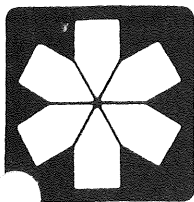


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**MINNESOTA
HOUSING
FINANCE
AGENCY**

DEC 9 1994

December 9, 1994

Ms. Maryanne Hruby, Director
Legislative Commission to Review Administrative Rules
55 State Office Bldg.
100 Constitution Ave.
St. Paul, MN 55155

Dear Ms. Hruby:

I have enclosed a copy of the Statement of Need and Reasonableness on the proposed rules relating to Proposed Permanent Rules Relating to Housing Finance; Capital Contribution of Investors; Certain Loan Programs; Clarification and Updates for your files.

If you have any questions call me at 296-9793.

Sincerely,

J. Van Der Bosch

Judie VanDerBosch
Legal Assistant

JV
Enc.

November 21, 1994

STATE OF MINNESOTA
HOUSING FINANCE AGENCY

STATEMENT OF NEED AND REASONABLENESS

In the Matter of the Proposed Rules Relating to Housing Finance;
Capital Contributions of Investors; Certain Loan Programs; Clarification and Updates

I. INTRODUCTION

The Minnesota Housing Finance Agency (Agency) proposes to adopt rules governing the definition of capital contributions of investors for the Redefined Equity Program (Program). The Program provides incentives for owners of federally subsidized multi-family rental housing to remain in the subsidized housing program and preserve the housing as decent, affordable housing for very low income households.

The Agency has prepared this Statement of Need and Reasonableness (SNR) to explain its proposed rules and satisfy the rule making requirements of the Minnesota Administrative Procedures Act, Minnesota Statutes Chapter 14 (1992).

Part II of this SNR describes the statutory authority of the Agency to undertake this rule making. Part III describes the need for the proposed rules. Part IV describes the reasonableness of the proposed rules. Parts V and VI address the small business consideration and the fiscal note requirements of Chapter 14, respectively. Part VII consists of required dates and signatures. A fee requirements disclosure is unnecessary, because the proposed rules do not establish or adjust fees as contemplated in Minnesota Statutes Chapter 16A.128 (1992).

The proposed rules were drafted after discussions with various representatives of multi-family investors and developers. The Agency drafted these proposed rules based on these discussions as well as statutory requirements. The Agency board of directors has also reviewed and approved the Program concept and proposed rules.

II. STATUTORY AUTHORITY OF PROPOSED RULES AND FUNDING SOURCE

The Agency's statutory authority to adopt rules to comply with Chapter 14 is set forth in Minnesota Statutes, Section 462A.06, subdivision 11 (1992).

The Agency's authority to define capital contributions of investors is set forth in Minnesota Statutes Section 462A.03, subdivision 13 which reads in part:

".....the return to a limited dividend entity shall not exceed ten percent of the capital contributions of the investors or such lesser percentage as the agency shall establish in its rules...."

III. STATEMENT OF NEED

Minnesota Statutes Chapter 14 (1992) requires the Agency to make an affirmative presentation of facts establishing the need for and reasonableness of the rules as proposed. In general terms, this means that the Agency must set forth the reasons for its proposal, and the reasons must not be arbitrary or capricious.

However, to the extent that need and reasonableness are separate, need means a problem exists which needs administrative attention, and reasonableness means the solution proposed by the Agency is appropriate. The need for the proposed rules is discussed below. The reasonableness of the proposed rules is discussed in Part IV.

As general background information, it has been determined that a need exists to preserve the supply of existing federally assisted very low income rental housing. With very low income renter household's experiencing a steady decline in their purchasing power, housing costs consume an ever increasing portion of their incomes if federally assisted housing assistance is not available.

