

COMMUNITY AFFAIRS

NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

Proposed Repeal and New Rule: N.J.A.C. 5:80-5.5

Proposed Amendments: N.J.A.C. 5:80-5.1, 5.2, 5.4, and 5.6 through 5.11

Proposed Repeal: N.J.A.C. 5:80-5.3

Authorized By: New Jersey Housing and Mortgage Finance Agency, Melanie R. Walter,
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 2025-052.

Submit written comments by July 18, 2025, to:

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The agency proposal follows:

Summary

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, among

other things, 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 rules of the Agency are codified at N.J.A.C. 5:80. The rules at N.J.A.C. 5:80-5, Transfer of Ownership Interests, govern transfers of ownership interests and, as amended herein, the prepayment of Agency mortgages with respect to Agency-financed housing projects. The Agency is proposing amendments, repeals, and a new rule in this subchapter. Throughout the subchapter, amendments are proposed for style, grammar, and syntax. These proposed amendments will not be discussed further in this Summary. Additional amendments are proposed as follows.

N.J.A.C. 5:80-5 Heading

The Agency proposes to amend the subchapter heading of N.J.A.C. 5:80 from “Transfer of Ownership Interests” to “Transfer of Ownership Interests and Prepayment of Agency Mortgage” to more accurately and fully express the scope of the proposed amendments, repeals, and new rule in the subchapter.

N.J.A.C. 5:80-5.1 Definitions

1. The Agency proposes to add a definition of “buyer,” as an analogy to the existing definition of “seller.”
2. The Agency proposes to amend the definition of “closing” to express the generally perceived meaning of the term and to improve syntax.
3. The Agency proposes to add a definition of “closing date” to express the meaning that is currently set forth in the misnamed definition of “closing.”

4. The Agency proposes to add a definition of “control” to provide a standard for assessing the person or entity having the authority to manage the operations of an Agency-financed housing project.

5. The Agency proposes to delete the definition of “conversion,” as the term is obsolete with respect to Agency-financed housing projects and no longer appears within the subchapter.

6. The Agency proposes to add a definition of “full review” to express the extent of review by the members of the Agency of a proposed transfer of an ownership interest in an Agency-financed housing project, as contemplated at N.J.A.C. 5:80-5.2(b)1 through 4.

7. The Agency proposes to add a definition of “maximum allowable return” to express the formula used by the Agency in determining the ceiling on allowable profit upon the transfer of ownership of a housing project from one person or entity to another.

8. The Agency proposes to add a definition of “modified review” to express review by certain designated Agency staff of a proposed transfer of an ownership interest in an Agency-financed housing project, as contemplated at N.J.A.C. 5:80-5.2(b)5 and (c).

9. The Agency proposes to amend the definition of “secondary financing” by substituting “may” for “will” to be consistent with the terminology at N.J.A.C. 5:80-5.7.

10. The Agency proposes to amend the definition of “seller” to correct an omission in the existing term and to clearly express the full extent and limitation of the term.

N.J.A.C. 5:80-5.2 General Policy

11. The Agency proposes to amend the heading of N.J.A.C. 5:80-5.2 from “General policy” to “General policy and applicability” to express the proposed combination of N.J.A.C. 5:80-5.2, General policy, and 5.3, Applicability.

12. The Agency proposes to amend N.J.A.C. 5:80-5.2(a) to express the applicability of Subchapter 5 to transfers of ownership interests in Agency-financed housing projects and to delete the existing, but obsolete, requirement that all proposed changes in such ownership interests be reviewed and approved, in writing, by the Executive Director of the Agency.

13. The Agency proposes to amend N.J.A.C. 5:80-5.2(b) to delete the meaningless word “specific” and to modify the transfer of ownership circumstances that require approval by the members of the Agency Board (Board). Proposed new N.J.A.C. 5:80-5.2(b)1 would clarify the meaning of a transfer of title and relax the standard for a qualifying transfer from the existing 90-or-more percent of the ownership interests within a five-year period, as currently set forth at N.J.A.C. 5:80-5.5(a)3 (which is proposed to be deleted), to 100 percent of the ownership interests within a one-year period. Proposed new N.J.A.C. 5:80-5.3(b)2 would recognize the applicability of the requirement for Board approval to changes in managing members, as well as general partners, as currently set forth at N.J.A.C. 5:80-5.5(a)4, which is proposed to be deleted. Proposed new N.J.A.C. 5:80-5.2(b)3 would raise the threshold for the requirement of Board approval for transfers of corporate stock from the existing 10 percent, as currently set forth at N.J.A.C. 5:80-5.2(b), to 50 percent of the corporate stock of a project owner and where such transfer constitutes a change in control. Proposed new N.J.A.C. 5:80-5.2(b)4 is a catch-all provision that would clarify the applicability of N.J.A.C. 5:80-5.2(b) to any other proposed transfer involving a change of control within a project owner. Proposed new N.J.A.C. 5:80-5.2(c) would negate the need for approval by the Agency Board for transfers between a principal within a project owner and a fully owned or controlled entity owned by the principal, and would allow for a relaxed approval process pursuant to proposed new N.J.A.C. 5:80-5.2(d).

14. The Agency proposes new N.J.A.C. 5:80-5.2(d) to exempt certain transfers of interests within a project owner from the requirement of approval by the Agency Board to approval by the Executive Director, or other specified Agency personnel, where such transfers do not result in a change in control.

