

CHAPTER 80

**NEW JERSEY HOUSING AND MORTGAGE
FINANCE AGENCY**

Authority

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

Source and Effective Date

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

Executive Order No. 66(1978) Expiration Date

Chapter 80, New Jersey Housing and Mortgage Finance Agency, expires on February 28, 2005.

Chapter Historical Note

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

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

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

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

Subchapter 33, Low Income Housing Tax Credit Qualified Allocation Plan, was adopted as R.1995 d.281, effective June 5, 1995. See: 27 N.J.R. 986(a), 27 N.J.R. 2190(a).

Subchapter 33, Low Income Housing Tax Credit Qualified Allocation Plan, was repealed and Subchapter 33, Low Income Housing Tax Credit Qualified Allocation Plan, was adopted as new rules by R.1996 d.255, effective June 3, 1996.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

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

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SUBCHAPTER 1. GENERAL PROVISIONS

5:80-1.1 Authority

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

5:80-1.2 Purpose and objective

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

1. Assuring the availability of rental and owner occupied housing;
2. Stimulating the construction, rehabilitation and improvement of adequate and affordable housing in the State so as to increase the number of housing opportunities for New Jersey residents particularly those of low and moderate income;
3. Enhancing the production capacity of the private sector in meeting the housing needs of residents of New Jersey;
4. Assisting in the revitalization of the State's urban areas; and
5. Responding to changing housing demographic and economic circumstances for the development of innovative and flexible financing vehicles.

5:80-1.3 General definitions

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

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

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

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

"Collateral" shall mean with respect to any loan those securities, mortgages or other instruments defined as eligible pursuant to the terms of the Assignment of Collateral and Trust Agreement relating to such loan.

"Collateral requirement" shall mean, as of any date of calculation and with respect to any loan the amount at which collateral securing such loan is required to be maintained pursuant to the terms of the Assignment of Collateral and Trust Agreement relating to such loan.

"Home Improvement Loan Program Commitment" shall mean the aggregate unpaid principal amount of home improvement loans which a mortgage seller offers to deliver and sell to the Agency and the Agency agrees to purchase, such sale and purchase to be made under a Note Purchase Agreement.

"Housing project" or "project" shall mean any work or undertaking other than a continuing care retirement community, whether new construction, improvement, rehabilitation or acquisition of existing buildings or units, which is designed for the primary purpose of providing multi-family rental housing or acquisition of sites for future multi-family rental housing, including an assisted living residence.

"Housing sponsor" shall mean any person, partnership, corporation or association to which the Agency has made or proposes to make a loan, either directly or indirectly through an institutional lender, for a housing project.

"Mortgage Purchase Agreement" shall mean an agreement, entered into between a mortgage seller and the Agency, under which the mortgage seller agrees to deliver and sell to the Agency and the Agency agrees to purchase mortgage loans.

"Mortgage Servicing Agreement" shall mean an agreement entered into between a mortgage seller or other person acceptable to the Agency, under which the mortgage seller or other person agrees to service the mortgage loans purchased by the Agency from such mortgage seller under a Mortgage Purchase Agreement.

"Note Purchase Agreement" shall mean an agreement, entered into between a mortgage seller and the Agency, under which the mortgage seller agrees to deliver and sell to the Agency and the Agency agrees to purchase single family home improvement loans.

"Notice of Acceptance" shall mean the Notice of Acceptance by the Agency to the mortgage seller of an application.

"Primarily residential in character" as set forth in N.J.S.A. 55:14K-3(e) shall mean:

1. With regard to an individual unit, structure, or property, that at least 60 percent of the net sheltered area, not including areas for circulation, utilities and common space, is or will be upon completion of scheduled improvements used exclusively as a residence for one or more persons; or

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

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

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

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

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

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

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

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

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

SUBCHAPTER 25. (RESERVED)

SUBCHAPTER 26. HOUSING AFFORDABILITY CONTROLS

5:80-26.1 Purpose and applicability

(a) The rules within this subchapter are promulgated to establish requirements and controls to ensure that housing assisted under the Fair Housing Act (N.J.S.A. 52:27D-301 et seq.) remains affordable to low and moderate income households for time periods established herein by the Agency, in consultation with the Council on Affordable Housing. The rules also establish procedures for the administration of affordability controls by the Agency for housing which has not been assisted under the Act.

