

**825-RICR-30-00-1**

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

### **CHAPTER 30 - RULES RELATIVE TO MULTIFAMILY LOAN PROGRAMS**

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

##### **PART 1 - Rental Housing Production and Rehabilitation Program**

### **1.1 PROGRAM PURPOSES**

#### **A. Objectives of Program.**

1. The Corporation has determined that there exists a compelling need to provide decent, safe and sanitary housing and assisted living facilities for persons and families of low and moderate income residing in the State of Rhode Island and long term affordability to the residents of such housing, and to prevent the loss of this State's existing supply of Federally Insured or Assisted Housing units and the displacement of Low Income Persons and Families arising as a result of the conversion of such housing to market rate rental properties and condominiums.
2. The Rental Housing Production and Rehabilitation Program (the "Program") offers financial incentives to Housing Sponsors that preserve, develop, construct, produce or rehabilitate Housing Developments.
3. This Part sets forth the criteria established by the Corporation to determine which Housing Developments will be eligible for various financing alternatives under the Program, and shall be construed and applied so as to accomplish the objectives of providing mortgage financing Housing Developments in the State of Rhode Island.

#### **B. Income Targeting.**

1. Under the Program, the Corporation will provide financing only to:
  - a. Developments occupied or to be occupied at least 20% by persons and families whose income is 50% or less of the Area Median Gross Income (the "20 50 Test") or
  - b. Developments occupied or to be occupied at least 40% by persons and families whose income is 60% or less of the Area Median Gross Income (the "40 60 Test") as those terms are defined in the Tax Act at 26 U.S.C. § 142(d) or

- c. in the case of Assisted Living Facilities, Development occupied or to be occupied 100% by persons and families whose income is 110% or less of the Area Median Gross Income (the "100-110 Test").
2. To encourage the development and preservation of rental housing for Low Income Persons or Families, the Board of Commissioners has established a Targeted Loan Fund from which, subject to certain limitations, the Corporation will make below-market rate loans to Housing Sponsors.

## **1.2 CONSTRUCTION OF RULES AND REGULATIONS**

Construction with Act, Tax Act and Housing Trust Fund Legislation. 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, the Tax Act and the Housing Trust Fund Legislation.

## **1.3 DEFINITIONS**

- A. "Act" means the Housing and Mortgage Finance Corporation Act more particularly set forth in R.I. Gen. Laws Chapter 42-55, as amended.
- B. "Affiliated Person of a Housing Sponsor" means:
  1. if the Housing Sponsor is a Partnership, any individual or corporate general partner or any limited partner which has an ownership interest of 25% or greater;
  2. if the Housing Sponsor is a joint venture, each joint venturer, the general partners thereof and each limited partner of each joint venturer which has an ownership interest of 25% or greater;
  3. if the Housing Sponsor is a corporation, any officer, director or shareholder owning 10% or greater of the voting stock issued and outstanding; and
  4. if the Housing Sponsor is a trust, any trustee thereof or a beneficiary with a 25% or greater interest therein.
  5. An "Affiliated Person of a Housing Sponsor" shall also mean any shareholder of a corporate general partner or joint venturer of a Housing Sponsor owning 10% or greater of the voting stock issued and outstanding of such corporation.
- C. "Appraised Value" means the appraised value of a Development as determined by an independent certified real estate appraiser approved by the Corporation.

- D. "Assisted Living Facility" means a multiple unit residential rental development (including a designated wing or section of such development) located in the State of Rhode Island, to be acquired, constructed, developed and/or rehabilitated by a Housing Sponsor, offering room, board and Services for the frail elderly and other persons requiring assistance with activities of daily living, such as bathing, dressing, grooming, ambulating, eating, toileting or other similar tasks.
- E. "Board of Commissioners" or "Board" means the Board of Commissioners of the Corporation.
- F. "Corporation" means the Rhode Island Housing and Mortgage Finance Corporation, a public corporation organized and existing under the Act.
- G. "Deferred Maintenance" means needed maintenance of an ordinary or routine nature that could be, but has not been performed, which has a serious adverse effect on the use, value and/or useful life of the Housing Development. Deferred Maintenance, shall not include the failure to modernize equipment or fixtures in the Housing Development, if such equipment or fixtures are adequate to perform their intended function, and consistently operate as originally designed and installed, but in the case of Assisted Living Facilities, Deferred Maintenance does pertain to furniture, fixtures and equipment.
- H. "Development" or "Housing Development" means a multifamily residential housing complex consisting of Rental and Low Income Rental Units to be acquired, constructed, developed and/or rehabilitated by a Housing Sponsor. A Development may be a multifamily residential housing complex portions of which are located on non-contiguous parcels of land; provided, however, that all parcels shall be located in the State of Rhode Island and shall be within one (1) mile radius of each other and, provided, further, that for Developments financed with tax-exempt bonds, housing complexes on noncontiguous parcels must meet the applicable 20-50 Test or the 40-60 Test for each parcel. Notwithstanding the foregoing, a Development also may be a mobile or manufactured home park located in the State of Rhode Island which meets the applicable 20-50 Test or 40-60 Test or an Assisted Living Facility.
- I. "Economic Occupancy" means the gross rental income which would be received if the Housing Development were fully occupied.
- J. "Equity" means the Equity of the Housing Sponsor in the Housing Development calculated in accordance with the Act and this Part.
- K. "Existing Waiting List" means a list of eligible low and moderate income individuals or families who have applied to become tenants of the Housing Development upon the occurrence of a vacancy, which list is updated at least bi monthly and contains names of potential tenants to fill vacancies of units equal to at least one and one half (1.5) times the annual turn-over for the two (2) preceding years for the Housing Development.

