

TITLE 47: HOUSING AND COMMUNITY DEVELOPMENT  
CHAPTER II: ILLINOIS HOUSING DEVELOPMENT AUTHORITY

PART 310  
MULTIFAMILY RENTAL HOUSING MORTGAGE LOAN PROGRAM

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**AUTHORITY:** Implementing and authorized by the Illinois Housing Development Act [20 ILCS 3805].

**SOURCE:** Adopted at 5 Ill. Reg. 14583, effective prior to October 24, 1980 as corrected at 6 Ill. Reg. 620; codified at 7 Ill. Reg. 2433; amended at 8 Ill. Reg. 2996, effective February 28, 1984; amended at 9 Ill. Reg. 8631, effective May 29, 1985; emergency amendment at 9 Ill. Reg. 10086, effective June 13, 1985, for a maximum of 150 days; amended at 9 Ill. Reg. 11296, effective July 5, 1985; amended at 9 Ill. Reg. 14675, effective September 13, 1985; amended at 9 Ill. Reg. 16848, effective October 21, 1985; amended at 10 Ill. Reg. 13657, effective August 4, 1986; amended at 10 Ill. Reg. 13987, effective August 11, 1986; amended at 14 Ill. Reg. 683, effective December 27, 1989; amended at 16 Ill. Reg. 10248, effective June 16, 1992; emergency amendment at 17 Ill. Reg. 13805, effective August 10, 1993, for a maximum of 150 days; amended at 18 Ill. Reg. 1939, effective January 21, 1994; amended at 22 Ill. Reg. 3854, effective

February 4, 1998; amended at 23 Ill. Reg. 1355, effective January 15, 1999; amended at 31 Ill. Reg. 4392, effective February 28, 2007.

#### SUBPART A: GENERAL RULES

##### **Section 310.101 Authority**

The Rules in this Part are authorized by and made pursuant to Sections 7.2, 7.19, 7.24b, 7.24e, 8, 9, 10, 11, 12 and 14 of the Act and shall govern the Program.

(Source: Amended at 31 Ill. Reg. 4392, effective February 28, 2007)

##### **Section 310.102 Purpose and Objectives**

The Rules in this Part are established to accomplish the general purposes of the Act and in particular the making of Mortgage Loans for the construction or rehabilitation of multifamily rental housing in accordance with the Program.

(Source: Amended at 31 Ill. Reg. 4392, effective February 28, 2007)

##### **Section 310.103 Definitions**

As used in this Part, the following words or terms mean:

"Act": The Illinois Housing Development Act [20 ILCS 3805].

"Application": An application for a Mortgage Loan for a proposed Development.

"Authority": The Illinois Housing Development Authority.

"Bonds": Bonds issued by the Authority from time to time to finance the Program.

"Chairman": The Chairman of the Authority.

"Clearinghouse": A State, regional, or metropolitan agency designated by the Governor of the State or the Authority or established by State statute to provide notice to appropriate State and local agencies of proposed Developments and to review such Developments.

"Code": The Internal Revenue Code of 1986 (26 USC), as amended from time to time, and the regulations promulgated thereunder.

"Commercial Tenant": Any entity leasing commercial facilities in a Development.

"Conduit Bonds": Bonds issued by the Authority for which another party assumes the risk of default, including but not limited to a default arising out of a default on the Mortgage Loan financed with the proceeds of the Bonds.

"Conduit Loan": A Mortgage Loan or other similar financing arrangement made with the proceeds of Conduit Bonds.

"Cost Certification Cutoff Date": The last day of the month in which the Construction Completion Date falls.

"Cost of Development": The costs of the acquisition and the construction or rehabilitation of a Development, including the design architect's fees; engineering fees; the supervisory architect's fees; legal and accounting fees; marketing and consulting fees; land costs; interest and financing charges to be paid during construction; the Authority's origination fee; application fees paid to other lenders; funding of reserves for real estate and other taxes; funding of reserves for replacement and other reserves; title and recording fees; financial contingency and construction contingency; a developer's fee; costs associated with the issuance of Bonds; relocation costs; the cost of landscaping and off-site improvements; carrying charges; and any other costs approved by the Authority, whether or not such costs have been paid in cash or provided in a form other than cash. For an existing Development that is being refinanced or being acquired, the cost of development shall be the appraised value of the Development, as determined on or after the date of the Application for refinancing, and the costs of rehabilitation.

"Cumulative Distribution": A Distribution of Surplus Cash and/or Residual Receipts representing all or part of a Distribution unpaid but cumulated by an Owner in a prior fiscal year.

"Current Distribution": A Distribution of Surplus Cash and/or Residual Receipts representing all or part of a Distribution earned in a current fiscal year.

"Deputy Director": The Deputy Executive Director of the Authority.

"Development": The Real Estate, together with all buildings and other improvements constructed on it, and the equipment, and personal property appurtenant to the Real Estate.

"Development Funds": All cash, rent subsidies, gross Development income, bank accounts, certificates of deposit, trust funds, reserves, escrows, accounts

receivable, and other such assets of a Development.

"Director": The Executive Director of the Authority.

"Distribution": Any withdrawal or taking of cash from Surplus Cash and/or Residual Receipts, including segregation of cash for subsequent withdrawal, for payment to or on behalf of an Owner pursuant to the Authority's written authorization of the Distribution.

"Eligible Mortgagor": Any Limited-Profit Entity or Nonprofit Corporation or any Illinois land trust the beneficiary of which is a Limited-Profit Entity or Nonprofit Corporation, but only if the Mortgagor's ownership of the Development (including any partnership interest or stock ownership interest in the Mortgagor), or the beneficiary's interest in an Illinois land trust (including the ownership of any partnership interest or stock ownership interest in the beneficiary), shall not cause any Tax-exempt Bonds used to finance the Development to become taxable for federal income tax purposes. The organizational documents of the Mortgagor or beneficiary referred to in Section 310.303 of this Part shall at all times be in compliance with the requirements of Section 310.303.

"Equity": The difference between the amount of a Mortgage Loan and all other loans and grants for the Development and the total Cost of Development, except as otherwise provided for in Section 310.403(f).

"FAF Funds": Funds received from HUD pursuant to certain refunding agreements between the Authority and HUD as authorized by the Stewart B. McKinney Homeless Assistance Act of 1988, which provided for the sharing of savings resulting from the reduction of HUD subsidies provided to certain Developments financed under the Program.

"Final Closing Date": The date on which the Authority makes the final distribution of the proceeds of a Mortgage Loan.

"HOME Program": The Home Investment Partnerships Program for the State of Illinois established pursuant to Title II of the National Affordable Housing Act of 1990 (42 USC 12701), as amended from time to time, and the regulations promulgated under that Act.

"HUD": the United States Department of Housing and Urban Development.

"Initial Closing Date": The date on which the Authority determines that funds for a Mortgage Loan may be disbursed for the construction or rehabilitation of the Development.

"Limited-Profit Entity": Any individual, joint venture, partnership, limited partnership, limited liability company, trust, or corporation organized or existing under the laws of the State of Illinois or authorized to do business in the State and having either articles of incorporation, articles of organization or comparable documents of organization or a written agreement with the Authority that, in addition to meeting other requirements of law, meets the requirements of Section 7.2(k) of the Act.

"Low Income": An income adjusted for family size that is less than or equal to 80% of the Median Income.

"Median Income": The median income of the county or the metropolitan statistical area, as applicable, in which the Development is located, adjusted for family size. The median income is determined from time to time by HUD for purposes of Section 8 of the United States Housing Act of 1937 (42 USC 1437a).

"Members": The Members of the Authority.

"Moderate Income": An income adjusted for family size that is less than or equal to 120% of the Median Income.