(b) The rules in this subchapter shall not apply to housing which is located in urban target areas.

Amended by R.1988 d.331, effective July 18, 1988.

See: 20 N.J.R. 862(a), 20 N.J.R. 1688(b).

(b) added.

5:80-26.2 Definitions

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

"Act" shall mean the Fair Housing Act, P.L. 1985, c.222 (N.J.S.A. 52:27D-301 et seq.).

"Adjusted rent" shall mean the base rent for a rental unit adjusted by the index.

"Agency" shall mean the New Jersey Housing and Mortgage Finance Agency (NJHMFA) or its designee.

"Applicant household" shall mean a household whose preliminary application has been reviewed, whose unverified estimated total gross annual income is judged to be low or moderate pursuant to applicable guidelines and whose name has been placed on a waiting list for affordable housing.

"Base price" shall mean the initial sales price of a unit designated as owner-occupied affordable housing and restricted by affordability controls.

"Base rent" shall mean the charge for a rental unit at the time the unit is first restricted by affordability controls.

"Department" shall mean the Department of Community Affairs.

"Eligible household" shall mean any household that has submitted a preliminary application for an affordable housing unit, whose total gross annual income has been verified, whose financial references have been approved and which has received a determination by the Agency as a low or moderate income eligible household.

"First purchase money mortgagee" shall mean the holder and/or assigns of the first purchase money mortgage, which holder must be an institutional lender or investor, licensed or regulated by the State or the Federal government or an agency of the State or Federal government.

"Foreclosure" shall mean the termination through legal process of all rights of the mortgagor or the mortgagor's heirs, successors, assigns or grantees in a unit covered by a recorded mortgage.

"Gross annual income" shall mean the total amount of all sources of a household's income including but not limited to salary, wages, interest, dividends, alimony, pensions, social security, business and capital gains, tips and welfare benefits. Generally, gross annual income will be based on income reported to the Internal Revenue Service (IRS).

"Household" shall mean the person or persons occupying a housing unit.

"Low income housing" shall mean housing which is affordable to, according to U.S. Department of Housing and Urban Development or other standards recognized by the Agency for home ownership and rental costs, and occupied or reserved for occupancy by, households with a gross household income equal to 50 percent or less of the median gross household income for households of the same size within the housing region in which the housing is located.

"Median income index" or "index" shall mean the percentage by which the median income figures, established by the U.S. Department of Housing and Urban Development, changes each year for every area in the State.

"Moderate income housing" shall mean housing which is affordable to, according to U.S. Department of Housing and Urban Development or other standards recognized by the Agency for home ownership and rental costs, and occupied or reserved for occupancy by, households with a gross household income equal to more than 50 percent, but less than 80 percent of the median gross household income for households of the same size within the housing region in which the housing is located.

"Owner" shall mean the title holder of record as same is reflected in the most recently dated and recorded deed for the particular affordable housing unit.

"Owner-Occupied Unit" means a building containing one, two, three or four family housing units in which one of the units is occupied by the owner of the building.

"Program" shall mean any of the Affordable Housing Programs as permitted under the Act which may include but not be limited to programs which receive assistance as a result of an Agency sale of bonds ("bond financed rental housing").

"Resale price" shall mean the base price of a unit designated as owner-occupied affordable housing as adjusted by the median income index. The resale price may also be adjusted to accommodate an approved home improvement.

"State" shall mean the State of New Jersey.