15. The Agency proposes new N.J.A.C. 5:80-5.2(e) to allow certain transfers of ownership to be made without prior Agency approval, but to require that notification be provided to the Agency Director of Regulatory Affairs within 90 days following the transfer. The eligible transfers are transfers of interest within an owner entity of less than 50 percent of the ownership interest that do not constitute a change of control of the owner entity (N.J.A.C. 5:80-5.2(e)1); transfers by investor limited partners or members to affiliate entities in connection with the syndication of low-income housing tax credits (N.J.A.C. 5:80-5.2(e)2); and testamentary transfers that do not involve a change in control of a housing sponsor (N.J.A.C. 5:80-5.2(e)3).

16. The Agency proposes new N.J.A.C. 5:80-5.2(f) to address transfers of ownership within housing projects financed pursuant to the Agency's Conduit Financing Program. The proposed new subsection is intended to relax the Agency's traditional transfer of ownership requirements in light of the Agency's less extensive oversight of conduit projects compared with its oversight of projects financed with conventional Agency loan programs. Proposed new N.J.A.C. 5:80-5.2(f)1 would provide for prior written approval by the Executive Director, or other specified Agency personnel, rather than approval by the Agency Board, for transfers that satisfy one or more of the elements at proposed new N.J.A.C. 5:80-5.2(b)1 through 4. Additionally, the requirements at N.J.A.C. 5:80-5.4(c) and (d) would not be applicable, other than to the extent required by the holder of the mortgage instrument or equivalent interest and as to any fees due to the Agency and/or the bond trustee. Proposed new N.J.A.C. 5:80-5.2(f)2 would provide that all

other transfers of ownership interests may be made without prior Agency approval, but would require notification to the Agency Director of Regulatory Affairs within 90 days following such transfer. Proposed new N.J.A.C. 5:80-5.2(f)3 would provide that the Agency may require satisfactory proof that the mortgage holder, credit enhancer, tax credit syndicator, bond trustee, and/or other equivalent parties with an interest in the project have approved the transfer.

17. The Agency proposes to recodify existing N.J.A.C. 5:80-5.2(c), (d), and (e) as (g), (h), and (i), respectively, and at recodified N.J.A.C. 5:80-5.2(h) to delete the term “financial sufficiency” as a requirement for a buyer, inasmuch as project owners are required to be single-purpose entities and, thus, have no financial history.

18. The Agency proposes new N.J.A.C. 5:80-5.2(h) as a relocation of existing N.J.A.C. 5:80-5.3(a)4.

19. The Agency proposes new N.J.A.C. 5:80-5.2(k) as a relocation of existing N.J.A.C. 5:80-5.3(c), with amendments to improve syntax.

N.J.A.C. 5:80-5.3 Applicability

20. The Agency proposes to repeal existing N.J.A.C. 5:80-5.3, as its remaining applicable provisions are recodified at N.J.A.C. 5:80-5.2, as discussed above.

N.J.A.C. 5:80-5.4 Procedure

21. The Agency proposes to amend N.J.A.C. 5:80-5.4(a) by adding a phrase to provide that the buyer of an Agency-financed project or an ownership interest therein may, with the consent of the seller, initiate the approval process by submitting a written request for such approval to the Executive Director of the Agency. The Agency also proposes to delete the final two sentences of subsection (a).

22. The Agency proposes to amend N.J.A.C. 5:80-5.4(b) to eliminate the requirement that seller's counsel submit an affidavit with the request for a transfer or sale and to clarify that it is only relevant documents that must be submitted to the Agency and that an opinion of the buyer's attorney may be required, not merely requested, by the Agency.

23. The Agency proposes to delete N.J.A.C. 5:80-5.4(c).

24. The Agency proposes to amend recodified N.J.A.C. 5:80-5.4(c) to better define those instances in which transfers of ownership interests will necessitate restoration of the underlying housing project to sound physical condition and to update the report(s) upon which such restoration must be based. The proposed amendments would also require that a source of funds adequate to complete the restorative work be provided prior to or on the closing date and that a guarantee may be required by the Agency.

25. The Agency proposes to amend recodified N.J.A.C. 5:80-5.4(d) to clarify the Agency's requirements for those transfers for which projects must meet reserve funding requirements. Additionally, the proposed amendments would clarify that tax and insurance reserves for such projects must be fully funded at the time of closing and that project repair and replacement reserves must be funded to an acceptable level at the time of closing in accordance with Agency funding requirements, thereby eliminating the impractical 12-months-from-date-of-transfer timeframe.

26. The Agency proposes to amend recodified N.J.A.C. 5:80-5.4(f), so as to require modifications of the Agency mortgage upon an assignment and assumption thereof, only as may be determined necessary by the Agency and to specify that the objective of any such modifications is to enhance the Agency's right to enforce this subchapter against the assignee.

N.J.A.C. 5:80-5.5 Scope of Review

27. The Agency proposes to repeal existing N.J.A.C. 5:80-5.5 and replace it with references to those transfers for which a full review is required (new subsection (a)) and those transfers for which a modified review is required (new subsection (b)).

N.J.A.C. 5:80-5.6 Required Documents

28. The Agency proposes to amend N.J.A.C. 5:80-5.6(a)3 to recognize that owner entities are not limited solely to partnerships.

29. The Agency proposes to amend N.J.A.C. 5:80-5.6(b) to clarify those documents that may be required for a full review.

30. The Agency proposes new N.J.A.C. 5:80-5.6(b)8 to express that the submission of documentation evidencing the purchase price on certain transfers may be required for a full review.

