

RULE ADOPTIONS

COMMUNITY AFFAIRS

(a)

NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

New Jersey Housing and Mortgage Finance Agency Rules

Adopted Repeal and New Rule: N.J.A.C. 5:80-5.5

Adopted Amendments: N.J.A.C. 5:80-5.1, 5.2, 5.4, and 5.6 through 5.11

Adopted Repeal: N.J.A.C. 5:80-5.3

Proposed: May 19, 2025, at 57 N.J.R. 971(a).

Adopted: August 28, 2025, by the New Jersey Housing and Mortgage Finance Agency, Melanie R. Walter, Executive Director.

Filed: September 18, 2025, as R.2025 d.117, with non-substantial changes not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

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

Effective Date: October 20, 2025.

Expiration Date: May 30, 2031.

Summary of Public Comments and Agency Responses:

The New Jersey Housing and Mortgage Finance Agency (Agency) received comments on the notice of proposal from the following persons:

1. Scott Roth, Fairstead.com;
2. Brad Ingerman, President/CEO, Ingerman; and
3. Mitch Malec.

The Agency thanks the commenters for their comments and provides the following responses. The numbers in parentheses following each comment identify the commenter, as identified above.

1. COMMENT: The commenter asks if the requirement that the Agency continue servicing a loan and holding escrows for a project even after the mortgage loan has been paid off can be eliminated. As an example, the commenter presents a low-income housing tax credit (LIHTC) project financed by the Agency in 2005, as to which the initial compliance period has expired and the owner is selling the project, paying off the existing Agency mortgage and refinancing with a new lender (Fannie Mae or Freddie Mac). The commenter states that, although the Agency will no longer be the mortgagee, it will still be servicing the loan, charging a fee, and collecting escrows, which, he asserts, "complicates things" for the buyer and new lender. (1)

RESPONSE: The comment does not relate to any provision of the rules that was subject to this rulemaking.

2. COMMENT: The commenter, an affordable housing developer for more than 15 years, states that he supports the proposed changes at N.J.A.C. 5:80-5.1, 5.2, 5.3, and 5.6 through 5.11, asserting that the existing rules have a "chilling effect" on affordable housing developers. (2)

RESPONSE: The Agency thanks the commenter for the expression of support.

3. COMMENT: The commenter points out that the new definition of "modified review" at N.J.A.C. 5:80-5.1 includes a cross-reference at "N.J.A.C. 5:80-5.2(b)5," but that there is no such provision in either the existing or proposed rules. He asks if the intent was to cross-reference N.J.A.C. 5:80-5.2(c) and (d). (3)

RESPONSE: The Agency agrees with the commenter and is making the necessary change upon adoption. As proposed by the Agency, N.J.A.C. 5:80-5.2(c) was originally N.J.A.C. 5:80-5.2(b)5 and N.J.A.C. 5:80-5.2(d) was originally N.J.A.C. 5:80-5.2(c); however, upon publication in the New Jersey Register, the intended N.J.A.C. 5:80-5.2(b)5 was codified as N.J.A.C. 5:80-5.2(c) and N.J.A.C. 5:80-5.2(c) was codified as N.J.A.C. 5:80-5.2(d). These changes in codification were not

updated in the cross-references in the definition of "modified review" at N.J.A.C. 5:80-5.1. Upon adoption, the Agency is changing the cross-references in the definition of "modified review" from N.J.A.C. 5:80-5.2(b)5 and (c) to 5:80-5.2(c) and (d).

4. COMMENT: The commenter requests that the Agency review N.J.A.C. 5:80-5.5, submitting that "[e]ditorial changes appear needed." (3)

RESPONSE: With the change being made to the definition of "modified review" as set forth in the Response to Comment 3, the Agency does not believe that any changes are necessary at N.J.A.C. 5:80-5.5.

5. COMMENT: The commenter observes that the documents, "at a minimum," required to be submitted for a modified review are clearly expressed at N.J.A.C. 5:80-5.6(a) and (b), noting that subsection (a) provides that "at least the following" documents must be included. However, the commenter points to existing N.J.A.C. 5:80-5.6(a)4, which requires "[a]ny other documents determined by the Agency to be necessary." The commenter asks what "other documents" the Agency has or could determine to be necessary for a modified review and would this determination exclude those documents listed at N.J.A.C. 5:80-5.6(b) as being necessary for a full review. (3)

RESPONSE: The commenter raises hypothetical questions about the specific documents that might be required in certain unspecified circumstances. The Agency is unable to list every conceivable document that might be required in any particular circumstance, but does advise that some of the documents specified at N.J.A.C. 5:80-5.6(b) might be required for a modified review.