"Urban target area" means those geographical areas of the State which are designated by the Agency as an area of chronic economic distress in accordance with Section 143(j) of the Internal Revenue Code of 1986, as amended, and any regulations adopted thereunder.

Amended by R.1988 d.331, effective July 18, 1988.

See: 20 N.J.R. 862(a), 20 N.J.R. 1688(b).

"Owner-Occupied Unit" and "Urban target area" defined.

5:80-26.3 Length of controls on affordability

(a) All housing to be assisted financially, administratively or otherwise, under the Act by the Agency will be required to remain affordable to, and occupied by, low and moderate income households for the following minimum periods:

1. Rehabilitated owner-occupied single family housing units that are improved to code standard shall be subject to affordability controls for six years.

2. Rehabilitated renter occupied housing units that are improved to code standard shall be subject to affordability controls for 10 years.

3. Housing units created through conversion of a non-residential structure, or through new construction in municipalities receiving State aid pursuant to N.J.S.A. 52:27-178 et seq. which exhibit one of the characteristics delineated in N.J.A.C. 5:92-5.3(b) at the time of substantive certification, shall be subject to affordability controls for 10 years.

4. All other housing units shall be subject to affordability controls for 20 years.

(b) The Agency may adjust the affordability control periods established in (a) above in particular instances, upon a determination that the economic feasibility of the Program, is jeopardized by the requirement and the public purpose served by the Program outweighs the shorter period.

(c) The affordability control periods established in (a) above shall begin as follows:

1. For owner-occupied units, on the date a Certificate of Occupancy is issued.

2. For rental housing containing two or more units, on the date of 50 percent occupancy, as determined by the Agency or municipality administering controls.

3. For single-family housing which is rented, on the date the unit is first occupied.

(d) For all owner-occupied units and vacant rental units, the resale and rent restrictions shall expire at the end of the sixth, tenth, or twentieth year from the date the initial restrictions encumbered the unit, as set forth in (a)1, 2, 3 and 4 above, unless a lesser or greater period of time has been approved by the Agency as set forth herein. For rental units which are occupied by households with a gross household income less than 80 percent of median income, as defined herein, at the end of the sixth, tenth or twentieth year from the date the initial restrictions encumbered the unit, the controls shall continue to remain in effect and shall only expire at the time the then current tenant vacates the unit.

(e) Whenever the Agency finds through administrative determination that the rent increases permitted under N.J.A.C. 5:80-26.16 are insufficient to maintain the financial needs of housing financed under the Agency's bond financed rental housing program and such insufficiency would jeopardize the economic feasibility of the Program, the Agency may terminate the control periods established in (a) above until such financial jeopardy is resolved.

(f) Whenever the Agency is not providing financial assistance, it may administer affordability controls other than those provided in these rules, provided the controls are adopted pursuant to court order or approved settlement or consistent with the rules of the Council on Affordable Housing, N.J.A.C. 5:92.

Amended by R.1988 d.331, effective July 18, 1988.

See: 20 N.J.R. 862(a), 20 N.J.R. 1688(b).

New (c) added; existing (c) made (d), with "less than 80 percent of median income" provision added; existing (d) and (e) made (e) and (f).

5:80-26.4 Agreements regarding affordability controls

All owners of affordable housing units shall enter into agreements with the Agency which subject the owner to the affordability controls required by these rules in order to ensure that housing units remain affordable to households of low and moderate income. The agreement shall take the form of a deed restriction or other contractual agreement established by the Agency. Whenever the agreement is not in the form of a deed restriction, the agreement shall be recorded along with the deed.

5:80-26.5 Calculation of initial/purchase price: owner-occupied units

At initial sale, base prices for owner-occupied units shall be determined in accordance with contractual agreements approved by the Agency at levels that indicate affordability to households who qualify for low and moderate income housing. At initial sale, affordability controls shall be incorporated into the deed or a separate agreement established by the Agency. The purchaser shall forward a copy of the recorded deed or, when applicable, the recorded agreement to the Agency.

