

~~(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.~~

(a)

NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

New Jersey Housing and Mortgage Finance Agency Certification and Recertification of Income Rules Adopted Amendments: N.J.A.C. 5:80-20.2 through 20.7 and 20.9

Proposed: March 18, 2019, at 51 N.J.R. 396(a).

Adopted: July 26, 2019, by the New Jersey Housing and Mortgage Finance Agency, Charles A. Richman, Executive Director.

Filed: August 3, 2019, as R.2019 d.094, **without change**.

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

Effective Date: September 3, 2019.

Expiration Date: September 14, 2024.

Summary of Public Comments and Agency Responses:

The New Jersey Housing and Mortgage Finance Agency ("HMFA" or "Agency") received comments from the following persons:

1. Carolee Wineburgh, Housing Manager, Cooks Pond Senior Housing, Denville, NJ; and
2. Tanya Van Order, Deputy Director, Madison Affordable Housing Corporation, Madison, NJ.

A summary of the comments received and the Agency responses follows (commenters are identified by the numbers before their names above).

1. COMMENT: The commenter is "vehemently opposed" to the amendment at N.J.A.C. 5:80-20.3(d) that would "allow the [housing] sponsor to approve the [tenant] move-in without prior review or approval by the Agency." The commenter states that she has been a housing manager for almost 20 years and relies upon HMFA review to assure compliance of applicant files before tenant move-ins, observing that she oversees applicants with numerous assets and sources of income that complicate the income calculation, especially where some applicants are "very close to the income maximum" and a "miscalculation" might make them ineligible. (1)

RESPONSE: As stated in the Social Impact of the notice of proposal, the amendment at N.J.A.C. 5:80-20.3(d) was proposed at the behest of a number of project sponsors, who believe the existing requirement of Agency review and approval prior to tenant move-ins is time-consuming and deprives the sponsors of rental income as units remain vacant pending such review. The subject has been discussed and vetted with members of the New Jersey Affordable Housing Developer Council, Inc. (NJAHDC), an affordable housing industry trade group, whose members raised the issue that the current system of Agency pre-approval "delays lease-up, costs money, [and] presents a hardship to applicants in need of housing." The Agency acknowledges that there may be a trade-off in oversight where pre-approval by the Agency is eliminated in order to expedite tenant move-ins. However, the Agency notes that its role — although once necessary — has become, in the words of the NJAHDC, "redundant" because applicant files are now reviewed by managing agents and investors; additionally, third-party accountants and other practitioners are

available to perform reviews and analysis. Both the Agency and what is believed to be the vast majority of project sponsors (judging by the fact that only two adverse comments were received) believe the gain in tenant move-in times far outweighs the loss of preliminary review by the Agency. Project developers have requested this procedure and they, their managing agents, investors, and outside practitioners are experienced in performing the reviews.

With respect to the commenter's expressed concern that a "miscalculation" might lead to tenant ineligibility, the Agency notes that it is the responsibility of the project owner to ensure compliance with applicable requirements. The Agency suggests that if owners desire a pre-review or audit of applicant files, there are, as mentioned above, many professional firms that perform such functions on behalf of project owners and managers. Additionally, the Agency hosts bi-annual tax credit compliance monitoring training to aid property management staff in performing tenant income calculations and maintaining compliance with IRS regulations. Based on the various supports available to owners and the processes already in place, the Agency believes that another level of pre-review by Agency staff is no longer warranted.

2. COMMENT: In expressing opposition to the proposed amendment at N.J.A.C. 5:80-20.3(d), the commenter states that the issue of "non-compliance" for Federal low-income housing tax credits is more of a concern than any fee that might be imposed on project sponsors. (1)

3. COMMENT: The commenter states that "[i]f [she] understand[s] correctly, [the] amendment would allow [low income housing tax credit] property sponsors to move new tenants into tax credit units prior to review and approval by [the Agency]." (2)

RESPONSE TO COMMENTS 2 AND 3: The Agency believes the comment is inapplicable to the proposed amendment to N.J.A.C. 5:80-20.3(d) because this amendment applies only to Agency-financed projects. It does not have any effect on tax-credit projects, which are addressed in a completely different area of the rules entitled Qualified Allocation Plan (QAP), at N.J.A.C. 5:80-33. Any current Agency review of applicants for admission to tax-credit units occurs only because those units are in Agency-financed projects; the Agency's review and pre-approval is not undertaken for projects financed solely by low-income housing tax credits. Also, N.J.A.C. 5:80-33.1(f) (part of the QAP) states in part: "Compliance with the requirements of the [Internal Revenue] Code is the sole responsibility of the owner of the building for which the credit is allowable. [The Agency] makes no representations to the owner or anyone else as to compliance with the Code, Federal regulations issued under the Code, or any other law or regulations governing Low Income Housing Tax Credits ..." Thus, the project owner/managing agent, not the Agency, is responsible for ensuring that only eligible tenants are admitted to tax credit units under existing rules.

