

CHAPTER 80

**NEW JERSEY HOUSING AND MORTGAGE
FINANCE AGENCY**

Authority

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

Source and Effective Date

R.2005 d.219, effective June 10, 2005.
See: 37 N.J.R. 970(a), 37 N.J.R. 2476(a).

Chapter Expiration Date

Chapter 80, New Jersey Housing and Mortgage Finance Agency, expires on June 10, 2010.

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Subchapter 33, Low Income Housing Tax Credit Qualified Allocation Plan, was repealed and Subchapter 33, Low Income Housing Tax Credit Qualified Allocation Plan, was adopted as new rules by R.1996 d.255, effective June 3, 1996.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: 32 N.J.R. 191(a), 32 N.J.R. 1065(a).

Subchapter 26, Housing Affordability Controls, was repealed and a new Subchapter 26, Housing Affordability Controls, was adopted as new rules by R.2001 d.360, effective October 1, 2001.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: 33 N.J.R. 230(a), 33 N.J.R. 3432(b).

Chapter 80, New Jersey Housing and Mortgage Finance Agency, was readopted as R.2005 d.219, effective June 10, 2005. See: Source and Effective Date. See, also, section annotations.

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. GENERAL PROVISIONS

- 5:80-1.1 Authority
- 5:80-1.2 Purpose and objective
- 5:80-1.3 General definitions
- 5:80-1.4 Regulations regarding housing projects

SUBCHAPTER 2. ACTIONS REGARDING HOUSING SPONSORS

- 5:80-2.1 Rights of housing sponsors
- 5:80-2.2 Consultation with housing sponsors
- 5:80-2.3 Temporary appointment of Agency representative to perform functions on behalf of housing sponsors

SUBCHAPTER 3. RETURN ON EQUITY

- 5:80-3.1 Authority
- 5:80-3.2 Housing projects prior to January 17, 1984
- 5:80-3.3 Housing projects on or after January 17, 1984
- 5:80-3.4 Conditions required for distribution
- 5:80-3.5 Waiver

SUBCHAPTER 4. (RESERVED)

SUBCHAPTER 5. TRANSFER OF OWNERSHIP INTERESTS

- 5:80-5.1 Definitions
- 5:80-5.2 General policy
- 5:80-5.3 Applicability
- 5:80-5.4 Procedure
- 5:80-5.5 Scope of review
- 5:80-5.6 Required documents
- 5:80-5.7 Secondary financing
- 5:80-5.8 Return on equity
- 5:80-5.9 Required payment and repayments
- 5:80-5.10 Prepayment
- 5:80-5.11 Approval and disclosure requirements

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

- 5:80-6.1 Definitions
- 5:80-6.2 Procedures
- 5:80-6.3 Determination of total development cost
- 5:80-6.4 Required fees and repayments
- 5:80-6.5 Use of funds with regard to projects subsidized under Section 8
- 5:80-6.6 Use of funds with regard to projects subsidized under Section 236 Interest Reduction Program
- 5:80-6.7 Investment income earned on the PSR, DCE and CDE
- 5:80-6.8 Use of DCE and CDE for development of housing
- 5:80-6.9 Additional terms of purchase
- 5:80-6.10 Tax obligations
- 5:80-6.11 Approval and disclosure requirements
- 5:80-6.12 Requests for use of escrow funds
- 5:80-6.13 (Reserved)

SUBCHAPTER 7. TENANT SELECTION STANDARDS

- 5:80-7.1 Definitions
- 5:80-7.2 General policy
- 5:80-7.3 Screening criteria
- 5:80-7.4 Non-discrimination
- 5:80-7.5 Priorities and preferences
- 5:80-7.6 Limitations on admission of over-income tenants
- 5:80-7.7 Non-immigrant student aliens
- 5:80-7.8 Prohibited conditions for admission

SUBCHAPTER 8. OCCUPANCY REQUIREMENTS REGARDING INCOME

- 5:80-8.1 General applicability
- 5:80-8.2 Maximum gross aggregate family income
- 5:80-8.3 Occupancy requirements for housing projects

- 5:80-8.4 Special Multiple Family Unit within housing projects located in municipalities affected by casino gaming
- 5:80-8.5 Recertification of income

