

## **PUBLIC NOTICE OF PROPOSED RULEMAKING**

**AGENCY:** Rhode Island Housing and Mortgage Finance Corporation

**DIVISION:** None

**RULE IDENTIFIER:** ERLID #1115

**REGULATION TITLE:** [Repeal] First Amendment to and Restatement of the Rules and Regulations of the Corporation Applicable to the Predevelopment Loan Program

**RULEMAKING ACTION:** Direct Final

**DIRECT FINAL:** If no formal objection is received on or before June 19, 2017, Agency will file the repeal without further opportunity for public comment.

**TYPE OF FILING:** Repeal

**DATES:** Public Notice Date: May 18, 2017; End of Comment Period Date: June 19, 2017; Hearing Date, if any: To Be Determined

### **SUMMARY OF PROPOSED RULE:**

The purpose of this repeal is to eliminate an unnecessary rule. The above-captioned rule describes a program through which Rhode Island Housing assists eligible developers by providing loans to support the retention of site control and/or efforts to determine the feasibility of prospective affordable housing development activities.

This is an agency-sponsored loan program, for which funding has historically fluctuated and is currently under review. To the extent that Rhode Island Housing chooses to continue financing the program, a program bulletin or term sheet would provide a more streamlined and flexible method of publishing related underwriting criteria, which change from time to time depending on the availability of funds and the agency's strategic priorities. Ultimately, this approach would give Rhode Island Housing the opportunity to more flexibly serve the needs of developers likely to seek funding for predevelopment purposes.

### **COMMENTS INVITED:**

All interested parties are invited to submit written or oral comments concerning the proposed repeal by June 19, 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@rihousing.com](mailto:cmyers@rihousing.com)

**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@rihousing.com](mailto:cmyers@rihousing.com)

**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 unnecessary 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 unnecessary 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 #1115 in its entirety:

~~RHODE ISLAND HOUSING AND  
MORTGAGE FINANCE CORPORATION~~

~~FIRST AMENDMENT TO AND RESTATEMENT OF THE RULES AND REGULATIONS OF THE  
CORPORATION APPLICABLE TO THE PREDEVELOPMENT LOAN PROGRAM~~

~~SECTION 1. THE PREDEVELOPMENT LOAN PROGRAM~~

~~1.1 Program Purposes and Objectives. Rhode Island Housing and Mortgage Finance Corporation hereby promulgates Rules and Regulations (the "Regulations") Applicable to the Predevelopment Loan Program (the "Program"). This Program, which will be funded initially with \$500,000 from the Housing Trust Fund, has been developed to address the difficulties encountered by Housing Sponsors in raising capital necessary to retain site control and determine the feasibility of prospective housing Developments. Although the Program has been designed as a loan program, the Board of Commissioners recognizes the risks inherent in undertaking housing development. Accordingly, the Corporation may be forgiven the indebtedness under a Predevelopment Loan in accordance with Section 7 of these Regulations if a Development as initiated does not prove to be technically or economically feasible or practical.~~

~~SECTION 2. CONSTRUCTION~~

~~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 Rules and Regulations are as defined in the Act.~~

~~2.2 Definitions. As used in these Regulations~~

- ~~2.2.1 "Aggregate Family Income" shall be determined in accordance with the methods and procedures of the Corporation in effect at the time of Application pursuant to the Rules and Regulations of the Corporation Applicable to the Mortgage Finance Programs.~~
- ~~2.2.2 "Application" means an application for a Predevelopment Loan from the Corporation pursuant to these Regulations.~~
- ~~2.2.3 "Board of Commissioners" means the Board of Commissioners of the Corporation.~~
- ~~2.2.4 "Closing of the Financing" means (i) with respect to a Development to be constructed or rehabilitated, the closing of the construction loan, and (ii) with respect to a Development for which there will be acquisition financing but not construction financing, the closing of the acquisition financing.~~
- ~~2.2.5 "Corporation" means Rhode Island Housing and Mortgage Finance Corporation, a public corporation organized and existing under the Rhode Island Housing and Mortgage Finance Corporation Act, set forth in Chapter 55 of Title 42 of the Rhode Island General Laws of 1956, as amended (the "Act").~~
- ~~2.2.6 "Development" or "Proposed Development" means any housing development, or mutual housing association or limited equity cooperative eligible for financing and/or tax credits under any program of the Corporation; provided, however, that not less than fifty percent (50%) of the Units in a Development shall be reserved for occupancy by Low Income Persons or Families.~~
- ~~2.2.7 "Development Professional" means any engineer, attorney, surveyor, accountant, architect, appraiser, consultant or any other person engaged or to be engaged by a Housing Sponsor for purposes of providing technical assistance in connection with the Development.~~
- ~~2.2.8 "Extension" of an option to purchase and sale agreement means an agreement whereby the term of an existing option or purchase and sale agreement is extended for additional consideration.~~

