided that:

1. The ALR adheres to the provisions of (a), (c), (f) and (g) above; and
2. The ALR rents the next available non-restricted ALR unit to the next income-eligible applicant who applies.

Amended by R.1998 d.80, effective February 2, 1998.
 See: 29 N.J.R. 3214(a), 30 N.J.R. 539(b).
 Added (i).

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 examinations: 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). In the case of assisted living residences, screening of applicants' physical or medical conditions shall be conducted in accordance with N.J.A.C. 8:36.

(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."

Amended by R.1998 d.80, effective February 2, 1998.

See: 29 N.J.R. 3214(a), 30 N.J.R. 539(b).

In (b), added a third sentence.

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

(a) 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.

(b) In assisted living residences financed by the Agency with the proceeds of Agency bonds where the interest on the bonds is exempt from Federal taxation, either not less than 20 percent of the units shall be occupied by individuals whose income is 50 percent or less of area median gross income, or not less than 40 percent of the units shall be occupied by persons whose income is 60 percent or less of area median gross income, at all times during the qualified project period as defined in the *Internal Revenue Code* (the "income-restricted units"). All ALRs shall reserve five percent of the income-restricted units for occupancy by persons whose monthly income does not exceed 300 percent of the monthly Federal Supplemental Security Income (SSI) benefit amount (which amount is determined and published annually by the Social Security Administration). Income-restricted units shall be distributed throughout the Project such that the residents of such units shall have equal access to and enjoyment of all common areas of the Project.

(c) For assisted living residences financed by the Agency with the proceeds of bonds where the interest is not exempt from Federal taxation, 20 percent of the units shall be set aside for persons whose incomes are 80 percent or less of the area median income. Five percent of the 20 percent of the units set aside shall be reserved for persons whose monthly income does not exceed 300 percent of the monthly Federal Supplemental Security Income (SSI) benefit amount (which amount is determined and published annually by the Social Security Administration).

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.

Amended by R.1998 d.80, effective February 2, 1998.

See: 29 N.J.R. 3214(a), 30 N.J.R. 539(b).

Added (b) and (c).

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 depen-

dency 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 Jasantown 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 inconsistencies 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 of an amount greater than three percent of the current rent, or the increase which would be derived by multiplying the current rent by the increase, if any, in the overall Consumer Price Index for New York-Northeastern New Jersey as published by the United States Department of Labor, Bureau of Labor Statistics as of September 30 of the year preceding the year in which the increase is sought to be implemented, whichever is less, or for a project receiving subsidy, assistance, insurance or guarantee by HUD shall submit a rent increase application to the Agency's Director of Property Management. The application shall consist of the rent determination and the following supporting documents:

5:80-13.10 Return on equity for eligible loans

For each eligible loan made for owner-occupied structures of four dwelling units or less, there is no general restriction on the rate of return which the owner may receive on its investment whether from rental of the other units in the structure or on sale of the property. However, the Agency may establish limitations on the rate of return on investment for owner-occupied, one to four family units, either at the time of the making of the original loan or upon the sale, of all or a portion of the property and improvement, upon a finding that such restrictions are necessary to assure the continued use of the property for individuals of low to moderate income.

SUBCHAPTER 14. MAKING OR PURCHASING ELIGIBLE LOANS FOR SINGLE FAMILY HOME IMPROVEMENT

5:80-14.1 Commitment applications

(a) Upon request, the Agency shall make available to all mortgage sellers a single family home improvement loan application form. Such form shall be provided at least 14 days in advance of the date all such applications must be submitted to the Agency. The single family home improvement loan application shall contain, among other things:

1. Provision for the mortgage seller to state the maximum principal amount of single family home improvement loans which the mortgage seller offers to the Agency;
2. The date by which the commitment application must be submitted to the Agency in order to be considered for an allocation of funds and the date by which program commitments will be accepted by the Agency;
3. A form of the proposed note purchase agreement to be executed by the mortgage seller; and
4. Provision for the mortgage seller to furnish information regarding its residential loan origination activities during a time period to be prescribed by the Agency.

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), inserted "family" following "single" in 1.

5:80-14.2 Allocation of commitments

(a) In allocating funds available to meet the commitments requested by mortgage sellers, the Agency shall consider, among other things:

1. The amounts of the program commitments requested by the various mortgage sellers;
2. The adequacy of supply of affordable single family home improvement loans in the areas in which the mort-

gage seller proposes to originate single family home improvement loans;

3. The financial strength and stability of the mortgage seller; and
4. The residential loan originating activity reported in the commitment application and the ability of the mortgage seller to originate single family home improvement loans under the terms and conditions of the note purchase agreement.

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

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

5:80-14.3 Execution of note purchase agreement

Upon notice of acceptance by the Agency to a mortgage seller of all or a portion of the home improvement loan program commitment requested by it, the Agency shall specify the date by which the Agency shall execute the note purchase agreement executed by the mortgage seller.

5:80-14.4 Unsecured single family home improvement loans

Single family home improvement loans which are not secured by a mortgage on the property being improved or rehabilitated shall be limited to loans specified in the Term Sheet for each single family Home Improvement Loan Program fully insured under the Federal Housing Administration Title I Property Improvement Loan Program.

5:80-14.5 Eligibility requirements

The Agency may designate income and other limitations with respect to persons eligible to receive single family home improvement loans and with respect to the use of proceeds of single family home improvement loans by such persons, which limitations may vary according to geographical area, in order that the purchase of single family home improvement loans by the Agency shall best effectuate the general purpose of the Act and the objectives of expansion of the supply of funds in the State available for single family home improvement loans, provision of additional housing needed to remedy the shortage of adequate housing in the State and elimination of substandard and energy inefficient dwellings. The Agency may set limitations on the principal amounts of single family home improvement loans to effectuate the aforesaid purposes of the Act.

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

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

5:80-14.6 Regulation of points charged by mortgage sellers

The Agency may regulate, limit or prohibit the charge or collection of any commitment fee, premium, bonus, points or other fees in connection with the origination of single family home improvement loans by mortgage seller to be purchased by the Agency.

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

5:80-14.7 Refinancing of pre-existing debt

The Agency shall not acquire any single family home improvement loans made for the purpose of refinancing pre-existing debt.

5:80-14.8 Purchase of Agency bonds

No mortgage seller (including any related person thereof, as defined in Section 103(b)(6)(C) of the Internal Revenue Code) shall, pursuant to any arrangement, formal or informal, purchase the bonds of the Agency in an amount related to the amount of the single family home improvement loans to be purchased from such mortgage seller (or related person, as aforesaid) by the Agency.