"Mortgage": The mortgage or other instrument in the nature of a mortgage, together with any supplements, amendments or modifications, executed as security for a Mortgage Loan.

"Mortgage Loan": A loan under the Program from the Authority to a Mortgagor to be used for the acquisition, construction or rehabilitation and permanent financing of a Development or the refinancing of a Mortgage Loan that provided financing for an existing Development.

"Mortgage Note": The document executed as evidence of a Mortgagor's indebtedness under a Mortgage Loan and any supplements, modifications or amendments.

"Mortgagor": The Limited-Profit Entity, Nonprofit Corporation, or Trustee holding title to a Development.

"Nonprofit Corporation": A not-for-profit corporation incorporated pursuant to the provisions of the Illinois General Not-for-Profit Corporation Act of 1986 [805 ILCS 105] or the State Housing Act [310 ILCS 5] and having articles of incorporation that, in addition to meeting other requirements of law, meet the requirements of Section 7.2(m) of the Act.

"Notes": Notes issued by the Authority from time to time to finance Mortgage Loans under the Program.

"Owner": The Limited-Profit Entity or Nonprofit Corporation holding title to Real Estate or a Development or, when the Real Estate or the Development is held in a Trust, the Limited-Profit Entity or Nonprofit Corporation owning the beneficial interest in the Trust. Under no circumstances shall "owner" mean the Authority or a Trustee.

"Program": The Authority's multifamily rental housing mortgage loan program, including, without limitation, Mortgage Loans made under the HOME Program, Risk Sharing Loans, loans made with FAF Funds and Mortgage Loans insured by HUD (other than Risk Sharing Loans), Ambac Assurance Corporation or any other entity that insures mortgage loans.

"Real Estate": The real property upon which a multifamily housing development is to be or has been constructed.

"Regulatory Agreement": The regulatory agreement or other instrument in the nature of a regulatory agreement, together with any supplements, amendments or modifications, governing a Mortgage Loan or a Conduit Loan. The agreement shall, among other things, establish the income and rental restrictions on the Development and the method of determining the permissible Distribution to the Owner.

"Reserve Fund for Replacements": The account that the owner of a Development must establish to provide a source of funds for capital repairs or improvements for the Development.

"Residual Receipts": That part of Development income remaining at the end of an annual fiscal year after the deduction of the amount of all Distributions.

"Risk Sharing Loans": Mortgage Loans insured by HUD under the Housing Finance Agency Risk-Sharing Program for Insured Affordable Multifamily Project Loans, as authorized by Section 542(c) of the Housing and Community Development Act of 1992 (42 USC 3535(d)) and the regulations promulgated under that Act.

"Rules": The Rules and Regulations of the Authority as supplemented and amended from time to time, including, without limitation, the Rules in this Part.

"Staff": The Director, the Deputy Director and the employees of the Authority.

"State": The State of Illinois.

"Surplus Cash": That part of gross Development income remaining at the end of a fiscal year after Development Funds, if applicable, have been disbursed in accordance with the priorities established in the Regulatory Agreement for the Development.

"Tax-exempt Bonds": Bonds issued under the provisions of the Code, the interest on which is not taxable to the holders of the Bonds.

"Tenant": A person or family leasing a dwelling unit in a Development.

"Tenant Selection Plan": The tenant selection plan approved by the Authority for a Development that sets forth the criteria and procedures for selecting Tenants for a Development.

"Trust": An Illinois land trust of which an Owner is the sole beneficiary and that holds legal title to a Development.

"Trustee": The trustee of an Illinois land trust holding legal title to a Development, the beneficiary of which is a Limited-Profit Entity or a Nonprofit Corporation.

"Very Low Income": An income adjusted for family size that is less than or equal to 50% of the Median Income.

(Source: Amended at 31 Ill. Reg. 4392, effective February 28, 2007)

#### **Section 310.104 Borrowing by the Authority**

To the extent allowed by applicable federal law and the Act, the Authority may borrow funds with which to make Mortgage Loans under the Program.

#### **Section 310.105 Compliance with Federal Law**

Notwithstanding anything herein to the contrary, this Part shall be construed in conformity and compliance with applicable federal law, including, without limitation, the Code and the federal regulations governing the HOME Program and Risk Sharing Loans.

(Source: Amended at 31 Ill. Reg. 4392, effective February 28, 2007)

#### **Section 310.106 Standards**

In administering the Program, the Authority, the Chairman, the Director, and the Staff shall in the exercise of discretion consider, in addition to the criteria specifically set forth in this Part, the purposes of the Program to provide decent, safe, and sanitary multifamily rental housing; the requirements of applicable State and federal law; the financial condition and previous experience of potential and participating developers; the Authority's ability to purchase or redeem any Bonds and to comply with the requirements of the resolutions authorizing any Bonds; the Authority's ability to comply with the terms and provisions of any Notes; the financial integrity of the Program; the housing needs of the State; architectural and construction quality; the preservation of the value of the Development as security for a Mortgage Loan; the ability of the Owner to repay a Mortgage Loan out of gross Development income; the potential prepayment of a Mortgage Loan; the desirability of achieving a reasonable geographic distribution of Developments throughout the State; the standards and practices of a prudent lender; the requirements of local housing codes and zoning laws; specific standards set forth in Authority agreements and documents; or any other factors relevant under the circumstances.

(Source: Amended at 31 Ill. Reg. 4392, effective February 28, 2007)

#### **Section 310.107 Forms and Procedures for the Program**

The staff may prepare, use, supplement and amend such forms, agreements and other documents and such procedures as may be necessary to implement the Program, all as may be prescribed by the Director.

(Source: Amended at 16 Ill. Reg. 10248, effective June 16, 1992)

#### **Section 310.108 Fees and Charges of the Authority**

In connection with the Program, the Authority may establish and collect such fees and charges as may be necessary. Such fees and charges may be used by the Authority for its general corporate purposes, including costs of administering the Program.

#### **Section 310.109 Waiver (Repealed)**

(Source: Repealed at 22 Ill. Reg. 3854, effective February 4, 1998)

#### **Section 310.110 Amendment**

This Part may be supplemented, amended or repealed by the Members from time to time and in such manner as they may determine consistent with the Rules, the Act and other applicable provisions of law. This Part shall not constitute or create any contractual rights.

(Source: Amended at 16 Ill. Reg. 10248, effective June 16, 1992)

**Section 310.111 Severability**

If any clause, sentence, paragraph, subsection, Section, or Subpart of this Part be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subsection, Section or Subpart thereof as to which such judgement is rendered.

(Source: Amended at 16 Ill. Reg. 10248, effective June 16, 1992)

**Section 310.112 Gender and Number**

All terms used in any one gender or number shall be construed to include any other gender or number as the context may require.

**Section 310.113 Titles and Captions**

Titles and captions of Subparts, Sections and subsections are used for convenience and reference and are not a part of the text.

(Source: Amended at 16 Ill. Reg. 10248, effective June 16, 1992)

**Section 310.114 Calendar Days**

Days shall mean calendar days. Days falling on a Saturday, Sunday or legal State or federal holiday shall be deemed to fall on the next calendar day that is not Saturday, Sunday or a legal State or federal holiday.

(Source: Amended at 16 Ill. Reg. 10248, effective June 16, 1992)

**SUBPART B: NOTICE OF PROPOSED DEVELOPMENTS****Section 310.201 Applicability and Purpose of Notification**

- a) Purpose  
This Subpart is established to provide for notification to certain persons and agencies pursuant to Section 7.24b of the Act that a developer proposes to construct or rehabilitate a Development in their district, county or municipality.
- b) Compliance  
A developer's Application shall not be deemed to be complete until the provisions of this Subpart have been complied with. A developer's failure to comply with the provisions of this Subpart shall relieve the Authority of all obligations to provide

a Mortgage Loan for the proposed Development.