- 2.2.9 ~~"Housing Sponsor" means non-profit corporation which has been approved as a Section 501(c)(3) corporation by the Internal Revenue Service or otherwise determined to be exempt from federal income taxation, and which is engaged in providing housing to low and moderate income persons, which corporation has not been formed principally for the purpose of obtaining a Predevelopment Loan.~~
- 2.2.10 ~~"Housing Trust Fund" means that certain housing trust fund of the Corporation established under Chapter 55.1 of Title 42 of the Rhode Island General Laws of 1956, as amended.~~
- 2.2.11 ~~"Low Income Persons or Families" or "Low Income Families" means persons or families, as the case may be, having Aggregate Family Income equal to or less than eighty percent (80%) of the area or statewide median income (whichever is higher), adjusted for family size, in accordance with standards of the United States Department of Housing and Urban Development in effect at the time of approval of the Application. Statistical data relating to Low Income Persons or Families shall be made available to Housing Sponsors by Program Bulletin from time to time.~~
- 2.2.12 ~~"Outstanding" means any site control agreement entered into and signed with or without an exchange of funds between the Housing Sponsor and the seller or optionee, which ever the case may be, prior to the Housing Sponsor's submission of an Application to the Corporation and the Corporation's approval of such Application.~~
- 2.2.13 ~~"Predevelopment Loan" means either a Technical Assistance Loan or a Site Control Loan.~~
- 2.2.14 ~~"Program Bulletin" means a bulletin issued by the Corporation implementing a section or sections of these Regulations. Copies of all Program Bulletins shall be maintained by the Corporation at its principal office, and shall be available for inspection and copying between the hours of 9:00 a.m. and 5:00 p.m. on Mondays through Fridays, except holidays..~~
- 2.2.15 ~~"Site Control Loan" means a loan from the Corporation to a Housing Sponsor having a negotiated term of not longer than twenty four (24) months, for the purposes of obtaining site control, made pursuant to the terms and conditions set forth in Sections 3.4 – 3.4.5 of these Regulations.~~
- 2.2.16 ~~"Technical Assistance Budget" means the budget submitted by a Housing Sponsor to the Corporation for review and approval detailing: (i) the pre-development tasks to be performed and paid for with Technical Assistance Loan proceeds, (ii) the identity and qualifications of the Development Professional performing each task, (iii) a schedule of each task's proposed commencement and completion date, and (iv) the cost of each task, specified in both the number of hours required to perform such task and the hourly rate of the Development Professional performing task.~~
- 2.2.17 ~~"Technical Assistance Loan" means a loan from the Corporation to a Housing Sponsor having a negotiated term of not longer than twenty four (24) months, for the purpose of engaging Development Professionals, made pursuant to Sections 3.3.1 – 3.3.3 of these Regulations.~~
- 2.2.18 ~~"Unit" means a residential dwelling unit in a Development consisting of complete living, dining, cooking, sanitation and sleeping facilities. A Unit shall also mean a single room occupancy unit in a Development, as approved by the Corporation.~~

### SECTION 3. PREDEVELOPMENT LOANS

3.1 Generally. Under the Program, a Housing Sponsor may apply for both a Technical Assistance Loan and Site Control Loan for the same Development. Predevelopment Loan proceeds may be used only with respect to Units, reserved for Low Income Persons or Families.

~~3.2 Applicability of Cooperative Housing Demonstration Program. The amount of any seed money loan funds provided to a Housing Sponsor under the Rules and Regulations of the Corporation applicable to the Cooperative Housing Demonstration Program, as the same may be amended from time to time, shall be included for purposes of determining the maximum amount of predevelopment funds available to such Housing Sponsor under this Program.~~

~~3.3.1 Technical Assistance Loans. Technical Assistance Loan proceeds may be used for the following purposes: (i) to cover costs and expenses of Development Professionals, (ii) to cover origination fees, application, commitment and similar fees and charges of financial institutions and other lenders including payments for points, and (iii) to cover filing fees and costs and expenses incurred in obtaining permits and approvals and applying for public or private grants. Technical Assistance Loan proceeds may not be used to cover application or origination fees of the Corporation under any of its programs. Eligible uses for Technical Assistance Loan proceeds may be expanded from time to time by Program Bulletin based on the Corporation's experience under the Program.~~

