

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

486 HOUSING FINANCE AGENCY

RULES REVIEW CHECKLIST

DATE RULES RECEIVED 11-16 Temporary Rule —

Resubmitted and Received _____

DUE DATE 12/6

a. Returned to Agency w/o filing w/Secy of State _____
b. Approved _____ Date Sent Back to Agency _____

- -

Rule Amendments

1. Rules as Adopted ✓
2. Rules as Proposed ✓
3. Certificate of Board's Authorizing Resolution, where applicable ✓
4. Order for Hearing ✓
5. Notice of Hearing ✓
   (i) Sufficiency ✓ O.K per old HE rules
6. Secretary of State's List ✓
7. Certificate of Acquisition of Secretary of State's List ✓
8. Affidavit of Mailing ✓
   (i) At least 30 days prior to hearing ✓
9. Statement of Need and Evidence ✓
10. Hearing Examiner's Report ✓
11. Agency's Findings of Fact _____
12. Certificate of Board's Resolution Adopting Rules, where applicable ✓
13. Order Adopting _____

} modified form

14. Report of Chief Hearing Examiner ✓
    (i) Finding of No Substantial Change ✓
    (ii) Permission to Incorporate by Reference, where applicable n/a
15. Certificate of Compliance with Rulemaking Procedures ✓
16. Copy of Notice of Intent to Solicit Outside Opinion, where applicable n/a
17. Petition by Public, where applicable n/a.

STATE OF MINNESOTA

MINNESOTA HOUSING FINANCE AGENCY

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE MINNESOTA HOUSING FINANCE AGENCY RELATING TO THE HOME IMPROVEMENT LOAN, ACCESSIBILITY IMPROVEMENT GRANT, AND WARRANTY CLAIM PROGRAMS.	CERTIFICATE OF RESOLUTION OF THE MINNESOTA HOUSING FINANCE AGENCY

The undersigned hereby certifies that s/he is the Secretary of the Minnesota Housing Finance Agency, an Agency duly authorized under the laws of the State of Minnesota; that the resolution attached hereto as Exhibit A is a true, complete, and correct copy of a resolution adopted at a meeting of the Minnesota Housing Finance Agency duly and properly called and held on the 7th day of November, 1978; that a quorum was present at said meeting; that a majority of those present voted in favor of the adoption of said resolution; that said resolution has not been altered, modified, or annulled and remains in full force and effect.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 7th day of November, 1978.

Attest: James O Rice

Peter Vandenpoel
Member

Robert W Matthews
Secretary

STATE OF MINNESOTA

MINNESOTA HOUSING FINANCE AGENCY

IN THE MATTER OF THE PROPOSED ADOPTION OF)
RULES OF THE MINNESOTA HOUSING FINANCE AGENCY)
RELATING TO THE HOME IMPROVEMENT LOAN,)
ACCESSIBILITY IMPROVEMENT GRANT, AND WARRANTY)
CLAIM PROGRAMS.)

Resolution No. 78-84

RESOLUTION ADOPTING REPORT OF HEARING EXAMINER AND RULES

WHEREAS, pursuant to Board Resolution No. MHFA 78-54 of July 21, 1978, the Executive Director was authorized to call a public hearing on the above-entitled proposed rules which were presented to the Board on that date; and

WHEREAS, at said public hearing the Agency suggested amendments to the proposed rules, a copy of which amendments is attached hereto as Exhibit 1; and

WHEREAS, the above-entitled matter having come on for hearing before Steve Mihalchick, Hearing Examiner of the State of Minnesota on September 27, 1978, at 9:30 a.m. at Conference Room D, Veteran's Service Bldg., St. Paul, Minnesota after proper notice required by Minn. Stat. §15.0412 was served upon all persons, associations, and other interested groups registered with the Secretary of State for that purpose; and

WHEREAS, on October 25, 1978, after consideration of the proposed rules, suggested Agency amendments, and the evidence presented in writing and at the public hearing, the Hearing Examiner issued a report approving the rules and amendments as proposed by the Agency at the hearing, with the exception that proposed rule 12 MCAR §3.063 should be slightly modified so that the last sentence of that rule would read:

> If a grant is made both for Accessibility Improvements and for other eligible improvements pursuant to these Rules, then the portion of the grant which is for such eligible improvements shall not exceed $5,000, and the total amount of the grant for [aggregate cost of] such other eligible improvements and the Accessibility Improvements shall not exceed $7,500.

and

WHEREAS, the Board finds that the modification proposed by the Hearing Examiner will improve the clarity of 12 MCAR §3.063;