- c) Developer's Acts  
In responding to comments, attending hearings, or undertaking any other activities pursuant to this Subpart, a developer shall not hold itself out to represent the Authority and shall not take or suffer any act that would incur any obligation on behalf of the Authority.

(Source: Amended at 31 Ill. Reg. 4392, effective February 28, 2007)

### **Section 310.202 Notification by Authority**

- a) Notice of Development  
When the Authority accepts an Application for a Mortgage Loan for a proposed Development, the Authority shall give written notice of the proposed Development to the following persons and agencies:
- 1) the chairman of the county board of the county in which the Development is proposed to be located;
  - 2) the mayor or other chief executive of the municipality (means cities, villages and incorporated towns), if any, in which the Development is proposed to be located;
  - 3) in municipalities with a population of more than 1,500,000 persons, the alderman of the ward in which the Development is proposed to be located;
  - 4) appropriate Clearinghouses; and
  - 5) each member of the General Assembly from the legislative district in which the Development is proposed to be located.
- b) Forms  
Notice under this Section shall be made on Authority forms.
- c) Contents  
The notice shall set forth the name and address of the proposed Development; the name, address and telephone number of the developer; the estimated amount of the proposed Mortgage Loans; the total number of units; the total number of units for Low Income and Very Low Income Tenants; the type of Development (for example, elderly, family or mentally or physically disabled); and any other information the Authority deems relevant.

(Source: Amended at 31 Ill. Reg. 4392, effective February 28, 2007)

### **Section 310.203 Comments and Responses**

- a) **Comments**  
The persons and agencies receiving notice of a proposed Development pursuant to Section 310.202 shall have 30 days from the date of mailing of the notice to submit written comments to the developer or the Authority.
- b) **Developer's Response**  
The developer shall respond in writing to all comments in connection with the proposed Development received under this Section.

(Source: Amended at 31 Ill. Reg. 4392, effective February 28, 2007)

### **Section 310.204 Submissions to the Authority**

- a) **Documents**  
The developer shall submit to the Authority the following documents in connection with the proposed Development:
  - 1) a copy of every written comment and a written summary of every oral comment received pursuant to Section 310.203(a);
  - 2) a copy of every response made pursuant to Section 310.203(b);
  - 3) a history of conferences, hearings and other activities undertaken in relation to comments on the proposed Development;
  - 4) a brief summary of what the developer has done in response to comments; and
  - 5) a certification that the information provided under this Section is accurate and complete.
- b) **Information**  
Sufficient information shall be provided under this Section to enable the Authority to determine whether comments received pursuant to Section 310.203 have been adequately considered and responded to.
- c) **Denial**  
The Authority may deny a developer's Application for, among other reasons, failure to comply with the conditions of this Subpart. The denial shall be in

writing and shall state the reasons for the denial. If the Authority determines that it must cease processing an Application, the Authority will inform the developer in writing of the conditions necessary for continued processing and the time period in which the conditions must be met.

- d) Assistance of Authority  
The Developer shall have the responsibility to seek the assistance of the Authority, if needed, in addressing comments received pursuant to Section 310.203.

(Source: Amended at 31 Ill. Reg. 4392, effective February 28, 2007)

### **Section 310.205 Hearings**

The developer shall provide written notice to the Authority of any public or adjudicatory hearing that may be held in connection with the proposed Development. The developer shall mail the notice to the Authority within 2 days after receiving notice or otherwise becoming aware of the hearing. It shall be the developer's responsibility to prepare for and attend the hearings and to respond to any inquiry made at or in connection with the hearings regarding the proposed Development.

(Source: Amended at 31 Ill. Reg. 4392, effective February 28, 2007)

### **Section 310.206 Notice of Issuance of Conditional Commitment Letter (Repealed)**

(Source: Repealed at 31 Ill. Reg. 4392, effective February 28, 2007)

## **SUBPART C: OWNER**

### **Section 310.301 Eligible Mortgagors**

The Authority may make Mortgage Loans under the Program to Eligible Mortgagors. The Owner of the Development shall at all times be an Eligible Mortgagor. If the Authority learns that an Owner is not an Eligible Mortgagor, then the Authority shall take the action, if any, specified in the Mortgage Loan documents.

(Source: Amended at 16 Ill. Reg. 10248, effective June 16, 1992)

### **Section 310.302 Land Trusts**

Whenever Real Estate or a Development is held in an Illinois land trust, the agreement creating the Trust and establishing the respective rights, powers, and duties of the Trustee and Owner shall be in a format approved by the Authority. The format shall be approved if it meets the legal

requirement necessary to create a valid Illinois land trust. Any trust agreement shall not be amended or revoked without the prior written approval of the Authority. Upon either the request of the Owner or the Authority, the Trustee shall furnish the Authority with copies of the trust agreement and all records in its possession relating to the trust agreement, the Real Estate and the Development.

(Source: Amended at 31 Ill. Reg. 4392, effective February 28, 2007)

### **Section 310.303 Organizational Documents**

The organizational documents of a joint venture, partnership, limited partnership, limited liability company or corporation shall contain provisions to qualify and maintain the Owner as a Limited-Profit Entity or Nonprofit Corporation, as defined in the Act and this Part, and to insure that the Owner and each person or entity that has an ownership interest in the Owner are required to comply with the Act and this Part and shall not cause the underlying Bonds used to finance the Development, if any, to become taxable for federal income tax purposes. The Owner may, upon the approval of the Authority, meet the requirements of this Section by entering into an agreement with the Authority rather than incorporating the necessary provisions in its organizational documents. The provisions of the documents of organization or agreement, as required by this Section, shall not be amended without prior written Authority approval. Amendment of the provisions of the documents or agreement shall be allowed so long as the Authority determines that the amendments comply with Section 310.106 of this Part and this Section.

(Source: Amended at 31 Ill. Reg. 4392, effective February 28, 2007)

### **Section 310.304 Books and Records**

The books and records of the Development shall be prepared and maintained in accordance with Authority requirements and shall be subject to inspection, examination and copying by the Authority and its authorized representatives or agents at such times as the Authority reasonably requires for the purpose of determining compliance with the Rules, the Act and all contracts and agreements relating to the Program. The books and records of the Owner, if separate from the books and records of the Development, shall be prepared and maintained in accordance with Authority requirements and shall be subject to inspection, examination and copying by the Authority and its authorized representatives or agents at such times as the Authority reasonably requires.

(Source: Amended at 16 Ill. Reg. 10248, effective June 16, 1992)

### **Section 310.305 Audits**

The Development and the offices, architectural plans and specifications, apparatuses, books and

records, contracts, documents and other papers relating to the development shall at all times be maintained in reasonable condition for proper audit and shall be subject to inspection, examination and copying by the Authority and its authorized representatives or agents at such times as the Authority reasonably requires. All audits, certifications and financial reports that the Owner is required by contract with the Authority to allow, undertake or prepare shall be made by an independent certified public accountant acceptable to the Authority.

(Source: Amended at 31 Ill. Reg. 4392, effective February 28, 2007)

### **Section 310.306 Annual Financial Report**

Within 90 days after the end of a Development's fiscal year, the Owner shall be required to furnish the Authority with a complete annual financial report based upon the books and records of the Development and the Owner, prepared in accordance with Authority requirements, and certified by the Owner and an independent certified public accountant acceptable to the Authority.

(Source: Amended at 31 Ill. Reg. 4392, effective February 28, 2007)

### **Section 310.307 Furnishing Information**

The Owner shall furnish such reports, projections, certifications, analyses and tax returns as required by applicable federal or State statutes, regulations or subsidy or assistance programs or by the Authority and shall furnish specific answers to the Authority's questions about the Owner's income, assets, liabilities and contracts and about the administration, operation, maintenance, occupancy, financial soundness and physical condition of the Development.