6. COMMENT: The commenter opines that N.J.A.C. 5:80-5.6(b) is unclear as to the documents, in addition to those set forth at N.J.A.C. 5:80-5.6(a) required for a modified review, that are required for a full review, stating that the word "may" at subsection (b) "appears to leave it up to the Agency" as to which, if any, of the listed documents are required. The commenter suggests rewriting N.J.A.C. 5:80-5.6 to address his comments. (3)

RESPONSE: The Agency notes that the wording at N.J.A.C. 5:80-5.6(b) has been carefully and deliberately chosen. Subsection (b) accurately lists certain documents that "may" be required for a full review, but, since each Agency-financed housing project is a separate entity with its own particular ownership characteristics, not every "required" document will be applicable to each transfer situation. The Agency has proposed N.J.A.C. 5:80-5.6(b) to give notice to project owners of those documents that are most typically, and will most likely be, required for a full review of any proposed transfer. However, the Agency does not desire to unnecessarily burden owners, or its own staff, with the preparation/acquisition and submittal, or review, of documents that may be extraneous to a given situation; the language at subsection (b), as proposed and adopted, allows for the exclusion of otherwise required documents in appropriate circumstances. The Agency, therefore, declines the commenter's suggested change at N.J.A.C. 5:80-5.6.

7. COMMENT: The commenter asks if the financial report on project operations at N.J.A.C. 5:80-5.6(b)7 is required to be a final, pre-transfer audited financial statement or if only the most recent annual audited financial statement is required. (3)

RESPONSE: The comment does not relate to any provision of the rules that was subject to this rulemaking.

8. COMMENT: The commenter appears to ask if the word "questionnaires" at N.J.A.C. 5:80-5.6(a)1 should be the singular "questionnaire." (3)

RESPONSE: No, the plural term "questionnaires" is appropriate since a "buyer" may consist of more than one individual or entity.

9. COMMENT: The commenter asks if "an electronic submittal package is available via the Portal." (3)

RESPONSE: No, the Agency does not currently have an electronic submittal package available.

10. COMMENT: The commenter asks if the (unspecified) amendments "align with the TOI document checklist guide," stating his impression that

applications for loans are to be on forms provided by the Agency, containing the information required by the Agency. (3)

RESPONSE: The Agency does not have, nor is it aware of the existence of, a "TOI document checklist guide." The Agency does have multiple checklists that are adapted to meet the requirements of the Agency's rules and the rules, regulations, codes, etc., of other State and Federal entities. There are different types of transfers and, thus, different checklists to correspond with the particular requirements associated with each type of transfer. Where applicable, checklists will be modified to correspond with requirements newly imposed by this rulemaking.

To the extent the commenter relates to "applications for loans," as it appears to do, it does not relate to any provision of the rules that was subject to this rulemaking, which is transfers of ownership interests and prepayment of Agency mortgages.

11. The commenter advises the Agency to review the title of the HUD form designated "Previous Participation Certificates" at N.J.A.C. 5:80-5.6(b)1. (3)

RESPONSE: The Agency thanks the commenter for the notification and is changing the reference to "Forms HUD 2530" at N.J.A.C. 5:80-5.6(b)1 to "Previous Participation Certifications" upon adoption.

12. The commenter notes that the amendments at N.J.A.C. 5:80-5.9 "appear" to establish flat-rate processing fees in the amounts of \$7,500 for a full review, and \$2,500 for a modified review, and asks how the Agency determined and established these fees as the Agency's administrative costs. (3)

RESPONSE: The Agency confirms that the amendments set forth flat fees of \$7,500 for a full review and \$2,500 for a modified review and that the amendments also eliminate the non-refundable \$5,000 fee payable by the buyer at N.J.A.C. 5:80-5.9(a)1. The fees were determined to bear a reasonable relationship to the Agency's cost of processing a transfer of ownership interest application and the fees charged to the Agency by the Attorney General's Office for legal review.

13. COMMENT: The commenter asks if a full review that only requires the modified review documents would be charged \$2,500 or \$7,500. (3)

RESPONSE: The fee for a full review is \$7,500. See N.J.A.C. 5:80-5.9(a)1.

14. COMMENT: The commenter asks what are the "typical" current Agency fees charged for reviews and how such fees are calculated. (3)

RESPONSE: The commenter does not relate to any provision of the rules that was subject to this rulemaking.

15. COMMENT: The commenter requests that the Agency provide "an example of the calculated fee for a modified review and a full review completed by the Agency" and explain why the process needs to be changed. (3)

RESPONSE: The commenter's request for "an example of the calculated fee for a modified review and a full review completed by the Agency" is not within the scope of the Administrative Procedure Act. See N.J.S.A. 52:14B-4(a)(3).

16. COMMENT: The commenter asks if a full review is typically three times the cost of a modified review. (3)

RESPONSE: The administrative cost of a full review may not be precisely three times that of a modified review in every instance.

17. COMMENT: "The current regulations state that a non-refundable fee of \$5,000 shall be submitted (from Buyer) which will be applied at closing (toward any payment or repayments due) and a processing fee (an amount determined by the Agency for the Agency's administrative cost in processing the transfer request and not less than \$1,000 from the Seller)." The commenter requests that the Agency "justify the proposed amendments and clarify intent." (3)

RESPONSE: The Agency finds the commenter's quoted synopsis of the "current regulations" to be neither comprehensible nor accurate and notes that he does not specify the "proposed amendments" he wishes the Agency to justify, thereby making it difficult to intelligently respond to the comment. The Agency advises that the principal reason for the amendments at N.J.A.C. 5:80-5.9 is to reduce the overall cost for more limited, modified reviews and, thus, to ease the financial and documentation burdens for applicants seeking approval of relatively minor transfers. The Agency believes the adopted amendments accomplish that purpose.

