NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

New Jersey Housing and Mortgage Finance Agency
Prepayment Rules

Adopted Amendment: N.J.A.C. 5:80-5.10

Proposed: March 18, 2019, at 51 N.J.R. 394(a).
Adopted: July 26, 2019, by the New Jersey Housing and Mortgage
Finance Agency, Charles A. Richman, Executive Director.
Filed: August 3, 2019, as R-2019 d.093, without change.
Authority: N.J.S.A. 55:14K-5.g.
Effective Date: September 3, 2019.
Expiration Date: September 14, 2024.

Summary of Public Comment and Agency Response:
No comments were received.

Federal Standards Statement
A Federal standards analysis is not required because the adopted
amendment does not contain any standards or requirements that exceed
the standards or requirements imposed by applicable Federal law.

Full text of the adoption follows:

SUBCHAPTER 5. TRANSFER OF OWNERSHIP INTERESTS
5:80-5.10 Prepayment
(a) (No change.)
(b) Prepayment of the Agency mortgage loan will be permitted, with
the prior written approval of the Agency’s Executive Director, Deputy
Executive Director, Chief Financial Officer, or Chief of Legal
and Regulatory Affairs, provided all of the following conditions are met:
1. Sponsor 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 of 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 under 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 by (b)(7)(b) 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 under 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(d) 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.-4. (No change.)
5. After prepayment, in implementing the provisions of N.J.S.A.
55:14K-7.b, the Agency will require the following:
i.-vii. (No change.)
6.-7. (No change.)
8. Additional mortgage financing placed on the project upon
prepayment, or otherwise during the Agency’s continued statutory and
regulatory oversight period pursuant to (b)(1) above, shall be subject to
Agency staff’s prior determination of continued project financial
feasibility throughout the remainder of such period.

(CITE 51 N.J.R. 1420) NEW JERSEY REGISTER, TUESDAY, SEPTEMBER 3, 2019
NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

New Jersey Housing and Mortgage Finance Agency Certification and Recertification of Income Rules

Adopted Amendments: N.J.A.C. 5:80-20.2 through 20.7 and 20.9

Proposed: March 18, 2019, at 51 N.J.R. 396(c).
Adopted: July 26, 2019, by the New Jersey Housing and Mortgage Finance Agency, Charles A. Richman, Executive Director.
Filed: August 9, 2019, as R.2019 d.094, without change.
Authority: N.J.S.A. 55:14K-5.g.
Effective Date: September 3, 2019.
Expiration Date: September 14, 2024.

Summary of Public Comments and Agency Responses:

The New Jersey Housing and Mortgage Finance Agency ("HMFA" or "Agency") received comments from the following persons:
1. Carolene Wineburgh, Housing Manager, Cools Pond Senior Housing, Denville, NJ.
2. Tanya Van Order, Deputy Director, Madison Affordable Housing Corporation, Madison, NJ.

A summary of the comments received and the Agency responses follows (commenters are identified by the numbers before their names above):

1. COMMENT: The comment is "vehemently opposed" to the amendment at N.J.A.C. 5:80-20.3(d) that would "allow the [housing] sponsor to approve the [tenant] move-ins without prior review or approval by the Agency." The commenter states that she has been a housing manager for almost 20 years and relies on HMFA review to assure compliance of applicant files before tenant move-ins, observing that she oversees applicants with numerous assets and sources of income that complicate the income calculation, especially where some applicants are "very close to the income maximum" and a "miscalculation" might make them ineligible. (1)

RESPONSE: As stated in the Social Impact of the notice of proposal, the amendment at N.J.A.C. 5:80-20.3(d) was proposed at the behest of a number of project sponsors, who believe the existing requirement of Agency review and approval prior to tenant move-ins is time-consuming and deprives the sponsors of rental income as units remain vacant pending such review. The subject has been discussed and vetted with members of the New Jersey Affordable Housing Developer Council, Inc. ("NAHDC"), an affordable housing industry trade group, whose members raised the issue that the current system of Agency pre-approval "delay, lease-up, costs money, [and] presents a hardship to applicants in need of housing." The Agency acknowledges that there may be a trade-off in oversight where pre-approval by the Agency is eliminated in order to expedite tenant move-ins. However, the Agency notes that its role — although once necessary — has become, in the words of the NAHDC, "redundant" because applicant files are now reviewed by managing agents and investors, additionally, third-party accountants and other practitioners are available to perform reviews and analysis. Both the Agency and what is believed to be the vast majority of project sponsors (judging by the fact that only two adverse comments were received) believe the gain in tenant move-ins far outweighs the loss of preliminary review by the Agency. Project developers have requested this procedure and they, their managing agents, investors, and outside practitioners are experienced in performing the reviews.

With respect to the commenter's expressed concern that a "miscalculation" might lead to tenant ineligibility, the Agency notes that it is the responsibility of the project owner to ensure compliance with applicable requirements. The Agency suggests that if owners desire a pre-review or audit of applicant files, there are, as mentioned above, many professional firms that perform such functions on behalf of project owners and managers. Additionally, the Agency has had annual tax credit compliance monitoring training to aid property management staff in performing tenant income calculations and maintaining compliance with IRS regulations. Based on the various supports available to owners and the processes already in place, the Agency believes that another level of pre-review by Agency staff is no longer warranted.

2. COMMENT: In expressing opposition to the proposed amendment at N.J.A.C. 5:80-20.3(d), the commenter states that the issue of "non-compliance" for Federal low-income housing tax credits is more of a concern than any fee that might be imposed on project sponsors. (1)

RESPONSE TO COMMENTS 2 AND 3: The Agency believes the comment is inappropriate to the proposed amendment to N.J.A.C. 5:80-20.3(d) because this amendment applies only to Agency-financed projects. It does not have any effect on tax-credit projects, which are addressed in a completely different area of the rules entitled Qualified Allocation Plan (QAP), at N.J.A.C. 5:80-33. Any current Agency review of applicants for admission to the project occurs only because those units are in Agency-financed projects; the Agency's review and pre-approval is not undertaken for projects financed solely by low-income housing tax credits. Also, N.J.A.C. 5:80-33.1(f) (part of the QAP) states in part: "Compliance with the requirements of the [Internal Revenue] Code is the sole responsibility of the owner of the building for which the credit is allowable. [The Agency] makes no representations to the owner or anyone else as to compliance with the Code. Federal regulations issued under the Code, or any other law or regulations governing Low Income Housing Tax Credits ...." Thus, the project owner/managing agent, not the Agency, is responsible for ensuring that only eligible tenants are admitted to tax credit units under existing rules.

3. COMMENT: The commenter expresses concern as to how tax credit syndicators (investors) will react to the amendments, anticipating that they may not want to see their tenants in need of affordable housing move in because the family is "inadvertently" moved into a tax credit unit. The commenter alludes to the "difficultly" of evicting tenants in New Jersey. (2)

RESPONSE: As noted in the Response to Comments 2 and 3, the proposed amendments do not affect the review of applicants for tenancy in tax credit units, which are currently — and have been since the advent of the tax credit program — the responsibility of project sponsors and/or managing agents. It is the Agency's understanding that, if not all, syndicators and/or investors separately review tenant eligibility because of the risk of tax credit recapture. No comments were received from syndicators nor to the Agency's knowledge have syndicators expressed any discontent with the present system as applied to the tax credit program.

Federal Standards Statement

Federal standards analysis is not required because the adopted amendments do not contain any standards or requirements that exceed the standards or requirements imposed by applicable Federal law.