The federal tax reform act of 1986 removed most of the tax incentives for owning rental housing. Without tax incentives for investment the need has become greater to provide the opportunity for investors to obtain a higher rate of cash return on their investment if they are to continue to remain in federally assisted very low income rental housing programs. To date, 32 federally subsidized multi-family developments, or 13% of the Agency's portfolio, have prepaid their mortgages.

Minnesota Statutes 462A.02 Subdivision 11 declares that it is in the best interests of the citizens of the State of Minnesota that public money used for the purposes of this chapter be used in a manner that best assures the long-term affordability of housing to low and moderate income citizens. It is necessary to provide adequate incentives for investors to remain in federally assisted housing programs in order to assure long term affordability of multi-family rental housing.

Based upon the above facts, the Agency has determined that rules are necessary to implement the Program.

IV. STATEMENT OF REASONABLENESS

The Agency is required by Minnesota Statutes Chapter 14 (1992) to make an affirmative presentation of facts establishing the reasonableness of the proposed rules. Reasonableness is the opposite of arbitrariness or capriciousness. It means that there is a rational basis for the Agency's proposed action. The reasonableness of the proposed rules is discussed below.

A. Reasonableness of the Rules as a Whole.

To determine the need for and adequacy of rules for the Program, the Agency performed various activities which are discussed here.

The Agency met with its team of bond underwriters, three accountants, and investor/owners and property managers of one third of the federally subsidized multi-family rental housing it has financed to discuss and evaluate various options and incentives to encourage investor/owners to continue to keep their housing enrolled in federally subsidized housing programs and not pre-pay their mortgages. The investor/owners and property managers own and manage properties throughout the state with Agency financing.

Discussions were conducted with the Assistant Attorney General assigned to the Agency to ensure statutory requirements will be met in the Program. These requirements included verification of the Agency's responsibility and authority to define capital contributions of investors in Agency rules.

The Agency determined the proposed rules are necessary to define capital contributions of investors in accordance with applicable statutory provisions.

The Agency considered concerns of all parties and believes their concerns are adequately addressed and reasonably accommodated in the proposed rules. The reasonableness of each proposed rule is discussed below.

B. Reasonableness of Individual Rules

The following discussion addresses the specific provisions of the proposed rules.

Section 4900.0010 **DEFINITIONS**

This section establishes that the terms used in this chapter are assigned the following meanings. This is reasonable to establish uniform and clear definitions of terms appearing throughout the proposed rules.

Subpart 7. Capital contributions of the investors. The changes made in subitem 1, unit (j) and subitem 2 are reasonable because reserves of federally subsidized multi-family rental housing developed prior to October, 1981 are the property of the investors and as such add to the financial security and long term economic viability of the development. It is reasonable to require that adequate reserves are available to make future needed repairs and replacements in a timely manner in order to preserve housing in decent and safe condition.

It is also reasonable in subitem 2(b)(i) to recognize that having development reserves of at least 30% of the outstanding mortgage add to the financial security of the development thereby offsetting the need for a waiting list provided occupancy of at least 95% has been maintained for the prior 24 consecutive months.

It is also reasonable in subitem 2(c) to recognize that having development reserves at least equal to 40% of the outstanding mortgage adds to the financial security of the development thereby offsetting the need for both a waiting list and 95% occupancy.

It is further reasonable that developments which are financially secure and meet the criteria outlined in Subpart 7A, units (1) and (2) and agree to extend their federal housing subsidy contracts for their maximum terms and agree to not prepay their mortgages thereby preserving this housing as decent affordable housing for the long term be entitled to cumulative dividends.

V. SMALL BUSINESS CONSIDERATIONS IN RULEMAKING

The Agency is cognizant of the provisions of Minnesota Statutes 14.115 (1992) which requires a state agency to consider methods for reducing the negative impact on small businesses of its

proposed rules or amendments to its rules. The proposed rules do not establish any compliance or reporting requirements, design or operational standards, or directly affect the required operation of any small businesses. Therefore, the provisions contained in Minnesota Statutes 14.115 (1992) do not apply to the proposed rules.

