

(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 Jasontown 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 shall submit a rent increase application to the Agency's Director of Management. The application shall consist of the rent determination and the following supporting documents:

1. Name of sponsor, location of housing project, number of apartments of each type;

2. Date of initial occupancy;
3. For Section 236 developments, a status report on the housing project's implementation of its current energy conservation plan;
4. A narrative statement of the reasons for the rent increase;
5. Most recent certified audit report prepared in accordance with Agency regulations;
6. Summary of income and expenses for the preceding 12 month period prepared on an accrual basis for non-federally subsidized housing projects. For all projects with Federal subsidy, monthly operating reports will be required for the preceding three months;
7. Annual budget on which the requested rent increase is based;
8. Copy of notice to tenants in accordance with 5:80-9.6;

(b) In housing projects where there is a valid Housing Assistance Payments contract, in accordance with which rents are or may be adjusted, the sponsor is not required to submit a rent increase application. Rents will be adjusted in accordance with the contract without resort to the rules within this subchapter, except that the sponsor shall still be obligated to make the rent determination as required by N.J.A.C. 5:80-9.3.

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 notice to tenants and cooperators recodified to 9.6; text on supporting documentation recodified from 9.3 and renamed rent increase application; text from old 9.8, on automatic annual adjustments added at (b).

5:80-9.5 Additional rent increases in given fiscal year

The submission of a rent increase application for any given fiscal year shall not preclude any sponsor from making additional or revised rent increase applications in the same fiscal year, provided that they are submitted in accordance with all the procedures set forth in this subchapter.

Repeal and New Rule, R.1991 d.334, effective July 1, 1991.
See: 22 N.J.R. 2389(b), 23 N.J.R. 2055(a).

5:80-9.6 Notice to tenants and cooperators

(a) Prior to or simultaneous with the submission of the rent increase application to the Agency, each housing sponsor shall provide, in writing, to each tenant and cooperator and conspicuously post at the housing project, a notice, in a form prescribed by the Agency, setting forth the following:

1. The rent determination;
2. A statement that the rent determination is subject to the review and approval of the Agency and, if applicable, subject to the review and approval of HUD;
3. Reasons for the increase;

4. A statement that tenants and cooperators will have 30 days to inspect the rent increase application submitted by the housing sponsor pursuant to N.J.A.C. 5:80-9.4(a); and

5. A statement that written comments on the proposed rents may be submitted to the housing sponsor, managing agent or the Agency's Director of Management, at their current address within 30 days of the rent increase application being available for review.

(b) Upon expiration of the comment period, the housing sponsor shall submit a certification to the Agency, in the form prescribed by the Agency, that it has complied with the requirements of N.J.A.C. 5:80-9.6(a).

(c) If the housing sponsor fails to substantially comply with the notice requirement of (a) above, the Agency shall withhold processing of the rent increase application until there is substantial compliance with such requirements.

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 rent schedules approvable by the Department of Housing and Urban Development repealed; text on notice to tenants and cooperators recodified from 9.4; submission attachments specified; (c) added.

5:80-9.7 Agency review

(a) The Agency will review the rent increase application to verify the need for the rent increase requested. If the application contains errors or omissions of a material nature, the Director of Management shall require the housing sponsor to submit the corrected or omitted material and provide tenants and cooperators with notice that they will have 15 days to inspect and comment upon the corrected or omitted material.

(b) Within 10 business days after receipt of the complete rent increase application and any comments thereto, the Agency shall:

1. For housing projects receiving subsidies under HUD, submit the rent increase application to HUD for approval pursuant to N.J.A.C. 5:80-9.8;

2. For all other projects, process the application in accordance with N.J.A.C. 5:80-9.9 and, if applicable, 5:80-9.10. The 10 business day requirement in (b) above shall not apply to rent increases subject to a hearing as provided by N.J.A.C. 5:80-9.10.

(c) Prior to submission of any rent increase application to HUD, the Agency may attach its comments and recommend a rent increase different from that requested by the housing sponsor. If the Agency reduces or eliminates that portion of the requested increase that would provide return on owner's equity, written notice of such reduction or elimination will be provided to the housing sponsor by the Executive Director of the Agency.

Amended by R.1991 d.334, effective July 1, 1991.

See: 22 N.J.R. 2389(b), 23 N.J.R. 2055(a).

Application procedure specified further; tenants given 15 days to inspect documents.

