

COMMUNITY AFFAIRS

NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

New Jersey Housing and Mortgage Finance Agency Prepayment Rules

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

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

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

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

Proposal Number: PRN 2019-031.

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 and terms and conditions of mortgage loans made by the Agency and 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. N.J.A.C. 5:80-5.10 (hereinafter, “prepayment rules”), was, together with other rules in N.J.A.C. 5:80-5, adopted in 1984 to “regulat[e] the transfer of ownership interests in housing projects financed by the Agency and its predecessors, the Housing Finance Agency (HFA) and the Mortgage Finance Agency (MFA).” *Lower Main St. Assocs. v. New Jersey Hous. and Mortgage Finance Agency*, 114 N.J. 226, 228 (1989) (citing 15 N.J.R. 2090-95). The prepayment rules specifically govern the prepayment of Agency mortgages prior to the expiration of their terms. The Agency is proposing the following amendments to the prepayment rules:

1. The Agency proposes to amend N.J.A.C. 5:80-5.10(b) to replace the term “Agency” with “Agency’s Executive Director, Deputy Executive Director, Chief Financial Officer, or Chief of Legal and Regulatory Affairs.”

2. The Agency proposes to amend N.J.A.C. 5:80-5.10(b)1 to replace the 20-year “lockout” period for the prepayment of Agency mortgages with a 15-year period and to insert a provision to expressly include among those conditions to which a housing sponsor must agree to be bound in order for prepayment to be approved, the continued applicability of the Agency’s return on equity provisions, except as modified by N.J.A.C. 5:80-5.10(b)7 (which allows the alternative of funding an acceptable operating reserve account in lieu of continuing return on equity restrictions). In addition to the continuation of the return on equity restrictions, the provisions related to tenant income eligibility, tenant selection, rent increases, certification/recertification of income, affirmative fair housing marketing, and

transfer of ownership interests will continue to be applicable in their entirety to the sponsor, project, and tenants until the original expiration date of the original mortgage loan. The reduction in the lock-out period recognizes that almost all projects recently financed by the Agency also received awards of low-income housing tax credits. The tax benefits to the limited partners who have invested in those projects are virtually eliminated after the initial 15-year tax-credit compliance period ends. The limited partners, therefore, frequently seek to exit the partnership pursuant to an agreement with the general partner for a payout amount. General partners have experienced difficulty in raising the money to fund those buyouts without the ability to refinance their projects, which they are unable to do with Agency mortgages still in place. The proposed amendment would give project sponsors the ability to refinance 15 years after the closing on the Agency loan, which is when the funds are needed. Additionally, the proposed amendment would allow housing sponsors to take advantage of possibly more favorable market conditions five years sooner than is presently the case.

3. The Agency proposes to amend N.J.A.C. 5:80-5.10(b)2 to insert a phrase to allow utilization of an Agency-approved construction funding account, as an alternative to an Agency-controlled escrow account, to ensure the funding of necessary repairs or improvements to a project following prepayment of the Agency mortgage.

4. The Agency proposes to amend N.J.A.C. 5:80-5.10(b)5 to delete the word “initially,” to clarify that the requirements set forth in N.J.A.C. 5:80-5.10(b)5i, ii, and iii will continue throughout the original mortgage term.

5. The Agency proposes to add new N.J.A.C. 5:80-5.10(b)8 to provide that any additional mortgage financing sought to be placed on the project during the Agency’s continuing statutory and regulatory oversight period is subject to Agency staff’s prior determination that such financing will not impact the project’s continued financial feasibility throughout the remainder of that period. This proposed amendment would codify the Agency’s existing practice.

6. The Agency proposes to amend N.J.A.C. 5:80-5.10(c)3 to add a phrase to include a new subsidy to the project that will maintain the project’s financial viability throughout the remainder of the

original mortgage term as being acceptable to replace reduced or terminated subsidies where such reduction or termination is imposed by HUD or other issuing authority.

