

**REVISED PROPOSED REGULATION OF THE
ADMINISTRATOR OF THE HOUSING DIVISION OF
THE DEPARTMENT OF BUSINESS AND INDUSTRY**

LCB File No. R093-00

August 16, 2000

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

AUTHORITY: §§1-36, NRS 319.140.

Section 1. Chapter 319 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 28, inclusive, of this regulation.

Sec. 2. *“Senior project” means a project for housing for persons who are at least 55 years of age.*

Sec. 3. *“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. 4. *“Sponsor” means a person who is the primary entity responsible for the promotion of a project.*

Sec. 5. *“Volume cap” has the meaning ascribed to it in 26 U.S.C. § 146(b) and (c).*

Sec. 6. 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

match 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 match volume cap on all projects submitted by a local government, the division:

(a) Shall 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 match 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 children or marital characteristics of the residents.

Sec. 7. 1. *To receive financing from the division, the project must:*

(a) Be approved by the state board of finance; and

(b) 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 a local government will provide a minimum of 50 percent of the total bonding authority for the project. The division may finance a project that has less than 50 percent of the total bonding authority from a local government if the project is in a rural community.

Sec. 8. *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 credits are to be part of the total financing, the project has binding commitments from the tax-credit equity investor; and

3. There is a fully committed balance or a surplus between the sources of funding and the proposed uses of money for the proposed project.

Sec. 9. *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 2 to 28, 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 amount of the bonds plus interest rate lags, as appropriate, and the life of the proposed bond issue or the earliest date of mandatory tender;

(b) If tax credits are 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, tax-credit syndication, 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) The contract to purchase or option to purchase the property on which the project is to be built;

(h) A title report for the property on which the project is to be built 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 property on which the project is to be built;

(j) A copy of the most recent geotechnical report, that is less than 12 months old, on the property on which the project is to be built;

(k) A copy of a certified appraisal of the property on which the project is to be built that is approved by the credit enhancer;

(l) A copy of a certified “as-built” survey of the property on which the project is to be built 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 property on which the project is to be built that is recorded with the county recorder;

(q) If the property on which the project is to be built is located on a flood zone as designated by the Federal Emergency Management Agency, a map which 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 zoning restrictions on the property on which the project is to be built that allows the development of the project on the property.

Sec. 10. 1. *For a project approved by the division, the division may issue a combination of:*

(a) Taxable bonds of up to 25 percent of the total bonds issued; and

(b) 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 or the 25 percent limit on taxable bonds with concurrence from the state board of finance.*

Sec. 11. 1. *Except as otherwise provided in this section, up to 25 percent of the bonds issued for a project must be taxable bonds.*

2. *The division may waive or reduce the 25 percent requirement on any project if the division determines that sufficient volume cap is available for such a purpose.*

3. *The division may waive or reduce the 25 percent requirement for a senior project or other special needs project if the division determines that sufficient volume cap is available for the project.*

4. *A sponsor of a mixed-use project that is partially a senior project or a special needs project must show that the project will be funded from the issuance of taxable bonds in an*

amount equal to 25 percent of the total cost of the project minus the percentage of the project which is a senior project, or a special needs project, or both, as applicable.

5. As used in this section, “mixed-use project” means a project for housing for more than one demographic group, as defined by the division.

Sec. 12. *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 land cost 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. 13. 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 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 bonds for the project.

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

Sec. 14. 1. *A project that receives financing from the division must have adequate credit enhancement from a credit enhancer which is long-term rated AA/Aa, including variable rate transactions. The credit enhancement must:*

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

(b) Cover the full principal amount of the bonds outstanding plus appropriate interest rate lags issued for the life of the bonds.

2. If the sponsor of a project does not renew the credit enhancement during the life of the bonds or on the earliest date of mandatory tender, the division shall require a tendering of the bonds.

Sec. 15. Except as otherwise provided in this section, fixed and floating loans on a project that receives financing from the division must be fully amortizing with a maximum length of 30 years. A loan insured by the Federal Housing Administration may have a maximum length of more than 30 years.

Sec. 16. All bond and loan documents for a project that receives financing from the division must contain provisions relating to prepayment and must provide for yield maintenance on issuer and trustee fees for at least the first 10 years.

Sec. 17. All permanent or nonconstruction loans on a project that receives financing from the division must be nonrecourse except for standard lender and issuer exceptions.

Sec. 18. A project that receives financing from the division and all land associated with the project must be owned by a single entity. If the entity is a business entity, the entity must be formed for the sole purpose of developing the project. The sponsor shall not include property that is not a part of the original financing for the project in cross-collateralization.

Sec. 19. The debt service coverage for a project that receives financing from the division must have a minimum ratio of 115:100 on projects for new construction and 125:100 on projects for acquisition and rehabilitation of existing facilities at the completion of the construction phase and after a reasonable rent-up period following construction as determined by the division.

Sec. 20. A sponsor who receives financing from the division shall maintain tax, insurance, and repair and replacement escrows for the duration of the loan.

Sec. 21. A project that receives financing from the division must have a loan to value percentage of not more than 85 percent of the appraised value of the project to the amount of financing from the division for the project. For projects with 4 percent tax credits, the division may allow a 90 percent loan to value percentage if the division determines that such a percentage is justified by the market.

Sec. 22. A project that receives financing from the division may receive subordinate financing, which 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 available cash flow.

Sec. 23. A project that receives financing from the division must not convert to permanent financing until the project has been 90 percent occupied for 90 consecutive days.

Sec. 24. A project that receives financing from the division must comply at all times with the regulatory agreement of the division which is filed with the county recorder.

Sec. 25. During construction and rent-up, a project that is financed with bonds issued by the division and a project that is financed with a 4 percent tax credit from the division shall permit the division to display a sign on the property on which the project is being constructed that states in effect that the project is financed by the division.

Sec. 26. 1. The maximum amount of profit and overhead for a developer on a project that receives financing from the division is 15 percent of the total 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 reserves.

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

Sec. 27. *The maximum amount of profit and overhead for a contractor on a project that receives financing from the division is limited to 14 percent of profits on improvements. Such profit and overhead must be paid on the basis of percentage of completion.*

Sec. 28. *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. 29. NAC 319.600 is hereby amended to read as follows:

319.600 As used in NAC 319.600 to 319.790, inclusive, *and sections 2 to 28, inclusive of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 319.610 to 319.680, inclusive, *and sections 2 to 5, inclusive, of this regulation* have the meanings ascribed to them in those sections.

Sec. 30. NAC 319.660 is hereby amended to read as follows:

319.660 "Program" means the division's program ~~[of loans]~~ for *financing* projects.

Sec. 31. 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.]~~ *multifamily housing.*

Sec. 32. 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. 33. 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* 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. 34. 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 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 2 to 28, inclusive, of this regulation; and*

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

Sec. 35. 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. 36. 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.