N.J.A.C. 5:80-5.7 Secondary Financing

31. The Agency proposes to replace existing N.J.A.C. 5:80-5.7(a)4, which provides that in the event of a declaration of default on any mortgage held by the Agency, all secondary financing debt and rights thereunder to rent or other project income or assets are to be assigned to the Agency. The Agency proposes to replace the paragraph with a new provision reflecting current Agency practice of not allowing secondary financing for transfers within an existing owner to be secured by a lien on the project or of allowing project funds to be applied toward payments on the secondary financing debt, unless such payments are paid from permitted return on equity distributions.

N.J.A.C. 5:80-5.8 Return on Equity

32. The Agency proposes to amend the heading of N.J.A.C. 5:80-5.8 from “Return on equity” to “Return on equity and maximum allowable return upon transfer of ownership of a

project pursuant to N.J.A.C. 5:80-5.2(b)1” to reflect the applicability of N.J.A.C. 5:80-5.2(b)1 to limitations on maximum allowable return.

33. The Agency proposes to amend N.J.A.C. 5:80-5.8(a) to express the rate of return on equity to which a for-profit buyer is entitled where the seller is a nonprofit entity without a rate of return. The Agency proposes to further amend the subsection to cross-reference N.J.A.C. 5:80-5.10(b), which governs a buyer’s return on equity distribution where the sale or other disposition of a project includes a prepayment of the Agency mortgage.

34. The Agency proposes to delete N.J.A.C. 5:80-5.8(b), which expresses the limitation of a seller’s return on equity and paragraph (b)1, which expresses the return on equity a seller is entitled to upon the sale or other disposition of a project. The Agency also proposes to delete the first sentence of existing N.J.A.C. 5:80-5.8(b)2, which duplicatively expresses the limitation of a seller’s return on equity upon the sale or other disposition of a project or any interest therein. The Agency further proposes to delete N.J.A.C. 5:80-5.8(b)2i, ii, and iii, which identify amounts that are paid, escrowed, or assumed upon transfer and, thus, do not constitute return on equity. The Agency proposes to replace the first sentence at N.J.A.C. 5:80-5.8(b)2 to express the maximum allowable return (MAR), which a seller may realize, and amounts that may be deducted by the Agency from that allowable return. The proposed new language would also provide for the engagement by the Agency of an outside-party reviewer, where applicable, of an appraisal that may be submitted by a seller as part of its MAR calculation and the method for payment by the seller of the cost of the review. The Agency further proposes to codify the second sentence of existing N.J.A.C. 5:80-5.8(b)2 as subsection (c) and to amend the subsection to improve clarity and syntax; to refer to the newly defined term “MAR” and the potential deductions therefrom to codify Agency practice and as expressed at N.J.A.C. 5:80-5.8(b), as amended; to reflect that

amounts in excess of the MAR, after deductions, may be paid into new programs that may be established by the Agency, as well as into the Multifamily Rental Investment Program; and, at existing N.J.A.C. 5:80-5.8(b)3 (which is proposed to be codified as the final two sentences at N.J.A.C. 5:80-5.8(c)), to properly cite to the repealed New Jersey Limited Dividend Law. Finally, the Agency proposes to delete existing N.J.A.C. 5:80-5.8(b)4, as it is proposed to be relocated to the final sentence at N.J.A.C. 5:80-5.8(a).

N.J.A.C. 5:80-5.9 Required Payment and Repayments

35. The Agency proposes to amend the heading at N.J.A.C. 5:80-5.9 from “Required payment and repayments” to “Fees and repayments” to better express the content of the section.

36. The Agency proposes to amend N.J.A.C. 5:80-5.9(a) to delete the inaccurate phrase “at closing.”

37. The Agency proposes to amend N.J.A.C. 5:80-5.8(a)1 to require a single, nonrefundable fee of \$7,500 for a full review or \$2,500 for a modified review, which fee can be submitted by either the buyer or seller, and to eliminate the existing requirement of payment of a nonrefundable fee of \$5,000 by the buyer.

38. The Agency proposes to delete existing N.J.A.C. 5:80-5.9(a)2, which provides for payment to the Agency of a processing fee in an amount to be determined by the Agency, as being vague and unnecessary.

39. The Agency proposes to amend recodified N.J.A.C. 5:80-5.9(a)2 to clarify that for certain specified transfers, any supplemental financing must be paid at closing if the Agency determines the continued existence of the financing jeopardizes the financial viability of the project, which reverses the previous standard whereby the supplemental financing had to be paid

unless the Agency determined its continuation would not jeopardize the financial viability of the project.

N.J.A.C. 5:80-5.10 Prepayment

40. The Agency proposes to amend N.J.A.C. 5:80-5.10(b) to improve syntax and to update the identity of Agency personnel who are authorized to approve mortgage prepayments.

41. The Agency proposes to amend N.J.A.C. 5:80-5.10(b)2 to update the cross-reference.

42. The Agency proposes to amend N.J.A.C. 5:80-5.10(b)4 to omit the requirement to prepay other State agency financing upon the prepayment of an Agency loan.

43. The Agency proposes to delete N.J.A.C. 5:80-5.10(e), as the New Jersey Urban Multi-Family Production Program no longer exists.

44. The Agency proposes new N.J.A.C. 5:80-5.10(g) to codify its current regulatory interpretation and practice with regard to continuing prepayment restrictions on projects receiving Agency refinancing through the Conduit Financing Program.

