

shall be cancelled if a person to whom a procurement card is issued becomes ineligible for coverage under the fidelity bond or blanket honesty policy; and

5. (No change.)

(b) **The chief administrative officer, in consultation with the chief financial officer and the program manager, if that individual is someone other than the chief financial officer, will identify positions within the organizational structure that will benefit from the use of a procurement card and establish limits by amount, period (time), and category of usage permissible. Under the supervision of the chief financial officer, the program manager shall develop and administer a supervisory review process, as well as engage in any other oversight or management duties required to ensure the proper usage of procurement cards. The chief financial officer or an individual under the supervision of the chief financial officer other than the program manager shall be responsible for reconciliation of activity.**

[(b)] (c) **The program manager, subject to the supervision of the chief financial officer if the program manager is someone other than the chief financial officer, is responsible for the identification, analysis, and management of all risks associated with the use of procurement cards.**

[(c)] (d) **The [contracting] local unit, local authority, or county college shall publish and distribute within the organization all policies and procedures that govern all procurement card users, their supervisors, the purchasing agent, the accounts payable, and accounting personnel responsible for reconciliation of procurement card statements and the disbursement of funds in satisfaction thereof. Said policies and procedures shall, at a minimum, describe the following:**

1.-12. (No change.)

[(d)] (e) **The [program manager] chief financial officer shall assure that the following information is gathered and reviewed prior to any disbursement of funds to the issuer:**

1. Evidence of each transaction, including a receipt or other acceptable documentation provided by the vendor of goods or services, and certified by the authorized procurement card user pursuant to N.J.S.A. 40A:5-16.b, as having been received as described;

2. (No change.)

3. A reconciliation of activity performed upon the transaction evidence, supervisory review, and procurement card issuer statement; and

4. (No change.)

[(e)] (f) **The [program manager] chief financial officer is responsible for monitoring and assessing the quality of internal control performance on a continuing basis to assure that all controls are actively pursued each cycle without exception.**

5:30-9A.8 (Reserved)

CHAPTER 31
LOCAL AUTHORITIES

SUBCHAPTER 4. APPROVAL AND PAYMENT OF CLAIMS

5:31-4.1 Payment of authority moneys; approval of claims

(a) All persons submitting a claim for payment from authority moneys shall present a detailed bill of items or demand, specifying how the bill or demand is made up, with the certification of the party claiming payment that it is correct[.], **except payments may be made without certification by the vendor or claimant as to the bill or demand being correct under the following circumstances:**

1. When payment to vendors is required in advance of the delivery of the following materials or services, if those materials or services cannot be obtained from any other source at comparable prices, including:

i. For such purposes as may be permitted pursuant to N.J.S.A. 40A:5-16.2 and 16.3;

ii. Payment obligations to the State or Federal governments;

iii. Membership in a nonprofit organization;

iv. Educational courses, including, but not limited to, those where continuing education credits are awarded;

v. Registration for a convention hosted by a nonprofit organization; and

vi. Website hosting, including registration and maintenance of a domain name.

2. When ordering, billing, and payment transactions for goods or services are made through a computerized electronic transaction utilizing standard electronic funds transfer technologies; and

3. Where an authority institutes a standard policy by resolution not to require a vendor or claimant certification if said vendor or claimant does not provide, as part of its normal course of business, a certification from an individual with knowledge of the transaction that a bill or demand is correct. In instituting such a policy, the authority shall have the discretion to require vendor or claimant certification as the authority deems necessary and appropriate.

(b) **The provisions of (a)2 and 3 above shall not apply to the reimbursement of employee expenses or payment for personal services.**

1. No employee expenses shall be reimbursed by an authority unless the employee provides a detailed statement, certified in writing by the employee, along with documentation in support of each expense.

2. For purposes of this section, a "personal service" shall be a service provided exclusively and entirely by the individual seeking payment.

