

NEW HAMPSHIRE HOUSING FINANCE AUTHORITY

Multi-Family Bond Financing Program Rules HFA 114

Table of Contents

HFA 114 PART ONE: Overview, Purpose, Applicability

HFA 114.01 Overview and Purpose

HFA 114.02 Applicability

HFA 114.03 Rulemaking

HFA 114 PART TWO: Definitions

HFA 114.04 Definitions

HFA 114 PART THREE: General Rules

HFA 114.05 Eligible Applicants

HFA 114.06 Project Eligibility

HFA 114.07 Fees and Costs

HFA 114.08 Application Procedure

HFA 114.09 Additional Requirements

HFA 114.10 Approval Process

HFA 114.11 Credit Enhancement

HFA 114.12 Bond Issuance

HFA 114.13 Anti-Displacement and Relocation Policy

HFA 114.14 Compliance

NEW HAMPSHIRE HOUSING FINANCE AUTHORITY
Multi-Family Bond Financing Program Rules
HFA 114

HFA 114 PART ONE: Overview, Purpose, Applicability

HFA 114.01 Overview and Purpose

- (a) The Multi-Family Bond Financing Program provides an efficient source of funds for a variety of affordable multi-family rental developments. The Multi-Family Bond Financing Program enables the Authority to lend the proceeds from the sale of tax-exempt or taxable bonds for the construction, acquisition, and rehabilitation of multi-family rental housing developments.
- (b) The Multi-Family Bond Financing Program is intended for projects where the Authority makes the mortgage loan that it has fully underwritten and receives up to the maximum spread it is allowed to take.

HFA 114.02 Applicability

- (a) These rules only apply to the Multi-Family Bond Financing Program.
- (b) The provisions of HFA 101 are incorporated into these HFA 114 rules.
- (c) Projects intending to use Low Income Housing Tax Credits must comply with the LIHTC section of HFA 109.
- (d) All developments financed with tax-exempt bonds must meet Federal Tax Code requirements and additional Authority regulatory requirements with respect to project occupancy and income targeting. If any of these HFA 114 rules are inconsistent with the pertinent sections of the Federal Tax Code, the provisions of the Federal Tax Code shall govern.

HFA 114.03 Rulemaking

These Multi-Family Bond Financing Program Rules are generally adopted pursuant to RSA 204-C:9, which empowers the Authority to adopt rules relative to programs and operations.

HFA 114 PART TWO: Definitions

HFA 114.04 Definitions

In addition to the terms defined in HFA 101, the following words or terms shall have the following meanings in these HFA 114 Rules:

“Applicant” means an entity that is seeking the Authority’s approval to participate in the Multi-Family Bond Financing Program.

“Application” means the application form and all Authority required supporting documents.

“Complete Application” means an Application with all information and documents required by the Authority to participate in the Multi-Family Bond Financing Program.

“FHA” means the Federal Housing Administration.

“Findings” means a study conducted by the Authority pursuant to RSA 204-C:20.

“TEFRA” means the Tax Equity and Fiscal Responsibility Act of 1982 as amended.

HFA 114 PART THREE: General Rules

HFA 114.05 Eligible Applicants

All single asset mortgagors are eligible to apply including:

- (1) Non-profit 501(c)(3) corporations;
- (2) Limited partnerships;
- (3) General partnerships;
- (4) Corporations; and
- (5) Limited liability companies.