NOW THEREFORE, having afforded interested persons an opportunity to present written and oral data, statements, and arguments, having considered all of the testimony and evidence contained in the records, files, and proceedings herein, and applicable statutory standards and criteria, and having confirmed the need for the above-captioned rules,

IT IS HEREBY RESOLVED BY THE MINNESOTA HOUSING FINANCE AGENCY:

1. that the findings of fact, conclusions, and recommendations of the Hearing Examiner dated October 25, 1978 be and hereby are adopted; and

2. that the rules attached hereto as Exhibit 2 and incorporated herein by this reference as if fully set forth herein be and hereby are adopted; and

3. that the Executive Director of the Minnesota Housing Finance Agency, be and he hereby is authorized and directed to present these rules as adopted to the Chief Hearing Examiner and to the Attorney General for review and approval pursuant to Minn. Stat. §15.0412; to arrange at the appropriate time for the publication of these rules in the State Register; and to perform all other acts necessary to the promulgation of said rules.

Adopted by the Minnesota Housing Finance Agency this 7th day of November, 1978.

By Demetrius G. Gelatis
Chairman

Attest: Robert W. Matt
Secretary

Minnesota Housing Finance Agency

Suggested Amendment to Proposed Rule

The Agency suggests that proposed Rule 12MCAR §3.051-A be amended to read as follows:

A. Each applicant must individually or in the aggregate [be an individual] possess at least a one-third interest in a fee, [owner] or a contract for deed [purchaser of], or [the holder of] a life estate in the property to be improved. All persons who, individually or collectively, possess the type of ownership upon which the application is based, or whose income is to be included for the purpose of determining the Adjusted Income, and spouses of all such persons must join in the application and must execute the loan documents. However, occupancy of the property by the applicant shall not be required.

* * *

*New language added to the existing rule by the proposed rule is underlined.

*New language added to the proposed rule by this suggested amendment is underlined twice.

*Deletions from the language of the proposed rule are in square brackets.

Exhibit 1

Second Suggested Amendment to Proposed Rule

The Agency suggests that proposed Rule 12 MCAR §3.141 be amended to read as follows:

C. The applicant must be an individual fee owner or, in the case of an Agency Home Improvement Loan, possess, individually or in the aggregate, at least a one-third interest in a fee, a contract for deed [purchaser of] or [holder of] a life estate in, the dwelling containing the defect, and must occupy the dwelling as the applicant's principal place of residence.

MINNESOTA HOUSING FINANCE AGENCY

Adopted Sept
~~Proposed~~ Rules Governing the Home Improvement Loan, Accessibility Improvement Grant, and Warranty Claim Programs

12 MCAR § 3.051-A

Each applicant must individually or in the aggregate possess at least a one-third interest in a fee, or a contract for deed, or a life estate in the property to be improved. All persons who, individually or collectively, possess the type of ownership upon which the application is based, or whose income is to be included for the purpose of determining the Adjusted Income, and spouses of all such persons must join in the application and must execute the loan documents. However, occupancy of the property by the applicant shall not be required.

12 MCAR § 3.051-B

Each applicant must be a Person or Family (including nonrelated individual adults) of Low or Moderate Income.

12 MCAR § 3.051-C

Each applicant must be a reasonable credit risk with the ability to pay the loan obligation, as determined by the Agency or by the lending institution, if any, servicing the loan on behalf of the Agency.

12 MCAR § 3.051-D

The structure to be improved must be at least 15 years old, or in need of repair to correct damage resulting from a natural disaster, or in need of repair to correct defects or deficiencies which are hazardous to health or safety, or to directly improve energy efficiency.

12 MCAR § 3.051-E

The structure to be improved must not be in violation of applicable zoning ordinances or other applicable land use guides.

12 MCAR § 3.051-F

The property must be used primarily for residential purposes and must not contain more than six dwelling units. Mobile homes and trailers shall not be eligible for Home Improvement Loans.

Exhibit 2

12 MCAR § 3.051-G

Home Improvement Loan proceeds must be used to finance only improvements upon or in connection with existing structures.

12 MCAR § 3.051-H

All improvements must be reasonably capable of being completed (except for causes beyond the applicant's reasonable control, such as fire, strike, and shortages of materials) within nine months of the date of the first disbursement of funds pursuant to the Home Improvement Loan.

12 MCAR § 3.051-I

At the time of application, conventional financing must not be available from private lenders upon equivalent terms and conditions.

12 MCAR § 3.051-J

Each applicant who is an owner of residential housing occupied in whole or in part by renters, shall enter into such agreement as the Agency shall require to ensure that for the term of the loan Persons and Families of Low and Moderate Income will occupy at least one of the units in the case of a two unit residence, two of the units in the case of a three unit residence, three of the units in the case of a four unit residence, and four of the units in the case of a five or six unit residence.

