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TITLE 825 - HOUSING AND MORTGAGE FINANCE CORPORATION

CHAPTER 30 - RULES RELATIVE TO MULTIFAMILY LOAN PROGRAMS

SUBCHAPTER 00 - N/A

PART 2 - Preservation of Existing Section 8-Assisted Housing Developments

2.1 DEFINITIONS

- A. "Additional Financing" means new or additional financing provided by the Corporation to some or all Applicants to be secured by a lien on the Housing Development.
- B. "Applicant" means Owner and Transferee, if any, submitting Preservation Applications pursuant to this Part.
- C. "Available Proceeds" means funds available for distribution as calculated by the Corporation pursuant to this Part.
- D. "Board of Commissioners" means the Board of Commissioners of the Corporation.
- E. "Closing Date" means the date on which Available Proceeds are distributed pursuant to this Part.
- F. "Corporation" means the Rhode Island Housing and Mortgage Finance Corporation, a public corporation organized and existing under the laws of the State of Rhode Island.
- G. "Executive Director" means the Executive Director of the Corporation.
- H. "Housing Assistance Payment Contracts" means housing assistance payment contracts executed pursuant to Section 8 of the United States Housing Act of 1937, 42 U.S.C. § 1437 *et seq.*
- I. "Housing Development" means a multi-family housing project which has been financed in whole or in part by the Corporation; is subject to a mortgage lien in favor of the Corporation as of the effective date of this Part; or receives rental subsidy payments pursuant to an existing Housing Assistance Payment Contract administered by the Corporation on the effective date of this Part.
- J. "HUD" means the Department of Housing and Urban Development of the United States of America.

- K. "Mortgage Loan" means the loan issued by the Corporation to finance the Housing Development in whole or in part.
- L. "Operating Account" means the funds of a Housing Development available to pay the costs of its day-to-day operations.
- M. "Operating Reserve Fund" means the existing Operating Reserve Fund maintained for the Housing Development on the Closing Date.
- N. "Owner" means the owner of a Housing Development, or a lessee of all or substantially all of a Housing Development.
- O. "Prepayment" means the prepayment of the entire or any portions of the outstanding balance of the Mortgage Loan, (whether or not, made in connection with a sale, conveyance, assignment or other transfer of the Housing Development,) and regardless of the source of funds for the prepayment, which under the terms of the Mortgage Loan or pursuant to applicable state or federal laws or rules or regulations, requires the prior approval of the Corporation.
- P. "Preservation Application" means an application submitted pursuant to this Part in connection with a distribution of Available Proceeds.
- Q. "Preservation Program" means the program established by this Part to maintain existing Housing Developments as affordable to persons and families of low income.
- R. "Preservation Trust" means a separate trust or other entity created and/or controlled by the Corporation to further the preservation and provision of low-income housing in the State of Rhode Island; the funds of which may, but need not be, used by the trustees thereof to provide financial assistance to a Housing Development, but in all instances may only be used in connection with the preservation or provision of housing in the State affordable to persons and families of low-income.
- S. "Program Bulletin" means any bulletin issued by the Corporation from time to time implementing the Preservation Program or resolving any ambiguity in this Part with respect to the Preservation Program. Copies of all Program Bulletins shall be maintained by the Corporation at its principal office, and shall be available for inspection and copying between the hours of 9:00 a.m. and 5:00 p.m. on Mondays through Fridays, except holidays.
- T. "Replacement Reserve Fund" means the existing Replacement Reserve Fund (including the Painting and Decorating Reserve Account, if any) maintained for the Housing Development on the Closing Date.
- U. "Residual Receipts" means funds maintained in Residual Receipts accounts established by or at the direction of the Corporation for Housing Developments.