5:80-26.6 Calculation of resale price: owner-occupied units

(a) When an owner wishes to sell an affordable housing unit, he or she shall forward written notice to the Agency. The Agency will calculate the resale price using the Index and will determine an estimated monthly mortgage payment. The approved resale price shall not be established at a level lower than the last recorded purchase price.

(b) A home improvement that renders the unit suitable for a larger household may be approved by the Agency for a resale price adjustment. In no case, however, shall the adjusted resale price exceed the limits of affordability for the larger household as determined pursuant to N.J.A.C. 5:92-12.

5:80-26.7 Referral of household to units: owner-occupied units

Generally, a household's monthly mortgage payment, including principal, interest, taxes, insurance, and condominium or association fees, where applicable, will not be expected to exceed 28 percent of gross monthly income. A minimum downpayment of at least five percent of the selling price will be required. Mortgage application is the responsibility of the household. Eligible households whose gross annual income is compatible with the estimated monthly mortgage payment and whose family size meets occupancy criteria will be referred to the owner for contract negotiations within 60 days of receipt of the initial notice.

5:80-26.8 Hardship waiver: owner-occupied units

(a) If no eligible household has executed a contract to purchase within 90 days of the Agency's notification to the owner of an approved resale price and referral of potential purchasers, the owner may request that the unit be sold to a household that exceeds the income eligibility criteria established for that unit by submitting a written request for a hardship waiver to the Agency, and a copy to the municipal entity.

(b) The owner must demonstrate that his request is consistent with one or more of the following reasons for a hardship waiver.

1. The cost of economic factors not related to household income, including but not limited to interest rates, taxes, or insurance, inhibits the ability of an income-eligible household to obtain a mortgage commitment for the unit.
2. The owner has made a good faith effort to sell the unit to a eligible household for 90 days and no eligible household has signed a contract to purchase the unit.
3. The Agency has not referred an eligible household who qualifies for a mortgage commitment as required by the unit.

(c) Upon receipt of a request for a hardship waiver, the municipal entity shall have the first option to purchase the unit at the approved resale price and to hold, rent or convey it to an eligible household. The municipal entity shall have 30 days in which to exercise this option.

(d) The Agency shall approve or deny a hardship waiver in writing within 30 days of receipt of the request. A copy of the waiver shall be provided to the purchaser at the time of closing and filed with the deed. The waiver of income eligibility requirements is only valid for the designated resale transaction. Even if such a waiver is granted, the sale shall be in accordance with the approved index resale price and all future resales will be in accordance with the deed restrictions and sold to income-eligible households at the indexed resale price.

(e) If the Agency denies a hardship waiver, an owner may submit a written request to appeal, within 15 days of receipt of the denial, to the Executive Director of the Agency. Upon receipt of the request to appeal, the Agency shall hold a hearing or request the Office of Administrative Law to hold a hearing on the appeal. All hearings shall be conducted according to the rules established by the Office of Administrative Law pursuant to N.J.S.A. 52:14B-10. If a written request for an appeal has not been received within 15 days after the owner's receipt of the denial, the order of denial shall be final.

5:80-26.9 Exempt transactions: owner-occupied units

(a) The following title transactions shall be deemed "non-sales" and the Agency shall provide the owner receiving title with written confirmation of the exemption to those restrictions that determine occupancy of the unit.

1. Transfer of ownership between husband and wife;
2. Transfer of ownership between former spouses ordered as a result of a judicial decree of divorce or judicial decree of separation (but not including sales to third parties);
3. Transfer of ownership between family members as a result of inheritance;
4. Transfer of ownership through an executor's deed to any person.

(b) An exempt transfer of ownership does not terminate the resale restrictions or existing liens on the property. All liens must be satisfied in full prior to subsequent resale and all subsequent resale prices must be calculated using the resale price index in compliance with the terms of the deed restriction or other agreement with the Agency. The exempt transaction shall not be considered as a recorded transaction in calculating subsequent resale prices.