SUBCHAPTERS 15 THROUGH 16. (RESERVED)

SUBCHAPTER 17. PREVAILING WAGES

5:80-17.1 Authority

This subchapter is promulgated pursuant to the authority of N.J.S.A. 55:14K-42.

5:80-17.2 Applicability of prevailing wages

(a) Prevailing wage rates shall be paid in the construction or rehabilitation of housing projects the construction or rehabilitation of which is fully or partially financed by a loan from the Agency by all housing sponsors or builders, contractors or subcontractors engaged by housing sponsors, except as may be provided under the provisions of N.J.A.C. 5:80-1.4 or N.J.S.A. 55:14K-5y. The Agency may also require prevailing wage rates to be paid in connection with the operation, repair or improvement of any housing project or in conjunction with the construction or rehabilitation of any improvement or development financed by a loan from the Agency.

(b) Prevailing wage rates required to be paid pursuant to (a) above shall be determined in accordance with N.J.S.A. 55:14K-42.

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), inserted "the construction or rehabilitation of which is fully or partially financed by a loan from the Agency" following "rehabilitation of" in the first sentence.

SUBCHAPTER 18. DEBARMENT AND SUSPENSION FROM AGENCY CONTRACTING

5:80-18.1 Definitions

When used in this subchapter, the following terms shall have the following meanings:

"Affiliates" means persons having an overt or covert relationship such that any one of them directly or indirectly controls or has the power to control another.

"Agency contracting" means any arrangement giving rise to an obligation to supply anything to or perform any service for the Agency, other than by virtue of State or Agency employment, or to supply anything to or perform any service for a private or public person where Agency provides substantial financial assistance and retains the right to approve or disapprove the cost, nature or quality of the goods or service or the persons who may supply or perform the same.

"Debarment" means an exclusion from the New Jersey Housing and Mortgage Finance Agency (Agency) contracting, on the basis of a lack of responsibility evidenced by an offense, failure, or inadequacy of performance, for a reasonable period of time commensurate with the seriousness of the offense, failure, or inadequacy of performance.

"Person" means any natural person, company, firm, association, corporation or other entity that is engaged in or offers or proposes to be engaged in Agency contracting.

"Suspension" means an exclusion from Agency contracting for a temporary period of time, pending the completion of an investigation or legal proceedings.

Amended by R.1990 d.247, effective May 21, 1990.
See: 21 N.J.R. 3350(a), 22 N.J.R. 1556(b).

Definitions of agency contracting and person added.

Case Notes

Cited as former codification N.J.A.C. 5:80-4.1. New Jersey Housing Finance Agency v. Canino, 7 N.J.A.R. 182 (1983).

5:80-18.2 Causes for debarment of a person(s)

(a) In the public interest, the Agency may debar a person for any of the following causes:

1. Commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract, or subcontract thereunder, or in the performance of such contract or subcontract.

2. Violation of the Federal Organized Crime Control Act of 1970, or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, perjury, false swearing, receiving stolen property, obstruction of justice, or any other offense indicating a lack of business integrity or honesty.

(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 pro-

grams 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;

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

6. Assisted living residences applying for funding for 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."

Amended by R.1998 d.80, effective February 2, 1998.
See: 29 N.J.R. 3214(a), 30 N.J.R. 539(b).

In (a), added 6.

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.

(g) The applicant should consider using brochures as part of the total marketing program. Brochures can be tailored to meet specific housing information needs of those persons who are members of groups identified as least likely to apply for the housing. The brochure can also contain a greater quantity of information about the project or subdivision than that contained in mass media advertising.

1. A brochure may include a range of information which influences decisions regarding housing choice, for example, price/rent; proximity to schools; transportation; shopping, and employment centers; the availability of medical facilities for disabled persons.

2. The brochure should communicate the applicant's equal housing opportunity policy.

(h) Signs are another means of advertising. The applicant must indicate the size of any existing or proposed permanent project site sign. This sign must include the equal opportunity housing logo. The applicant must indicate the size of the logo. A photograph of the project sign must be submitted with the Plan or be submitted as soon as possible after erection of the sign.

5:80-22.8 Community contact

(a) Community contacts can supplement formal communications media for the purpose of soliciting tenants/buyers. The applicant shall include only those individuals or organizations that have direct and frequent contact with those groups identified earlier in the Plan as least likely to apply. The applicant shall choose community contacts on the basis of their position of influence within the general community and the particular target groups.

(b) Examples of suitable community contacts include:

1. Fair housing organizations and local non-profit housing associations, housing counseling agencies, regional tenant referral services;

2. Minority organizations (NAACP, Urban League), women's organizations, religious institutions, civil rights groups, editors of majority-owned and minority-owned newspapers;

3. Local government agencies which are in a position to make referrals of potential homeseekers and/or renters to the project or subdivision;

4. Real estate industry related groups such as local real estate boards, Community Housing Resource Boards, organized pursuant to HUD voluntary agreements with the National Association of Realtors and the National Association of Real Estate Brokers; and

5. Local employment centers, including large industrial and commercial employers, labor unions, hospitals, and educational institutions.

(c) The applicant shall give the following information regarding the community contacts:

1. Name of the organization or individual;
2. The racial/ethnic identification of the group or individual;
3. The approximate date the group or individual is to be contacted. This date should be consistent with the requirements for advance marketing to those persons least likely to apply where applicable;
4. The address and telephone number of the person to be contacted;
5. The methods of contact, for example, community meetings, briefing sessions by the applicant and community organizations brochures, walking or bus tours of the proposed housing, radio talk shows; and
6. The specific functions the group will perform.

5:80-22.9 Future marketing activities for rental units only

(a) The applicant shall describe the types of activities to be undertaken after the completion of initial occupancy of rental units in order to fill vacancies resulting from normal turnover.

(b) The applicant may undertake the same marketing activities which were performed during the initial occupancy. A modified Plan may reflect a reduced level of marketing activity as units are available only through turnover and may reflect changes in the media, community contacts or procedures in order to continue a marketing approach that is consistent with the Affirmative Fair Housing Marketing objectives.

(c) Examples of such marketing activities which may be performed following the initial rent-up can include the use of advertising media which may be targeted to the same groups previously identified as least likely to apply for the housing without special outreach, or to different groups chosen on the basis of need to encourage their greater representation in the prospective occupant pool. The media advertising can be similar in content and format to that used during the initial rent-up or can be changed by adjusting the scale of the advertising program.

(d) The applicant may use brochures and/or site signs to publicize the project after initial rent-up has been completed. The applicant may elect to eliminate community contacts altogether or may use contacts such as churches, local businesses, civic groups, the local government or individual community leaders as distributors of brochures or as information sources about the project. Participation in the regional tenant referral clearing house operated by local real estate industry, Public Housing Authorities (PHAs), fair housing groups or public agencies is also encouraged. Such services match prospective homeseekers and/or renters with vacant units of suitable size or price.