- V. "Tax Credits" means low income housing tax credits issued by the Corporation for a Housing Development pursuant to the Corporation's regulations applicable to the Allocation of Low Income Housing Tax Credits, as amended from time to time (the "Tax Credit Regulations").
- W. "Transfer" means a transfer of a Housing Development within the meaning of the Corporation's Regulations Governing Proposed Transfers, as amended from time to time (the "Transfer Regulations").
- X. "Transferee" means the individual or entity to which an Owner proposes to Transfer a Housing Development.

2.2 SCOPE OF REGULATIONS

- A. Purpose. The Preservation Program established under this Part is intended to provide Owners and Transferees with incentives to maintain Housing Developments as affordable housing for a period of forty (40) years beyond any current use restrictions for persons and families of low-income and to further the economic viability of such Housing Developments. This Part establishes certain procedures to obtain, and certain conditions for the grant of, the Corporation's approval of Prepayments of Mortgage Loans, Additional Financing, distributions of Residual Receipts, and the allocation of Tax Credits, which are intended to further these objectives.
- B. Applicability. An Owner or Transferee seeking the Corporation's approval of a Prepayment, Additional Financing, a distribution of Residual Receipts, or an allocation of Tax Credits shall fully comply with all provisions in this Part. To the extent that a Prepayment is to be effectuated in connection with a transfer of a Housing Development within the meaning of the Corporation's regulations governing Proposed Transfers; an application is submitted for financing to provide the funds for the Prepayment or Additional Financing pursuant to the Corporation's Rental Housing Production and Rehabilitation regulations (the "Rental Production Regulations"); an application for Tax Credits pursuant to the Tax Credit Regulations is submitted to the Corporation; and/or the proposed transactions are otherwise governed by other rules or regulations of the Corporation, the provisions of such regulations shall also apply to the proposed transaction. In the event that any provision of other rules and regulations of the Corporation conflicts with the provisions, the provisions in this Part shall control, unless otherwise deemed necessary by the Corporation to accomplish the purposes of all applicable rules and regulations.
- C. Conformance with State and Federal Law. In addition to complying with the rules and regulations of the Corporation, Owners and Transferees must at all times comply with all applicable state and federal laws, rules and regulations, and must obtain all approvals and consents, and take all such other actions in connection with the proposed transactions as required by such laws, rules and regulations. Any provision of this Part which expressly conflicts with any state or federal law,

or federal rule or regulation, as determined by the Corporation, shall be of no force or effect.

- D. Modification or Waiver. The Corporation reserves the right to modify or waive any provision of this Part with respect to any Preservation Application if the Corporation, in its sole judgment, determines that such modification or waiver is consistent with and will further the purposes of this Part.

2.3 APPLICATION PROCEDURE

- A. Generally. As provided herein, an Owner shall submit to the Corporation a Notice of Intent. The Corporation shall calculate and notify the Owner of the estimated Available Proceeds which would be distributable to the Owner and/or the Transferee from the Housing Development in the event of consummation of the proposed transactions identified in the Notice of Intent. If the Owner wishes to proceed with the proposed transactions, the Owner shall submit a Preservation Application to the Corporation (jointly with the Transferee, if any), on forms provided by the Corporation. One-half of the Available Proceeds shall be distributed to the Preservation Trust (as hereinafter defined) to be used to provide and maintain affordable housing for persons and families of low income within the State of Rhode Island. The Owner and/or Transferee, if any, shall receive the balance of the Available Proceeds. The Owner of Transferee shall agree to maintain the Housing Development as housing affordable to persons and families of low-income for a period of forty (40) years beyond any current use restrictions and to certain other restrictions designed to preserve affordable housing.
- B. Notice of Intent.
 - 1. Submission of Notice of Intent. The Owner shall submit to the Corporation a completed Notice of Intent together with the Processing Fee specified below, to notify the Corporation of the proposed transactions to which this Part applies. The Notice of Intent shall contain such provisions as the Corporation shall determine from time to time, including, without limitation, a description of the proposed transactions, specifying the Owner's current intention to retain or Transfer the Housing Development.
 - 2. Documentation and Agreements. Simultaneously with the submission of the Notice of Intent (unless otherwise specified herein or agreed to by the Corporation), the Owner shall submit to the Corporation:
 - a. Certification of Authority. Evidence of corporate or partnership authority of the Owner and the officers or agents acting on Owner's behalf, satisfactory to the Corporation in form and substance and certified to by the appropriate officer or agent to be validly adopted and in full force and effect; and