12 MCAR § 3.063 - Amount of Grant

The amount of the rehabilitation grant shall not exceed the lesser of

A. $5,000, or in the case of an Accessibility Improvement Grant, $7,500, or

B. the actual cost of the work performed, or

C. that portion of the cost of rehabilitation which the Agency determines cannot otherwise be paid by such person or family without spending an unreasonable portion of the income of such person or family thereon.

If a grant is made both for Accessibility Improvements and for other eligible improvements pursuant to these Rules, then the portion of the grant which is for such eligible improvements shall not exceed $5,000, and the total amount of the grant for such other eligible improvements and the Accessibility Improvements shall not exceed $7,500.

12 MCAR § 3.069

The Agency may establish a separate fund known as the Emergency Home Improvement Grant Fund. Grants from the Emergency Home Improvement Grant Fund shall be made to eligible applicants for rehabilitation necessitated by an emergency occurrence whereby the dwelling:

A. was rendered immediately uninhabitable, or

B. suffered severe structural damage, or

C. became imminently hazardous to a Handicapped Person.

An emergency occurrence is an event which took place within a reasonably recent period of time prior to the grant application and which caused a defect or deficiency in the dwelling proposed to be rehabilitated, or which resulted in a resident of that dwelling becoming handicapped.

Before an application to the Emergency Home Improvement Grant Fund is accepted, the Administering Entity in the region in which the dwelling is located must establish that it has no funds available from its regular grant fund and, if applicable, that no funds are available from the Accessibility Improvement Fund, to cover the cost of repairs. Such funds may also be used to correct serious defects or deficiencies in the dwelling other than the specific defect or deficiency which rendered the dwelling immediately uninhabitable. Grants from the Emergency Home Improvement Fund shall be made to eligible applicants pursuant to the procedures set forth in Chapter Seven of these Rules, provided however, that the Emergency Home Improvement Fund shall not be subject to the allocation requirements of 12 MCAR § 3.061-D.

12 MCAR § 3.070

With funds appropriated by the Legislature from time to time for that purpose, the Agency may establish an Accessibility Improvement Fund from which Home Improvement Grants may be made to eligible applicants for the purpose of making Accessibility Improvements to dwelling units occupied by Handicapped Persons of low or moderate income, as defined in 12 MCAR § 3.002-0-3. Grants from the Accessibility Improvement Fund shall be made pursuant to the procedures set forth in Chapter 7 of these Rules, provided, however, that the Accessibility Improvement Grant Fund shall not be subject to the reservation and allocation requirements of 12 MCAR § 3.061.

12 MCAR § 3.071

A. No property shall be eligible for a Home Improvement Grant if it has been improved by such a grant within the five-year period next preceding the date on which application for such grant is made, except (i) for rehabilitation necessitated by damage to the property as a result of unforeseen events beyond

the control of the applicant or the failure of plumbing, heating, or electrical systems, as determined by the Agency in its sole discretion, or (ii) for Accessibility Improvements to aid a Handicapped Person who became handicapped or established residency in the dwelling after the date of approval of the initial Home Improvement Grant.

B. A dwelling which was occupied by a Handicapped Person and improved prior to September 1, 1977, by Home Improvement Grant Funds shall be eligible for an Accessibility Improvement Grant within the five-year period following receipt of the original Home Improvement Grant, provided that the cumulative total of all grants for Accessibility Improvements for a single dwelling permitted under this subsection shall not exceed $7,500 within such five-year period.

12 MCAR § 3.072-A

With respect to Home Improvement Grants pursuant to Chapter Six of these Rules, "Handicapped Person" means a person who has a permanent physical condition which is not correctable and which substantially reduces such person's ability to function in a residential setting. A person with a physical condition which does not require the use of a device to increase mobility shall be deemed a Handicapped Person only upon the written certification of a licensed physician that the physical condition substantially limits such person's ability to function in a residential setting.

12 MCAR § 3.072-B

"Accessibility Improvement" means an interior or exterior improvement or modification to a residential dwelling in Minnesota which is necessary to enable a Handicapped Person to function in a residential setting.

