

**825-RICR-10-00-2**

## **TITLE 825 - HOUSING AND MORTGAGE FINANCE CORPORATION**

### **CHAPTER 10 - RULES RELATIVE TO AGENCY ADMINISTRATION**

#### **SUBCHAPTER 00 - N/A**

PART 2 - Equal Opportunity and Affirmative Action Procedures.

#### **2.1 Purpose**

- A. Objectives of Procedures. The Corporation has determined that there exists a need to ensure that recipients of its funds under the Corporation's Rental Housing Production and Rehabilitation Program (the "Multi-Family Program") do not discriminate in their hiring or contract practices on the basis of race, sex, national origin, age, religion, sexual orientation, handicap or status as a veteran. The Corporation has also determined that it is necessary to take affirmative action to eliminate the vestiges of past societal discrimination and to ensure employment opportunities and social advancements for Minorities and women.
- B. These Rules and Regulations set forth requirements established by the Corporation to ensure non-discrimination and affirmative action by Housing Sponsors, Contractors, and Sub-contractors, and shall be construed and applied so as to accomplish the objectives stated above.

#### **2.2 Construction of Rules and Regulations**

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 this Part are as defined in the Act.

#### **2.3 Definitions**

"Act" means the Housing and Mortgage Finance Corporation Act more particularly set forth in R.I. Gen. Laws Chapter 42-55, as amended.

"Affirmative Action Officer" means the individual or individuals appointed by the Executive Director to serve as Affirmative Action Officer under this Part.

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

"Contractor" means an individual, corporation or partnership retained by a Housing Sponsor to serve as a general contractor or construction manager in the construction of a Development.

"Corporate Office" means 44 Washington Street, Providence, Rhode Island 02903.

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

"Development" means a multi-family residential housing complex under the Rules and Regulations of the Corporation Applicable to the Multi-Family Program (the "Multi-Family Regulations").

"Executive Director" means the Executive Director of the Corporation.

"Hearing Officer" means the individual or individuals appointed by the Executive Director to serve as a Hearing Officer under this Part.

"Housing Sponsor" means corporation, individuals, joint ventures, partnerships, limited partnerships, trusts, firms, associations, or other legal entities or any combination thereof, whether organized for profit or not, qualified either to own, construct, acquire, develop or rehabilitate a Development.

"Minorities" or "Minority" means persons or person of black, Native American, Asian or Hispanic ancestry.

"Minority and Female Owned" means businesses in which at least fifty-one percent (51%) of the ownership interest is held by, and which are managed and controlled by Minorities and/or women, and which have obtained written certification thereof from the state in which their principal office is located or from such other governmental or non-governmental office, board, commission, department, agency or entity satisfactory to the Corporation.

"Mortgage Loan" means a loan made to a Housing Sponsor for the purpose of providing construction or permanent financing, or both, for a Development, upon the terms and conditions required by the Multi-Family Regulations.

"Proposal" means a written proposal for the construction, development and/or rehabilitation of a Development seeking financing under the Multi-Family Program.

"Subcontractor" means individuals, corporations, joint ventures, partnerships, limited partnerships, associations or other legal entities retained by a Housing Sponsor or Contractor to render services, or services and material in connection with the construction or rehabilitation of a Development.

"Suspension" means disqualification of a Housing Sponsor from participation in the Corporation's programs and suspension of Housing Sponsor's rights to disbursements from Mortgage Loans.

"Total Construction Costs" means the total funds expended in connection with the construction or rehabilitation of the Development.

"Total Work Force Hours" means the total number of worker-hours expended in connection with construction or rehabilitation of the Development.

## **2.4 Affirmative Action Obligations**

- A. Generally. Through affirmative action activities provided for herein, Housing sponsors shall use all reasonable efforts to ensure that ten percent (10%) of the Total Work Force Hours are provided by Minorities and women.
- B. Housing Sponsors shall utilize Minorities and females, and Minority and Female Owned businesses, as contractors and Subcontractors to the greatest extent practicable in the construction or rehabilitation of the Development, and each housing Sponsor shall include a statement regarding its nondiscriminatory and affirmative action policies in all solicitations for Contractors and Subcontractors issued in connection with the Development. The Housing Sponsor shall maintain records relating to all such solicitations, all responses received to solicitations (specifically identifying responses received from Minority and Female Owned businesses), and all awards made based on such solicitations and the reasons therefor. Each Housing Sponsor shall use its best efforts to ensure that at least ten percent (10%) of the Total Construction Costs shall be paid to Minority and/or female Contractors and Subcontractors, or Minority and/or Female Owned Contractors and Subcontractors. The Housing Sponsor shall provide the Corporation with a schedule of anticipated awards to be made to Minority and Female Owned Contractors and Subcontractors prior to the initial closing of the Mortgage Loan.
- C. Contractual Obligations. Housing Sponsors shall, and shall ensure that each contract with a contract price of \$50,000.00 or more executed in connection with the Development shall require all contracting parties to:
  - 1. post a written notice of at least 8 inches by 11 inches in size in a conspicuous place in its principal office stating that it is an equal opportunity employer and does not discriminate on the basis of race, sex, national origin, age, religion, sexual orientation, handicap or status as a veteran;
  - 2. abstain from harassment, intimidation and coercion of employees based on race, sex, national origin, age, religion, sexual orientation, handicap, or status as a veteran;
  - 3. establish and maintain a current list of recruitment sources for Minority and female employees, provide written notification to such sources of employment opportunities, and maintain a record of each organization's response to each such notification;