(c) **An authority shall not require vendor or claimant certification before payment is made for debt service or the services set forth under N.J.S.A. 40A:5-16(d).**

(d) **A certification pursuant to N.J.S.A. 40A:5-16.a that a bill or demand is correct must feature either an original signature, signature stamp, facsimile signature, or electronic signature of the individual making the certification.**

Recodify existing (b)-(d) as (e)-(g) (No change in text.)

[(e)] (h) **Payment of claims shall be by check drawn on the authority, signed by the governing body chairman[,] and the chief financial officer and countersigned by such other officer or official as designated by the resolution. Disbursements utilizing standard electronic funds transfer technologies shall be initiated and authorized pursuant to N.J.A.C. 5:30-9A.**

[(f)] (i) **The governing body shall by resolution, passed by not less than a majority of the full membership, designate the manner in which and the time in which salaries, wages, or other compensation for services shall be paid.**

5:31-4.2 **Signatures on checks drawn upon the treasury of the authority; initiation and authorization of electronic funds transfers**

Every authority shall at each organizational meeting designate by resolution the individuals whose signatures shall appear on checks drawn upon the treasury of the authority and the individuals who shall initiate and authorize transactions utilizing standard electronic funds transfer technologies.

(a)

DIVISION OF LOCAL GOVERNMENT SERVICES

Tax Collection Administration

Proposed New Rule: N.J.A.C. 5:33-1.1

Authorized By: Timothy J. Cunningham, Director, Division of Local Government Services.

Authority: N.J.S.A. 54:5-19.1.a.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2017-097.

Please submit written comments by August 18, 2017, via e-mail to dlds@dca.nj.gov or by regular mail to:

Jason R. Martucci, Esq.
Administrative Practice Officer

Division of Local Government Services
 Department of Community Affairs
 PO Box 803
 Trenton, NJ 08625-0803

For comments submitted via e-mail, please name the subject heading "N.J.A.C. 5:33-1.1 Electronic Tax Lien Sales."

The agency proposal follows:

Summary

N.J.S.A. 54:5-19.1.a authorizes the Director of the Division of Local Government Services in the Department of Community Affairs to promulgate rules authorizing municipalities to utilize a "nationally recognized electronic municipal tax lien service" to conduct a sale of delinquent taxes and municipal charges. In accordance with such rules, an electronic municipal tax lien service can provide electronic publication of tax lien sale notices, electronic auctions, electronic payment for purchased liens, digital signature validation, or any other matters necessary for the conduct of electronic tax lien sales. Electronic tax lien sales are currently conducted by certain municipalities under the aegis of a pilot program authorized by the Director pursuant to N.J.S.A. 54:5-19.1.c. After considering the input provided by municipalities participating in the pilot program, along with other informal input from various stakeholders, the Director is promulgating a new rule authorizing and governing the sale of delinquent taxes and municipal charges through electronic means.

The proposed new rule sets forth procedures and parameters for internet-based sales of delinquent taxes and municipal charges. Municipalities would be permitted to enter into contracts with third-party vendors that offer nationally recognized electronic tax lien sale services as defined by the proposed new rule. The proposed new rule sets forth standard contract requirements for any agreement between the municipality and the vendor, also addressing areas such as procurement, prerequisites for awarding a contract, and limitations on vendor fees. With respect to the conduct of an online sale, the proposed new rule creates a framework for publishing and posting of the notice of tax lien sale, issuance of individual notice to the property owner, bidder registration, and conducting the online tax lien sale, as well as requirements pertaining to the receipt and processing of payments. Minimum technological, cybersecurity, and internal control standards are also set forth. Each vendor would be required to offer standard system capabilities and adhere to certain customer service standards.