- L. "Federally Insured or Assisted Housing" means any:
1. low income housing units insured or assisted under §§ 221(d)(3) and 236 of the National Housing Act (12 U.S.C. § 1701 *et seq.*);
  2. low income housing units produced with assistance under Section 8 of the United States Housing Act of 1937 (42 U.S.C. § 1401 *et seq.*) and
  3. rural low income housing financed under § 515 of the Housing Act of 1949 (12 U.S.C. § 1715z).
- M. "Funding Period" means any period during which the Corporation has requested and is reviewing Proposals for financing under the Program.
- N. "Housing Sponsor" means mutual housing associations, nonprofit housing development corporations, limited equity housing cooperatives (all as defined in the Housing Trust Fund Legislation and hereinafter referred to as "Mutual Housing Association," "Nonprofit Housing Development Corporations" and "Limited Equity Housing Cooperatives"), as well as corporations, individuals, joint ventures, partnerships, limited partnerships, trusts, firms, associations, or other legal entities or any combination thereof, whether organized for profit or not, qualified to own, construct, acquire, develop, produce, preserve or rehabilitate a Development. With respect to applications for construction loans to be funded from the Corporation's reserves, a "Housing Sponsor" shall also include municipal or local governments located in the State of Rhode Island, the State of Rhode Island, and state, municipal, and local public housing development and redevelopment authorities, agencies and corporations lawfully created and located in the State of Rhode Island.
- O. "Housing Trust Fund Legislation" means R.I. Gen. Laws Chapter 42-55.1, as the same may be amended from time to time.
- P. "Low Income Persons or Families" means persons or families whose income does not exceed the applicable percentages of the Area Median Gross Income as defined in the Tax Act at 26 U.S.C. § 142(d) and, with respect to Assisted Living Facilities, also means persons or families whose income does not exceed the 100-110 Test. Statistical data relating to Area median Gross Income of Low Income Persons or Families shall be made available to Housing Sponsors by Program Bulletin from time to time.
- Q. "Low Income Rental Unit" means a Rental Unit which is rented or intended to be rented to Low Income Person or Families.
- R. "Major Repairs or Replacements" mean repairs or replacements to the Housing Development which the Corporation estimates in the aggregate to equal or exceed Three Thousand Dollars or such larger amount as may be determined from time to time by Program Bulletin.

- S. "Mortgage Loan" means a loan made or authorized by the Corporation to be 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 this Part. To the extent that a Mortgage Loan in the form of construction loan financing is provided from the Corporation's own reserves, permanent financing may be provided by a third party or parties.
- T. "Operating Expenses" means all expenses, costs and fees incurred in the operation and maintenance of a Housing Development.
- U. "Program Bulletin" means a bulletin issued by the Corporation implementing a section or sections of this Part. A Request for Proposals under § 1.5(A) of this Part may also constitute a Program Bulletin. Copies of all Program Bulletins shall be maintained by the Corporation at its principal office, and shall be available for inspection and copying during the Corporation's Regular Business Hours.
- V. "Proposal" means a written application for the acquisition, construction, development, production, rehabilitation or preservation of a Development seeking financing under the Program.
- W. "Rental Unit" means, except as provided in § 1.4(D) of this Part, a unit containing complete living, dining, cooking, sanitation and sleeping facilities to be rented to persons or families. For purposes in this Part, a Rental Unit also includes a space for a manufactured or mobile home, with appropriate water, utility and sanitation connections, located in a qualified mobile or manufactured home park.
- X. "Regular Business Hours" means between the hours of 9:00 a.m. - 5:00 p.m. on Mondays through Fridays, except holidays.
- Y. "Rhode Island Housing Trust Fund" or "Housing Trust Fund" means that certain fund created pursuant to the Housing Trust Fund Legislation, monies from which shall be used by the Corporation specifically for the purposes set forth in R.I. Gen. Laws § 42-55.1-3, as the same may be amended from time to time.
- Z. "Services" means, with respect to an Assisted Living Facility, those supportive services to be provided to the residents of such Development. Services required to be offered by an Assisted Living Facility shall be established by Program Bulletin and may include, among other, two meals per day; housekeeping, maintenance, and laundry services; medical monitoring; service coordination and case management; 24-hour emergency response; and assistance with personal care needs.
- AA. "Targeted Loan Fund" means those certain designated funds heretofore authorized by the Board of Commissioners, loans from which shall be made to encourage the development, construction and/or rehabilitation of Low Income Rental Units. The Board of Commissioners may at any time and from time to