- b. Additional Documents. Such additional documents agreements and certificates as the Corporation may, from time to time, require.
- C. Fees and Costs. Upon receipt of the Notice of Intent, the Corporation shall determine the cost of a Capital Needs Assessment and an Appraisal, if required by the Corporation, and notify the Owner of such costs in writing. The owner shall deliver to the Corporation within ten (10) days following the receipt of the cost disclosure, a certified check (or other method of payment acceptable to the Corporation) in the full amount of such costs. If the Owner fails to do so within such time period, the Corporation may disregard the Notice of Intent and retain the Processing Fee. If requested by the Corporation, the Owner shall provide the Corporation with the names and quotes of and assessors qualified to perform the Capital Needs and Appraisals. The Corporation may select any or entity it shall, in its sole discretion, deem whether or not included among those provided by the Owner and shall in no event be limited to selection based on quotes received.
- D. Capital Needs Assessment. Following receipt of the required fees and costs, the Corporation shall cause a Capital Needs Assessment of the Housing Development to be completed by a qualified assessor satisfactory to the Corporation and in accordance with its instructions, the cost of which shall be payable by the Owner, but shall be deemed an allowable transaction cost for purposes of calculation of Available Proceeds. The Capital Needs Assessment shall detail the current and future capital improvements and rehabilitation necessary to rehabilitate the Housing Development and maintain it in good repair, as safe and sanitary residential housing, as well as the estimated costs thereof. After reviewing the Capital Needs Assessment, the Corporation shall determine the required capital improvements and rehabilitation and the estimated costs thereof (which costs shall constitute the minimum required initial contributions to the Rehabilitation Reserve Account as to current improvements and rehabilitation, and the Replacement Reserve Account as to future improvements and rehabilitation, both of which accounts are required by this Part.) In no event, shall the Corporation in any way be bound by the determinations made in the Capital Needs Assessment. In making this determination, the Corporation may consider any relevant information, including, without limitation, information submitted by Owners, tenants and governmental agencies.
- E. Appraisal. If determined to be necessary by the Corporation and upon receipt of the required fees and costs by the Corporation, the Corporation shall cause an appraisal of the Housing Development to be completed by a qualified appraiser satisfactory to the Corporation. All fees and costs associated with the appraisal shall be paid by the Owner, but shall be deemed an allowable transaction cost in the calculation of Available Proceeds. The appraisal must be satisfactory to the Corporation in all respects and shall be conducted pursuant to its instructions as to form, substance and assumptions.

