

PUBLIC NOTICE OF PROPOSED RULEMAKING

AGENCY: Rhode Island Housing and Mortgage Finance Corporation

DIVISION: None

RULE IDENTIFIER: ERLID #1095

REGULATION TITLE: Rules and Regulations of the Corporation Applicable to the Special Housing Needs Program

RULEMAKING ACTION: Direct Final

DIRECT FINAL: If no formal objection is received on or before March 20, 2017, Agency will file the repeal without further opportunity for public comment.

TYPE OF FILING: Repeal

DATES: Public Notice Date: February 16, 2017; End of Comment Period Date: March 20, 2017; Hearing Date, if any: TBD

SUMMARY OF PROPOSED RULE:

The purpose of this repeal is to eliminate an obsolete rule. The Special Needs Housing Program was created as a research and demonstration effort to address the special housing needs of persons with long-term disabilities and persons in crisis. After a period of several years, the program ceased to operate. As a result, the rule no longer serves a practical purpose.

COMMENTS INVITED:

All interested parties are invited to submit written or oral comments concerning the proposed repeal by March 20, 2017, to the address listed below.

ADDRESS FOR PUBLIC COMMENT SUBMISSIONS:

Corinne Myers, Deputy General Counsel
Rhode Island Housing and Mortgage Finance Corporation
44 Washington Street, Providence, Rhode Island 02903
cmyers@rhodeislandhousing.org

PUBLIC HEARING:

In accordance with RIGL § 42-35-2.8, an oral hearing will be granted if requested by twenty-five (25) persons, by an agency or by an association having at least twenty-five (25) members. A request for an oral hearing must be made within thirty (30) days of this notice.

FOR FURTHER INFORMATION CONTACT:

Corinne Myers, Deputy General Counsel
Rhode Island Housing and Mortgage Finance Corporation
44 Washington Street
Providence, Rhode Island 02903
(401) 277-1552
cmyers@rhodeislandhousing.org

SUPPLEMENTARY INFORMATION:

Regulatory Analysis Summary and Supporting Documentation:

No economic impact was identified in connection with this repeal. By this action, Rhode Island Housing proposes to repeal an obsolete rule, and does not (a) impose any compliance or reporting obligations; (b) require adherence to schedules or deadlines; (c) establish performance, design or operational standards; or (d) establish any other requirements, which may be consolidated or simplified or from which small businesses could be exempt. This repeal is intended to further the objectives of the Office of Regulatory Reform by eliminating an obsolete rule.

Authority for This Rulemaking: R.I. General Laws § 42-55-5(5)

Regulatory Findings:

In the development of the proposed repeal consideration was given to: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) significant economic impact on small business. No alternative approach, duplication, or overlap was identified based upon available information.

The Proposed Action:

Rhode Island Housing and Mortgage Finance Corporation proposes to repeal ERLID #1095 in its entirety:

RHODE ISLAND HOUSING AND
MORTGAGE FINANCE CORPORATION

RULES AND REGULATIONS OF THE CORPORATION APPLICABLE TO THE SPECIAL HOUSING
NEEDS PROGRAM

~~SECTION 1. PROGRAM PURPOSES~~

~~1.1 Program Objectives. The Corporation has created the Special Housing Needs Program (the "Program") as a research and demonstration effort to address the special housing needs of Persons with Long Term Disabilities and Persons in Crisis. The Program has been designed to encourage Special Needs Housing Sponsors to develop such housing through below market rate loans. The Program will be funded from a Three Hundred Fifty Thousand Dollar (\$350,000) fund established from the Corporation's reserves which the Board of Commissioners may at any time and from time to time supplement with additional funds or from which funds may be withdrawn. These Rules and Regulations set forth the criteria established by the Corporation to determine which Proposals will be eligible for financing under the Program.~~