45. The Agency proposes new N.J.A.C. 5:80-5.10(h) to express that, except with regard to the requirements applicable to existing Agency-financed housing projects that refinance pursuant to the Conduit Financing Program, prepayment of mortgage loans financed pursuant to the Conduit Financing Program are governed by the terms of the Conduit Financing loan and are not otherwise subject to the requirements at N.J.A.C. 5:80-5.10.

N.J.A.C. 5:80-5.11 Approval and Disclosure Requirements

46. The Agency proposes to amend N.J.A.C. 5:80-5.11(a) to reflect current industry practice by better ensuring inclusivity.

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

Social Impact

The proposed amendments, repeals, and new rule are principally intended to clarify, simplify, and update the Agency's rules governing transfers of ownership interests, including sales of projects and transfers of interests within entities sponsoring Agency-financed housing projects, by reducing the regulatory burdens currently associated with such transfers, and by clarifying that affordability and other Agency oversight controls remain in place on certain existing Agency-financed housing projects following prepayment of the existing mortgage and refinancing provided through the Agency's Conduit Financing Program. Additionally, the proposed amendments, repeals, and new rule are intended to relax the Agency's current transfer of ownership requirements and Agency review as to housing projects financed pursuant to the Agency's Conduit Financing Program. It is, thus, anticipated that the proposed amendments, repeals, and new rule will encourage developers and their funding sources to participate in the production of affordable housing in the State and, therefore, enhance the availability of such much-needed housing.

Economic Impact

The proposed amendments, repeals, and new rule are intended to clarify, simplify, and expedite the processes by which affordable housing sponsors obtain Agency review and approval of transfers of ownership interests and to adjust the fees associated with such reviews and approvals. The changes would also clarify the application of the rules to Agency-financed housing projects that prepay their existing Agency mortgages and refinance through the Agency's Conduit Financing Program, to ensure that certain Agency oversight controls, including those with respect to affordability, remain in place on such projects for the required period of time after prepayment. Additionally, they are intended to eliminate the current restrictions on maximum allowable return on the seller's equity upon the sale of less than 100 percent of the ownership interests within a

sponsor entity, making the production of affordable housing more attractive to developers. The rulemaking is, therefore, not expected to result in any material negative economic impact.

Federal Standards Statement

The Agency finds that the proposed amendments, repeals, and new rule do not exceed any known standards or requirements imposed by Federal law. Accordingly, a Federal standards analysis is not required.

Jobs Impact

The proposed amendments, repeals, and new rule are not expected to create or result in the loss of any jobs.

Agriculture Industry Impact

The proposed amendments, repeals, and new rule are not expected to have any impact on the agriculture industry in the State.

Regulatory Flexibility Statement

The proposed amendments, repeals, and new rule are principally intended to clarify, simplify, and expedite the processes by which sponsors of affordable housing projects obtain approval or review of transfers of ownership interests, including sales of projects and internal transfers of ownership within sponsor entities. Among the proposed changes would be to modify or eliminate current requirements for Agency preapproval of certain transfers that do not affect control of sponsors' affordable housing projects, establish a more relaxed review and approval process for housing projects financed through the Agency's Conduit Financing Program, and clarify the requirements for prepayment of Agency mortgage loans made pursuant to the Conduit Financing Program. The Agency finds that the proposed amendments, repeals, and new rule will

not impose any material additional reporting, recordkeeping, or other compliance obligations on current or prospective sponsors of affordable housing projects, regardless of their classification as a small business pursuant to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Housing Affordability Impact Analysis

The Agency finds that the proposed amendments, repeals, and new rule would not impose any impact on the average cost of housing and that they may, in fact, facilitate the production of affordable housing by minimizing the burdens associated with certain transfers of interest, by eliminating the maximum allowable return requirements for certain transfers, and by clarifying that existing Agency-financed housing projects that refinance through the Agency's Conduit Financing Program, particularly with short-term loans, maintain affordability controls for significant periods of time following prepayment of the existing Agency mortgage.

Smart Growth Development Impact Analysis

The Agency finds that the proposed amendments, repeals, and new rule would impose no more than an insignificant impact on smart growth development because there is an extreme unlikelihood that the proposed amendments, repeals, and new rule, which are principally intended to clarify, simplify, and expedite the processes by which sponsors of affordable housing projects obtain review and approval of transfers of ownership interests and to eliminate the maximum allowable return limitation in certain cases, would evoke a negative change in housing production within Planning Areas 1 or 2, or within designated centers, pursuant to the State Development and Redevelopment Plan.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The Agency finds that the proposed amendments, repeals, and new rule will have no impact on pretrial detention, sentencing, probation, or parole policies concerning juveniles and adults in the State. Accordingly, no further analysis is required.

Full text of the rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 5:80-5.3 and 5.5.

Full text of the proposed amendments and new rule follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 5. TRANSFER OF OWNERSHIP INTERESTS AND PREPAYMENT OF AGENCY MORTGAGE

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:

“Buyer” means an individual or entity that acquires, proposes to acquire, or contracts to acquire a housing project financed in whole, or in part, by a loan from the Agency, or any direct or indirect interest therein, from a seller.

...

“Closing” means the [date on] final exchange by which title or other interest in [the] **a** housing project is transferred from **a** seller to **a** buyer.

[**“Conversion” means transfers involving sale of the housing project owned by a nonprofit corporation to an ownership entity having profit motivated status such as a limited partnership.**]

“Closing date” means the date on which a closing occurs.