5:80-22.10 Assessment of marketing efforts

(a) The applicant shall describe the indicators to be used in measuring the effectiveness of the marketing efforts. Measuring effectiveness is an integral part of the applicant's Affirmative Fair Housing Marketing strategy, and the indicators selected should be consistent with other actions the applicant plans to undertake.

(b) The applicant may estimate the possible racial/ethnic composition of the prospective occupant pool which may be anticipated as a result of the marketing efforts including special outreach activities undertaken in accordance with the Plan. The prospective occupant pool should reflect the racial/ethnic composition of the housing market area.

(c) The applicant may estimate the distribution by race/ethnicity of the projected tenant population or owner population resulting from both the implementation of marketing activities and the tenant or homeowner selection process. Under no circumstances is this statement of anticipated occupancy results to be used as a quota in the tenant/owner selection process.

5:80-22.11 Composition of the prospective occupant pool

(a) In determining the anticipated racial/ethnic composition of the prospective occupant pool or tenant/homeowner population the applicant must consider any of the following factors as appropriate:

1. Physical characteristics of the proposed project or subdivision including:

- i. Project size, that is, number of units;
- ii. Distribution of units by bedroom size;
- iii. Household type to be served by the housing, that is, nonelderly families or elderly persons;
- iv. Income eligibility requirements;
- v. The demographic characteristics of the housing market area in which the project or subdivision is to be located including the racial/ethnic composition.

2. Demographic changes (social and economic) in the housing market area in which the project is to be located may result from publicly or privately financed revitalization activities which may displace lower income persons and encourage the immigration of higher income persons. Demographic changes may also result from housing practices which are illegal such as racial "redlining" by financial institutions, residential appraisals based on the racial composition of the neighborhood or the offering of financial incentives to sell homes because of racial or ethnic groups moving into the neighborhood (blockbusting).

5:80-22.12 Demographic characteristics of income eligible population in need

Applicants shall include data on any newly assisted project that may also be available at the time of occupancy of the proposed project. Such data should include project size and location, stage of construction, and anticipated dates of initial marketing activity and initial occupancy.

5:80-22.13 Residency preferences

(a) Residency preferences are generally prohibited in housing financially assisted by the Agency. The use of residency preferences as part of a project tenant selection and assignment procedure may be permitted under certain circumstances such as a court ordered settlement and/or consent order with prior approval of the Agency. In these instances, prior approval of the Agency is required, and the residency preferences may be used in such a manner that housing opportunity will not be denied to any particular group.

(b) In connection with housing assisted under the Fair Housing Act, residency preferences shall be limited to the indigenous need portion of the community's housing obligation, but not more than 50 percent in any one project.

(c) In formulating the request for a residency preference, the applicant should calculate the size of the potential population of households eligible for the proposed housing and should also indicate the potential population of eligible households or families identified as expected to reside in the housing area because of present or planned employment. Using the results of this calculation, the applicant should then determine whether an eligible population of residents exists which contains sufficient numbers of households from both majority and minority groups to yield a prospective occupant or tenant/homeowner pool. If such a population does exist, the owner may confine the marketing to that jurisdiction and all the units in the project can be subject to the preference. If, however, an insufficient number of one or more categories of eligible households exists within the jurisdiction the applicant should open marketing to the entire market area.

(d) In formulating the request for residency preference the applicant may use data on the housing assistance needs of particular segments of the eligible population contained in the local Housing Assistance Plan, the Census Bureau's census of population and housing reports which gives statistics on income for each SMSA by race, and other locally compiled data sources such as regional planning agency reports and locally performed census counts.

5:80-22.14 Staff experience and instructions for fair housing training

(a) The applicant shall indicate whether it has had any experience in marketing housing to the group(s) identified as least likely to apply.

(b) The applicant is responsible for instructing all employees and agents in writing and verbally concerning non-discrimination in housing. Instructions regarding fair housing requirements and objectives should also be a continuing part of the agenda of staff meetings or other regular orientation activities carried on for sales and rental staff.

(c) The applicant shall submit a copy of the instructions given to submanagement staff on fair housing concerns such as Federal, State, or local housing laws, and the applicant's Affirmative Fair Housing Marketing Plan. These materials should indicate the date established for conducting such training and the name and title of the person responsible for developing the fair housing training program.

5:80-22.15 Other indicators of successful implementation

The applicant may describe indicators other than the projected racial/ethnic composition of the prospective occupant pool or the tenant population. These indicators can measure the effectiveness of various components of the Plan such as the advertising methods, the outreach activities targeted toward the group identified as least likely to apply or the use of community contacts.

5:80-22.16 Approval of the Affirmative Fair Housing Marketing Plan

(a) In the event that the Plan is deficient, the Agency will notify the applicant of the nature of the deficiencies and request any additional information. Copies of approved plans will be distributed as follows:

1. Original to the applicant;
2. A copy to be maintained by the Agency's Minority Affairs Coordinator;
3. A copy to be maintained in the Management Division; and
4. For projects financed under the Affordable Housing Program, a copy to the respective community and the designated developer.

(b) The letter of approval to the applicant will include the following information:

1. The procedure to follow in notifying the Agency of intent to market;
2. Submission to the Agency of copies of the advertisements, project signs, brochures and letters used during the marketing period and developed as part of the marketing program; and
3. Submission of required occupancy reports, monthly sales reports, and monthly rental reports.

5:80-22.17 The Management Plan

(a) The applicant shall submit a Management Plan setting forth roles, responsibilities, policies and procedures regarding all aspects of management, including but not

limited to parking and tenant selection. The Management Plan shall contain the applicant's plan for implementing the Affirmative Fair Housing Marketing Plan and for equal employment opportunities. The agency will review the Management Plan to determine consistency with the approved Affirmative Fair Housing Marketing Plan. Particular attention will be paid to the following in determining consistency with the Plan:

1. Advertising of units; and

2. Tenant selection and assignment methods. Although the Affirmative Fair Housing Marketing requirements apply to advertising the availability of the housing, the selection procedures adapted by the applicant affect the opportunity of eligible persons to exercise their housing choice. These selection procedures and methods of administration should not directly or indirectly discriminate against any person on the basis of race, color, religion, creed, sex, or national origin or have the effect of hindering the achievement of the purposes of the plan objectives. Applicants are encouraged to adopt the Agency's Tenant/Owner Selection Guidelines as their own.

5:80-22.18 Notification of intent to begin marketing

The applicant shall notify the agency no later than 90 days prior to the commencement of any sales or rental marketing activities of the applicant's intent to begin sales or rental activities.