~~1.2 Use of Other Funding Sources. Program funds are intended to supplement other sources of funding for the acquisition, construction, development, conversion, expansion or rehabilitation of a Special Needs Development. Accordingly, as a condition to the approval of a Proposal for Funding under the Program, Special Needs Housing Sponsors will be required to certify to the Corporation that such other sources of funds are either unavailable or insufficient to cover the Total Development Cost.~~

~~SECTION 2. CONSTRUCTION OF RULES AND REGULATIONS~~

~~2.1. Construction with Act. Unless otherwise defined herein or unless a different meaning is required from the context in which they are used herein, all words and terms used in these Regulations are as defined in the Act.~~

~~2.2. Definitions.~~

~~2.2.1 "Act" means the Housing and Mortgage Finance Corporation Act more particularly set forth in Chapter 55 of Title 42 of the Rhode Island General Laws of 1956, as amended.~~

~~2.2.2 "Appraised Value" means the appraised value of a Special Needs Development as determined by an independent certified real estate appraiser approved by the Corporation.~~

~~2.2.3 "Board of Commissioners" means the Board of Commissioners of the Corporation.~~

~~2.2.4 "Corporation" means Rhode Island Housing and Mortgage Finance Corporation, a public corporation organized and existing under the Act.~~

~~2.2.5 "Mortgage Loan" means a loan made or authorized by the Corporation to be made to a Special Needs Housing Sponsor for the purpose of providing for the acquisition, construction, conversion, expansion or rehabilitation of, and secured by, real estate, improvements and/or personal property constituting a Special Needs Development, upon the terms and conditions set forth in these Rules and Regulations.~~

~~2.2.6 "Persons in Crisis" means homeless, abused, battered or neglected individuals and families.~~

~~2.2.7 "Persons with Long Term Disabilities" means (i) persons having a physical or mental condition or conditions which significantly limits or impairs a major life function including mobility, hearing, vision or judgment and (ii) persons that are dependent upon alcohol, drugs or other chemical substances.~~

- 2.2.8 ~~"Program Bulletin" means a bulletin issued by the Corporation implementing a section or sections of these Regulations. A Request for Proposals under Section 4.1 of these Rules and Regulations may also constitute a Program Bulletin. Copies of all Program Bulletins shall be maintained by the Corporation at its principal office, and shall be available for inspection and copying during the hours of 9:00 a.m. – 5:00 p.m. on Mondays through Fridays, except holidays.~~
- 2.2.9 ~~"Proposal" means a written proposal seeking Program funds for the acquisition, construction, development, conversion, expansion or rehabilitation of a Special Needs Development.~~
- 2.2.10 ~~"Special Needs Development" means a residential housing complex located in the State of Rhode Island which (i) provides housing to Persons with Long-Term Disabilities or (ii) provides Transitional Housing to Persons in Crisis. A Special Needs Development may consist of (a) single room occupancy units, (b) independent or shared living apartments, (c) cooperative units or (d) a group home or boarding house.~~
- 2.2.11 ~~"Special Needs Housing Sponsor" means (i) any state, municipal or local government located in the State of Rhode Island; (ii) any state, municipal or local public housing development or redevelopment authority, agency or corporation lawfully created and located in the State of Rhode Island; (iii) any organization exempt from State and federal income taxation which provides housing, residential and social services to Persons with Long-Term Disabilities or Persons in Crisis.~~
- 2.2.12 ~~"Total Development Cost" means the total cost of a Special Needs Development as determined and approved by the Corporation.~~
- 2.2.13 ~~"Transitional Housing" means housing in a Special Needs Development to be provided to Persons in Crisis under the Program for a period not to exceed two (2) years from the date of first occupancy.~~

