

**COMMUNITY AFFAIRS**

**NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY**

**New Jersey Housing and Mortgage Finance Agency Rent Rules**

**New Jersey Housing and Mortgage Finance Agency Rules**

**Proposed Amendments: N.J.A.C. 5:80-9.2, 9.7, and 9.14**

**Proposed New Rule: N.J.A.C. 5:80-9.10**

**Proposed Repeal: N.J.A.C. 5:80-9.13**

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 2018-086.

Submit comments by November 16, 2018, 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 (State). 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, N.J.S.A. 55:14K-1 et seq. (Act), 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. 5:80-9, Rents, sets forth the procedures for making annual rent determinations and for submitting and determining rent increase applications at housing projects financed by the Agency. The Agency is proposing the following amendments, new rule, and repeal:

1. At N.J.A.C. 5:80-9.2, Applicability, an amendment is proposed to codify the practice that rents with respect to housing units that are rent-restricted pursuant to section 42(g) of the IRC do not exceed any limitations imposed by the IRC, as well as any limitations imposed pursuant to the rent rules. Additional amendments are proposed in the second sentence to recognize that the Department of Housing and Urban Development has been defined as “HUD” in the general definitions section of the rules at N.J.A.C. 5:80-1.3 (and, thus, does not have to again be defined at N.J.A.C. 5:80-9.2) and to improve syntax.

2. At N.J.A.C. 5:80-9.7(b)2, amendments are proposed in two instances to reflect the proposed recodification of existing N.J.A.C. 5:80-9.10 as 9.11.

3. New N.J.A.C. 5:80-9.10, Resetting of rent upon unit vacancy, is proposed to permit, subject to certain restrictions, rents for individual affordability-restricted housing units to be reset upon the vacancy of any such unit up to the maximum allowable amount permitted for such unit and to provide the mechanism for determining the maximum allowable rent. This proposed rule is not applicable to market-rate units financed by the Agency.

4. The Agency proposes to repeal N.J.A.C. 5:80-9.13. While the rules at N.J.A.C. 5:80-9.1 through 5:80-9.12 establish the general procedure for the determination, submission, and review of rent increase requests, N.J.A.C. 5:80-9.13 provides an alternative means by which sponsors of housing projects without Federal project-based rent subsidies may implement rent increases. However, because the procedure set forth therein is applicable to no more than seven projects, has been used by only one housing sponsor (which the Agency will continue to allow to use the procedure), and it is unlikely that the procedure will be used in the future by any other housing sponsors, the Agency proposes to repeal N.J.A.C. 5:80-9.13.

5. The Agency proposes to amend N.J.A.C. 5:80-9.14(b). The proposed repeal of N.J.A.C. 5:80-9.13 necessitates the proposed amendment of N.J.A.C. 5:80-9.14(b), which relies upon and cross-references N.J.A.C. 5:80-9.13(a)1 as providing the procedure for implementing monthly fee increases for income-restricted assisted living residences (ALRs). To preserve that procedure's applicability to income-restricted ALRs (which the Agency intends to do), it is proposed to incorporate the procedure currently set forth at N.J.A.C. 5:80-9.13(a)1 (which is proposed to be repealed) directly into N.J.A.C. 5:80-9.14(b).

6. The Agency proposes to amend N.J.A.C. 5:80-9.14(a) to correct an error in the text of the third sentence. The third sentence currently states as follows: "Monthly fees for income-restricted ALR units may not exceed 80 percent of the percentage of HUD median income applicable to that ALR as set forth in the Financing, Deed Restriction and Regulatory Agreement executed by the housing sponsor and the Agency ('applicable HUD median income level')." The recitation of "80 percent of the