5:80-22.19 Preoccupancy conference

Upon receipt of the notification of intent to begin marketing, the Agency may schedule a preoccupancy conference with the applicant's advertising firm, rental and/or sales agent.

5:80-22.20 Marketing for initial sales or rent-up

(a) In carrying out the provisions of the approved Affirmative Fair Housing Marketing Plan, the applicant shall implement the following procedures which apply to advance marketing activities as well as marketing activities targeted to the general eligible population:

1. Prior to initiating general marketing, contact the commercial media, fair housing groups, employment centers and civil rights organizations which have been identified as resources for attracting persons who are "least likely to apply" for the housing.
2. Establish a system for documenting outreach activities and for maintaining records of prospective occupants and approved eligible families which provide racial, ethnic and gender data.
3. Prior to the commencement of application taking or sales, provide training to all management or sales staff in Federal, State and local fair housing laws and with respect to the plan objectives.

4. Submit materials to the agency which document activities taken to implement the approved Plan; that is, copies of advertisements, brochures, leaflets, and letters to community organizations, fair housing groups, major employment centers, referral services, and other contacts utilized as part of the marketing program; photographs of project signs; a copy of the instructions used to train sales/rental staff in fair housing laws; anticipated dates of advertising and occupancy.

5. Prior to initiation of marketing, the applicant may compile a list of those persons who indicated an interest in applying for the housing. Such persons shall not be considered prospective occupants and placed in the prospective occupant pool until they have filed a formal application during the regular, publicized application-taking period. Application forms should not be provided to such persons in advance of other persons to whom the marketing program is directed.

5:80-22.21 Assessment of the Plan's implementation

(a) The applicant shall monitor and carefully evaluate the results of the special outreach and general marketing activities undertaken during the initial sales or rent-up period. Through such evaluation, the applicant can determine whether the provisions of the Plan have been successfully implemented and how effectively the Affirmative Marketing Program has helped attract buyers or tenants of majority and minority groups. Examples of factors to be examined in the population of the relevant housing market area include:

1. The actual racial/ethnic composition of either the tenant/owner population or the prospective occupant pool. The applicant should compare this data with the anticipated composition of prospective occupants or tenants/owners the applicant has projected in the Plan. If the anticipated and actual compositions are similar, then the advertising program can be considered successful. If the actual occupant or prospective occupant pool composition does not reflect the projected pattern, the marketing program should be carefully reviewed to determine, for example:

- i. Whether outreach efforts are yielding fewer or more applicants from the target groups;
- ii. Whether the prospective occupant pool composition itself appears to be realistic in light of marketing experience related to the project in question;
- iii. Whether adjustments in the advertising strategy or other outreach efforts are warranted;
- iv. Whether tenant/owners selection criteria appear to be a factor in producing a racial/ethnic composition of occupants which is different from that of the prospective occupant pool.

2. Measures relating directly to special outreach and other advertising techniques used in the marketing program. For example, the applicant may keep a running tabulation of responses to questions relating to the manner in which the prospective buyer or renter had heard about housing. Through such techniques, the applicant can determine whether, for example, foreign language or minority media are effective marketing mechanisms; whether the equal housing opportunity logo effectively conveys to such buyers or renters the message that they are welcome to apply and will not encounter discrimination; whether community contacts used by the applicant are advertising the housing effectively; whether members of groups targeted for special outreach activities are learning about the housing through informal means rather than commercial media.

5:80-22.22 Modification of the approved Affirmative Fair Housing Marketing Plan

(a) Modification to the approved Plan may be appropriate under certain circumstances prior to initial marketing, after commencement of initial marketing, or after rent-up is completed. Circumstances which may generate modifications in the Plan include:

1. Significant changes in the parties implementing the Plan, for example, sales company, management company or applicant. If such changes occur, the applicant should identify the new parties and inform the Agency of such changes.
2. Significant changes in the demographic or economic characteristic of the housing marketing area in which the project is located, for example, racial/ethnic composition. Such changes can affect the direction of the outreach activities, that is, the group or groups within the eligible population which have been identified as least likely to apply. If the demographic or economic characteristics of the area in which the proposed housing is to be located have changed very significantly, the applicant should consider changing the group(s) to be targeted for special outreach activities as well as the specific aspects of the advertising program, for example, commercial media, brochures and signs, which relate to the choice of target groups. Similarly if new information with respect to community contacts which may be helpful in reaching the target groups, for example, establishment of a Community Resources Housing Board or the dissolution of a housing referral service previously listed in the approved plan comes to light then changes might be warranted.

(b) If the applicant concludes that changes would be appropriate, the applicant should, as early in the marketing process as possible, discuss possible changes with the Agency and submit any proposed changes for Agency review and approval.

5:80-22.23 Record keeping and recording requirements

(a) The applicant shall collect and maintain information relating to sales and rental activities, including documentation connected with the outreach program, race and gender for both occupants and prospective occupants. The applicant shall maintain this data for the most recent three year period of operation or portion thereof, if the project has not been in operation for more than three years. The applicant shall submit monthly reports on occupancy to the Agency, as follows:

1. The monthly sales report is to be submitted for all single-family subdivisions and multifamily cooperative projects on or before the fifth day of the month following initial sales of any housing units and monthly thereafter until 95 percent of the units are sold. For housing units built in scattered sites, separate sales reports must be submitted for each type of area in which the units are built, that is, minority area, racially-mixed area, or non-minority area.

2. The applicant must submit monthly rental reports for rental housing programs on or before the fifth day of the month following the rental of the first unit. This report is submitted monthly until 95 percent of the units are occupied.

5:80-22.24 Future marketing activities for rental projects

(a) Upon completion of the initial rent-up, the applicant initiates appropriate marketing activities for filling vacancies resulting from normal turnover. The applicant may utilize the list of remaining prospective occupants as the waiting list for the project. The applicant is encouraged to contact the Agency for assistance in adapting the Plan to the post-initial occupancy period. The nature of this adaptation would normally depend on such factors as:

1. The size and racial/ethnic composition of the waiting list, if one is maintained;
2. The assessment by the Agency and the applicant of the effectiveness of the initial marketing Plan, especially with respect to participation by members of those groups identified as least likely to apply;
3. Any changes in the demographic and socio-economic composition of the housing market area.