~~SECTION 3. PROGRAM REQUIREMENTS~~

3.1 ~~Special Needs Developments. To be eligible for financing under the Program, a Special Needs Development shall: (i) be located within the State of Rhode Island; (ii) be available for immediate or eventual temporary or permanent occupancy by Persons with Long-Term Disabilities or for Transitional Housing for Persons in crisis; (iii) provide a permanent structure for year-round residential use served or to be served by adequate storm, waste removal, telephone, gas, electricity and water service; (iv) comply with applicable state and local building and health codes; and (v) be constructed on land which is not in a flood "base zone" as determined by the most current flood hazard boundary map issued by the Federal Emergency Management Agency and which is or will be classified to permit the construction, development, conversion, expansion or rehabilitation and use of the Special Needs Development for its intended purposes.~~

3.2 ~~Eligible Uses of Mortgage Loan Proceeds. Mortgage Loan proceeds shall be used for residential purposes only, except to the extent an improvement financed with the proceeds of a Mortgage Loan incidentally benefits the non-residential portion, if any, of a Special Needs Development. A Special Needs Housing Sponsor may use the proceeds of a Mortgage Loan for the following costs: (i) acquisition, construction, conversion, expansion, development or rehabilitation of a Special Needs Development; (ii) soft development costs, so-called, such as architectural, engineering and attorneys' fees, costs of obtaining permits, costs incurred in obtaining financing such as points and origination fees, and (iii) such other development-related costs as may be approved by the Corporation. Mortgage Loan proceeds shall not be used for operating expenses or support services of a Special Needs Development or for equipment or furniture except appliances as approved by the Corporation.~~

~~3.3 Maximum Loan Amount.~~

~~The principal amount of a Mortgage Loan shall not exceed the lesser of (i) fifty percent (50%) of the Total Development Cost of a Special Needs Development or (ii) Seventy-Five Thousand Dollars (\$75,000).~~

3.4 Income of Occupants.

~~During the twelve (12) month period immediately preceding occupancy in a Special Needs Development, the income of Persons with Long Term Disabilities or Persons in Crisis shall not exceed fifty percent (50%) of the median income for the State of Rhode Island then in effect, adjusted for family size, as established by the United States Department of Housing and Urban Development.~~

SECTION 4. APPLICATION PROCESS

~~4.1 Requests for Proposals. The Corporation shall, by advertisement in a newspaper of general circulation in the City of Providence, Rhode Island, publish notice of each request for Proposals from Special Needs Housing Sponsors at such times and from time to time as may be established by Program Bulletin. The Corporation may from time to time by Program Bulletin establish additional procedures for the notification of interested persons as to a request for Proposals period. The deadline for submission of Proposals during any period in which Proposals have been requested shall not be less than forty five (45) days after the date a Request for Proposals has been published. The Corporation reserves the right to extend any deadline established for receipt of Proposals.~~

~~4.2 Receipt of Proposals. Proposals may be submitted to the Corporation during any period in which the Corporation has requested Proposals on Mondays through Fridays, except holidays, between the hours of 9:00 a.m. to 5:00 p.m.~~

~~4.3 Priority Criteria. The Corporation will seek Proposals which have the greatest potential to create additional housing opportunities for Persons with Long Term Disabilities and Persons in Crisis. Accordingly, the Corporation will give priority to Proposals: (i) which request less than the maximum Mortgage Loan permitted under the Program thereby leveraging Mortgage Loan proceeds against other funding resources such as foundation grants and loans, grants and loans from state, federal and municipal programs and lending institutions; (ii) which demonstrate a novel or creative technique, system or program for providing social, rehabilitative and residential services to residents of the Special Needs Development; (iii) which offer alternative environments and living arrangements to Persons in Crisis and Persons with Long Term Disabilities; and (iv) from Special Needs Housing Sponsors that are currently receiving or have received commitments to receive operating funds from state or federal agencies, corporations, public and private foundations and the like, sufficient to sustain the Special Needs Development for the present and future. It is the goal of the Corporation to fund, a variety of Special Needs Developments during the initial request for Proposals period, each such Special Needs Development addressing a different special need.~~

