

COMMUNITY AFFAIRS

NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

New Jersey Housing and Mortgage Finance Agency Rules

Adopted Repeals and New Rules: N.J.A.C. 5:80-6.2, 6.3, 22.1, 32.2, and 32.3

Adopted Repeals: N.J.A.C. 5:80-6.4, 6.9, 10, 22.2 through 22.24, 24, 32.4, 32.5, 32.6, and 5:80-32

Appendix

Adopted Amendments: N.J.A.C. 5:80-5.1, 5.9, 6.1, 6.5, 6.6, 6.7, 6.8, 6.10, 6.11, 9.14, 22.25, 32.1, and 32.7

Proposed: June 19, 2017, at 49 N.J.R. 1595(a).

Adopted: May 17, 2018, by the New Jersey Housing and Mortgage Finance Agency, Charles Richman, Executive Director.

Filed: June 7, 2018, as R.2018 d.132, **with non-substantial changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3) **and with the proposed repeal of N.J.A.C. 5:80-9.13 not adopted.**

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

Effective Date: July 2, 2018.

Expiration Date: September 14, 2024.

Summary of Public Comment and Agency Response:

No comments were received.

Summary of Agency-Initiated Changes:

As part of the rulemaking, the Agency proposed to repeal N.J.A.C. 5:80-9.13, which provides an alternate procedure for implementing rent increases at low- and/or moderate-income housing projects without Federal project-based rent subsidies, and to amend N.J.A.C. 5:80-9.14(a) and (b), regarding

resident monthly fee increases for low- and/or moderate-income restricted units in assisted living residences (ALRs) in light of the proposed repeal of N.J.A.C. 5:80-9.13 and to correct a longstanding error of syntax. The Agency has determined not to adopt the proposed repeal of N.J.A.C. 5:80-9.13 and the proposed non-technical amendments at N.J.A.C. 5:80-9.14(a) and (b) at this time. The Agency intends to propose a new rule and the amendment and recodification of certain of its rent rules at N.J.A.C. 5:80-9, of which N.J.A.C. 5:80-9.13 and 9.14 are a part. The Agency believes the proposed repeal of N.J.A.C. 5:80-9.13 and the proposed substantive amendments to N.J.A.C. 5:80-9.14 are best considered and evaluated in conjunction with that anticipated rulemaking. The Agency, therefore, intends to re-propose those actions as a part of the rulemaking related to rents.

Federal Standards Statement

The adopted repeals, new rules, and amendments do not exceed any standards or requirements imposed by any known Federal laws or regulations. The adopted substantial repeal and new rule and amendment of the Affirmative Fair Housing Marketing Plan rules at N.J.A.C. 5:80-22 are specifically intended to comply with the express State policy of reducing “confusion and costs” by eliminating an unnecessary State standard where it has been determined that an analogous Federal counterpart adequately protects the welfare of New Jersey citizens. See N.J.S.A. 52:14B-22.

Full text of the adopted new rules and amendments follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*):

SUBCHAPTER 5. TRANSFER OF OWNERSHIP INTERESTS

5:80-5.1 Definitions

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

...

5:80-5.9 Required payment and repayments

(a) At closing, the following payments and repayments are required:

Recodify existing 2.-4. as 1.-3. (No change in text.)

(b) The Portfolio Reserve Account is a fund previously established by the Agency to provide support for any project financed by the Agency that is in need of financial assistance. The source of such fund was previously codified at (a)1 above, which was deleted effective *[(effective date of this amendment)]* ***July 2, 2018***. The Portfolio Reserve Account, and any interest or investment income earned thereon, may be used, at the Agency's discretion, to fund debt service arrears and other operating deficits, capital improvements, and repairs of any project that cannot fund these items from normal project income. The Portfolio Reserve Account enables the Agency to assist projects in maintaining physical and fiscal viability, so as to preserve the housing units at rents that are affordable to low- and moderate-income families. Eligibility for assistance from the Portfolio Reserve Account shall be subject to the terms and conditions as determined by the Agency.

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

5:80-6.1 Definitions

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

“Community Development Escrow” or “CDE” means that fund established pursuant to a conversion, intended primarily for use in assisting community improvements, activities, or services related to a project.

