

ADOPTIONS SECTION

COMMUNITY AFFAIRS

NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

Notice of Readoption

New Jersey Housing and Mortgage Finance Agency Rules

Readoption with Technical Changes: N.J.A.C. 5:80

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

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

Effective Dates: September 14, 2017, Readoption;
October 16, 2017, Technical Changes.

New Expiration Date: September 14, 2024.

Take notice that pursuant to N.J.S.A. 52:14B-5.1, the rules of the New Jersey Housing and Mortgage Finance Agency (Agency) at N.J.A.C. 5:80 are readopted and shall continue in effect for a seven-year period. The rules had been scheduled to expire on November 16, 2017. The Agency has reviewed the rules and determined that they should be readopted, with technical changes, because they are necessary, reasonable, and proper for the purposes for which they were originally promulgated. The technical changes are being made to improve clarity, grammar, punctuation, and syntax; to more properly and accurately reference, cite to, and quote or paraphrase certain Federal legislation; to update the status of certain State legislation; to reflect the reorganization and/or renaming of certain State departments and divisions, including

one division within the Agency; and to correct certain cross-references within the rules. Such technical changes do not affect the substance of any rule or its impact. In accordance with N.J.S.A. 52:14B-5.1.c(1), timely filing of this notice with the Office of Administrative Law extends the expiration date of the rules for a seven-year period.

Pursuant to its statutory authority, the Agency serves as an advocate for increasing the supply of adequate, safe, and affordable housing in the State. To fulfill its statutory mission, the Agency acts as a mortgage lender by providing financing to housing sponsors 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 housing credit agency for the State. A general description of the rules and of the technical changes follows.

Subchapter 1, General Provisions, sets forth the authority for and the purpose and objective of the rules and provides definitions that apply to the other rules within the chapter. It also includes general provisions concerning the applicability of the rules to housing projects financed by the Agency.

At N.J.A.C. 5:80-1.3, General definitions, the Agency is changing the definition of “assisted living residence” to clarify that an assisted living residence may also be referred to in the rules as an ALR and to recognize that the former New Jersey Department of Health and Senior Services is now the New Jersey Department of Health (this change is made throughout the chapter). Additionally, the Agency is changing the definition of “housing sponsor” to clarify that the word “sponsor,” standing alone, is sometimes used synonymously in the rules with the term “housing sponsor.”

Subchapter 2, Actions Regarding Housing Sponsors, sets forth the rights of housing sponsors and the procedure for consulting with and informing housing sponsors and other

interested parties of the Agency's intent to adopt, amend, or repeal any rules that affect them. It also includes provisions setting forth the circumstances under and the manner by which the Agency will exercise the remedies and powers granted to it by N.J.S.A. 55:14K-7.b(6) to perform, under prescribed circumstances, certain functions on behalf of housing sponsors.

Subchapter 3, Return on Equity, sets forth the method for calculating housing sponsors' permitted rates of return on projects financed by the Agency and the conditions to be met before a return on equity will be authorized by the Agency.

In the heading of N.J.A.C. 5:80-3.2, the Agency is inserting a possessive apostrophe after the word "projects" to clarify that the section concerns the rate of return of housing projects.

In the first sentence of N.J.A.C. 5:80-3.2(a), the Agency is de-capitalizing "Housing Projects" and "Housing Sponsor" because those terms are not defined as, or intended to be, capitalized. The Agency is also deleting the phrase "of the property and improvements" in the first sentence as being both superfluous (since the term "housing project" includes both property and improvements) and, as currently positioned, semantically awkward.

At N.J.A.C. 5:80-3.2(b), the Agency is inserting a parenthetical to denote that the Agency's former governing statute, N.J.S.A. 55:14J-1 et seq., was repealed by P.L. 1983, c. 530.

At N.J.A.C. 5:80-3.2(b)1, the Agency is making technical changes to improve grammar and syntax in the references to "development cost escrows" and "community development escrows" and, in addition, is inserting the phrase "from the amount of available funds" at the end of the paragraph to clarify that the funds a project must have on-hand in order to take advantage of the one-time increase in the rate of return on equity include funds sufficient to meet the items enumerated in subparagraphs (b)1i through v; the Agency believes the current language is

susceptible of the erroneous interpretation that those items are to be deducted from the funds that are required to be available.