18. COMMENT: "The TOI [Transfer of Ownership Interest] document checklist appears to establish a \$5,000 processing fee (due from Seller but the \$5,000 Buyer's non-refundable fee can be applied—so, 'in reality', only \$5,000 due for the transfer fee." [Sic] The commenter asks if his quoted synopsis of the TOI checklist "[i]sn't different than how the current regulations read" and if the "guidelines" can "overrule the regulations." (3)

RESPONSE: The Agency's TOI checklists do not state that the buyer's fee can be applied to the seller's fee. Currently, N.J.A.C. 5:80-5.9(a)1 provides that the \$5,000 fee submitted by the buyer is to "be applied at closing toward any payment or repayments due." The fee is first applied to any underfunded escrows or reserves or any other payments due to the Agency. If none are due, the buyer may, but is not required to, cover the seller's processing fee, which, pursuant to existing N.J.A.C. 5:80-5.9(a)2, is due at closing. The adopted amendments at N.J.A.C. 5:80-5.9(a) and (a)1 combine the buyer's and seller's fees into one fee that may be paid by either party and, consistent with the application as a "processing" fee, is to be paid upfront with the application. The adopted amendments simplify the issue and allow the buying and selling parties themselves to determine who will pay the fee.

19. COMMENT: The commenter notes that amendments at N.J.A.C. 5:80-5.9(a)1 provide that the "seller or buyer" shall submit the nonrefundable \$7,500 processing fee and asks if payment of the fee can be allocated in any allocable proportion between the buyer and seller or be paid by a third party. (3)

RESPONSE: N.J.A.C. 5:80-5.9(a)1, as amended, provides that the seller or buyer shall "submit" the processing fee. It does not address the source of the funds, which the Agency does not control.

20. COMMENT: The commenter repeats his inquiry as to how the Agency determined the fees established—apparently, although not so specified, at N.J.A.C. 5:80-5.9(a)1—to be reasonable. (3)

RESPONSE: The Agency refers the commenter to its Response to Comment 12. The fees were determined to bear a reasonable relationship to the Agency's cost of processing a transfer of ownership interest application and the fees charged to the Agency by the Attorney General's Office for legal review.

21. COMMENT: "The current regulations at N.J.A.C. 5:80-5.10(g), relating to prepayment requests, requires [sic] a non-refundable processing fee of \$5,000 but is waived if prepayment occurs simultaneously with a transfer of ownership necessitating a full review. So would a prepayment with full review based on proposed amendments result in a \$2,500 processing fee? (\$7,500 - \$5,000 = \$2,500) If the prepayment request, based on the proposed amendments, occurs simultaneously with a modified review for transfer of ownership is the non-refundable processing fee \$7,500? (\$2,500 + \$5,000). Note that prepayment with full review, based on proposed amendments, results in a \$2,500 fee increase. Did the Agency determine a 50 percent increase as reasonable? Also a prepayment with modified review, based on proposed amendments, results in a \$2,500 fee decrease (if the Agency had a \$5,000 effective flat processing fee changed to the proposed \$2,500 fee.) If the Agency had a \$5,000 processing fee for a modified review—a prepayment with modified review would result in a \$10,000 fee requirement! Is this applicable at this time?" (3)

RESPONSE: The commenter's analysis appears to be based on hypotheticals or, in some instances, incorrect perceptions concerning the state of the existing and proposed rules. Pursuant to the adopted amendments, the fee for a full review is \$7,500. N.J.A.C. 5:80-5.9(a)1. If the full review transfer occurs with a prepayment, the \$5,000 prepayment fee is not charged. N.J.A.C. 5:80-5.10(f) (formerly N.J.A.C. 5:80-5.10(g)). A modified review scenario would not occur in the context of a project owner seeking to prepay its mortgage and transfer ownership of the project, which was the impetus for the rule at N.J.A.C. 5:80-5.10(f). If a request for a transfer of ownership that fell within the context of a modified review were to occur, that would, by its nature, be a separate transaction from the prepayment request. Therefore, pursuant to either the existing or adopted rules, both a prepayment and a modified review fee would be assessed independently. This explanation also addresses the commenter's last above-quoted question with respect to the applicability of "a prepayment with modified review." The Agency has determined that its fees bear a reasonable relationship to its costs incurred in processing,

reviewing, and approving or denying applications for transfers of interest and prepayments.

22. COMMENT: The commenter recommends the Agency review the fee structure "so that reasonable [sic] justifiable fees are established." (3)

RESPONSE: The Agency thoroughly considered and analyzed all fees prior to this rulemaking and is satisfied that all fees are reasonable.