(c) The owner shall notify the Agency in writing of any proposed transaction that he or she wishes to qualify as an exempt transaction. The owner shall supply the Agency with all necessary documentation to demonstrate that the transaction qualifies as an exemption as delineated. The Agency may request additional documentation as it deems necessary. The Agency shall approve or deny in writing a request for a certificate of exemption within 15 days of the receipt of the request.

(d) If the Agency denies the exemption, the owner may submit a written request to appeal, within 15 days of receipt of the denial, to the Executive Director of the Agency. Upon receipt of the request to appeal, the Agency shall hold a hearing or request the Office of Administrative Law to hold a hearing on the appeal. All hearings shall be conducted according to the rules established by the Office of Administrative Law pursuant to N.J.S.A. 52:14B-10. If a written request for an appeal has not been received within 15 days after the owner's receipt of the denial, the denial of the certificate of exemption shall be final.

(e) A copy of the certificate of exemption shall be filed with the deed at the time of closing.

5:80-26.10 Owner-occupied rehabilitated units

(a) Income-eligible owner-occupants who are the beneficiaries of a grant or loan agreement for rehabilitation of a substandard unit shall have the following options at resale.

1. The unit can be sold to an eligible household at an affordable price and in standard condition, in which case, the deed restriction or applicable agreement shall be assumed by the purchaser as a condition of sale.

(b) Owners or subsequent owners who personally continue to occupy their rehabilitated units for a total period of six years will no longer be subject to resale restrictions or required to repay the loan.

5:80-26.11 Lease or rental of owner-occupied units

(a) The owner of an owner-occupied two, three or four family housing unit may lease or rent the non-owner-occupied units subject to the lease/rental provisions of N.J.A.C. 5:80-26.12 through 20.

(b) The owner of a single family housing unit may lease or rent the unit, unless the owner finances the unit with a mortgage loan from the Agency or lease/rental of the unit is prohibited by the terms of any contractual documents entered into by the owner or prohibited by other applicable controls. The owner of a two, three or four family housing unit may lease or rent the unit in which he or she resides unless any of the aforesaid lease/rental prohibitions apply. Such units may be leased or rented by the owner subject to the lease/rental provisions of N.J.A.C. 5:80-26.12 through 20.

Amended by R.1988 d.331, effective July 18, 1988.

See: 20 N.J.R. 862(a), 20 N.J.R. 1688(b).

Old text replaced by provisions (a) and (b).

5:80-26.12 Initial rents: rental units

(a) Initial rents shall be determined in accordance with contractual agreements approved by the Agency at levels that indicate affordability to households who qualify for low and moderate income housing. Generally, a household's monthly rental charge including utilities will not be expected to exceed 30 percent of their gross monthly income.

(b) Notwithstanding (a) above, whenever the Agency is not providing financial assistance, the Agency will administer controls for projects or programs when requested, which contain initial rents determined in a manner different from that outlined in (a) above, provided such determination is pursuant to a court order or approved settlement or is consistent with the rules of the Council on Affordable Housing, N.J.A.C. 5:92.

(c) At the time restrictions are initially placed on a rental unit, the affordability controls shall be incorporated into a deed restriction or other agreement established by the Agency. The owner shall record the deed or, if applicable, the agreement and forward a copy of the recorded deed or the agreement to the Agency for its files.

5:80-26.13 Vacancies: rental units

The landlord shall notify the Agency of any impending vacancy in any restricted rental unit not more than 60 days or less than 30 days in advance of the unit's availability.

5:80-26.14 Tenant selection: rental units

The Agency will refer a list of eligible households to the landlord for final selection within 30 days of receipt of this notification. The Agency will refer eligible households who meet income criteria for a vacant unit to landlords for lease negotiations. Landlords must select an eligible household for occupancy of an affordable rental unit. Final tenant selection shall be the responsibility of the landlord. However, no referred household will be denied a lease for any reason that violates any applicable law or any provision thereof.