5:80-22.25 Monitoring

(a) Monitoring will be conducted to assess the degree to which the activities undertaken pursuant to an approved Affirmative Fair Housing Marketing Plan conform with the applicable Fair Housing Laws and Regulations. In conducting monitoring, the agency will determine:

1. Whether the applicant has made a good-faith effort to carry out the provision of the approved Plan and related Affirmative Fair Housing Marketing requirements; and

2. Whether progress has been made toward the achievement of the objectives of the Plan.

(b) Agency staff will conduct on-site monitoring which will entail an examination of records, visual inspection of the project and interviews with applicants, rental/sales agent and staff, occupants and community organizations identified in the Plan. Records which may be examined include applications (for both accepted and rejected prospective occupants), and documentation relating to advertising.

(c) Failure to make a "good faith effort" to comply with the Plan could result in the loss of Agency financial assistance. All complaints regarding discrimination will be forwarded to the New Jersey Division on Civil Rights for formal criminal investigation.

SUBCHAPTER 23. HOUSING INCENTIVE NOTE PURCHASE PROGRAM
5:80-23.1 Authority

The rules in this subchapter are promulgated under and pursuant to the authority of the New Jersey Housing and Mortgage Finance Agency Law of 1983 constituting P.L. 1983, c.530, N.J.S.A. 55:14K-1 et seq.; specifically N.J.S.A. 55:14K-12a and 14K-5(s).

5:80-23.2 Purpose

This subchapter is established to assist the Agency in helping to create incentives for lenders and developers to make available and continue to provide a base of affordable housing stock of owner occupied residential units in the State of New Jersey, as contemplated by N.J.S.A. 55:14K-12a and 14K-5(s).

5:80-23.3 Definitions

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

"Available note purchase commitment" means at the time of entering into any housing incentive note purchase agreement an amount equal to the product of x times y , where $x = 3$ and $y =$ the amount then on deposit to the credit of the Fund less all amounts then required as determined as of the end of the most recent calendar quarter by the Agency to be paid out of the Fund pursuant to properly made demands for purchase of undivided interests under existing Housing Incentive Note Purchase Agreements and less (but without duplication) the amount of any undivided interest already subject to purchase with respect to any residential project loan as to which there is an existing default for the payment of principal or interest which is over 90 days past

due (whether or not a demand for purchase has been made).

"Eligible project" means any residential project which:

1. Is located entirely within the geographic boundaries of the State of New Jersey; and
2. Otherwise meets the requirements of the Agency which shall include the qualifications of the developer applying for a housing incentive note purchase agreement and the environmental and other characteristics of the real property comprising the residential project.

"Fund" means the Housing Incentive Note Purchase Fund established pursuant to N.J.A.C. 5:80-23.4.

"Housing incentive note purchase agreement" or "HINPA" means any note purchase agreement entered into by the Agency pursuant to this subchapter in which the Agency agrees, subject to the terms and conditions set forth therein, to purchase an undivided interest.

"Person" means any individual, corporation, general or limited partnership, joint venture or other entity.

"Purchase price" means the dollar amount, payable by the Agency to a qualified lender to acquire an undivided interest pursuant to and as adjusted by the terms of the relevant HINPA, as determined on the date of purchase. The purchase price shall be an amount equal to the lesser of:

1. A stated dollar amount; or
2. The product of x times y , where x = the undivided interest and y = the outstanding principal amount of the relevant loan on the date of purchase.

"Qualified lender" means any person resident in, established under the laws of, or qualified to do business as a foreign corporation or other entity in, the State of New Jersey and which person is in the business of making real estate loans, has the corporate or other power to, and is authorized to conduct such business in, the State of New Jersey, and has a credit status satisfactory to the Agency.

"Residential project" means any development, the purpose of which is to create one or more residential structures for owner occupancy whether in the form of detached units or attached units for separate occupancy together with any land, infrastructure, roads, sewer, structures, facilities or other improvements, appurtenant or ancillary thereto. "Residential project" includes any partially or wholly completed development which would have constituted a "residential project" at inception and which has been abandoned or foreclosed or is subject to a foreclosure, bankruptcy, insolvency or like proceeding.

"Undivided interest" means the Agency's undivided share of any eligible project and the right, title and interest of the qualified lender in, to and under the related loan documents and collateral.

5:80-23.4 Housing Incentive Note Purchase Fund

(a) There is hereby established within the funds maintained by the Agency a fund to be known as the "Housing Incentive Note Purchase Fund."

(b) There shall, on July 19, 1993, be deposited in the Fund the amount of \$10,000,000 from funds available to the Agency and previously designated for this purpose.

(c) There shall also be deposited in the Fund:

1. All income earned on the monies deposited therein;
2. All HINPA fees received pursuant to N.J.A.C. 5:80-23.9(a);
3. All monies received by the Agency in respect of the undivided interests whether denominated as principal, interest or otherwise but excluding the fees received pursuant to N.J.A.C. 5:80-23.9(b) and (c), and

4. All other monies designated from time to time by the agency for deposit in the Fund.

(d) Monies on deposit in the Fund may be invested and reinvested by the Agency in the same manner in which other funds of the Agency may be invested.

(e) Monies on deposit in the Fund may be withdrawn:

1. To fund the payment of the purchase price of undivided interests pursuant to housing incentive note purchase agreements;
2. To cure, at the option of the Agency, payment defaults by developers as, and if, contemplated by the respective housing incentive note purchase agreements; and
3. To liquidate the Fund upon payment in full or the provision of payment in full of all existing and contingent obligations of the Agency under housing incentive note purchase agreements existing at the time of liquidation of the Fund.

5:80-23.5 Authority to enter into housing incentive note purchase agreements

(a) Each housing incentive note purchase agreement entered into pursuant to this subchapter shall be a limited recourse purchase obligation of the Agency payable solely from monies available in the Fund and from no other fund or source of monies and shall not be a general obligation of the Agency. In the event there are insufficient monies in the Fund to pay the aggregate purchase price of all undivided interests under outstanding housing incentive note purchase agreements, such purchases shall be made pro rata based upon the ratio which the purchase price under each HINPA bears to the aggregate purchase price of all undivided interests with respect to which a demand for purchase has been received by the Agency.