SUBCHAPTER 9. RENTS

- 5:80-9.1 Purpose
- 5:80-9.2 Applicability
- 5:80-9.3 Rent determination
- 5:80-9.4 Rent increase application
- 5:80-9.5 Additional rent increases in given fiscal year
- 5:80-9.6 Notice to tenants and cooperators
- 5:80-9.7 Agency review
- 5:80-9.8 Rent increases approvable by the Department of Housing and Urban Development
- 5:80-9.9 Increases approved by Agency
- 5:80-9.10 Increase subject to hearing
- 5:80-9.11 Notice of final approval
- 5:80-9.12 Effective date of increase
- 5:80-9.13 Rent increases for low and/or moderate income projects without Federal project-based rent subsidies
- 5:80-9.14 Resident monthly fee increases for low and/or moderate income-restricted units in assisted living residences (ALRs)

SUBCHAPTER 10. LOANS TO LENDERS FOR SINGLE FAMILY MORTGAGE LOANS

- 5:80-10.1 Authority
- 5:80-10.2 Requests for loans
- 5:80-10.3 Allocation of loans
- 5:80-10.4 Award of loans
- 5:80-10.5 Interest and other terms of loan
- 5:80-10.6 Collateral for loans
- 5:80-10.7 Application of loan proceeds; restriction as to single family mortgage loans
- 5:80-10.8 Restrictions on return realized by mortgage lenders
- 5:80-10.9 Fees and charges of the Agency; loan account
- 5:80-10.10 Purchase of Agency bonds

SUBCHAPTERS 11 THROUGH 12. (RESERVED)

SUBCHAPTER 13. MAKING OR PURCHASING ELIGIBLE LOANS FOR SINGLE FAMILY MORTGAGES

- 5:80-13.1 Authority
- 5:80-13.2 Commitment applications
- 5:80-13.3 Allocation of commitments
- 5:80-13.4 Execution of mortgage purchase agreement, mortgage servicing agreement; Term Sheet; Notice of Acceptance
- 5:80-13.5 Eligible neighborhoods
- 5:80-13.6 Limitations on loans
- 5:80-13.7 Regulation of points charged by mortgage sellers
- 5:80-13.8 Refinancing of pre-existing single family mortgage loans
- 5:80-13.9 Purchase of Agency bonds
- 5:80-13.10 Return on equity for eligible loans

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

- 5:80-14.1 Commitment applications
- 5:80-14.2 Allocation of commitments
- 5:80-14.3 Execution of note purchase agreement
- 5:80-14.4 Unsecured single family home improvement loans
- 5:80-14.5 Eligibility requirements
- 5:80-14.6 Regulation of points charged by mortgage sellers
- 5:80-14.7 Refinancing of pre-existing debt
- 5:80-14.8 Purchase of Agency bonds

SUBCHAPTERS 15 THROUGH 16. (RESERVED)

SUBCHAPTER 17. PREVAILING WAGE RATE

- 5:80-17.1 Applicability of prevailing wage rate
- 5:80-17.2 (Reserved)

SUBCHAPTER 18. DEBARMENT AND SUSPENSION FROM AGENCY CONTRACTING

- 5:80-18.1 Definitions
- 5:80-18.2 Causes for debarment of a person(s)
- 5:80-18.3 Conditions affecting the debarment of a person(s)
- 5:80-18.4 Procedures; period of debarment; scope of debarment affecting the debarment of a person(s)
- 5:80-18.5 Causes for suspension of a person(s)
- 5:80-18.6 Conditions for suspension of a person(s)
- 5:80-18.7 Procedures; period of suspension; scope of suspension affecting the suspension of a person(s)
- 5:80-18.8 Prohibited activities of persons; reporting requirement
- 5:80-18.9 Extent of debarment and suspension
- 5:80-18.10 Prior notice by the Agency
- 5:80-18.11 List of debarred and suspended
- 5:80-18.12 Discretion
- 5:80-18.13 Lists of other agencies

SUBCHAPTER 19. WAIVERS

- 5:80-19.1 Waivers

SUBCHAPTER 20. CERTIFICATION AND RECERTIFICATION OF INCOME

- 5:80-20.1 Authority
- 5:80-20.2 General applicability
- 5:80-20.3 Documentation
- 5:80-20.4 Calculation of income
- 5:80-20.5 Recertification periods and procedures
- 5:80-20.6 Failure to recertify
- 5:80-20.7 Adjustments in tenancy
- 5:80-20.8 Surcharges
- 5:80-20.9 Eviction
- 5:80-20.10 Confidentiality