“Control” means the ability, directly or indirectly, of any entity or person, including, but not limited to, a managing member or general partner, to direct the business or financial affairs and policies of a housing sponsor and/or to direct the day-to-day operations of a housing project financed by the Agency.

“Full review” means a review by the members of the Agency Board of a proposed transfer of an ownership interest in an Agency-financed housing project as set forth at N.J.A.C. 5:80-5.2(b)1, 2, 3, and 4.

“Maximum allowable return” means the maximum amount that a housing sponsor or any of its partners, members, shareholders, or other owners may realize as profit upon the sale or other disposition of a housing project. Maximum allowable return consists of the following:

1. The seller’s equity in the project. For purposes of determining maximum allowable return, the seller’s equity at closing is the greater of:

i. The seller’s existing equity base previously established by the Agency pursuant to N.J.A.C. 5:80-3.3 for the purpose of determining a permitted return on equity distribution; or

ii. An amount equal to the appraised value of the project as determined by an independent appraisal acceptable to Agency staff, minus all existing mortgage debt, as determined immediately prior to the closing of the transfer of ownership;

2. The seller’s accrued, but undistributed, return on equity, which amount is determined based upon the applicable equity base and rate of return at the time(s) such return was earned but not distributed; and

3. The seller's balance, immediately prior to the closing of the transfer of ownership, of the project's tax, insurance, and repair and replacement reserves.

"Modified review" means a review by certain designated Agency staff of a proposed transfer of an ownership interest in an Agency-financed housing project as set forth at N.J.A.C. 5:80-5.2(b)5 and (c).

...

"Secondary financing," both secured and unsecured, means any portion of the purchase price that is not paid in cash proceeds or by assuming an existing indebtedness. Secondary financing [will] **may** be permitted as set forth [in] **at** N.J.A.C. 5:80-5.7.

"Seller" means the existing mortgagor and owner of [the] **a** housing project [having] **financed in whole, or in part, by** a loan from the Agency, **or any individual or entity owning any interest therein, either directly or indirectly, that sells, contracts to sell, or proposes to sell the project or any interest therein to a buyer.**

5:80-5.2 General policy **and applicability**

(a) [To be effective, all proposed changes in] **The requirements of this subchapter apply to transfers of** ownership interests of [an] Agency-financed housing projects [must receive the prior review and written approval of the Executive Director] **or within their housing sponsor entities.**

(b) The [prior specific] review and approval of the [Agency] members **of the Agency Board** is required if a proposed [change] **transfer of ownership** involves [a general partner, or shareholder with more than a 10 percent interest, or where the change involves a transfer of control of the housing sponsor.] **any of the following:**

1. A transfer of title to the project, whether by sale, merger, or otherwise, or by the aggregate transfer of 100 percent of the ownership interests within the housing sponsor within a one-year period;

2. A change in managing general partners or managing members or where there is a change in control of a general partner or managing member;

3. A transfer of 50 percent or more of the corporate stock of a project owner that results in a change in control; or

4. Any other change that involves a change in control of the project owner.

(c) For proposed transfers at (b)2 and 3 above, where a change involves a transfer of an existing principal's interest within a project owner or a portion thereof to an entity fully owned or controlled by that principal, or where an entity fully owned or controlled by a principal transfers its interest or portion thereof to that principal, the Agency may approve the transfer in accordance with (d) below and process the transfer as a modified review.

(d) The Agency's Executive Director, Chief Financial Officer, Chief of Legal and Regulatory Affairs, or Chief of Multifamily Programs may approve a change of non-managing general partners, non-managing members, limited partners, or a stock transfer, where the foregoing constitutes a change of a 50 percent or greater interest, but not a change in control.

(e) The following transfers may be made without prior Agency approval, but require that notification be provided by the housing sponsor to the Agency's Director of Regulatory Affairs within 90 days following the transfer:

1. A change of non-managing general partners, non-managing members, limited partners, or stock ownership of the housing sponsor, where the foregoing constitutes a change of less than a 50 percent interest and does not constitute a change in control of the housing sponsor;

2. A transfer by investor limited partners or members of the housing sponsor to affiliate entities in connection with the syndication of low-income housing tax credits; and

3. Testamentary transfers that do not involve a change in control of the housing sponsor.

(f) Transfers of ownership involving projects financed pursuant to the Agency's Conduit Financing Program may be approved as follows:

1. Proposed transfers of ownership that meet the elements set forth at (b)1, 2, 3, or 4 above may be approved by prior written approval of the Agency Executive Director, Chief Financial Officer, Chief of Legal and Regulatory Affairs, or Chief of Multifamily Programs. Any such proposed transfers are also subject to a full review pursuant to N.J.A.C. 5:80-5.5, except the requirements at N.J.A.C. 5:80-5.4(c) and (d) shall not apply other than to the extent required by the holder of the mortgage instrument or equivalent interest and as to any fees due to the Agency and/or the bond trustee.

2. All other transfers of ownership interests may be made without prior Agency approval, but require that notification be provided by the housing sponsor to the Agency's Director of Regulatory Affairs within 90 days following the transfer.

3. Notwithstanding the foregoing, the Agency may require satisfactory proof that the mortgage holder, credit enhancer, tax credit syndicator, bond trustee, and/or other equivalent parties with an interest in the project have approved the transfer.