5:80-26.15 Leases: rental units

A written lease shall be required in all restricted rental units. Final lease agreements will be the responsibility of the landlord and the prospective tenant. Tenants are responsible for security deposits and the full amount of the rent as stated on the lease. All lease provisions must comply with New Jersey Truth in Renting Act, N.J.S.A. 46:8-43 et seq., provisions.

5:80-26.16 Rent adjustments

(a) Rental charges may be adjusted at the annual anniversary date of the lease. Rent adjustments shall be determined by adjusting the base rent by the applicable index. The landlord will submit a written request for rent adjustment approval to the Agency or municipal entity administering the affordability controls prior to any rent adjustment being made. The Agency or municipal entity shall approve all proposed rent adjustments provided they do not exceed the amount permitted when adjusting the base rent by the applicable index.

(b) Upon a demonstration of financial need, the landlord may apply for a rent increase in excess of the amount permitted in (a) above, provided that in no event may the increase exceed an amount by which the unit would no longer qualify as low or moderate income housing, whichever is applicable. All such increases are subject to the review and approval of the Agency in a manner consistent with the rent increase rules of N.J.A.C. 5:80-9 for market rate projects, after consultation with the Council on Affordable Housing.

(c) The rent controls established in (a) and (b) above shall begin on the date the first rental unit is occupied.

Amended by R.1988 d.331, effective July 18, 1988.

See: 20 N.J.R. 862(a), 20 N.J.R. 1688(b).

(c) added.

5:80-26.17 Transfer of ownership: rental units

An owner of a restricted rental unit shall notify the Agency in writing of an intent to transfer ownership of the property. A copy of the recorded deed shall be forwarded to the Agency. The property shall be retained as affordable housing at resale subject to the terms of the deed restriction or other agreement with the Agency.

5:80-26.18 Determination of applicant households

(a) In order to be considered for an affordable housing unit, households must submit a preliminary application to the Agency. As a completed preliminary application is received, the Agency will review it to determine, without verification, if the declared household income is low or moderate within this subchapter. All applications for affordable housing will be accepted in accordance with any applicable law or any provision thereof.

(b) When the review of the preliminary application indicates that a household may be eligible, the household will be deemed an applicant household and the name of the head of the household shall be placed on a waiting list. The Agency will send a confirmation letter to the applicant household.

(c) When the review of the preliminary application indicates that a household's income is not low or moderate, the household will be so advised in writing and the preliminary application will be denied. If a household receives such a determination, the household may submit a written request for a redetermination to the Agency within 15 days of receipt of the denial. The request must set forth the basis for the claim of eligibility. The household will be required to produce documentation to support the claim at the time of redetermination. If the household's application is again denied, in writing, a written request to appeal may be filed with the Executive Director of the Agency. Upon receipt of the request to appeal, the Agency shall hold a hearing or request the Office of Administrative Law to hold a hearing on the appeal. All hearings shall be conducted according to the rules established by the Office of Administrative Law pursuant to N.J.S.A. 52:14B-10. If a written request for an appeal has not been received within 15 days after the household's receipt of this notice, the determination will be final and the application considered denied.

(d) Applicant households must still be determined to be eligible in accordance with N.J.A.C. 5:80-26.19.

5:80-26.19 Determination and referral of eligible households

(a) As units become available, the Agency will notify applicant households who satisfy the income criteria for an available unit who will then be scheduled for an interview to determine if they qualify as an eligible household. At the interview, the household will be requested to document all income. This determination process shall also include a credit background report. Every household member 18 years of age or older who will live in the affordable unit and who receives income shall be required to provide the required information, where applicable, identified at (a)1 below. All applicant households meeting the criteria shall be deemed an eligible household.