Chapter 12 - Warranty Claim Program

12 MCAR § 3.140 - Defects Covered by Warranty Claim Program

The Agency may make payments to correct defects in construction or rehabilitation of residential housing financed by Agency mortgage loans for Limited-Unit Developments or Home Improvement Loans, if the defects:

A. result in actual damage to load-bearing portions of the dwelling (including damage due to subsidence, expansion, or lateral movement of the soil), to the extent that their load-bearing function is affected and the use of the dwelling for residential purposes is vitally affected or is imminently likely to be vitally affected; or

B. create an emergency condition under which the safety or the residential use and livability of the dwelling is so substantially impaired (or is imminently likely to be so substantially impaired) that an average reasonable person would not, economic considerations aside, remain in the dwelling; or

C. create an imminent hazard for a Handicapped Person.

12 MCAR § 3.141 - Eligible Recipients for Warranty Claim Payments

To qualify for a payment the applicant must satisfy the following requirements:

A. The applicant must be a Person or Family of Low or Moderate Income as defined in 12 MCAR § 3.002-O-1 at the time of the application for the payment.

B. The applicant must either:

1. have received an Agency mortgage loan for a Limited-Unit Development or an Agency Home Improvement Loan for the construction or rehabilitation of the dwelling containing the defect; or

2. have purchased, from a recipient of an Agency mortgage loan for a Limited-Unit Development or an Agency Home Improvement Loan, a residential dwelling constructed or rehabilitated through the proceeds of such loan.

C. The applicant must be an individual fee owner or, in the case of an Agency Home Improvement Loan, possess, individually or in the aggregate, at least a one-third interest in a fee, a contract for deed, or a life estate in the dwelling containing the defect, and must occupy the dwelling as the applicant's principal place of residence.

D. The applicant must have taken all steps necessary to maintain the Agency approved warranties and all other applicable warranties in full force and effect.

E. The applicant must agree to cooperate with the Agency in any action to recover from the person responsible for the defect, execute all documents necessary to secure the Agency's right of subrogation to the applicant's claim, and assist the Agency in the prosecution of any legal action for breach of warranty that the Agency may deem appropriate.

12 MCAR § 3.142 - Eligible Applications -- Rehabilitation

An application for Agency payment under this Chapter which is based upon rehabilitation financed by an Agency Home Improvement Loan must

demonstrate that the defects:

A. if caused by faulty workmanship or defective materials due to noncompliance with building standards, arose within one year after completion of the rehabilitation work; or

B. if caused by faulty installation of plumbing, electrical, heating, or cooling systems, or if affecting the load-bearing portions of the dwelling, arose within two years after completion of the rehabilitation work.

In no event may an application be made to the Agency more than two years after the issuance of the Home Improvement Loan, or after any applicable statute of limitations has expired.

12 MCAR § 3.143 - Eligible Applications -- Limited-Unit Mortgage Loans

An application for Agency payment under this Chapter which is based upon new construction financed by an Agency mortgage loan for a Limited-Unit Development must show that the defects:

A. if caused by faulty workmanship or defective materials due to noncompliance with building standards, arose within one year after the date of initial occupancy of the dwelling by the loan recipient; or

B. if caused by faulty installation of plumbing, electrical, heating, or cooling systems, arose within two years after the date of initial occupancy of the dwelling by the loan recipient; or

C. if affecting the load-bearing portions of the dwelling, arose within four years after the date of initial occupancy of the dwelling.

In no event may an application be made to the Agency more than four years after the issuance of the mortgage loan, or after any applicable statute of limitations has expired.

12 MCAR § 3.144 - Exclusions

Agency payments under this Chapter will not extend to the following:

A. loss caused by defects in design, installation, or materials which the loan recipient or subsequent purchaser supplied, installed, or had installed under his/her direction;

B. secondary loss including personal injury or property damage, other than damage to the dwelling itself, caused by the defect or omission; incidental loss such as the cost of alternate shelter during repair of the dwelling; and consequential loss such as the diminution in the value of the dwelling caused by the de-

fect or omission;

C. loss from normal wear and tear;

D. loss from normal shrinkage caused by drying of the dwelling within tolerances of building standards;

E. loss from dampness and condensation due to insufficient ventilation after occupancy;

F. loss from negligence, improper maintenance, or alteration of the dwelling by parties other than the contractor;

G. loss from changes in grading of the ground around the dwelling by parties other than the contractor;

H. landscaping or insect loss;

I. loss from failure to maintain the dwelling in good repair;

J. loss which the loan recipient or purchaser has not taken timely action, whenever feasible, to minimize;

K. accidental loss usually described as acts of God, including, but not limited to: fire, explosion, smoke, water escape, windstorm, hail or lightning, falling trees, aircraft, vehicles, flood, and earthquake, except when the loss is caused by defects in construction or rehabilitation financed by Agency loans;

L. loss from soil movement which is compensated by legislation or covered by insurance;

M. loss due to soil conditions where construction is done upon land which is owned by the loan recipient or subsequent purchaser and which was obtained by him/her from a source independent of the contractor.

