

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

LCB File No. R114-14

AUTHORITY: §§1-15, NRS 319.140

A REGULATION relating to loans for multiple-unit housing;

Section 1. NAC 319.670 is hereby amended to read as follows:

NAC 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 property to be leased, purchased or developed for sites for multifamily housing and upon which the Division takes a security interest and records a regulatory agreement, whether the Division issues bonds ~~or~~ **or** a mortgage loan ~~for a letter of credit~~ for the lease, purchase or development of the multifamily housing.

Sec. 2. NAC 319.690 is hereby amended to read as follows:

NAC 319.690 1. If appropriate, the Division shall issue bonds ~~for a letter of credit,~~ or make a mortgage loan for:

- (a) The interim financing of the development, construction or rehabilitation of a project;
- (b) The permanent financing of a project; or
- (c) Both interim and permanent financing of a project.

2. A bond issuance or mortgage loan pursuant to subsection 1 must ~~be:~~

~~—(a) Fully or partially insured or guaranteed with a credit facility from a governmental agency other than the Division or by a private source of mortgage insurance, 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.~~ *comply with the provisions of paragraphs (a), (b) and (c) of subsection 3 of NAC 319.7125.*

3. As a condition precedent to the initial closing of 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. A mortgage loan may only be assigned, transferred, conveyed or 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 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 of a letter of credit from the Division or~~ *Division's* sale of bonds or other obligations of the Division in an amount sufficient to permit financing.

6. Upon ~~the issuance of~~ *approval of a project by the State Board of Finance, the Division will submit* a letter of conditional commitment and inducement ~~and the acceptance by the sponsor of~~ *to the sponsor which includes* the terms and conditions ~~of the~~ *of the financing of the project. Such* letter ~~the sponsor shall submit to the Division, within~~ *must include, without limitation, an estimate of the Division's costs for the review and issuance of the bonds or mortgage loans. Within* 10 days after the letter is issued, *the sponsor shall remit to the Division* a ~~fee which is in an amount equal to 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.~~
nonrefundable deposit in an amount determined by the Division to cover the Division's costs.

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 shall return the remainder of the fee to the sponsor within 10 days after the date the Division conclusively determines the total costs incurred.~~ *Upon the issuance of bonds or a mortgage loan, the sponsor shall remit to the Division the remaining balance of the Division's costs for issuing the bonds or mortgage loan.*

Sec. 3. NAC 319.710 is hereby amended to read as follows:

NAC 319.710 The Division 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~~ *set forth in the financing documents of the project using the* agreed upon ~~but not at the prevailing market rate of interest with such~~ *restricted* rents for the units designated as *rent restricted* set-aside units ~~;~~ *and market rate rents for units not designated as rent restricted units;*
3. Will be rented at or below the rents charged for comparable housing which is affordable by tenants of low or moderate income;
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

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

Sec. 4. NAC 319.711 is hereby amended to read as follows:

NAC 319.711 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. *The Division may allocate volume cap to finance a project if the local government does not have sufficient volume cap or does not have volume cap to contribute to the project and the local government is in support of the project.*

4. 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. 5. NAC 319.7115 is hereby amended to read as follows:

NAC 319.7115 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 ~~1~~ *and subsection 3 of NAC 319.711*, 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) 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.

(b) Provide volume cap to a project that has less than 50 percent of the total volume cap from a local government if the Division has sufficient volume cap for the project.

Sec. 6. NAC 319.712 is hereby amended to read as follows:

NAC 319.712 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 a credit rating on his or her outstanding long term debt of not less than "Aa2" by Moody's Investors Service, Inc., or "AA" by Standard and Poor's Ratings Services, or their successors, if any, and has been approved by the Division;~~ *For bonds which will be sold through:*

(a) A private placement, a preliminary commitment for direct purchase of the proposed loan or bonds from a commercial bank or institutional lender approved by the Division; or

(b) A public sale, preliminary evidence acceptable to the Division that the bonds will be assigned a rating not less than A/A3 or an equivalent rating as determined by a nationally recognized statistical rating organization;

2. If tax-credit equity is to be part of the total financing, the project has ~~binding commitments~~ *preliminary commitment or letter of intent* 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. 7. NAC 319.7125 is hereby amended to read as follows:

NAC 319.7125 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

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;}~~ *If the bonds are to be sold:*

