

RULE PROPOSALS

INTERESTED PERSONS

Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until the date indicated in the proposal. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

The required minimum period for comment concerning a proposal is 30 days. A proposing agency may extend the 30-day comment period to accommodate public hearings or to elicit greater public response to a proposed new rule or amendment. Most notices of proposal include a 60-day comment period, in order to qualify the notice for an exception to the rulemaking calendar requirements of N.J.S.A. 52:14B-3. An extended comment deadline will be noted in the heading of a proposal or appear in subsequent notice in the Register.

At the close of the period for comments, the proposing agency may thereafter adopt a proposal, without change, or with changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-6.3. The adoption becomes effective upon publication in the Register of a notice of adoption, unless otherwise indicated in the adoption notice. Promulgation in the New Jersey Register establishes a new or amended rule as an official part of the New Jersey Administrative Code.

COMMUNITY AFFAIRS

(a)

THE COMMISSIONER

Government Records

Proposed Readoption: N.J.A.C. 5:3

Authorized By: Lt. Governor Sheila Y. Oliver, Commissioner,
Department of Community Affairs.

Authority: N.J.S.A. 47:1A-1, 52:14B-3, and 52:27D-3(f); and
Executive Orders No. 9 (Hughes 1963) and No. 47 (Christie
2010).

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

Proposal Number: PRN 2018-108.

Submit written comments by January 18, 2019, to:

Geraldine Callahan
Department of Community Affairs
PO Box 800
Trenton, New Jersey 08625-0800
Fax No. (609) 984-6696
E-mail: geraldine.callahan@dca.nj.gov

The agency proposal follows:

Summary

Pursuant to N.J.S.A. 52:14B-5.1, the rules concerning requests for government records were scheduled to expire on October 17, 2018. As the Department of Community Affairs (Department) submitted this notice of proposal to the Office of Administrative Law on that date, the expiration date was extended 180 days to April 15, 2019, pursuant to N.J.S.A. 52:14B-5.1.c(2). The Department has reviewed these rules and finds that they continue to be necessary for the purpose for which they were adopted and is therefore proposing that they be readopted without change. It is possible that in the future the Department may propose amendments, but at this time it is appropriate to readopt them.

The rules proposed for readoption are intended to implement N.J.S.A. 47:1A-1, the Open Public Records Act (Act), which sets forth the parameters and procedures for the public to request access to and copies of public documents. Subchapter 1 of the rules proposed for readoption require a requestor to submit a request for government records on a form designated by the Department. The rules proposed for readoption set forth the procedure for submitting the request. The rules provide the timeframe for the Department to act on a request and set forth the cost to the requestor. The rules proposed for readoption also set forth the procedure if the custodian of records fails to respond to the request. The rules proposed for readoption set forth the procedure for providing access to stored or archived records. The rules further address the medium in which

the Department will provide the requested records, which generally will be on letter size paper, however, the rules do allow for other mediums, as appropriate. Finally, the rules proposed for readoption set forth those records that are designated as confidential. The Act provides that a public agency should be mindful of the need to safeguard from public access a citizen's personal information with which it has been entrusted, when disclosure thereof would violate the citizen's reasonable expectation of privacy.

In Subchapter 2, the rules proposed for readoption are designed to serve both these legislative policies by facilitating public access to government records while, at the same time, balancing citizens' reasonable expectation of privacy and the integrity and effectiveness of government operations.

As the Department, has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The rules proposed for readoption will have a positive social impact by establishing a procedure for public access to government records held or controlled by the Department of Community Affairs. The law requires that government records be readily accessible for inspection, copying, or examination by citizens of this State unless exempt by law or rule, but also calls upon a public agency to safeguard from public access a citizen's personal information with which it has been entrusted when disclosure would violate the citizen's reasonable expectation of privacy. These rules proposed for readoption attempt to balance the competing statutory policies.

Economic Impact

Consistent with the statute, the rules proposed for readoption provide for fees that correlate to the actual copy costs. The cost incurred will depend on the type and volume of records requested and the medium of delivery.

The Department will incur costs in processing requests for access to government records in the time set forth in the Act.

Federal Standards Statement

No Federal standards analysis is required because the rules are not being proposed for readoption under the authority of, or in order to implement, comply with, or participate in any program established under Federal law or a State law that incorporates or refers to Federal law, standards, or requirements.

Jobs Impact

The rules proposed for readoption will not have an impact on the number of jobs generated or lost in the private sector in New Jersey. The rules proposed for readoption may, however, require public agencies to increase the number of employees designated to respond to requests for public access.

Agriculture Industry Impact

The Department does not anticipate any impact upon the agricultural industry as a result of the readoption of this chapter.

Regulatory Flexibility Analysis

The rules proposed for readoption do not impose reporting or recordkeeping requirements on small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et. seq. The rules proposed for readoption impose compliance requirements on all persons seeking access to government records pursuant to N.J.S.A. 47:1A-1 et seq. All persons, including small businesses, will be required to submit requests for access to government records on a form approved by the Department. The statute requires the custodian of records to adopt a form for access to records. The statute authorizes fees for copies of government records. There is no exception for small businesses. The cost depends on the number of copies requested. The rules proposed for readoption provide that the fee will be in the amount authorized by the statute. The cost to the Department of providing the record does not depend on whether the requestor is a small business.