This notice of proposal provides for a comment period of 60 days and, therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, is excepted from the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

Social Impact

The proposed new rule will have a positive social impact by opening up the online sale of delinquent taxes and municipal charges to municipalities throughout New Jersey, creating a standard framework that will engender confidence in the process. Internet-based tax lien sales offer an opportunity to expand the pool of bidders for municipal liens to investors across the country, which would have the impact of driving down the rate of interest that the delinquent property owner would be required to pay to the lienholder, thus, providing relief to property owners experiencing financial distress. By expanding and diversifying the pool of potential lien purchasers, as well as offering a level of anonymity, online tax lien sales also reduce the risk of bidder collusion versus a live sale. Collusion decreases competition and thereby increases the interest that the delinquent taxpayer must pay to the lienholder.

Economic Impact

The proposed new rule will have a positive economic impact on both the municipality and the delinquent taxpayer. When compared to the demands of an in-person sale, an online tax lien sale poses substantially less administrative and staff burden on a municipal tax collector's office because the third-party vendor registers the bidders and conducts the actual auction. Internet-based tax lien sales also offer the opportunity to expand the universe of bidders, thereby increasing the likelihood of more liens being sold on a consistent basis. Liens that are not sold at a tax lien sale get struck off to the municipality resulting in a loss of revenue, which tends to happen more often in economically distressed

areas where property is less valuable. Robust lien sales ensure continued revenue for a municipality to maintain a sound budget and continue providing services for its residents. If a particular lien is bid down to zero interest for the delinquent property owner, additional bids beyond that point result in a monetary premium going to the municipality. The tax collector shall hold the premium and return it to the lienholder if redemption is made by the delinquent property owner within the timeframe set forth in N.J.S.A. 54:5-33, during which time the municipality can invest the premium and keep any interest earned; the premium is turned over to the municipality's general fund if redemption is not made within the allotted timeframe. Finally, in lieu of publishing an entire tax lien sale notice in an official newspaper, which for larger municipalities can cost up to tens of thousands of dollars, a display ad published for a substantial savings that features the web address where the tax lien sale notice can be seen online can be used.

Federal Standards Statement

No Federal standards analysis is required because the proposed new rule is not proposed in order to implement, comply with, or participate in any program established under Federal law or under a State law that incorporates or refers to Federal law, standards, or requirements.

Jobs Impact

An online tax lien sale may reduce a municipal tax collector's need for support staff that would otherwise be utilized in conducting an in-person sale. To the extent that a tax collector's office has such staff, they may be subject to layoffs or a reduction in hours if the municipality is not able to reassign them to other duties.

Agriculture Industry Impact

The Board does not anticipate that the proposed new rule, which pertains to electronic tax lien sales, would have an impact on the agriculture industry.

Regulatory Flexibility Statement

The vendor for the only electronic tax lien auction platform currently approved under the Division's pilot program does not qualify as a "small business" pursuant to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., because the company is presently dominant in the field and, by virtue of its having been the sole vendor in the aforementioned pilot program, will likely remain so for the foreseeable future even upon the Director's adoption of a regulatory framework for electronic municipal tax lien sales. Other companies the Division has identified that offer electronic municipal tax lien sale platforms are non-New Jersey residents. To the extent that any New Jersey firms that fall under the definition of the Regulatory Flexibility Act may wish to participate in the market upon the adoption of a regulatory framework, this number is indeterminate. In any case, the uniform platform design standards, cybersecurity measures, audit reporting, and mandatory contractual provisions set forth within the rule proposal are necessary to ensuring the proper functioning of electronic municipal tax lien sales and the protection of municipalities. Subsection (s) sets forth minimum cybersecurity requirements that reflect standard industry practice. The standard cost of a SOC2 Type I and Type II audit report would be at least approximately \$40,000, however the Director finds that making a SOC2 report a uniform requirement is necessary for providing municipalities with detailed assurance that relevant criteria for security, availability, processing integrity, confidentiality and privacy trust services principles are being met.