percentage of HUD median income” is incorrect; “monthly fees,” which are expressed in dollar amounts, must be limited by similarly expressed dollar amounts, not by a “percentage,” as results from a literal reading of the current text of N.J.A.C. 5:80-9.14(b) (in effect, resulting in a comparison of apples and oranges). Accordingly, the third sentence is proposed to read as follows: “Monthly fees for income-restricted ALR units may not exceed 80 percent of the HUD median income level applicable to that ALR as set forth in the Financing, Deed Restriction and Regulatory Agreement executed by the housing sponsor and the Agency (applicable HUD median income level).” This proposed amendment will result in the rule stating that monthly fees for income-restricted ALR units must be limited to 80 percent of the applicable HUD median income level (a dollar-to-dollar comparison), which is the intention of the rule and accords with how it has been applied in practice.

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

### **Social Impact**

The proposed rulemaking will help housing sponsors of Agency-financed housing projects better support and maintain affordable housing projects by increasing project revenue streams. This, in turn, is expected to benefit tenants of those projects and neighboring residents by providing more attractive, better-maintained housing units. The Agency recognizes that rents at vacant units will increase; however, because rent increases will continue to be subject to limitations imposed by the Agency or other governing authority, it is expected that rent increases on vacant units will be reasonable and that such units will remain affordable. Also, it is anticipated that any impact will be limited to the approximately 2.5 percent of affordability-restricted units that become vacant on a yearly basis.

### **Economic Impact**

The proposed rulemaking will allow sponsors of Agency-financed housing projects to increase rents, subject to certain limitations, so as to increase revenue to keep pace with rising maintenance, repair, and labor costs; because rent increases contemplated by the proposed rulemaking will be implemented only upon vacant units, no current tenant of a housing unit will be financially impacted. Further, because the proposed rulemaking is to be applicable only to vacancies created where a tenant has died, voluntarily vacated, abandoned, or been legally evicted, the contemplated increases will be imposed only in the case of legitimate vacancies (not, for instance, in the case of constructive evictions).

There will of necessity be a fiscal impact on prospective tenants of vacant housing units, who will either have to bear the increased rents charged for such units or seek alternative housing; however, because rent increases will remain subject to limitations imposed by the Agency or other governing authority, it is expected that rent increases will be reasonable and that the vast majority of such units will remain affordable.

### **Federal Standards Statement**

The proposed amendments, new rule, and repeal do not contain any standards or requirements that exceed the standards or requirements imposed by applicable Federal law.

### **Jobs Impact**

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

### **Agriculture Industry Impact**

The proposed amendments, new rule, and repeal 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, new rule, and repeal will not impose any reporting, recordkeeping, or other compliance requirements on small businesses as defined in section 2 of the Regulatory Flexibility Act, N.J.S.A. 52:14B-17. Accordingly, the requirement of issuing a regulatory flexibility analysis does not apply to this proposed rulemaking.

### **Housing Affordability Impact Analysis**

The proposed rulemaking will apply to approximately 250 multifamily rental housing projects in the Agency's portfolio, containing approximately 20,000 rental units. Those 250 housing projects experienced an annualized average vacancy rate of approximately 2.5 percent in 2017. Assuming the 2.5 percent annualized vacancy rate remains constant, the Agency expects that about 500 rental units per year will be eligible to take advantage of the proposed resetting of rent upon unit vacancy rule at N.J.A.C. 5:80-9.10. The Agency estimates that implementation of the rule will result in average increased monthly rents of approximately \$144.00 (or \$1,730 per year) for each of the 500 units that are anticipated to become vacant each year.

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

The Agency finds that the proposed amendments, new rule, and repeal would impose an insignificant impact upon smart growth development because the scope of the proposed rulemaking is limited to existing housing projects and 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. Accordingly, the requirement of issuing a smart growth development impact analysis does not apply to this proposed rulemaking.

