

**COMMUNITY AFFAIRS**

**NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY**

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

**Rules**

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

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

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

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

Proposal Number: PRN 2019-032.

Submit written comments by May 17, 2019, to:

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The agency proposal follows:

**Summary**

The New Jersey Housing and Mortgage Finance Agency (“NJHMFA” or “Agency”), pursuant to its statutory authority, serves as an advocate for increasing the supply of adequate, safe, and affordable housing in the State of New Jersey. To fulfill its statutory mandate, the Agency acts as a mortgage

lender by providing financing to housing sponsors who wish to construct, rehabilitate, or improve housing for low- and moderate-income residents of the State. The Agency also provides mortgage loans for home buyers and serves as the housing credit agency for the State.

The rules of the Agency, codified at N.J.A.C. 5:80, were adopted and have been amended from time to time pursuant to the authority of the New Jersey Housing and Mortgage Finance Agency Law of 1983 (Act), N.J.S.A. 55:14K-1 et seq., to establish procedures for applying for and approving the terms and conditions of mortgage loans made by the Agency, as well as the means of administering the Federal program of low-income housing tax credits pursuant to Section 42 of the Internal Revenue Code (IRC), 26 U.S.C. § 42. Subchapter 20 of N.J.A.C. 5:80, Certification and Recertification of Income, sets forth the requirements and procedures for determining and verifying the income of applicants for, and existing tenants of, units in housing projects financed by the Agency. The Agency is proposing the following amendments to Subchapter 20:

1. The Agency proposes to amend N.J.A.C. 5:80-20.2(b) to subcodify parts of subsection (b) into paragraphs (b)1, 2, 3, and 4, and: (i) include “former” Section 103(b)(4) and “or current Section 142 of the Internal Revenue Code (or any other applicable provision of the Internal Revenue Code as it relates to tax-exempt housing bonds)” to clarify that Section 103(b)(4) of the IRC, pursuant to which certain housing projects were previously financed by the Agency, no longer exists, but projects have been and are being financed pursuant to current Section 142 of the IRC, and to include any other applicable provision of the IRC as it may relate to tax-exempt housing bonds that may be issued by the Agency; (ii) include “or, with respect to an allocation of Federal low-income housing tax credits, is a low-income unit as defined in Section 42 of the [IRC]” to include any low-income units financed by low-income housing tax credits (LIHTC) within the sphere of the subsection; and (iii) insert “and, as applicable, the Low Income Housing Tax Credit Qualified Allocation Plan at N.J.A.C. 5:80-33” to include any applicable rules in the Qualified Allocation Plan (QAP) as governing certification and recertification requirements. The Agency also proposes new subsection (c) to clarify that the existing notification requirements pertain to paragraphs (b)1, 2, 3, and 4.

2. The Agency proposes to amend recodified N.J.A.C. 5:80-20.2(e) to delete the phrase “percentage of” in the definition of “income-restricted units” since “units” refers to tangible housing units, not a percentage of those units.

3. In the heading of N.J.A.C. 5:80-20.3, Documentation, the Agency proposes to add “and review of tenant income qualifications” to indicate that the section concerns the review of tenant income certifications, as well as the documentation that must be provided in order to enable such reviews.

4. The Agency proposes to amend N.J.A.C. 5:80-20.3(a) to clarify that both applicants for admission to and existing tenants of housing projects must provide to the housing sponsors of those projects (not directly to the Agency) the information and documentation itemized in N.J.A.C. 5:80-20.3(a)1 through 7 that will enable the sponsor to verify gross aggregate family income.

5. At N.J.A.C. 5:80-20.3(a)2 is proposed for amendment to make certain stylistic changes.

6. Proposed new N.J.A.C. 5:80-20.3(a)7 includes a certification of income and assets as being among the information and documentation required to be submitted by applicants and tenants as part of the income review process.

7. N.J.A.C. 5:80-20.3(c) is proposed for amendment to include “former” Section 103(b)(4) and to clarify that applicants for admission to and tenants of housing projects receiving Federal financing assistance are subject to any additional documentation requirements that may be imposed by Federal regulations regarding certification and recertification of income.