Summary of Agency-Initiated Changes Upon Adoption:

1. The Agency is making changes upon adoption at N.J.A.C. 5:80-5.4(c) and (d) to correct additional differences in the rule text between that as originally drafted by the Agency and as published in the New Jersey Register. Specifically, at N.J.A.C. 5:80-5.4(c), the initial phrase should have provided that "[a]s a condition of approving a transfer pursuant to N.J.A.C. 5:80-5.2(b) or (c) or pursuant to 5:80-5.2(d) where the transfer is of a 90 percent or greater interest (emphasis added)," the language stating and the intent being that the 90-percent-or-greater-interest condition applies only to transfers pursuant to N.J.A.C. 5:80-5.2(d), not to those transfers pursuant to N.J.A.C. 5:80-5.2(b) or (c). (In this context, it is noted that, as pointed out elsewhere in this notice of adoption, the Agency's intended N.J.A.C. 5:80-5.2(b)5 was, in fact, codified as subsection (c), not as paragraph (b)5; thus, subsection (c) must be included together with subsection (b) to fully encompass all of subsection (b) that was intended by the Agency to be subject to subsection (c)). As the second "pursuant to" clause was omitted in the published rule text, the erroneous impression is created that transfers pursuant to N.J.A.C. 5:80-5.2(b), (c), and (d) are subject to the 90-percent-or-greater-interest condition. The Agency is inserting the phrase "pursuant to N.J.A.C. 5:80-5.2" before the subsection (d) designation at N.J.A.C. 5:80-5.4(c) to correct the omission and accurately state the intent of subsection (c).

2. The Agency is making similar changes at N.J.A.C. 5:80-5.4(d), where the initial phrase should have provided that "[f]or transfers pursuant to N.J.A.C. 5:80-5.2(b) or (c) or pursuant to 5:80-5.2(d) where the transfer is of a 90 percent or greater interest (emphasis added)," but the second "pursuant to" clause was omitted and, as with the omitted recodification of N.J.A.C. 5:80-5.2(c) to 5.2(d) that was not picked up in the definition of "modified review" at N.J.A.C. 5:80-5.1, that recodification was similarly missed at N.J.A.C. 5:80-5.4(d). The Agency is, therefore, inserting the phrase "or pursuant to 5:80-5.2(d)" at N.J.A.C. 5:80-5.4(d) to correct the omission.

3. At N.J.A.C. 5:80-5.8(b), the Agency is changing the cross-references to N.J.A.C. 5:80-5.4(d) to subsection (c) and to N.J.A.C. 5:80-5.4(c) to subsection (d) to correct citation errors in the published notice of proposal.

Federal Standards Statement

The Agency finds that the adopted repeals, new rule, and amendments, do not exceed any known standards or requirements imposed by Federal law. Accordingly, a Federal standards analysis is not required.

Full text of the adopted amendments and new rule 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 AND PREPAYMENT OF AGENCY MORTGAGE

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:

"Buyer" means an individual or entity that acquires, proposes to acquire, or contracts to acquire a housing project financed in whole, or in part, by a loan from the Agency, or any direct or indirect interest therein, from a seller.

"Closing" means the final exchange by which title or other interest in a housing project is transferred from a seller to a buyer.

"Closing date" means the date on which a closing occurs.

"Control" means the ability, directly or indirectly, of any entity or person, including, but not limited to, a managing member or general partner, to direct the business or financial affairs and policies of a housing sponsor and/or to direct the day-to-day operations of a housing project financed by the Agency.

"Full review" means a review by the members of the Agency Board of a proposed transfer of an ownership interest in an Agency-financed housing project as set forth at N.J.A.C. 5:80-5.2(b)1, 2, 3, and 4.

"Maximum allowable return" means the maximum amount that a housing sponsor or any of its partners, members, shareholders, or other owners may realize as profit upon the sale or other disposition of a housing project. Maximum allowable return consists of the following:

1. The seller's equity in the project. For purposes of determining maximum allowable return, the seller's equity at closing is the greater of:

i. The seller's existing equity base previously established by the Agency pursuant to N.J.A.C. 5:80-3.3 for the purpose of determining a permitted return on equity distribution; or

ii. An amount equal to the appraised value of the project as determined by an independent appraisal acceptable to Agency staff, minus all existing mortgage debt, as determined immediately prior to the closing of the transfer of ownership;

2. The seller's accrued, but undistributed, return on equity, which amount is determined based upon the applicable equity base and rate of return at the time(s) such return was earned but not distributed; and

3. The seller's balance, immediately prior to the closing of the transfer of ownership, of the project's tax, insurance, and repair and replacement reserves.

"Modified review" means a review by certain designated Agency staff of a proposed transfer of an ownership interest in an Agency-financed housing project as set forth at N.J.A.C. 5:80-5.2(b)5*5.2(c)* and *[(c)]* *(d)*.

"Secondary financing," both secured and unsecured, means any portion of the purchase price that is not paid in cash proceeds or by assuming an existing indebtedness. Secondary financing may be permitted as set forth at N.J.A.C. 5:80-5.7.

"Seller" means the existing mortgagor and owner of a housing project

financed in whole, or in part, by a loan from the Agency, or any individual or entity owning any interest therein, either directly or indirectly, that sells, contracts to sell, or proposes to sell the project or any interest therein to a buyer.

5:80-5.2 General policy and applicability

(a) The requirements of this subchapter apply to transfers of ownership interests of Agency-financed housing projects or within their housing sponsor entities.