At N.J.A.C. 5:80-3.4(c)2, the Agency is deleting the incorrect reference to “N.J.A.C. 5:80-1.4(c)3” as imposing the standard for the requirement of an operating reserve fund for assisted living residences because there is not, and apparently never has been, a rule codified as “N.J.A.C. 5:80-1.4(c)3.” The Agency is preserving the requirement for such a reserve fund while deleting the reference to that nonexistent rule.

Subchapter 4 is reserved.

Subchapter 5, Transfer of Ownership Interests, sets forth the procedures and criteria governing the Agency’s review and decision on proposed transfers of ownership interests of projects financed by the Agency and the prepayment of Agency mortgages; it also sets forth the requirements necessary to consummate transfers of ownership interests and mortgage prepayments.

At N.J.A.C. 5:80-5.1, Definitions, the Agency is capitalizing the reference to “the agency” in the definition of “Portfolio Reserve Account,” as that term, when referring to the Agency, is capitalized throughout the chapter.

The Agency is changing N.J.A.C. 5:80-5.2(e), to correctly cite to and denote that the Limited-Dividend Nonprofit Housing Corporations or Associations Law (Limited Dividend Law), N.J.S.A. 55:16-1 et seq., was repealed by P.L. 1991, c. 431, § 20.

At N.J.A.C. 5:80-5.6(a)2, the Agency is deleting the superfluous phrase “as to the nature” and replacing the incorrect word “transition” with the correct term “transaction.”

At N.J.A.C. 5:80-5.7(a)3, the term “agency” is being capitalized because it refers to the Agency and, as such, is capitalized throughout the chapter.

Subchapter 6, Use of funds from sale of projects owned by nonprofit corporations to limited partnerships, sets forth the means of accessing and the permitted uses of funds in certain escrow accounts (Development Cost Escrow or DCE, Community Development Escrow or CDE, Portfolio Reserve Account or PRA, and Project Subsidy Reserve or PSR) in connection with the sales of certain projects.

Subchapter 7, Tenant Selection Standards, sets forth standards for the selection of tenants who reside or seek to reside in Agency-financed housing projects.

At N.J.A.C. 5:80-7.2(d), the Agency is changing the introduction to the sentence to improve grammar and eliminate superfluous language; to recognize, in two instances, that the former New Jersey Department of Health and Senior Services is now the New Jersey Department of Health; and to recognize that the relevant functions of the former Division of Consumer Support in the Department of Health are now handled by the Division of Health Facilities Evaluation and Licensing.

At N.J.A.C. 5:80-7.6(d), the Agency is spelling out the phrase “Below Market Interest Rate” because the acronym “BMIR” is nowhere defined in the chapter. The Agency is also inserting the word “Section” before “236 projects” to better identify such projects and deleting the word “the” preceding “HUD” as being improper when used with the common acronym “HUD.”

At N.J.A.C. 5:80-7.7, the Agency is making technical changes as follows: (i) in the section heading, subsections (a), (b), (c), and (d), and in Exhibit B, to change the phrase “non-immigrant student alien(s)” to “nonimmigrant alien student(s)” to better accord with the term as used in Federal legislation; (ii) at N.J.A.C. 5:80-7.7(a), to more accurately and correctly cite to

section 214 of the Federal Housing and Community Development Act of 1980, 42 U.S.C. § 1436a; (iii) at N.J.A.C. 5:80-7.7(d), to insert a comma and delete a comma to improve grammar; and (vi) at Exhibit B, to more properly cite to 42 U.S.C. § 1436a; to more accurately reflect the definition of a “nonimmigrant alien student” as set forth at 8 U.S.C. § 1101(a)(15)(F); and, in the Warning, to more properly cite to and quote the relevant provision of 18 U.S.C. § 1001.

Subchapter 8, Occupancy Requirements Regarding Income, sets forth the maximum incomes that tenants may earn to qualify for and maintain admission to Agency-financed housing projects and assisted living residences (ALRs).

The Agency is making a technical change at N.J.A.C. 5:80-8.3(b), to recognize that the Commissioner of the former New Jersey Department of Health and Senior Services is now the Commissioner of the Department of Health.

In the heading of N.J.A.C. 5:80-8.4, Special Multiple Family Unit within Housing Projects located in municipalities affected by casino gaming, the Agency is pluralizing the word “unit” to improve grammar and is de-capitalizing the term “Housing Projects” for consistency with other uses of the term in the chapter.

At N.J.A.C. 5:80-8.4(c), the Agency is substituting the word “severally” for the incorrect term “severably.”

Subchapter 9, Rents, sets forth the procedures for making annual rent determinations and for submitting and determining rent increase applications at housing projects.