HFA 114.06 Project Eligibility

- (a) For purposes of eligibility for the Multi-Family Bond Financing Program, eligible projects must meet one of the following standards:
 - (1) At least 20% of units must be occupied by households at or below 50% AMI as adjusted for household size and published from time to time by HUD; or
 - (2) At least 40% of units must be occupied by households at or below 60% AMI as adjusted for household size and published from time to time by HUD.
- (b) Mixed income projects are encouraged but the Authority recognizes that many factors, including market conditions and scarce resource allocations will impact the relative mix of targeted and market rate units. The Authority, in its sole discretion, will evaluate projects on a case-by-case basis in accordance with the Authority's Findings.
- (c) In order to ensure affordability, the rent and utility cost for a Multi-Family Bond Financing Program-funded project may not exceed 30% of the maximum income for a particular eligibility category chosen.
- (d) In the event that targeted rents exceed the voucher payment standard for the area a minimum of 20% of the targeted units must be at or below the voucher payment standard for the area in order to ensure affordability to Housing Choice Voucher holders.
- (e) No project may deny occupancy to a tenant for any unit solely because that tenant is receiving Housing Choice Voucher rental assistance.
- (f) Rents and occupancy are restricted and the project must remain restricted for a period beginning on the first day on which 10% of the dwelling units in the project are first occupied and end on the later of:
 - (1) The date which is 15 years after the date on which 50% of the dwelling units in the project are occupied; or
 - (2) The first day on which no tax-exempt private activity bond issued with respect to the project is outstanding.
 - (3) The first day on which any project-based Section 8 assistance provided to the project terminates.

HFA 114.07 Fees and Costs

- (a) The Authority shall publish a list of applicable fees and the maximum amount allowed for each such fee.
- (b) The Authority, in its sole discretion, may waive any or all of the applicable fees.

HFA 114.08 Application Procedure

- (a) Applications for the Multi-Family Bond Financing Program will be accepted continuously. Applications must be submitted on an Authority provided form and will be accepted both in writing and electronically. All accompanying documentation required by the Authority must be included. Incomplete Applications may be rejected by the Authority.
- (b) Complete Applications will be reviewed by the Authority for appropriateness of proposal and consistency with these rules. Each Complete Application will be reviewed under general criteria. Failure to comply with any of the general criteria may result in the rejection of the Complete Application. The general criteria are:
 - (1) Project location considered infeasible or inappropriate;
 - (2) Project or design characteristics inappropriate for the neighborhood or do not satisfy market need;
 - (3) Developer or any member of the development team lack necessary capacity or experience to successfully complete the project;
 - (4) Developer or any member of the development team is or has been noncompliant or in default with any Authority program;
 - (5) Development costs including, but not limited to, acquisition, construction, and intermediary expenses are excessive as determined by the Authority; and
 - (6) Project determined financially infeasible due to high costs and/or lack of adequate financing sources as determined by the Authority.
- (c) Within 45 days of receipt of a Complete Application, the Authority will make a determination to either reject the Complete Application or proceed with processing. The decision to proceed with processing is not an approval of the financing for the project.

- (d) If a project receives an initial determination to proceed, then a schedule of events will be developed to include, but not be limited to:
 - (1) An Official Intent Resolution (if necessary);
 - (2) TEFRA hearing;
 - (3) FHA Risk Sharing Insurance;
 - (4) Final Bond Resolution;
 - (5) Determination Letter;
 - (6) Real estate closing; and
 - (7) Bond sale.

HFA 114.09 Additional Requirements

- (a) Upon review of the Application, site visit, and review of other material available, the Authority may require the preparation of other third party reports. These reports may include, but are not limited to:
 - (1) Market studies;
 - (2) Environmental reviews;
 - (3) Appraisals; and
 - (4) Engineering reports.

Such reports will be commissioned by the Authority but the cost will be borne by the Applicant. Before the Authority authorizes any third party contracts, the Applicant will have deposited with the Authority adequate funds to cover the costs of said reports.
- (b) All Complete Applications meeting the general criteria will be underwritten, in accordance with the Authority's underwriting policy, to ensure that no more than the minimum amount of subsidy that is necessary is included in the project.
- (c) All projects must be constructed or rehabilitated in accordance with HFA 111 and all applicable federal, state, and local codes.

HFA 114.10 Approval Process

- (a) After the required procedures and final project underwriting is complete, financing approvals will be made by the Authority's Board of Directors. A commitment letter will be issued within 14 days of Board Approval.
- (b) Subsequent to Board approval, a mutually agreeable schedule will be developed by the Authority, to include, but not be limited to:
 - (1) Bond document development and cash flows;
 - (2) Pre-closing and closing costs of the real estate; and
 - (3) Pre-closing and closing costs of the bonds.
- (c) The real estate closing will be held in escrow approximately 14 days prior to the bond closing date. In general, funds will not be available to the project until the bonds have been closed.