8. Proposed new N.J.A.C. 5:80-20.3(d) requires that the housing sponsor review the submitted documentation of an applicant and determine whether the applicant qualifies for residence prior to occupancy of a unit in a housing project. If the sponsor determines the applicant qualifies for admission, the sponsor may approve the move-in without prior review or approval by the Agency.

9. Proposed new N.J.A.C. 5:80-20.3(e) requires that, by the fifth day of each month, the housing sponsor file with the Agency, a copy of each newly-admitted tenant’s certification of income and assets, together with a certification that the sponsor has reviewed the required documentation and has verified that each tenant has qualified for residence in his, her, or their respective unit. The proposed new

subsection would additionally require that the sponsor maintain copies of all required documentation for such periods of time as required by all applicable State and Federal laws, rules, and regulations and as required by the Agency pursuant to its financing of the housing project.

10. Proposed new N.J.A.C. 5:80-20.3(f) addresses the situation in which the Agency has issued a notice of noncompliance with the rules at N.J.A.C. 5:80-20.3 to a housing sponsor. In those instances, the Agency reserves the right to require submission of all tenant documentation prior to tenant occupancy. In addition, the provision would require the sponsor to pay a \$200.00 administrative fee to the Agency for each certification for which a notice of noncompliance has been issued.

11. N.J.A.C. 5:80-20.4(a) is proposed for amendment, similarly to the changes discussed in item 7 above, to include “former” Section 103(b)(4) and to clarify that applicants for admission to, and tenants of, housing projects receiving Federal financing assistance are subject to calculation of gross-aggregate-family-income standards in accordance with applicable Federal regulations.

12. N.J.A.C. 5:80-20.4(b)1 and (c) are proposed for amendment to delete “minor” in the phrase “a dependent minor under 18 years of age” as being both unnecessary and possibly confusing. (The provision by its terms is applicable only to those “under 18 years of age;” such a person need not be additionally defined as a “minor,” especially since, in some circumstances, a “minor” may be older than 18.)

13. The Agency proposed to amend the heading of N.J.A.C. 5:80-20.5, Recertification periods and procedures, to include “annual compliance audit” to indicate that the Agency proposes to add provisions that would require an annual audit of compliance-with-family-income-recertification requirements;

14. N.J.A.C. 5:80-20.5(a) is proposed for amendment to merge paragraph (a)1 into subsection (a).

15. The Agency proposes new N.J.A.C. 5:80-20.5(b). Proposed new subsection (b) would require families to recertify their incomes in accordance with the Internal Revenue Code (IRC) where

the units they occupy have been financed pursuant to certain provisions of the IRC (including existing N.J.A.C. 5:80-20.5(a)2).

16. Recodified N.J.A.C. 5:80-20.5(c) is proposed for amendment to update the cross-reference.

17. The Agency proposes to amend recodified N.J.A.C. 5:80-20.5(d)3 to update “are” to “may be,” to account for the Agency’s simultaneous proposed amendment to N.J.A.C. 5:80-20.6, which imposes sanctions on families who fail to recertify income, to limit its application to units covered by HUD subsidies and market-rate units only (see item 22 below). Thus, not all families will be subject to sanctions and, for accuracy, the notification to be provided by sponsors to families should include a statement that those who fail to recertify income may be (not are) subject to the sanctions provided for in N.J.A.C. 5:80-20.6.

18. The Agency proposes to amend recodified N.J.A.C. 5:80-20.5(e) to delete the last sentence and to incorporate that information into proposed new N.J.A.C. 5:80-20.5(f) (see item 19 below).