Subchapter 10, Loans to Lenders for Single Family Mortgage Loans, sets forth the terms and procedures pursuant to which the Agency may make loans to institutional lenders in order for such lenders to make single family mortgage loans.

Subchapters 11 and 12 are reserved.

Subchapter 13, Making or Purchasing Eligible Loans for Single Family Mortgages, sets forth the terms and procedures pursuant to which the Agency may make or purchase loans for single family home mortgages.

At N.J.A.C. 5:80-13.2(a), the Agency is inserting the word “it” in the first sentence to improve syntax.

At N.J.A.C. 5:80-13.2(a)4, the Agency is substituting the term “servicing” for the incorrect term “serving” in describing the activities of mortgage sellers.

Subchapter 14, Making or Purchasing Eligible Loans for Single Family Home Improvement, sets forth the terms and procedures pursuant to which the Agency may make or purchase loans for single family home improvements.

Subchapters 15 and 16 are reserved.

Subchapter 17, Prevailing Wages, sets forth the applicability of prevailing wage rates required to be paid to workmen performing construction work on projects financed by the Agency.

Subchapter 18, Debarment and Suspension from Agency Contracting, sets forth the grounds and procedure for debarring or suspending individuals and/or entities from doing business with the Agency.

At N.J.A.C. 5:80-18.2(a)3, the Agency is making changes to properly cite to the current, partially-recodified version of the Copeland Anti-kickback Act, 18 U.S.C. § 874 and 40 U.S.C. § 3145.

The Agency is making a change at N.J.A.C. 5:80-18.6(a)6, to clarify that suspension from Agency contracting may be imposed where a suspension has been imposed by a department, as well as by an agency, referenced and as set forth at N.J.A.C. 5:80-18.2(a)13.

At N.J.A.C. 5:80-18.8(a)2, (b), and (c), the Agency is making changes to recognize the renaming of the Executive Commission on Ethical Standards as the State Ethics Commission pursuant to section 1 of P.L. 2005, c. 382 (N.J.S.A. 52:13D-21(a)) and the latter-named commission's current authority to promulgate ethical standards. At N.J.A.C. 5:80-18.8(a)2, the Agency is inserting the word "Agency" before "member or employee" in both the second and third sentences to clarify that the reference in both instances is to an Agency member or employee; the Agency is also, in the third sentence, changing the phrase "does not present the potential, actuality or appearance of a conflict of interest" to "does not present a potential or actual conflict of interest or the appearance of a conflict of interest" to improve grammar.

In the heading of N.J.A.C. 5:80-18.11, List of debarred and suspended, the Agency is inserting the missing word "persons" and, in the heading of N.J.A.C. 5:80-18.13, Lists of other agencies, the Agency is substituting the specific term "Federal" for "other" inasmuch as the departments, agencies, and instrumentalities referred to in the section are those of the United States Government.

Subchapter 19, Waivers, sets forth the procedure and standard for granting a waiver from any of the rules within N.J.A.C. 5:80.

Subchapter 20, Certification and Recertification of Income, sets forth the procedure for determining the income of families applying for admission to Agency-financed housing projects, for the periodic recertification of such income, and the consequences of a failure to recertify and/or for income in excess of maximum income limits upon recertification; it also sets forth the standards for the confidentiality of income certification and recertification records.

At N.J.A.C. 5:80-20.5(d), the Agency is replacing the incorrect cross-reference to N.J.A.C. 5:80-20.7 with the correct cross-reference to N.J.A.C. 5:80-20.8.

Subchapter 21, Transfer of Servicing of Single Family Mortgage Loans, sets forth the review and approval process and the transfer fees involved in the transfer of the servicing of Agency single family mortgage loans from one servicer to another.

Subchapter 22, Affirmative Fair Housing Marketing, sets forth the requirements for the development, implementation, and monitoring of a fair housing marketing plan (Plan) for those applicants required to submit and adhere to such a Plan.

Subchapter 23 is reserved.

Subchapter 24, Lease-Purchase Program, sets forth the terms of the program under which eligible buyers execute lease-purchase agreements enabling them to lease residential units with an option to purchase such units following the expiration of the lease terms.

Subchapter 25 is reserved.

Subchapter 26, Housing Affordability Controls, sets forth the requirements and restrictions governing low- and moderate-income housing financed pursuant to the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 et seq.