- F. Processing Fee. The Owner shall pay to the Corporation a nonrefundable processing fee (the "Processing Fee") in an amount established by the Corporation from time to time by Program Bulletin, which fee shall in no event exceed Ten Thousand Dollars (\$10,000.00). The Processing Fee shall be payable to the Corporation (or such other entity designated by the Corporation) solely from funds of the Owner and not from Housing Development funds in cash or by certified or bank check; provided that the Processing Fee shall be deemed an allowable transaction cost in the calculation of Available Proceeds. Notwithstanding any other provision herein contained, the Corporation may, at its option, agree to waive all or any portion of the Processing Fee. The Processing Fee paid shall be credited against all applicable application processing and loan submission fees to be paid by the Applicant to the Corporation pursuant to any other rules and regulation of the Corporation in connection with the proposed transactions listed in the Preservation Application.
- G. Operating Needs Assessment. The Corporation shall assess the current and future operating expenses of the Housing Development. In making this assessment, the Corporation may consider any relevant information including, without limitation, information submitted by the Owner, residents of the Housing Development or any governmental agency. Owners shall provide the Corporation promptly with access to or copies of all records, documents and information requested by it in connection with such assessment.
- H. Initial Determination of Available Proceeds.
1. Upon completion of the Capital Needs Assessment, the Appraisal (if any) and the Operating Needs Assessment, the Corporation shall make an initial estimate of Available Proceeds as of the date of determination, based on available information. In the case of proposed Additional Financing or other proposed financing, the Corporation shall estimate the Available Proceeds assuming conventional financing, as well as the issuance of taxable bonds and tax exempt bonds (including 501(c)(3) bonds) to fund such financings. The estimated Available Proceeds shall be calculated as of the date of determination as follows:
 - a. Total Funds. The Corporation shall estimate the sum of:
 - (1) the amount of funds in the Operating Account for the Housing Development in excess of that amount deemed necessary by the Corporation to satisfy the Housing Development's day to day operating costs for the balance of the calendar year;
 - (2) all revenue account balances for the Housing Development (including, without limitation, the balance of the Operating Reserve Fund and the Replacement Reserve Fund, but

excluding all funds escrowed for the payment of taxes and insurance on the Housing Development);

- (3) Residual Receipt Account balances for the Housing Development;
- (4) an estimate of the proceeds of any Additional Financing or other proposed financing, if any, that is supportable under applicable underwriting criteria; and
- (5) proceeds of the sale of Tax Credits, if any.

b. Available Proceeds. The following amounts shall be estimated as of the date of determination and shall be subtracted from the Total Funds to determine the estimated Available Proceeds:

- (1) balance of all obligations constituting a lien on the Housing Development which are to be satisfied and discharged in connection with the proposed transactions listed in the Notice of Intent and/or Preservation Application;
- (2) estimated amount of the initial deposit to the Rehabilitation Reserve Account;
- (3) estimated amount of the initial deposit to the Replacement Reserve Account;
- (4) estimated amount of the Preservation Operating Reserve Account Requirement (as herein defined);
- (5) estimated amounts of all other required reserve account deposits; and
- (6) estimated transaction costs to be paid from funds of the Housing Development (which shall be approved by the Corporation on a case by case basis).

2. The initial determination of Available Proceeds is an estimate and in no way binds the Corporation. The Corporation shall provide the Owner with a copy of the initial determination together with copies of the Operating Needs Assessment, the Capital Needs Assessment and the Appraisal (if any) (collectively, the "Assessment Material").

2.4 APPLICATION

A. Submission Deadline. Within one hundred and twenty (120) days from the date of receipt by the Owner of the Initial Determination of Available Proceeds, Applicant must submit a completed Preservation Application to the Corporation,

together with all documentation, certificates and agreements as may be required by the Corporation. Applicants failing to do so within such period, unless otherwise agreed to by the Corporation in writing, must reinitiate the application process (including the payment of a Processing Fee). The Preservation Application shall in part specify the proposed transactions the Applicant wishes to pursue, which may be different from those originally identified in the Notice of Intent. The Preservation Application shall be submitted as part of any application to the Corporation for a Transfer, Additional Financing or Tax Credits, for a Housing Development, and all such applications shall be submitted to the Corporation together with a completed Preservation Application.

- B. Required Documentation. Documentation to be submitted together with a completed Preservation Application shall include, but not be limited to:
1. information regarding the experience and qualifications of the Applicant as requested by the Corporation on a case by case basis;
 2. any documentation or information necessary to update or correct the Assessment Material and certification by Applicant satisfactory to the Corporation of the accuracy of the Assessment Material, as supplemented or corrected;
 3. certification by Applicant of the existence and continued validity of all necessary approvals, together with evidence thereof satisfactory to the Corporation; and
 4. in the event that the Preservation Application is submitted together with an application under the Rental Production Regulations, the Transfer Regulations or the Tax Credit Regulations, any other documentation and information required by such regulations.
- C. The Corporation shall attempt to notify Applicants within forty-five (45) days of submission of the Preservation Application of any identifiable deficiencies therein.