There are at least 50 firms of varying sizes who participate in tax lien auctions held by New Jersey municipalities. These firms participate both in live sales and electronic auctions taking place under the current Division of Local Government Services pilot program. Bidder deposits, and any corresponding bidder registration documentation that may be required to be submitted for auction participation, are necessary to avoid potential fraud and ensure the efficient and fair administration of the electronic tax lien sale process; participants in electronic auctions sanctioned under the pilot program already follow such prerequisites.

Housing Affordability Impact Analysis

There is an extreme unlikelihood that the proposed new rule would evoke a change in average costs associated with housing, nor would it

have any impact on the affordability of housing. The proposed new rule only pertains to electronic tax lien sales.

Smart Growth Development Impact Analysis

There is an extreme unlikelihood that the proposed new rule would evoke a change in housing production within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The proposed new rule only pertains to electronic tax lien sales.

Full text of the proposed new rule follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 1. TAX COLLECTION PROCEDURES

5:33-1.1 [(Reserved)] Electronic municipal tax lien sales

(a) No municipality may contract with a third-party vendor to conduct tax lien sales that is not a nationally recognized electronic municipal tax lien service. In order to qualify as a "nationally recognized electronic municipal tax lien service," the vendor must presently conduct internet-based electronic municipal tax lien sales in at least two states, or have conducted internet-based electronic municipal tax lien sales in the past two years that have included bidders from more than one state, or affirmatively market a system for performing internet-based electronic municipal tax lien sales in more than one state.

(b) An electronic municipal tax lien sale shall be authorized by a resolution of the governing body.

(c) For any contract for an electronic municipal tax lien service that exceeds the contracting unit's bid threshold, an electronic municipal tax lien service shall not be construed to fall under one of the exceptions to public advertising for bids set forth in N.J.S.A. 40A:11-5, except as set forth under 40A:11-5(3) and 40A:11-5(4).

1. An electronic municipal tax lien service may be procured through competitive contracting pursuant to N.J.S.A. 40A:11-4.1 et seq., without seeking prior approval of the Director of the Division of Local Government Services.

(d) When a municipality conducts an electronic tax lien sale, the tax collector shall continue to prepare the tax lien sale notice required pursuant to N.J.S.A. 54:5-25. In addition to the content required by N.J.S.A. 54:5-25, the notice shall state that the sale is being held through an online auction, that bidders should submit their bids no later than the date and time of the sale set forth in the notice, and that all or any portion of this tax lien sale may be adjourned by the tax collector pursuant to N.J.S.A. 54:5-28. A full link to the website for tax lien sale bidder instructions and registration shall also be included.

1. The tax lien sale notice prepared pursuant to this subsection shall be available to the public online without requiring registration, membership, or payment prior to viewing. If the municipality has a website, a copy of the tax lien sale notice shall be posted and continuously maintained thereon until the tax lien sale concludes.

2. Pursuant to N.J.S.A. 54:5-26, the municipality shall physically post copies of the tax lien sale notice prepared pursuant to this subsection in five of the most public places in the municipality.

3. Pursuant to N.J.S.A. 54:5-27, when the property owner's name appears in the tax lien sale list and their post office address is known, the municipality shall mail to the property owner at that address, postage prepaid, a copy of the tax lien sale notice prepared pursuant to this subsection. Failure to mail the notice shall not invalidate any proceeding under this section.

(e) In addition to the notice required to be mailed pursuant to (d)3 above, at least one additional notice shall be mailed by regular or certified mail to the property owner and to any person or entity entitled to notice of foreclosure pursuant to section 20 of P.L. 1948, c. 96 (N.J.S.A. 54:5-104.8) once during the four-week period prior to the week of the tax lien sale. The costs of mailing said notice(s) shall not be added to the cost of sale in addition to those costs provided in N.J.S.A. 54:5-38. The additional notification to the property owner shall contain the information required pursuant to (d) above.

Failure to mail the notice shall not invalidate any proceeding under this section.