4. maintain a record of the name, address and telephone number of each Minority and female applicant for employment, which record shall contain a statement regarding the action taken with respect to the application;
5. to the extent feasible, participate in area based training programs for Minorities and women;
6. provide notice of its obligations under this Part to signatory unions to collective bargaining agreements it has entered, and to entities regularly conducting training programs within the area of its principal place of business, and request the assistance of such unions and entities in its compliance under this Part;
7. include a statement of its non-discriminatory practices in any company manuals, collective bargaining agreements it enters, and company newspapers or newsletters it produces;
8. notify the Housing Sponsor in writing when signatory unions and bargaining agreements it has entered prohibit or deter its equal employment and affirmative action recruiting activities;
9. ensure that all facilities and activities under its control are non-segregated, except for the segregation by sex of toilet and changing facilities;
10. where feasible, employ Minority and female workers in summer employment and on-the-job training programs;
11. take such other steps as necessary to ensure that equal employment policies are implemented and that recruitment, job classifications, and other employment procedures do not have a direct, or indirect discriminatory effect on Minority or female employees or applicants.

## **2.5 Preliminary Information**

As soon as practicable after receipt of a Housing Sponsor's Proposal, the Affirmative Action Officer shall provide the Housing Sponsor with a summary of the equal opportunity and affirmative action requirements contained in this Part.

## **2.6 Pre-Construction Conference**

After the initial closing of the Mortgage Loan, the Corporation shall conduct a meeting with the Housing Sponsor and all Contractors chosen as of that date, at which conference the Corporation shall discuss the requirements of this Part and the Housing Sponsor's affirmative action goals in connection with the Development.

## **2.7 Utilization Reports**

The Housing Sponsor shall submit to the Corporation monthly a report of the Total Construction Cost as of the date of said report, and shall specify therein, the total amount paid to Minority and female Contractors and Subcontractors or Minority and Female Owned Contractors and Subcontractors.

## **2.8 Review Conferences and On-Site Inspections**

The Corporation may, anytime during construction or rehabilitation of a Development, conduct such on-site inspections, reviews of Housing Sponsor's records and all contracts relating to the Development, and conferences with Housing Sponsors, Contractors and Subcontractors as it deems necessary to ensure compliance under this Part.

## **2.9 Report of Discrimination Charges Filed**

The Housing Sponsor shall promptly notify the Corporation in writing of any charges it becomes aware of which have been filed with the Rhode Island Commission of Human Rights, the United States Equal Employment Opportunity Commission, or otherwise, alleging unlawful discrimination by the Housing Sponsor, or any Contractor or Subcontractor in connection with the Development.

## **2.10 Suspension of Housing Sponsors**

- A. Generally. Suspension is a measure which may be invoked by the Corporation either to exclude or to disqualify Housing Sponsors from participation in any of the Corporation's programs. Suspension shall be used for the purposes of ensuring compliance with this Part and not for punitive purposes. The exclusion or disqualification of Housing Sponsors from participation in the Corporation's programs, and the reconsideration of such measures, shall be based upon all available evidence and facts. Investigations required to accumulate such facts and evidence shall be conducted by the Affirmative Action Officer or by such other individuals as may be designated by the Executive Director from time to time.
- B. Notice of Violation. In the event that the Affirmative Action Officer determines that a Housing Sponsor is in violation of its obligations under this Part, the Affirmative Action Officer shall notify the Housing Sponsor of such violations in writing by certified or registered mail, which notice shall specify the violations established, shall request the Housing Sponsor to correct all violations within fifteen (15) business days from receipt of said notice, and shall inform the Housing Sponsor of possible suspension for failure to rectify all violations within said period. The Housing Sponsor shall have fifteen (15) business days from receipt of the notice in which to rectify all violations identified, and to provide the Affirmative Action Officer with evidence of compliance satisfactory to the Affirmative Action Officer.

In the event that Housing Sponsor fails to rectify the violations and produce sufficient evidence of compliance, the Affirmative Action Officer may recommend to the Executive Director that the Housing Sponsor be suspended.