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

[(d)] **(h)** The Agency is under no obligation to approve the transfer or resale, unless the proposed buyer has the [financial sufficiency,] organizational capabilities, background, and previous housing experience [that will] **to** help ensure that the buyer will be capable of operating the project.

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

(j) In the case of proposed changes or transfers of ownership of assisted living residences (ALRs), if any provision(s) of this chapter are in conflict with any provision(s) at N.J.A.C. 8:36, the provision(s) at N.J.A.C. 8:36 shall govern.

(k) The rules set forth in this subchapter are also applicable to changes or transfers of ownership in cooperative and condominium projects financed by the Agency.

5:80-5.3 (Reserved)

5:80-5.4 Procedure

(a) The seller, **or the buyer with the written consent of the seller**, must initially submit to the Executive **Director**, a written request for approval of any proposed change in ownership. The request must contain a detailed description of the terms of sale or other ownership changes. [and a statement of the reasons for the proposed sale. The seller must also identify in detail and in a written report, the present physical, financial, management and tenant needs of the housing

project. The Agency will review this report for completeness and accuracy, may require additional information or revisions to the report and may conduct its own review of the housing project's condition and operation.]

(b) All essential parties within the seller's organization documents must approve the transfer or sale. An [affidavit and] opinion of the seller's legal counsel must be submitted to the Agency as proof of the legality of the transfer pursuant to the seller's Partnership Agreement or any other **relevant** document and all applicable laws and regulations. An opinion of the buyer's legal counsel may also be [requested] **required** by the Agency.

[(c) In selecting the prospective buyer, the seller may solicit as many proposals as it deems necessary. Bidding is not required. The seller may negotiate among prospective buyers to obtain the best financial package/offer. Full and complete disclosure as to the nature and amount of the transaction must be made in writing to the Agency.]

[(d)] (c) As a condition of approving [the] a transfer **pursuant to N.J.A.C. 5:80-5.2(b) or (d) where the transfer is of a 90 percent or greater interest**, the Agency will require that the housing project be restored to sound physical condition in accordance with the **Agency's most recent inspection** report [submitted by the seller and the independent review] **or such other report(s) as may be required** by the Agency. Deferred maintenance, [must be corrected at the time of transfer unless otherwise approved by the Agency. Necessary] **necessary** repairs, and **required** capital improvements must be completed within a time frame acceptable to the Agency. [A schedule for performing the work and a letter of credit or bond in the] **A source of funds in an amount [needed] acceptable to the Agency** to complete the work must be provided **prior to or on the closing date and be held in a manner acceptable** to the Agency [at closing]. **The Agency may additionally require a guarantee, such as a bond or letter of credit.**

[(e)] (d) [Cash] **For transfers pursuant to N.J.A.C. 5:80-5.2(b) or (c) where the transfer is of a 90 percent or greater interest, cash** contributions must be sufficient to fund both immediate and anticipated reserve needs. The mortgage and all fees and charges due **to** the Agency must be current at the time of closing. [All housing project] **Project tax and insurance** reserve accounts must be **fully funded in accordance with the Agency-approved project budget upon transfer. The project repair and replacement reserve must be** funded to an acceptable level, as determined by the Agency[, within 12 months from the date of transfer] in accordance with the Agency's repair and replacement funding [schedule] **requirements, as may be amended from time to time.**

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

[(g)] (f) Upon assignment and assumption of the Agency's mortgage, modifications shall be made to the mortgage, **as determined necessary by the Agency, to** clearly [specifying] **set forth** the Agency's right to enforce these regulations **against the assignee.**

5:80-5.5 Scope of review

(a) **Full review. Transfers pursuant to N.J.A.C. 5:80-5.2(b)1, 2, 3, or 4 require a full review.**

(b) **Modified review. Transfers pursuant to N.J.A.C. 5:80-5.2(c) or (d) require a modified review.**

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. [Administrative] **Completed Agency administrative** questionnaires for **the** buyer;
2. (No change.)
3. Copy of [Partnership Certificate] **the owner entity's formation certificate**, with proposed revisions; **and**
4. (No change.)

(b) [The] **In addition to the documents set forth at (a) above, the** following [additional] documents may be required for **a** full review:

1. Previous Participation Certificates ([form] **Form HUD 2530**) for **the** buyer;
- 2.–3. (No change.)
4. Legal opinion from **the** seller's attorney and, if requested by the Agency, from **the** buyer's attorney;
5. Appraisal of **the** property;
6. (No change.)
7. Financial report on project operations approved by the Agency[.]; **and**
- 8. Documentation evidencing purchase price.**

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. The Agency will review and may restrict all secondary financing, particularly where the secondary financing is secured by a lien on the project;
2. (No change.)

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

[4. In the event of a declaration of default on any existing mortgage held by the Agency, the secondary financing debt and all rights thereunder to rent or any other project income or assets shall be assigned to the Agency.]

4. Any secondary financing for a transfer of ownership that does not involve a sale of the project or sale of 100 percent of the ownership interest may not be secured by a lien on the project nor may project funds be applied toward payments on the secondary financing debt, except to the extent such payments are paid out of permitted return on equity distributions.