At N.J.A.C. 5:80-26.1, Purpose and applicability, the Agency is making changes to correct grammar with reference to “low- and moderate income units” and “low- and moderate-income households,” to clarify that it is the New Jersey Fair Housing Act that is referred to in the first sentence, and to accurately identify and cite to the Federal HOME Investment Partnerships program, 24 CFR Part 92; the HUD Section 202 Supportive Housing for the Elderly program, 24 CFR Part 891; the HUD Section 811 Supportive Housing for Persons with Disabilities program, 24 CFR Part 891; and the Federal Home Loan Bank Affordable Housing Program, which is codified at 12 CFR Part 1291, not at Part 60.

At N.J.A.C. 5:80-26.2, Definitions, the Agency is changing the definition of “age-restricted unit” by deleting the incorrect word “the” before “42 U.S.C. §§ 3601 et seq.” and to complete the sentence with the missing words “in the unit.” The Agency is also changing the definition of “assisted living residence” to recognize that the former New Jersey Department of Health and Senior Services is now the Department of Health and the definition of “HAS” to recognize that the Housing Affordability Service is now in the Agency, having been transferred there from the Division of Housing in the Department of Community Affairs.

At N.J.A.C. 5:80-26.5(c)1, the Agency is correcting a transposition of the words “the” and “that.”

The Agency is making technical changes at N.J.A.C. 5:80-26.6(c), to delete the duplicative term “unit,” to substitute “H.15” for “HR15” to correct an error and reference the correct Federal Reserve interest rate, and to rewrite the last phrase from “and that is of an appropriate household size as determined under N.J.A.C. 5:80-26.4” to “and that utilizes the appropriate household size as determined under N.J.A.C. 5:80-26.4” for clarification.

Subchapter 27 is reserved.

Subchapter 28, Nonpublic Records, sets forth a listing of the records maintained by the Agency which are not deemed to be public records pursuant to the Open Public Records Act, N.J.S.A. 47:1A-1 et seq. (OPRA).

Subchapter 29, Investment of Housing Project Funds, sets forth the types of investments that may be made of available funds by housing sponsors.

Subchapter 30, Residual Receipts, sets forth the terms of the program whereby surplus funds of certain Agency-financed housing projects may be used to increase the supply of affordable housing and to provide services or assistance to existing housing projects.

The Agency is making a change at N.J.A.C. 5:80-30.3(a) to recognize the change of the name of one of the Agency's divisions, and correspondingly of the title of the director of that division, from the Management Division to the Property Management Division.

Subchapter 31, Attorney Services, sets forth the scope of services and the fees permitted for the performance of such services by attorneys who are to be paid with funds of Agency-financed housing projects.

Subchapter 32, Housing Investment Sales, sets forth the terms of the program whereby for-profit sponsors can access residual receipts by the sale of Agency-financed housing projects to buyers that agree to preserve housing projects as low- and/or moderate-income housing.

Subchapter 33, Low Income Housing Tax Credit Qualified Allocation Plan, sets forth the Agency's current low-income housing tax credit qualified allocation plan.

Full text of the technical changes follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 1. GENERAL PROVISIONS

5:80-1.3 General definitions

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

...

“Assisted living residence” [(ALR)] or “**ALR**” means a housing project, which is a facility licensed by the New Jersey Department of Health [and Senior Services] to provide apartment-style housing and congregate dining and to assure that assisted living services are available when

needed, for four or more adult persons unrelated to the proprietor. Apartment units in ALRs offer, at a minimum, one unfurnished room, a private bathroom, a kitchenette, and a lockable door on the unit entrance.

...

“Housing sponsor” or “**sponsor**” means any person, partnership, corporation, or association to which the Agency has made or proposes to make a loan, either directly or through an institutional lender, for a housing project.

...

SUBCHAPTER 3. RETURN ON EQUITY

5:80-3.2 Housing projects' rate of return

(a) For all eligible loans for [Housing Projects] **housing projects** made by the Agency, the rate of return on its investment in the housing project, as determined by the Agency ([“]stated equity[”]), which can be paid or earned by the [Housing Sponsor of the property and improvements] **housing sponsor** or its principals or stockholders, shall be determined pursuant to N.J.A.C. 5:80-3.3 and be paid on a cumulative but not compounded basis. This restriction shall apply for the full term of the Agency’s loan and shall apply to return on investment earned or received upon construction and rehabilitation of the housing or from the operations of the housing or upon the sale, assignment, or lease of the housing, subject only to the applicable provisions, if any, of the Agency’s [regulations] **rules** concerning the sale of projects owned by nonprofit sponsors and transfer of ownership interests.

