

PUBLIC NOTICE OF PROPOSED RULEMAKING

AGENCY: Rhode Island Housing and Mortgage Finance Corporation

DIVISION: None

RULE IDENTIFIER: ERLID #1117

REGULATION TITLE: [Repeal] Third Amendment to and Restatement of Rules Governing the Construction Loan Program and Land Bank 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The purpose of this repeal is to eliminate an unnecessary, outdated, and obsolete rule. The above-captioned rule describes two programs: the construction loan program, through which Rhode Island Housing provides revolving loans to eligible municipal agencies and community development corporations (among other types of developers) for the purpose of building and rehabilitating affordable housing; and a land banking program, through which Rhode Island Housing assists eligible developers to acquire and/or hold real estate for the purpose of future affordable housing development.

The agency believes that the portions of this rule related to the construction loan program are unnecessary and outdated. Rhode Island Housing has not entered a new master construction loan facility since 2015 and does not have any plans to make new master construction loans in the near future, during which time the program continues to be under review and existing revolving loans continue to be serviced in accordance with applicable loan documents. Moreover, the portions of this rule related to the land bank program were superseded many years ago by the Fifth Amendment to and Restatement of the Land Bank Program (ERLID #1125), which is being proposed for repeal concurrently with the repeal described in this notice. To the extent that Rhode Island Housing chooses to continue financing these programs, program bulletins or term sheets would provide a preferable method of publishing program-related criteria, which necessarily change from time to time to accommodate the agency's business needs.

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

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

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, outdated, and 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 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 #1117 in its entirety:

~~RHODE ISLAND HOUSING AND
MORTGAGE FINANCE CORPORATION~~

~~THIRD AMENDMENT TO AND RESTATEMENT OF RULES AND GOVERNING THE
CONSTRUCTION LOAN PROGRAM AND LAND BANK PROGRAM~~

~~SECTION 1. INTRODUCTION~~

- ~~1.1 Affordable Housing Partnership. Rhode Island Housing and Mortgage Finance Corporation hereby promulgates rules and regulations governing the Affordable Housing Partnership Construction Loan Program (the "Construction Loan Program") and the Affordable Housing Partnership Land Bank Program (the "Land Bank Program"), the first and second programs of the Corporation's Affordable Housing Partnership series (the "Partnership"). The Corporation will set aside funds from time to time to provide affordable housing, in partnership with Eligible Developers, to low and moderate income residents of the State of Rhode Island.~~
- ~~1.2 Construction Loan Program. The Construction Loan Program is designed to provide below market rate financing for approved Proposals submitted by Eligible Developers for (i) the development and construction of new housing for eventual sale to Qualified Purchasers or; (ii) the acquisition and rehabilitation of improved real estate for eventual sale to Qualified Purchasers. Any portion of the proceeds of a Construction Loan may be used for payment of costs and expenses incurred in connection with moving buildings and structures.~~
- ~~1.2 Land Bank Program. The Land Bank Program is designed to provide below market rate financing to Eligible Developers that submit approved Proposals for the acquisition and development of unimproved real estate upon which new housing will be constructed for eventual sale to Qualified Purchasers or for eventual rental to eligible tenants as hereinafter provided. Eligible Developers seeking to develop or construct housing on such acquired land may apply for financing under any program of the Corporation, to the extent funds are available under such program, provided the requirements of such program are satisfied. The Board of Commissioners may, in its sole option and discretion, approve any Proposal seeking a Land Bank Loan, the proceeds of which are used to refinance an existing mortgage given by an Eligible Developer or its predecessor in interest, on unimproved real estate.~~

~~In addition, the Board of Commissioners may, at its sole option and discretion, extend a Land Bank Loan to any Eligible Developer seeking to finance the acquisition of, or to refinance an existing mortgage on, land upon which rental housing will be developed and constructed for use by persons and families of low and moderate income (a "Rental Housing Land Bank Loan"), provide any such rental housing development ("Qualified Rental Housing") meets the low income targeting and other requirements set forth in Section 142(d) of the Internal Revenue Code of 1986, as the same may be amended from time to time. Unless otherwise expressly set forth herein, Rental Housing Land Bank Loans shall be subject to all of the terms and conditions of these Rules and Regulations.~~