(b) Each lease-purchase agreement with an eligible buyer shall contain the following terms and conditions, in addition to such other terms and conditions that the Agency may from time to time deem appropriate for a particular agreement:

1. The eligible buyer shall agree to rent at a fair market rental a housing unit in an eligible development for a fixed period as determined by the Agency, not to exceed 36 calendar months, and to pay the monthly rental promptly and fully. Failure to make such rental payments promptly and fully, or physical abuse of the unit, shall result in prompt eviction and the termination of the option described in (b)3 below;

2. The eligible buyer shall agree that such housing unit be used solely as a principal residence, and shall further agree that the unit shall not be used for seasonal use, as an investment property, or for business purposes;

3. The eligible buyer shall pay upon the execution of the lease-purchase agreement, a nonrefundable option fee of \$1,000 for an option to purchase for cash the housing unit which is the subject of the lease-purchase agreement, on the expiration date of the lease period set forth therein. If the eligible buyer does not exercise the option, the lease will terminate at the expiration of the lease period, the eligible buyer will immediately vacate the unit, and the Agency will retain the option fee;

4. In return for the option fee, the Agency shall grant the eligible buyer an option to purchase the subject housing unit at a fixed price; each price being the unit's estimated fair market value at the end of the lease period, such estimate being set pursuant to an appraisal prior to the execution of the lease-purchase agreement;

5. The Agency shall accumulate in a segregated fund a percentage (calculated at the time of execution of the lease-purchase agreement) of the fair market monthly rent it will receive during the lease period set forth in the lease-purchase agreement at a rate calculated by the Agency to be sufficient, together with the option fee, and its projected profit on the sale of the unit, if the option is exercised, to enable it to make the grant. The grant will be applied towards closing costs and the downpayment on the sales price for such housing unit for which the eligible buyer has otherwise obtained or is expected to obtain his or her own financing. The amount of the grant to be made will be calculated by the Agency (at the time the lease-purchase agreement is executed) as the amount, given anticipated market conditions, to be necessary, taking into account the assets of the eligible buyer, to induce a mortgage lender to finance the balance of the sales price for the housing unit. Such calculation by the Agency shall not constitute a representation or warranty to the eligible buyer of the availability of mortgage financing and the eligible buyer shall have no recourse against the Agency in the event such eligible buyer fails to obtain mortgage financing or is otherwise unable to exercise the option to purchase the housing unit which is subject to

the lease-purchase agreement. If, for any reason, the eligible buyer is unable to or chooses not to exercise the option to purchase, all monies so set aside shall be retained by the Agency.

i. Notwithstanding anything to the contrary contained in these rules, the percentage rent to be set aside by the Agency to fund a portion of the grant shall not reduce the unrestricted portion of the rent to an amount less than the amount sufficient to maintain and operate the rental housing and to meet debt service on the portion of the securities issued by the Agency to finance the purchase of such housing, and all monies set aside with respect to such downpayment and/or closing costs shall be subject to application to pay required debt service on such securities; and

6. The eligible buyer shall acknowledge that the Agency may give a mortgage and/or other security interests in the housing unit to secure repayment of the financing undertaken by the Agency to finance the purchase price for the eligible development.

SUBCHAPTER 25. (RESERVED)

SUBCHAPTER 26. HOUSING AFFORDABILITY CONTROLS

Authority

N.J.S.A. 52:27D-321f, 52:27D-324 and 55:14K-5g.

Source and Effective Date

R.2001 d.360, effective October 1, 2001.
See: 33 N.J.R. 230(a), 33 N.J.R. 3432(b).

Subchapter Historical Note

Subchapter 26, Housing Affordability Controls, was repealed and a new Subchapter 26, Housing Affordability Controls, was adopted as new rules by R.2001 d.360, effective October 1, 2001. See: Source and Effective Date.

5:80-26.1 Purpose and applicability

This subchapter is designed to implement the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301 et seq.) by assuring that low-and moderate-income units created under the Act are occupied by low-and moderate-income households for an appropriate period of time. This subchapter provides rules for the establishment and administration of affordability controls on restricted units that receive COAH credit under the Fair Housing Act; that receive funding from the Division under the Neighborhood Preservation Balanced Housing Program; that receive funding from the Agency under its UHORP and MONI programs; or with respect to

which a municipality or developer contracts with the Agency, HAS or other experienced administrative agent approved by DCA, the Agency or COAH for the administration of affordability controls pursuant to the Fair Housing Act. Unless expressly stated otherwise herein, this subchapter shall apply to all restricted units described in the foregoing sentence, regardless of the date on which the units were created; provided, however, that the rules do not apply to units qualifying for the Federal Low-Income Housing Tax Credit under Section 42 of the Internal Revenue Code, units that receive Balanced Housing funds under the Agency's Home Express program or to units receiving assistance under the Federal HOME program, 24 C.F.R. § 92.252(e), § 92.254(a)(4); HUD 202 program, 24 C.F.R. Part 891; HUD 811 program, 24 C.F.R. Part 890; HUD HOPE VI program; or Federal Home Loan Bank, Affordable Housing Program, 12 C.F.R. Part 60.

Amended by R.2004 d.475, effective December 20, 2004.
See: 36 N.J.R. 3655(a), 36 N.J.R. 5713(a).
Rewrote the section.

5:80-26.2 Definitions

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

“Administrative agent” means the entity responsible for administering the affordability controls of this subchapter with respect to specific restricted units, as designated pursuant to N.J.A.C. 5:80-26.14.

“Affordability average” means an average of the percentage of median income at which restricted units in an affordable development are affordable to low-and moderate-income households. For example, if the rents for the five restricted rental units in an affordable housing development were affordable at 46, 48, 50, 52 and 54 percent of median income, respectively, the average affordability for those units would be 50 percent of median income.

“Affordable” means, in the case of an ownership unit, that the sales price for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.6 and, in the case of a rental unit, that the rent for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.12.

“Affordable development” means a housing development all or a portion of which consists of restricted units.

“Agency” means the New Jersey Housing and Mortgage Finance Agency established by P.L. 1983, c.530 (N.J.S.A. 55:14K-1 et seq.) and in, but not of, the DCA.

“Age-restricted unit” means a housing unit designed to meet the needs of, and exclusively for, the residents of an age-restricted segment of the population where the head of the household is a minimum age of either 62 years, or 55 years and meets the provisions of the 42 U.S.C. §§ 3601 et seq., except that due to death, a remaining spouse of less than 55 years of age shall be permitted to continue to reside.

“Assisted living residence” means a facility licensed by the New Jersey Department of Health and Senior Services to provide apartment-style housing and congregate dining and to assure that assisted living services are available when needed for four or more adult persons unrelated to the proprietor. Apartment units offer, at a minimum, one unfurnished room, a private bathroom, a kitchenette and a lockable door on the unit entrance.

“Balanced Housing” means the Neighborhood Preservation Balanced Housing Program of the DCA as set forth at N.J.S.A. 52:27D-320 and N.J.A.C. 5:43.

“Certified household” means a household that has been certified by an administrative agent as a low-income household or moderate-income household.

“COAH” means the Council on Affordable Housing in, but not of, the DCA, established under the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301 et seq.).

“DCA” means the State of New Jersey Department of Community Affairs.

“Division” means the Division of Housing in the DCA.

“HAS” means the Housing Affordability Service, formerly known as the “Affordable Housing Management Service,” in the Department of Community Affairs, Division of Housing.