~~3.3.2 Amount of Technical Assistance Loans. The amount of any Technical Assistance Loan provided to a Housing Sponsor shall be determined from information contained in the Application. Except as provided below, a Technical Assistance Loan shall not exceed the following limits:~~

<del>Number of Units Reserved for Low Income Persons or Families in Proposed Development</del>	<del>Maximum Amount of Technical Assistance Loan</del>
<del>10 or less</del>	<del>Lesser of \$10,000 or \$1,500/unit</del>
<del>11 to 35</del>	<del>Lesser of \$20,000 or \$1,000/unit</del>
<del>36 to 75</del>	<del>Lesser of \$36,000 or \$600/unit</del>
<del>76 to 100</del>	<del>Lesser of \$40,000 or \$400/unit</del>
<del>101 or more</del>	<del>Lesser of \$50,000 or \$300/unit</del>

~~The Corporation, in its discretion upon request of a Housing sponsor, may increase the amount of a Technical Assistance Loan only where subsurface conditions not reasonably anticipated cause predevelopment engineering costs to increase over projected costs. Such requests will be subject to particularly rigorous review and will be considered with respect to the ability of the Housing Sponsor to obtain predevelopment funds from sources other than the Corporation, Development feasibility and anticipated public benefit.~~

~~3.3.3 Terms and Repayment of Technical Assistance Loans. Each Technical Assistance Loan shall: (i) be repayable in full at the expiration of the loan term or upon Closing of the Financing of the Development, whichever shall first occur but in no event shall such repayment be made more than twenty-four (24) months from the date of the making of the Technical Assistance Loan, and (ii) be secured by such collateral, if any, and made upon such other terms and conditions as may be set forth in a Technical Assistance Loan Agreement between the Housing Sponsor and the Corporation.~~

~~3.4 Site Control Loans. Site Control Loan proceeds may only be used for the following purposes: (i) acquiring options or Extensions of options or purchase and sale agreements on real estate, and (ii) binders and deposits under real estate purchase and sale agreement. Eligible uses for Site Control Loan proceeds may be expanded by Program Bulletin from time to time based on the Corporation's experience under the Program. Site Control Loan proceeds, however, may not be used to replace funds previously expended or committed to an option agreement or purchase and sale agreement outstanding at the time of Application.~~

~~3.4.1 Amount of Site Control Loans and Application. The maximum amount of a Site Control Loan provided to a Housing Sponsor shall not exceed the lesser of Forty Thousand Dollars (\$40,000) or ten percent (10%) of the purchase price. All Application materials must have been submitted to or waived by the Corporation and the Corporation must have approved the Application prior to the Housing Sponsor's execution of the option agreement, Extension of option agreement or purchase and sale agreement, whichever the case may be, for which the Site Control Loan proceeds will be used.~~

~~3.4.2 Terms and Repayment of Site Control Loans. Each Site Control Loan shall be repayable in full at the expiration of the loan term or upon Closing of the Financing of the Development, whichever shall first occur but in no event shall such repayment be made later than twenty-four (24) months from the date of the making of the Site Control Loan. The Corporation may retain the option agreement or purchase and sale agreement, as appropriate, as security for a Site Control Loan, and may require assignment thereof to the Corporation or its designee upon default by the Housing Sponsor.~~

~~3.4.3 Binders. Upon application by a Housing Sponsor, the Corporation will provide a maximum of Two Thousand Five Hundred Dollars (\$2,500) under a Site Control Loan to bind real estate purchase and sale agreement under expedited processing procedures. To be eligible, the binder must be creditable to the purchase price and fully refundable in the event a definitive purchase and sale agreement between the Housing Sponsor and the seller is not executed.~~

~~3.4.4 Option Agreements. No option agreement to purchase real estate may be funded from the proceeds of a Site Control Loan unless the option agreement provides: (i) for assignability of the option to the Corporation or any designee of the Corporation without consent of the seller, and (ii) that option payments will be credited to the purchase price. The Corporation may from time to time by Program Bulletin impose additional conditions precedent to the funding of an option under this Program.~~

~~3.4.5 Deposits Under Purchase and Sale Agreements. Site Control Loan proceeds may be used for deposits under a real estate purchase and sale agreement only if such agreement contains financing, zoning and inspection contingencies satisfactory to the Corporation, and permits assignability of such agreement by the Housing Sponsor to the Corporation or its designee without consent of the seller.~~