time supplement the Targeted Loan Fund with additional funds or withdraw funds previously committed to the Targeted Loan Fund.

- BB. "Targeted Loan Fund Loan" means a loan from the Corporation's Targeted Loan Fund. In no event, shall the principal amount of a Targeted Loan Fund Loan exceed such amount as the Corporation may establish from time to time.
- CC. "Tax Act" means the Internal Revenue Code of 1986, as amended, and the rules and regulations promulgated thereunder.
- DD. "Total Development Cost" means the total cost of a Development, as approved by the Corporation.

#### **1.4 DEVELOPMENTS ELIGIBLE FOR FINANCING.**

- A. Eligible Developments. To be eligible for financing under the Program, a Development shall:
  - 1. be located within the State of Rhode Island;
  - 2. be available to the general public;
  - 3. except with respect to spaces in a mobile or manufactured home park, provide a permanent structure for year-round residential non-transient use served or to be served, in the opinion of the Corporation, by adequate storm, waste removal, telephone, gas, electricity and water service;
  - 4. comply with applicable state and local building and health codes, the Corporation's design and construction criteria and guidelines (the "Design Guidelines"), and applicable requirements of the Tax Act;
  - 5. comply with the Corporation's income targeting requirements set forth in § 1.1(B) of this Part;
  - 6. except as provided below, be constructed on land which is not in a base flood elevation (100-year flood) ("Base Flood Elevation") as determined by the Corporation in accordance with the most current Flood Insurance Rate Map issued by the Federal Emergency Management Agency; and
  - 7. comply with other applicable requirements of law, as they may be amended from time to time, including, but not limited to, for an Assisted Living Facility, obtaining a license from the Rhode Island Department of Health, if required.
- B. Waiver by the Corporation as to Base Flood Elevation Requirement. If a Housing Sponsor seeks to construct a Development in a Base Flood Elevation, the Housing Sponsor must demonstrate to the Corporation's complete satisfaction that the location of the Development will not present an unreasonable risk of

bodily injury or harm to the residents of the Development and the structural integrity of the Development will not be materially and adversely affected by its location in a Base Flood Elevation. The decision of the Corporation shall be binding and conclusive on the Housing Sponsor.

- C. Developments Consisting of Fewer than Fifteen Rental Units. Unless the Corporation in its discretion determines that the financing of such Developments from the proceeds of its bonds is economically feasible, Developments otherwise complying with this Part that consist of less than fifteen (15) Rental Units shall be financed primarily from sources other than the Corporation. Such Developments, however, may be eligible for Corporation subsidies from the Targeted Loan Fund and the Housing Trust Fund, to the extent funds are available. Any loan or loans to such Developments shall be made upon such terms and conditions as the Corporation deems appropriate.
- D. Rental Units. Each Rental Unit and Low Income Rental Unit (other than spaces in mobile and manufactured home parks) in a Development financed with the proceeds of bonds exempt from federal income taxation shall have complete facilities for living, sleeping, dining, cooking and sanitation. Notwithstanding the foregoing, Developments financed with the proceeds of taxable bonds, with Corporation reserve funds or monies from the Housing Trust Fund may, if approved by the Corporation, contain Single Room Occupancy Units ("SRO Units") which do not have complete self-contained facilities for living, sleeping, dining, cooking and sanitation. In addition to any other requirements contained in the Tax Act, each Low-Income Rental Unit shall be of the same size and construction and contain the same amenities of comparable non-Low Income Rental Units contained in the Development. Each Rental Unit, Low Income Rental Unit and SRO Unit shall be constructed in accordance with the Design Guidelines.
- E. Rental Units for Use by the Handicapped. The Corporation may, in its discretion, on such terms and conditions as it may determine, loan to a Housing Sponsor up to an additional \$5,000 of Targeted Loan Funds per Rental Unit or Low Income Rental Unit specifically equipped for use by a handicapped person or persons.

