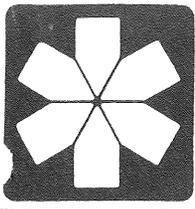


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**MINNESOTA
HOUSING
FINANCE
AGENCY**

November 22, 1995

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 Home Ownership Assistance Fund for your files.

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

Sincerely,

Judie VanDerBosch
Legal Assistant

JV
Enc.

STATE OF MINNESOTA
HOUSING FINANCE AGENCY

STATEMENT OF NEED AND REASONABLENESS

In the Matter of the Proposed Rules Governing the
Home Ownership Assistance Fund

I. INTRODUCTION

The Minnesota Housing Finance Agency (Agency) proposes to adopt rules governing the Home Ownership Assistance Fund (Program). The Program provides interest free loans to recipients who are determined, on the basis of normal credit procedures, who lack the financial resources necessary to pay entry costs on the property to be purchased. The amount of the entry cost assistance must equal; (1) the maximum allowable under the applicable mortgage insurance program; or (2) \$3,500 if the maximum allowable under clause (1) exceeds this amount. Entry cost assistance may be used to pay a portion of the entry costs on the property to be purchased that are customary within the mortgage industry. Recipients of homeownership assistance fund money must have a maximum adjusted household income limit of less than or equal to, 115% of state or area medium income as determined and adjusted from time to time by the United States Department of Housing and Urban Development. For purposes of this subpart, adjusted income is as defined in part 4900.0010, subpart 3. eligible recipients. Homeownership assistance fund money may only be used in conjunction with first mortgage loans made or purchased by the agency, except for special initiatives designed to encourage the development or redevelopment of neighborhoods or communities in cooperation with money from community sources eligible activities.

The Agency has prepared this Statement of Need and Reasonableness (SNR) to explain its proposed rules and satisfy the rulemaking 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 rulemaking. 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 lending institutions, realtors, housing and homeless organizations, members of the Metropolitan Council, the McKnight Foundation, Department of Trade and Economic Development (DTED), and for-profit and nonprofit housing providers. The Agency drafted these proposed rules based on these discussions as well as the statutory requirements of the Program and its funding source. 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 implement the Program is set forth in Minnesota Statutes Section 4900.1331 which provides that the Agency may provide low and moderate income borrowers with assistance in meeting the required entry costs (downpayment, closing costs and prepaid expenses) to obtain first mortgage financing, and/or to provide a subsidy to meet the value gap in those markets where the cost of new home construction or the cost of substantial rehabilitation exceeds the resulting appraised value of the home.

The Program is financed with direct appropriations from the Legislature.

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, staff from MHFA and DTED conducted five (5) Jobs and Housing meetings around the state in the fall of 1994 regarding the issue of job growth and housing shortages. Data from those meetings, along with the recent Governor's Economic Vitality and Housing Initiative, have determined that a shortage of housing, a lack of affordable housing, and a lack of decent housing is standing in the way of economic development efforts throughout the state. Private sector developers and lenders would like to respond to the housing needs they have identified in their communities but the gap between what it costs to develop new housing or rehabilitate existing housing and what most households can afford to pay for housing is a substantial barrier. With respect to single family development, the barriers are the costs of land and infrastructure; the value gap, the unavailability of mortgage insurance, the lack of downpayment and entry costs, the unavailability of construction financing, the need for homebuyer training, and the need for purchase and rehabilitation financing. The Governor's Economic Vitality and Housing Initiative recommends combining \$15 million of state appropriated funds with \$30 million in recycled mortgage funds from the Housing Finance Agency to strengthen communities economic development efforts.

In 1995, the Minnesota Legislature recognized the need to address these issues. Their response was to authorize the Agency to develop the proposed Program. The Program will provide both a downpayment as well as an equity participation loan that would not exceed \$15,500. This would address the need for downpayment assistance as well as value gap between what it costs to develop new housing or rehabilitate existing housing and what most households can afford to pay for housing.

The Agency reviewed the statutory authority for implementing the Program. This authority, and its related restrictions, do not specifically address the income levels of persons and families that may apply for this assistance, the limitations on the type of first mortgage loans that may be used in conjunction with this assistance, a provision to provided for a recapture of program funds for later use by the agency, enforcement of liens in the event of Homeownership Assistance Fund loan default, maximum amount of assistance per applicant and specific eligibility for application of funds.