(f) The newspaper publication requirement set forth in N.J.S.A. 54:5-26 may be satisfied by publishing, in lieu of a copy of the tax lien sale notice prepared pursuant to (d) above, a notice published in the format of a display advertisement, rather than a legal advertisement. The display advertisement, which must be no less than two inches by three inches with a bold black border, shall be published once a week for four weeks, prior to the week of the sale in both a newspaper circulating in the municipality and any other newspaper designated by the municipality for publishing public hearing notices regarding ordinances being considered for adoption. The notice contained in the display advertisement shall set forth the following information:

1. A statement that the municipality is announcing the sale of delinquent taxes and delinquent municipal charges;

2. A statement that the sale shall be conducted through an online auction;

3. A statement that the listing of all parcels and delinquencies and costs, along with bidding instructions, are available online for viewing at no cost;

4. The date and time of sale; and

5. The full website link where the notice of tax lien sale may be viewed.

(g) Where the newspaper fails to print a notice published pursuant to (f) above, or where a notice published pursuant to (f) above contains one or more errors, notice to the property owner and to any person or entity entitled to notice of foreclosure pursuant to section 20 of P.L. 1948, c. 96 (N.J.S.A. 54:5-104.8) may be given by regular or certified mail in lieu of any two publications required pursuant to (f) above. In addition to costs of sale provided in N.J.S.A. 54:5-38, the costs of such notice or notices shall be added to the cost of sale pursuant to N.J.S.A. 54:5-26, not to exceed \$25.00 for each notice for a particular property. The notice or notices to the property owner shall contain the information required pursuant to (d) above. Failure of the property owner to receive a notice properly mailed by the tax collector shall not constitute grounds to void the subsequent tax lien sale.

(h) The vendor's fee for conducting the electronic tax lien sale shall not exceed the fee collected by the tax collector under N.J.S.A. 54:5-38. The vendor shall only charge fees to the municipality and not to bidders or lien purchasers.

(i) The tax collector shall not collect any additional fees for the cost of sale, except as otherwise permitted pursuant to law.

(j) Bidding shall open no earlier than upon publication of the tax lien sale notice prepared pursuant to (d) above or the display advertisement prepared pursuant to (f) above.

(k) Bidder registration shall be online and completed prior to submitting a bid, although the municipality shall have the discretion to permit in-person registration with the tax collector's office.

(l) Before any bidder can place a bid, the bidder will be required to post a forfeitable deposit equal to 10 percent of the total lien amount to be bid upon.

1. Bidder deposits shall be allowed to be posted at least up until the final business day of the final calendar week prior to the date of the tax lien sale. At the tax collector's discretion, deposits may be given in person at the municipality's office.

2. Deposits shall be held by the municipality and not the vendor.

3. If a bidder shall fail to make a payment on a lien certificate that such bidder has won upon conclusion of the sale, the deposit amount representing 10 percent of the lien certificate not paid shall be forfeited to the municipality.

4. The tax collector shall ensure that any unused portion of the deposit will be promptly returned to the bidder after the conclusion of the sale.

(m) An electronic municipal tax lien sale system shall provide:

1. Online bidder registration, including the ability to obtain and electronically submit forms, such as bidder information sheets and W-9s.

2. Detailed online instructions on how to use the system's website.

3. Help desk support for tax collectors and bidders through the internet, e-mail, and at least one toll-free telephone number. A dedicated telephone hotline shall be made available to tax collectors for use until the sale has been completed.

4. Web-based training, including online tutorials, for both bidders and those municipal officers and employees responsible for administering the tax lien sale. The vendor shall supply a method for bidders to practice bidding.

5. Available in-person training, including a working demonstration of the website and overall system, for tax collectors and other municipal employees involved in the tax lien sale process.

6. Online display of winning bids immediately upon completion of the auction.

7. Notification to winning bidders by e-mail at the bidder's registered e-mail address.

8. Access for the tax collector to remove and update the tax lien sale list in real time.

9. Access for the tax collector to review a detailed history of all funds transferred, as well as a transaction log of all bid submissions and results.

