

**ADOPTED REGULATION OF THE
ADMINISTRATOR OF THE HOUSING DIVISION OF
THE DEPARTMENT OF BUSINESS AND INDUSTRY**

LCB File No. R093-00

Effective November 20, 2000

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §§1-38, NRS 319.140.

Section 1. Chapter 319 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 29, inclusive, of this regulation.

Sec. 2. *The issuance of notes, bonds or other obligations by the division is conclusive evidence that the requirements of this chapter have been met, and the validity of any notes, bonds or other obligations of the division is not affected by the failure to meet any of the requirements of this chapter.*

Sec. 3. *“Senior project” means a project for housing for persons who are at least 55 years of age.*

Sec. 4. *“Special needs project” means a project for housing for a particular demographic group with a special need for housing, as identified by the division.*

Sec. 5. *“Sponsor” means a person who is the primary entity responsible for the promotion of a project.*

Sec. 6. *“Volume cap” has the meaning ascribed to it in 26 U.S.C. § 146(b) and (c).*

Sec. 7. 1. Except as otherwise provided in this section, when allocating volume cap, the division shall give priority to senior projects and special needs projects if the division determines that there is a need for such projects.

2. A local government may establish a priority for the allocation of volume cap for projects proposed by the local government. If a local government has established a priority for allocation and if the division has determined that it has sufficient volume cap for projects to supplement volume cap on all projects submitted by a local government, the division shall apply the priority of the local government to all projects proposed by the local government when allocating volume cap to the projects of the local government. If the division has determined that it does not have sufficient volume cap to supplement volume cap on all projects submitted by a local government, the division:

(a) May give priority to senior projects or special needs projects; and

(b) Shall not finance family projects proposed by the local government until the division has sufficient volume cap to supplement volume cap for those projects.

3. As used in this section, "family project" means a project for housing that does not discriminate as to family size, age of head of household or dependents, or marital status of the residents.

Sec. 8. 1. For a project to receive volume cap from the division:

(a) The findings of the administrator relating to the project must be approved by the state board of finance pursuant to chapter 319 of NRS; and

(b) The project must have the support of a local government as described in subsection 2.

2. Except as otherwise provided in this subsection, the division shall not provide financing to a project unless one or more local governments will provide a minimum of 50 percent of the

total volume cap for the project. The division may finance a project that has less than 50 percent of the total volume cap from a local government if the project is in a rural community.

Sec. 9. *The division shall not submit a project to the state board of finance for approval unless the division determines that:*

1. The project has binding commitments on either the mortgage or bonds, as required, from a credit enhancer who has been approved by the division;

2. If tax-credit equity is to be part of the total financing, the project has binding commitments from the tax-credit equity investor; and

3. Sources of funding for the proposed project have all been identified and are adequate to fund the project to completion.

Sec. 10. *To receive financing from the division for a project, the sponsor must:*

1. Pay the application fee described in NAC 319.700;

2. Prove to the satisfaction of the division that the project will comply with the provisions of NAC 319.600 to 319.790, inclusive, and sections 3 to 29, inclusive, of this regulation; and

3. Submit the following documents, as applicable, to the division:

(a) A binding letter of commitment from a credit enhancer which is rated AA/Aa or AAA/Aaa and which covers the principal of and interest on the bonds through the earlier of:

(1) The maturity of the proposed bond issue; or

(2) A mandatory tender or redemption date;

(b) If tax-credit equity is to be used as a source of funding for the project, a binding letter of commitment from the tax-credit syndicator verifying the amount and timing of money from the sale of tax credits less all associated fees;

(c) A document describing:

- (1) The proposed final sources and uses of funds for the project, including, without limitation, net bond proceeds, tax-credit equity, grants and any subordinated debt; and*
- (2) The proposed draw schedule for use of bond proceeds;*
- (d) The partnership agreement or articles of incorporation of the sponsor;*
- (e) The certificate of registration issued by the secretary of state pursuant to NRS 86.551 or 88.580, as applicable, for the sponsor;*
- (f) The articles of organization and any resolutions or operating agreements that establish the authority of a person to sign documents associated with the financing of the project;*
- (g) A written contract to purchase or option to purchase the property on which the project is to be built, or a title report showing ownership of the property on which the project is to be built;*
- (h) A title report for the site of the project that includes a list of all exceptions and a pro forma American Land Title Association policy to be issued to the lending organization;*
- (i) A copy of the most recent Phase I Environmental Report, that is less than 12 months old, for the site of the project;*
- (j) A copy of the most recent geotechnical report, that is less than 12 months old, for the site of the project;*
- (k) A copy of a certified appraisal of the site of the project that is approved by the credit enhancer;*
- (l) A copy of a certified “as-built” survey of the site of the project which is American Land Title Association qualified and which shows the project in its proper place on the site and all exceptions to title;*
- (m) A copy of any development agreement with the owner of the proposed project;*

(n) A copy of any management agreement to be used for the proposed project;

(o) A copy of any general contractor's agreement between the sponsor and the proposed general contractor for the project;

(p) A parcel map of the site of the project that is recorded with the county recorder;

(q) If the site of the project is located on a flood zone as designated by the Federal Emergency Management Agency, a map that shows the bounds of the flood zone, the property on which the project is to be located and the project; and

(r) A copy of the zoning restrictions on the site of the project showing that the applicable zoning laws and regulations allow for the development of the project on the site.

Sec. 11. 1. *For a project approved by the division, the division may issue a combination of taxable and tax exempt bonds.*

2. Except as otherwise provided in this subsection, the proceeds of bonds issued pursuant to subsection 1 must be used to construct or permanently finance projects in this state with loan amounts on a single project from \$5,000,000 to \$30,000,000. The administrator may waive the minimum or maximum loan amounts.

Sec. 12. 1. *The division may require that up to 25 percent of the bonds issued for a project be taxable bonds.*

2. The division may impose a percentage requirement for a mixed-use project that is partially a senior project or a special needs project which is less than the percentage requirement for other types of projects.

3. As used in this section, "mixed-use project" means a project for housing for more than one demographic group, as determined by the division.

Sec. 13. When determining whether to approve a loan application, the division shall review the contract for the sale of land on which the project is to be built. If the contract reveals a high percentage markup of the cost of the land without documented improvements that add value, the division may disapprove the application or decrease the amount of financing that it will provide by the amount of the markup that is disapproved by the division.

Sec. 14. 1. Upon approval of a loan application by the division, a sponsor must submit:

(a) If the application is for a new project, a down payment of \$75,000 toward the cost of issuance of the bonds for the project; or

(b) If the application is for refinancing of an existing project, a deposit in an amount that is less than \$75,000, as determined by the division, toward the cost of issuance of the bonds for the project.

2. The balance of the cost of issuance of the bonds is due at closing.

Sec. 15. 1. Each project must have adequate credit enhancement from a credit enhancer that is long-term rated AA/Aa, including variable rate transactions. The credit enhancement must:

(a) Be in the form of a surety bond, Federal Housing Administration mortgage insurance, mortgage-backed security, credit facility, letter of credit or other credit instrument that is acceptable to the division; and

(b) Cover the principal of and interest on the bonds through the earlier of:

(1) The maturity of the bonds; or

(2) A mandatory tender or redemption date.

2. If, during the life of the bonds, the sponsor of a project does not renew the credit enhancement, upon the termination of the credit enhancement, the division shall require a tendering of the bonds.

Sec. 16. Except as otherwise provided in this section, following the construction or rehabilitation period, fixed rate and variable rate loans on a project must be fully amortizing with a maximum term of 30 years. A loan insured by the Federal Housing Administration may have a maximum term of more than 30 years.

Sec. 17. All bond and loan documents for a project must contain provisions relating to prepayment and must provide for yield maintenance on issuer and trustee fees for at least the first 15 years.

