

Rhode Island Housing and Mortgage Finance Corporation
44 Washington Street
Providence, Rhode Island 02903

PUBLIC NOTICE OF PROPOSED RULEMAKING

Pursuant to the provisions of title 42, chapter 55, section 5(5) of the Rhode Island General Laws and in accordance with the Administrative Procedures Act, R.I. Gen. Laws § 42-35-3(a)(1), the Rhode Island Housing and Mortgage Finance Corporation (“Rhode Island Housing”) hereby gives notice of its intent to repeal the Rules and Regulations of the Corporation Applicable to the Cooperative Housing Demonstration Program, which has been assigned ERLID number 1093 (the “Rule”).

The purpose of this activity is to repeal an obsolete and potentially duplicative rule. The Rule, first enacted in the 1990s, was originally intended to describe a pilot program for stimulating the development of affordable housing in Rhode Island by providing financial assistance to limited equity cooperative housing sponsors and their members. Since then, Rhode Island Housing has chosen to pursue its objectives through other financing initiatives, and has not operated the Cooperative Housing Demonstration Program in more than ten years. Furthermore, there are no plans to reinstate the program in the future. As a result, the Rule is functionally obsolete.

In the repeal of this Rule, consideration was given to: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) significant economic impact on small business. No alternative approach, duplication, overlap, or significant economic impact was identified based on available information.

The regulation proposed to be repealed is available for public inspection on the website of the Rhode Island Secretary of State, <http://www.sos.ri.gov/> (also accessible via the Accountability & Transparency page of the Rhode Island Housing website, <http://www.rhodeislandhousing.org/sp.cfm?pageid=988>); by request to Corinne Myers, Assistant Counsel, at (401) 277-1552 or cmyers@rhodeislandhousing.org; or in person at Rhode Island Housing, 44 Washington Street, Providence, Rhode Island 02903.

In accordance with section 42-35-3 of the Rhode Island General Laws, an oral hearing will be granted if requested by twenty-five (25) persons, or by an agency or an association having at least twenty-five (25) members. A request for an oral hearing must be made within thirty (30) days of the posting date of this notice to Corinne Myers, Assistant Counsel, by email to cmyers@rhodeislandhousing.org or orally or in writing delivered to Rhode Island Housing, 44 Washington Street, Providence, Rhode Island 02903, ATTN: Corinne Myers, Assistant Counsel.

Barbara Fields
Acting Executive Director

**Rhode Island Housing and Mortgage Finance Corporation
44 Washington Street
Providence, Rhode Island 02903**

**CONCISE SUMMARY OF PROPOSED NON-TECHNICAL AMENDMENTS TO THE
RULES AND REGULATIONS OF THE CORPORATION APPLICABLE TO THE
COOPERATIVE HOUSING DEMONSTRATION PROGRAM**

The Administrative Procedures Act, Section 42-35-3(a)(1) of the Rhode Island General Laws, requires agencies to provide a concise summary of proposed non-technical amendments in connection with any rulemaking activity.

The above-captioned regulation is proposed to be repealed in its entirety.

~~RHODE ISLAND HOUSING AND
MORTGAGE FINANCE CORPORATION~~

~~RULES AND REGULATIONS OF THE CORPORATION APPLICABLE TO THE COOPERATIVE
HOUSING DEMONSTRATION PROGRAM~~

~~SECTION 1. THE LIMITED EQUITY COOPERATIVE HOUSING DEMONSTRATION PROGRAM~~

~~1.1 Program Purposes and Objectives. Rhode Island Housing and Mortgage Finance Corporation hereby promulgates Rules and Regulations (the "Regulations") Applicable to the Limited Equity Cooperative Housing Demonstration Program (the "Program"). The Program is a pilot program designed to stimulate the creation, development and preservation of affordable housing in the State of Rhode Island by making financial assistance available to Limited Equity Cooperative Housing Sponsors and their Members. The Program is intended to supplement primary financing from other sources such as financial institutions, federal, state and local housing authorities and agencies and the Corporation, through other programs. Under the Program the Corporation will, in accordance with these Regulations: (i) make pre-development seed money available to Housing Sponsors for certain preliminary development costs; (ii) commit funds for replacement reserves and guaranty loan repayment reserves for Developments, as may be required by Primary Lenders; and (iii) provide certain financial assistance (a) to Limited Equity Cooperative Housing Developments in the form of blanket loans and (b) to Low Income Persons or Families who become shareholders or Members in Limited Equity Cooperative Housing Developments.:~~

~~SECTION 2. CONSTRUCTION~~

~~2.1. Construction with Act. Unless otherwise defined herein or unless a different meaning is required from the context in which they are used herein, all words and terms used in these Regulations are as defined in the Act.~~