(Source: Amended at 16 Ill. Reg. 10248, effective June 16, 1992)

### **Section 310.308 Purchase of Authority Bonds and Notes**

No Owner, including any "related person," as defined in Section 103(b)(6)(C) of the Internal Revenue Code of 1954 as amended from time to time, shall pursuant to any arrangement, formal or informal, direct or indirect, agree to purchase the Bonds, Notes, or other obligations of the Authority in an amount related to the aggregate principal amount of the Mortgage Loan to be made to the Owner or such related person.

### **Section 310.309 Standards for Approval of Conveyance and Amendment of Documents**

In determining whether to approve and/or impose restrictions on the conveyance, assignment, leasing, mortgaging, pledging or other transfer of all or any part of the Development, or any partnership interest, stock ownership interest or member interest in the Owner of a Development, or the beneficial interest in, and power of direction over, the Trust, or any partnership interest,

stock ownership interest or member interest in the beneficiary of a Trust, and in determining whether to approve amendments to the documents of organization of an Owner under Section 310.303 of this Part, the Authority shall grant approval, with any necessary restrictions, if the Authority determines that the proposed action will not have an adverse impact upon the financial stability or the economic viability of the Development or the tax-exempt status of the Bonds, if any.

(Source: Amended at 31 Ill. Reg. 4392, effective February 28, 2007)

#### SUBPART D: MORTGAGE LOAN

##### **Section 310.401 Maximum Mortgage Loan Amount**

- a) **Establishing Amount.** The maximum Mortgage Loan amount available to an Owner that is a Limited-Profit Entity is 90% of the Cost of Development, as determined and approved by the Authority in its sole discretion. The maximum Mortgage Loan amount available to an Owner that is a Nonprofit Corporation is 100% of the Cost of Development, as determined by the Authority in its sole discretion.
- b) **Mortgage Loan Increase.** After the Authority has made a Mortgage Loan for a Development, nothing contained in this Section shall prohibit the Authority from increasing the amount of the Mortgage Loan in excess of the limitations specified in Section 310.401 of this Part if the Authority, in its sole discretion, determines that the increase is necessary to maintain the financial stability or economic viability of the Development. In deciding whether to approve a Mortgage Loan increase, the Authority shall consider the physical condition of the Development, the value of the Development as security for the Mortgage Loan, the Authority's ability to provide the Mortgage Loan increase, the ability of the Owner to repay the Mortgage Loan out of gross Development income, the financial status of the Development, and any other relevant factors.
- c) **Refinancing Mortgage Loans in Foreclosure or Default.** Nothing contained in this Section shall prohibit the Authority from settling defaults under any existing Mortgage Loan or restructuring a defaulted Mortgage Loan pursuant to settlement terms that the Authority deems appropriate, including making a new Mortgage Loan to pay all or a portion of the amounts due and owing under the defaulted Mortgage Loan and any costs, fees and expenses of the Authority in connection with the defaulted Mortgage Loan and the restructuring of the Mortgage Loan. Any new Mortgage Loan that is made in settlement and/or restructuring of a defaulted Mortgage Loan may be in an amount that exceeds the amount due and owing under the defaulted Mortgage Loan, and shall include only such amounts as the Authority deems necessary and appropriate for the financial rehabilitation

of the Development and to mitigate any loss to the Authority, including, without limitation, the following: the costs of redeeming any Bonds issued to finance the defaulted Mortgage Loan, including any premium payable in connection with the redemption; the costs of issuance of any Bonds issued to finance a new Mortgage Loan; the costs of audits of the Development or the debt service payments on the defaulted Mortgage Loan; the costs of appraisals of the Development and assessments of the physical condition of the Development, including, without limitation, environmental studies required by the Authority or any third party in connection with the settlement; the costs of repair, maintenance or improvement of the Development; legal and accounting fees and expenses (including the fees and expenses of counsel to the Authority) to the Authority relating to the exercise of remedies by the Authority under the defaulted Mortgage Loan; the Authority's work-out fees, or other charges made by the Authority against the Development; defaulted debt service payments, delinquency payments and other amounts due and owing under the defaulted Mortgage Loan; title insurance premiums and recording fees; and the Authority's administrative expenses relating to the defaulted Mortgage Loan.

(Source: Amended at 31 Ill. Reg. 4392, effective February 28, 2007)

### **Section 310.402 Term of Mortgage Loans**

The maximum term of a Mortgage Loan to be made by the Authority shall not exceed 65 years and may be shorter at the sole discretion of the Authority. In determining the term of a Mortgage Loan, the Authority shall take into account its ability to pay when due the principal (including any sinking fund installments) and interest on any Bonds or Notes, its ability to purchase or redeem any Bonds and to comply with the requirements of the resolutions authorizing any Bonds, its ability to comply with the terms and provisions of any Notes, the feasibility of the proposed Development, the financial integrity of the Program, the requirements of applicable State and federal law, and any other relevant factors.

(Source: Amended at 31 Ill. Reg. 4392, effective February 28, 2007)

### **Section 310.403 Equity and Distributions**

- a) **Right to Distributions.** As provided in the Act, an Owner shall have the right, commencing on the Initial Closing Date, to make annual Distributions in an amount not to exceed 6% of its Equity in a Development, except as otherwise provided pursuant to Sections 310.801 through 310.805, except that, if a Distribution cannot be made as provided in subsections (b) and (c) of this Section, an Owner may cumulate the right to make a Distribution. An Owner's right to a Distribution shall begin to cumulate on the Initial Closing Date. In any partial fiscal year in which an Owner is entitled to make a Distribution, the amount of a

Distribution shall be calculated pro rata based on the number of days since the closing of the Mortgage Loan.

- b) **Source of Distributions.** An Owner may make Current and Cumulative Distributions out of Surplus Cash and/or Residual Receipts. If Surplus Cash or Residual Receipts are unavailable in a given fiscal year, an Owner shall make no Current Distribution, but the right to make a Distribution shall cumulate. If Surplus Cash and/or Residual Receipts are insufficient in a given fiscal year to make a Distribution in an amount equal to 6%, or as otherwise permitted in Sections 310.801 through 310.805, of an Owner's Equity in a Development, an Owner may distribute all available Surplus Cash and/or Residual Receipts and cumulate the right to make the rest of the Distribution in future years when and if Surplus Cash and/or Residual Receipts are available.
- c) **Timing of Distributions.** No Distribution shall be made until after the Final Closing Date. Even if Surplus Cash and/or Residual Receipts are available, the initial and all subsequent Distributions, including Cumulative Distributions, may be made only after the Authority has approved the Development's annual financial report (see Section 310.306); the Development has an approved Development budget for the next fiscal year; the Owner has complied with all outstanding notices of requirements for proper maintenance and operation of the Development; the Owner has cured any defaults or breaches of applicable Rules, contracts and agreements; and the Authority has issued its written authorization of the Distribution.
- d) **Amount of Equity.** As required by the Act, the Authority shall establish an Owner's Equity in a Development on or after the Final Closing Date. In no event shall the amount of the Equity be calculated to include any grants or other funds not originating with the Owner. Once established by the Authority, the amount of an Owner's Equity shall remain constant so long as the Mortgage Note and Mortgage are outstanding on the Development, unless adjusted by resolution of the Members based on the criteria set forth in subsection (e).
- e) **Increase in Amount of Equity**
  - 1) If an Owner agrees either to preserve the existing income and rental restrictions of a Development for a period not less than five years (starting from the later of the date on which the owner acquires the right to prepay its Mortgage Loan or the date on which the increase in Equity is granted) or create an equivalent number of additional units of housing with similar income and rental restrictions, the Authority, by resolution of its Members, may increase Owner's Equity to an amount not to exceed the difference between the unpaid balance of the Mortgage Loan and the

Development's appraised value at the time of the request by the Owner for an Equity increase. The appraisal shall be based on the Development's highest and best use and be conducted by an appraiser acceptable to the Authority. For purposes of the increase in Owner's Equity, the Development's appraised value may be updated by the Owner no more frequently than every five years after an increase is granted under this subsection (e) and the amount of Owner's Equity may be adjusted to reflect the updated appraisal. The cost of the appraisal shall not be a Development expense.