10. Provision for the electronic transfer of information and data from and to the municipality.

11. A standard complaint procedure for both the municipality and bidders. The complaint procedure shall require that a complaint log be maintained, which shall be available to the municipality for inspection.

(n) All bid information and participant financial data is deemed property of the municipality.

(o) No officer, employee, or independent contractor of the vendor may participate in the auction.

(p) Bids shall not be visible to the public or to the municipality while the auction is in process.

(q) All liens shall be auctioned individually, such that a bid will be placed on each lien with a winning bidder determined for each lien. The bulk sale of liens is prohibited. Only proxy bidding shall be permitted for electronic tax lien sales.

(r) The electronic municipal tax lien service shall give the tax collector the ability to accept and process payments by ACH transfer, bank wire transfer, certified check, or cash. Cash payments may be accepted in person by the tax collector; however, the tax collector must immediately input data into the electronic tax lien sale system to reflect any such payment. Payment must be made within 24 hours after the bidding is closed.

1. For ACH transfers, the transfer must be initiated within 24 hours after the bidding is closed and settled within 72 hours of the close of sale, unless a longer period of time has been agreed upon in writing between the municipality and the vendor.

2. Failure to receive payment within the time period required will result in the lien being resold on the seventh calendar day after the date on which bidding is closed or, if the seventh calendar day falls on a holiday, the first business day following the holiday. The vendor shall notify all registered bidders of any properties that are available for bidding due to non-payment. If a parcel is resold, interest shall be recalculated to the date of the new sale date.

(s) The following cybersecurity best practice framework shall be followed:

1. The vendor's website and system shall:

i. Be hosted on dedicated servers or in a FedRAMP Moderate Impact Level Authorized Cloud. When using cloud services, the vendor shall check provider credentials and contracts;

ii. Encrypt stored and transmitted financial information and personal identification information;

iii. Maintain only critical personal identification information. Social Security numbers shall not be utilized as identification numbers for system purposes;

iv. Employ a resilient password policy;

v. Undergo regular security updates and stress testing;

vi. Have back up, information disposal, and disaster recovery plans and procedures created and tested;

vii. Undergo regular security risk assessments for detecting compromises; and

viii. Maintain awareness of vulnerabilities, implement necessary patches and updates, and develop a cybersecurity incident response plan.

2. The vendor shall notify the municipality of any cybersecurity incidents they experience, even if the incident did not lead to an actual compromise of data.

3. The vendor's staff shall be educated in good security measures. The vendor shall perform employee background checks on employees with access to financial information and personal identification information stored on the system.

4. The vendor shall have a computer security incident response team (CSIRT) in place.

(t) Vendors shall provide annual evidence of satisfactory internal controls to the municipality's chief financial officer and the tax collector. Such evidence must be in the form of an unqualified auditor's report issued pursuant to the performance of a Service Organization Control (SOC) 2 engagement based upon the existing Trust Services Principles (WebTrust™ and SysTrust™) carried out in accordance with AT 101 Standard 1, with the ability to test and report on the design effectiveness (Type I) and operating effectiveness (Type II) of the vendor's controls.

(u) All contracts between a municipality and a vendor shall:

1. Be reviewed and approved by the tax collector prior to the execution of the contract as to the terms, including satisfaction of the requirements of this section;

2. Be awarded by the governing body, notwithstanding the value of the contract;

3. Contain adequate provisions to indemnify the municipality against any losses incurred as a result of the actions or inactions of the vendor;

4. Require the vendor to be responsible for the errors and omissions of its employees or agents; and

5. Upon reasonable notice, require the vendor to allow an independent auditor to examine its internal controls applying SSAE No. 16 and AT 101 standards, or WebTrust™ and SysTrust™ standards. The municipality shall have the discretion to agree to compensate the independent auditor. Upon completion, the independent auditor's report shall be provided to the tax collector, chief financial officer, and governing body and shall be for internal use only.