~~4.4 Use of Forms; Contents of the Proposal. The Corporation may from time to time designate, make available and require Special Needs Housing Sponsors to use Corporation forms in connection with a Proposal. Special Needs Housing Sponsors seeking financing under the Program shall submit to the Corporation the following information in triplicate:~~

- ~~a. The name, address and telephone number of the Special Needs Housing Sponsor together with the name, title and telephone number of the individual(s) designated to correspond and communicate with the Corporation in connection with the Proposal;~~
- ~~b. Certified copies of the organizational documents of the Special Needs Housing Sponsor including its enabling legislation, constitution, Articles of Association or Incorporation and by-laws, declaration of trust, as the case may be, together with all amendments thereto;~~
- ~~c. A copy of the most recently available audited annual financial statements of the Special Needs Housing Sponsor prepared in accordance with generally accepted accounting principles consistently applied and duly certified by a licensed certified public accountant covering a period ending within twelve (12) months prior to the date submitted;~~

- d. ~~Detailed pro forma financial information of the Special Needs Development including an operating budget which clearly sets forth, to the satisfaction of the Corporation, the sources and applications of operating funds;~~
- e. ~~A proposed construction timetable, if applicable;~~
- f. ~~A disbursement schedule;~~
- g. ~~A construction cost breakdown, if applicable;~~
- h. ~~A copy of the proposed development plans and specifications, including without limitation, the site plan, location map, soil and foundation investigation report and, if required by the Corporation, a structural report;~~
- i. ~~Copies of the land survey and the surveyor's report;~~
- j. ~~Resumes of the Special Needs Housing Sponsor, and of any architects, contractors, engineers and attorneys or other third parties on the development team setting forth all previous housing experience;~~
- k. ~~Copies of all market data collected by the Special Needs Housing Sponsor, if any, the occupant and/or tenant selection plan and evidence of compliance with federal and state fair housing, fair rental and landlord/tenant laws;~~
- l. ~~Evidence that the Special Needs Development will comply with applicable zoning, building and fire codes and ordinances and will not be located in a wetland or flood hazard area;~~
- m. ~~Title report with respect to the Special Needs Development evidencing good and marketable title;~~
- n. ~~A utility cost analysis together with certifications from authorities providing electricity, waste removal, water and heat as to their ability to provide such services to the Special Needs Development;~~
- o. ~~Certifications, in form satisfactory to the Corporation, that the Special Needs Housing Sponsor has diligently sought funding other than the Corporation and that such other funding is insufficient to the extent of funds requested in the Proposal;~~
- p. ~~A detailed description of the residential services, support services and other social services to be provided by the Special Needs Housing Sponsor to occupants of the Special Needs Development; and~~
- q. ~~Evidence of receipt or a commitment to receive operating funds as set forth in Section 4.3(iv) hereof, written copies of commitments for other sources of financing and a proposed plan for repayment of the Mortgage Loan.~~

~~In addition, the Corporation may require each Special Needs Housing Sponsor to submit evidence of its ability to complete the Special Needs Development in a timely manner. To the extent permitted by law, the Corporation may obtain or require additional background information respecting the character of the Special Needs Housing Sponsor and persons on the development teams.~~

~~The Corporation reserves the right to waive any of the foregoing requirements in any particular case, and to supplement any of the foregoing requirements from time to time by Program Bulletin. Any information or materials submitted must be in form and substance satisfactory to the Corporation in all respects.~~

~~4.5. Review by Staff; Approval of Board of Commissioners. Each Special Needs Housing Sponsor shall submit the information and materials required by the Corporation to evaluate the Special Needs Development. A review committee, consisting of individuals selected by the Corporation in its sole discretion that are knowledgeable in the area of special needs, will assist Corporation staff in evaluating proposals. Upon completion of its review during any period in which Proposals have been requested by the Corporation, Corporation staff shall recommend to the Board of Commissioners for financing those Special~~

~~Needs Developments which (i) best satisfy the priority criteria set forth in Section 4.3 hereof and (ii) are economically feasible.~~