- 2) It shall be a condition of the Authority increasing Owner's Equity that:
  - A) the Authority give its prior written consent to any increase in the rental charges for the Development; and
  - B) the Authority determine, in its sole discretion, that:
    - i) the Reserve Fund for Replacements for the Development is sufficient to pay the costs set forth in Section 310.405 for the five years (starting from the later of the date on which the owner acquires the right to prepay its Mortgage Loan or the date on which the increase in Equity is granted), as determined by a physical needs assessment performed by a company acceptable to the Authority; the cost of such physical needs assessment shall not be a Development expense; and
    - ii) the amount needed to complete any deferred maintenance on the Development is less than one year's funding requirement for the Reserve Fund for Replacements.
- 3) The Authority shall require the Owner to execute an agreement evidencing the increase in Equity and containing the Owner's agreement either to preserve the existing income and rental restrictions of the Development as affordable for low and moderate income for a period not less than five years (starting from the later of the date on which the owner acquires the right to prepay its Mortgage Loan or the date on which the increase in Equity is granted) or create an equivalent number of additional units of housing with similar income and rental restrictions.
- 4) Any increase in Owner's Equity approved pursuant to this Section shall conform to any relevant federal statutes, rules or regulations.

(Source: Amended at 31 Ill. Reg. 4392, effective February 28, 2007)

#### **Section 310.404 Development Funds and Property**

All Development Funds received by an Owner or its agent shall be deposited to and maintained, as the Authority directs, in appropriate accounts with the Authority, or in a federally insured bank or savings and loan association or other financial institution located and qualified to do business in Illinois and whose deposits are insured by the federal government, or in other fiduciaries acceptable to the Authority. The Authority shall, in the Regulatory Agreement for the Development, establish priorities for the disbursement and use of Development Funds, including the funding of reserves and escrows, and require that the Owner have personal liability for Development Funds or Development property that comes into its hands or the hands of its agents that the Owner is not entitled to retain or has disbursed or used in violation of Authority requirements. In establishing these priorities, the Owner and Authority shall take into account the purposes of the Program, the financial stability of the Development, the physical condition of the Development, the value of the Development as security for the Mortgage Loan, and other relevant factors. It shall be a violation of the Rules for the Owner or its agent to disburse, use or retain Development Funds or Development property other than in accordance with the requirements or priorities established pursuant to this Section and set forth in the Regulatory Agreement or other Mortgage Loan documents.

(Source: Amended at 31 Ill. Reg. 4392, effective February 28, 2007)

#### **Section 310.405 Reserve Fund for Replacements**

The Owner of a Development shall set aside out of gross Development income and shall deposit with the Authority such sums as the Authority shall specify, or that applicable federal statutes, regulations, or agreements require to be deposited to the Reserve Fund for Replacements. No proceeds of the Reserve Fund for Replacements may be withdrawn, disbursed, or applied without written Authority approval. The sums set aside, together with any income earned, shall be used to pay the costs of replacing structural elements and mechanical equipment of the Development and for such other Development expenses as the Authority in its sole discretion may approve. In determining the amounts to be set aside or deposited to the Reserve Fund for Replacements, the Authority shall consider the nature and condition of any structural elements or mechanical equipment that may have to be replaced, the estimated useful life of any such structural elements or mechanical equipment, the estimated cost of replacements, applicable federal requirements, construction costs, potential gross Development income, and any other relevant factors. In determining whether to approve disbursements from the Reserve Fund for Replacements, the Authority shall consider the benefit to the Development of the proposed disbursement, the amount to be disbursed, the amount on deposit in the Reserve Fund for Replacements, whether the Owner is delinquent in making deposits to the Reserve Fund for Replacements or is otherwise delinquent in making payments or deposits under the Mortgage Loan documents, other uses for which the Reserve Fund for Replacements is likely to be needed,

and any other relevant factors.

(Source: Amended at 31 Ill. Reg. 4392, effective February 28, 2007)

### **Section 310.406 Other Reserve Funds**

The Authority may require the Owner or developer of a Development to deposit with the Authority, on the Initial Closing Date or on the Final Closing Date of a Mortgage Loan, funds for such other reserves as the Authority deems to be necessary to provide adequate security for the Mortgage Loan. The reserves may include, without limitation, tax and insurance reserves, debt service reserves and operating deficit reserves.

(Source: Added at 31 Ill. Reg. 4392, effective February 28, 2007)

### **Section 310.407 Assignment or Sale of Mortgage Loan**

If the Authority assigns or sells a Mortgage Loan, Section 8.1 of the Act, which requires that the owner of a Development give notice to the tenants of its intent to prepay the Mortgage Loan on the Development at least nine months in advance of the prepayment, as well as give them an opportunity to form an organization to purchase the Development, shall cease to apply to the Mortgage Loan as of the date of the sale or assignment of the Mortgage Loan.

(Source: Added at 31 Ill. Reg. 4392, effective February 28, 2007)

## **SUBPART E: CONSTRUCTION**

### **Section 310.501 Design and Construction Standards**

Developments financed by Mortgage Loans under the Program shall be designed and constructed or rehabilitated to conform with applicable federal, State, and local statutes, regulations, ordinances, standards, and codes, with industry practices in Illinois, and, except for Developments financed with the proceeds of Conduit Bonds, with the requirements of applicable Authority Rules, contracts, agreements, guides, and other documents.

(Source: Amended at 31 Ill. Reg. 4392, effective February 28, 2007)

## **SUBPART F: MARKETING AND MANAGEMENT**

### **Section 310.601 Marketing and Management**

- a) **Responsibility.** It shall be the responsibility of the Owner to provide for the marketing and management of the Development in a manner satisfactory to the Authority so as to promote the purposes of the Program and the financial stability

of the Development and to preserve the value of the Authority's security interest in the Development.

- b) All marketing and management contracts shall be evidenced on forms acceptable to the Authority pursuant to Section 310.602.

(Source: Amended at 10 Ill. Reg. 13987, effective August 11, 1986)

### **Section 310.602 Marketing and Management Plans**

- a) **Approval.** Before the Authority makes a Mortgage Loan other than a Conduit Loan and at other times required by the Authority, the Owner shall submit for the Authority's approval a marketing plan and a management plan for the Development. In deciding whether to approve the marketing plan and the management plan, the Authority shall consider the purposes of the Program, the provisions of the Tenant Selection Plan, and any other relevant matters.
- b) **Compliance.** The marketing plan and the management plan shall comply with all applicable federal and State statutes and regulations and with the terms and conditions of all applicable contracts and agreements providing for federal subsidies or assistance relating to the Development.
- c) **Contents of Marketing Plan.** The marketing plan shall set forth the policies and procedures to be used by the marketing agent in marketing the Development and shall address the qualifications of the marketing agent; the nature of the market to be served by the Development; the dates of availability of occupiable units by type and location; the dates of availability and locations of Development facilities essential to the marketing campaign, including any model units, rental office or community building; the promotion of the Development, including the use of mass media, public relations, brochures, signs, equipment and furnishings for model units and the rental office, and marketing staff; the intended mix of family, elderly and disabled Tenants; where appropriate, the intended Tenant income mix and method of achieving such a mix; the method of processing prospective tenants; the criteria upon which applications of prospective Tenants are to be approved or disapproved; preference for occupancy in the Development for persons and families displaced by urban renewal, slum clearance, other governmental action or natural disaster; rent schedules; and any other relevant matters.
- d) **Contents of Management Plan.** The management plan shall set forth the policies and procedures to be used by the managing agent in operating the Development and shall address the qualifications of the managing agent; procedures for recruiting and supervising management personnel; physical maintenance of the

Development; procedures for tenant selection; preference for occupancy in the Development for persons and families displaced by urban renewal, slum clearance, other governmental action or natural disaster; tenant/landlord relations; eviction procedures; marketing; financial reporting; books and records of the Development; the intended mix of family, elderly and disabled Tenants; where appropriate, the intended Tenant income mix and method of achieving such a mix; the method of processing prospective Tenants; the criteria upon which applications of prospective Tenants are to be approved or disapproved; and any other relevant matters.

