



**MINNESOTA
HOUSING
FINANCE
AGENCY**

August 4, 1994

Ms. Maryanne Hruby, Director
Legislative Commission to Review Administrative Rules
55 State Office Bldg.
100 Constitution Ave.
St. Paul, MN 55155

Dear Ms. Hruby:

I have enclosed a copy of the Statement of Need and Reasonableness on the proposed rules relating to Affordable Rental Investment Fund Program for your files.

If you have any questions call me at 296-9793.

Sincerely,

Judie VanDerBosch
Legal Assistant

JVB
Enc.

**STATE OF MINNESOTA
HOUSING FINANCE AGENCY**

STATEMENT OF NEED AND REASONABLENESS

In the Matter of the Proposed Rules Governing the
Affordable Rental Investment Fund Program

I. INTRODUCTION

The Minnesota Housing Finance Agency (Agency) proposes to adopt rules governing the Affordable Rental Investment Fund Program (Program). The Program provides deferred loans to for-profit and non-profit entities, housing and redevelopment authorities, or Minnesota cities to assist in the development, construction, acquisition and rehabilitation of permanent affordable rental housing.

The Agency has prepared this Statement of Need and Reasonableness (SNR) to explain its proposed rules and satisfy the rulemaking requirements of the Minnesota Administrative Procedures Act, Minnesota Statutes Chapter 14 (1992).

Part II of this SNR describes the statutory authority of the Agency to undertake this rulemaking. Part III describes the need for the proposed rules. Part IV describes the reasonableness of the proposed rules. Parts V and VI address the small business consideration and the fiscal note requirements of Chapter 14, respectively. Part VII consists of required dates and signatures. A fee requirements disclosure is unnecessary, because the proposed rules do not establish or adjust fees as contemplated in Minnesota Statutes Chapter 16A.128 (1992).

The proposed rules were drafted after discussions with various representatives of housing and redevelopment authorities, cities, and for-profit and non-profit developers. The Agency drafted these proposed rules based on these discussions as well as the statutory requirements of the Program and its funding source. The Agency board of directors has also reviewed and approved the Program concept and proposed rules.

II. STATUTORY AUTHORITY OF PROPOSED RULES AND FUNDING SOURCE

The Agency's statutory authority to adopt rules to comply with Chapter 14 is set forth in Minnesota Statutes, Section 462A.06, subdivision 11 (1992).

The Agency's authority to implement the Program is set forth in Minnesota Statutes Section 462A.21, subdivision 8b which provides that the Agency may establish housing programs to provide loans for housing for families with incomes of up to 60 percent of area median income.

This authority is subject to the restrictions contained in Minnesota Statutes Section 462A.03, Subd. 13.

The Program is financed with direct appropriations from the Legislature and Agency resources.

III. STATEMENT OF NEED

Minnesota Statutes Chapter 14 (1992) requires the Agency to make an affirmative presentation of facts establishing the need for and reasonableness of the rules as proposed. In general terms, this means that the Agency must set forth the reasons for its proposal, and the reasons must not be arbitrary or capricious.

However, to the extent that need and reasonableness are separate, need means a problem exists which needs administrative attention, and reasonableness means the solution proposed by the Agency is appropriate. The need for the proposed rules is discussed below. The reasonableness of the proposed rules is discussed in Part IV.

As general background information, it has been determined that there is a need for more affordable permanent rental housing for low income households.

In 1993, the Minnesota Legislature recognized the need to address these issues. Their response was to authorize the Agency to develop the proposed Program. The Program will provide a funding mechanism to assist in the provision of more affordable permanent rental housing to households with incomes below 60% of area median income.

The Agency reviewed the statutory authority for implementing the Program. This authority, and its related restrictions, do not specifically address the components of an eligible application, eligible applicants, and selection criteria.

There is a need for substantive and procedural Program requirements to be as clear as possible to entities which do not regularly apply to the Agency for financing, and which do not know the various statutory requirements affecting this Program. Hence, the Agency found that rules were necessary to clearly define eligible applicants, eligible applications, and selection criteria.

Using state appropriations for financing, the Program also required the Agency to address various provisions as to the terms and conditions of the financing. The Agency saw rules as a method to reasonably assist in clarifying these matters for all.

Finally, due to the lack of limited financing available for the Program, the Agency found rules were necessary to establish reasonable standard criteria to assist in selecting among competing proposals.