VI. FISCAL NOTE

There is no requirement for the expenditure of public monies by local public bodies to implement the proposed rules. Any expenditure of public monies by public bodies with regard to the proposed rules is voluntary. Therefore, the provisions contained in Minnesota Statutes 14.11, subdivision 1 (1992) do not apply to the proposed rules.

VII. CONCLUSION

Based on the foregoing, the proposed Minnesota Rules part 4900.0010, Subpart 7, subitems 1 and 2 are needed and reasonable.

Dated: 12 - 8 - 94

Katherine G. Hadley

Katherine G. Hadley, Commissioner
Minnesota Housing Finance Agency



MINNESOTA HOUSING FINANCE AGENCY

In the Matter of the Proposed Adoption
of the Rule of the Minnesota Housing
Finance Agency Governing the
Permanent Rules Relating to Housing Finance; Capital Contribution of Investors;
Certain Loan Programs; Clarification and Updates

NOTICE OF INTENT TO ADOPT
A RULE WITHOUT A
PUBLIC HEARING

The Minnesota Housing Finance Agency intends to adopt a permanent rule without a public hearing following the procedures set forth in the Administrative Procedures Act, Minnesota Statutes, sections 14.22 to 14.28. You have 30 days to submit written comments on the proposed rule and may also submit a written request that a hearing be held on the rule.

Agency Contact Person. Comments or questions on the rule and written requests for a public hearing on the rule must be submitted to:

Judie VanDerBosch
Minnesota Housing Finance Agency
400 Sibley Street, Suite 300
St. Paul, MN 55101-1998
(612) 296-9793

Subject of Rule and Statutory Authority. The proposed rule is about Permanent Rules Relating to Housing Finance; Capital Contribution of Investors; Certain Loan Programs; Clarification and Updates. The statutory authority to adopt this rule is Minnesota Statutes 462A.06, subd. 4 and 11. A copy of the proposed rule is published in the State Register and attached to this notice as mailed. You have until 4:30 PM, January 13, 1995 to submit written comment in support of or in opposition to the proposed rule and any part or subpart of the rule. Your comment must be in writing and received by the agency contact person by the due date. Comment is encouraged. Your comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Request for a Hearing. In addition to submitting comments, you may also request that a hearing be held on the rule. Your request for a public hearing must be in writing and must be received by the agency contact person by 4:30 PM, on January 13, 1995. Your written request for a public hearing must include your name and address. You are encouraged to identify the portion of the proposed rule which caused your request, the reason for the request, and any changes you want made to the proposed rule. If 25 or more persons submit a written request for a hearing, a public hearing will be held unless a sufficient number withdraw their requests in writing. If a public hearing is required, the agency will follow the procedures in Minnesota Statutes, sections 14.131 to 14.20.

Modifications. The proposed rule may be modified as a result of public comment. The modifications must be supported by data and views submitted to the agency and may not result in a substantial change in the proposed rule as attached

and printed in the State Register. If the proposed rule affects you in any way, you are encouraged to participate in the rulemaking process.

Statement of Need and Reasonableness. A statement of need and reasonableness is now available from the agency contact person. This statement describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule.

Adoption and Review of Rule. If no hearing is required, after the end of the comment period the agency may adopt the rule. The rule and supporting documents will then be submitted to the attorney general for review as to legality and form to the extent form relates to legality. You may request to be notified of the date the rule is submitted to the attorney general or be notified of the attorney general's decision on the rule. If you wish to be so notified, or wish to receive a copy of the adopted rule, submit your request to the agency contact person listed above.

Dated: 11-22-94

Katherine G. Hadley
Katherine G. Hadley, Commissioner

1 Minnesota Housing Finance Agency

2

3 Proposed Permanent Rules Relating to Housing Finance; Capital
4 Contribution of Investors; Certain Loan Programs; Clarification
5 and Updates

6

7 Rules as Proposed

8 4900.0010 DEFINITIONS.