19. Existing N.J.A.C. 5:80-20.5(e) is proposed for deletion because the Agency no longer intends to review recertifications at the beginning of the process. Proposed new subsection (f) requires that housing sponsors file with the Agency copies of recertifications for the previous calendar year within 45 days of the end of each calendar year or at such other times as may be required by the IRC or IRS regulations, and imposes a \$200.00 administrative fee upon housing sponsors for each certification for which a notice of noncompliance has been issued, which fee shall be in addition to, not in lieu of, any remedies available to the Agency pursuant to the loan and regulatory documents governing the project.

20. Recodified N.J.A.C. 5:80-20.5(g) is proposed for amendment to include updated cross-references.

21. The Agency proposes new N.J.A.C. 5:80-20.5(i) to require that on an annual basis, housing sponsors of at least 33.33 percent of all Agency-financed housing projects that are subject to subchapter 20, submit for compliance review by the Agency the following information for at least 20 percent of all income-restricted units, 20 percent of all units assisted by HUD subsidies, and 20 percent of all market-rate units: (1) a copy of the most recent family income certification; (2) the documentation received by

the sponsor in support of the certification; and (3) the rent record or rent roll. The projects to be reviewed would be selected randomly by a computer program pursuant to which all subject projects would be reviewed once within a three-year cycle. However, if any review evidences a project's noncompliance with the documentation collection and retention requirements, that project may be selected for review more than once within a three-year period. Project sponsors will be notified of their project's selection prior to the review. This provision is intended to bring all Agency-financed projects in line with the compliance requirements for projects that receive awards of low income housing tax credits. Given that the Agency proposes in this rulemaking to allow sponsors greater autonomy with respect to the collection, review, and retention of tenant income records, the Agency deems it prudent to ensure that requirements pertaining to those endeavors are being complied with.

22. The Agency proposes to amend N.J.A.C. 5:80-20.6(a)2 to clarify that only families occupying market-rate units are subject to the imposition of surcharges and may be subject to eviction pursuant to N.J.A.C. 5:80-20.9.

23. The Agency proposes to amend N.J.A.C. 5:80-20.6(b) to properly reference the Agency.

24. The Agency proposes to amend N.J.A.C. 5:80-20.7(b) to clarify that upon recertification, only families occupying market-rate units are subject to the imposition of surcharges and may be subject to eviction pursuant to N.J.A.C. 5:80-20.9.

25. N.J.A.C. 5:80-20.7(c) and 20.9(c) are proposed for amendment to make stylistic and grammatical changes.

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

### **Social Impact**

The main import of the proposed rulemaking is to allow housing sponsors to review the information and documentation provided by prospective tenants of housing projects financed by the Agency and to directly approve admissions (move-ins) without the necessity of Agency pre-approval.

This is intended to remedy a concern that has been expressed by housing sponsors, who feel the existing requirement for Agency review and approval of move-ins is time-consuming and deprives the sponsors of needed income as units remain vacant pending Agency approval. Prospective tenants – who are the intended beneficiaries of the Agency’s multifamily-housing-financing programs – will also be advantaged by shorter wait-times before being approved for residency in Agency-financed housing projects.

Thus, the proposed amendments, particularly, proposed new N.J.A.C. 5:80-20.3(d), is expected to benefit both housing sponsors and their prospective tenants by shortening the time period between when a unit first becomes vacant and when a tenant is approved for admission to, and occupies, the unit. Also, the proposed amendment to N.J.A.C. 5:80-20.6(a)2 to clarify that only families occupying market-rate units are subject to the imposition of surcharges and may be subject to eviction pursuant to the rule frees non-market rate tenants from those penalties.

Additionally, the Agency anticipates that the proposed rulemaking may make its multifamily-project-financing products more appealing to developers of affordable housing projects and, thereby, result in an increase in the supply of affordable housing for residents of the State.

### **Economic Impact**

Proposed new N.J.A.C. 5:80-20.3(d) is expected to have a beneficial economic impact for both housing sponsors and tenants of projects financed by the Agency; housing sponsors will be able to fill vacant units faster and, thus, reduce the amount of “lost” income from such units, while tenants will be able to move sooner into housing units that are affordable to them.