Based upon the above facts, the Agency has determined that rules are necessary to implement the Program.

IV. STATEMENT OF REASONABLENESS

The Agency is required by Minnesota Statutes Chapter 14 (1992) to make an affirmative presentation of facts establishing the reasonableness of the proposed rules. Reasonableness is the opposite of arbitrariness or capriciousness. It means that there is a rational basis for the Agency's proposed action. The reasonableness of the proposed rules is discussed below.

A. Reasonableness of the Rules as a Whole

To determine the need for and adequacy of rules for the Program, the Agency performed various activities which are discussed here.

The Agency held focus group meetings to ensure there were efforts to include those not normally involved.

The Agency requested comments from the public before undertaking the drafting of the proposal rules (Notice of Solicitation of Outside Opinions Regarding Proposed Rule Governing the Affordable Rental Investment Fund, Cite 18S.R.2283).

No formal comments were received in response to the formal notice. However, informal discussions with various interested parties revealed the need for specific explanations of Program requirements, eligible activities, and the financing source for the Program.

Discussions were conducted with the Special Assistant Attorney General assigned to the Agency to ensure statutory requirements will be met in the Program. These requirements included that the funds would be in the form of a loan, who eligible mortgagors are, and what household income requirements are.

The Agency determined the proposed rules are necessary to establish uniform procedures for the Program, define eligible applicants, and establish uniform selection criteria to assist both the Agency and the applicants to avoid capricious acts in completing, reviewing, and selecting the applications.

The Agency considered concerns of all parties and believes their concerns are adequately addressed and reasonably accommodated in the proposed rules. The reasonableness of each proposed rule is discussed below.

B. Reasonableness of Individual Rules

The following discussion addresses the specific provisions of the proposed rules.

4900.3500 SCOPE

This section cites the statutory authority for the Program, and briefly explains the nature of the Program. This is reasonable to establish a frame of reference for the proposed rules.

4900.3510 DEFINITIONS

This section establishes that the terms used in this chapter are assigned the following meanings. It is reasonable to establish uniform and clear definitions of terms appearing throughout the proposed rules.

Subpart 1. Application.

This subpart applies the definitions listed to the operative portion of the rule.

Subpart 2. Agency.

This definition is necessary and reasonable because it will help avoid needless repetition of the full title of the Minnesota Housing Finance Agency.

Subpart 3. Affordable rental housing.

This term requires definition because it appears throughout the proposed rules and has a specific meaning not commonly understood outside legal and administrative contexts. The proposed definition is reasonable because it clearly and adequately describes what is meant by the term.

Subpart 4. Affordable rental investment fund program.

This term requires definition because it appears throughout the proposed rules and has a specific meaning not commonly understood outside legal and administrative contexts. The proposed definition is reasonable because it clearly and adequately describes what is meant by the term, and cites the statutory reference which identifies requirements and specific eligible activities involving developments financed with state appropriated funds.

Subpart 5. Area median income.

This term requires definition because it appears within the context of the proposed rules and has a specific meaning not commonly understood outside legal and administrative contexts. The proposed definition is reasonable because it clearly and adequately describes what is meant by the term.

Subpart 6. Assisted unit.

This term requires definition because it appears throughout the proposed rules and has a specific meaning not commonly understood outside legal and administrative contexts. The proposed definition is reasonable because it clearly and adequately describes what is meant by the term and provides a useful means of identifying an eligible unit within a development.

Subpart 7. Development.

This term requires definition because it appears throughout the proposed rules and has a specific meaning not commonly understood outside legal and administrative contexts. The proposed definition is reasonable because it clearly and adequately describes what is meant by the term.

4900.3520 ELIGIBLE APPLICANTS

This section identifies the requirements for an applicant's interest in real property which is the site of the development and identifies the entities who may apply for funding. This section is reasonable because it states uniform and clear standards of eligibility requirements.

Subpart 1. Property interest.

This subpart identifies the acceptable alternative forms of interest in the real property, which is the site of the development, that the applicant must have at the time of application for funding. This subpart is reasonable because it clearly sets forth the alternative property interest requirements.

Subpart 1A. Fee title is an acceptable form of property interest that the applicant may have in order to apply for funding. It is reasonable to state this in the proposed rules because not all interested parties know of this requirement.