“High-poverty census tract” means a census tract with a census-determined average poverty rate equal to or greater than 25 percent, as determined by the United States Census Bureau.

“HUD” means the United States Department of Housing and Urban Development.

“Low-income household” means a household with a total gross annual household income equal to 50 percent or less of the median income.

“Low-income unit” means a restricted unit that is affordable to a low-income household.

“Median income” means the median income by household size for an applicable county, as adopted annually by COAH.

“Moderate-income household” means a household with a total gross annual household income in excess of 50 percent but less than 80 percent of the median income.

“Moderate-income unit” means a restricted unit that is affordable to a moderate-income household.

“MONI” means the Agency's Market Oriented Neighborhood Investment Program, as it may be authorized from time to time by the Agency.

Article 8. NO WAIVER BY AGENCY

The Agency may exercise any right under this Mortgage or under any law, even if the Agency has delayed in exercising that authority, or has agreed in an earlier instance not to exercise that right. The Agency does not waive its right to declare the Owner is in default by making payments or incurring expenses on behalf of the Owner.

Article 9. EACH PERSON LIABLE

The Mortgage is legally binding upon each Owner individually and all their heirs, assigns, agents and designees who succeed to their responsibilities. The Agency may enforce any of the provisions of the Note and of this Mortgage against any one or more liable individual.

Article 10. SUBORDINATION

This Mortgage will not be subordinate, and will not be subordinated by the Agency, to any mortgage, refinancing, equity loan, secured letter of credit, or any other obligation secured by the Property, except with respect to (a) any such obligation which was duly recorded prior to the recording hereof, and (b) any such obligation which, when added to all other such obligations recorded against the Property, shall result in total debt secured by the Property being an amount less than the maximum resale price that would be applicable were the Control Period still in effect.

Article 11. SUBSEQUENT OWNERS

This Mortgage shall not be released, with respect to any subsequent owner who acquires the property through an exempt transfer unless the transferee shall execute a note and mortgage in the form of the Note and this Mortgage, and the same has been duly recorded.

Article 12. AMENDMENTS

No amendment or change to the Note and this Mortgage may be made, except in a written document signed by both parties and approved by the administrative agent appointed pursuant to N.J.A.C. 5:80-26.1 et seq.

Article 13. SIGNATURES

By executing this Mortgage on page 3, hereof, the Owner agrees to all of its terms and conditions.

Article 14. ACKNOWLEDGEMENT

The Owner acknowledges receipt of a true copy of this Mortgage, at no charge to the State.

IN WITNESS WHEREOF, the Owner(s) has executed this Mortgage for the purposes stated herein.

ATTEST:

By: _____
Signature of (Owner)
Signature (Co-Owner)

STATE OF NEW JERSEY)
COUNTY OF _____) ss:

BE IT REMEMBERED, that on this the _____ day of _____, 20_____ the subscriber _____ appeared personally before me (If more than one person signed the foregoing mortgage and appeared before me, the words "the subscriber" and "the Owner" shall include all such persons) and who, being duly sworn by me, deposed and made proof to my satisfaction (i) that he/she is the Owner named in the foregoing mortgage and (ii) and that he/she has executed said mortgage with respect to the Property and for the purposes described and set forth therein.

Sworn to and subscribed before me, _____ on the date set forth above.

NOTARY PUBLIC

New Rule, R.2004 d.475, effective December 20, 2004.
See: 36 N.J.R. 3655(a), 36 N.J.R. 5713(a).

SUBCHAPTER 27. (RESERVED)

SUBCHAPTER 28. NONPUBLIC RECORDS

5:80-28.1 Nonpublic records

(a) The documents, files, data and other records of the New Jersey Housing and Mortgage Finance Agency which are listed below shall not be deemed to be public records pursuant to N.J.S.A. 47:1A-1 et seq. Such records shall not be available for inspection, examination or copying by members of the public or by any other individual except authorized members and employees of the Agency or except as provided by order of the Governor of New Jersey, a court of competent jurisdiction, or applicable law.

- 1. All confidential reports, executive memoranda and evaluations submitted to the Executive Director of the Agency, the members of the Agency or to any other State Agency;

2. All personnel records;
3. All records concerning applications for employment with the Agency;
4. All records concerning personal or financial information submitted by applicants for or tenants of rental housing units financed by the Agency;
5. All records concerning personal or financial information submitted by applicants for or recipients of any single family mortgage loan or home improvement loan of the Agency;
6. All records concerning personal or financial information, including Agency form, Certification and Questionnaire, submitted by individuals, corporations, partnerships and other entities doing or seeking to do business with the Agency; and
7. All reports, correspondence and other documents or data provided or discussed at the Executive Session of the meetings held by the members of the Agency, except that any action taken or other information required to be disclosed to the public pursuant to N.J.S.A. 10:4-6 et seq. shall not be deemed to be nonpublic records within the scope of this subchapter.

SUBCHAPTER 29. INVESTMENT OF HOUSING PROJECT FUNDS

5:80-29.1 Permitted investments

(a) Housing sponsors whose mortgages are insured by the U.S. Department of Housing and Urban Development (HUD), may, with prior Agency approval, invest available funds including escrow funds in taxable or tax free investments permitted by HUD, provided that they have not incurred operating losses for the past three years and provided that all escrows are fully funded at the time of the request.

(b) Housing sponsors of all other projects, with prior Agency approval, may invest available funds including escrow funds in the following, provided that they have not incurred operating losses for the past three years and provided that all escrows are fully funded at the time of the request:

1. State of New Jersey general obligation bonds;
2. New Jersey Housing and Mortgage Finance Agency bonds, which shall be rated A or higher;
3. Bonds of municipalities, instrumentalities or agencies of the State of New Jersey, which shall be rated A or higher and whose rating of A or higher has been confirmed within the past 12 months;
4. New Jersey bond funds (consisting of bonds of any of the entities in (b)1 through 3 above) of which at least 90 percent of the bonds within the fund are rated A or higher and whose ratings have been confirmed within the past 12 months;

5. Taxable or tax-free, interest-bearing instruments which are Triple A rated. The Triple A rated instruments are limited to U.S. Treasury Notes, U.S. Treasury Bills, U.S. Treasury Bonds, Federal National Mortgage Association obligations, and Government National Mortgage Association obligations;

6. Certificates of deposit, money market accounts and other bank accounts, provided such accounts are insured in full by the Federal Deposit Insurance Corporation; and

7. Any other investment as permitted under (a) above.

(c) The rating designation in (b) above shall be from either Standard and Poor's or Moody's Investor Services.