(v) All disputes between the parties and disputes concerning the contract or its operation shall be in writing and forwarded to the other party via registered or certified mail. New Jersey law shall govern the contract and the relationship between the municipality and the vendor. All contracts shall have appropriate provisions for:

1. Dispute resolution between the parties;

2. Service of process to the vendor; and

3. Application of New Jersey law.

(w) The duration of any contract between a municipality and a vendor shall not exceed one year, notwithstanding any provisions of the Local Public Contracts Law to the contrary. Contracts for electronic tax lien sale systems shall not be considered data processing service contracts under N.J.S.A. 40A:11-15(5).

(x) All contracts entered into between the municipality and a vendor shall be in writing, executed by all parties, and have appropriate provisions for termination of the contract, including, but not limited to, termination for failure to perform on the part of the vendor.

(y) The tax collector shall allow the Director of the Division of Local Government Services access to online reports of any electronic municipal tax lien sale. The Director of the Division of Local Government Services may require any tax collector and vendor conducting an electronic tax lien sale to provide a report with information on the sale including, but not limited to:

1. The date and time of sale;

2. Number of line items;

3. Agreed upon fee to the vendor, subject to the limitations set forth in (h) above;

4. A weblink to the auction site; and
5. Auction results.

(a)

NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

New Jersey Housing and Mortgage Finance Agency Rules

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

Proposed Repeals: N.J.A.C. 5:80-6.4, 6.9, 9.13, 10, 22.2 through 22.24, 24, 32.4 through 32.6, and 5:80-32 Appendix

Proposed 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, 32.7

Authorized By: New Jersey Housing and Mortgage Finance Agency, Anthony Marchetta, Executive Director.

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

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2017-093.

Submit comments by August 18, 2017, to:

Jim Peasco
Senior Legal Research Analyst
New Jersey Housing and Mortgage Finance Agency
637 South Clinton Avenue
PO Box 18550
Trenton, New Jersey 08650-2085
jpeasco@njhmfa.gov

The agency proposal follows:

Summary

The New Jersey Housing and Mortgage Finance Agency (“NJHMFA” or “Agency”), pursuant to its statutory authority, serves as an advocate for increasing the supply of adequate, safe, and affordable housing in the State of New Jersey. To fulfill its statutory mandate, the Agency acts as a mortgage lender by providing financing to housing sponsors who wish to construct, rehabilitate, or improve housing for low- and moderate-income residents of the State. The Agency also provides mortgage loans for home buyers and serves as the low-income housing tax credit agency for the State.

The rules of the Agency, N.J.A.C. 5:80, were adopted and have been amended from time to time pursuant to the authority of the New Jersey Housing and Mortgage Finance Agency Law of 1983 (Act), N.J.S.A. 55:14K-1 et seq., to establish the procedures for and the terms and conditions of mortgage loans made by the Agency and the means of administering the program of Federal low-income housing tax credits pursuant to Section 42 of the Internal Revenue Code (IRC), 26 U.S.C. § 42.

The Agency proposes repeals of and amendments to its rules to promote de-regulation, clarity, and accuracy. The Agency has identified certain programs that are obsolete and no longer a part of its portfolio of products; the Agency, therefore, proposes to repeal the rules regulating those programs. Specifically, the Agency proposes 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; 10, the Loans to Lenders for Single Family Mortgage Loans program; and 24, the Lease-Purchase Program. Additionally, the Agency proposes to delete the Portfolio Reserve Account sum at N.J.A.C. 5:80-5.9(a)1 and to make certain related amendments at N.J.A.C. 5:80-5.1 and 5.9(b).