#### ~~SECTION 4. SELECTION OF DEVELOPMENT PROFESSIONALS~~

~~4.1 Credentials. Every engineer, attorney, surveyor or accountant who will receive proceeds of a Technical Assistance Loan: (i) shall be duly licensed to practice in the State of Rhode Island; (ii) shall not during consideration of the Application be under investigation, suspension or debarment by the Corporation, the Department of Housing and Urban Development or any other state or federal agency or authority; and (iii) shall disclose to the Corporation, in writing, with the Application, whether he or she serves as an officer, director or employee or is otherwise similarly affiliated with the Housing Sponsor. Any architect who will receive proceeds of a Technical Assistance Loan shall have a degree in architecture from an accredited educational institution and at least two (2) years' practical experience. Any real estate appraiser selected by a Housing Sponsor shall be certified by the American Institute of Real Estate Appraisers with an MAI designation or accredited by the Society of Real Estate Appraisers with an SREA, SRA or SRPA designation. The credentials of a Development Professional shall at a minimum satisfy such standards as the Corporation may designate or establish from time to time.~~

~~4.2 Selection Process. Prior to the disbursement of any Technical Assistance Loan proceeds, the Corporation must have approved and receive an executed contract by and between the Housing Sponsor and each Development Professional to be employed and paid with the Technical Assistance Loan proceeds. Housing Sponsors shall conduct their selection process in an open and reasonable manner that actively encourages the participation of minority Development Professionals with the goal that more than one candidate will be considered for each Development Professional position. The Corporation will assist Housing Sponsors, as necessary, to identify Development Professionals and establish satisfactory selection processes.~~

#### ~~SECTION 5. TECHNICAL ASSISTANCE LOAN DISBURSEMENT~~

~~5.1 Technical Assistance Budget. The Technical Assistance Budget must be approved by the Corporation prior to a development professional's performance, whether in whole or in part, of any task set forth therein. The Technical Assistance Budget may be amended from time to time at the request of a Housing Sponsor and only upon the Corporation's approval. The Corporation may, at its election, consider a Housing Sponsor's request to increase the approved amounts set forth in the Technical Assistance Budget, provided, however, that all such requests comply with (i) any existing agreement between the Housing Sponsor and the Corporation, and (ii) the Rules and Regulations.~~

~~5.2 Disbursement. Any request for disbursement of Technical Assistance Loan proceeds by a Housing Sponsor shall be: (a) made on such forms as may be designated by the Corporation from time to~~

~~time, and (b) accompanied by invoices, in form satisfactory to the Corporation, from each Development Professional to be paid with such Technical Assistance Loan proceeds. The Corporation shall not disburse Technical Loan proceeds more than once a month unless it, in its sole discretion, determines more frequent disbursements to be necessary.~~

## ~~SECTION 6. APPLICATION PROCESS~~

~~6.1 Applications. Applications shall be considered generally on a first come first served basis promptly after application forms become available. Applications will be considered for as long as Program funds remain available, unless the Program shall be sooner terminated by the Board of Commissioners.~~

~~6.2 Priorities. The Corporation seeks to maximize the availability of affordable housing, mutual housing and cooperative housing in the State of Rhode Island, and to use monies allocated for that purpose efficiently. Accordingly, the Corporation will give priorities to Applications from Housing Sponsors seeking to (i) provide housing to families rather than individuals in furtherance of the Corporation's goals, and (ii) increase the amount of housing stock in Rhode Island for Low Income Families. In addition, the Corporation shall give priority to those Applications of Housing Sponsors most likely to proceed quickly to construction or permanent financing.~~

~~6.3 Application Forms. The Corporation will require separate Applications for each Development. Applications shall be on such forms as may be designated by Corporation staff from time to time, and may require submission of the following information:~~

- ~~a. The name, address and telephone number of the 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 Application;~~
- ~~b. Certifies copies of the organizational documents of the Housing Sponsor including its enabling legislation, constitution, Articles of Incorporation or Association and by laws, as the case may be;~~
- ~~c. A copy of the determination letter from the Internal Revenue Service, as to exemption of the Housing Sponsor from recognition of federal income taxation under Section 501(c)(3) of the Internal Revenue Code;~~
- ~~d. With respect to a Technical Assistance Loan, a statement as to the type, amount and uses of Predevelopment Loan funds requested, copies of invoices and/or estimates of expenses for which Predevelopment Loan funds have been requested to the extent the same are available and the names, addresses, credentials, qualifications and affiliations with the Housing Sponsor, if any, of the development professionals and consultants;~~
- ~~e. With respect to a Site Control Loan, a copy of the proposed offer to purchase, option agreement or purchase and sale agreement, as appropriate;~~
- ~~f. Certified copies of resolutions of the Board of Directors or other governing body of the Housing Sponsor authorizing submission of the Application to the Corporation and authorization of the Housing Sponsor and appropriate officers to enter into notes, loan agreements and security documents with the Corporation evidencing the Predevelopment Loan;~~
- ~~g. A description of the sources, amount and type of principal financing sought by the Housing Sponsor for the Development, and copies of any commitments issued with respect to such financing;~~
- ~~h. A Development timetable;~~
- ~~i. A description of the past experience of the Housing Sponsors in undertaking similar developments; and~~