(b) The review and approval of the members of the Agency Board is required if a proposed transfer of ownership involves any of the following:

1. A transfer of title to the project, whether by sale, merger, or otherwise, or by the aggregate transfer of 100 percent of the ownership interests within the housing sponsor within a one-year period;

2. A change in managing general partners or managing members or where there is a change in control of a general partner or managing member;

3. A transfer of 50 percent or more of the corporate stock of a project owner that results in a change in control; or

4. Any other change that involves a change in control of the project owner.

(c) For proposed transfers at (b)2 and 3 above, where a change involves a transfer of an existing principal's interest within a project owner or a portion thereof to an entity fully owned or controlled by that principal, or where an entity fully owned or controlled by a principal transfers its interest or portion thereof to that principal, the Agency may approve the transfer in accordance with (d) below and process the transfer as a modified review.

(d) The Agency's Executive Director, Chief Financial Officer, Chief of Legal and Regulatory Affairs, or Chief of Multifamily Programs may approve a change of non-managing general partners, non-managing members, limited partners, or a stock transfer, where the foregoing constitutes a change of a 50 percent or greater interest, but not a change in control.

(e) The following transfers may be made without prior Agency approval, but require that notification be provided by the housing sponsor to the Agency's Director of Regulatory Affairs within 90 days following the transfer:

1. A change of non-managing general partners, non-managing members, limited partners, or stock ownership of the housing sponsor, where the foregoing constitutes a change of less than a 50 percent interest and does not constitute a change in control of the housing sponsor;

2. A transfer by investor limited partners or members of the housing sponsor to affiliate entities in connection with the syndication of low-income housing tax credits; and

3. Testamentary transfers that do not involve a change in control of the housing sponsor.

(f) Transfers of ownership involving projects financed pursuant to the Agency's Conduit Financing Program may be approved as follows:

1. Proposed transfers of ownership that meet the elements set forth at (b)1, 2, 3, or 4 above may be approved by prior written approval of the Agency Executive Director, Chief Financial Officer, Chief of Legal and Regulatory Affairs, or Chief of Multifamily Programs. Any such proposed transfers are also subject to a full review pursuant to N.J.A.C. 5:80-5.5, except the requirements at N.J.A.C. 5:80-5.4(c) and (d) shall not apply other than to the extent required by the holder of the mortgage instrument or equivalent interest and as to any fees due to the Agency and/or the bond trustee.

2. All other transfers of ownership interests may be made without prior Agency approval, but require that notification be provided by the housing sponsor to the Agency's Director of Regulatory Affairs within 90 days following the transfer.

3. Notwithstanding the foregoing, the Agency may require satisfactory proof that the mortgage holder, credit enhancer, tax credit syndicator, bond trustee, and/or other equivalent parties with an interest in the project have approved the transfer.

(g) (No change in text.)

(h) The Agency is under no obligation to approve the transfer or resale, unless the proposed buyer has the organizational capabilities, background, and previous housing experience to help ensure that the buyer will be capable of operating the project.

(i) (No change in text.)

(j) In the case of proposed changes or transfers of ownership of assisted living residences (ALRs), if any provision(s) of this chapter are in conflict with any provision(s) at N.J.A.C. 8:36, the provision(s) at N.J.A.C. 8:36 shall govern.

(k) The rules set forth in this subchapter are also applicable to changes or transfers of ownership in cooperative and condominium projects financed by the Agency.

5:80-5.3 (Reserved)

5:80-5.4 Procedure

(a) The seller, or the buyer with the written consent of the seller, must initially submit to the Executive Director, a written request for approval of any proposed change in ownership. The request must contain a detailed description of the terms of sale or other ownership changes.

(b) All essential parties within the seller's organization documents must approve the transfer or sale. An opinion of the seller's legal counsel must be submitted to the Agency as proof of the legality of the transfer pursuant to the seller's Partnership Agreement or any other relevant document and all applicable laws and regulations. An opinion of the buyer's legal counsel may also be required by the Agency.

(c) As a condition of approving a transfer pursuant to N.J.A.C. 5:80-5.2(b) *or (c)* or *[(d)]* *pursuant to 5:80-5.2(d) (*where the transfer is of a 90 percent or greater interest*)*, the Agency will require that the housing project be restored to sound physical condition in accordance with the Agency's most recent inspection report or such other report(s) as may be required by the Agency. Deferred maintenance, necessary repairs, and required capital improvements must be completed within a time frame acceptable to the Agency. A source of funds in an amount acceptable to the Agency to complete the work must be provided prior to or on the closing date and be held in a manner acceptable to the Agency. The Agency may additionally require a guarantee, such as a bond or letter of credit.

(d) For transfers pursuant to N.J.A.C. 5:80-5.2(b) or (c) *or pursuant to 5:80-5.2(d) (*where the transfer is of a 90 percent or greater interest*)*, cash contributions must be sufficient to fund both immediate and anticipated reserve needs. The mortgage and all fees and charges due to

the Agency must be current at the time of closing. Project tax and insurance reserve accounts must be fully funded in accordance with the Agency-approved project budget upon transfer. The project repair and replacement reserve must be funded to an acceptable level, as determined by the Agency in accordance with the Agency's repair and replacement funding requirements, as may be amended from time to time.

(e) (No change in text.)

(f) Upon assignment and assumption of the Agency's mortgage, modifications shall be made to the mortgage, as determined necessary by the Agency, to clearly set forth the Agency's right to enforce these regulations against the assignee.

5:80-5.5 Scope of review

(a) Full review. Transfers pursuant to N.J.A.C. 5:80-5.2(b)1, 2, 3, or 4 require a full review.