(d) Agency staff, at the sponsors' written request, shall respond within 30 days after the complete request is received. The sponsors shall submit a certification that the investments requested are within the permissible investments listed in these rules.

(e) Investment of escrow funds shall be made by an Agency designated investment services firm.

Recodified from 5:80-29.2 and amended by R.1994 d.303, effective June 20, 1994.

See: 25 N.J.R. 4830(a), 26 N.J.R. 2572(a).

Prior text at 5:80-29.1, Definition of surplus funds, repealed.

5:80-29.2 (Reserved)

5:80-29.3 General applicability

The rules within this subchapter shall apply to all Agency financed housing projects. In the event the housing project receives HUD Section 8 or Section 236 subsidies or whose mortgage is insured, directly or indirectly, by HUD, any appropriate HUD rules, regulations or requirements (hereafter HUD directives) shall also apply. In the event that there are any inconsistencies between the rules in this subchapter and applicable HUD directives, the HUD directives shall prevail.

SUBCHAPTER 30. RESIDUAL RECEIPTS

5:80-30.1 Definitions

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

"Qualifying development" means an Agency-financed housing project owned by a nonprofit sponsor, except for projects receiving Section 8 subsidies pursuant to an Annual Contributions Contract executed after the adoption of regulations by the U.S. Department of Housing and Urban Development on February 29, 1980, at 24 CFR 883, which has:

1. Produced a positive cash flow from operations in each of the past three fiscal years; and

2. Been current in all escrow and debt service payments for the past three fiscal years.

"Residual receipts" means the balance of funds remaining after the deduction of the following items from the cash and the investment accounts of a qualifying development:

1. Debt service arrearages;

2. Current unpaid invoices;

3. Three months of operating expenses (for senior citizen projects) or six months of operating expenses (for family projects), which includes debt service and reserve payments, of the latest Agency approved annual budget;

4. Full funding of all required reserve accounts;

5. Anticipated or proposed capital improvements; and

6. Any other current obligations of the qualifying development.

5:80-30.2 Uses of residual receipts

(a) For qualifying developments, residual receipts may be used:

1. To provide funding to expand the supply of "affordable rental housing" or to render financial assistance to other Agency financed or "affordable housing projects" (the terms "affordable rental housing" and "affordable housing project" shall mean housing with income unit distribution consistent with the requirements of tax-exempt financing pursuant to the then-current Internal Revenue Code);

2. For funding of supplementary services to the qualifying development, such as free senior citizens transportation, medical assistance and other social services programs and activities; and

3. For other uses as may from time to time, be requested, which will enhance the feasibility of a new project or the financial and social condition of an existing project.

(b) Residual receipt funding may include any one or more of the following:

1. First and supplemental mortgages, including construction mortgages;

2. Operating deficit subsidies;

3. Seed money loans; and

4. Grants.

(c) Disbursements of residual receipts shall be in the form of a loan, grant or equity contribution, as approved by the Agency, from the nonprofit sponsor to the entity receive-

ing the funds. However, for all sponsors formed under N.J.S.A. 55:16-1 et seq., approval by the Public Housing Development Authority is required with respect to the form of the disbursement.

5:80-30.3 Request for use of residual receipts

(a) All requests to use residual receipts funds must be approved by the Agency in advance. Requests shall be made in writing by the sponsor of a qualifying development and submitted to the Agency's Director of Management.

(b) The request shall specify the purpose, amount and payee. The request shall be accompanied by a resolution of the nonprofit sponsor's board of directors. If the request is for social services or professional services, the request shall also be accompanied by a proposal outlining the services and the cost. If the request involves payment to a third party, an Administrative Questionnaire, completed by the third party, shall also accompany the request.

(c) The officers, directors and principals of the qualifying development shall submit certifications that they will not receive any fee or compensation, other than reimbursement for out-of-pocket expenses, for services performed in connection with the use of residual receipts. Such certification may also be required for the officers, directors and principals of the entity receiving the funds, as determined by the Agency.

5:80-30.4 Agency review and approval

(a) Upon receipt of a complete request package as delineated in N.J.A.C. 5:80-30.3, the Agency will review the request to determine whether the requested use of funds falls within the permissible uses set forth in N.J.A.C. 5:80-30.2(a) and whether there are sufficient residual receipts to fund the undertaking requested. The Agency will also evaluate the requested undertaking for feasibility.

(b) If the use of the receipts is for total funds of \$25,000 or less, it may be approved by the Executive Director of the Agency. If the request is for funds in excess of \$25,000, the recommendation and request package shall be submitted to the Agency Board of Directors for approval.

(c) Agency approval will be subject to receipt of:

1. An opinion from Agency bond counsel that the proposed use of residual receipts is permitted under the terms of the Bond Resolution and other Bond documents in connection with the Bonds issued to finance the qualifying development; and

2. An opinion by counsel for the qualifying development that the sponsor's formation documents and the laws under which the sponsor was formed permit the proposed use of residual receipts.

(d) Agency review will be subject to the payment of a \$3,500 fee to the Agency to cover administrative costs in reviewing and processing the use of residual receipts and to maintain the account established pursuant to N.J.A.C. 5:80-30.5. In addition, Agency review is subject to the payment of Agency bond counsel costs. Payment may be made by the entity receiving the residual receipts or the qualifying development's sponsor.

5:80-30.5 Disbursement of residual receipts

(a) Upon approval of a request for the use of residual receipts, the sponsor of the qualifying development shall transfer the residual receipts to the Agency. The Agency shall maintain the residual receipts in a separate account and shall make all disbursements from the account to pay for the cost of the approved undertaking. The Agency shall maintain accounting records reflecting the disbursement.

(b) Prior to the disbursement of any residual receipts, the Agency will require acceptable documentation of expenses associated with the undertaking being financed with residual receipts.

SUBCHAPTER 31. ATTORNEY SERVICES

5:80-31.1 Applicability

The rules within this subchapter apply to the engagement of the services of an attorney by housing sponsors during the operation of their housing project and which services will be paid out of project funds. These rules shall not apply to attorney services paid for out of return on equity funds approved by the Agency for distribution or out of non-project funds.

5:80-31.2 Scope of services

(a) Sponsors may engage the services of an attorney to perform necessary general legal services in connection with and respecting the operation of their project. Such general legal services include, but are not limited to:

1. Advising the sponsor with regard to the rules of the project, the Agency and, if applicable, the Department of Housing and Urban Development;
2. Advising the officers and directors on elections as provided by the by-laws or partnership agreement of the sponsors and supervision of elections of all officers and directors;
3. Preparation and filing of any necessary reports, forms and other documents required by law;
4. Advising the sponsor with regard to legal matters related to project bank accounts, resolutions, duties of officers, directors and employed personnel;