SUBCHAPTER 21. TRANSFER OF SERVICING OF SINGLE FAMILY MORTGAGE LOANS

- 5:80-21.1 General applicability
- 5:80-21.2 Agency review and approval of transfer
- 5:80-21.3 Compensation adjustment due on transfer
- 5:80-21.4 Subsequent transfers
- 5:80-21.5 Termination of servicing by Agency

SUBCHAPTER 22. AFFIRMATIVE FAIR HOUSING MARKETING

- 5:80-22.1 Definitions
- 5:80-22.2 Purpose of the Affirmative Fair Housing Marketing Plan
- 5:80-22.3 Who submits a Plan
- 5:80-22.4 Plan submission deadlines
- 5:80-22.5 Format of the Plan
- 5:80-22.6 Direction of marketing activity
- 5:80-22.7 Marketing program
- 5:80-22.8 Community contacts
- 5:80-22.9 Future marketing activities for rental units only
- 5:80-22.10 Assessment of marketing efforts
- 5:80-22.11 Composition of the prospective occupant pool
- 5:80-22.12 Demographic characteristics
- 5:80-22.13 Residency preferences
- 5:80-22.14 Staff experience and instructions for fair housing training
- 5:80-22.15 Other indicators of successful implementation
- 5:80-22.16 Approval of the Plan
- 5:80-22.17 The Management Plan

(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 that has submitted 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 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.

Amended by R.2005 d.219, effective July 5, 2005.
See: 37 N.J.R. 970(a), 37 N.J.R. 2476(a).

In (a), substituted "the requisite" for "a 30 day" preceding "public comment period" in 1; in (b), deleted "30-day" preceding "public comment period"; in (e), substituted "that has submitted" for "submitting" preceding "data"; and in (i), deleted "of the Agency" following "opinions on any proposed changes to the Executive Director".

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 only after reasonable notice and reasonable opportunity to correct the violation has been 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 a 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 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 that jeopardizes the safety of tenants or the public or the integrity of any primary building system;

9. Failure to pay any utility bill after the receipt of written notice indicating that service would be terminated;

10. Failure to pay any lien or judgment, including municipal liens, which could jeopardize the financial viability of the project.

(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 the 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 Property 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 Property Management within the 15-day period.

3. The Director of Property 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 in the development of a program of corrective actions. If the sponsor does not submit a proposal, then the Director of Property Management shall propose a corrective plan to the sponsor.

5. Upon receipt of a proposal from the sponsor, the Director of Property 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 Property Management, then the sponsor may request in writing within 10 days that the matter be referred to the Executive Director, 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 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 regularly scheduled public meeting that will allow sufficient time for seven days written notice to be provided to the sponsor. The written notice shall advise that the failure to implement or abide by the recommended corrective actions is being brought to the attention of the Agency Board and that suspension of the sponsor may be requested.

2. The Agency Board 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 Agency Board may, however, discuss the matter at a session closed to the public if permitted by N.J.S.A. 10:4-1 et seq.

3. The decision by the Agency Board 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 coextensive with the duration of the original violation giving rise to the need for the corrections or until the Agency is assured in a manner satisfactory to it 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 the sponsor. 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 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.

Amended by R.2005 d.219, effective July 5, 2005.

See: 37 N.J.R. 970(a), 37 N.J.R. 2476(a).

Rewrote the section.

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).
Amended by R.2005 d.219, effective July 5, 2005.
See: 37 N.J.R. 970(a), 37 N.J.R. 2476(a).

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 (excluding 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 used toward approved project costs.

(b) For housing projects that 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 that receive a loan from the Agency on or after January 17, 1984, the Agency shall fix, at the time of the closing of the loan, the rate of return that 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 investment pursuant to (c)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 that 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 that have a mix of units serving populations with an assortment of income ranges, the Agency shall determine the limit on the rate of return that may be earned by the housing sponsor by pro-rating 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) that 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 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 that 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).

Amended by R.2005 d.219, effective July 5, 2005.

See: 37 N.J.R. 970(a), 37 N.J.R. 2476(a).

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 investment 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 use forms as required by the Agency when requesting a return on investment.

(b) The requirement of a final mortgage closing prior to receiving a return on investment may be waived by the Executive Director 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:

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 that 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.