- e) **Owner's Responsibility.** The Owner shall be responsible for ensuring the marketing agent's and the managing agent's compliance with all applicable ordinances, regulations, statutes, Rules, agreements and requirements.

(Source: Amended at 31 Ill. Reg. 4392, effective February 28, 2007)

### **Section 310.603 Maintenance**

The Owner shall maintain the Development, including without limitation the dwelling units, commercial facilities and grounds and equipment related to the Development, in a decent, safe and sanitary condition, in a tenantable and rentable state of repair, and in compliance with applicable federal, State and local statutes, regulations, ordinances, standards and codes.

(Source: Amended at 16 Ill. Reg. 10248, effective June 16, 1992)

### **Section 310.604 Cost of Services**

The Owner shall not pay more for administrative, operating and maintenance expenses than is reasonable given the location and size of the Development, the level of administration, operation and maintenance required by the applicable Rules, the requirements of the Regulatory Agreement or other Mortgage Loan documents, the requirements of the marketing plan, management plan, and Tenant Selection Plan, the uniqueness or quality of available services or supplies, the presence of an emergency or other time constraint, the creditworthiness of suppliers and contractors and any other relevant factors. The Owner shall solicit bids for certain contracts in accordance with Authority agreements.

(Source: Amended at 31 Ill. Reg. 4392, effective February 28, 2007)

## **SUBPART G: OCCUPANCY**

### **Section 310.701 Tenant Selection Plan**

- a) **Approval.** Before making a conditional commitment for a Mortgage Loan under

the Program, the Authority shall approve a Tenant Selection Plan submitted by the Owner that shall set forth the income limits for Tenants of the Development. In approving the Tenant Selection Plan, the Authority shall consider whether the selection procedures will be equitable, considering the size and circumstances of the Tenant family; promote a heterogeneous mix of income levels to the extent appropriate; maintain the financial stability of the Development; and comply with the Rules, agreements and requirements.

- b) Compliance. The Tenant Selection Plan shall comply with all applicable State and federal statutes and regulations, with the terms and conditions of all applicable contracts and agreements providing for federal subsidies or assistance relating to the Development, and with the affirmative fair housing marketing plan approved by the Authority for the Development.
- c) Requirement for Developments for which a Conditional Commitment Letter Has Been Issued on or after August 9, 1984. With respect to Developments for which a conditional commitment letter has been issued on or after August 9, 1984, the Tenant Selection Plan submitted by the Owner and approved by the Authority shall specify how many units in the Development shall be held available to persons and families of Very Low, Low or Moderate Income and set forth the rental charges for those units. In determining the number of units that shall be held available for rentals, the Authority shall require that the number of dwelling units reserved for persons and families of Very Low, Low and Moderate Income in each Development shall not be less than the number required by applicable federal and State law.

(Source: Amended at 31 Ill. Reg. 4392, effective February 28, 2007)

### **Section 310.702 Income and Rental Limits**

- a) General. A person's or family's initial occupancy of a unit held available for rental to persons and families of Very Low, Low or Moderate Income shall be limited to persons and families initially meeting the income limits set forth in Section 310.103. If a person or family meeting income requirements at the time of initial occupancy subsequently fails to continue to meet those requirements, that failure shall not constitute non-compliance by that Tenant.
- b) Income Limits
  - 1) For all Developments financed by the Authority before January 1, 1987, that proportion of the units (20%, or 15% in certain targeted areas) as is required by the Treasury Regulations under Section 103(b) of the United States Internal Revenue Code of 1954 (26 USC 103(b)) shall be reserved

for Low Income Tenants.

- 2) For Developments that have not or will not receive subsidies from HUD or mortgage insurance through the Federal Housing Administration, a minimum of 20% of the units shall be reserved for Low Income Tenants.
  - 3) For Developments that are financed with the proceeds of Tax-exempt Bonds after January 1, 1987, either 20% of the units must be reserved for Very Low Income Tenants or 40% of the units must be reserved for Low Income Tenants whose income is no greater than 60% of the Median Income.
- c) **Rental Limits.** Rents for units in Developments shall not exceed 30% of the maximum income permitted for a Very Low or Low Income Tenant in the Development, as applicable, unless otherwise required by applicable federal and State law.
  - d) **Certification.** The Owner shall obtain from each prospective Tenant intending to occupy a unit held available for rental to persons and families of Very Low, Low or Moderate Income a certification of income that shall be submitted by letter to the Authority from the Owner.
  - e) In determining the number of units in a Development that shall be held available for rental to Very Low, Low and Moderate Income Tenants, the Authority shall require that the number of units be not less than the number required by applicable federal and State law.
  - g) The Owner of each Development shall enter into a Regulatory Agreement with the Authority setting forth, among other things, the income and rental restrictions governing the Development.

(Source: Amended at 31 Ill. Reg. 4392, effective February 28, 2007)

### **Section 310.703 Commercial Facilities**

- a) **Facilities.** The Owner shall rent commercial facilities, if any, only to such Commercial Tenants, at rentals and for purposes that have been approved by the Authority. In approving commercial facilities and Commercial Tenants, the Authority shall consider the Tenant Selection Plan, the marketing plan, the management plan, the nature of the prospective business, the credit history of the prospective Commercial Tenant, the benefit of the prospective business to Tenants of the Development, the prospective Commercial Tenant's ability to comply with applicable licensing and zoning requirements, the purposes of the

Program, and any other relevant matters.

- b) Compliance. The Owner shall be responsible for ensuring the Commercial Tenant's compliance with all applicable ordinances, zoning codes, licensing requirements, regulations, statutes and Rules, and agreements.

(Source: Amended at 31 Ill. Reg. 4392, effective February 28, 2007)

#### SUBPART H: RATE OF RETURN ON EQUITY FOR LIMITED-PROFIT ENTITIES

##### **Section 310.801 Statutory Authorization**

Pursuant to Section 8 of the Act, the Authority is required to establish the Owner's Equity on each Mortgage Loan provided to a Limited-Profit Entity at the time of final Mortgage disbursement. The Act provides that the maximum rate of return on Owner's Equity shall be 6% unless the Authority, pursuant to this Part, establishes criteria by which a higher rate is established. It is the purpose of this Subpart to set the criteria by which a rate of return higher than 6% will be established.