To the extent the proposed rulemaking might have a negative economic impact, it would result from the imposition at proposed new N.J.A.C. 5:80-20.5(f) of a \$200.00 administrative fee for the failure of a housing sponsor to timely submit to the Agency the documentation in support of a tenant’s recertification of income. However, it is not expected that the fee will be widely or frequently imposed,

as sponsors will have the capacity to avoid it by complying with the time requirements for submitting the underlying documentation.

### **Federal Standards Statement**

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

### **Jobs Impact**

The proposed amendments are not expected to create or result in the loss of any jobs.

### **Agriculture Industry Impact**

The proposed amendments are not expected to have any impact on the agriculture industry in the State of New Jersey.

### **Regulatory Flexibility Analysis**

The proposed amendments will apply to approximately 250 existing multifamily rental housing projects that are currently in the Agency's portfolio and to any such projects that may be financed by the Agency in the future. The Agency believes that each of those projects is owned and managed by a "small business," as that term is defined in section 2 of the Regulatory Flexibility Act, N.J.S.A. 52:14B-17.

In addition to existing requirements, the proposed amendments will require housing sponsors to (i) obtain certifications of income and assets from tenants (proposed new N.J.A.C. 5:80-20.3(a)7); (ii) file with the Agency, by the fifth day of each month, a copy of each newly-admitted tenant's certification of income and assets obtained during the previous month, together with a certification that the sponsor has reviewed the required documentation provided by the tenant and has verified that the tenant qualifies for residency in his/her/their unit (proposed new N.J.A.C. 5:80-20.3(e)); (iii) maintain for all applicable periods of time, copies of all documentation required to be obtained to support a tenant's application for tenancy (proposed new N.J.A.C. 5:80-20.3(e)); and (iv) file with the Agency, copies of tenant recertifications obtained during the previous calendar year within 45 days of the end of each calendar year or at such other times as may be required by the IRC or IRS regulations (the existing requirement is "at least 30 days prior to the expiration of a family's lease," recodified N.J.A.C. 5:80-20.5(f)), and will require housing sponsors of at least 33.33 percent of all Agency-financed projects to submit the following information for a minimum of 20 percent of all income-restricted units, 20 percent of all units assisted by HUD subsidies, and 20 percent of all market-rate units, as applicable: (1) A copy of the most recent family income certification; (2) all documentation received by the sponsor in support of that certification; and (3) the rent record or rent roll.

The Agency does not expect that any additional professional services will be needed to meet the requirements of the proposed requirements nor does the Agency anticipate that any initial capital costs or annual costs will be incurred by sponsors or by managing agents already utilized by sponsors in complying with them. These compliance requirements are, at most, a limited extension of existing document collection, review, retention, and submission requirements and most, if not all, businesses that deal with the Agency are already equipped – both personnel- and equipment-wise – to meet the proposed requirements. The main thrust of the proposed amendments is to respond affirmatively to the appeal of housing sponsors for faster turn-around times and increased autonomy in the tenant approval and move-in process; the Agency does not expect there to be any adverse economic impact of the

proposed amendments on small businesses and has, consistent with its ongoing statutory obligation to oversee those housing projects it finances, striven to eliminate any such negative impact.

### **Housing Affordability Impact Analysis**

The Agency finds that the proposed amendments would have an insignificant impact on the affordability or average cost of housing, both because the scope of the proposed amendments is narrow (dealing solely with the certification and recertification of the income of applicants and tenants at Agency-financed housing projects) and because there is an extreme unlikelihood that the proposed amendments would evoke a change in the average costs associated with housing. See, generally, the Regulatory Flexibility Analysis above (concluding that proposed rulemaking will have no adverse economic impact on small businesses). Because the proposed amendments would allow tenant move-ins to occur more quickly, it is anticipated to improve access to affordable housing.

### **Smart Growth Development Impact Analysis**

The Agency finds that the proposed amendments would have an insignificant impact upon smart growth development because there is an extreme unlikelihood that the rulemaking would evoke a change in the housing production within Planning Area 1 or 2, or within designated centers, under the State Development and Redevelopment Plan because the proposed amendments pertain to the certification and recertification of the income of applicants and tenants at Agency-financed housing projects.