~~2.2. Definitions. As used in these Regulations:~~

~~2.2.1 "Act" means the Housing and Mortgage Finance Corporation Act set forth in Chapter 55 of Title 42 of the Rhode Island General Laws of 1956, as amended.~~

~~2.2.2 "Aggregate Family Income" shall have the same meaning and, with respect to Applications for financial assistance hereunder, shall be determined using the same methods and procedures in effect at the time of Application used by the Corporation pursuant to the Rules and Regulations of the Corporation Applicable to the Mortgage Finance Programs.~~

~~2.2.3 "Application" means an application for financial assistance under the Program pursuant to these Regulations.~~

~~2.2.4 "Board of Commissioners" means the Board of Commissioners of the Corporation.~~

~~2.2.5 "Corporation" means Rhode Island Housing and Mortgage Finance Corporation, a public corporation organized and existing under the Act.~~

~~2.2.6 "Limited Equity Cooperative Housing Sponsor" or "Housing Sponsor" means a non-profit organization which develops, constructs or rehabilitates a Limited Equity Cooperative Housing Development.~~

~~2.2.7 "Limited Equity Cooperative Housing Development" or "Development" means a cooperative housing corporation organized under Chapter 6.1 of Title 7 of the General Laws of Rhode Island of 1956, as amended, located in the State of Rhode Island, which owns or will own real estate and/or improvements for residential purposes, and whose equity, after allowance for maximum transfer value of its stock, is permanently dedicated to providing affordable housing to Low Income Persons or Families. To be eligible for Financial Assistance under the Program, a Development must contain not less than two (2) residential Units,~~

- ~~and not less than fifty percent (50%) of the Units in a Development shall be occupied or reserved for occupancy by Low Income Persons or Families.~~
- 2.2.8 ~~"Low Income Persons or Families" or "Low Income Families" means, as the case may be, persons or families having Aggregate Family Income less than to equal to eighty percent (80%) of the area or statewide median income (whichever is higher), adjusted for family size, in accordance with standards of the United States Department of Housing and Urban Development in effect at the time of approval of the Application.~~
- 2.2.9 ~~"Member" means a member or a shareholder of a Limited Equity Cooperative Housing Development.~~
- 2.2.10 ~~"Primary Lender" means a financial institution, federal, state, or local agency or housing authority or other entity (including the Corporation) which provides not less than fifty five percent (55%) of the Total Development Cost of a Development or not less than fifty five percent (55%) of the acquisition cost of a Share.~~
- 2.2.11 ~~"Program Bulletin" means a bulletin issued by the Corporation implementing a section or sections of these Regulations. A Program Manual shall constitute a Program Bulletin under these Regulations. Copies of all Program Bulletins shall be maintained by the Corporation at its principal office, and shall be available for inspection and copying during Regular Business Hours.~~
- 2.2.12 ~~"Regular Business Hours" means the hours between 9:00 a.m. and 5:00 p.m. on Mondays through Fridays, except holidays.~~
- 2.2.13 ~~"Share" means a share of stock or membership certificate representing an equity interest in a Development.~~
- 2.2.14 ~~"Total Development Cost" means the total cost of a Limited Equity Cooperative Housing Development, as approved by the Corporation.~~
- 2.2.15 ~~"Unit" means a residential dwelling unit in a Development consisting of a complete living, dining, cooking, sanitation and sleeping facilities.~~

~~SECTION 3. FINANCIAL ASSISTANCE - HOUSING SPONSORS~~

3.1 ~~Generally. Applications for financial assistance under the Program will be considered in light of the Corporation's goal of providing affordable housing to as many Rhode Island residents as resources will allow. Accordingly, the Corporation will give priority to Applications which will increase the cooperative housing stock in Rhode Island for Low Income Families rather than individuals. A Development and its Members may be eligible for any or all of the types of financial assistance provided for in these~~

3.2 ~~Pre-Development Loans. The Corporation will made pre-development loans to Housing Sponsors for the following: (i) costs and expenses for deposits on or options to acquire unimproved or improved real estate on which Developments will be constructed or rehabilitated, (ii) costs and expenses for appraisals, legal, engineering and architectural work, organization fees, application, commitment and similar fees and charges by banks and other lenders including payments for points, (iii) costs and expenses incurred in obtaining permits and approvals and applying for public or private grants and (iv) costs and expenses associated with determining feasibility or obtaining feasibility studies. The types of costs and expenses for which pre-development loans are available may be changed by Program Bulletin from time to time.~~

~~3.3 Amount of Pre-Development Funds Available.~~

~~The amount of pre-development funds that may be loaned by the Corporation to any Development shall be determined by the Corporation from the information contained in the Application, but shall not in any event exceed Two Thousand Dollars (\$2,000) per Unit or Sixty thousand Dollars per Development, whichever is less.~~

