

State of Minnesota

Minnesota Housing Finance Agency

In the Matter of the Proposed Rules
Relating to American Indian Housing

Statement of Need
and Reasonableness

4900.0930 and 4900.0980

Minnesota Statutes, Section 462A.07, Subdivision 14 establishes that the Minnesota Housing Finance Agency (Agency) may engage in housing programs for low and moderate income American Indians that are to be developed and administered by specified Indian tribes, bands or communities, and that such programs must conform to rules promulgated by the Agency concerning program administration. These rules include rules pertaining to adjusted income in Minnesota Rules pt. 4900.0930 and rate of interest in Minnesota Rules pt. 4900.0980. These rules have not been amended since they were originally promulgated.

In Minnesota Laws of 1987, Chapter 404, Section 8, Subdivision 1, the Legislature provided additional appropriations for such programs under Minnesota Statutes 462A.07, Subdivision 14, of which a portion are for a demonstration program to make off-reservation loans in combination with mortgage revenue bond proceeds raised by the Agency through its single family mortgage operations. This is the first occasion that the Legislature has specified that a portion of the funds appropriated for such programs be leveraged with funds from a different source. Under previous appropriations, appropriated funds were used to provide the total proceeds for each loan originated under such programs.

Through discussions with tribal officials, the Agency has determined that an equity participation loan instrument would best meet the requirements of the demonstration program anticipated by the Legislature. In this case, an equity participation loan is a second mortgage loan meeting certain criteria which is to be originated in conjunction with a first mortgage loan to be provided through use of Agency single family bond proceeds. The equity participation loan is to provide a specified percentage of the total financing on a subject home and does not have to be repaid until the time the home is sold. Upon sale of the subject home, an "interest assessment" is calculated for the equity participation loan based upon the amount that the home has appreciated in value. The borrower-seller is then required to pay a portion of the appreciation, if any, equal to the proportion of the equity participation loan to the original purchase price of the home.

Upon consideration of this demonstration program, current administrative rules pertaining to American Indian Housing were reviewed, and the two rules noted herein were cited for amendment. This becomes necessary as the original rules did not anticipate either the leveraging of two funding sources with varying requirements or a mortgage instrument without a nominal interest rate calculated on a fully amortizing basis.

The purpose of the change to Minnesota Rules 4900.0930 pertaining to adjusted income is to provide that the adjusted income calculation be consistent under both the demonstration Indian housing program and the Agency single family bond program. Besides providing for administrative simplicity, tribal officials are supportive of this change in that they hope the demonstration program will aid their efforts to recruit Indians in professional occupations to move closer to the reservation. It has been noted in the past that the method of averaging income in the current rule may discourage this effort in that urban incomes tend to be greater than rural incomes and the current income averaging in the rule gives greater weight to oftentimes higher income that an Indian in a professional occupation may have earned in an urban area that may not be earned in rural areas near the reservation.

The purpose of the change to Minnesota Rules 4900.0930 pertaining to rate of interest is to accommodate loan instruments in which other than nominal interest rates are provided, including the equity participation loan interest rate cited herein above. Given that past loan activity has generated sufficient interest income to make the operation of the programs self-supporting, and given the relatively small size of the demonstration program, and given that the proposed rule still enables the Agency to negotiate program interest rates with the administering entity, the Agency deems the change to be reasonable.

The Agency is cognizant of the provisions of Section 14.115 of the Minnesota Statutes, entitled Small Business Considerations in Rulemaking, however, since the recipients of the funds under the American Indian Housing Program must be individuals of Indian heritage and low or moderate income, the proposed rules do not directly affect small businesses, and said law, by its terms, is not applicable to these proposed rules. In addition, the proposed rules do not establish any compliance or reporting requirements, design or operational standards, or directly affect the way any business must operate. Further, to the extent the proposed rules may have an indirect effect on small businesses, the effect is to make such funds more readily available and, as a result, the proposed rule has no negative effect on small businesses. Therefore, the provisions contained Minn. Stat. § 14.115 (1986 Supp.) do not apply to the proposed rules discussed herein.