APPROVED AS TO FORM AND LEGALITY

DEC. 5 1978 19

WARREN SPANNAUS, ATTORNEY GENERAL

BY Joanne E. Hidershe

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
DEC - 6 1978
Joan Anderson Growe
Secretary of State

9:15AM

STATE OF MINNESOTA

MINNESOTA HOUSING FINANCE AGENCY

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE MINNESOTA HOUSING FINANCE AGENCY RELATING TO THE HOME IMPROVEMENT LOAN, ACCESSIBILITY IMPROVEMENT GRANT, AND WARRANTY CLAIM PROGRAMS.	STATEMENT OF COMPLIANCE WITH MANUAL OF RULE MAKING PROCEDURES

As a Special Attorney, I, George Reilly, do hereby declare that I have examined the rules of the Minnesota Housing Finance Agency and all related documents and that, based on them and on my personal familiarity with the applicable procedures, the Manual of Rule Making Procedures has been followed.

George Reilly
Special Attorney

DATED:

LAW OFFICES

LEONARD, STREET AND DEINARD

1200 NATIONAL CITY BANK BUILDING
510 MARQUETTE AVENUE
MINNEAPOLIS, MINNESOTA 55402
TELEPHONE (612) 339-1200
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GEORGE B. LEONARD (1872-1956)
ARTHUR L. H. STREET (1877-1961)
BENEDICT DEINARD (1899-1969)

OF COUNSEL
IRENE SCOTT

November 13, 1978

RECEIVED
NOV 10 1978
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

Lee Sheehy, Esquire
Special Assistant Attorney General
State Administration Building
Room G-19K
St. Paul, Minnesota 55155

RE: MHFA - Rules Relating to the Home Improvement Loan, Accessibility Improvement Grant, and Warranty Claim Programs.

Dear Mr. Sheehy,

I am submitting to you for review the documents prepared by the Minnesota Housing Finance Agency for the promulgation of new regulations relating to the Home Improvement Loan, Accessibility Improvement Grant, and Warranty Claim Programs.

I have sent an original and one copy of each document except the rules as adopted of which there is an original plus two copies. Two of the copies of the adopted rules are attached to the copies of the resolution authorizing and ordering the adoption of these rules. Pursuant to the new law the hearing on these rules was taped but not transcribed. The tape is available at the Agency if you should wish to hear it.

If there are any questions please let me know. Thank you for your assistance.

Yours truly,

LEONARD, STREET AND DEINARD

BY Pat
M. Patricia Schaffer

MPS/jas
Enclosures

RECEIVED
AUG 7 1978
OFFICE OF HEARING
EXAMINERS

STATE OF MINNESOTA

MINNESOTA HOUSING FINANCE AGENCY

IN THE MATTER OF THE PROPOSED ADOPTION OF)
RULES OF THE MINNESOTA HOUSING FINANCE)
AGENCY RELATING TO THE HOME IMPROVEMENT) ORDER FOR HEARING
LOAN, ACCESSIBILITY IMPROVEMENT GRANT,)
AND WARRANTY CLAIM PROGRAMS.)

IT IS HEREBY ORDERED that a public hearing on the above-captioned rules be held at Conference Room D, Veterans Service Building, St. Paul, Minnesota, on September 27, 1978, commencing at 9:30 a.m. and continuing until all persons have had an opportunity to be heard.

IT IS FURTHER ORDERED that a Notice of Hearing be mailed to all persons or representatives of associations or other interested groups who have registered their names with the Secretary of State for that purpose.

IT IS FURTHER ORDERED that the Notice of Hearing be published in the State Register.

James Solem
Executive Director

Date: 7-31-78

Asg's
Exhibit No. A
File No.
Date

MINNESOTA HOUSING FINANCE AGENCY
333 Sibley
St. Paul, Minnesota 55101

RESOLUTION NO. MHFA 78-54

RESOLUTION AUTHORIZING PUBLIC HEARING ON PROPOSED RULES

BE IT RESOLVED BY THE MINNESOTA HOUSING FINANCE AGENCY:

That James Solem, the Executive Director of the Minnesota Housing Finance Agency, be and he hereby is authorized and directed (1) to call a hearing for the purpose of promulgating rules of the Minnesota Housing Finance Agency, relating to the Accessibility Improvement Grant Program, the Warranty Claim Program, and the Home Improvement Loan Program; (2) to arrange for a hearing examiner to act as presiding officer at said hearing; and (3) to perform all other acts incidental to such hearing including without limitation signing an Order of Hearing and Notice of Hearing.

Adopted by the Minnesota Housing Finance Agency this 21 day of July, 1978.