There is a need for substantive and procedural Program requirements to be as clear as possible to entities which do not regularly apply to the Agency for financing, and which do not know the various statutory requirements affecting this Program. Hence, the Agency found that rules were necessary to clearly define eligible parties, eligible applications, and eligible activities.

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 met with a variety of housing professionals including lending institutions, realtors, housing and homeless organizations, members of the Metropolitan Council, the Mcknight Foundation, Department of Trade and Economic Development (DTED), and for-profit and nonprofit housing providers. The primary purpose of these meetings was to discuss program parameters as a whole as opposed to specifically addressing administrative rules.

The Agency requested comments from the public before undertaking the drafting of the proposed rules (Notice of Solicitation of Outside Information or Opinions Regarding Proposed Rule Governing Home Ownership Assistance Fund, Cite 20 S.R. 245.)

Two formal comments were received in response to the formal notice. However, informal discussions with various interested parties revealed the need for specific explanations of Program requirements, eligible activities, and the financing source for the Program.

Discussions were conducted with the Special Assistant Attorney General assigned to the Agency to ensure statutory requirements will be met in the Program. These requirements included addressing the needs of low and moderate income homebuyer, and furthering the purpose of increasing the supply of affordable housing.

The Agency determined that the proposed rules are necessary to ensure program uniformity, to avoid arbitrary and capricious decisions and to establish uniform requirements and procedures for the Program.

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.

4900.1300. **SCOPE** This section cites the statutory authority for the Program, and briefly explains the nature of the Program. This is reasonable to establish a frame of reference for the proposed rules.

4900.1315 **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.

4900.1331 Subpart 2 **Use of Funds**. General. Amendment to this section allows for application of Homeownership Assistance Funds for special initiatives designed to encourage the development or redevelopment of neighborhoods or communities in cooperation with money from community sources without requiring the they be used in conjunction with first mortgage loans made by the agency as in other forms of program applications. This is necessary to meet the need for new variations of fund application required by the Governors Economic Vitality and Housing Initiative for housing needs in areas designated as needing substantial increases in affordable housing stock for low and moderate income homebuyers.

Subpart 3 **Fund Recapture**. Revision is needed to allow for deferral of repayment of Homeownership assistance funds without limiting repayment to predetermined limits of repayment linked to income growth by the recipients. Funds must be repaid in a timely fashion and it is not possible to determine future income growth with any accuracy at time of loan application so this requirement may prove a hardship to applicants and terms of loans may prove to be practically unenforceable if projected income is be overstated under the repayment formula.

4900.1345 Subpart 2 **Income Limit Restriction**. This must be set at 115% of state or area median income in order to reach to target market of home buyers designate under the Governors Economic Vitality and Housing Initiative. The current limits of 60% of the greater of state or area

median income and 75% of the greater of state or area median income will preclude participation by most homebuyers targeted under this Governors Economic Vitality and Housing Initiative.

4900.1315 Subparts 7 and 10 are definitions that are not longer referenced in parts 4900 referencing Home Ownership Assistance Fund.

This is reasonable because if terms are not used they need not be defined.

4900.1345 Subpart 1. **Three-year requirement.** This section establishes a requirement that each recipient of Home Ownership Assistance Fund must not have had an interest in a principal residence for the past three years prior to receiving Home ownership assistance money. The Governor's Economic Vitality and Housing Initiative targets both first time and non first time homebuyers as eligible recipients. If the Homeownership Assistance Fund is used to support this initiative, the three year requirement must be deleted to facilitate participation of non first time homebuyers in the program.

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

The Agency is cognizant of the provisions of Minnesota Statutes 14.11, subdivision 1 (1992) which requires a state agency, when proposing rules or amendments to rules, to determine if the rules will require expenditures of public monies by local public bodies to implement the rule. If the expenditures are estimated to exceed \$100,000 in either of the two years immediately after the adoption of the rule, the Agency's notice must contain a written statement giving a reasonable estimate of the total cost.

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 parts 4900.1315 Subparts 7 and 10 and 4900.1331 Subpart 2 through Subpart 3 and 4900.1345 Subpart. 2 are needed and reasonable.

Dated: Nov. 21, 1995

Katherine G. Hadley

Katherine G. Hadley , Commissioner
Minnesota Housing Finance Agency