“Conversion” means the overall transaction by which ownership of a project was transferred from a nonprofit entity to a profit-motivated partnership.

“Development Cost Escrow” or “DCE” means that fund established pursuant to a conversion, intended primarily for use in improving or supporting a project itself.

“Nonprofit” means the nonprofit owner of a project that conveyed its interest in the project and assigned its Agency mortgage on the premises to a profit-motivated partnership.

...

“Partnership” means a profit-motivated limited partnership that has qualified as a limited dividend housing association pursuant to the New Jersey Limited-Dividend and Nonprofit Housing Corporations and Associations Law, N.J.S.A. 55:16-1 et seq (Limited Dividend Law), repealed by P.L. 1991, c. 431, § 20, and that has taken title to a project from a nonprofit entity.

“Project Subsidy Reserve Fund” or “PSR” means that fund established pursuant to a conversion, intended primarily for maintaining the operative viability of Section 236 projects.

...

5:80-6.2 Scope

Prior to the repeal of the Limited Dividend Law, a number of Agency-financed housing projects were sold by their nonprofit sponsors to limited partnerships formed pursuant to the Limited Dividend Law. As a result of those transactions, designated funds were deposited into certain accounts for the primary purpose of financing project and community activities and services. The provisions of this subchapter are intended primarily to set forth the permissible uses of and the procedure for accessing the funds remaining in and accruing to those accounts.

5:80-6.3 Annual administrative fee

Unless otherwise provided for by agreement, each project that has been subject to a conversion shall pay to the Agency an annual administrative fee of \$3,500 from the principal and/or interest income on the escrow accounts in such manner as shall be determined by the Agency.

5:80-6.4 Use of funds with regard to projects subsidized under Section 8

(a) With the approval of the Agency, the principal of the Development Cost Escrow shall be used to fund debt service arrearages and other operating deficits at the project, including appropriate funding of required reserve accounts as determined by the Agency and for such other purposes as may be approved by the Agency that will improve the financial viability or physical structure of the project or increase tenant safety and/or comfort.

(b) With the approval of the Agency, the principal of the Community Development Escrow shall be used for any use permitted under (a) above or to increase amenities of the project; reduce maintenance and replacement costs of the project; provide or assist desirable social services benefiting the residents of the project or the community in which it is located; and finance various community development activities in the community in which the project is located.

5:80-6.5 Use of funds with regard to projects subsidized under Section 236 Interest Reduction Program

(a) This section is promulgated to recognize the essential difference between the Section 236 and Section 8 Programs. In projects subsidized through interest reductions, tenants must bear the full responsibility for all other operating costs. Accordingly, after certain required payments, all proceeds of the sales of Section 236 projects were primarily pledged to easing the burden on the tenants by subsidizing repair and maintenance or operating costs. If, however, the housing sponsor of a Section 236 project can demonstrate that the project is in sound physical and financial condition and will likely remain so for the foreseeable future, a portion of the proceeds or investment income on the proceeds may be deposited into a CDE.

(b) The income and principal of a Project Subsidy Reserve may be utilized in the following manner:

1. First to pay any existing operating deficits, including debt service arrearages, of the project;

2.-3. (No change.)

4. After the project sponsor has demonstrated to the satisfaction of the Agency, based on information required under (b)4i through iv below, that the funds in the PSR are not required for any of the purposes listed in (b)1, 2, or 3 above and will not be so required for the foreseeable future and after payment of the annual administrative fee to the Agency has been funded, a portion of these funds or the investment income thereon may, at the request of the sponsor, be deposited into a CDE. If such a request is made, the project sponsor shall submit, and the Agency shall consider, the following information:

i. Operating revenue and expense projections for the project for the next five years;

ii. The rents expected to be charged at the project assuming reasonable annual increases for five years;

iii. The rents charged and expected to be charged at comparable projects; and

iv. The effect of the requested action on (b)4i and ii above.

5:80-6.6 Investment income earned on the PSR, DCE, and CDE

(a) After payment of the annual administrative fee specified in N.J.A.C. 5:80-6.3 has been funded, the investment income earned on the DCE and CDE may be used:

1. To fund current operating deficits and/or arrearages, including debt service arrearages, of the project;

2. To pay the partners a return on equity to the extent allowed by law and to the extent not paid from operating revenues of the project, but only if there are no operating deficits or arrearages at the project; and

3. In accordance with the designated uses of the accounts or for other purposes requested by the project sponsor and approved by the Agency.