~~SECTION 2. DEFINITIONS As used in these Rules and Regulations:~~

- ~~2.1.1 "Act" means the Housing and Mortgage Finance Corporation Act set forth in Chapter 55 of Title 42 of the Rhode Island General Laws of 1956, as amended.~~
- ~~2.1.1 "Administrative Costs" means any internal costs directly or indirectly incurred by and Eligible Developer in the development of a Proposal and in the submission thereof to the Corporation in connection with the acquisition, construction, rehabilitation, ownership, management and sale of Development~~

- Units, it being intended hereby that this definition be broadly construed by the Corporation:
- 2.1.1 ~~"Board of Commissioners" means the Board of Commissioners of the Corporation.~~
- 2.1.1 ~~"Budget" means the Development budget submitted with a Proposal by an Eligible Developer. The Budget shall set forth in reasonable detail to the satisfaction of the Corporation all estimated costs and expenses of the Development through final sale of Development Units to Qualified Purchasers or lease of rental units, as applicable, as well as all sources of funds to be used in connection with the Development. The Corporation shall, in its sole discretion, reject any Budget which provides for the payment of Administrative costs or other overhead costs not related to the Development from the proceeds of a Construction Loan or Land Bank Loan.~~
- 2.1.5 ~~"Chief Executive Officer" means the Mayor, City or Town Manager, or President of the City or Town Council of any municipality located in the State of Rhode Island.~~
- 2.1.5 ~~"Corporation" means Rhode Island Housing and Mortgage Finance Corporation, a public corporation organized and existing under the Act.~~
- 2.1.5 ~~"Development" means construction on, rehabilitation of, or acquisition or refinancing of real estate upon which Development Units or Qualified Rental Housing is to be constructed.~~
- 2.1.5 ~~"Development Unit" means a building used for residential purposes consisting of one to four residential dwelling units located in the State of Rhode Island to be constructed or rehabilitated as part of a Development, one of which such residential dwelling units is owner-occupied. A Development Unit may only be sold to a Qualified Purchaser. The price of a Development Unit to be charged shall not, in the case of a Development Unit financed with the proceeds of a Qualified Mortgage, exceed the acquisition cost limitations of one to four residential dwelling units established by the Corporation under any existing Single Family home ownership program of the Corporation and, in the case of a Development unit financed with the proceeds of a Qualified Federal Mortgage, shall not exceed the applicable acquisition cost limitations under Section 502 of Title V of the Housing Act of 1949 and applicable regulations, as amended, if any, in effect at the time of approval of the Qualified Purchaser for such Qualified Federal Mortgage; provided, however, that if no such acquisition cost limitations are in effect, the acquisition cost limitations of the Corporation then in effect shall apply.~~
- 2.1.5 ~~"Eligible Developer" 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 has as one of its organizational purposes the providing of housing and related facilities and services to persons and families of low and moderate income which organization has not been incorporated or otherwise formed for the purpose of obtaining a Construction Loan or Land Bank Loan; or (iv) any partnership or joint venture consisting of any combination of entitled described in subsections (i), (ii) and (iii) of this Section 2.1.9.~~
- 2.1.5 ~~"Program Bulletin" means a bulletin issued by the Corporation implementing a section or sections of these Rules and Regulations. 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.~~
- 2.1.5 ~~"Proposal" means a proposal submitted to the Corporation by an Eligible Developer for a Construction Loan, Land Bank Loan or Rental Housing Land Bank Loan.~~

- 2.1.5 ~~"Qualified Federal Mortgage" means a Rural Housing Loan under Section 502 of Title V of the Housing Act of 1949 and applicable rules and regulations, all as amended from time to time.~~
- 2.1.5 ~~"Qualified Mortgage" means a Qualified Mortgage as defined in the Corporation's Single Family Bond Regulations or a mortgage loan provided by a private lending institution to a Qualified Purchase.~~
- 2.1.5 ~~"Qualified Purchaser" means a person or family that is eligible and has applied for a Qualified Mortgage, the proceeds of which will be used to finance the purchase of a Development Unit, whose aggregate family income (as defined in the Single Family Bond Regulations) does not exceed income limits established by the Corporation under any existing single family home ownership program of the Corporation. Qualified Purchaser also means a person or family that (i) meets the eligibility requirements of and (ii) has a reasonable expectation, in the sole opinion of the Corporation, of receiving the proceeds thereof.~~
- 2.1.5 ~~"Single Family Bond Regulations" means the Rules and Regulations of the Corporation Applicable to the Mortgage Finance Programs filed with the Secretary of State of the State of Rhode Island on July 30, 1986, as the same may be amended from time to time.~~