(b) Housing sponsors who have agreed to an annual rate of return of less than eight percent pursuant to the Agency’s former governing statute, N.J.S.A. 55:14J-1 et seq. (**repealed by P.L.**

1983, c. 530), may request a one-time increase in the rate that shall be calculated pursuant to N.J.A.C. 5:80-3.3(f) upon meeting the following criteria:

1. The housing project has funds, including [Development Cost (DCE) or Community Development (CDE) Escrows] **development cost escrows (DCE) or community development escrows (CDE)**, operating, savings and investment accounts, and all other funds, accounts, and escrows of the project, of an amount equal to three months of operating expenses (for senior citizens projects) or six months of operating expenses (for family projects), which includes debt service and reserve payments of the Agency-approved annual budget in effect at the time of the request and after deducting the following **from the amount of available funds**:

i. – v. (No change.)

2. – 3. (No change.)

(c) (No change.)

5:80-3.4 Conditions required for distribution

(a) – (b) (No change.)

(c) In addition to the conditions listed in (a) above, the following conditions shall be met by assisted living residences (ALRs) before return on investment shall be approved by the Agency and disbursed to the housing sponsor:

1. (No change.)

2. The **ALR shall have an** operating reserve fund [established pursuant to N.J.A.C. 5:80-1.4(c) 3 shall be fully funded] with 75 [days] **days'** worth of operating expenses, including expenses of tenants' meals and basic services.

SUBCHAPTER 5. TRANSFER OF OWNERSHIP INTERESTS

5:80-5.1 Definitions

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

...

“Portfolio Reserve Account” means that fund established pursuant to N.J.A.C. 5:80-5.9(b) intended primarily for financial support for any housing project financed by the [agency] **Agency.**

...

5:80-5.2 General policy

(a) – (d) (No change.)

(e) The approval of the Public Housing and Development Authority must be obtained where necessary pursuant to **the Limited-Dividend Nonprofit Housing Corporations or Associations Law, N.J.S.A. 55:16-1 et seq. (repealed by P.L. 1991, c. 431, § 20) (Limited Dividend Law).**

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. (No change.)
2. Complete description [as to the nature] of the [transition] **transaction;**

3. - 4. (No change.)

(b) (No change.)

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. – 2. (No change.)

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

4. (No change.)

SUBCHAPTER 7. TENANT SELECTION STANDARDS

5:80-7.2 General policy

(a) – (c) (No change.)

(d) [In the case of] **All** assisted living residences (ALRs)[, all ALRs] are subject to the New Jersey Department of Health [and Senior Services] screening requirements as set forth in N.J.A.C. 8:36 and the requirements of the New Jersey Department of Health [and Senior Services], Division of [Consumer Support] **Health Facilities Evaluation and Licensing** and/or the New Jersey Department of Human Services, Division of Medical Assistance and Health Services.

5:80-7.6 Limitations on admission of over-income tenants

(a) – (c) (No change.)

(d) At [BMIR] **Below Market Interest Rate**, rent supplement, or **Section 236** projects, an owner must also obtain the prior written approval of [the] HUD or the Contract Administrator.

(e) – (i) (No change.)

5:80-7.7 [Non-immigrant] **Nonimmigrant alien** students [aliens]

(a) [The] **Section 214 of the** Housing and Community Development Act of 1980, **42 U.S.C. § 1436a**, prohibits HUD from making housing assistance available to [non-immigrant] **nonimmigrant alien** students [aliens].

(b) A [non-immigrant] **nonimmigrant alien** student [aliens] is a person who:

1. – 2. (No change.)

3. [Was] **Is** admitted to the United States temporarily and solely for [the] purposes of pursuing **such** a [full] course of study at an established institution of learning or other recognized place of study in the United States, particularly [designed] **designated** by him or her and approved by the Attorney General **of the United States (Attorney General)** after consultation with the Department of Education of the United States.

(c) [Non-immigrant] **Nonimmigrant alien** student [alien] also means the alien spouse and [alien] minor children of such student, as long as the spouse's and children's right to be in the United States depends on the alien's right.

(d) If an applicant identifies himself or herself or his or her spouse as a student, the owner must request proof of United States citizenship[,] and ask the applicant to sign a statement certifying that he or she is not a [non-immigrant] **nonimmigrant alien** student [alien]. An example certification form may be found as Exhibit B.

5:80-7.8 Prohibited condition for admission

(a)-(c) (No change.)

EXHIBIT A

(No change.)