Housing Affordability Impact Analysis

This rulemaking is intended to readopt rules concerning public access to government records. It would be most unlikely to have any impact upon average costs associated with housing or to affect the affordability of housing.

Smart Growth Development Impact Analysis

The Department does not anticipate any impact upon the achievement of smart growth or the implementation of the State Development and Redevelopment Plan as a result of the readoption of Chapter 3. This rulemaking is intended to readopt rules concerning public access to government records. It would be most unlikely to have any impact upon housing production within Planning Areas 1 and 2, or within designated centers, under the State Development and Redevelopment Plan.

Racial and Ethnic Community Criminal Justice and Public Safety Impact Statement

The Department has evaluated this rulemaking and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 5:3.

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NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

Low Income Housing Tax Credit Qualified Allocation Plan

Proposed Amendments: N.J.A.C. 5:80-33.2, 33.4 through 33.8, 33.10, 33.12, 33.15, 33.16, 33.17, 33.19, 33.25, 33.28, and 33.32

Proposed Repeals and New Rules: N.J.A.C. 5:80-33 Appendices A and B

Authorized By: New Jersey Housing and Mortgage Finance Agency, Charles A. Richman, Executive Director.

Authority: N.J.S.A. 55:14K-5.g and 26 U.S.C. § 42(m).

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

Proposal Number: PRN 2018-107.

A public hearing on this notice of proposal will be held on the following date and time at the following location:

Tuesday, December 11, 2018, at 10:00 A.M.
 New Jersey Housing and Mortgage Finance Agency
 637 South Clinton Avenue
 Trenton, New Jersey 08611

Please call the Division of Tax Credit Services at (609) 278-7629 if you wish to be included on the list of speakers.

Submit written comments by January 18, 2019, to:

Anne Hamlin
 Director of Tax Credit Services
 New Jersey Housing and Mortgage Finance Agency
 637 South Clinton Avenue
 PO Box 18550
 Trenton, New Jersey 08650-2085
 E-mail: ahamlin@njhmf.gov.

The agency proposal follows:

Summary

The New Jersey Housing and Mortgage Finance Agency (Agency) is the administrator of the Low Income Housing Tax Credit (LIHTC) program for the State of New Jersey. Governed by Section 42 of the Internal Revenue Code of 1986 (Code), 26 U.S.C. § 42, the program establishes a low-income housing tax credit that may be applied against the Federal income tax of persons or associations who have invested in buildings that provide housing for low- and/or moderate-income individuals or families.

As mandated by 26 U.S.C. § 42(m)(1)(B), each state housing credit agency must create a plan, known as the Qualified Allocation Plan (QAP), that sets forth the selection criteria to be utilized to allocate tax credits to eligible applicants. The rules codified at N.J.A.C. 5:80-33 represent the QAP for the State.

The Agency continually reviews the selection criteria and, from time-to-time, finds that amendments to the rules are necessary or beneficial to ensure consistency with Federal requirements and State housing policy. The proposed amendments, among other things, redefine how municipalities are evaluated for desirability and/or distress through utilization of the Department of Community Affairs' Municipal Revitalization Index, target housing construction in Opportunity Zones, expand available funding for mixed-income developments, and incentivize developers to create better housing for senior residents. The proposed amendments are expected to be effective for calendar years 2019 and 2020. The Agency will receive \$24 million in nine-percent low-income housing tax credits in each of those years and expects to fully allocate the credits in accordance with the QAP, as amended. Broadly speaking, 40 percent of the credits will be allocated to urban municipalities and 60 percent of the credits will be allocated to the remainder of the State.

The proposed amendments are summarized as follows:

N.J.A.C. 5:80-33.2 Definitions

The Agency proposes to either amend or introduce as new terms, the following:

1. "Area median income" would be added as a defined term to clarify that the U.S. Department of Housing and Urban Development (HUD) annually calculates and publishes area median income statistics, by which tenants are evaluated for eligibility to reside in low-income housing tax credit developments.
2. "Average income set-aside" would be added as a defined term to identify and define a new Federal minimum set-aside election for low-income housing tax credit projects.
3. "Developer fee" or "development fee" would be amended to reduce the permitted non-deferred developer fee for building acquisition costs to a maximum of two percent.
4. "Municipal Revitalization Index" would be added as a defined term to identify the index to be utilized in the point-scoring system and as the basis for selecting Targeted Urban Municipalities.
5. "NJHMFA" would be added to mean the New Jersey Housing and Mortgage Finance Agency. The acronym is used throughout the subchapter, but is not a defined term, as required by the Office of Administrative Law standards.
6. "Public transportation" would be amended to further restrict which transit opportunities would qualify under the scoring and ranking section at N.J.A.C. 5:80-33.14.
7. "Smart growth areas" would be amended to update the website reference for the site evaluator tool.