Sec. 18. Permanent or nonconstruction loans on a project may be nonrecourse except for standard lender and issuer exceptions.

Sec. 19. Each project must be owned by a natural person or a single entity that is formed for the sole purpose of developing the project. The sponsor shall not encumber the project to secure any obligation unrelated to the project and may not provide in any bond, mortgage or loan document that a default on any obligation unrelated to the project is a default with respect to the project.

Sec. 20. The projected ratio for debt service coverage for each project must be a minimum of 115:100 on projects for new construction and 125:100 on projects for acquisition and rehabilitation of existing facilities, at:

- 1. The completion of the construction phase; and*
- 2. After a reasonable rent-up period following completion of the project as determined by the division.*

Sec. 21. Each sponsor shall maintain tax, insurance, and repair and replacement escrows for the duration of the loan.

Sec. 22. Each project that uses tax-credit equity must have a loan to value percentage of not more than 85 percent of the appraised value of the project, taking into account all debt. For projects not using tax-credit equity, the division may allow a 95 percent loan to value percentage if the division determines that such a percentage is appropriate under the circumstances.

Sec. 23. A project may receive subordinate financing that is not bond or tax-credit financed, for up to 98 percent of the appraised value of the project if the subordinate financing is serviced by not more than 75 percent of projected available cash flow.

Sec. 24. A project may not convert to nonrecourse financing until the project has been at least 90 percent occupied for 90 consecutive days.

Sec. 25. The sponsor of a project must enter a regulatory agreement with the division. The division shall file each regulatory agreement with the county recorder. A project must comply at all times with the regulatory agreement.

Sec. 26. During construction and rent-up, a developer shall permit the division to display a sign on the site of the project that states in effect that the project is financed by the division.

Sec. 27. 1. The maximum amount of proforma profit and overhead for a developer on a project is 15 percent of the appraised value of the project. The profit must be paid as follows:

- (a) Ten percent paid on the basis of percentage of completion of the improvements;*
- (b) Ten percent paid on the date the construction loan converts to a permanent loan; and*
- (c) Eighty percent paid from cash flows after payment of debt service for senior projects and funded repair and replacement reserves.*

2. The maximum interest rate on a deferred note is limited to the amount needed to maintain the present value of the amount of the developer's fee that remains unpaid.

Sec. 28. *The maximum amount of profit and overhead for a contractor on a project is limited to 14 percent of profits on improvements. Such profit and overhead must be paid on the basis of percentage of completion.*

Sec. 29. *A loan from the division is assumable if:*

1. A loan balance assumption fee of up to 1 percent of the loan balance, as determined by the division, is paid to the division;

2. A processing fee, as established by the division, is paid to the division; and

3. The division approves of the assumption.

Sec. 30. NAC 319.020 is hereby amended to read as follows:

319.020 *1.* Any person desiring clarification of the provisions of this chapter, relief from the strict application of any of its terms, or information concerning procedures for dealing with the division in connection with this chapter should address a written request to the administrator of the division.

2. The administrator may waive any provision of this chapter if he determines that the waiver will assist in accomplishing the public purposes of the division.

Sec. 31. NAC 319.600 is hereby amended to read as follows:

319.600 As used in NAC 319.600 to 319.790, inclusive, *and sections 3 to 29, inclusive of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 319.610 to 319.680, inclusive, *and sections 3 to 6, inclusive, of this regulation* have the meanings ascribed to them in those sections.

Sec. 32. NAC 319.660 is hereby amended to read as follows:

319.660 “Program” means the division’s program ~~[of loans for]~~ *of financing* projects.