EXHIBIT B

FORMAT OF ADDENDUM TO APPLICATION FOR HOUSING ASSISTANCE

By law, housing assistance cannot be provided to any nonimmigrant [student-alien] **alien student** or the alien spouse and minor children of such alien ([Section 1436a of Title] 42[, U.S.C. § 1436a).

Definition of Nonimmigrant [Student-Alien] **Alien Student**: (1) an alien having a residence in a foreign country which he or she has no intention of abandoning, who is a bona fide student qualified to pursue a full course of study and who is admitted to the United States temporarily and solely for the purpose of **pursuing such a course of study** at an established institution of learning or other recognized place of study in the United States, particularly designated by him or her and approved by the Attorney General **of the United States (Attorney General)** after consultation with the Department of Education of the United States, which institution or place of study shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant student and if any such institution of learning or place of study fails to make reports promptly the approval shall be withdrawn, and (2) the alien spouse and minor children of any such alien if accompanying him or her or following to join him or her.

I certify that I have read the information above and that I am not a nonimmigrant [student-alien] **alien student**, and that no others in my household are nonimmigrant [student-alien] **alien students**.

Applicant

Date

WARNING: [Section 1001 of Title] 18 U.S.C. § 1001 provides, **in part, as follows:** “[Whoever] **[W]hoever**, in any matter within the jurisdiction of [any department or agency] **the executive, legislative, or judicial branch of the Government** of the United States, knowingly and willfully – **(1)** falsifies ... a material fact[.]; **(2)** makes any **materially** false, fictitious, or fraudulent statement[s] or representation[s,]; or **(3)** makes or uses any false writing or document knowing the same to contain any **materially** false, fictitious, or fraudulent statement or entry[.]; shall be fined [not more than \$10,000 or] **under this title**, imprisoned not more than [five] **5** years or, **if the offense involves international or domestic terrorism ... , imprisoned not more than 8 years**, or both.”

SUBCHAPTER 8. OCCUPANCY REQUIREMENTS REGARDING INCOME

5:80-8.3 Occupancy requirements for housing projects

(a) (No change.)

(b) In assisted living residences financed by the Agency with the proceeds of Agency bonds where the interest on the bonds is exempt from Federal taxation, either not less than 20 percent of the units shall be occupied by individuals whose income is 50 percent or less of area median gross income, or not less than 40 percent of the units shall be occupied by persons whose income is 60 percent or less of area median gross income, at all times during the qualified project period as defined in section 142(d)(2)(A) of the Code (the “income-restricted units”). All ALRs shall reserve 10 percent of the income-restricted units for occupancy by persons whose

monthly income does not exceed 300 percent of the monthly Federal Supplemental Security Income (SSI) benefit amount (which amount is determined and published annually by the Social Security Administration), unless such 10-percent utilization requirement is waived or reduced for the applicable region of the State or Statewide by the New Jersey Commissioner of Health [and Senior Services] (Commissioner) pursuant to N.J.S.A. 26:2H-12.17 or any successor statute. Income-restricted units shall be distributed throughout the project such that the residents of such units shall have equal access to and enjoyment of all common areas of the project.

(c) (No change.)

5:80-8.4 Special Multiple Family Units within [Housing Projects] **housing projects** located in municipalities affected by casino gaming

(a) – (b) (No change.)

(c) For purposes of determining income eligibility for admission into a Special Multiple Family Unit, the gross aggregate family income of each family is to be considered separate and apart from the gross aggregate family income of the other family or families occupying the unit. The full rental and carrying charges of the unit are to be used in determining each family's eligibility for admission, notwithstanding each family's planned or actual percentage contribution toward those charges, provided there is a written consent in the lease holding each family jointly and [severably] **severally** liable for these charges.

(d) – (f) (No change.)

SUBCHAPTER 13. MAKING OR PURCHASING ELIGIBLE LOANS FOR SINGLE FAMILY MORTGAGES

5:80-13.2 Commitment applications

(a) The Agency shall make available to all mortgage sellers who request **it**, a form of commitment application for each proposed program to purchase single family mortgage loans at least 14 days in advance of the date all such applications must be submitted to the Agency. The commitment application shall be in the form prescribed by the Agency and shall contain, among other things:

1. – 3. (No change.)

4. Provision for the mortgage seller to furnish information regarding its mortgage loan origination and [serving] **servicing** activities during a time period to be prescribed by the Agency;

5. – 6. (No change.)