(b) Modified review. Transfers pursuant to N.J.A.C. 5:80-5.2(c) or (d) require a modified review.

5:80-5.6 Required documents

(a) Required documents for a modified review must be satisfactory to the Agency and include at least the following:

1. Completed Agency administrative questionnaires for the buyer;

2. (No change.)

3. Copy of the owner entity's formation certificate, with proposed revisions; and

4. (No change.)

(b) In addition to the documents set forth at (a) above, the following documents may be required for a full review:

1. Previous Participation *[Certificates]* *Certifications* (Form HUD 2530) for the buyer;

2.-3. (No change.)

4. Legal opinion from the seller's attorney and, if requested by the Agency, from the buyer's attorney;

5. Appraisal of the property;

6. (No change.)

7. Financial report on project operations approved by the Agency; and

8. Documentation evidencing purchase price.

5:80-5.7 Secondary financing

(a) Secondary financing, representing a portion of the purchase price, may be permitted by the Agency. However, the following limitations exist where secondary financing is an element of the transaction:

1. The Agency will review and may restrict all secondary financing, particularly where the secondary financing is secured by a lien on the project;

2. (No change.)

3. The second mortgage, security agreement, or any other debt instrument must be subordinate to any existing mortgage of the Agency; and

4. Any secondary financing for a transfer of ownership that does not involve a sale of the project or sale of 100 percent of the ownership interest may not be secured by a lien on the project nor may project funds be applied toward payments on the secondary financing debt, except to the extent such payments are paid out of permitted return on equity distributions.

5:80-5.8 Return on equity and maximum allowable return upon

transfer of ownership of a project pursuant to N.J.A.C. 5:80-5.2(b)1

(a) The buyer shall assume the same rate of return on equity that the seller had. In the event a project is sold to an unrelated for-profit buyer entity by a nonprofit entity that does not have a rate of return on equity, the buyer's rate of return on equity shall be established as the rate that may be earned pursuant to N.J.A.C. 5:80-3.3(f), as applied on the closing date of the transfer. The buyer's equity in the housing project shall be determined in accordance with N.J.A.C. 5:80-3.3(a). In cases in which the sale or other disposition of the project includes a permitted prepayment of the Agency mortgage, the buyer's return on equity distribution is governed pursuant to N.J.A.C. 5:80-5.10(b).

(b) Upon the sale or other disposition of the project pursuant to N.J.A.C. 5:80-5.2(b)1, the seller shall be limited to its maximum allowable return. The Agency may deduct from the maximum allowable

return to be realized by the seller, any amounts thereof that are required to fund project repairs or improvements pursuant to N.J.A.C. 5:80-5.4(d)**5.4(c)* and project debt service arrears, project reserve balance shortages, and other amounts due to the Agency pursuant to N.J.A.C. 5:80-5.4(c)**5.4(d)*, unless, and to the extent, that such amounts are paid by the buyer. Additionally, where a seller requests that the Agency utilize an appraisal as part of the calculation of its maximum allowable return, the Agency may, in its discretion, and at the expense of the seller, engage an outside party to review the submitted appraisal, in which case, the Agency shall so notify the seller and the seller shall remit payment for the cost of the review prior to the engagement.

(c) Any amounts realized by the seller in excess of the maximum allowable return, after any deductions by the Agency as set forth at (b) above, shall be paid into the Multifamily Rental Investment Program or such similar program as may be established by the Agency.

1. Funds paid into the Multifamily Rental Investment Program shall be used as provided therein or, in the case of a housing sponsor organized pursuant to N.J.S.A. 55:16-1 et seq. (the Limited Dividend Law, repealed at P.L. 1991, c. 431, § 20), such excess shall be distributed pursuant to the terms thereof as in effect immediately prior to the repeal of the Limited Dividend Law. The funds deposited into this program shall be used for the purpose of providing loans to rental projects meeting low- and moderate-income housing needs.

5:80-5.9 Fees and repayments

(a) The following payments and repayments are required:

1. The seller or buyer shall submit a nonrefundable processing fee in the amount of \$7,500 with its request for a full review or a nonrefundable processing fee in the amount of \$2,500 for a modified review.

2. For transfers pursuant to N.J.A.C. 5:80-5.2(b)1, any outstanding supplemental financing must be paid at closing if the Agency determines the financial viability of the project is jeopardized by the continuation of such supplemental financing.

(b) (No change.)

5:80-5.10 Prepayment

(a) Prepayment of the mortgage loan made by the Agency to a housing sponsor is prohibited, except as permitted at (b) below.