### **Racial and Ethnic Community Criminal Justice and Public Safety Impact**

The Agency has evaluated the proposed rulemaking and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning juveniles and adults in the State

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

## SUBCHAPTER 20. CERTIFICATION AND RECERTIFICATION OF INCOME

### 5:80-20.2 General applicability

(a) (No change.)

(b) In addition to (a) above, **any additional Federal regulations, if applicable, regarding certification and recertification of income and, as applicable, the Low Income Housing Tax Credit Qualified Allocation Plan, N.J.A.C. 5:80-33, shall also apply** if a unit within a housing project is:

1. [assisted] **Assisted** by subsidies provided by [the United States Department of Housing and Urban Development, (HUD)], such as Section 8 (Housing Assistance Payments) and Section 236 (Interest Reduction Payments) of the National Housing Act of 1937[, or is];

2. [financed] **Financed** pursuant to **former** Section 103(b)(4) of the Internal Revenue Code,] or [is] **current Section 142 of the Internal Revenue Code (or any other applicable provision of the Internal Revenue Code as it relates to tax-exempt housing bonds);**

3. [financed] **Financed** by a loan from the Agency [which] **that** is insured or guaranteed by the United States or any agency thereof[, then any additional Federal regulations, if applicable, regarding certification and recertification of income shall also apply to the unit.]; **or**

4. **With respect to an allocation of Federal low-income housing tax credits, is a low-income unit as defined in Section 42 of the Internal Revenue Code.**

(c) In [such] **the cases described in (b)1 through 4 above**, the [Housing Sponsor] **housing sponsor** shall notify families that they are residing in housing projects [which] **that** are subject to such Federal regulation. In the event there are any inconsistencies between the [regulations] **rules** in this subchapter and [said] **any applicable** Federal regulations, the Federal regulations [shall] prevail.

[(c)] **(d)** (No change in text.)

[(d)] **(e)** “Income-restricted units” means the [percentage of] units in a housing project where occupancy is restricted to low- or moderate-income tenants pursuant to the requirements of the Agency or the Internal Revenue Code and **that** will qualify the housing project for tax-exempt bond financing and/or Federal low-income housing tax credits.

[(e)] **(f)** (No change in text.)

5:80-20.3 Documentation **and review of tenant income qualifications**

(a) Each [family applying] **applicant** for admission to, or **tenant** occupying, an income-restricted unit within a housing project shall provide **to the housing sponsor all required** information and documentation [which verifies] **that will verify**, to the satisfaction of the Agency, gross aggregate family income. [The] **This information and** documentation [which the Agency] shall [require families to submit to housing sponsors may] include, but [is] not [necessarily] **be limited to, the following:**

1. (No change.)

2. Permission for the Agency and [Housing Sponsor] **housing sponsor** to contact the Internal Revenue Service for [additional] information [which is] necessary to verify gross aggregate family income, [and/or] **such as** copies of the first page of [a] **the** family's income tax returns;

3. – 5. (No change.)

6. Confirmation of income from assets (for example, bank statements)[.]; **and**

**7. Certification of income and assets.**

(b) (No change.)

(c) In addition to the documentation required pursuant to this section, any family applying for admission to or occupying a unit within a housing project assisted by subsidies provided by HUD, [such as] **including, but not limited to**, Section 8 and 236, **Federal low-income housing tax credits**, and/or financed pursuant to **former** Section 103(b)(4) **or current Section 142** of the Internal Revenue Code[.], **(or any other applicable provision of the Internal Revenue Code as it relates to tax-**

**exempt housing bonds)** may be required to submit additional documentation as required by Federal regulations regarding certification and recertification of income.