9 [For text of subps 1 to 6, see M.R.]

10 Subp. 7. Capital contribution of the investors.

11 A. "Capital contribution of the investors" means the
12 excess of the value of the project at the times and in the
13 manner determined by the agency, whether or not paid in cash,
14 over the then current principal amount of the agency's loan:

15 (1) for those developments which that:

16 A- (a) have adequate reserves as determined
17 by the agency;

18 B- (b) all needed maintenance, as determined
19 by the agency, has either been performed or is scheduled to be
20 performed;

21 C- (c) during the next 12-month period will
22 require no major repairs or replacements, as determined by the
23 agency, the payment of which would reduce the reserve accounts
24 below an amount determined by the agency;

25 D- (d) the operating expenses are paid in
26 full;

27 E- (e) have operating account balances equal
28 to or greater than one month's total operating expenses;

29 F- (f) have sustained an average occupancy
30 by rent paying tenants of 95 percent or more for the prior 24
31 months;

32 G- (g) have a current waiting list equal to
33 at least 1-1/2 times the annual turnover for the prior 24
34 months, but the requirements of this item are not applicable to
35 developments that have reserves equal to or exceeding the sum

1 that is the greater of \$5,000 per dwelling unit or 30 percent of
2 the outstanding principal balance of the mortgage;

3 ~~H-~~ (h) the mortgage has not been delinquent
4 during the prior 24 months;

5 ~~I-~~ (i) the owner agrees to limit future rent
6 increases to the amount needed to pay for increases in annual
7 operating expenses which includes return on equity and the
8 maintenance of adequate reserves as determined by the agency;

9 ~~J-~~ (j) the owner agrees to maintain the
10 development as Section 8 or Section 236 assisted housing for a
11 minimum of 20 years from the effective date of the Housing
12 Assistance Payments Contract or Agreement for Interest Reduction
13 Payments, if one exists, and the minimum 20-year term has not
14 yet expired and in excess of five years remain prior to its
15 expiry date; and

16 ~~K-~~ (k) the owner agrees to execute any
17 documents that the agency deems necessary and appropriate to
18 effectuate the intent of this definition; or

19 (2) for those developments that:

20 (a) meet the requirements of subitem (1),
21 units (a) to (e), (h), and (i);

22 (b) have sustained an average occupancy of
23 rent-paying tenants of 95 percent or more for the prior 24
24 months or have reserves equal to the greater of 40 percent of
25 the outstanding mortgage or \$5,000 per unit;

26 (c) have a current waiting list equal to at
27 least 1-1/2 times the annual turnover for the prior 24 months,
28 but the requirements of this item are not applicable to
29 developments that have reserves equal to or exceeding the sum
30 that is the greater of \$5,000 per dwelling unit or 30 percent of
31 the outstanding principal balance of the mortgage, or have
32 reserves equal to the greater of 40 percent of the outstanding
33 mortgage or \$5,000 per unit;

34 (d) the owner agrees to maintain the
35 development as Section 8 or Section 236 assisted housing for the
36 maximum terms of the Housing Assistance Payments Contract or

1 Agreement for Interest Reduction Payments, if one exists;
2 (e) the owner agrees not to prepay its
3 mortgage with the agency; and

4 (f) the owner agrees to execute any
5 documents that the agency deems necessary and appropriate to
6 effectuate the intent of item A, subitem (2), which shall
7 include an agreement by the agency that the owner shall be
8 entitled to cumulative dividends.

9 ~~For-all-other-developments,~~ B. "Capital contribution
10 of the investors" means the excess of the total development cost
11 of the project as determined by the agency, whether or not paid
12 in cash, over the original principal amount of the agency's loan
13 for developments not meeting the requirements of item A, subitem
14 (1) or (2).

15 [For text of subps 7a to 23, see M.R.]