HFA 114.11 Credit Enhancement

The Authority, in connection with the corresponding issuance of tax exempt bonds to finance a project, will determine the form, and cause to be put in place, a credit enhancement on the financing transaction to ensure that, at a minimum, a Moody's bond rating of Aa2 is achieved and maintained.

HFA 114.12 Bond Issuance

The Authority, at its sole discretion, will determine the timing, structure, and method of marketing the bonds to finance a project, including the designation of bond underwriters, if applicable.

HFA 114.13 Anti-Displacement and Relocation Policy

Involuntary permanent displacement of tenants is strongly discouraged. The Authority may reject an Application that fails to minimize permanent displacement of tenants. Any proposed temporary or permanent relocation of tenants should generally meet standards equivalent to the federal Uniform Relocation Act. A formal relocation plan must be submitted with the Application if any temporary or permanent relocation is anticipated.

HFA 114.14 Compliance

- (a) All projects receiving financing must maintain income and rent targeting requirements as outlined in these rules. The restrictions will be enforced by a Regulatory Agreement and, if tax credits are used, a LURA for Low Income Housing Tax Credits. These agreements may also contain other conditions which the Authority may impose on the project.

- (b) Other documents and certificates necessary for the Authority to issue bonds may need to be executed by the Applicant including, but not limited to, a Continuing Disclosure Agreement and a tax certificate.

NEW HAMPSHIRE HOUSING FINANCE AUTHORITY

Initial Equity Determination HFA 115

Table of Contents

HFA 115 PART ONE: Overview, Purpose, Applicability

HFA 115.01 Overview and Purpose

HFA 115.02 Applicability

HFA 115.03 Rulemaking

HFA 115 PART TWO: Definitions

HFA 115.04 Definitions

HFA 115 PART THREE: General Rules

HFA 115.05 Calculation

HFA 115.06 Equity Constant

HFA 115.07 Sale of Property

HFA 115.08 Refinancing

HFA 115.09 Timing

HFA 115.10 Materials Submitted

NEW HAMPSHIRE HOUSING FINANCE AUTHORITY

Initial Equity Determination

HFA 115

HFA 115 PART ONE: Overview, Purpose, Applicability

HFA 115.01 Overview and Purpose

- (a) The purpose of these Initial Equity Determination Rules is to establish procedures by which the Authority shall implement the requirements of RSA 204-C:16, V in order to determine the initial equity for rental housing projects financed in full or in part by the Authority, and the circumstances under which and the criteria by which the initial equity will be recalculated.
- (b) Once determined, the initial equity amount or, if applicable, the amount thereof as recalculated, is to be used to calculate the maximum allowed distribution that can be received by a project annually.

HFA 115.02 Applicability

- (a) These rules only apply to the Authority's Initial Equity Determination.
- (b) The provisions of HFA 101 are incorporated into these HFA 115 rules. Whenever there is a conflict between these rules and the rules for a specific Authority program, the stricter requirement, as determined by the Authority, shall apply.
- (c) If another equity determination applies from another funding source, the stricter requirement, as determined by the Authority, shall apply.

HFA 115.03 Rulemaking

- (a) These Initial Equity Determination Rules are generally adopted pursuant to RSA 204-C:9, which empowers the Authority to adopt rules relative to programs and operations.
- (b) In addition, these Initial Equity Determination Rules are specifically adopted pursuant to RSA 204-C:16, V.

HFA 115 PART TWO: Definitions

HFA 115.04 Definitions

The terms defined in HFA 101 are incorporated into these HFA 115 rules.

HFA PART THREE: General Rules

HFA 115.05 Calculation

The initial equity will be calculated using the following formula: total development cost of the project less all funding sources requiring a security position on the property. The Authority, in its sole discretion, shall determine the development cost and funding sources.

HFA 115.06 Equity Constant

Once calculated, the initial equity amount shall remain constant as long as any Authority mortgage loans on the property remain outstanding, except as otherwise provided herein.

HFA 115.07 Sale of Property

In the event that a property is sold to an unrelated ownership entity involving new Authority financing and all original Authority mortgage loans are paid in full, the Authority will recalculate initial equity as provided in HFA 115.08 using the formula in HFA 115.05 and based on the new financing structure.