Sec. 33. NAC 319.670 is hereby amended to read as follows:

319.670 “Project” means a housing facility for residential use which consists of two or more dwelling units for occupancy by eligible tenants on a rental basis. The term includes ~~[real]~~ property to be leased, *, purchased or developed* for sites for ~~[mobile homes, whether or not]~~ *multifamily housing and upon which* the division ~~[finances]~~ *takes a security interest and records a regulatory agreement, whether the division issues bonds, a mortgage loan or a letter of credit for* the lease, purchase *or development* of ~~[the mobile homes.]~~ *the multifamily housing.*

Sec. 34. NAC 319.690 is hereby amended to read as follows:

- 319.690 1. If appropriate, the division ~~[will make:~~
- ~~—(a) A loan for the]~~ *shall issue bonds or a letter of credit, or make a mortgage loan for:*
- (a) *The* interim financing of the development, construction or rehabilitation of a project;
 - (b) ~~[A loan for the]~~ *The* permanent financing of a project; or
 - (c) ~~[A loan for both]~~ *Both* interim and permanent financing of a project.
2. ~~[Such a]~~ *A bond issuance or mortgage* loan *pursuant to subsection 1* must be:
- (a) Fully or partially insured or guaranteed ~~[by]~~ *with a credit facility from* a governmental agency *other than the division* or by a private source of mortgage insurance ~~[which is licensed to do business in this state;]~~, *bond insurance, guarantee or other credit instrument that is acceptable to the division;* and
 - (b) Secured by a deed of trust on a project in this state.
3. As a condition precedent to the initial closing of ~~[such a loan,]~~ *a bond issuance or mortgage loan pursuant to this section,* the sponsor must execute any documents which the

administrator deems necessary or appropriate to regulate the acquisition, development, construction or rehabilitation of the proposed project and the operations of the sponsor, in order to protect the interest of the division and to fulfill the division's duties.

4. ~~Such a~~ *A mortgage* loan may only be assigned, *transferred, conveyed* or ~~sold~~ *pledged* by a sponsor *or direct lending institution* subject to terms and conditions which are approved in writing by the division before the assignment, *transfer, conveyance* or ~~sale.~~ *pledge*. Upon the execution of an agreement for the assumption of the *mortgage* loan, the sponsor shall pay to the division a fee of *up to* 1 percent of the unpaid principal balance of the *mortgage* loan.

5. The obligation of the division to finance a project is subject to the issuance ~~and~~ *of a letter of credit from the division or* sale of bonds or other obligations of the division in an amount sufficient to permit financing. ~~Unless the project is financed with money from the general reserve trust.~~

~~6. An originating and servicing correspondent or, if a project is approved without a correspondent, the sponsor shall execute an agreement for such a loan or an agreement for a commitment of purchase obligating him to deliver loans for projects. The agreement for a commitment of purchase must provide that loans for projects will be delivered to the division following the final endorsement of the loan made by the division, but not later than 30 months after the delivery of the series of bonds issued for the financing.~~

~~7.]~~ 6. Upon the issuance of a letter of conditional commitment and inducement and the acceptance by the sponsor of the terms and conditions of the letter, the sponsor shall submit to the division within ~~45]~~ *10* days after the letter is issued, a fee *which is* in an amount equal to ~~3 percent of the amount of the mortgage loan or an amount]~~ *the division's cost for issuing bonds,*

a mortgage loan or letter of credit and which is in accordance with the Internal Revenue Code of 1986, as amended.

~~[8.]~~ 7. If the sponsor notifies the division in writing that it does not wish to proceed with the financing, the division shall retain a portion of the fee to cover the costs incurred. The division ~~[will]~~ *shall* return the remainder of the fee to the sponsor ~~[-~~

~~—9.— If the initial closing of an insured mortgage loan has not occurred within 9 months after the execution of the agreement for a commitment of purchase and a substitute project which is acceptable to the division has not been offered, the division may terminate its commitment to purchase the loan.~~

~~—10.— When a project is required to have an originating and servicing correspondent, the correspondent must execute a servicing agreement with the division.]~~ *within 10 days after the date the division conclusively determines the total costs incurred.*

Sec. 35. NAC 319.700 is hereby amended to read as follows:

319.700 1. The division ~~[will publish and periodically update a “Developer’s Handbook”]~~ *shall publish application requirements in hard copy or on its website* which must describe in detail ~~[-~~

~~—(a) The]~~ *the* procedure for reviewing an application and any other requirements prescribed by the division . ~~[- and~~

~~—(b) The applicants who need not submit the \$500 fee with the preliminary application.~~

~~—2.— The enclosures which must be furnished with the preliminary application include:~~

~~—(a) A general map of the location.~~

~~—(b) A plot plan of the site including dimensions and unusual contours or surface features.~~

~~—(c) The legal description of the property and a preliminary report of status of title.~~

- ~~—(d) A copy of the deed, contract of sale or option by which the sponsor holds the site.~~
- ~~—(e) The Federal Housing Administration's application 2013.~~
- ~~—3. A complete proposal must be submitted if the division accepts the preliminary application.~~
- ~~—4. The division will specify in any commitment approving a loan:~~
 - ~~—(a) The date of expiration of the commitment;~~
 - ~~—(b) The principal amount of the loan;~~
 - ~~—(c) The maximum rent by dwelling unit which may be charged by sponsor;~~
 - ~~—(d) The requirements concerning occupancy of the project; and~~
 - ~~—(e) The requirements concerning fees.~~
- ~~—5. All costs must be computed by certified public accountants acceptable to the division. All appraisals must be made by a member of an appraiser's organization which is acceptable to the division. All financial information required by NAC 319.600 to 319.790, inclusive, must be supplied or disclosed in the form of an audited financial statement unless another form of financial statement is specified by]~~

2. The administrator, in consultation with the advisory committee on housing, will establish a fee for applying for financing from the division.

Sec. 36. NAC 319.710 is hereby amended to read as follows:

319.710 The division ~~[will]~~ *shall* finance those projects which:

- 1. Receive approval from a local government that governs the area which includes the project and, if the project includes private activity bonds, receive a transfer from such local government an amount of volume cap deemed necessary by the division;*

2. Are financially feasible at the interest rate to be charged under the division's program and the rents which have been agreed upon but not at the prevailing *market* rate of interest with such rents ~~;~~

~~—2.]~~ *for the units designated as set-aside units;*

3. Will be rented at or below the rents charged for comparable housing which is affordable by tenants of low or moderate income; ~~and~~

~~—3.]~~ 4. Meet the needs identified by the division *and local government* for increasing the supply or improving the quality of decent, safe and sanitary housing for eligible tenants ~~;~~;

5. *Comply with the requirements of NAC 319.600 to 319.790, inclusive, and sections 3 to 29, inclusive, of this regulation; and*

6. *Meet the underwriting criteria of the division that is published and updated periodically by the division.*

Sec. 37. NAC 319.770 is hereby amended to read as follows:

319.770 All the sponsor's *real and personal property pertaining to the project, including all* books, accounts and records pertaining ~~[to the project]~~ *thereto*, must be available for inspection by representatives of the division during the regular business hours. The division may conduct such ~~[examinations of the books and records]~~ *inspections* as it deems necessary or appropriate to determine compliance with ~~[chapter 319 of NRS and NAC 319.600 to 319.790, inclusive, and may require each sponsor to]~~ *the requirements of the division and local, state and federal law. The sponsor shall* pay the cost of ~~[any examination.]~~ *such an inspection to the division.*

Sec. 38. NAC 319.650 and 319.720 are hereby repealed.

TEXT OF REPEALED SECTIONS

319.650 “Originating and servicing correspondent” defined. “Originating and servicing correspondent” means a lending institution which:

1. Originates and services insured mortgage loans;
2. Has a net worth of at least \$500,000;
3. Maintains at least one office within the state;
4. Is qualified to do business in the state;
5. Is licensed as required by law and is authorized to commence business by certificate of the superintendent of banks or the commissioner of savings associations, if required by law;
6. Is in good standing with all state, local and federal regulatory agencies and bodies; and
7. Is approved by the division and the Federal Housing Administration as experienced and qualified to originate and service loans for projects.