~~4.6. Issuance of Commitment. If a Proposal is accepted by the Board of Commissioners, the Corporation shall issue its commitment to provide a Mortgage Loan to the Special Needs Housing Sponsor. Such commitment may contain such additional terms and conditions as the Board of Commissioners deems necessary or appropriate under the circumstances.~~

~~4.7. Rejection. The Corporation shall advise any Special Needs Housing Sponsor, in writing, that has been rejected under the Program.~~

~~SECTION 5. CERTAIN TERMS AND CONDITIONS OF MORTGAGE LOANS~~

~~5.1 Loan Term. The term of a Mortgage Loan shall not exceed twenty (20) years from the date of the closing of the Mortgage Loan.~~

~~5.2 Interest Rate. The maximum interest rate on Mortgage Loans shall be determined by the Corporation on a case by case basis but shall not, in any event, exceed three percent (3%) per annum.~~

~~5.3 Loan to Value Ratio. The total principal amount of a Mortgage Loan secured by a Special Needs Development shall not exceed One Hundred Percent (100%) of the Appraised Value of such Special Needs Development after completion of the work as set forth in the Proposal.~~

~~5.4 Change in Use of Special Needs Development. Documents evidencing Mortgage Loans shall contain provisions permitting the Corporation to accelerate all principal and interest outstanding on the Mortgage Loan if (i) there should be a change in use of the Special Needs Development, unless such change in use shall be approved by the Corporation in writing, or (ii) at any time during the Mortgage Loan term if there shall be a transfer, assignment, conveyance, hypothecation or pledge of the Special Needs Development or any portion thereof, without the Corporation's prior written consent.~~

~~SECTION 6. LOAN DOCUMENTATION~~

~~6.1 Agreements with Corporation. If the Proposal is approved by the Corporation and the Corporation's commitment is accepted by the Special Needs Housing Sponsor, the Special Needs Housing Sponsor shall enter into, execute, deliver and provide the Corporation with such documents, instruments and further assurances as the Corporation deems necessary including, without limitation, a promissory note or notes secured by a mortgage or mortgages on the Special Needs Housing Development and/or evidencing a security interest in personal property, opinions of counsel to the Special Needs Housing Sponsor, performance and payment bonds or letters of credit in lieu thereof if acceptable to the Corporation, cost certifications, assignments of construction, architectural and other contracts and rentals and a construction loan agreement. Any agreement, construction loan agreement, mortgage and/or related loan documents may, as applicable, also require the Special Needs Housing Sponsor to obtain title insurance and to obtain and maintain casualty, liability and builder's risk insurance on the Special Needs Development in such amounts as the Corporation deems necessary, and may require the Special Needs Housing Sponsor to hold the Corporation harmless from and against any and all liabilities and claims arising out of the construction, rehabilitation, expansion, development, conversion or use of the Special Needs Development. In addition, such agreement and related documents may contain other terms and conditions that the Corporation deems appropriate including, without limitation, (i) provisions respecting the payment of taxes on the Special Needs Development; (ii) provisions requiring a percentage of proceeds to be retained during the construction, development or rehabilitation periods; (iii) provisions respecting monitoring of the use of the Special Needs Development; and (iv) the imposition of penalties and/or legal or equitable remedies, including acceleration and foreclosure against the Special Needs Development, available to the Corporation in the event of default, fraud or misrepresentation.~~

~~SECTION 7. AFFIRMATIVE ACTION POLICY~~

~~7.1 Affirmative Action Policy. The Corporation actively encourages participation by minority and female-owned businesses as contractors, suppliers, subcontractors, architects, engineers and other vendors participating in a Special Needs Development. During the review process, each Special Needs Housing Sponsor that submits a Proposal shall be required to demonstrate a good faith effort to~~

~~engage or have engaged minority and female-owned businesses in connection with the Special Needs Development.~~