HFA 115.08 Refinancing

- (a) Generally, the Authority does not refinance existing mortgage loans unless it determines that such action will have a public benefit pursuant to RSA 204-C:8. If the Authority determines that a refinancing will have a public benefit and that a recalculation of initial equity is appropriate to encourage the project owner to refinance with the Authority rather than to seek refinancing elsewhere, then the Authority may recalculate initial equity provided all existing Authority mortgage loans are paid in full.
- (b) In the case of refinancing, the current appraised value, as determined by the Authority, of the subject property shall be substituted for total development cost in the initial equity calculation formula.

HFA 115.09 Timing

- (a) Initial equity shall be calculated prior to the end of the fiscal year of the applicable project in which the closing of the Authority's loan(s) for such project occurred.
- (b) In the case of an HFA 115.07 sale or HFA 115.08 refinancing, initial equity shall be recalculated prior to the end of the fiscal year of the applicable project in which the sale or refinancing of such project occurred.
- (c) If the final development cost of a project or the final amount of any loans used in the calculation of initial equity for a specific project are unknown at the time of the calculation or recalculation, then such calculation or recalculation shall be preliminary. Final calculation or recalculation of initial equity shall be made prior to the end of the fiscal year of the specific project that the final development cost and final amount of loans for the specific project are determined by the Authority.

HFA 115.10 Materials Submitted

- (a) Without limiting the Authority's discretion under any other provisions of these rules or RSA 204-C, the Authority will not calculate or recalculate initial equity until the project owner has submitted all information and materials requested by the Authority with respect to such calculation or recalculation.
- (b) The owner is responsible for paying all applicable fees including, but not limited to, an appraisal of the specific property.

NEW HAMPSHIRE HOUSING FINANCE AUTHORITY

Replacement Reserve and Residual Receipts Rules

HFA 204

Table of Contents

HFA 204 PART ONE: Overview, Purpose, Applicability, Rulemaking

204.01 Overview and Purpose

204.02 Applicability

204.03 Rulemaking

HFA 204 PART TWO: Definitions

204.04 Definitions

HFA 204 PART THREE: General Rules

204.05 Funding

204.06 Uses of Replacement Reserve Account

204.07 Uses of Residual Receipts Account

204.08 Prohibited Uses of Operating Account

204.09 Ownership of the Replacement Reserve Account

204.10 Ownership of the Residual Receipts Account

204.11 Procurement of Goods or Services Using Replacement Reserve
or Residual Receipts Funds.

204.12 Distribution Limitations and Performance Indicators

204.13 Delegation

204.14 Board Waiver

204.15 Amendments

NEW HAMPSHIRE HOUSING FINANCE AUTHORITY
Replacement Reserve and Residual Receipts Rules
HFA 204

HFA 204 PART ONE: Overview, Purpose, Applicability, Rulemaking

HFA 204.01 Overview and Purpose

The purpose of these rules is to establish the procedures for the operation of the Replacement Reserve and Residual Receipts Accounts established for multi-family housing projects funded by the Authority.

HFA 204.02 Applicability

These rules only apply to the Replacement Reserve and Residual Receipts Accounts.

HFA 204.03 Rulemaking

These Replacement Reserve and Residual Receipts Rules are adopted pursuant to RSA 204-C:9, which empowers the Authority to adopt rules relative to programs and operations.

HFA 204 PART TWO: Definitions

HFA 204.04 Definitions

The following words or terms shall have the following meanings in these HFA 204 Rules.

“Administration” means the day-to-day, application-by-application decisions and procedures required to administer the Replacement Reserve and Residual Receipts Account.

“Authority” means the New Hampshire Housing Finance Authority.

“Distribution” means the annual payment that an owner is allowed to take from project revenue pursuant to RSA 204-C:16, V and based on standards established in HFA 204.12.

“Operating Account” means a project account controlled by the owner/manager for the deposit of operating income and the payment of operating expenses.

“Replacement Reserve Account” means a project account maintained by the Authority or other lender to the project as approved by the Authority for the purpose of holding a reserve to fund replacement items at the project.