## **1.5 APPLICATION PROCESS**

- A. Requests for Proposals. The Corporation will request Proposals from Housing Sponsors at such times as the Corporation may establish from time to time by Program Bulletin. With the approval of the Corporation, the review and approval of Proposals submitted during a particular Funding Period may be carried over into a future Funding Period or periods. Notwithstanding the foregoing, the Corporation will consider Proposals submitted at any time and from time to time after the expiration of a Funding Period to the extent that funds allocated to such period are still available, provided such Proposals otherwise comply with this Part.

B. Receipt of Proposals. Proposals may be submitted to the Corporation during Regular Business Hours. A Proposal shall be deemed received as of the date the Corporation determines that the Proposal contains the information necessary to conduct the Corporation's preliminary review.

C. Review of Proposals and Evaluation Criteria.

1. The Corporation seeks to maximize the availability of affordable rental housing in the State of Rhode Island and to use monies allocated for that purpose efficiently. Accordingly, the Corporation will give priority to Proposals which:
  - a. utilize other available funding resources such as Community Development Block Grants, Stuart McKinney Funds and other federal funds, foundation grants and grants of real estate by state and municipal governments and agencies;
  - b. request less than the maximum Targeted Loan Fund Loan allowable under this Part and Program Bulletins;
  - c. utilize the Tax Credit (defined in § 1.11 of this Part) in a cost-effective manner;
  - d. creatively respond to the needs of Low Income Persons or Families that are physically handicapped;
  - e. provide rental housing to families rather than individuals in furtherance of the Corporation's Program goals, recognizing that such a goal may not be applicable to Assisted Living Facilities;
  - f. are located in areas that do not have low income housing;
  - g. are competitive on a per unit development cost basis; and
  - h. contain extended long-term affordability provisions.
2. The Corporation reserves the right to amend, modify or supplement the priorities and evaluation criteria set forth herein from time to time by Program Bulletin.

D. Use of Forms; Contents of the Proposal.

1. The Corporation may from time to time designate, make available and require Housing Sponsors to use Corporation forms in connection with a Proposal. Housing Sponsors seeking financing under the Program shall submit to the Corporation the following information in triplicate:



- 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 the Proposal;
- b. Certified copies of the organizational documents of the Housing Sponsor including its enabling legislation, constitution, Articles of Association or Incorporation and by-laws, declaration of trust, partnership, limited partnership or joint venture agreement, as the case may be, together with all amendments thereto;
- c. Credit reports of the general contractor and of each Affiliated Person of the Housing Sponsor;
- d. Certified copies of resolutions of the Board of Directors, Trustees or other managing body of the Housing Sponsor authorizing the Development and the submission of the Proposal to the Corporation;
- e. A copy of the most recently available audited annual financial statements of the Housing Sponsor prepared in accordance with generally accepted accounting principles consistently applied and duly certified by a licensed certified public accountant covering a period ending within twelve (12) months prior to the date submitted.
- f. Personal financial statements of each Affiliated Person of the Housing Sponsor;
- g. Detailed pro forma financial information of the Development including an operating budget which clearly sets forth, to the satisfaction of the Corporation, the sources and applications of Development funds;
- h. A proposed construction timetable;
- i. A disbursement schedule;
- j. A construction cost breakdown;
- k. A copy of the proposed development plans and specifications, including without limitation, the site plan, location map, soil and foundation investigation report and, if required by the Corporation, a structural report;
- l. Copies of the Development survey and the surveyor's report;
- m. Resumes of the Housing Sponsor, each Affiliated Person of the Housing Sponsor and of any architects, contractors, engineers and

attorneys or other third parties on the development team setting forth all previous housing experience;

- n. Copies of all market data collected by the Housing Sponsor, tenant selection plan, housing, management plan and questionnaire and evidence of compliance with federal and state fair housing, fair rental and landlord/tenant laws;
  - o. Evidence that the Development will comply with applicable zoning, building and fire codes and ordinances and will not be located in a wetland or flood hazard area;
  - p. Title report with respect to the Development evidencing good and marketable title;
  - q. A utility cost analysis together with certifications from authorities providing electricity, waste removal, water and heat as to their ability to provide such services to the Development;
  - r. With respect to Assisted Living Facilities, copies of all contracts for (or, if such contracts have not yet been entered into, the Housing Sponsor's plans for) the provision of Services to the Development, a lease-up/absorption analysis, and a copy of the license issued by the Rhode Island Department of Health with respect to the Development, if required;
  - s. Other information as shall in the discretion of the Corporation be required to establish that the requirements of the Tax Act have been satisfied; and
  - t. With respect to applications for construction loans funded from the Corporation's reserves, evidence satisfactory to the Corporation of a commitment or commitments for permanent financing.
2. In addition, the Corporation may require each Housing Sponsor to submit evidence of its ability to complete the Development in a timely manner. To the extent permitted by law, the Corporation may obtain or require additional background information respecting the character of the Housing Sponsor and any Affiliated Person of the Housing Sponsor.
3. The Corporation reserves the right to waive any of the foregoing requirements in any particular case, and to supplement any of the foregoing requirements from time to time by Program Bulletin. Any information or materials submitted must be in form and substance satisfactory to the Corporation in all respects. The Corporation shall, by Program Bulletin, establish a timetable for the submission of information required to be contained in a Proposal.