(b) Prepayment of the Agency mortgage loan is permitted, with the prior written approval of the Agency's Executive Director, Chief Financial Officer, Chief of Legal and Regulatory Affairs, or Chief of Multifamily Programs; provided all of the following conditions are met:

1. Sponsors of projects may prepay the mortgage at any time following the 15-year period following the date of the mortgage closing. However, any such prepayment shall be conditioned upon the housing sponsor's agreement that: the Agency policies on tax, insurance, and repair and replacement reserves; the provisions at N.J.S.A. 55:14K-7.b; and the statutory provisions at N.J.S.A. 55:14K-1 et seq., and the corresponding rules in this chapter regarding tenant income eligibility, tenant selection, rent increases, certification/recertification of income, affirmative fair housing marketing, transfer of ownership interests, and return on equity (except as modified at (b)7 below) shall continue to be applicable in their entirety to the sponsor, project, and tenants residing therein until the original expiration date of the original mortgage loan. Such prepayment shall also be conditioned upon the agreement of the sponsor to pay the servicing fees and charges currently being paid by the sponsor through the mortgage documents through the remainder of the original mortgage term, in order to cover the administrative costs of the Agency in monitoring the statutory and regulatory controls that will continue to apply to the project. The Agency may require housing sponsors to execute a deed restriction or other appropriate agreement upon prepayment, whereby the sponsor acknowledges the continuing statutory and regulatory control of the Agency and its obligation to pay fees and charges determined by the Agency.

2. Any repairs or improvements pursuant to N.J.A.C. 5:80-5.4(c) must be made prior to prepayment or an amount sufficient to fund such repairs or improvements must be paid into an Agency-controlled escrow account or Agency-approved construction funding account upon prepayment.

3. (No change.)

4. All supplemental financing on the project provided by the Agency must be prepaid, unless prohibited by the terms of that supplemental financing or at (c) below or any other applicable law or regulation.

5. After prepayment, in implementing the provisions at N.J.S.A. 55:14K-7.b, the Agency will require the following:

i. (No change.)

ii. Submission of annual audited financial statements; and

iii. (No change.)

6. The Agency reserves the right to implement any of the additional provisions at N.J.S.A. 55:14K-7.b, if determined by the Agency to be needed to preserve the financial viability of the project or its status as a low- and/or moderate-income project, to maintain the physical condition of the project, or to help ensure the safety and well-being of the tenants residing at the project.

7. After prepayment, return on equity rules at N.J.A.C. 5:80-3 shall continue to apply until the expiration of the original mortgage term or until the owner funds an operating reserve account, whichever is sooner. Upon funding of an operating reserve account, return on equity rules shall terminate. The operating reserve shall be equal to three months of operating expenses (for senior citizen projects) or six months of operating expenses (for family projects), which includes debt service and reserve payments. The three/six months of operating expenses shall be calculated based on the Agency-approved annual budget. Once established, interest earned on a fully funded operating reserve account may be withdrawn by the owner upon written request to and verification by the Agency that the account is fully funded. If the operating reserve is thereafter used, return on equity rules shall be reinstituted until the operating reserve is again fully funded. The determination of a fully funded operating account after its initial establishment shall be based on the Agency-approved budget in effect at the time the project first established the operating reserve account.

8. (No change.)

(c) Notwithstanding (b) above, prepayment shall not be approved or permitted in cases that would:

1. (No change.)

2. Jeopardize the continuing tax-exempt status of the bonds; or

3. Reduce or terminate subsidies to the project, such as HUD Section 8 or Section 236, unless a reduction or termination is imposed by HUD or other issuing authority and results in a renewal of the subsidy or in a new subsidy to the project that will be sufficient to maintain the financial viability of the project through the end of the original mortgage term.

(d) Upon prepayment of the Agency mortgage as provided at (b) above, the Agency will endorse the mortgage for cancellation so the sponsor can cancel it of record. In addition, upon prepayment, the statutory and regulatory controls of the Agency at N.J.S.A. 55:14K-1 et seq., and this chapter shall terminate for the housing sponsor and project, except for those preserved at (b)1 above. The termination of the Agency's statutory and regulatory controls shall not affect the requirements, restrictions, and obligations of housing sponsors as mandated at N.J.S.A. 55:16-1 et seq., or any other applicable statute pursuant to which the corporate entity of the housing sponsor was created.

(e) The provisions of this section that impose conditions on prepayment regarding Agency policies on the insurance and repair and replacement reserves, the provisions at N.J.S.A. 55:14K-7.b, and the regulations on transfer of ownership interests and return on equity shall not be applicable to projects financed between October 15, 1990 and January 17, 1995.

(f) (No change in text.)

(g) Existing Agency-financed projects and projects under continuing Agency regulatory oversight pursuant to N.J.A.C. 5:80-5.10 or 32 that refinance through the Conduit Financing Program must maintain project affordability controls no less restrictive than existing controls as to both area-median-income limitations and percentage and number of affordable units for a period of time not less than that imposed by the then-existing Agency financing or regulatory oversight requirements. With the exception of the continuing affordability requirements applicable to such projects, the continuing post-prepayment regulatory controls and requirements that are applicable pursuant to this section or the continuing regulatory controls and requirements that are applicable pursuant to N.J.A.C. 5:80-32 for projects regulated thereunder are suspended until

payment in full of the conduit mortgage note. Upon payment in full of the conduit mortgage note, the regulatory controls and/or requirements in this section or N.J.A.C. 5:80-32, as applicable, shall be reinstituted for the remaining term, if any, of such controls and/or requirements.

(h) Except as set forth at (g) above, with regard to existing Agency-financed projects that refinance pursuant to the Conduit Financing Program, prepayment of mortgage loans financed pursuant to the Conduit Financing Program are governed by the terms of the Conduit Financing loan and are not otherwise subject to the requirements of this section.