By Demetrius G. Jolatis
Chairman

Attest: James C. Price

MINNESOTA HOUSING FINANCE AGENCY
333 Sibley
St. Paul, Minnesota 55101

CERTIFICATE OF RESOLUTION
OF
THE MINNESOTA HOUSING FINANCE AGENCY

The undersigned does hereby certify that he is the Secretary of the Minnesota Housing Finance Agency, an Agency duly authorized under the laws of the State of Minnesota; that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Minnesota Housing Finance Agency duly and properly called and held on the 21st day of July, 1978; that a quorum was present at said meeting; that a majority of those present voted in favor of the adoption of said resolution; that said resolution is set forth in the minutes of said meeting; and that said resolution has not been altered, modified, or annulled, and remains in full force and effect:

"BE IT RESOLVED BY THE MINNESOTA HOUSING FINANCE AGENCY:

"That James Solem, the Executive Director of the Minnesota Housing Finance Agency, be and he hereby is authorized and directed (1) to call a hearing for the purpose of promulgating rules of the Minnesota Housing Finance Agency, relating to the Accessibility Improvement Grant Program, the Warranty Claim Program, and the Home Improvement Loan Program; (2) to arrange for a hearing examiner to act as presiding officer at said hearing; and (3) to perform all other acts incidental to such hearing including without limitation signing an Order of Hearing and Notice of Hearing."

IN WITNESS WHEREOF, I have hereunto subscribed my name this 21st day of July, 1978.

Attest: Mark Kaplan
Member

Robert W Matteson
Secretary

STATE OF MINNESOTA

RECEIVED

MINNESOTA HOUSING FINANCE AGENCY

AUG 7 1978

OFFICE OF HEARING EXAMINERS

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE MINNESOTA HOUSING FINANCE AGENCY RELATING TO THE HOME IMPROVEMENT LOAN, ACCESSIBILITY IMPROVEMENT GRANT, AND WARRANTY CLAIM PROGRAMS.

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that a public hearing in the above-entitled matter will be held at Conference Room D, Veterans Service Building, St. Paul, Minnesota, on September 27, 1978 commencing at 9:30 a.m. and continuing until all persons have had an opportunity to be heard.

All interested or affected persons will have an opportunity to participate. Statements may be made orally and written materials may be submitted at the hearing or by mail to Steve Mihalchick, Room 300, 1745 University Avenue, St. Paul, Minnesota 55104 either before the hearing or within 5 working days after the close of the hearing, or 20 days if ordered by the hearing examiner.

The proposed rules, if adopted, would establish guidelines for the Home Improvement Loan, Accessibility Improvement Grant, and Warranty Claim Programs, as authorized by Minn. Stat. §§462A.05, subd. 14, 462A.05, subd. 15, and 462A.05, subd. 16 respectively.

A copy of the proposed rules is attached hereto and one additional free copy may be obtained by writing to the Minnesota Housing Finance Agency, 333 Sibley, St. Paul, Minnesota, 55101. Additional copies will be available at the door at the date of the hearing. A "statement of need" explaining why the Agency believes the proposed rules are necessary and a "statement of evidence" outlining the testimony which the Agency will introduce will be filed with the Hearing Examiner's Office at least 25 days prior to the hearing and will be available there for public inspection.

In addition, please be advised that Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five (5) days after he commences lobbying. Lobbying includes attempting to influence rulemaking by communicating or urging others to communicate with public officials. A lobbyist is generally any individual who spends more than $250 per year for lobbying or any individual who is engaged for pay or authorized to spend money by another individual or association and who spends more than $250 a year or five (5) hours per month for lobbying. The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, Saint Paul, Minnesota 55155, telephone: (612) 296-5615.

James Solem
Executive Director

Date: 7-31-78

Agy's Exhibit No. B

File No.

Date

MINNESOTA HOUSING FINANCE AGENCY

Proposed Rules Governing the Home Improvement Loan, Accessibility Improvement Grant, and Warranty Claim Programs

12 MCAR § 3.002-W

With respect to Home Improvement Grants pursuant to Chapter Six of these Rules, "Handicapped Person" means a person who has a permanent physical condition which is not correctable and which substantially reduces such person's ability to function in a residential setting. A person with a physical condition which does not require the use of a device to increase mobility shall be deemed a Handicapped Person only upon the written Certification of a licensed physician that the physical condition substantially limits such person's ability to function in a residential setting.

12 MCAR § 3.002-X

"Accessibility Improvement" means an interior or exterior improvement or modification to a residential dwelling in Minnesota which is necessary to enable a Handicapped Person to function in a residential setting.