5:80-32.7 Developer's fee and return on equity

(a) The Agency may credit buyers with a developer's fee of 10 percent of the purchase price at the time of closing. The developer's fee may only be pledged as equity in the project. No project funds or available cash may be used to pay a developer's fee to the buyer.

(b) Buyers shall be eligible to earn a return on equity based upon any equity investment in the project including the developer's fee which is being pledged as equity. The rate of return shall be established pursuant to N.J.A.C. 5:80-3.3(b), unless the buyer elects to qualify for enhanced return on equity under (c) below. During the regulatory period, after expiration of the term of the Agency mortgage, the return on equity restrictions shall continue as provided in this section until the owner funds an operating reserve account in the amount provided in N.J.A.C. 5:80-5.10(b)7. The operating reserve account shall be maintained until the expiration of the deed restriction and administered as provided in N.J.A.C. 5:80-5.10(b)7. If the operating reserve account is used, the return on equity restrictions hereunder shall be reinstated until the operating reserve account is again fully funded.

(c) Buyers who agreed to fund a capital improvement account, and agree to preserve the low-income status of the project for an additional 15 years, as provided below, may receive enhanced return on equity during the term of the Agency's mortgage through a split of the project's residual receipts on a 50/50 basis with the Agency.

1. The capital improvement account would be in addition to the reserve for repair and replacement account, the operating reserve account, and any rehabilitation expenditures escrow funded in connection with secondary financing. The capital improvement account shall be used for capital improvements, repairs, maintenance and any other expense of the project which will help ensure that the project is maintained as safe and sanitary rental housing during the mortgage term and thereafter. Ten percent of the annual residual receipts must be deposited into the capital improvement account prior to distribution of the residual receipts between the Agency and owner;

2. The buyer shall execute a deed restriction which preserves the project as affordable rental housing for an additional 15-year period, subject to the same Agency restrictions as are applicable during the 35-year period under the definition of housing investment sales in N.J.A.C. 5:80-32.1;

3. The Agency's annual share of the residual receipts shall be deposited into the Housing Investment Sales Account;

4. Buyers who elect to participate in this option must make such election at the time of closing. Buyers may elect to participate subsequent to closing, provided they fund the capital improvement account with an amount equivalent to the amount that would have been required since closing and distribute 50 percent of the accumulated residual receipts to the Agency for deposit into the Housing Investment Sales Account.

(d) The distribution of amounts to the buyer pursuant to this section shall be subject to those conditions set forth at N.J.A.C. 5:80-3.4.

New Rule, R.1997 d.102, effective March 3, 1997.

See: 28 N.J.R. 321(a), 29 N.J.R. 763(a).

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), amended the N.J.A.C. references in the third and fourth sentences; in (c), substituted "who" for "which" in the introductory paragraph and the first sentence of 4, and substituted "that" for "which" in the second sentence of 4.

APPENDIX**Example of Application of Subchapter Rules**

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

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

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

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

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

1. \$500,000 cash invested by the owners of the eligible LD sponsor that was not recognized as investment in the project (see N.J.A.C. 5:80-32.1, "maximum additional return" paragraph 1), plus

2. \$600,000 representing cumulative annual return on the \$500,000 described in (e)1 above (see N.J.A.C. 5:80-32.1, "maximum additional return" paragraph 2), plus

3. \$200,000 investment income earned on the \$600,000 described in (e)2 above (see N.J.A.C. 5:80-32.1, "maximum additional return" paragraph 3), plus

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

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

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

1. To the eligible LD sponsor, \$1,000,000, representing its investment in the project, as determined under the HMFA Law (see N.J.A.C. 5:80-32.6(b)3i);

2. To the eligible LD sponsor, \$2,000,000, representing 50 percent of its maximum additional return (see N.J.A.C. 5:80-32.6(b)3ii);

3. To the Housing Investment Sales Account, \$2,000,000 representing 50 percent of the maximum additional return (see N.J.A.C. 5:80-32.6(b)3iii); and

4. To the State Treasurer, \$700,000, representing the balance of available proceeds (see N.J.A.C. 5:80-32.6(b)3iv).

Amended by R.1997 d.102, effective March 3, 1997.
See: 28 N.J.R. 321(a), 29 N.J.R. 763(a).