~~SECTION 3. THE PROPOSAL~~

~~3.1 Contents of Proposal. Eligible Developers applying for either a Construction Loan or Land Bank Loan shall submit to the Corporation one (1) original Proposal together with three (3) copies thereof. Each Proposal shall contain the following information together with such other information as the Corporation may require by Program Bulletin from time to time:~~

- ~~(i) The name, address and telephone number of the Eligible Developer 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;~~
- ~~(ii) With respect to Eligible Developers defined in Section 2.1.9 (iii), a copy of the determination letter from the Internal Revenue Service as to exemption from recognition of federal income taxation;~~
- ~~(iii) Certified copies of the organizational documents of the Eligible Developer, including, its enabling legislation, constitution, Articles of Incorporation and by-laws, declaration of trust, partnership or joint venture agreement, if any, together with all amendments thereto;~~
- ~~(iv) Certified copies of resolutions of the city or town council, Board of Directors or other managing body of the Eligible Developer authorizing the Development and the submission of the Proposal to the Corporation;~~
- ~~(v) A copy of the most recently available audited annual financial statements of the Eligible Developer prepared in accordance with generally accepted accounting principles consistently applied and duly certified by a licensed certified public accountant;~~
- ~~(vi) A copy of the Budget which clearly sets forth, to the satisfaction of the Corporation, the manner in which the Construction Loan proceeds and/or Land Bank Loan proceeds will be used together with a proposed timetable, disbursement schedule and construction cost breakdown;~~
- ~~(vii) A copy of the proposed development plans and specifications, including without limitation, the site plan and location map, resumes of the Eligible Developer and of any architects, contractors, attorneys or other third parties on the development team and condominium documents, if applicable;~~

- ~~(viii) A copy of the marketing plan identifying to the satisfaction of the Corporation (a) the proposed sale prices of Development Units; and (b) the method by which the Eligible Developer will select Qualified Purchasers;~~
- ~~(ix) A copy of the proposed form of Purchase and Sale Agreement to be used in connection with the sale of Development units;~~
- ~~(x) Evidence that the Development will comply with applicable zoning, building and fire codes and ordinances and will not be located in a flood hazard area;~~
- ~~(xi) Evidence of site control to the Development;~~
- ~~(xii) With respect to a Construction Loan, a letter addressed to the Corporation, duly executed by the Chief Executive Officer of the municipality where the Development is to be constructed or rehabilitated, endorsing the Development;~~
- ~~(xiii) With respect to a Construction Loan where it is anticipated that permanent financing will be provided by sources other than the Corporation, such commitments for permanent financing and other information about the party providing such financing as the Corporation in its discretion deems necessary or appropriate to ensure compliance with these Rules and Regulations;~~
- ~~(xiv) An appraisal in form satisfactory to the Corporation; and~~
- ~~(xv) In connection with a Land Bank Loan, a copy of the commitment for construction loan financing or, if no commitment has been issued, the plans of the Eligible Developer to obtain such financing.~~

~~Eligible Developers seeking Rental Housing Land Bank Loans shall submit all of the foregoing items except those required by Subsections (viii), (ix), (xii) and (xiii) of this Section 3.1. The Corporation reserves the right to waive any of the foregoing requirements in any particular case, to supplement any of the foregoing requirements from time to time by Program Bulletin and to reject incomplete, insufficient or inadequate Proposals.~~

~~3.2 Submission of Proposals.~~

- ~~3.2.1 Generally. Proposals shall be submitted to the Corporation on Mondays through Fridays except holidays between the hours of 9:00 a.m. to 5:00 p.m. A Proposal shall be deemed received as of the date the Corporation determines that the Proposal contains all the information required by Section 3.1 of these Rules and Regulations.~~
- ~~3.2.2 Construction Loans. Proposals for Construction Loans shall be reviewed by the Corporation and considered for funding in the order in which received. The Corporation will accept Proposals for Construction Loans commencing October 1, 1986.~~
- ~~3.2.3 Land Bank Loans. The Corporation shall receive Proposals for Land Bank Loans at least once each year or more often as the Corporation may deem appropriate as long as funds are available.~~