4. COMMENT: The commenter expresses concern as to how tax credit syndicators (investors) will react to the amendments, anticipating that they are the ones who stand to lose out on their investments if an ineligible family is "inadvertently" moved into a tax credit unit. The commenter alludes to the "difficult[y]" of evicting tenants in New Jersey. (2)

RESPONSE: As noted in the Response to Comments 2 and 3, the proposed amendments do not affect the review of applicants for tenancy in tax credit units, which are currently — and have been since the advent of the tax credit program — the responsibility of project sponsors and/or managing agents. It is the Agency's understanding that most, if not all, syndicators and/or investors separately review tenant eligibility because of the risk of tax credit recapture. No comments were received from syndicators nor to the Agency's knowledge have syndicators expressed any discontent with the present system as applied to the tax credit program.

Federal Standards Statement

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

Full text of the adoption follows:

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 by subsidies provided by HUD, such as Section 8 (Housing Assistance Payments) and Section 236 (Interest Reduction Payments) of the National Housing Act of 1937;

2. Financed pursuant to former Section 103(b)(4) of the Internal Revenue Code 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);

3. Financed by a loan from the Agency that is insured or guaranteed by the United States or any agency thereof; 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 the cases described in (b)1 through 4 above, the housing sponsor shall notify families that they are residing in housing projects that are subject to such Federal regulation. In the event there are any inconsistencies between the rules in this subchapter and any applicable Federal regulations, the Federal regulations prevail.

(d) (No change in text.)

(e) "Income-restricted units" means the 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.

(f) (No change in text.)

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

(a) Each 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 that will verify, to the satisfaction of the Agency, gross aggregate family income. This information and documentation shall include, but not be limited to, the following:

1. (No change.)

2. Permission for the Agency and housing sponsor to contact the Internal Revenue Service for information necessary to verify gross aggregate family income, such as copies of the first page of 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, 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, and 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.

5:80-20.4 Calculation of income

(a) Gross aggregate family income shall be calculated in accordance with applicable Federal regulations for families applying for admission to or occupying units that are assisted by HUD subsidies such as Section 8 and 236 or families occupying units within a housing project financed pursuant to former Section 103(b)(4) of the Internal Revenue Code, where such units are restricted to families of low and moderate income as defined in Section 103(b)(12)(C), 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 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 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 families occupying units 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:

1. A family occupying a unit within a housing project financed under former Section 103(b)(4) of the IRC where such unit is restricted to families of 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.

(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) or (b) above.

(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 may be subject to provisions set forth in N.J.A.C. 5:80-20.6. The statement must include a description of the provisions at N.J.A.C. 5:80-20.6;

4. (No change.)

(e) After families have recertified, housing sponsors shall calculate 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.

(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.

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

(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 that fails to recertify income after notification pursuant to this subchapter shall be subject to the following:

1. (No change.)

2. 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 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) Where, upon recertification, 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 must ensure that the project contains the number of 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 must provide families with written notice at the end of the 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.)

HIGHER EDUCATION

(a)

EDUCATIONAL OPPORTUNITY FUND
Undergraduate EOF Academic and Financial Eligibility

Adopted Amendment: N.J.A.C. 9A:11-2.3

Proposed: March 4, 2019, at 51 N.J.R. 348(a).
Adopted: July 24, 2019, by the Educational Opportunity Fund Board of Directors, Hasani Carter, EOF Executive Director.
Filed: July 30, 2019, as R.2019 d.090, **without change**.
Authority: N.J.S.A. 18A:71-28 et seq., specifically 18A:71-33 through 36.

Effective Date: September 3, 2019.

Expiration Date: October 14, 2023.

Summary of Public Comments and Agency Responses:

Comments were received from Jean Public and Dr. Allyson Straker-Banks, Associate Vice President of Student Academic Services, Montclair State University.

1. COMMENT: Jean Public offered commentary indicating her opposition of taxpayer funding for college scholarships for students, because they can divide their time between attending college and working to pay their own tuition costs.

RESPONSE: The Educational Opportunity Fund (EOF) Board of Trustees (EOF Board) thanks the commenter for sharing her thoughts and comments regarding the proposed amendments to the EOF rules. The proposed amendments are facilitated through the Office of the Secretary of Higher Education/Educational Opportunity Program. All proposed amendments for the EOF rules are posted on the Office of the Secretary of Higher Education's website under the Decisions and Rules tab. Jean Public's comments are noted and her comments have no direct impact on the proposed amendments.

2. COMMENT: Dr. Straker-Banks offered commentary on behalf of Montclair State University that reflected the institution's support of the proposed amendments.

RESPONSE: The EOF Board thanks Dr. Allyson Straker-Banks for her comments and support of the proposed amendments.

Federal Standards Statement

The adopted amendment does not require a Federal standards analysis under Executive Order No. 27 (1994) and N.J.S.A. 52:14B-22 et seq., because EOF was established by New Jersey legislation, is wholly supported by State appropriations, and is not subject to any Federal requirements of standards.

Full text of the adoption follows:

SUBCHAPTER 2. UNDERGRADUATE EOF ACADEMIC AND FINANCIAL ELIGIBILITY

9A:11-2.3 Financial eligibility for initial Article III student grants

(a)-(g) (No change.)

(h) Where there is evidence that strict adherence to the maximum income and asset eligibility cut-off will not serve the purpose of the Fund, the campus EOF administrator/director has the discretion to admit, up to a maximum of 10 percent of the annual class of initial students with family incomes as high as, but no more than, 281 percent of the Federal poverty