

**CHAPTER 80**

**NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY**

**Authority**

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

**Source and Effective Date**

R.2010 d.292, effective November 16, 2010.  
See: 42 N.J.R. 1282(a), 42 N.J.R. 3055(a).

**Chapter Expiration Date**

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 80, New Jersey Housing and Mortgage Finance Agency, expires on November 16, 2017.  
See: 43 N.J.R. 1203(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Subchapter 33, Low Income Housing Tax Credit Qualified Allocation Plan, was repealed and Subchapter 33, Low Income Housing Tax Credit Qualified Allocation Plan, was adopted as new rules by R.1996 d.255, effective June 3, 1996.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, effective 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Subchapter 26, Housing Affordability Controls, was repealed and a new Subchapter 26, Housing Affordability Controls, was adopted as new rules by R.2001 d.360, effective October 1, 2001.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: 37 N.J.R. 970(a), 37 N.J.R. 2476(a).

Chapter 80, New Jersey Housing and Mortgage Finance Agency, was readopted as R.2010 d.292, effective November 16, 2010. See: Source and Effective Date.

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APPENDIX

SUBCHAPTER 1. GENERAL PROVISIONS

**5:80-1.1 Authority**

These regulations are issued pursuant to the authority of the New Jersey Housing and Mortgage Finance Agency Law of 1983, N.J.S.A. 55:14K-1 et seq., and specifically section 5g thereof, N.J.S.A. 55:14K-5g.

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.

**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 in the State of New Jersey (State);
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 the State;
4. Assisting in the revitalization of the State's urban areas; and
5. Responding to changing housing demographic and economic circumstances by the development of innovative and flexible financing vehicles.

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), inserted "in the State of New Jersey (State)" at the end of 1, substituted "the State" for "New Jersey" in 3, and substituted "by" for "for" following "and economic circumstances" in 5.

**5:80-1.3 General definitions**

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

"Act" means the New Jersey Housing and Mortgage Finance Agency Law of 1983, P.L.1983, c.530 (N.J.S.A. 55:14K-1 et seq.).

"Agency" means the New Jersey Housing and Mortgage Finance Agency, created by section 4 of the Act, N.J.S.A. 55:14K-4.

"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 New Jersey Department of Health and Senior Services to provide apartment-style hous-

ing 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 in ALRs offer, at a minimum, one unfurnished room, a private bathroom, a kitchenette and a lockable door on the unit entrance.

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.

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

#### 5:80-22.24 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; and
3. Any changes in the demographic and socio-economic composition of the housing market area.

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

#### 5:80-22.25 Monitoring

(a) Monitoring will be conducted to assess the degree to which the activities undertaken pursuant to an approved 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 provisions 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.

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), deleted "Affirmative Fair Housing Marketing" following "to an approved" in the introductory paragraph.

### 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) The Agency may enter into a housing incentive note purchase agreement for any eligible project pursuant to which the Agency agrees to purchase an undivided interest for a purchase price not exceeding \$2,000,000 provided that the dollar amount of the purchase price to be paid by the Agency pursuant to such housing incentive note purchase agreement with respect to an eligible project, when added to the aggregate purchase price payable by the Agency pursuant to existing housing incentive note purchase agreements (whether or not a demand for purchase has been made), does not exceed the then available note purchase commitment and provided further that the provisions at N.J.A.C. 5:80-23.6(b) are met. In determining whether the foregoing limits for a housing incentive note purchase agreement proposed to be entered into with respect to any eligible project are met, the Agency need not consider as an aggregate, separate eligible projects undertaken by the same person or such person's affiliates as one project, unless they are, in the judgment of the Agency, subdivisions of the same residential project, physically contiguous or located within the same municipality.

(c) In the event that the available note purchase commitment at any time is insufficient to meet the applications for financial support of the Agency in the form of requested housing incentive note purchase agreements, the Agency may prioritize requests for housing incentive note purchase agreements in its sole discretion, taking into consideration the goals of this program, together with the creditworthiness of the respective residential project, the location of existing eligible projects and the location of the proposed residential project, the readiness of the developer to proceed, the experience of the developer, and the marketability of the residential project.

#### 5:80-23.6 Applications

(a) An application for a housing incentive note purchase agreement for a residential project shall be made by the proposed developer in writing to the Agency.

(b) Such application shall set forth the following:

1. The amount of the requested commitment to purchase an undivided interest pursuant to a housing incentive note purchase agreement, the amount of the loan, and the name of the lender;
2. A description of the residential project (including the status thereof, for example, whether fully or partially completed, in foreclosure, ground not yet broken) together with an appraisal, not more than six months old, of the residential project by a New Jersey certified general real estate appraiser, a title report not more than six months old, a site plan, a survey by a licensed surveyor, a copy of applicable zoning ordinances, and the status of utilities, roads and existing financing, if any, relating to the residential project;
3. A description of the developer, including a description of all real estate projects undertaken by the developer for the five years prior to the application, outstanding

judgments against the developer and pending litigation involving the developer, if any, the type of person (for example, whether a corporation, limited or general partnership, or joint venture), list of all existing and proposed owners of equity in the developer and the residential project, and the most recent financial statements of the developer;

4. A description of the proposed financing for the residential project, including the name of the lender, any term sheets or commitment letters which have been provided to the developer and any draft documentation relating thereto;

5. If the lender is not a bank or other financial institution having one of the three highest investment grade ratings issued by Standard and Poor's Corporation or Moody's Investors Service, Inc., the application shall be accompanied by the most recent annual report of such lender;

6. An analysis of the cost to complete the residential project, together with a tabulation of the source and use of funds necessary to meet such costs; and

7. Any other documents or information (such as, but without limitation, environmental audits) the Agency deems necessary or appropriate to determine whether the residential project is an eligible project.