“Residual Receipts Account” means a project account maintained by the Authority for the purpose of holding project funds which remain annually after all other project obligations, as

approved by the Authority, have been met including the payment of owner distribution or sponsor fee as appropriate.

“Sponsor Fee” means the annual payment that a non-profit owner is allowed to take from project revenue. This only applies for projects financed before January 1, 2016.

“Surplus Cash” means the reported net income (loss or other equivalent term) for a project’s fiscal year adjusted as follows:

- (1) Add back depreciation and any amortization expense;
- (2) Deduct required principal repayments during the fiscal year on all Authority-approved debt with scheduled payments (i.e., debt payments contingent upon cash flow or cash balance are excluded);
- (3) Deduct required payments to the established Replacement Reserve Account;
- (4) Deduct any interest income on restricted cash reserves and escrows; and
- (5) Deduct/add any other items specifically approved by the Authority.

HFA 204 PART THREE: General Rules

HFA 204.05 Funding

- (a) The Replacement Reserve Account will be funded at loan closing in an amount determined appropriate and in accordance with the Authority’s Underwriting Standards. Subsequent deposits will typically be billed monthly in an amount the Authority determines necessary to meet future replacement item expenses.
- (b) The Residual Receipts Account will be funded annually from Surplus Cash as determined by the project’s annual audit or other Authority approved financial statement.

HFA 204.06 Uses of Replacement Reserve Account

- (a) Replacement Reserve Accounts are to be utilized for capital expenditures on items that have a given life expectancy and require periodic replacement. This does not include normal repair or maintenance items. All expenses that may utilize the funds from this account are to be approved in writing on forms provided by the Authority before the expenses are incurred. Exceptions to this may be granted in the case of an emergency when the health and safety of the tenants are at risk or when it is necessary to prevent damage to the project.

- (b) Owners are not required to seek Authority approval before utilizing Replacement Reserve Account funds for ordinary turnover costs, as may be defined by the Authority. The Authority, however, may require the owner to reimburse the specific Replacement Reserve Account if the Authority, in its sole discretion, determines the use of Replacement Reserve Account funds have been excessive.
- (c) Each project's regulatory agreement will further define the uses of the Replacement Reserve Account.

HFA 204.07 Uses of Residual Receipts Account

- (a) Funds in the Residual Receipts Account are to be used for the benefit of the project. All uses of this account are to be approved by the Authority.
- (b) This account is only to be used when other project accounts such as the operating account, tax and insurance escrows, and the Replacement Reserve Account are insufficient to cover the expenditure. Residual Receipts may also be used to pay unpaid owner Distribution or Sponsor Fees throughout the life of the project.
- (c) Each project's regulatory agreement will further define the uses of the Residual Receipts Account.

HFA 204.08 Prohibited Uses of Operating Account

The Operating Account is not to be used for the payment of capital expenses or expenses that would otherwise be eligible for payment from the Replacement Reserve Account. Payments for capital or replacement reserve items made from the Operating Account shall be reimbursed to that account from the Replacement Reserve Account as soon as reasonably possible.

HFA 204.09 Ownership of the Replacement Reserve Account

The Replacement Reserve Account is the property of the project and will be included in any transfer of the project to another owner. Upon payment in full of all sums due the Authority, the Replacement Reserve Account will be released from the control of the Authority to the control of the project unless some other document, such as a housing assistance payment contract, requires the Authority to maintain control of the account.

HFA 204.10 Ownership of the Residual Receipts Account

The Residual Receipts Account is maintained for the benefit of the project and will be included in the transfer of the project to another owner. Upon payment in full of all sums due the

Authority and payment of an owed owner Distribution or Sponsor Fee, however, then the balance in the Residual Receipts Account is to be transferred to the Authority for use for any lawful purpose, unless otherwise provided for in the project's regulatory documents.