(Source: Amended at 31 Ill. Reg. 4392, effective February 28, 2007)

##### **Section 310.802 Developments Eligible for Increased Rate of Return**

- a) Subject to applicable federal law, any Development for which the Authority has issued a conditional commitment letter effective on or after August 9, 1984 is eligible for the establishment of an alternate basic rate of return in excess of 6% if, either:
  - 1) the Director or, in his or her absence, the Deputy Director determines it to be necessary in order to attract private enterprise to construct, rehabilitate, operate and maintain housing for Very Low, Low and Moderate Income persons. The standard or test for determining whether a higher rate of return is necessary is that, but for the higher rate of return, private enterprise would be unable to acquire, construct, rehabilitate, operate and maintain housing for Very Low, Low and Moderate Income persons. In making this determination, the Director or, in his or her absence, the Deputy Director shall consider but not be limited to the competing market interest rates, the alternative lending sources, financial projections based upon anticipated rents, debt service, utilities, taxes and other expenses and the comparative severity of the housing needs; or
  - 2) the Authority determines, pursuant to resolution of its Members, that an

increase in the basic rate of return is necessary to preserve the Development as affordable for persons or families of Very Low, Low and Moderate Income or that the increase provides for the creation of additional units of housing affordable to persons or families of Very Low, Low and Moderate Income in the State. It shall be a condition to an increase in the basic rate of return pursuant to this subsection (a)(2) that:

- A) the Authority give its prior written consent to any increase in the rental charges for the Development; and
- B) the Authority determine, in its sole discretion, that:
  - i) the Reserve Fund for Replacements is sufficient to pay the costs set forth in Section 310.405 for the subsequent five years; and
  - ii) the amount needed to complete any deferred maintenance on the Development is less than one year's funding requirement for the Reserve Fund for Replacements.
- b) If the Authority makes a determination pursuant to subsection (a)(2), then, prior to the Authority increasing the basic rate of return, the Authority shall require that the Owner execute an agreement evidencing the increase in the basic rate of return and containing the Owner's agreement either to preserve the Development as affordable for persons or families of Very Low, Low and Moderate Income for a period not less than five years (starting from the later of the date on which the owner acquires the right to prepay its Mortgage Loan or the date on which the increase in Equity is granted) or increase the number of units affordable to persons or families of Very Low, Low and Moderate Income.
- c) Any increase in the basic rate of return approved pursuant to this Section shall conform to any relevant federal statutes, rules or regulations.

(Source: Amended at 31 Ill. Reg. 4392, effective February 28, 2007)

### **Section 310.803 Retroactive Adjustments**

- a) Developments for which the Authority has issued a conditional commitment letter effective prior to August 9, 1984 are not eligible for an alternate basic rate of return in excess of 6%, unless:
  - 1) the Development is a troubled Development as determined by the Director or, in his or her absence, the Deputy Director. A "troubled Development"

for purposes of this Section is one for which a delinquency of more than 60 days exists for replacement reserve, tax and insurance reserve, or principal or interest payments and/or an alternate basic rate of return is necessary, as determined by the Director or, in his or her absence, the Deputy Director, to encourage a new Owner to acquire the Development, or to encourage an existing Owner to invest monies into the Development, or to assist an existing Owner to meet its financial obligations. In regard to the delinquencies, it shall be established to the satisfaction of the Director or, in his or her absence, the Deputy Director, that the increase in the rate of return is essential for the Development to meet these delinquency obligations. The standard to be applied shall be that but for the increased rate of return the Development would not be able to make these past due payments current. In making the determination whether one or more delinquencies exist, the Director or, in his or her absence, the Deputy Director shall consider, but not be limited to, an examination of all books and records the Authority has in regard to the delinquencies as well as all documentation submitted by or on behalf of the Development, and anticipated rents, debt service, utilities, taxes and other expenses of the Development; or

- 2) the Authority determines, pursuant to resolution of its Members, that an increase in the basic rate of return is necessary to preserve the Development as affordable for persons or families of Very Low, Low and Moderate Income or that the increase provides for the creation of additional units of housing affordable to persons or families of Very Low, Low and Moderate Income in the Development or otherwise in the State. It shall be a condition to an increase in the basic rate of return pursuant to this subsection (a)(2) that:
  - A) the Authority give its prior written consent to any increase in the rental charges of the Development; and
  - B) the Authority determine, in its sole discretion, that:
    - i) the Reserve Fund for Replacements is sufficient to pay the costs set forth in Section 310.405 for the subsequent five years; and
    - ii) the amount needed to complete any deferred maintenance on the Development is less than one year's funding requirement for the Reserve Fund for Replacements.
- b) In regard to an alternate basic rate of return to encourage a new Owner to acquire

the Development, it shall be established to the satisfaction of the Director or, in his or her absence, the Deputy Director that, but for the increase in the rate of return, a new Owner could not be found to acquire the Development. In making this determination, the Director or, in his or her absence, the Deputy Director shall consider but not be limited to competing market interest rates, alternative lending sources, financial projections based upon anticipated rents, debt service, utilities, taxes and other expenses and the comparative severity of the housing needs.

- c) If the Authority makes the determination pursuant to subsection (a)(2), the Authority, prior to increasing the basic rate of return pursuant to subsection (a)(2), shall require that the Owner execute an agreement evidencing the increase in the rate of return and containing the Owner's agreement either to preserve the Development as affordable for persons or families of Very Low, Low and Moderate Income for a period not less than five years (starting from the later of the date on which the owner acquires the right to prepay its Mortgage Loan or the date on which the increase in rate of return is granted) or to increase the number of units affordable to persons or families of Very Low, Low and Moderate Income.
- d) Any increase in the basic rate of return approved pursuant to this Section shall conform to any relevant federal statutes, rules or regulations.

(Source: Amended at 31 Ill. Reg. 4392, effective February 28, 2007)

#### **Section 310.804 Calculation of Alternate Basic Rate of Return**

- a) For Developments that are eligible for an alternate basic rate of return in excess of 6%, pursuant to Section 310.802(a)(1) or 310.803(a)(1), the Authority may establish an alternate basic rate of return in an amount not to exceed, except as provided in Section 310.805, 200% of the yield paid on 30-year Government National Mortgage Association (GNMA) mortgage certificates as of the date of the issuance of the conditional commitment letter or, if a conditional commitment letter is not issued, a loan agreement for that Development. In order for an alternate basic rate of return higher than 6% to be approved, it shall be established to the satisfaction of the Director or, in his or her absence, the Deputy Director that, but for increase in the rate of return, private enterprise would not be attracted to acquire, construct, rehabilitate, operate and maintain the Development. The Authority will establish an alternate basic rate of return if the Director or, in his or her absence, the Deputy Director determines and certifies that, but for a higher rate of return, private enterprise would not acquire, construct, rehabilitate, operate and maintain housing for Very Low, Low and Moderate Income persons. In making the determination and certification whether an alternate basic rate of return will be approved and in determining and certifying the amount of the rate

increase, the Director or, in his or her absence, the Deputy Director shall consider, but not be limited to, the competing market interest rates, alternative lending sources, financial projections based upon anticipated rents, debt service, taxes, utilities and other expenses and the comparative severity of the housing needs. The Chief Fiscal Officer of the Authority shall certify to the GNMA rate as of the date of the conditional commitment letter or the loan agreement, if a conditional commitment letter is not issued, for the Development, and the rate shall be fixed at that level.

- b) For Developments that are eligible for an alternate basic rate of return in excess of 6% pursuant to Section 310.802(a)(2) or 310.803(a)(2), the Authority may establish an annual alternate basic rate of return that shall not exceed, except as provided for in Section 310.805, 200% of the yield paid on 30-year GNMA mortgage certificates as of December 1 of the year for which the alternate basic rate of return is to be applied. The Chief Fiscal Officer of the Authority shall certify to the GNMA rate as of December 1 of the year for which the alternate basic rate of return is to be applied and the rate shall be fixed at that level.
- c) Any increase in the basic rate of return approved pursuant to this Section shall conform with any relevant federal statutes, rules or regulations.