#### 5:80-23.7 Housing incentive note purchase commitment and requirements

(a) The Agency may issue to the developer of a residential project which is determined by the Agency to be an eligible project, a commitment to enter into a housing incentive note purchase agreement, only upon the approval of the members of the Agency after a review of the application delivered by the developer and such other information as the Agency may request from the developer and any qualified lender. Such commitment to enter into a housing incentive note purchase agreement shall contain such conditions precedent and other terms as the Agency shall deem appropriate. The members of the Agency may delegate to any officer of the Agency the authority to execute and deliver a housing incentive note purchase agreement pursuant to a commitment upon a determination by such officer that all conditions precedent and other terms of such commitment have been satisfied.

(b) Each commitment to issue a housing incentive note purchase agreement shall require that:

1. All documents relating to an eligible project shall be in form and substance satisfactory to the Agency;
2. All mortgages of an eligible project securing repayment of the financing thereof shall identify and set release prices for the individual parcels comprising the eligible project and require the mortgagee to release each parcel upon its sale provided the release price has been paid;
3. The developer provide mortgagee's title insurance, casualty and liability insurance and builders risk insurance, all by insurers and in such amounts as the Agency may require;

4. The mortgage in favor of the qualified lender financing the eligible project be the only first lien encumbrance on the eligible project securing indebtedness for borrowed money. Subordinated financing may be permitted with the approval of the Agency provided the subordinated financing, collectively with the first lien financing provided by qualified lenders, meet standard underwriting criteria used in the lending industry; and

5. Loan documents and all security therefor expressly reflect the rights and benefits of the Agency arising from the undivided interest and providing for the recognition of the rights of the Agency as a lender pursuant to its acquisition of the undivided interest.

Amended by R.1994 d.302, effective June 20, 1994.  
See: 26 N.J.R. 9(a), 26 N.J.R. 2571(a).

#### 5:80-23.8 Housing incentive note purchase agreement requirements

(a) Each housing incentive note purchase agreement entered into by the Agency shall state that it expires at a date not later than the second anniversary of the date of entering into such housing incentive note purchase agreement.

(b) The amount of the undivided interest agreed to be purchased pursuant to each housing incentive note purchase agreement may not exceed 30 percent of the monies being loaned by a qualified lender with respect to such eligible project. The foregoing restriction is in addition to, and not in derogation of, any other limits contained within this subchapter.

(c) Each housing incentive note purchase agreement shall require that the developer pay all costs incurred by the Agency in connection with the preparation, execution and delivery of such housing incentive note purchase agreement, and in connection with any litigation arising out of such housing incentive note purchase agreement or any rights the Agency may have with respect thereto, including, in each case, and without limitation, all reasonable fees and disbursements of counsel to the Agency.

(d) Any request for an extension of the termination date of a housing incentive note purchase agreement shall be treated as an application for a new housing incentive note purchase agreement, and all of the provisions of this subchapter shall apply to such request as if it were an application for a new housing incentive note purchase agreement.

#### 5:80-23.9 Fees

(a) No application for a housing incentive note purchase agreement shall be accepted unless it is accompanied by a nonrefundable application fee of \$3,500.

(b) No commitment to enter into a housing incentive note purchase agreement shall be issued by the Agency pursuant to N.J.A.C. 5:80-23.5 unless on or before the date of issuance of such commitment there has been paid to the Agency a nonrefundable commitment fee as follows:

1. No commitment fee shall be due for projects of 12 units or less;

2. \$300.00 for every unit over 12 for projects of 13 to 41 units;

3. \$9,000 for projects of 42 units or more.

(c) No housing incentive note purchase agreement shall be entered into by the Agency unless on or before the date of entering into such agreement, there has been paid to the Agency a nonrefundable purchase fee (the "HINPA Fee") in an amount equal to one percent of the principal amount of the respective loan in which an undivided interest is being purchased, but not to exceed \$67,000.

(d) The Agency may establish, from time to time, additional fees as it deems necessary to defray its reasonably estimated costs of administering the program contemplated hereby.

Amended by R.1994 d.302, effective June 20, 1994.  
See: 26 N.J.R. 9(a), 26 N.J.R. 2571(a).

#### 5:80-23.10 No discrimination

(a) Developers must comply with all applicable Federal, State or local fair housing and civil rights laws and regulations. Federal and State laws provide that developers may not discriminate based upon race, color, creed, religion, sex, national origin, age or handicap.

(b) Developers must also comply with requirements imposed in Agency statutes and rules.

### SUBCHAPTER 24. LEASE-PURCHASE PROGRAM

#### 5:80-24.1 Authority

The rules in this subchapter 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., including N.J.S.A. 55:14K-5e and 55:14K-5aa.

#### 5:80-24.2 Purpose

These rules are established to assist the Agency to make available a base of housing stock of residential units in the State of New Jersey as contemplated by N.J.S.A. 55:14K-5e and 55:14K-5aa for families under the lease-purchase arrangement. It is intended that the residential units would become owner occupied after a maximum 36-month rental period during which a portion of the monthly fair market lease payments received by the Agency would be set aside by the Agency to enable it to make a grant towards the downpayment and/or closing costs of an eligible buyer who exercises the purchase option.