7. The Agency proposes new N.J.A.C. 5:80-5.10(g) to provide for a \$5,000 non-refundable processing fee payable to the Agency to accompany any prepayment request, other than when the prepayment is to occur simultaneously with a transfer of ownership necessitating a full review.

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 proposed amendment at N.J.A.C. 5:80-5.10(b)1 to replace the existing 20-year prepayment “lockout” period with a 15-year period is user-friendly and intended, with appropriate safeguards, to preserve Agency-financed housing projects as affordable for the original mortgage terms and to attract developers to take advantage of Agency financing, and, thereby, increase the supply of safe, adequate, and affordable housing in the State in furtherance of the Agency’s statutory mission. Together with the proposed amendments at N.J.A.C. 5:80-5.10(b), (b)2, (b)8, and (c)3, the rulemaking would also allow housing sponsors to take advantage of more favorable borrowing conditions in the marketplace up to five years sooner than is presently the case, while preserving housing projects financed by the Agency as affordable for the original terms of the mortgages. The Agency anticipates that these proposed amendments will make Agency financing products more competitive and, thus, increase opportunities for the development of affordable housing in the State.

Economic Impact

The proposed amendment at N.J.A.C. 5:80-5.10(b)1 to expressly include the continued applicability of the Agency’s return on equity provisions among those conditions to which a housing sponsor must agree to be bound in order for prepayment to be approved is intended to help ensure

project financial viability after prepayment of an Agency loan by preventing the sponsor from taking excessive funds out of the project in the guise of return on equity.

The proposed amendment at N.J.A.C. 5:80-5.10(b)2 to allow funding of an Agency-approved construction funding account as an alternative to an Agency-controlled escrow account is user-friendly, intended to allow housing sponsors to have greater control over invested funds while ensuring that those funds are available to make necessary repairs or improvements to a project following prepayment of the Agency mortgage.

The proposed amendment at N.J.A.C. 5:80-5.10(g) provides for payment of a \$5,000 non-refundable processing fee to the Agency for each prepayment request, which fee is necessary to compensate the Agency for the time and expense incurred by staff in reviewing such requests. The fee is deemed not applicable where a simultaneous transfer of ownership request necessitating a full review is made. The Agency does not anticipate that the fee will dissuade any Agency mortgagor from requesting approval to prepay a mortgage, since such mortgages typically have multi-million dollar balances.

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 Statement

The Agency finds that the proposed amendments will not impose reporting, recordkeeping, or other compliance requirements on small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-17 et seq., because the scope of the proposed rulemaking is limited to the prepayment of Agency mortgages. While certain reporting, recordkeeping, and other compliance requirements for Agency mortgagors are provided in existing Agency rules, the proposed amendments do not expand or enhance any of those requirements.

Housing Affordability Impact Analysis

The Agency finds that the proposed amendments would impose an insignificant impact on the affordability and average cost of housing, both because the scope of the proposed amendments is narrow (dealing solely with the prepayment of Agency mortgages) and because there is an extreme unlikelihood that the proposed amendments would evoke a change in the average costs associated with housing.

Smart Growth Development Impact Analysis

The Agency finds that the proposed amendments would impose 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 Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan, because the proposed amendments concern the prepayment of Agency mortgages.

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 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] **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. Sponsors of projects may prepay the mortgage at any time following the [20-year] **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-7b; 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, [and] transfer of ownership interests, **and return on equity (except as modified by (b)7 below)** shall continue to be applicable in their entirety to the sponsor, project and tenants residing therein until the original expiration date of the original mortgage loan. Such prepayment shall also be conditioned upon the agreement of the sponsor to pay the servicing fees and charges currently being paid by the sponsor 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] **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-[7b]7.b, the Agency will [initially] require the following:

i. – iii. (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.

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

1. – 2. (No change.)

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

(d) – (f) (No change.)

(g) All prepayment requests shall be accompanied by a non-refundable processing fee of \$5,000 payable to the Agency, except that such prepayment processing fee shall not be applicable where the prepayment is to occur simultaneously with a transfer of ownership necessitating a full review as set forth in this subchapter.