5:80-9.8 Rent increases approvable by the Department of Housing and Urban Development

(a) In all housing projects receiving subsidies under the Section 236 Interest Reduction Payments Program or Section 8 Housing Assistance Payments Program, rent increase applications shall be submitted to and are subject to approval by HUD, unless the rent increase is automatically authorized pursuant to N.J.A.C. 5:80-9.4(b).

(b) Upon verification of the completeness, accuracy and validity of the rent increase application pursuant to its review under N.J.A.C. 5:80-9.7, the Agency will forward the rent increase application to HUD for final action. The Agency will notify the housing sponsor of HUD's final decision.

Repeal and New Rule, R.1991 d.334, effective July 1, 1991.

See: 22 N.J.R. 2389(b), 23 N.J.R. 2055(a).

5:80-9.9 Increases approved by Agency

(a) If the rents are not subject to review and approval by HUD nor subject to automatic annual adjustments pursuant to a valid Housing Assistance Payments contract, then the Executive Director may make or approve a rent increase without a hearing as long as the resulting rents do not exceed the rents in effect for the same units in the housing project at any time in the previous 12 months by more than the combined percentage of paragraphs 1 and 2 below:

1. The percentage increase in the Consumer Price Index for rent and utilities for the most recently preceding 12 month period for which information has been published by the United States Department of Labor; plus

2. Either of:

i. The percentage, up to a maximum of 12 percent annually, needed to fund operating deficits, debt service arrears or reserves for repair and replacement incurred at the housing project during the preceding 12 months, provided that no part of the rent increase includes an amount allocated toward providing a return on equity to the sponsor; or

ii. The percentage, up to a maximum of six percent annually, needed to offset an inability to provide a return on equity and to offset operating deficits, debt service arrears or reserves for repair and replacement delinquencies incurred during the preceding 12 months, if all or a portion of the requested increase is intended to pay return on equity.

(b) For housing projects receiving subsidies under the New Jersey Urban Multi-Family Production Program (JUMPP), the Agency shall consider the amount by which the JUMPP subsidy decreases annually, as well as any operating deficits existing after distribution of the annual JUMPP subsidy, in determining the amount of rent increase needed pursuant to (a) above.

(c) The Agency shall provide the housing sponsor with a copy of its calculations done pursuant to (a) above.

Amended by R.1991 d.334, effective July 1, 1991.

See: 22 N.J.R. 2389(b), 23 N.J.R. 2055(a).

Stylistic changes.

Amended by R.1991 d.335, effective July 1, 1991.

See: 23 N.J.R. 646(a), 23 N.J.R. 2058(a).

Clarification of application of requirements to JUMPP added at (b).

Case Notes

Citation to former N.J.A.C. 5:80-1.9; defense of rent increase unconscionability not available to tenant in summary dispossession action; agency approval of rent increase can only be reviewed by Appellate Division. *Marine View Housing Co. No. 1 v. Benoit*, 188 N.J.Super. 539, 457 A.2d 1241 (Law Div.1982).

5:80-9.10 Increase subject to hearing

(a) In projects not subject to HUD approval nor subject to automatic annual adjustments, if the Executive Director of the Agency approves a rent increase which exceeds the amounts specified in N.J.A.C. 5:80-9.9(a), in order to cover any purpose including but not limited to operating deficits, debt service arrears, reserves for repair and replacement delinquencies incurred during the preceding 12 months, inability to pay return on equity, increases in permitted return on equity and accelerated amortization of any supplemental financing, then any person, association or corporation aggrieved by such determination may file for a hearing by submitting a written request to the Executive Director. Housing sponsors shall give written notice to all tenants and cooperators affected by such rent increase approved by the Executive Director and of their opportunity to request a hearing. Persons, associations or corporations aggrieved by the increase must file their request for a hearing within 21 days of said notice.

(b) Upon receipt of a request for a hearing or upon his or her own initiative, the Executive Director shall request that the Office of Administrative Law conduct same. All hearings shall be conducted according to the procedures established by the Office of Administrative Law pursuant to N.J.S.A. 52:14B-10. When the date of the hearing has been established, housing sponsors shall provide notices, in a manner approved by the Agency, of the date, time, place and nature of said hearing to all tenants, cooperators and other persons requesting notice of said hearing. The scope of the hearing shall be limited to consideration of the amount in excess of the increases approvable by the Executive Director under N.J.A.C. 5:80-9.9(a). Upon review of the record submitted by the administrative law judge, the Agency members shall adopt, reject or modify the recommended decision and issue a final written order.