In (d), (f), and (f)4, substituted "proceeds" for "cash"; and in (f)3, substituted "Housing Investment Sales Account" for "MAR Revolving Account".

SUBCHAPTER 33. LOW INCOME HOUSING TAX CREDIT QUALIFIED ALLOCATION PLAN

5:80-33.1 Introduction

(a) Section 42 of the Internal Revenue Code of 1986 (Code), 26 U.S.C. § 42, establishes a low income housing tax credit that may be applied against the Federal income tax of persons or associations who or which have invested in certain buildings providing housing for families of low-income. As the housing credit agency for the State of New Jersey, the New Jersey Housing and Mortgage Finance Agency (NJHMFA) allocates these credits to qualified taxpayers and thereafter monitors their compliance with Section 42 of the Code. The rules in this subchapter set forth the standards and procedures used by NJHMFA to perform its allocation and monitoring responsibilities and this subchapter represents the qualified allocation plan for New Jersey required by Section 42 of the Code.

(b) In each calendar year, the total dollar value of the credits that can be allocated under these rules, except for the credits issued in connection with buildings financed with the proceeds of certain tax-exempt bonds, is limited by the State housing credit ceiling provided in Section 42 of the Code. NJHMFA, therefore, has determined to award these limited credits on a competitive basis. Applicants seeking an allocation of these credits must apply under one of the cycles set forth in N.J.A.C. 5:80-33.4, 33.5, 33.6 or 33.7. NJHMFA ranks the applications received in each cycle according to the respective point scales provided in N.J.A.C. 5:80-33.15, 33.16, 33.17 and 33.18. The credits assigned to each cycle are then reserved for the highest ranking applications that meet the eligibility requirements set forth in N.J.A.C. 5:80-33.12.

(c) Credits issued in connection with buildings financed with the proceeds of tax exempt bonds subject to the volume cap restrictions provided in Section 42(h)(4) of the Code are not limited by the State housing credit ceiling and, therefore, are not allocated on a competitive basis. Applicants seeking such "volume cap tax credits" are directed to the provisions of N.J.A.C. 5:80-33.9.

(d) It is the burden of every applicant to comply literally with the requirements of these rules and to ensure that any application presented to NJHMFA is clear, unambiguous and complete in all respects at the time of submission.

(e) These rules shall be construed and administered in a manner consistent and in accordance with the Code and regulations promulgated thereunder.

(f) Compliance with the requirements of the Code is the sole responsibility of the owner of the building for which the credit is allowable. NJHMFA makes no representations to the owner or anyone else as to compliance with the Code, Federal regulations issued under the Code, or any other laws or regulations governing Low Income Housing Tax Credits, or as to the financial viability of any project. All applicants should consult their accountant, tax attorney or advisor as to the specific requirements of Section 42 of the Code governing the Low Income Housing Tax Credit Program.

(g) These rules have been promulgated in a manner consistent with the smart growth initiatives required under Executive Order No. 4(2002).

Amended by R.1998 d.279, effective June 1, 1998.
See: 30 N.J.R. 1132(a), 30 N.J.R. 1978(a).

Rewrote (a); added new (b) through (d); and recodified former (b) and (c) as (e) and (f).

Amended by R.1999 d.120, effective April 5, 1999.
See: 31 N.J.R. 122(a), 31 N.J.R. 860(a).

In (b) and (c), changed N.J.A.C. references.
Amended by R.2002 d.233, effective July 15, 2002.
See: 34 N.J.R. 1574(a), 34 N.J.R. 2417(a).

Added (g).
Amended by R.2003 d.300, effective July 21, 2003.
See: 35 N.J.R. 1616(a), 35 N.J.R. 3298(b).

In (a), (b), amended N.J.A.C. reference.

5:80-33.2 Definitions

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

“Brownfields site” means, pursuant to the Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-1 et seq., “any former or current commercial or industrial site that is currently vacant or underutilized and on which there has been, or there is suspected to have been, a discharge of contamination.” For the purposes of this subchapter, the proposed redevelopment for the site under consideration

must also have an approved New Jersey Department of Environmental Protection Remedial Action Work Plan.

“COAH” means the New Jersey State Council on Affordable Housing.

“COAH obligation” means a low or moderate-income rental project in a plan that is either COAH-certified or under COAH’s jurisdiction as the result of a petition to receive substantive certification or to amend a plan that has previously received substantive certification.