E. Review by Staff; Approval of Board of Commissioners.

Each Housing Sponsor shall submit the information and materials required by the Corporation to evaluate the Development. Upon receipt of those materials required by the Corporation to commence the review process, the Corporation shall notify the municipality where the Development is or will be located. Upon completion of its review, Corporation staff shall recommend to the Board of Commissioners, for either construction loan or permanent financing or both, those Developments which best satisfy the criteria set forth in § 1.5(C) of this Part hereof and are economically feasible.

F. Developments to be Financed with Bonds or Other Instruments of the Corporation.

1. Except as modified hereby, the procedures set forth in § 1.5(E) of this Part shall apply to Housing Sponsors seeking to finance Developments through the issuance of the Corporation's bonds or other debt instruments. Such Housing Sponsors shall submit the information and materials required by the Corporation to make an initial evaluation of the Development. If it shall initially approve the Development, the Board shall adopt a resolution evidencing the Corporation's intent to issue bonds or other instruments to finance the Development, if necessary. Notwithstanding the foregoing, the adoption of such resolution shall not constitute the Corporation's binding commitment to finance the Development.
2. Following the issuance of the resolution, Corporation staff shall meet with such Housing Sponsor to review further processing requirements and to obtain any further information and documentation not previously submitted. Upon satisfaction of such requirements and submission of the required documentation, staff shall make final recommendations to the Board to issue a commitment to such Housing Sponsor. The commitment may be conditioned on the Corporation's ability to issue bonds or other instruments at prevailing market rates and may contain such other terms and conditions as the Board of Commissioners may, in its sole discretion, deem appropriate. Upon satisfaction of the terms and conditions of the commitment within the time period contained therein, there shall be an initial closing (the "Initial Closing") for the development, construction and/or rehabilitation phase of the Development at which the parties will execute certain documents, instruments and agreements. After the development, construction and/or rehabilitation phase has been completed to the satisfaction of the Corporation, there shall be a finalization of the loan transaction (the "Final Closing").

G. Rejection. The Corporation shall advise any Housing Sponsor, in writing, that has been rejected under the Program.

## **1.6 FEES**

- A. Application Fee. A non-refundable Application Fee shall be payable to the Corporation by a Housing Sponsor upon submission of a Proposal for initial review by staff. The Application Fee shall be established from time to time by Program Bulletin and may be reduced for non-profit Housing Sponsors.
- B. Loan Submission Fee. Each Housing Sponsor shall pay to the Corporation a non-refundable Loan Submission Fee in an amount to be established from time to time by Program Bulletin upon submission of the information and documentation required by staff to complete the evaluation of the Proposal prior to final action by the Board of Commissioners.
- C. Loan Origination Fee. Each Housing Sponsor shall pay to the Corporation at the Initial Loan Closing, a loan origination fee with respect to a Mortgage Loan or a Targeted Loan Fund Loan in an amount to be established from time to time by Program Bulletin.
- D. Annual Servicing Fee. In addition to the interest charged on the Mortgage Loan at the rate established by the Corporation, each Housing Sponsor shall be required to pay to the Corporation an annual servicing fee based on percentages of the total initial principal indebtedness of the Housing Sponsor to the Corporation under the Program. The amount of such fee shall be .375% of such initial principal indebtedness where the same is \$1,000,000 or less, .25% on the excess, if any, above \$1,000,000 up to and including \$4,000,000 and .125% on the excess, if any, above \$4,000,000.
- E. Increases or Decreases in Fees; Other Fees. The Corporation may in its discretion increase or decrease the amount of any fee set forth in §§ 1.6(A) through (D) of this Part by Program Bulletin, and require a Housing Sponsor to pay additional fees which have been charged to the Corporation by bond insurers and financial institutions providing credit enhancement for bonds issued to fund a Development or Developments under the Program or which otherwise arise as a result of bond financing or direct borrowing from the Federal National Mortgage Association and/or the Federal Home Loan Bank or for other appropriate purposes as may be established from time to time by Program Bulletin and applied uniformly.