**(d) The housing sponsor shall be responsible for reviewing the required documentation and determining whether the applicant qualifies for residence prior to occupancy of the unit. If the sponsor determines the applicant is qualified, the sponsor may then approve the move-in of the qualified applicant.**

**(e) By the fifth day of each month, the housing sponsor shall file with the Agency, a copy of each newly-admitted tenant's certification of income and assets obtained by the housing sponsor during the previous month. The housing sponsor shall include with each tenant certification, a certification that the housing sponsor has reviewed the required documentation and has verified that the tenant has qualified for residence in the unit. The housing sponsor shall be responsible for maintaining copies of all documentation required by this section for the period of time required under all applicable provisions of State and Federal laws, rules, regulations and for such periods of time as may otherwise be required by the Agency pursuant to the terms of its financing of the housing project.**

**(f) Notwithstanding the provisions of (d) above, the Agency reserves the right to require pre-tenant move-in approval in instances where the Agency has issued to housing sponsors, a notice of noncompliance with this section. In addition, the housing sponsor shall pay to the Agency, an administrative fee of \$200.00 for each certification for which a notice of noncompliance has been issued. Such fee shall be in addition to, and not in lieu of, any default remedies available to the Agency pursuant to its loan and regulatory documents governing the project.**

(a) [For] **Gross aggregate family income shall be calculated in accordance with applicable Federal regulations for** families applying for admission to or occupying [a] units [which is] **that are** assisted by HUD subsidies such as Section 8 and 236 or families occupying [a] units within a housing project financed pursuant to **former** Section 103(b)(4) of the Internal Revenue Code, where such units [is] **are** restricted to families of low and moderate income as defined in Section 103(b)(12)(C), [gross aggregate family income shall be calculated in accordance with applicable Federal regulations] **or pursuant to current Section 142 of the Internal Revenue Code (or any other applicable provision of the Internal Revenue Code as it relates to tax-exempt housing bonds), or, with respect to an allocation of Federal low-income housing tax credits, are low-income units as defined in Section 42 of the Internal Revenue Code.**

(b) For all other families, gross aggregate family income shall be calculated by the total annual income of all family members, from whatever source derived, including but not limited to, pension, annuity, retirement, and social security benefits. However, the calculation for gross aggregate family income shall not include such income as the Agency determines may be excluded. Such excludable income shall include, but is not limited to, the following:

1. Income from a dependent [minor] under 18 years of age, who is not the head of household or spouse of the head of household;

2. – 3. (No change.)

(c) The calculation of gross aggregate family income with regard to (b) above[,] shall include an allowance of \$480.00 for each dependent [minor] under 18 years of age who is not the head of household or spouse of the head of household.

5:80-20.5 Recertification periods and procedures; **annual compliance audit**

(a) Family income shall be recertified on an annual basis for[:

1. Families] **families** occupying [a] units [which is] **that are** assisted by HUD subsidies, such as Section 8 and 236.

**(b) Family income shall be recertified annually or at such times and to the extent required pursuant to the Internal Revenue Code (IRC) for:**

[2.] **1.** [Families] **A family** occupying a unit within a housing project financed under **former** Section 103(b)(4) of the [Internal Revenue Code] **IRC** where such unit is restricted to families of [low and moderate income] **low- and moderate-income** as defined in Section 103(b)(12)(C) **of the IRC[.];**

**2. A family occupying a unit that is a low-income unit in a housing project financed under current Section 142 of the IRC (or any other applicable provision of the IRC as it relates to tax-exempt housing bonds); or**

**3. A family occupying a unit that is a low-income unit pursuant to Section 42 of the IRC.**

[(b)] (c) Family income shall be recertified at least every three years but not more than once each year, for all other families not included within [(a)1] (a) or [2] (b) above.

[(c)] (d) Housing sponsors shall notify each family in writing, not more than 100 days and not less than 91 days prior to expiration of a family's lease, that they must recertify family income. Such notification shall include, but is not necessarily limited to:

1. – 2. (No change.)

3. A statement that families who fail to recertify income [are] **may be** subject to provisions set forth in N.J.A.C. 5:80-20.6,[, such]. **The** statement [including] **must include** a description of [such] **the** provisions **at N.J.A.C. 5:80-20.6;**

4. (No change.)