The Agency also proposes to substantially amend the Affirmative Fair Housing Marketing Plan (AFHMP) rules codified at N.J.A.C. 5:80-22 and replace it with a much more abbreviated version that incorporates

the U.S. Department of Housing and Urban Development (HUD) form of AFHMP. The Agency further proposes to amend its rules at N.J.A.C. 5:80-6, Sale of Projects Owned by Nonprofit Corporations to Limited Partnerships, to reduce the content and scope of the subchapter in recognition of the essentially historical nature of sales contemplated thereunder. Additionally, the Agency proposes 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. Finally, the Agency proposes to amend its Housing Investment Sales program rules at N.J.A.C. 5:80-32 to eliminate that program as to any future transactions while maintaining existing restrictions and requirements for housing projects for which housing investment sales transactions have already taken place.

The proposed repeals and amendments are summarized as follows:

N.J.A.C. 5:80-5.9(a) sets forth the payments and repayments required upon the transfer of an applicable ownership interest in Agency-financed housing projects. The Agency proposes to delete N.J.A.C. 5:80-5.9(a)1, which imposes a payment of 3.25 percent of the purchase price of such a transfer to the Portfolio Reserve Account (PRA). Concomitantly, the Agency proposes to delete the definition of “Portfolio Reserve Account” at N.J.A.C. 5:80-5.1 and to amend N.J.A.C. 5:80-5.9(b) to reflect the essentially historical nature of the PRA.

N.J.A.C. 5:80-6, Sale of Projects Owned by Nonprofit Corporations to Limited Partnerships, sets forth the procedures to be followed by nonprofit sponsors desiring to sell housing projects to certain for-profit entities and the terms and conditions of such sales. Subchapter 6 also sets forth the requirements for the funding and use of certain escrow accounts (Development Cost Escrow or DCE; Community Development Escrow or CDE; PRA; and Project Subsidy Reserve or PSR) established in connection with the sales of certain projects. Prior to the 1991 repeal of the Limited Dividend Law (LD Law), a number of Agency-financed housing projects were sold by their nonprofit sponsors to limited partnerships formed pursuant to the LD 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. Because the provisions of Subchapter 6 that set forth the procedures for such sales and the resulting funding apparatuses for the relevant accounts were rendered largely historical by the repeal of the LD Law, as well as by the introduction of low-income housing tax credit syndications, the Agency proposes amendments to delete those provisions and to amend the subchapter heading to “Use of Funds from Sale of Projects Owned by Nonprofit Corporations to Limited Partnerships”; the remaining provisions of the subchapter, as proposed to be amended and recodified, are intended primarily to set forth the permissible uses of, and the procedure for accessing, the funds remaining in and accruing to those accounts. Specific amendments are proposed as follows:

N.J.A.C. 5:80-6.1 contains definitions of certain words and terms used in Subchapter 6. The Agency proposes to delete the following definitions as unnecessary because the proposed amendment of the subchapter will eliminate all references to the terms: “cash proceeds,” “closing,” “commitment letter,” “gross syndication proceeds,” “Multi-Family Rental Investment Program,” “net proceeds,” “original mortgage amount,” “portfolio reserve account,” “purchase price,” “stated equity,” “syndication,” and “transaction costs.” Also, the Agency proposes to amend the following definitions: “Community Development Escrow” to substitute the generic term “a conversion” for references to N.J.A.C. 5:80-6.5(a)2 and 5:80-6.6(b)4, to add the term “intended” and the phrase “or activities,” and to substitute the phrase “a project” for “the development,” the latter amendments for consistency with certain other definitions and to more accurately reflect the permitted uses of funds in a CDE account; “conversion” to more accurately state the nature of and assign historical perspective to transactions encompassed by Subchapter 6; “Development Cost Escrow” to substitute the generic term “a conversion” for references to N.J.A.C. 5:80-6.2(e)2 and 6.5(a)1 and to make a stylistic change; “nonprofit” to assign historical perspective to the term as used in Subchapter 6 and to make a stylistic change; “partnership” to assign historical perspective to the term as used in Subchapter 6 and to make certain stylistic changes; and “Project Subsidy