HFA 204.11 Procurement of Goods or Services Using Replacement Reserve or Residual Receipt Funds

- (a) Prior to soliciting bids, the owner shall submit to the Authority for approval a work description including plans and specifications as appropriate.
- (b) For jobs valued at less than \$10,000 there is no bidding requirement. For jobs equal to or greater than \$10,000 in value, owners must solicit and receive at least three bids from qualified contractors or suppliers of their choice. The Authority, in its sole discretion, will determine if a contractor or supplier is qualified.
- (c) It is expected that the lowest bid will be accepted. If, however, the owner believes that accepting the lowest bid is not in the best interest of the project, then the owner may request, in writing, permission from the Authority to accept a bid other than the lowest bid. If the Authority concurs, then the Authority may grant an exception in writing to the owner.
- (d) In situations when a contractor or bidder and the owner or property manager are the same person or entity, this common interest must be disclosed in writing to the Authority prior to bidding or, if no bidding is required, prior to entering into a contract.
- (e) Selected contractors shall provide the owner with evidence of adequate insurance and copies of warranties for goods and services provided as appropriate. The Authority, in its sole discretion, will determine if the insurance is adequate.

HFA 204.12 Distribution Limitations and Performance Indicators

Projects approved for financing by the Authority before January 1, 2016 shall remain subject to a Distribution limit of 12% per year of initial equity for for-profit owners and a Sponsor Fee limit of 4% per year of annual gross project revenue for non-profit owners, unless the project regulatory documents specify otherwise. All other projects may be eligible for Distributions according to the following standards and limitations, which shall apply to both for-profit and non-profit owners:

- (a) Projects subject to program-specific Distribution limitations shall remain subject to such limitations according to the terms of such programs, which may include requirements, terms, and conditions included in approvals and agreements made pursuant thereto.

- (b) Projects financed with outstanding development subsidy through any of the following programs shall be subject to a maximum cumulative Distribution of income of 12% per year of initial equity:
- (1) HOME Investment Partnerships Program administered by the Authority;
 - (2) Affordable Housing Fund (RSA 204-C:56 et seq.);
 - (3) Authority Capital Subsidy; or
 - (4) Housing Trust Fund.
- (c) Distributions may be authorized by the Authority upon application by the owner and demonstration to the sole satisfaction of the Authority that the following performance indicators have been met. Provisions of this paragraph may be waived by the Authority for good cause.
- (1) Financial Condition. A debt coverage ratio of at least 1.05 must be demonstrated in a project's audited annual financial statements. Debt coverage ratio shall be determined according to standards established by the Authority.
 - (2) Minimum Operating Reserves balance must be maintained as required by the Authority.
 - (3) Replacement Reserve must be sufficient to maintain a positive balance throughout the term of the project's financing and to meet the requirements of a Capital Needs Assessment, which shall be conducted by a qualified professional approved by the Authority. The Capital Needs Assessment shall meet accepted industry standards and shall be valid for the purposes of these rules only after approval by the Authority. Capital Needs Assessments shall be updated every five years and shall be submitted to the Authority for approval. The Authority, in its sole discretion, may permit an owner to conduct its own Capital Needs Assessment, according to such standards that the Authority may establish.
 - (4) Physical Condition. The project must meet program-specific quality standards (such as HQS and UPCS) on an ongoing basis. The Authority will inspect the condition of the property on a regular basis consistent with program requirements.
 - (5) Management of Property. The project must be managed in an appropriate and competent manner in accordance with the project's governing documents.

HFA 204.13 Delegation

- (a) Unless otherwise specified in the Replacement Reserve and Residual Receipts Rules, the Authority's Board of Directors delegates to the Executive Director, the Administration of the Replacement Reserve and Residual Receipts, including approving or denying the release of Replacement Reserve and Residual Receipts funds.
- (b) In the Administration of programs, the Executive Director has the authority to vary from these rules to accomplish program and participation goals, provided such variances are consistent with any applicable statutes and other program rules.
- (c) Pursuant to the Authority's operating policies, the Executive Director may delegate the Administration and approval authority to appropriate staff.

HFA 204.14 Board Waiver

The Authority's Board of Directors may waive any rule when such waiver is warranted by good cause and when such waiver shall not be inconsistent with applicable law and regulation. The Board may delegate waiver authority to the Multi-Family Housing Committee.

HFA 204.15 Amendments

Program requirements, including these Replacement Reserve and Residual Receipts Rules and all program documents, may be amended from time to time based on the Authority's sole discretion.