2.5 CALCULATION AND DISTRIBUTION OF AVAILABLE PROCEEDS

- A. Final Calculation and Distribution. The Corporation shall calculate the actual amount of the Available Proceeds in accordance with § 2.3(H) of this Part, as of the Closing Date. On the Closing Date, the Corporation shall distribute the Available Proceeds as follows:
1. An amount not to exceed the Operating Reserve Fund and the Replacement Reserve fund shall be distributed to the Applicant from Available Proceeds;

2. One-half of the balance of the Available Proceeds to the Applicant as specified in the Preservation Application; and
3. The balance to the Preservation Trust. The portion of the Available Proceeds distributed to the Preservation Trust may be deemed distributed first from Residual Receipt and reserve account funds included in the calculation of Available Proceeds, to the extent available.

2.6 AFFORDABLE HOUSING RESTRICTION AGREEMENT

- A. On the Closing Date, the Owner or Transferee, as applicable, shall enter into an Affordable Housing Restriction Agreement with the Corporation, in form and substance satisfactory to the Corporation, which shall, among other things, impose the following requirements and restrictions relating to the Housing Development income for a period of forty (40) years beyond any current use restrictions (the "Term"):
 1. **Tenant Income.** During the term of or any extension or renewal of any Housing Assistance Payments Contracts applicable to the Housing Development tenant income restrictions required thereunder shall be complied with. Thereafter, all units of the Housing Development shall, except as set forth below, be rented only to tenants having aggregate family incomes which, on the date of commencement of the lease term do not exceed sixty percent (60%) of the Area Median Income as defined in 26 U.S.C. § 42(d) as amended from time to time and the rules and regulations promulgated thereunder (the "Median Family Income"). In the event any tenant assistance is made available to the Development during the term of the Affordable Housing Restriction Agreement the Development shall, to the extent economically feasible, endeavor to lease at least forty percent (40%) of the units to tenants with aggregate family income not in excess of forty percent (40%) of the Area Median Income. Notwithstanding the foregoing, in the event the Development is occupied exclusively by tenants of age 62 and older, and to the extent permitted under any federal regulations applicable to the Housing Development, the Owner may admit tenants with incomes up to eighty percent (80%) of the Area Median Income. The Owner of the Housing Development shall annually obtain certifications of tenants' income and certify the same to the Corporation. All vacancies in the Housing Development shall be filled as expeditiously as possible with tenants whose incomes will insure compliance with this section. Nothing contained herein shall require the displacement of existing tenants of a Housing Development. Additionally, resident selection shall be conducted in accordance with the requirements of that certain Section 8-Resident Selection Plan (as applicable), contained in the consent order of the United States District Court for the District of Rhode Island entered on November 22, 1985 in the case of *Martinez v. Rhode Island Housing and Mortgage Finance Corporation*,

C.A. No. 83-03193, which plan was submitted for public comment and re-adopted by the Corporation on February 18, 1987.