## **1.7 CERTAIN TERMS AND CONDITIONS OF LOANS; REQUIREMENTS AT INITIAL AND PERMANENT CLOSING.**

- A. Loan Term. The term of each Mortgage Loan shall be established by the Corporation on a case by case basis but shall not, in any event, exceed a date forty (40) years from the due date of the first payment which commences the permanent amortization of the Mortgage Loan.

- B. Interest Rate. The interest rate on Mortgage Loans shall be established by the Corporation from time to time and made available by Program Bulletin.
- C. Loan to Value Ratio. The total principal indebtedness, excluding Targeted Loan Indebtedness, of a Housing Sponsor to the Corporation on any Development at the Initial Loan Closing shall not exceed 90% of the Appraised Value of the Development. To the extent permitted by the Act, the Corporation may, on a case by case basis, allow the total principal indebtedness to exceed said amount.
- D. Equity Contribution Requirement. Unless otherwise determined by the Corporation in accordance with the Act, no Development shall be considered for financing unless the Housing Sponsor shall have contributed equity to the Development equal to not less than 10% of the Total Development Cost. The equity requirement may be satisfied by a contribution in cash or real property from whatever source, including proceeds of a loan or loans, as long as such loan or loans are subordinated to the Corporation's mortgage(s); provided, however, that no equity contributions of real property shall satisfy this requirement unless the Corporation shall have received an appraisal satisfactory to the Corporation respecting the value of such real estate by a certified, independent real estate appraiser approved by the Corporation. The cost of such appraisal shall be borne by the Housing Sponsor.
- E. Calculation of Equity. At the time the Corporation makes the final advance under the Mortgage Loan, the Corporation shall determine the Housing Sponsor's Equity in the Housing Development in accordance with the Act and shall provide the Housing Sponsor with written notice of the Equity established within sixty (60) days of the date of the final advance. Except as otherwise provided in § 1.8 of this Part, the Equity established shall remain constant during the term of the Mortgage Loan.
- F. Limitation of Return on Equity. Each year, the return on equity contributed by a Housing Sponsor shall be limited to not more than the average yield per annum on thirty (30) year United States Treasury Bonds for the immediately preceding calendar year plus 5% unless a lesser return is specified in the regulatory agreement for the development.
- G. Working Capital/Latent Defects Reserve. For mortgage loans to finance new construction or rehabilitation, the Corporation may require a Housing Sponsor to create under the control of the Corporation, by cash or by irrevocable letter of credit, a fund equal to 2.5% of the Mortgage Loan to cover any deficiency in the construction or rehabilitation of the Development. Such fund shall be retained by the Corporation for a period of 12 months after the Final Closing to cover latent defects in the construction improvements, operating deficiencies, repairs and cost increases resulting from change orders.
- H. Residual Receipt Account. Income in excess of the permitted return on equity shall be maintained by the Corporation in a Residual Receipt Account or such

other accounts as may be required by the Corporation to insure the continued affordability and financial stability of the Development. The Corporation may require funds in the Residual Receipt Account to be used for maintenance and repairs to the Development at any time or times prior to repayment of all amounts due the Corporation under the loan documents to ensure that the Development will be maintained and operated in a fair, decent, safe and sanitary manner. All funds remaining in the Residual Receipt Account shall be the property of the Housing Sponsor upon payment in full of all amounts due under the loan documents unless otherwise provided for in the loan documents.

## **1.8 REDEFINITION OF EQUITY**

- A. Purpose. Recalculation of Equity is intended to provide a financial incentive for Housing Developers to maintain Housing Developments affordable to persons and families of low and moderate income.
- B. Redefinition of Equity Calculation. The Corporation shall recalculate Equity for Housing Developments every five (5) years, or more frequently at the Corporation's discretion. Not less than fifteen (15) years from the date of the closing of the Mortgage Loan and following the expiration of each five (5) year period thereafter, a Housing Sponsor may request that the Corporation redefine the Equity for a Housing Development. All such requests shall be in writing on forms provided by the Corporation and addressed to the Corporation at the Corporate Office, Attention: Director of Housing Development.
- C. Fee. Each Application for Redefinition of Equity shall be accompanied by a non-refundable fee in cash or by certified or bank check made payable to the Corporation in an amount equal to one half percent (1/2%) of the outstanding balance of all amounts due under the Mortgage Loan, which fee may be waived by the Corporation in writing in whole or in part, and will be considered an annual operating expense for the year in which it is paid. The Housing Sponsor shall submit to the Corporation all supporting documentation and information together with the Application as the Corporation may require.
- D. Financial and Structural Condition Equity shall only be redefined for those Housing Developments determined by the Corporation to be in good condition, and to have healthy finances and reserves. Equity for a Housing Development shall be denied if the Corporation determines that:
  - 1. Deferred Maintenance exists;
  - 2. Major Repairs or Replacements to the Housing Development are anticipated or required for the coming year, which would reduce the reserve accounts below levels required by the Corporation;
  - 3. Operating Expenses of the Housing Development have not been paid within thirty (30) days of the date on which they were due;