SUBCHAPTER 18. DEBARMENT AND SUSPENSION FROM AGENCY CONTRACTING

5:80-18.2 Causes for debarment of a person(s)

(a) In the public interest, the Agency may debar a person for any of the following causes:

1. – 2. (No change.)

3. Violation of any Federal or State antitrust statute or of the [Federal Anti Kickback] **Copeland Anti-kickback Act[s]**, 18 U.S.C. § 874[,], **and** 40 U.S.C. § [276 c] **3145**.

4. – 15. (No change.)

5:80-18.6 Conditions for suspension of a person(s)

(a) The following conditions concerning suspension are to be adhered to:

1. – 5. (No change.)

6. A suspension invoked by another **department or** agency for any of the causes described in N.J.A.C. 5:80-18.2(a)[1-13]**1 through 13** may be the basis for the imposition of a concurrent suspension by the Agency, which suspension may be imposed when found to be in the best interest of the State.

5:80-18.8 Prohibited activities of persons; reporting requirement

(a) In order to ensure that all persons meet a standard of responsibility which assures the Agency, the State, and its citizens that such persons will both compete and perform honestly in their dealings with the Agency and avoid conflicts of interest, all persons are prohibited from engaging in the following activities:

1. (No change.)

2. No person shall, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such person to, any Agency member or employee having any duties or responsibilities in connection with the purchase, acquisition, or sale of any property or services by or to the Agency. No person shall, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract, or other agreement, express or implied, or sell any interest in such person to any individual, firm, or entity with which such **Agency** member or employee is employed or associated or has an interest within the meaning of N.J.S.A. 52:13D-13g. Any relationships subject to this provision shall be reported in writing forthwith to the [Executive Commission on Ethical Standards] **State Ethics Commission**, which may grant a waiver of this restriction upon application of the **Agency** member or

employee upon a finding that the present or proposed relationship does not present [the] a potential[, actuality] **or actual conflict of interest** or **the** appearance of a conflict of interest.

3. – 4. (No change.)

(b) All persons shall report to the Attorney General of New Jersey and the [Executive Commission on Ethical Standards] **State Ethics Commission** the solicitation of such persons of any fee, commission, compensation, gift, gratuity, or other thing of value by an Agency member or employee.

(c) The prohibited activities in (a)1 through 4 above shall not be construed to prohibit a person from offering or giving gifts to or contracting with an Agency member or employee, nor be construed to prohibit an Agency member or employee from receiving gifts from or contracting with a person, and shall not be grounds for debarment pursuant to N.J.A.C. 5:80-18.2(a)15, provided that such activities are offered or made under the same terms and conditions that are available to members of the general public and are consistent with any rules promulgated by the [Executive Commission on Ethical Standards] **State Ethics Commission**.

5:80-18.11 List of debarred and suspended **persons**

The Agency shall supply to the State Treasurer a monthly list of all persons having been debarred or suspended in accordance with the procedures prescribed herein, including the effective date and term, if any, of such debarment or suspension. Such list shall at all times be available for public inspection.

5:80-18.13 Lists of [other] **Federal** agencies

Notwithstanding the failure of the Agency to debar or suspend any person or contractor pursuant to these regulations, whenever the Agency participates in any program financed, issued or guaranteed by any department, agency or instrumentality of the United States Government, it may rely on and distribute lists of persons suspended or debarred by such agency, department or instrumentality and prevent the listed person from participating in that program.

SUBCHAPTER 20. CERTIFICATION AND RECERTIFICATION OF INCOME

5:80-20.5 Recertification periods and procedures

(a) – (c) (No change.)

(d) After recertification, housing sponsors shall calculate a family's gross aggregate family income. If there will be an adjustment in HUD subsidy or imposition of a surcharge as provided by N.J.A.C. 5:80-[20.7]**20.8**, housing sponsors shall provide families with notice at least 30 days prior to the expiration of the lease. If requested by families, housing sponsors shall provide an explanation of how they calculated the family's income and arrived at the adjustment of subsidy or imposition of a surcharge. Housing sponsors must submit all family recertification calculations and supporting documents to the Agency at least 30 days prior to the expiration of a family's lease.

(e) – (g) (No change.)