5:80-5.11 Approval and disclosure requirements

(a) The Agency specifically reserves the right to investigate and disapprove any prospective buyer or any other party involved in the transaction including, without limitation, all partners, members, attorneys, syndicators, brokers, and consultants, as well as any partners or shareholders 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.

(b) All reviews, inspections, reports, and other determinations received pursuant to these regulations shall be subject to final review, approval, and determination by the Agency.

(a)

DIVISION OF HOUSING AND COMMUNITY RESOURCES

Notice of Readoption

Low-Income Home Energy Assistance Program

Readoption: N.J.A.C. 5:49

Authority: N.J.S.A. 52:27D-3.e.

Authorized By: Jacquelyn A. Suárez, Commissioner, Department of Community Affairs.

Effective Date: September 22, 2025.

New Expiration Date: September 22, 2032.

Take notice that, pursuant to N.J.S.A. 52:14B-5.1, the rules at N.J.A.C. 5:49 were scheduled to expire on November 5, 2025. The readopted rules serve as the handbook for the Low-Income Home Energy Assistance Program (the program), a Federal block grant program by the United States Department of Health and Human Services authorized by the Low-Income Home Energy Assistance Act of 1981, Title XXVI of Pub. L. 97-35. The purpose of the program is to assist low-income households to meet continuing costs of home heating and cooling. Emergency energy assistance is available to eligible individuals and families who are without heat or in danger of being without heat and lack sufficient income to purchase the necessary heating fuel or service.

The chapter is broken down into five subchapters. Subchapter 1 sets forth general provisions, including rules about administrative review and fair hearings; program funding; the "prudent person concept"; and confidentiality provisions. Subchapter 2 includes rules that govern the eligibility, in terms of both income and residency, to participate in the program. Subchapter 3 includes rules that describe the actual benefits pursuant to the program. These rules include provisions on automatic payments to certain households; applications; cooling assistance; emergency energy assistance; the maximum program benefit; and determination of benefits. Subchapter 4 includes one section about the process to apply to the program. Finally, Subchapter 5 includes information on other program requirements, including provisions for the establishment of Home Energy Assistance Units, notice requirements for program participants, procedures for the recoupment of overpayments, procedures for handling lost or stolen energy assistance checks, requirements for outreach networks and referral systems, and the notice requirement that community action agencies and other non-profit organizations for the advantages and availability of weatherization programs.

The Department of Community Affairs has reviewed the rules and has determined that they should be readopted without change. The rules are necessary, reasonable, and proper for the purpose for which they were originally promulgated. Therefore, pursuant to P.L. 2011, c. 45, the rules are readopted and shall continue in effect for a seven-year period.

ENVIRONMENTAL PROTECTION

(b)

AIR, ENERGY, AND MATERIALS SUSTAINABILITY DIVISION OF AIR QUALITY AND RADIATION PROTECTION

COMMISSION ON RADIATION PROTECTION

Radiation Protection Programs

Adopted Amendments: N.J.A.C. 7:28-3.12, 14.1, 14.2, 14.3, 14.4, 15.2, 15.3, 15.4, 15.5, 15.9, 15.10, 16.2, 16.3, 16.9, and 16.10

Adopted New Rules: N.J.A.C. 7:28-14.6, 16.7, and 16.8

Adopted Recodifications with Amendments:
N.J.A.C. 7:28-15.6 and 15.12 as 14.5 and 15.6,
Respectively

Proposed: May 19, 2025, at 57 N.J.R. 977(a).

Adopted: September 24, 2025, by Shawn M. LaTourette, Commissioner, Department of Environmental Protection, and the Commission on Radiation Protection, Donald Denny, Chair.

Filed: September 24, 2025, as R.2025 d.123, with non-substantial changes not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 13:1B-1 et seq., 13:1D-1 et seq., 26:2D-1 et seq., and 26:2D-25 et seq.

DEP Docket Number: 03-25-04.

Effective Date: October 20, 2025.

Expiration Date: February 19, 2027.

This rulemaking will update the Radiation Protection Program rules for therapeutic installations, medical diagnostic X-ray installations, and dental radiographic installations to incorporate current technologies, allow flexibility to address emerging and future technologies, and incorporate the latest applicable Federal guidance to reflect national standards in radiation protection. The rulemaking will also amend the annual registration fee tables and requirements at N.J.A.C. 7:28-3.12.

Summary of Hearing Officer's Recommendation and Agency's Response:

The Department of Environmental Protection (Department) held a virtual public hearing on this rulemaking on June 18, 2025, through the Department's video conferencing software, Microsoft Teams. Patrick Mulligan, Assistant Director of the Radiation Protection Element in the Division of Air Quality and Radiation Protection, served as hearing officer. There were no oral comments provided at the public hearing. After reviewing the written comments received during the public comment period, the hearing officer recommended that the Department and Commission on Radiation Protection (Commission) adopt the proposed rulemaking without change. The Department and Commission accept the hearing officer's recommendations.

A record of the public hearing is available for inspection, in accordance with applicable law by contacting:

Department of Environmental Protection
Office of Legal Affairs
401 East State Street, 7th Floor
Mail Code 401-04L
PO Box 402
Trenton, New Jersey 08625-0402