~~SECTION 4. TERMS AND CONDITIONS OF LOANS~~

~~4.1 Loan Term. The term of each Construction Loan shall not exceed twelve (12) months of Proposals involving construction of new Development Units or eighteen (18) months for Proposals involving the acquisition and rehabilitation of Development Units. The term of each Land Bank Loan shall not exceed thirty six (36) months. In each case, the term shall commence on the date the loan is closed. The Corporation may, in its discretion, extend the term of any Construction Loan or Land Bank Loan beyond the applicable loan term.~~

~~4.2 Interest Rate. The interest rate on Construction Loans, Land Bank Loans and Rental Housing Land Bank Loans shall be established by the Board of Commissioners from time to time and made available to the public by Program Bulletin. Under the Construction Loan Program, the Corporation may provide in any applicable loan documents for write-downs from the established rate where the Eligible Developer can demonstrate that interest cost savings will be passed directly on to Qualified Purchasers of Development Units through a reduced purchase price or through the addition of improvements to the Development which directly benefit Qualified Purchasers.~~

~~4.3 Issuance of Commitment. If the Proposal is accepted, the Corporation shall issue its commitment (the "Commitment") to provide a Construction Loan or a Land Bank Loan to the Eligible Developer. The Commitment shall set forth, among other things, certain terms and conditions of the loan set by the Corporation and the documentation that will be required by the Corporation.~~

~~4.4 Penalty. An Eligible Developer that (i) sells, transfers or conveys any interest in land subject to any Land Bank Loan mortgage prior to the expiration of the term without the written consent of the Corporation, or (ii) fails to have closed on financing to construct and develop Development Units or Qualified Rental Housing on any such land prior to the expiration of the loan term or any extension thereof granted by the Corporation, shall pay to the Corporation a penalty equal to the difference of the average prime rate of financial institutions as published in the Providence Journal Bulletin (or in any other local or national publication approved by the Corporation from time to time) on the date the Land Bank Loan is closed plus one percent (1%) and the interest rate of such Land Bank Loan. The amount of such penalty shall be based on the entire initial principal indebtedness owed to the Corporation by the Eligible Developer from the date of the closing of the Land Bank Loan.~~

~~SECTION 5. LOAN DOCUMENTATION~~

~~5.1 Agreements with Corporation. If the Proposal is approved by the Corporation and the Commitment has been accepted by the Eligible Developer, the Eligible Developer shall enter into a loan agreement with the Corporation and shall execute, deliver and provide such other documents and instruments as the Corporation deems necessary to make the loan including, without limitation, a promissory note secured by a mortgage on the Development, performance and payment bonds and assignments of contracts. With respect to Construction Loan Proposals, the agreement and mortgage shall provide for disbursements in the form of progress payments to be made only upon the satisfaction and fulfillment of requirements as established by the Corporation. Any construction loan agreement and/or related documents may provide that a portion of the loan proceeds may be used to pay off an existing mortgage on unimproved real estate on which Development Units and Qualified Rental Housing shall be constructed. Any loan agreement and/or related loan documents shall, as applicable, also require the Eligible Developer to obtain and maintain title, casualty, liability and builder's risk insurance on the Development in such amounts as the Corporation deems necessary, and may require the Eligible Developer to hold the Corporation harmless from and against any and all liabilities and claims arising out of the 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 Development; (ii) provisions respecting the sale of Development Units to Qualified Purchasers; (iii) reporting and monitoring requirements; and (iv) the imposition of penalties and/or legal or equitable remedies, including foreclosure against the Development, available to the Corporation in the event of default, fraud or misrepresentation.~~

~~SECTION 6. MISCELLANEOUS~~

~~6.1 Advertisements, Promotions, etc. The Corporation may from time to time make reference to and use information regarding approved Proposals in advertisements, brochures, newspaper articles, periodicals and in other promotional materials. The loan agreement may also contain provisions respecting promotion and advertisement of the Development.~~

~~6.2 Fees. The Corporation may require Eligible Developers to pay such application, origination, commitment, servicing and appraisal fees as may be established by the Corporation by Program Bulletin from time to time.~~