319.720 Loans assisted by governmental agencies.

1. The division will assign its allocation from the program for rent assistance of the Department of Housing and Urban Development within geographic areas of the state to those projects having lower levels of rent for comparable units.
2. When a project is financed in whole or in part by a loan which is secured by a mortgage insured or guaranteed by a governmental agency or is otherwise assisted by a governmental

agency, the loan is subject to the regulations of the governmental agency, and any contrary provision of NAC 319.600 to 319.790, inclusive, does not apply.

NOTICE OF ADOPTION OF REGULATIONS

The Housing Division of the Department of Business and Industry adopted regulations amending provisions of Chapter 319 of the Nevada Administrative Code (NAC), Assistance to Finance Housing, including regulations governing loans for multiple-unit housing and the general provisions of Chapter 319, and repeal of NAC 319.650 and NAC 319.729 on August 31, 2000.

INFORMATIONAL STATEMENT

(For Permanent Regulations - Nevada Housing Division)

AS REQUIRED BY THE ADMINISTRATIVE PROCEDURES ACT, NRS 233B.066

The following statement is submitted for adopted amendments to Nevada Administrative Code (NAC) Chapter 319.

1. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.

The Notice of Workshop to Solicit Comments on Proposed Regulation was posted at all Nevada County Public Libraries, the State Library, the Nevada Housing Division's Carson City and Las Vegas office, and at the Attorney General's Office on or about July 5, 2000. The Workshop was held on July 24, 2000. No one attended the Workshop, and no written public comment was received. The Notice of Intent to Act Upon a Regulation was posted at all Nevada County Public Libraries, the State Library, the Nevada Housing Division's Carson City and Las Vegas office and at the Attorney General's Office on or about July 27, 2000. The Hearing was held on August 29, 2000. Public response focused on supplemental volume cap from local governments, prioritization of senior and special needs projects, and the portion of requisite taxable bonds for a project. A copy of the transcript of the hearing/workshop may be obtained by calling the Nevada Housing Division at (702) 486-7220 or by writing to the Division at 1771 E. Flamingo Rd., Suite 206B, Las Vegas, NV 89119.

2. The number of persons who:

- a. Attended each hearing:** 3
- b. Testified at each hearing:** 3
- c. Submitted to the agency written comments:** Comments were submitted by SDA INC.

3. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.

Comments were solicited from affected businesses by the notices, as outlined in #1, and by direct mail to interested persons subscribing to the Division's mailing list. Comments from interested persons included representatives of SDA INC., Fore Property Company, Faiss Foley Merica, and Clark County. Comments focused on supplemental volume cap from local governments, prioritization of senior and special needs projects, and the portion of requisite taxable bonds for a project. A copy of the written comments may be obtained by calling the Nevada Housing Division at (702) 486-7220 or by writing to the Division at 1771 E. Flamingo Rd., Suite 206B, Las Vegas, NV 89119.

5. The estimated economic effect of the adopted regulation on the business which it is to regulate and on the public.

The proposed revisions are not expected to have an adverse or beneficial economic effect upon the regulated community. There is no estimated economic effect on the public, either adverse or beneficial, nor immediate or long-term. Further, the Division has determined the proposed regulations do not impose a significant economic burden upon small business or restricts the formation, operation or expansion of small business.

6. The estimated cost to the agency for enforcement of the adopted regulation.

There is no additional cost to the agency for enforcement of this regulation.

7. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary and the name of the regulating federal agency.

The regulations overlap the regulations adopted by the Internal Revenue Service, and the United States Department of Housing and Urban Development. The Division has adopted the regulations which are similar to those promulgated by the federal government for ease of application and consistency of programs for both the lenders and the public.

8. If the regulation includes provisions which are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.

The regulations are not more stringent than the federal regulations.

9. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

The regulations do not propose a new fee or increase an existing fee.