(1) Through a private placement, a final commitment for direct purchase of the proposed loan or bonds from a commercial bank or institutional lender approved by the Division; or

(2) In a public sale, a final confirmation that the bonds will be rated not less than A/A3 by a nationally recognized statistical rating organization;

(b) If tax-credit equity is to be used as a source of funding for the project, a ~~binding letter of~~ *final* commitment from the tax-credit syndicator *or purchaser* 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 86.545 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 performed by an appraiser certified pursuant to chapter 645C of NRS or 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;

(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;

(s) An audit or report, completed by a specialist in the efficient use of energy who is approved by the Division, which details the components of the project which are necessary for the efficient use of energy and which must be installed and used in the construction or rehabilitation of the project; and

(t) A physical assessment of the capital needs of any project that is more than 10 years old.

Sec. 8. 319.713 is hereby amended to read as follows:

NAC 319.713 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]~~ *\$100,000* to \$30,000,000. The Administrator may waive the minimum or maximum loan amounts.

Sec. 9. NAC 319.7155 is hereby amended to read as follows:

NAC 319.7155 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 financing which has credit enhanced bonds or direct loans insured by the Federal Housing Administration, the United States Department of Housing and Urban Development, Fannie Mae or Freddie Mac shall have amortization and* maximum term ~~of 30 years. A loan insured by the Federal Housing Administration may have a maximum term of more than 30 years.~~ *provisions consistent with the requirements of the applicable program. Bonds rated by a nationally recognized statistical rating organization or bonds which are directly purchased by a bank or institutional lender shall have a maximum maturity and amortization term of 35 years following the completion of construction.*

Sec. 10. NAC 319.716 is hereby amended to read as follows:

NAC 319.716 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. 11. NAC 319.717 is hereby amended to read as follows:

NAC 319.717 A project may ~~not~~ convert to nonrecourse financing ~~until the project has been at least 90 percent occupied for 90 consecutive days.~~ *as determined by the credit enhancer, bond purchaser or applicable lender. Such conversion must be approved by the Division.*

Sec. 12. NAC 319.718 is hereby amended to read as follows:

NAC 319.718 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.]~~ ***1.20:1.00. The Division may approve a lower projected ratio for projects which***

are enhanced by the Federal Housing Administration, the United States Department of Housing and Urban Development if such a ratio is consistent with the current criteria established by those programs.

Sec. 13. NAC 319.719 is hereby amended to read as follows:

NAC 319.719 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.]~~ ***for the***

first lien debt issued by the Division. The applicable value provided by an appraisal may include, without limitation, additional components for the valuation of tax credit equity and favorable tax-exempt financing. The Division may, in its sole discretion, waive the maximum loan to value percentage if it determines that a higher loan to value percentage is appropriate.

Sec. 14. NAC 319.722 is hereby amended to read as follows:

NAC 319.722 ~~H-] The maximum amount of pro-forma profit and overhead for~~ a developer ***fee*** on a project ***, excluding any potential profits earned by the participation of the developer as a general partner in the borrower partnership,*** is ***limited to*** 15 percent of the ~~appraised value of]~~

tax credit eligible basis of the project ~~H~~ and further identified in the project budget submitted to the Division. The ~~profit must~~ *developer fee may* be paid as follows:

~~(a) Ten~~ *1. Fifty* percent paid on the basis of percentage of completion of the improvements;

~~(b) Ten~~ *2. Twenty-five* percent paid on the date the construction loan converts to a permanent loan; and

~~(c) Eighty~~ *3. Twenty-five* percent paid from cash flows after payment of debt service ~~for senior projects and funded~~ *and required deposits to* 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. 15. NAC 319.715, 319.725 and 319.740 are hereby repealed.

TEXT OF REPEALED SECTIONS

NAC 319.715 Credit enhancement. (NRS 319.140) 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.

NAC 319.725 Federally insured, guaranteed or subsidized loan required if project

sponsored by certain partnerships. (NRS 319.140) If a project is sponsored by a partnership which:

1. Has more than 10 partners; or
2. Is a limited partnership,

the project must be financed by a mortgage loan which is insured, guaranteed or subsidized by the United States or a governmental agency or instrumentality thereof.

NAC 319.740 Interest rate. (NRS 319.140) The Administrator will establish the interest rate charged to the sponsor for a loan for a project and, if appropriate as a result of any refinancing of the money with which the loan was made, adjust the interest rate from time to time.