12 MCAR § 3.051-A

Each applicant must be an individual fee owner or contract for deed purchaser of, or the holder of a life estate in, the property to be improved. All persons who, indiviually or collectively, possess the type of ownership upon which the application is based, or whose income is to be included for the purpose of determining the Adjusted Income, and spouses of all such persons, must join in the application and must execute the loan documents. However, occupancy of the property by the applicant shall not be required.

12 MCAR § 3.063 - Amount of Grant

The amount of the rehabilitation grant shall not exceed the lesser of

A. $5,000, or in the case of an Accessibility Improvement Grant, $7,500, or

B. the actual cost of the work performed, or

C. that portion of the cost of rehabilitation which the Agency determines cannot otherwise be paid by such person or family without spending an unreasonable portion of the income of such person or family thereon.

If a grant is made both for Accessibility Improvements and for other eligible improvements pursuant to these Rules, then the portion of the grant which is for such eligible improvements shall not exceed $5,000, and the aggregate cost of such other eligible improvements and the Accessibility Improvements shall not exceed $7,500.

12 MCAR § 3.065-D - deleted. See proposed 12 MCAR § 3.071.

12 MCAR § 3.065-E. Reletter as 12 MCAR § 3.065-D.

12 MCAR § 3.069

The Agency may establish a separate fund known as the Emergency Home Improvement Grant Fund. Grants from the Emergency Home Improvement Grant Fund shall be made to eligible applicants ~~provided that the dwelling contains defects or deficiencies which~~

A. ~~are the direct result of an occurrence which took place within a reasonably recent period of time prior to the grant application; and~~

B. ~~if left uncorrected would render the dwelling~~

for rehabilitation necessitated by an emergency occurrence whereby the dwelling:

A. was rendered immediately uninhabitable, or

B. suffered severe structural damage, or

C. became imminently hazardous to a Handicapped Person.

An emergency occurrence is an event which took place within a reasonably recent period of time prior to the grant application and which caused a defect or deficiency in the dwelling proposed to be rehabilitated, or which resulted in a resident of that dwelling becoming handicapped.

Before an application to the Emergency Home Improvement Grant Fund is accepted, the Administering Entity in the region in which the dwelling is located must establish that it has no funds available from its regular grant fund and, if applicable, that no funds are available from the Accessibility Improvement Fund, to cover the cost of repairs. Such funds may also be used to correct serious defects or deficiencies in the dwelling other than the specific defect or deficiency which rendered the dwelling immediately uninhabitable. Grants from the Emergency Home Improvement Fund shall be made to eligible applicants pursuant to the procedures set forth in Chapter Seven of these Rules, provided however, that the Emergency Home Improvement Fund shall not be subject to the allocation requirements of 12 MCAR § 3.061-D.

12 MCAR § 3.070

With funds appropriated by the Legislature from time to time for that purpose, the Agency may establish an Accessibility Improvement Fund from which Home Improvement Grants may be made to eligible applicants for the purpose of making Accessibility Improvements to dwelling units occupied by Handicapped Persons of low or moderate income, as defined in 12 MCAR § 3.002-0-3. Grants from the Accessibility Improvement Fund shall be made pursuant to the procedures set forth in Chapter 7 of these Rules, provided, however, that the Accessibility Improvement Grant Fund shall not be subject to the reservation and allocation requirements of 12 MCAR § 3.061.

12 MCAR § 3.071

A. No property shall be eligible for a Home Improvement Grant if it has been improved by such a grant within the five-year period next preceding the date on which application for such grant is made, ~~[in]~~ except (i) for rehabilitation necessitated by ~~extraordinary circumstances relating to~~ damage to the property as a result of unforeseen events beyond the control of the applicant or the failure of plumbing, heating, or electrical systems, as determined by the Agency in its sole discretion, or (ii) for Accessibility Improvements to aid a Handicapped Person who became handicapped or established residency in the dwelling after the date of approval of the initial Home Improvement Grant.

B. A dwelling which was occupied by a Handicapped Person and improved prior to September 1, 1977, by Home Improvement Grant Funds shall be eligible for an Accessibility Improvement Grant within the five-year period following receipt of the original Home Improvement Grant, provided that the cumulative total of all grants for Accessibility Improvements for a single dwelling permitted under this subsection shall not exceed $7,500 within such five-year period.