Subpart 1B. This is another acceptable form of property interest that an applicant may have in order to apply for funding. It is reasonable to state this in the proposed rules because not all interested parties know of this requirement.

Subpart 1C. This is another acceptable form of property interest that an applicant may have in order to apply for funding. It is reasonable to state this in the proposed rules because not all parties know of this requirement.

Subpart 2. Eligible entities.

This subpart identifies those entities who may apply for funding under the Affordable Rental Investment Fund program. Minnesota Statutes 462A.03, subdivision 13 places various restrictions on the types of eligible applicants. There is need to specifically identify these requirements because not all interest parties know of these requirements. This section is reasonable in stating who eligible entities are to ensure a uniform and clear understanding.

Subpart 2A. A Minnesota nonprofit entity is an eligible entity. It is reasonable to state this because not all interested parties know of the statutory requirements affecting the program.

Subpart 2B. A town, or a home rule charter or statutory city in Minnesota are eligible entities. It is reasonable to state this because not all interested parties know of the statutory requirement affecting the program.

Subpart 2C. A cooperative housing corporation is an eligible entity. It is reasonable to state this because not all interested parties know of the statutory requirements affecting the program.

Subpart 2D. A limited dividend entity is an eligible entity. It is reasonable to state this because not all interested parties know of the statutory requirements affecting this program.

Subpart 2E. Minnesota Statutes 462A.21, subdivision 8b allows a for profit entity to apply for funding only for developments consisting of the rehabilitation of existing rental housing. It is reasonable to state this in the proposed rules because not all interested parties know of the statutory requirements affecting the program.

4900.3530 ELIGIBLE APPLICATIONS

This section establishes adequate and workable notice of the minimum requirements for applying for financial assistance. One of the goals of this rulemaking is to make Agency application procedures as clear as possible to entities which do not regularly apply to the

Agency for financing and do not know the various statutory requirements affecting the Affordable Rental Investment Fund program.

This section is reasonable in that it states uniform and clear standards of requirements and details to be included in an application.

A. There is a need to obtain clear and uniform information regarding the physical location and characteristics of the site in order to ensure the administrative efficiency for all parties. The specific site information requested assists in ensuring uniformity of the application and will assist the Agency in ascertaining applicability of the site for the proposed development. The proposed rule identifies the minimum site details required to be submitted with the application and is reasonable because it ensures clear and uniform application requirements..

B. There is a need to obtain specific details on the type of rental housing development proposed to determine the appropriateness of the housing for residency by households. The proposed rule identifies the minimum details required pertaining to the characteristics of the development and is reasonable because it ensures clear and uniform application requirements.

C. There is a need to obtain information regarding the need for this rental housing in the area of the state in which the development is proposed. The proposed rules identify the minimum market documentation required to be submitted with the application and is reasonable because it ensures clear and uniform application requirements.

D. There is a need to obtain information regarding the development activity proposed to be undertaken, including the costs associated with the activity and the uses of the funds for those costs so that the Agency can determine the reasonableness of the costs and the appropriateness of the use of the funds for the costs. The proposed rule identifies the minimum information required to be submitted with the application and is reasonable because it ensures clear and uniform application requirements.

E. There is a need to obtain a complete budget for the proposed development so that the Agency can determine the financial viability of the development. The proposed rule identifies the minimum budget detail required to be submitted with the application and is reasonable because it ensures clear and uniform application requirements.

F. There is a need to obtain information as to the proposed construction schedule for the development. The proposed rule requests the minimum detail required to be submitted with the application and is reasonable because it ensures clear and uniform application requirements.

4900.3550 SELECTION CRITERIA

This section establishes the selection criteria to be used when the Agency is reviewing competing applications. These scarce financial resources should be used only in areas demonstrating a need for the type of housing to be created, and where there's a reasonable chance for success in meeting the purpose of the Affordable Rental Investment Fund program. There is a potential for requests to exceed amount of financing available. There is therefore a need to establish uniform criteria to ensure orderly procedure and just results.

It is reasonable to use specific criteria in selecting applications for funding to avoid the Agency's arbitrary and capricious review and selection of applications for funding. The specific criteria used here are those commonly used in Agency activities. Utilizing commonly used criteria will assist in promoting administrative efficiency for all parties. The reasonableness of each selection criterion is discussed below.

