

CHAPTER 80

**NEW JERSEY HOUSING AND MORTGAGE
FINANCE AGENCY**

Authority

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

Source and Effective Date

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

Executive Order No. 66(1978) Expiration Date

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

Chapter Historical Note

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

See subchapter and section levels for further amendments.

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SUBCHAPTER 1. GENERAL PROVISIONS

5:80-1.1 Authority

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

5:80-1.2 Purpose and objective

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

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

3. Enhancing the production capacity of the private sector in meeting the housing needs of residents of New Jersey;

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

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

5:80-1.3 General definitions

The following words and terms, as used in this chapter, 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 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.

“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”.

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 the regulations in subchapters 2 through 9, 17, 18, 20, 29 and 30 through 32. Where appropriate other regulations within this chapter are specifically made applicable to Housing Projects. The regulations in subchapters 2 through 9, 17, 18, 20, 29 and 30 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
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.

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.