

NEW HAMPSHIRE HOUSING FINANCE AUTHORITY

Replacement Reserve and Residual Receipts Rules HFA 204

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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.