A. There is generally a shortage of decent, safe, and sanitary housing at prices or rentals within the means of persons and families of low and moderate income in the state. In certain areas, however, there already exists sufficient supply of certain types of housing that might be created using the Affordable Rental Investment Fund program. It is therefore reasonable, as a criterion for selecting applications for funding, to consider the demonstrated need for a proposed type of housing in an area.

B. There is a potential for requests to exceed the amount of financing available. There is a need to consider the ability and capacity of the applicant to proceed in a timely manner. It is reasonable to use this selection criterion to ensure funds are put to use as expeditiously as possible.

C. The development of rental housing is a complex activity, and the rental property will be maintained as such for a thirty year period. It is reasonable, therefore, that the Agency consider the applicant's prior experience in developing, owning, and operating similar development(s) to ensure a reasonable chance for long-term success of the development.

D. Because of the scarcity of these state appropriated funds, it is reasonable to require documentation demonstrating that the funds will be used for the purchase of capital goods of a high quality at a reasonable cost.

E. The need for the type of financing provided by the Affordable Rental Investment Fund program exists statewide. To the extent there will be competing applications for funding, it is reasonable to consider the equitable distribution of funds throughout the state as a selection criterion.

F. Residents of developments funded under the Affordable Rental Investment Fund Program should have reasonable access to public facilities, sources of employment, and services. To ensure that the residents of the development have adequate access to these facilities and services, it is reasonable to consider the location of the development to such amenities as a selection criterion.

G. Because of the scarcity of these funds, it is reasonable for the Agency to consider whether there are other resources available to assist with the financing of the development. If other resources are available that more directly fit the intent of the development, the Agency has the ability to consider not funding the development under the Affordable Rental Investment Fund program. It is reasonable to consider the extent to which other funding sources are available as a selection criterion.

H. The financial assistance from the Affordable Rental Investment Fund program will not be sufficient to completely finance all developments selected. There is a need to select applications where other financial resources are being utilized to assist in the financing of the development in order to achieve a development which is economically feasible and that has rents that are affordable to low-income families and individuals. It is reasonable to consider the confirmation of funding sources as a selection criterion.

I. Because of the scarcity of these funds and the potential for a large volume of competing applications, there will be a need to consider the existing available units of affordable rental housing in the areas for which applications are submitted. It is reasonable to use this selection criterion to assist in a distribution of funds where the need is greatest.

J. The Agency encourages the integration of economically diverse households within proposed developments. In addition, some existing developments which require rehabilitation may already have economically diverse households as residents. It is reasonable for the Agency to consider the economic diversity of a proposed application for funding as a selection criterion.

There is no requirement for the expenditure of public monies by local public bodies to implement the proposed rules. Any expenditure of public monies by public bodies with regard to the proposed rules is voluntary. Therefore, the provisions contained in Minnesota Statutes Section 14.11, Subdivision 1 (1992) do not apply to the proposed rules.

V. SMALL BUSINESS CONSIDERATIONS IN RULEMAKING

The Agency is cognizant of the provisions of Minnesota Statutes Section 14.115 (1992) which requires a state agency to consider methods for reducing the negative impact on small businesses of its proposed rules or amendments to its rules. The proposed rules do not establish any compliance or reporting requirements, design or operational standards, or directly affect the required operation of any small businesses. Therefore, the provisions contained in Minnesota Statutes Section 14.115 (1992) do not apply to the proposed rules.

VI. FISCAL NOTE

The Agency is cognizant of the provisions of Minnesota Statutes Section 14.11, subdivision 1 which requires a state agency, when proposing rules or amendments to rules, to determine if the rules will require expenditures of public monies by local public bodies to implement the rule. If the expenditures are estimated to exceed \$100,000 in either of the two years immediately after the adoption of the rule, the Agency's notice must contain a written statement giving a reasonable estimate of the total cost.

There is no requirement for the expenditure of public monies by local public bodies to implement the proposed rules. Any expenditure of public monies by public bodies with regard to the proposed rules is voluntary. Therefore, the provisions contained in Minnesota Statutes Section 14.11, subdivision 1 do not apply to the proposed rules.

VII. CONCLUSION

Based on the foregoing, the proposed Minnesota Rules parts 4900.3500 to 4900.3550 are needed and reasonable.

Dated: 8-3-94



K. G. Hadley, Commissioner
Minnesota Housing Finance Agency