[(d)] (e) After [recertification] **families have recertified**, housing sponsors shall calculate [a] **the** 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. 5:80-20.8, 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) The Agency shall review the recertification calculations and supporting documents and notify the Housing Sponsor of its approval or any adjustments to the calculations within 30 days of receipt. If the review results in an adjustment which will decrease or further decrease a family's HUD subsidy or impose or increase a surcharge, Housing Sponsors shall provide the family with an additional 30 days notice prior to implementing such adjustment.]

**(f) The housing sponsor must file with the Agency copies of the recertifications obtained by the housing sponsor during the previous calendar year within 45 days following the end of each calendar year, or at such other times as may be required by the IRC or IRS regulations, if applicable. If the housing sponsor fails to timely submit the documentation required pursuant to this section, the housing sponsor shall pay to the Agency an administrative fee of \$200.00 for each certification for which a notice of noncompliance has been issued. Such fee shall be in addition to, and not in lieu of, any default remedies available to the Agency pursuant to its loan and regulatory documents governing the project.**

[(f)] **(g)** Failure of the housing sponsor to comply with the time requirements in [(c)and] (d) **and (e)** above shall not relieve families of their obligation to complete their recertification within 30 days of receiving notice to recertify.

[(g)] **(h)** (No change in text.)

**(i) On an annual basis, and in addition to the other requirements of this subchapter, housing sponsors of at least 33.33 percent of all Agency-financed housing projects subject to this subchapter shall submit to the Agency for compliance review, the following information for a minimum of 20 percent of all income-restricted units, 20 percent of all units assisted by HUD**

subsidies, and 20 percent of all market-rate units, as applicable (projects and units shall be identified by the Agency):

1. A copy of the most recent family income certification;
2. The documentation the housing sponsor has received to support the certification; and
3. The rent record/roll.

5:80-20.6 Failure to recertify

(a) Any family [which] **that** fails to recertify income after notification pursuant to this subchapter shall be subject to the following:

1. (No change.)

2. [For all other families, they] **Families occupying market-rate units** shall be subject to imposition of surcharges pursuant to N.J.A.C. 5:80-20.8[,] and may also be subject to eviction pursuant to N.J.A.C. 5:80-20.9.

(b) Families subject to the provisions in (a) above, upon satisfactory completion of recertification, may have subsidies restored, provided said subsidies are available, or may, with Agency approval, have surcharges removed. Surcharges paid to the Agency for failure to recertify, as required by N.J.A.C. 5:80-20.8(d), may be returned, with Agency approval, if satisfactory completion of recertification is

made within six months of the notice to recertify. Neither the [agency] **Agency** nor the housing sponsor is responsible for the return of surcharges paid to the municipality.

#### 5:80-20.7 Adjustments in tenancy

(a) (No change.)

(b) [For all other families,] **Where**, upon recertification, [those whose] **a family is occupying a market-rate unit, and that family's** income is in excess of the maximum income limit under N.J.A.C. 5:80-8.2, **the family** may be subject to surcharges pursuant to N.J.A.C. 5:80-20.8[,] and may also be subject to eviction pursuant to N.J.A.C. 5:80-20.9.

(c) Upon recertification, [Housing Sponsors] **housing sponsors** must [assure] **ensure** that the project contains the [required] number of [low and moderate income] **low- and moderate-income** families as required by N.J.A.C. 5:80-8.3.

#### 5:80-20.9 Eviction

(a) – (b) (No change.)

(c) Prior to eviction under this section, [Housing Sponsors] **housing sponsors** must provide families with written notice at the end of the [six month] **six-month** period indicating that eviction procedures will begin unless they recertify within 10 days of the notice and show that family income has decreased below the maximum income limit. Families who fail to recertify within the 10 days or **who** upon

recertification are in excess of the maximum income limit may be evicted by following the provisions of N.J.S.A. 2A:18-61.1 et seq.

(d) (No change.)

...