1. Each applicant household member as set forth in (a) above shall provide the following required information:

i. A copy of IRS Form 1040 (Tax Computation form) for each of the three years prior to the date of the interview;

ii. A letter from their employer(s) stating present annual income figure or four consecutive pay stubs dated within 120 days of interview date;

iii. A letter or appropriate reporting form verifying benefits, including but not limited to, social security or pension;

iv. A letter or appropriate reporting form verifying any other sources of income claimed by the applicant household;

v. Reports that verify income from assets to be submitted by banks or other financial institutions managing trust funds, money market accounts, stocks or bonds; and

vi. Reports that verify assets that do not earn regular income such as real estate and savings with delayed earnings provisions.

2. The Agency may also request the social security number of each applicant household member as set forth in (a) above. The request shall indicate that the submission of the social security number is voluntary and that it would be used to do credit checks on applicants. The request shall also include the privacy notice requirements of applicable federal and/or state law.

(b) Applicant households who are not determined to be eligible households shall be so notified in writing of the denial. This notice shall state the specific reason for the denial. If the applicant household disagrees with this finding, a written request for redetermination may be submitted to the Agency within 15 days of receipt of the notice. Applicant households shall be required to produce further documentation to support their claim request for a redetermination.

(c) Applicant households who are again denied status as an eligible household may submit a written request to appeal with the Executive Director of the Agency. Upon receipt of the request to appeal, the Agency shall hold a hearing or request the Office of Administrative Law to hold a hearing on the appeal. All hearings shall be conducted according to the rules established by the Office of Administrative Law pursuant to N.J.S.A. 52:14B-10. If a written request for an appeal has not been received within 15 days of the applicant household's receipt of this notice, the determination will be final and the application considered denied.

(d) Only eligible households shall have an opportunity to be considered for low and moderate income housing. The Agency shall have the authority to approve all eligible households.

(e) To the greatest extent possible, eligible household shall be referred to available units using the following accepted standards for occupancy, provided that in no case shall a household be referred to a unit that provides for more than one extra bedroom per family occupancy requirement:

1. A maximum of two persons per bedroom.
2. Children of same sex in same bedroom.
3. Unrelated adults or persons of the opposite sex other than husband and wife in separate bedrooms.
4. Children not in same bedroom with parents.

Amended by R.1993 d.640, effective December 6, 1993.
See: 25 N.J.R. 4369(a), 25 N.J.R. 5471(a).

5:80-26.20 Assignment or sublease of rental units

Provided that assignment or sublease is permitted under the terms of the lease or rental agreement, the tenant may assign or lease the unit, provided the assignee or sublessee qualifies as an eligible household. Tenants shall submit a written request to the Agency or municipality administering affordability controls for approval to assign or sublease the unit. Any units which are assigned or sublet will remain subject to the rent adjustment controls of N.J.A.C. 5:80-26.16.

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

5:80-26.21 Foreclosure: owner-occupied and rental units

(a) A judgment of foreclosure by a first money mortgagee on any restricted owner-occupied unit will result in a termination of resale controls, unless otherwise ordered by the court. The affordability controls of this subchapter shall remain in effect in the event of judgments of foreclosure on rental units (except for rental units contained in owner-occupied units).

(b) Notice of foreclosure shall allow the municipality to purchase the unit at the maximum approved price and hold, rent or convey the unit to an eligible household, provided the municipality purchases the unit prior to the judgment of foreclosure.

(c) In the event of a foreclosure sale by the first purchase money mortgagee, after the first purchase money mortgage, including costs of foreclosure and any second mortgages have been satisfied, any surplus funds exceeding the maximum allowable resale price as calculated by the approved index, shall be paid to the Agency. Any remaining funds in excess of outstanding grants or loans will be returned to the municipality.

Amended by R.1988 d.331, effective July 18, 1988.

See: 20 N.J.R. 862(a), 20 N.J.R. 1688(b).

(a) Amended so that controls will terminate upon foreclosure of owner-occupied units only and only upon foreclosure by a first money mortgagee.

(b) Amended to conform to the language of a similar provision in the Council of Affordable Housing's rules.