~~3.4 Terms and Repayment of Pre-Development Loans.~~

~~Pre-development loans: (i) shall bear interest at such rate as the Corporation may establish from time to time by Program Bulletin and (ii) shall be secured by such collateral, if any, and shall~~

~~be repayable at such time or times and other wise made upon such terms and conditions as may be set forth in an agreement between the Housing Sponsor and the Corporation.~~

~~3.5 Replacement Reserve Commitment. The Corporation will provide a commitment to fund up to three percent (3%) of the Total Development Cost for repairs and maintenance (the "Replacement Reserve Commitment") of any Development that has established a repair and maintenance reserve. The types of repairs and maintenance for which the Replacement Reserve Commitment may be used shall be determined by the Corporation by Program Bulletin. The Replacement Reserve Commitment will supplement the Development's replacement reserves, and may not be drawn down until the Development's replacement reserve fund has been exhausted. The length of the Replacement Reserve Commitment shall be determined by the Corporate at its sole discretion on a case by case basis, but shall not extend for a period beyond ten (10) years from the date of the closing of primary financing. The Corporation may require the Housing Sponsor or Members of the Development to grant the Corporation a mortgage or provide other collateral to secure the Replacement Reserve Commitment at any time prior to or during the period that the Replacement Reserve Commitment is in effect. The Replacement Reserve Commitment and the security, if any, therefor shall be evidenced by such instruments, agreements and documents as the Corporation may or shall require.~~

~~3.6. Loan Repayment Reserve Guaranty. For any Development that has established a loan repayment reserve, the Corporation will guaranty up to four (4) months of loan payments (the "Loan Repayment Reserve Guaranty" for up to one third (1/3) of the Units in the Development (or one half (1/2) of the Units if the Development consists of only two (2) Units). The term of the Loan Repayment Reserve Guaranty shall be determined by the Corporation in its sole discretion on a case by case basis, but shall not in any event exceed five (5) years from the date of the closing of primary financing. In exchange for the Loan Repayment Reserve Guaranty, the Corporation will cause the Development to pay over to the Corporation or to escrow in an account maintained for the benefit of the Corporation a portion of each Member's monthly fees until such time as the amount of such funds paid to the Corporation (or escrowed for the benefit of the Corporation) equals the full amount of the Loan Repayment Reserve Guaranty. Amounts paid over to, or escrowed for the benefit of, the Corporation may be used by the Corporation to the extent the Corporation is required to make a payment or payments under the Loan Repayment Reserve Guaranty. When the funds paid to, or escrowed for the benefit of, the Corporation equal the full amount of the Loan Repayment Reserve Guaranty, the guaranty will terminate, and the Corporation will release such funds to the Development. The Corporation may require additional collateral from the Development and/or its Members to secure the Loan Repayment Reserve Guaranty. The Loan Repayment Reserve Guaranty and the security therefor, if any, shall be evidenced by such instruments, documents and agreements as the Corporation may or shall require.~~

~~SECTION 4. FINANCIAL ASSISTANCE TO COOPERATIVE MEMBERS~~

~~4.1 Share Financing. The Corporation will also provide financial assistance for the acquisition of shares in Developments by Low Income Persons or Families. The amount financed on any such Share shall not exceed thirty five percent (35%) of the Total Development Cost of the Development divided by the number of Shares to be issued and outstanding, up to a maximum of Twenty Thousand Dollars (\$20,000) per shareholder/Member. Any Member seeking a Share loan from the Corporation shall, as a condition to receipt of financing, make a minimum down payment to the Corporation or the Primary Lender, as the case may be, in the amount of five percent (5%) of the amount financed under this Section 4.1 or Three Hundred Dollars (\$300), whichever is greater. In any case, such Member shall satisfy the Corporation's underwriting criteria and guidelines as established by Program Bulletin from time to time.~~

~~4.2 Terms of Share Loans. Loans under Section 4.1 shall: (i) be secured by a pledge of the Share, (ii) bear interest at the rate of five percent (5%) per annum on unpaid principal balances (unless the Corporation establishes a different rate of interest by Program Bulletin), (iii) be repaid in monthly installments of principal and interest not more than fifteen (15) years from the date of the making of the loan unless the Corporation in its discretion waives payment of interest and/or principal on any such loan until such time as such Share is pledged, sold, transferred or hypothecated and (iv) be made on such other terms and conditions including, without limitation, restrictions on transfer and prepayment, and evidenced~~

~~by such notes, agreements, pledge agreements and other instruments and documents as the Corporation may or shall require.~~