1. Suspensions. Any Housing Sponsor who fails to comply with the requirements of this Part may be suspended by the Executive Director until such time as the Housing Sponsor is able to demonstrate the resolution of the matter or matters serving as a basis of the suspension and future compliance with this Part to the satisfaction of the Executive Director. The Executive Director shall review all findings of the Affirmative Action Officer and determine whether or not to suspend the Housing Sponsor as soon as practicable after receiving the recommendation of the Affirmative Action Officer.
2. Effects of Suspension. During the term of the suspension, the Housing Sponsor may not obtain any advances or payments due under any existing loan agreement with the Corporation, and the Housing Sponsor may not participate in any of the programs of the Corporation unless the Executive Director determines, in his/her sole discretion, that participation by such Housing Sponsor is in the best interest of the public. The determination to consider such applications shall include consideration of the unique value of the applicant's proposals, and the need of the community to be served by the granting of the applications.
3. Notice of Suspension. The Housing Sponsor shall be served by registered or certified mail, return receipt requested, with a written notice of suspension within five (5) days prior to the effective date of the suspension. The Notice shall state the basis for the suspension, that the suspension is effective until compliance has been documented, that the Housing Sponsor may not participate in any program of the Corporation during the term of the suspension, that all rights of the Housing Sponsor under all loan agreements with the Corporation shall be suspended until reinstatement of the Housing Sponsor, and that the Housing Sponsor may be represented by counsel.

## **2.11 Hearings**

- A. Requests for Hearings. Any Housing Sponsor receiving a notification of suspension is entitled to request an opportunity to be heard and to be represented by counsel at all hearings. All hearing requests shall be made in writing addressed to the Corporation at the Corporate Office and to the attention of Affirmative Action Officer. If after ten (10) days following receipt of notification, no such request for a hearing has been received by the Corporation, the Housing Sponsor shall be deemed to have waived its right to be heard, and final action on the proposed suspension may be taken.

- B. Notice and Procedures. Upon receipt of a request for an opportunity to be heard, the Affirmative Action Officer shall arrange a prompt and timely hearing. Notice of the time and place of such hearing shall be in writing, and delivered to all interested parties by certified or registered mail, return receipt requested, together with a statement indicating the nature of the proceedings. All hearings shall be conducted in accordance with R.I. Gen. Laws Chapter § 42-35, as amended, by a Hearing Officer. All witnesses shall testify under oath or affirmation and shall be subject to cross-examination.
- C. Determinations by Hearing Officer in Suspension Hearings. The Hearing Officer shall make a written determination and recommendation to the Executive Director based on all evidence presented at suspension hearings. All interested parties shall be notified of said determination by certified or registered mail, return receipt requested. The Executive Director shall review the findings of the Hearing Officer and issue a final determination on suspension of the Housing Sponsor within thirty (30) days from the date of the hearing. Notice of the Executive Director's determination shall be given to all interested parties in writing, signed by the Executive Director and transmitted by registered mail, return receipt requested.
- D. Powers of Hearing Officer. While conducting hearings, the Hearing Officer shall have all powers necessary to conduct hearings in an expeditious and fair manner. The powers of the Hearing Officer shall include, but not be limited to, the power to:
1. Hold conferences to settle, simplify, or fix the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding by consent of the parties or upon his own motion;
  2. Require parties to state their position with respect to the various issues in the proceeding;
  3. Require parties to produce for examination those relevant witness and documents under their control;
  4. Rule on motions and other procedural items on matters pending before him;
  5. Regulate the course of the hearing and conduct of the participants therein;
  6. Receive, rule on, exclude, or limit evidence, and limit lines of questioning or testimony which are irrelevant, immaterial or unduly repetitious;
  7. Fix time limits for submission of written documents in matters before him;
  8. Impose appropriate sanctions against any party or person failing or refusing to follow or to obey an order under these procedures which sanctions may include;

- a. Refusing to allow the party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence,
- b. Excluding all testimony of an unresponsive or evasive witness,
- c. Expelling any party or person from further participation in the hearing.
- d. Take official notice of any material fact not appearing in evidence in the record, which is among the traditional matters of judicial notice.

## **2.12 Rescission and Reinstatement**

Request for Reinstatement. Any Housing Sponsor against which a Suspension has been invoked may request reinstatement in writing. Reinstatement proceedings shall be conducted by the Affirmative Action officer. All recommendations of the Affirmative Action Officer for reinstatement shall be submitted to the Executive Director for final approval. Reinstatements may only be granted upon the determination that the matter or matters resulting in Suspension have been rectified, and the suspended party shall comply with all requirements of this Part in the future. When a Suspension has been rescinded, the Executive Director shall forward notice of reinstatement to the Housing Sponsor by certified or registered mail, return receipt requested.

## **2.13 Substitute Policies or Procedures**

Requests of Housing Sponsors. Housing Sponsors subject to other equal employment and affirmative action laws, regulations, procedures or policies ("Substitute Regulations") of any federal or state agency, board, or commission may request that the Corporation accept compliance with such Substitute Regulations in lieu of compliance with this Part if such Substitute Regulations are substantially similar to the requirements in this Part. All such requests shall be made in writing to the Executive Director of the Corporation, and shall set forth the requirements of such Substitute Regulations. All decisions of the Executive Director regarding such Substitute Regulations shall be final and binding on the parties.