4. The Housing Sponsor has failed to consistently maintain an Operating Account for the Housing Development with a balance equal to or greater than one (1) month's total Operating Expenses;
  5. The Housing Development has failed to sustain ninety-five percent (95%) or greater Economic Occupancy for each of the prior twenty-four (24) consecutive months;
  6. The Housing Sponsor has failed to maintain an Existing Waiting List satisfactory to the Corporation;
  7. Amounts due under the Mortgage Loan have been delinquent during the preceding twenty-four (24) month period;
  8. Reserve account balances for the Housing Development are determined by the Corporation to be inadequate;
  9. The Housing Sponsor fails to limit future rent increases for the Housing Development to the amount needed to pay all annual Operating Expenses (which expenses shall include return on equity and maintaining reserves at the greater of Five Thousand Dollars (\$5,000) per unit or twenty percent (20%) of the outstanding principal balance of the Mortgage Loan), and to execute any and all agreements relating thereto as the Corporation shall deem necessary; or
  10. With respect to Developments other than Assisted Living Facilities (as to which this subsection 10 shall not apply), The Housing Sponsor fails to agree to maintain each unit of the Housing Development as affordable to persons of low and moderate income for a minimum of twenty (20) years from the:
    - a. date of maturity of the Mortgage Loan, as the same may be amended from time to time, or
    - b. date on which the Housing Sponsor could prepay any mortgage securing the Housing Development or could elect not to renew a Section 8 assistance contract for any development as defined under R.I. Gen. Laws § 34-45-4, as amended, which prepayments or options not to renew may not occur without the prior consent of the Corporation.
- E. Calculation of Redefined Equity. Redefined Equity shall be equal to the greater of:
1. the difference between the amount derived from a capitalization of the annual cash flow of a Housing Development determined in accordance with standard appraisal practices approved by the Corporation and the

unpaid principal balance of any mortgage loans secured by a lien on the Housing Development; and

2. the difference between the fair market value of the Housing Development determined by the Corporation and the unpaid principal balance of any mortgage loans secured by a lien on the Housing Development.

## **1.9 DOCUMENTATION**

If the Proposal is approved by the Corporation and the Corporation's commitment is accepted by the Housing Sponsor, the Housing Sponsor shall enter into, execute, deliver and provide the Corporation with such documents, instruments and further assurances at the Initial Closing, Final Closing and thereafter as the Corporation deems necessary including, without limitation, a promissory note or notes secured by a mortgage or mortgages on the Development and/or evidencing a security interest in personal property, opinions of counsel to the Housing Sponsor, performance and payment bonds or letters of credit in lieu thereof if acceptable to the Corporation, cost certifications, assignments of construction, architectural and other contracts and rentals, assignments of contracts entered into in connection with the provision of Services for an Assisted Living Facility, and assignments of other contracts which the Corporation deems appropriate, secured or unsecured guarantees, a construction loan agreement and tax regulatory agreement, agreements respecting long term affordability of a Development and use of proceeds from the Targeted Loan Fund and Housing Trust Fund and letters of credit or other pledged cash to cover anticipated losses, if any, in meeting debt service coverage. Any agreement, construction loan agreement and/or related loan documents shall, as applicable, also require the Housing Sponsor to obtain title insurance and to obtain and maintain casualty, liability and builder's risk insurance on the Development in such amounts as the Corporation deems necessary, and may require the Housing Sponsor to hold the Corporation harmless from and against any and all liabilities and claims arising out of the Development. In addition, such agreement and related documents may contain other terms and conditions that the Corporation deems appropriate including, without limitation, provisions respecting the payment of taxes on the Development; provisions requiring a percentage of proceeds to be retained during the construction, development or rehabilitation periods; prepayment provisions, certification, reporting and monitoring requirements with respect to the continued use of Low Income Rental Units and the continuing use of the Development as a multifamily residential housing development; provisions respecting management of the Development; provisions relating to reserves and other operating funds; and the imposition of penalties and/or legal or equitable remedies, including foreclosure against the Development, available to the Corporation in the event of default, fraud or misrepresentation. In connection with Assisted Living Facilities, the Corporation may also require the Housing Sponsor to provide executed copies of all agreements for the provision of Services, all agreements with healthcare providers of all types, all agreements relating to federal and state funding and Medicare and similar programs, all agreements



with senior services and social services providers and such other agreements or documentation as the Corporation shall deem to be appropriate.