~~4.3 Blanket Loans. The Corporation will also provide loans to Developments and/or Housing sponsors secured by second or subsequent mortgages for the purpose of lowering the amount of the Development's debt service to its Primary Lender. As a condition to eligibility for such financing, the Corporation shall require a minimum equity contribution of Three Hundred Dollars (\$300) per Member for each Member that will reside in the Development, which equity contribution may be paid to the Corporation or to the Primary Lender as a down payment. The amount of any such blanket mortgage shall be at the discretion of the Corporation, up to a maximum of fifteen percent (15%) of the Total Development Cost. Blanket loans shall be evidenced by such documents and instruments as the Corporation may require to protect its interest.~~

~~4.4 Terms and Repayment of Blanket Loans. Blanket loans shall bear interest at such rate as the Corporation may establish from time to time by Program Bulletin, and shall be repayable upon the earlier of (i) thirty (30) years from the date of closing; (ii) conveyance or transfer of any interest in the real estate or improvements constituting all or a portion of the Development, other than for cooperative purposes, without the prior written consent of the Corporation; (iii) membership or ownership of Shares representing more than fifty percent (50%) of the Units in a Development other than by Persons and Families of Low Income; or (iv) when the Development ceases to be a "Limited Equity Cooperative Housing Corporation" as that term is defined in Section 2.2.7 of these Regulations.~~

~~SECTION 5. APPLICATION PROCESS~~

~~5.1 Generally. Applications to the Corporation for financial assistance shall be considered on a first come first served basis for as long as Program funds remain available or until the Program is terminated by the Board of Commissioners. Housing Sponsors shall be required to screen potential Members for eligibility under the Program before the Corporation will accept applications for Share loans.~~

~~5.2 Applications for Financial Assistance. Persons seeking financial assistance under the Program shall submit certain information to the Corporation, on such Application forms as may be designated by the Corporation, during Regular Business Hours. Such information may include the following:~~

- ~~a. The name, address and telephone number of the Housing Sponsor together with the name, title and telephone number of the individual(s) designated to correspond and communicate with the Corporation in connection with an Application;~~
- ~~b. Certified copies of the organizational documents of the Housing Sponsor including its enabling legislation, constitution, Articles of Incorporation or Association, Declaration of Trust and by-laws, as the case may be, evidencing compliance with Rhode Island laws governing the formation, organization and management of housing cooperatives;~~
- ~~c. A copy of the determination letter from the Internal Revenue Service, as to exemption of the Housing Sponsor from recognition of federal income taxation;~~
- ~~d. A statement as to the type, amount and uses of the financial assistance requested, and, with respect to applications for pre-development loans under Section 3.2 of these Regulations, copies of invoices and estimates of pre-development expenses for which financial assistance has been requested;~~
- ~~e. Certified copies of resolutions of the Board of directors or other governing body of the Housing Sponsor authorizing the submission of the Application of the Corporation;~~

- ~~f. Detailed pro forma financial information of the Limited Equity Cooperative Housing Development including a development budget and income and expense statement, which clearly sets forth, to the satisfaction of the Corporation, the sources and application of development funds and operating revenues;~~
- ~~g. With respect to Developments to be constructed or substantially rehabilitated, a copy of the proposed blueprints, renderings, and plans and specifications, including, without limitation, the site plan, location map, soil and foundation investigation report and, with respect to substantial rehabilitation, a structural report;~~
- ~~h. Copies of the development survey and the surveyor's report;~~
- ~~i. Copies of all market data, if any, collected by the Housing Sponsor, member selection plan, housing management plan and evidence of compliance with federal and state fair housing laws;~~
- ~~j. A description of the sources and type of primary financing applied for or to be applied for and copies of any commitments issued with respect to such financing;~~
- ~~k. Evidence, in form satisfactory to the Corporation, that the Development will be occupied in perpetuity at least fifty (50%) by Low Income Persons and Families; and~~
- ~~l. Copies of "pre-development" and "as built" appraisals of the Development; and~~
- ~~m. An income affidavit, as provided by the Corporation, signed by the Member, employment verification of the Member evidenced by such documentation as the Corporation may require, credit reports and other information and data necessary for underwriting purposes and copies of tax returns for at least two (2) years prior to the date of the Application.~~

~~5.3 Background Information. To the extent permitted by law, the Corporation may obtain or require additional information, including such documents as the Corporation may reasonably request, respecting the experience and background of the Limited Equity Cooperative Housing Sponsor, its directors, officers and any other person or persons on the development team.~~

~~5.4 Additional Requirements; Waiver of Requirements. The Corporation reserves the right to waive any of the foregoing Application requirements at its discretion in any case involving hardship, and to supplement any of the foregoing requirements, if required by law, from time to time by Program Bulletin. Any information or materials submitted shall be in form and substance satisfactory to the Corporation in all respects. No application shall be approved until it is determined by the Corporation to be complete.~~

~~SECTION 6. FEES~~

~~6.1 Fees to be Established by Program Bulletin. The Corporation reserves the right to establish, modify and eliminate Application fees and charges under the Program by Program Bulletin from time to time.~~