5:80-5.8 Return on equity and maximum allowable return upon transfer of ownership of a project pursuant to N.J.A.C. 5:80-5.2(b)1

(a) The buyer shall assume the same rate of return on equity that the seller had. **In the event a project is sold to an unrelated for-profit buyer entity by a nonprofit entity that does not have a rate of return on equity, the buyer's rate of return on equity shall be established as the rate that may be earned pursuant to N.J.A.C. 5:80-3.3(f), as applied on the closing date of the transfer.** The buyer's equity in the housing project shall be determined in accordance with N.J.A.C. 5:80-3.3(a). **In cases in which the sale or other disposition of the project includes a permitted prepayment of the Agency mortgage, the buyer's return on equity distribution is governed pursuant to N.J.A.C. 5:80-5.10(b).**

[(b) The seller shall be limited to a cumulative, but not compounded, return on its equity, from project operations or sale, at the rate of return as determined by N.J.A.C. 5:80-3 and set forth in the mortgage and other contractual documents between the seller and Agency.

1. Upon sale or other disposition of the project or any interest therein, the seller shall be entitled to a return of its equity in the project and any accrued but undistributed return on its equity. Such return shall be conditioned upon the Agency's mortgage and any other supplemental project financing from the Agency or other governmental agency or department being assumed by the buyer, and further conditioned upon the making of any required project repairs or improvements, pursuant to N.J.A.C. 5:80-5.4(d), and the payment of all amounts due the Agency and the funding of reserves pursuant to N.J.A.C. 5:80-5.4(e). The seller shall not be entitled to or paid any return until such conditions have been met. The seller's equity in the project shall be determined in accordance with N.J.A.C. 5:80-3.3(a).

2. Upon sale or other disposition of the project or any interest therein, the seller is not entitled to and may not retain or be paid any more than its equity in the project plus any accrued but undistributed return on its equity.]

(b) Upon the sale or other disposition of the project pursuant to N.J.A.C. 5:80-5.2(b)1, the seller shall be limited to its maximum allowable return. The Agency may deduct from the maximum allowable return to be realized by the seller, any amounts thereof that are required to fund project repairs or improvements pursuant to N.J.A.C. 5:80-5.4(d) and project debt service arrears, project reserve balance shortages, and other amounts due to the Agency pursuant to N.J.A.C. 5:80-5.4(c), unless, and to the extent, that such amounts are paid by the buyer. Additionally, where a seller requests that the Agency utilize an appraisal as part of the calculation of its maximum allowable

return, the Agency may, in its discretion, and at the expense of the seller, engage an outside party to review the submitted appraisal, in which case, the Agency shall so notify the seller and the seller shall remit payment for the cost of the review prior to the engagement.

(c) Any amounts realized by the seller in excess of the [aforementioned amounts less the total of the amounts listed below] **maximum allowable return, after any deductions by the Agency as set forth at (b) above**, shall be paid into the [Multi-family] **Multifamily** Rental Investment Program[:] **or such similar program as may be established by the Agency.**

i. Any amount of the purchase price that is paid or escrowed in an Agency controlled account for repairs or improvements pursuant to N.J.A.C. 5:80-5.4(d);

ii. Any amounts paid to fund reserves pursuant to N.J.A.C. 5:80-5.4(e); and

iii. Any mortgages or other supplemental financing from the Agency or other governmental agency or department that are paid or assumed upon transfer.

3.] Funds paid into the [Multi-family] **Multifamily** Rental Investment Program shall be used as provided therein or, in the case of a housing sponsor organized [under] **pursuant to** N.J.S.A. 55:16-1 et seq. **(the Limited Dividend Law, repealed at P.L. 1991, c. 431, § 20)**, such excess shall be distributed pursuant to [said Act] **the terms thereof as in effect immediately prior to the repeal of the Limited Dividend Law.** The funds deposited into this program shall be used for the purpose of providing loans to rental projects meeting [low and moderate income] **low- and moderate-income housing** needs.

[4. In cases where the sale or other disposition of the project includes a permitted prepayment of the Agency mortgage, return on equity shall be governed by the provisions of N.J.A.C. 5:80-5.10(b).]

5:80-5.9 [Required payment] **Fees** and repayments

(a) [At closing, the] **The** following payments and repayments are required:

1. The **seller or** buyer shall submit **a nonrefundable processing fee in the amount of \$7,500** with its request for **a full** review[, a non-refundable fee of \$5,000 which will be applied at closing toward any payment or repayments due] **or a nonrefundable processing fee in the amount of \$2,500 for a modified review.**

[2. The seller shall pay to the Agency, as a processing fee, an amount as determined by the Agency, to reimburse the Agency for its administrative cost in processing the seller's request to transfer ownership of the project or any interest therein.]

[3.] **2.** [Any] **For transfers pursuant to N.J.A.C. 5:80-5.2(b)1,** any outstanding supplemental financing must be paid at closing[, unless] **if** the Agency determines the financial viability of the project is [not] jeopardized by the continuation of such supplemental financing [and the buyer assumes all supplemental financing].

(b) (No change.)

5:80-5.10 Prepayment

(a) Prepayment of the mortgage loan made by the Agency **to a housing sponsor** is prohibited, except as permitted [in] **at** (b) below.

(b) Prepayment of the Agency mortgage loan [will be] **is** permitted, with the prior written approval of the Agency's Executive Director, [Deputy Executive Director,] Chief Financial Officer, [or] Chief of Legal and Regulatory Affairs, **or Chief of Multifamily Programs;** provided all of the following conditions are met:

1. Sponsors of projects may prepay the mortgage at any time following the 15-year period following the date of the mortgage closing. However, any such prepayment shall be conditioned upon the housing sponsor's agreement that: the Agency policies on tax, insurance, and repair and replacement reserves; the provisions [of] **at** N.J.S.A. 55:14K-[7b]**7.b**; and the statutory provisions at N.J.S.A. 55:14K-1 et seq., and the corresponding rules [under] **in** this chapter regarding tenant income eligibility, tenant selection, rent increases, certification/recertification of income, affirmative fair housing marketing, transfer of ownership interests, and return on equity (except as modified [by] **at** (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] **through** 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)]**5.4(c)** must be made prior to prepayment or an amount sufficient to fund such repairs or improvements must be paid into an Agency-controlled escrow account or Agency-approved construction funding account upon prepayment.