## **1.10 CONTINUING USE OF DEVELOPMENT AS MULTIFAMILY RENTAL HOUSING**

- A. Use as Rental Property. Each Development, other than Assisted Living Facilities financed under the Program shall continue to meet the 20 50 Test or the 40 60 Test during the qualified project period as such period is defined in the Tax Act at 26 U.S.C. § 142(d)(2). Each Assisted Living Facility financed under the Program shall continue to meet the 100-10 Test for a period of not less than fifteen years. Notwithstanding the foregoing, in the event that Targeted Loan Funds are utilized for an Assisted Living Facility, the period of affordability required for the units funded by Targeted Loan Funds shall be not less than 30 years, and, further, in the event that any other affordability restrictions apply as a result of other funding provided for a Development, those restrictions shall also apply.
- B. Limited Commercial Use. Each Development financed with taxable bonds or Corporation reserve funds may, if approved by the Corporation, contain up to twenty-five percent (25%) of its total square footage, and with respect to Assisted Living Facilities, up to thirty-five percent (35%) of its total square footage, dedicated to commercial usage. The amount of commercial space in a Development finance with tax-exempt bonds shall not exceed applicable limitations in the Tax Act. No monies from the Housing Trust Fund shall be used for any purposes other than those purposes set forth in the Housing Trust Fund Legislation.

## **1.11 TAX CREDITS**

Under the Tax Act, tax credits may be available to Housing Sponsors that acquire, construct, develop, produce or rehabilitate Developments that satisfy the low income targeting requirements set forth in the Tax Act at 26 U.S.C. § 42. Whether or not a multifamily housing development for rental to persons of low and moderate income is financed with funds of the Corporation, the Corporation shall have sole and exclusive authority to allocate tax credits among Housing Sponsors in accordance with the provisions of the Tax Act. The allocation of Tax Credits shall be determined in accordance with procedures established in separate Rules and Regulations of the Corporation, as the same may be amended from time to time.

## **1.12 EQUAL OPPORTUNITY AND AFFIRMATIVE ACTION POLICY**

The Corporation actively encourages participation by minority and female owned businesses as owners, developers, contractors, suppliers, subcontractors, architects, engineers, management agents and other vendors participating in the Development. Housing Sponsors shall comply with the rules and regulations of the Corporation applicable to Equal Opportunity and Affirmative Action

Procedures, Part 10-00-2 of this Title, as such rules and regulations may be amended from time to time.

### **1.13 FINANCING**

The Corporation intends to issue bonds and other debt instruments to provide funds to finance Developments under the Program. Nothing in this Part is intended to limit the instruments which may be issued (whether taxable or nontaxable), or the manner in which the same may be secured or sold. Types of financing instruments may include, without limitation, construction loan notes, bond anticipation notes or bonds issued to provide either or both temporary or permanent financing. In addition to the foregoing, funds may be provided to finance Developments from Corporation reserves.

### **1.14 SPECIAL PROVISIONS REGARDING CORPORATE GOVERNANCE OF MUTUAL HOUSING ASSOCIATIONS AND LIMITED EQUITY HOUSING COOPERATIVES**

- A. Pursuant to R.I. Gen. Laws § 42-55.1-3(b)(4) the Corporation hereby promulgates the following standards and requirements with respect to corporate governance of Mutual Housing Associations and Limited Equity Housing Cooperatives applying for financing under the Program. The Corporation may supplement such standards and requirements by Program Bulletin from time to time.
1. Mutual Housing Associations. Mutual Housing Associations shall be Rhode Island non-profit corporations, as defined in the Housing Trust Fund Legislation, organized under and subject to the provisions of the Rhode Island Non-Profit Corporation Act, as the same may be amended from time to time. Each Mutual Housing Association shall have as one of its corporate purposes the prevention and elimination of neighborhood deterioration and the preservation of neighborhood stability by affording community and resident involvement in the provision of high quality, long term housing for low and moderate income families. The Articles of Incorporation of each Mutual Housing Association seeking funding from the Corporation shall be subject to approval of the Corporation's Executive Director during the application process.
  2. Limited Equity Housing Cooperatives. Limited Equity Housing Cooperatives shall be Rhode Island non-profit corporations, organized under and subject to the provisions of the Rhode Island Non-Profit Corporation Act and R.I. Gen. Laws § 7-6.1-1 *et seq.*, as they may be amended from time to time.