(Source: Amended at 31 Ill. Reg. 4392, effective February 28, 2007)

### **Section 310.805 Risk Premium for Special Needs**

In addition to the increase to the alternate basic rate of return established pursuant to Sections 310.802 and 310.803, the Authority, through its Director or, in his or her absence, the Deputy Director may establish additional incentives in the form of additional return on equity in excess of the alternate basic rate of return if the criteria specified in subsections (a), (b) and (c) are met and if it is determined that the alternate basic rate of return is necessary. The additional return will be limited to one additional percentage point of return on Owner's Equity to be paid for each of the following factors:

- a) For each additional 5% Low Income Tenant occupancy above the limits set forth in Section 142 (b)(4) of the Code;
- b) Provision of housing for a special housing need, such as elderly facilities, handicapped facilities, or other qualified special needs, as specified in the Act, approved by the Director or, in his or her absence, the Deputy Director;
- c) Location of the Development within a specially designated Targeted Area (as defined by the U.S. Department of the Treasury under Section 6a.103A-2(b)(5) of the Treasury Regulations issued under section 142(b)(4) of the Code (26 CFR

6a.103A-2(b)(5)) and 47 Ill. Adm. Code 220.103 or within a State of Illinois Enterprise Zone established pursuant to 20 ILCS 655.

(Source: Amended at 31 Ill. Reg. 4392, effective February 28, 2007)

### **Section 310.806 Increases in the Basic Rate of Return**

The Basic Rate of Return shall not be increased or decreased during the term of the Mortgage Loan, except as provided in Sections 310.802 through Section 310.805 of this Part.

(Source: Amended at 31 Ill. Reg. 4392, effective February 28, 2007)

## **SUBPART I: ENERGY EFFICIENCY STANDARDS FOR NEW AND REHABILITATED DEVELOPMENTS**

### **Section 310.901 Statutory Authorization**

Pursuant to Section 7.24e of the Act, the Authority is required to establish rules governing minimum energy efficiency standards in Developments financed by the Authority. It is the purpose of this Subpart to set forth those minimum energy standards. After July 1, 1986, no Mortgage Loan shall be made by the Authority for the construction of a Development unless the Authority determines that the plans and specifications for the proposed Development are in compliance with the minimum energy efficiency standards set forth in this Part. Subject to Section 310.903, the same standards apply to both new and rehabilitated Developments.

(Source: Amended at 31 Ill. Reg. 4392, effective February 28, 2007)

### **Section 310.902 Definitions (Repealed)**

(Source: Repealed at 31 Ill. Reg. 4392, effective February 28, 2007)

### **Section 310.903 Incorporation of National Standards**

All Developments shall be constructed or rehabilitated in compliance with the energy efficiency standards set forth in the International Energy Efficiency Code published in 2006 by the International Code Council, 4051 Flossmoor Road, Country Club Hills IL 60478. This Section does not include any later amendments, revisions or additions to the International Energy Efficiency Code. These energy efficiency standards are also published in the Authority's Architectural and Construction Guidelines.

(Source: Amended at 31 Ill. Reg. 4392, effective February 28, 2007)

### **Section 310.904 Thermal Requirements (Repealed)**

(Source: Repealed at 31 Ill. Reg. 4392, effective February 28, 2007)

**Section 310.905 Air Infiltration Requirements (Repealed)**

(Source: Repealed at 31 Ill. Reg. 4392, effective February 28, 2007)

**Section 310.906 Doors, Windows and Glass (Repealed)**

(Source: Repealed at 31 Ill. Reg. 4392, effective February 28, 2007)

**Section 310.907 Mechanical Work (Repealed)**

(Source: Repealed at 31 Ill. Reg. 4392, effective February 28, 2007)

**Section 310.908 Insulation (Repealed)**

(Source: Repealed at 31 Ill. Reg. 4392, effective February 28, 2007)

**Section 310.909 Mechanical Work Insulation (Repealed)**

(Source: Repealed at 31 Ill. Reg. 4392, effective February 28, 2007)

**Section 310.910 Electrical Work (Repealed)**

(Source: Repealed at 31 Ill. Reg. 4392, effective February 28, 2007)

**Section 310.911 Energy Audit Analysis**

- a) If a proposed Development is a rehabilitation project, the Authority may require that an energy audit be performed and the results be provided to the Authority showing heat loss-gain analysis of building without energy conservation measures; projected savings for proposed energy conservation measures; and life-cycle cost analysis of the proposed heating and cooling system and energy source showing they are the most cost-effective considering front-end capital investment and operating costs over their life time. This life-cycle analysis shall utilize: useful equipment life, operating and maintenance costs, inflation and fuel escalation factors.
- b) A heat load analysis and cooling load analysis shall be performed and the results shall be provided to the Authority showing the savings and cost projections for the Development. Both the energy audit and analysis shall show that the selected heating system, cooling system and energy source are the most cost effective,

from the point of view of front-end capital investment and operating cost over its lifetime.

(Source: Amended at 31 Ill. Reg. 4392, effective February 28, 2007)

### **Section 310.912 Rehabilitation Guidelines (Repealed)**

(Source: Repealed at 31 Ill. Reg. 4392, effective February 28, 2007)

### **Section 310.913 Rehabilitation Waiver**

The Authority shall waive compliance with the minimum energy efficiency standards for a rehabilitation Development if:

- a) The Owner and/or developer submits a cost benefit analysis that demonstrates that compliance with minimum energy efficiency standards would increase the costs of the rehabilitation of the Development to the extent that it would be impossible for the Development to meet the costs of debt service and operating expenses while providing housing for Very Low, Low and Moderate Income Tenants, and the Director or, in his or her absence, the Deputy Director certifies that there is a serious shortage of decent, safe and sanitary housing available to persons of Very Low, Low and Moderate Income in that community and that, but for the waiver of compliance, the property would not be rehabilitated; or
- b) The minimum energy efficiency standards are in conflict with the energy efficiency requirements, rules, regulations, practices or procedures of any federal, State or local governmental entity through which a grant, loan, subsidy, insurance, underwriting or guarantee is provided for the rehabilitation of a development by any such entity; or
- c) The minimum energy efficiency standards are in conflict with any federal, State or local law, code or ordinance; or
- d) The Development does not meet the specific energy efficiency standards incorporated in Section 310.903, but a licensed consulting architect, retained by the Authority, certifies to the Authority that the Development meets standards that are functionally equivalent to the specific energy efficiency standards of this Subpart.

(Source: Amended at 31 Ill. Reg. 4392, effective February 28, 2007)

## **SUBPART J: CONDUIT BOND ISSUANCES**

**Section 310.1001 Conduit Bonds**

From time to time, the Authority may issue Conduit Bonds to obtain financing for a Conduit Loan for a Development. This Subpart governs the making of Conduit Loans.

(Source: Added at 31 Ill. Reg. 4392, effective February 28, 2007)

**Section 310.1002 Applications**

Applicants for a Conduit Loan must apply to the Authority in the same manner as all other applicants for Mortgage Loans, and must adhere to the notification requirements of Subpart B.

(Source: Added at 31 Ill. Reg. 4392, effective February 28, 2007)

**Section 310.1003 Eligible Mortgagor**

The recipient of a Conduit Loan must be an Eligible Mortgagor.

(Source: Added at 31 Ill. Reg. 4392, effective February 28, 2007)

**Section 310.1004 Regulatory Agreement**

Each recipient of a Conduit Loan shall enter into a Regulatory Agreement with the Authority.

(Source: Added at 31 Ill. Reg. 4392, effective February 28, 2007)

**Section 310.1005 Applicable Rules**

All provisions of this Part shall apply to Conduit Loans, except the following: Section 310.404, Section 310.405, Section 310.601 and Section 310.602.

(Source: Added at 31 Ill. Reg. 4392, effective February 28, 2007)