3. (No change.)

4. All supplemental financing on the project provided by the Agency [or other State agency] must be prepaid, unless prohibited by the terms of that supplemental financing or [by] **at** (c) below or any other applicable law or regulation.

5. After prepayment, in implementing the provisions [of] **at** N.J.S.A. 55:14K-7.b, the Agency will require the following:

- i. (No change.)
- ii. Submission of annual audited financial statements; **and**
- iii. (No change.)

6. The Agency reserves the right to implement any of the additional provisions [of] **at** N.J.S.A. 55:14K-[7b]7.b, if determined by the Agency to be needed to preserve the financial viability of the project or its status as a [low-and] **low- and/or** moderate-income project, to maintain the physical condition of the project, or to help ensure the safety and well-being of the tenants residing at the project.

7. After prepayment, return on equity rules at N.J.A.C. 5:80-3 shall continue **to apply** until the expiration of the original mortgage term or until the owner funds an operating reserve account, whichever is sooner. Upon funding of an operating reserve account, return on equity rules shall terminate. The operating reserve shall be equal to three months of operating expenses (for senior citizen projects) or six months of operating expenses (for family projects), which includes debt service and reserve payments. The three/six months of operating expenses shall be calculated based on the Agency-approved annual budget. Once established, interest earned on a [fully-funded] **fully funded** operating reserve account may be withdrawn by the owner upon written request to and verification by the Agency that the account is [fully-funded] **fully funded**. If the operating reserve is thereafter used, return on equity rules shall

be reinstituted until the operating reserve is again [fully-funded] **fully funded**. The determination of a [fully-funded] **fully funded** operating account after its initial establishment shall be based on the Agency-approved budget in effect at the time the project first established the operating reserve account.

8. (No change.)

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

1. (No change.)

2. Jeopardize the continuing [tax exempt] **tax-exempt** status of the bonds; or

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) Upon prepayment of the Agency mortgage as provided [in] **at** (b) above, the Agency will endorse the mortgage for cancellation so the [Sponsor may] **sponsor can** cancel it of record. In addition, upon prepayment, the statutory and regulatory controls of the Agency at N.J.S.A. 55:14K-1 et seq., and this chapter shall terminate for the [Housing Sponsor] **housing sponsor** and project, except for those preserved [by] **at** (b)1 above. The termination of the Agency's statutory and regulatory controls shall not affect the requirements, restrictions, and obligations of [Housing Sponsors] **housing sponsors** as mandated [by] **at** N.J.S.A. 55:16-1 et seq., or any other applicable statute [under] **pursuant to** which the corporate entity of the [Housing Sponsor] **housing sponsor** was created.

[(e) The provisions of this section regarding prepayment shall not apply to projects financed under the Agency's New Jersey Urban Multi-Family Production Program (JUMPP).]

[(f)] (e) The provisions of this section that impose conditions on prepayment regarding Agency policies on the insurance and repair and replacement reserves, the provisions [of] at N.J.S.A. 55:14K-[7b]7.b, and the regulations on transfer of ownership interests and return on equity shall not be applicable to projects financed between October 15, 1990 and January 17, 1995.

[(g)] (f) (No change in text.)

(g) Existing Agency-financed projects and projects under continuing Agency regulatory oversight pursuant to N.J.A.C. 5:80-5.10 or 32 that refinance through the Conduit Financing Program must maintain project affordability controls no less restrictive than existing controls as to both area-median-income limitations and percentage and number of affordable units for a period of time not less than that imposed by the then-existing Agency financing or regulatory oversight requirements. With the exception of the continuing affordability requirements applicable to such projects, the continuing post-prepayment regulatory controls and requirements that are applicable pursuant to this section or the continuing regulatory controls and requirements that are applicable pursuant to N.J.A.C. 5:80-32 for projects regulated thereunder are suspended until payment in full of the conduit mortgage note. Upon payment in full of the conduit mortgage note, the regulatory controls and/or requirements in this section or N.J.A.C. 5:80-32, as applicable, shall be reinstituted for the remaining term, if any, of such controls and/or requirements.

(h) Except as set forth at (g) above, with regard to existing Agency-financed projects that refinance pursuant to the Conduit Financing Program, prepayment of mortgage loans

financed pursuant to the Conduit Financing Program are governed by the terms of the Conduit Financing loan and are not otherwise subject to the requirements of this section.

5:80-5.11 Approval and disclosure requirements

(a) The Agency specifically reserves the right to investigate and disapprove any prospective buyer or any other party involved in the transaction including, without limitation, all [limited and general] partners, **members**, attorneys, syndicators, brokers, [or] **and** consultants, as well as any partners or shareholders thereof. Prior to its approval, the Agency may require any party to disclose such information as may be reasonably related to the transaction and may require any party to sign such waivers, releases, or affidavits as may be necessary to authenticate or investigate the information requested.

(b) All reviews, inspections, reports, and other determinations received pursuant to these regulations shall be subject to final review, approval, and determination by the Agency.