2. **Tenant Contributions of Rental Charges.** Tenant contributions of rental charges for each unit, including utility payments, shall not, after the expiration of any applicable Housing Assistance Payment Contracts, exceed the maximum tenant contribution in effect for the low income housing tax credit program established by § 42(g)(1)(B) of the Internal Revenue Code, or as determined by the Corporation from time to time by Program Bulletin in the event that the low income housing tax credit program established by § 42(d) of the Internal Revenue Code is terminated. Any permitted increases in tenant contributions of rental charges following expiration of any applicable Housing Assistance Payments Contracts shall be phased in under a transition schedule approved by the Corporation so as to minimize the financial burden on tenants residing at the Housing Development at the time of expiration of such Housing Assistance Payments Contracts.
3. **Additional Subsidies.** Owners and/or all Transferees of the Housing Development shall use best efforts to renew or extend the terms of any existing federal rental subsidies received for the Housing Development and to secure any available additional subsidies made available from time to time by the federal government, the State of Rhode Island or the municipality in which the Housing Development is located.
4. **Reserve Accounts.** The Owner shall maintain the following accounts for the Housing Development:
 - a. **Operating Reserve Fund.** An Operating Reserve Fund in an amount determined by the Corporation necessary to satisfy the future operating requirements of the Housing Development during the term of the Affordable Housing Restriction Agreement, taking into account, without limitation, the rent, transition and income provisions within the Affordable Housing Restriction Agreement and the anticipated net operating income of the Housing Development (the "Preservation Operating Reserve Fund Requirement");
 - b. **Replacement Reserve Account.** A Replacement Reserve Account in an amount determined by the Corporation to satisfy the future capital needs of the Housing Development;
 - c. **Rehabilitation Reserve Account.** A Rehabilitation Reserve Account in an amount determined by the Corporation to satisfy the current capital needs of the Housing Development, which account shall only be maintained until the current needs are satisfied and the funds of the account are depleted accordingly; and

- d. Other Reserve Accounts. Such other reserve accounts deemed necessary by the Corporation to insure the maintenance and financial viability of the Housing Development.
5. Asset Management Fee. Owners shall be eligible to receive an annual Asset Management Fee from available cash flow consistent with Program Bulletins issued from time to time. Payment of the Asset Management Fee shall not affect any property management fees paid to management agents for a Housing Development.
6. Return on Equity/Surplus Funds.
 - a. Distribution of Surplus Cash. One-half of any Surplus Cash of the Housing Development at the end of each calendar may be distributed to the Owner up to the amount of the Approved Return on Equity as defined below. The balance of Surplus Cash shall be distributed to and become the sole property of the Preservation Trust. Notwithstanding the foregoing, the Corporation may, as to a specific Housing Development and in its sole discretion, allow the Owner and/or the Transferee to retain ownership of all or a portion of the Surplus Cash upon the condition that the owner pays the Preservation Trust a preservation fee from the Surplus Cash during and after the remaining term of any applicable Housing Assistance Payments Contract; provided, however, that in no event shall the amount of such preservation fee be less than one-half of the present value of the estimated Surplus cash to be generated by the Housing Development during the remaining term of any applicable Housing Assistance Payments Contract, as determined by the Corporation. In the event that the Available Proceeds for any specific Preservation transaction includes funds made available in whole or part as a result of the sale of Tax Credits, the minimum preservation fee, in the Corporation's sole discretion, may be increased by up to one-half of the amount of such proceeds and may be paid from such proceeds. Such preservation fee may be evidenced by promissory notes of the Owner or Transferee.
 - b. Return on Equity. Owners shall be eligible to receive an annual return on equity in an amount approved by the Corporation and not to exceed six percent (6%) ("Approved Return on Equity"), which shall be paid from Surplus Cash as described above. Owners' equity in the Housing Development will be established at the Closing in accordance with Program Bulletins issued from time to time. Owners are entitled to an Approved Return on Equity only to the extent that funds remain in the Operating Account of the Housing Development after payment of mortgage debt service, operating expenses, reserve deposits and the Asset Management Fee, such funds to be known as Surplus Cash. In the event that

sufficient Surplus Cash is not available to pay the Approved Return on Equity in any one year, the balance shall not accrue and the Owner shall not be entitled to that portion of the Approved Return on Equity for that year.

- B. Binding Effect. The Affordable Housing Restriction Agreement shall run with the land, constitute a lien on the Housing Development for all obligations of the Owner thereunder and shall bind all permitted successors and assigns of the Owner.

2.7 TERMINATION OR SUSPENSION OF THE PRESERVATION PROGRAM.

The Corporation may terminate or suspend the Preservation Program at any time.