- j. ~~A general description of the proposed Development including, but not limited to, information about the structure (i.e., number of Units, number of bedrooms per Unit, anticipated improvements), the proposed occupants, proposed ownership, an estimate of anticipated acquisition and construction/rehabilitation costs, as applicable, and anticipated revenues and expenses of the Development.~~

~~The Corporation reserves the right to require a Housing Sponsor to obtain estimates or alternative bids for any predevelopment cost or expense for which Predevelopment Loan proceeds will be used prior to approving any Predevelopment Loan.~~

~~6.4 Additional Requirements; Waiver of Requirements. The Corporation reserves the right to waive any of the foregoing Application requirements at its discretion in any case involving hardship, and to supplement any of the foregoing requirements from time to time by Program Bulletin. Any information or materials submitted shall be in form and substance satisfactory to the Corporation in all respects. No application shall be approved until it is determined by the Corporation to be complete.~~

~~6.5 Background Information. To the extent permitted by law, the Corporation may obtain or require additional information, including such documents as the Corporation may reasonably request, respecting the experience and background of the Housing Sponsor, its directors and officers.~~

~~6.6 Rejection. The Corporation shall advise any Housing Sponsor in writing that has been rejected under the Program.~~

## ~~SECTION 7. OTHER TERMS AND CONDITIONS/DOCUMENTATION~~

~~7.1 Interest Rate. A Predevelopment Loan shall be non-interest bearing until (i) the expiration of the loan term, (ii) twenty-four (24) months from the making of the loan, or (iii) the date of the Closing of the Financing, whichever shall first occur. Thereafter, interest will accrue at the average prime rate of Rhode Island financial institutions published in the Providence Journal (or, if no longer available, in any successor newspaper published in the State of Rhode Island) plus two (2) percentage points determined as of the due date or, if the due date shall be on a holiday or weekend, then the prime rate shall be determined as of the next succeeding business day. The Corporation may in its discretion impose a retroactive interest payment of the prime rate plus two percent (2%) determined as aforesaid as of the date of the making of the Predevelopment Loan as to any portion of the proceeds of such Predevelopment Loan allocated to a Unit to be occupied by persons or families having income in excess of eighty percent (80%) of the Aggregate Family Income.~~

~~7.2 Decision of Corporation to Forgive Indebtedness. Every Housing Sponsor receiving a Predevelopment Loan shall be required to demonstrate to the Corporation use of best efforts in proceeding with the acquisition, construction and/or rehabilitation of the Development. If at the end of the loan term, a determination is made by the Corporation that the Development will be neither technically nor economically feasible for any reason, the Corporation may forgive the indebtedness under the Predevelopment Loan; provided, however, that such forgiveness shall be conditioned such that if the Housing Sponsor or an affiliated entity proceeds with the Development or any other development involving the same real estate at any time within fifteen (15) months after the date of forgiveness, the forgiveness shall be revoked, and the Predevelopment Loan shall be repaid not later than the Closing of the Financing with interest accruing from the date of forgiveness at the prime rate plus two (2) percentage points, determined in accordance with Section 7.1 of these Regulations.~~

~~7.3 Agreements with the Corporation. If the Application is approved by the Corporation, the Housing Sponsor shall enter into, execute, deliver and provide the Corporation with such promissory notes, mortgages, security instruments and agreements and loan agreements as the Corporation may require to evidence the Predevelopment Loan and any security therefor. Such instruments and documents may provide for the disbursement of Predevelopment Loan proceeds over time directly to third parties upon submission of evidence of the work having been completed rather than in a single lump sum disbursement made to the Housing Sponsor, and impose penalties and/or legal or equitable remedies available to the Corporation in the event of default, fraud or misrepresentation. The Corporation, in its discretion, may also enter into agreements with third parties for purposes of insuring the repayment of Predevelopment Loan proceeds.~~