(b) After funding the uses described in N.J.A.C. 5:80-6.5(b)1, 2, and 3 and the annual administrative fee specified at N.J.A.C. 5:80-6.3, the investment income on the PSR may be utilized in the manner set forth in (a) above.

5:80-6.7 Use of DCE and CDE for development of housing

(a) In addition to the uses permitted under N.J.A.C. 5:80-6.4, 6.5, and, 6.6, housing sponsors, or the authorized entity within the housing sponsor's organizational structure with financial control over the DCE and/or CDE accounts, may, with Agency approval, use DCE and CDE funds, and interest thereon, for the development, operation, maintenance, construction, rehabilitation, or improvement of or investment in additional housing within the State. DCE and CDE funds may only be used for such purposes if the Agency determines that DCE and CDE funds are not needed to ensure the financial viability or physical structure of the project. This includes, but is not limited to, a finding by the Agency that the project has surplus cash and that DCE and CDE funds are not needed for providing an additional source of operating revenue to assist in financing any other aspect of the current or future operations of the project.

(b) Housing sponsors, or the authorized entity within the housing sponsor's organizational structure with financial control over the DCE and/or CDE accounts, may use DCE and CDE funds as specified in (a) above or may deposit DCE and CDE funds with the Agency to be used by the Agency itself or by the Agency in conjunction with other developers for the purposes and under the conditions outlined in (a) above.

5:80-6.8 Tax obligations

The partnership shall be responsible for all tax consequences arising out of the sale of the project.

5:80-6.9 Approval and disclosure requirements

The Agency specifically reserves the right to investigate and approve any party involved in the transaction including, without limitation, all limited and general partners, attorneys, syndicators, brokers, or consultants, as well as any partners, shareholders, or members thereof. Prior to its approval the Agency may require any party to disclose such information as may be reasonably related to the transaction and may require any party to sign such waivers, releases, or affidavits as may be necessary to authenticate or investigate the information requested.

5:80-6.10 (No change in text.)

SUBCHAPTER 9. RENTS

5:80-9.14 Resident monthly fee increases for low- and/or moderate income-restricted units in assisted living residences (ALRs)

(a) For the purposes of this section, the term "monthly fee" includes charges for rent, meals, and basic services. The Agency shall regulate the monthly fees for all low and moderate income-restricted ALR units. Monthly fees for income-restricted ALR units may not exceed 80 percent of the ***percentage of*** HUD median income ***[level]*** applicable to that ALR as set forth in the Financing, Deed Restriction, and Regulatory Agreement executed by the housing sponsor and the Agency ("applicable HUD median income level"). The foregoing shall not apply to units occupied by persons who have insurance and/or another contracted third-party payor.

(b) Sponsors of ALRs may implement increases of monthly fees ***[for the income-restricted ALR units]*** with Agency approval ***[by submitting a written request to the Director of Property Management of the Agency, accompanied by the current tenant income certifications for the income-**

restricted ALR units, the most recent HUD area median income figures, and the maximum rents corresponding to the area median income figures. The Director of Property Management will review and verify the information contained therein and, if accurate, approve the requested monthly fee increase, up to a maximum of 10 percent for low-income units and 20 percent for moderate-income units, but] **as provided in N.J.A.C. 5:80-9.13(a)1 for the income-restricted ALR units, provided that the maximum monthly fee for the income-restricted ALR units may** not ***[to]*** exceed 80 percent of the applicable HUD median income level. Monthly fee increases for non-income restricted ALR units do not require Agency approval.

(c)–(e) (No change.)

SUBCHAPTER 10. (RESERVED)

SUBCHAPTER 22. AFFIRMATIVE FAIR HOUSING MARKETING PLAN REQUIREMENTS

5:80-22.1 Requirement to submit an Affirmative Fair Housing Marketing Plan

(a) The purpose of an Affirmative Fair Housing Marketing Plan (Plan) is to ensure that necessary steps are being taken to eliminate discriminatory rental practices and to overcome the effects of past discrimination involving rental housing by informing individuals or groups of persons who would not normally apply for the housing about the availability thereof and providing them a reasonable opportunity to rent the housing.