SUBCHAPTER 26. HOUSING AFFORDABILITY CONTROLS

5:80-26.1 Purpose and applicability

This subchapter is designed to implement the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301 et seq.) by assuring that [low-and] **low- and** moderate-income units created under

the **Fair Housing** Act are occupied by [low-and] **low- and** moderate-income households for an appropriate period of time. This subchapter provides rules for the establishment and administration of affordability controls on restricted units that receive COAH credit under the Fair Housing Act; that receive funding from the Division under the Neighborhood Preservation Balanced Housing Program; that receive funding from the Agency under its UHORP and MONI programs; or with respect to which a municipality or developer contracts with the Agency, HAS, or other experienced administrative agent approved by DCA, the Agency, or COAH for the administration of affordability controls pursuant to the Fair Housing Act. Unless expressly stated otherwise herein, this subchapter shall apply to all restricted units described in the foregoing sentence, regardless of the date on which the units were created; provided, however, that the rules do not apply to units qualifying for the Federal Low-Income Housing Tax Credit under Section 42 of the Internal Revenue Code, units that receive Balanced Housing funds under the Agency's Home Express program, or units receiving assistance under the Federal HOME **Investment Partnerships** program, 24 [C.F.R. § 92.252(e), § 92.254(a)(4)] **CFR Part 92**; the HUD **Section 202 Supportive Housing for the Elderly** program, 24 [C.F.R.] **CFR Part 891**; the HUD **Section 811 Supportive Housing for Persons with Disabilities** program, 24 [C.F.R.] **CFR Part [890] 891**; the HUD HOPE VI program; or the Federal Home Loan Bank[,] Affordable Housing Program, 12 [C.F.R.] **CFR Part [60] 1291**.

5:80-26.2 Definitions

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

...

“Age-restricted unit” means a housing unit designed to meet the needs of, and exclusively for, the residents of an age-restricted segment of the population where the head of the household is a minimum age of either 62 years, or 55 years and meets the provisions of [the] 42 U.S.C. §§ 3601 et seq., except that due to death, a remaining spouse of less than 55 years of age shall be permitted to continue to reside **in the unit**.

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

...

“HAS” means the Housing Affordability Service, formerly known as the “Affordable Housing Management Service,” in the [Department of Community Affairs, Division of Housing] **Agency**.

...

5:80-26.5 Control periods for ownership units

(a) – (b) (No change.)

(c) Prior to the issuance of the initial certificate of occupancy for a restricted ownership unit and upon each successive sale during the period of restricted ownership, the administrative agent shall determine the restricted price for the unit and shall also determine the non-restricted, fair market value of the unit based on either an appraisal or the unit’s equalized assessed value. At the time of the sale of the unit, the purchaser shall execute and deliver to the administrative agent

a recapture note obligating the purchaser (as well as the purchaser's heirs, successors, and assigns) to repay, upon the first non-exempt sale after the unit's release from the requirements of this subchapter, an amount equal to the difference between the unit's non-restricted fair market value and its restricted price. The recapture note shall be secured by a recapture lien evidenced by a duly recorded mortgage on the unit. The recapture note and recapture mortgage lien shall be in favor of the Agency if the unit was financed under UHORP or MONI, in favor of the State if State funds other than UHORP or MONI contributed to the financing of the unit, and, in all other cases, in favor of the municipality in which the unit is located. The recapture note and recapture mortgage lien shall be in the form prescribed in subchapter Appendices L, M, N, O, P, and Q, incorporated herein by reference, as applicable.

1. The recapture lien shall also provide **that** the [that] recapture amount shall be reduced by the cumulative dollar value of capital expenditures by all owners during the control period for improvements and/or upgrades to the unit, as approved by the administrative agent.

2. – 3. (No change.)

(d) – (i) (No change.)

5:80-26.6 Price restrictions for ownership units

(a)-(b) (No change.)

(c) The initial purchase price of a restricted ownership unit financed under UHORP or MONI [unit] shall be calculated so that the monthly carrying costs of the unit, including principal and interest (based on a mortgage loan equal to 95 percent of the purchase price and the Federal Reserve [HR15] **H.15** rate of interest), taxes, homeowner and private mortgage insurance, and condominium or homeowner association fees, do not exceed 28 percent of the eligible monthly income of a household whose income does not exceed 45 percent of median income, in the case

of a low-income unit, or 72 percent of median income, in the case of a moderate-income unit, and that [is of an] **utilizes the** appropriate household size as determined under N.J.A.C. 5:80-26.4.

(d)-(f) (No change.)

SUBCHAPTER 30. RESIDUAL RECEIPTS

5:80-30.3 Request for use of residual receipts

(a) All requests to use residual receipts funds must be approved by the Agency in advance. Requests shall be made in writing by the sponsor of a qualifying development and submitted to the Agency's Director of **Property** Management.

(b) – (c) (No change.)