## **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. Accordingly, no further analysis is required.

**Full text** of the rule proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 5:80-9.13.

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

### SUBCHAPTER 9. RENTS

#### 5:80-9.2 Applicability

The rules within this subchapter shall apply to all housing projects. In the event the housing project is assisted, directly or indirectly, by [the Department of Housing and Urban Development ([HUD])] or is financed by a loan from the Agency [which] **that** is insured or guaranteed by the United States, or any agency thereof, the Agency may utilize the rent regulations, requirements, or criteria for such project [which is] prescribed, utilized, or required by HUD or such guarantor or insurer. In the event there are any inconsistencies between these rules and the regulations, requirements, or criteria of HUD or other United States agency insuring or guaranteeing the Agency loan, the latter shall prevail. **If a housing project contains units that are rent-restricted pursuant to 26 U.S.C. § 42(g), rents with respect to such units are subject to, and may not under any circumstance exceed, any limitations imposed pursuant to the Internal Revenue Code, as well as any limitations imposed pursuant to this subchapter.**

## 5:80-9.7 Agency review

(a) (No change.)

(b) Within 10 business days after receipt of the complete rent increase application and any comments thereto, the Agency shall:

1. (No change.)

2. For all other projects submitting a rent increase application pursuant to N.J.A.C. 5:80-9.4(a), process the application in accordance with N.J.A.C. 5:80-9.9 and, if applicable, 5:80-[9.10]9.11. The [10 business day]10-business-day requirement in (b) above shall not apply to rent increases subject to a hearing as provided by N.J.A.C. 5:80-[9.10]9.11.

(c) (No change.)

## 5:80-9.10 Resetting of rent upon unit vacancy

**(a) Notwithstanding the provisions of this subchapter, and subject to any more restrictive Federal or State laws or monthly fee limits for ALR units under N.J.A.C. 5:80-9.14, the rent for an individual affordability-restricted unit may be reset up to the maximum amount for such unit upon the vacancy thereof where the tenant has died or voluntarily vacated, abandoned, or been legally evicted from the unit.**

**1. In determining the maximum rent, the calculation shall be based upon the applicable maximum allowable income assuming residence by 1.5 persons per bedroom and the payment of no more than 30 percent of the maximum allowable income for rent.**

**2. The maximum rent for any affordability-restricted unit shall be determined in accordance with (a)1 above pursuant to the most recent year's figures as shown on that chart of the maximum allowable rents, which is available on the Agency's website at <http://njhousing.gov/dca/hmfa/developers/credits/compliance/limits.shtml>.**



Recodify existing 5:80-9.10 through 5:80-9.12 as **5:80-9.11 through 5:80-9.13** (No change in text.)

5:80-9.14 Resident monthly fee increases for low- and/or moderate income-restricted units in assisted living residences (ALRs)

(a) For the purposes of this section, the term “monthly fee” includes charges for rent, meals, and basic services. The Agency shall regulate the monthly fees for all low and moderate income-restricted ALR units. Monthly fees for income-restricted ALR units may not exceed 80 percent of the [percentage of] HUD median income **level** applicable to that ALR as set forth in the Financing, Deed Restriction and Regulatory Agreement executed by the housing sponsor and the Agency ([“]applicable HUD median income level[“]). The foregoing shall not apply to units occupied by persons who have insurance and/or another contracted third-party payor.

(b) Sponsors of ALRs may implement increases of monthly fees **for the income-restricted ALR units** with Agency approval [as provided in N.J.A.C. 5:80-9.13(a)1 for the income-restricted ALR units, provided that the maximum monthly fee for the income-restricted ALR units may] **by submitting a written request to the Director of Property Management of the Agency, accompanied by the current tenant income certifications for the income-restricted ALR units, the most recent HUD area median income figures, and the maximum rents corresponding to the area median income figures. The Director of Property Management will review and verify the information contained therein and, if accurate, approve the requested monthly fee increase, up to a maximum of 10 percent for low-income units and 20 percent for moderate-income units, but not to exceed 80 percent of the applicable HUD median income level. Monthly fee increases for non-income restricted ALR units do not require Agency approval.**

(c) – (e) (No change.)