(b) Sponsors of housing projects and sponsors of continuing care retirement communities are required to submit a Plan prior to receiving a commitment or funding from the Agency.

(c) The contents of a Plan under (a) above are as follows:

1. The Plan shall consist of a fully completed U.S. Department of Housing and Urban Development (HUD), Office of Fair Housing and Equal Opportunity Affirmative Fair Housing Marketing Plan (AFHMP)–Multifamily Housing (Form HUD-935.2A (12/2011)) or such updated or

successor form as may be developed by HUD, available at <http://portal.hud.gov/hudportal/documents/huddoc?id=935-2a.pdf>.

2. In addition to (c)1 above, all sponsors of housing projects and continuing care retirement communities shall register their projects or cause their projects to be registered on the New Jersey Housing Resource Center website at <http://www.nj.gov/njhrc/>.

5:80-22.22 Monitoring

(a) The Agency will monitor projects 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 or sponsor 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 achievement of the objectives of the Plan.

(b)–(c) (No change.)

SUBCHAPTER 24. (RESERVED)

SUBCHAPTER 32. HOUSING INVESTMENT SALES

5:80-32.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings:

“Eligible LD sponsor” means a for-profit corporation or partnership organized under, and remaining subject to, the Limited Dividend Law, P.L. 1949, c. 184, § 1 et seq., as amended (N.J.S.A. 55:16-1 et seq.) (repealed by P.L. 1991, c. 431, § 20 (N.J.S.A. 40A:20.1 et seq.)), that owns and operates an

Agency-financed, multifamily, rental housing project that, in each of the three fiscal years preceding the housing investment sale, had:

1.-2. (No change.)

“Housing investment sale” means a previously completed transaction that promotes the provision or maintenance of low and moderate income housing, as defined pursuant to the Fair Housing Act, N.J.S.A. 52:27D-301 et seq., through the sale by an eligible LD sponsor of an Agency-financed, multifamily, rental housing project to a qualified housing sponsor upon the following terms:

1. The buyer executed a deed restriction (and such other instruments reasonably required by the Agency) at the closing of the housing investment sale to ensure that the project will remain affordable to low and/or moderate income tenants as provided in the original mortgages; and subject to Agency restrictions regarding tenant income eligibility, tenant selection, project reserves, return on equity, rent increases, and the provisions at N.J.S.A. 55:14K-7b for 35 years after the expiration of the term of the project mortgage. The foregoing documents shall also have provided for the payment of a servicing fee to the Agency through the end of the additional 35 years for monitoring the restrictions that apply to the project, such fee not being less than the servicing fee being paid by the eligible LD sponsor seller at the time of the housing investment sale; and

2. The eligible LD sponsor invested an amount equal to 50 percent of the maximum additional return in the Housing Investment Sale.

...

“Maximum additional return” means the additional return that was payable to the owners of an eligible LD sponsor under the Limited Dividend Law but not under the Housing and Mortgage Finance Agency (HMFA) Law, N.J.S.A. 55:14K-1 et seq.

...

5:80-32.2 Scope

The provisions of this subchapter are intended to set forth the continuing requirements and restrictions applicable to housing projects that participated in housing investment sales.

5:80-32.3 Prepayment

Any prepayment of the first mortgage subsequent to a housing investment sale as may be permitted by the Agency's rules on prepayment shall not operate to relieve the buyer of the continuing requirements of this subchapter. As a condition to prepayment, a new or amended deed restriction, as may be required by the Agency, shall be recorded upon prepayment and shall contain the same affordability restrictions as the project's deed restriction in effect at the time of prepayment. The affordability provisions shall continue from the date of prepayment through the end of the regulatory period, as required by this subchapter, and the project's deed restriction in effect at the time of prepayment.

5:80-32.4 Return on equity

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

(b) Buyers who agreed to fund a capital improvement account, and agree to preserve the low-income status of the project for an additional 15 years, as provided below, may receive enhanced return

on equity during the term of the Agency's mortgage through a split of the project's residual receipts on a 50/50 basis with the Agency.

1.-3. (No change.)

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

(c) (No change in text.)