5:80-26.22 Agency grants or loans

(a) In order to receive approval for a grant or loan including, but not limited to, mortgage financing or set-asides of mortgage financing from the Agency a municipality must provide a plan for assuring that the assisted housing will remain affordable to and occupied by low and moderate income households for the time periods prescribed in these rules or pursuant to court order or court approved settlement. The municipality may adopt and administer its own plan for establishing affordability controls, provided the plan is approved by the Agency, or may request that the Agency administer affordability controls on behalf of the municipality as provided by N.J.A.C. 5:80-26.23. The rules in this subchapter will be used as a standard for the review and approval of any affordability control plan adopted and to be administered by a municipality.

(b) Loans or grants made by the Agency may be subject to recapture if any unit(s) financed by such grant or loan is lost to the low or moderate income housing stock during the affordability control period established in N.J.A.C. 5:80-26.3.

5:80-26.23 Contractual agreements with municipalities or developers

(a) The Agency shall enter into contracts for the administration of affordability controls upon request by a municipality provided that the municipality has no appropriate administrative agency to administer the controls for a given project. The municipality shall adopt a resolution containing the following provisions:

1. A statement declaring that no appropriate administrative agency exists for a given project within the municipality to administer affordability controls;
2. A statement authorizing the municipality to enter into contractual agreements with the Agency whereby the Agency will administer affordability controls for the municipality;
3. A statement which identifies the municipal officer(s) who have authority to enter into contractual agreements on behalf of the municipality; and
4. A current inventory of the units to be subject to affordability controls.

(b) The Agency shall enter into contracts for the administration of affordability controls upon request by a developer of an inclusionary development in municipalities where no appropriate administrative agency exists to administer such controls. The developer shall submit a declaration of intent

from the appropriate person or body (for example, corporate resolution, letter from its president) indicating its willingness to enter into contractual agreements with the Agency whereby the Agency will administer resale and rent controls on behalf of the developer.

(c) Whenever the Agency administers affordability controls on behalf of a municipality or developer of an inclusionary development, it will do so in accordance with the rules in this subchapter. In the event that a municipality is not receiving a grant or loan from the Agency and has an affordability control plan approved by the Agency under subchapter 12 of the rules of the Council on Affordable Housing (N.J.A.C. 5:92-12), the Agency may administer the plan approved under subchapter 12. In the event the municipality is implementing a program pursuant to court order, or court approved settlement, the Agency may administer the affordability control plan provided under such order or settlement.

(d) Municipalities and developers of inclusionary developments who enter into contractual agreements with the Agency for the administration of affordability controls shall pay a servicing fee to the Agency, said fee to be established by the Agency according to methods or schedules approved by the State Treasurer.

SUBCHAPTER 27. (RESERVED)

SUBCHAPTER 28. NONPUBLIC RECORDS

5:80-28.1 Nonpublic records

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

1. All confidential reports, executive memoranda and evaluations submitted to the Executive Director of the Agency, the members of the Agency or to any other State Agency;
2. All personnel records;
3. All records concerning applications for employment with the Agency;

4. All records concerning personal or financial information submitted by applicants for or tenants of rental housing units financed by the Agency;

5. All records concerning personal or financial information submitted by applicants for or recipients of any single family mortgage loan or home improvement loan of the Agency;

6. All records concerning personal or financial information, including Agency form, Certification and Questionnaire, submitted by individuals, corporations, partnerships and other entities doing or seeking to do business with the Agency; and

7. All reports, correspondence and other documents or data provided or discussed at the Executive Session of the meetings held by the members of the Agency, except that any action taken or other information required to be disclosed to the public pursuant to N.J.S.A. 10:4-6 et seq. shall not be deemed to be nonpublic records within the scope of this subchapter.

SUBCHAPTER 29. INVESTMENT OF HOUSING PROJECT FUNDS

5:80-29.1 Permitted investments

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

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

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