Chapter 12 - Warranty Claim Program

12 MCAR § 3.140 - Defects Covered by Warranty Claim Program

The Agency may make payments to correct defects in construction or rehabilitation of residential housing financed by Agency mortgage loans for Limited-Unit Developments or Home Improvement Loans, if the defects:

A. result in actual damage to load-bearing portions of the dwelling (including damage due to subsidence, expansion, or lateral movement of the soil), to the extent that their load-bearing

function is affected and the use of the dwelling for residential purposes is vitally affected or is imminently likely to be vitally affected; or

B. create an emergency condition under which the safety or the residential use and livability of the dwelling is so substantially impaired (or is imminently likely to be so substantially impaired) that an average reasonable person would not, economic considerations aside, remain in the dwelling; or

C. create an imminent hazard for a Handicapped Person.

12 MCAR § 3.141 - Eligible Recipients for Warranty Claim Payments

To qualify for a payment the applicant must satisfy the following requirements:

A. The applicant must be a Person or Family of Low or Moderate Income as defined in 12 MCAR § 3.002-O-1 at the time of the application for the payment.

B. The applicant must either:

1. have received an Agency mortgage loan for a Limited-Unit Development or an Agency Home Improvement Loan for the construction or rehabilitation of the dwelling containing the defect; or

2. have purchased, from a recipient of an Agency mortgage loan for a Limited-Unit Development or an Agency Home Improvement Loan, a residential dwelling constructed or rehabilitated through the proceeds of such loan.

C. The applicant must be an individual fee owner or, in the case of an Agency Home Improvement Loan, a contract for deed purchaser of, or holder of a life estate in, the dwelling containing the defect and must occupy the dwelling as the applicant's principal place of residence.

D. The applicant must have taken all steps necessary to maintain the Agency approved warranties and all other applicable warranties in full force and effect.

E. The applicant must agree to cooperate with the Agency in any action to recover from the person responsible for the defect, execute all documents necessary to secure the Agency's right of subrogation to the applicant's claim, and assist the Agency in the prosecution of any legal action for breach of warranty that the Agency may deem appropriate.

12 MCAR § 3.142 - Eligible Applications -- Rehabilitation

An application for Agency payment under this Chapter which is based upon rehabilitation financed by an Agency Home Improvement Loan must demonstrate that the defects:

A. if caused by faulty workmanship or defective materials due to noncompliance with building standards, arose within one year after completion of the rehabilitation work; or

B. if caused by faulty installation of plumbing, electrical, heating, or cooling systems, or if affecting the load-bearing portions of the dwelling, arose within two years after completion of the rehabilitation work.

In no event may an application be made to the Agency more than two years after the issuance of the Home Improvement Loan, or after any applicable statute of limitations has expired.

12 MCAR § 3.143 - Eligible Applications -- Limited-Unit Mortgage Loans

An application for Agency payment under this Chapter which is based upon new construction financed by an Agency mortgage loan for a Limited-Unit Development must show that the defects:

A. if caused by faulty workmanship or defective materials due to noncompliance with building standards, arose within one year after the date of initial occupancy of the dwelling by the loan recipient; or

B. if caused by faulty installation of plumbing, electrical, heating, or cooling systems, arose within two years after the date of initial occupancy of the dwelling by the loan recipient; or

C. if affecting the load-bearing portions of the dwelling, arose within four years after the date of initial occupancy of the dwelling.

In no event may an application be made to the Agency more than four years after the issuance of the mortgage loan, or after any applicable statute of limitations has expired.

12 MCAR § 3.144 - Exclusions

Agency payments under this Chapter will not extend to the following:

A. loss caused by defects in design, installation, or materials which the loan recipient or subsequent purchaser supplied, installed, or had installed under his/her direction;

B. secondary loss including personal injury or property damage,

other than damage to the dwelling itself, caused by the defect or omission; incidental loss such as the cost of alternate shelter during repair of the dwelling; and consequential loss such as the diminution in the value of the dwelling caused by the defect or omission;

C. loss from normal wear and tear;

D. loss from normal shrinkage caused by drying of the dwelling within tolerances of building standards;

E. loss from dampness and condensation due to insufficient ventilation after occupancy;

F. loss from negligence, improper maintenance, or alteration of the dwelling by parties other than the contractor;

G. loss from changes in grading of the ground around the dwelling by parties other than the contractor;

H. landscaping or insect loss;

I. loss from failure to maintain the dwelling in good repair;

J. loss which the loan recipient or purchaser has not taken timely action, whenever feasible, to minimize;

K. accidental loss usually described as acts of God, including, but not limited to: fire, explosion, smoke, water escape, windstorm, hail or lightning, falling trees, aircraft, vehicles, flood, and earthquake, except when the loss is caused by defects in construction or rehabilitation financed by Agency loans;

L. loss from soil movement which is compensated by legislation or covered by insurance;

M. loss due to soil conditions where construction is done upon land which is owned by the loan recipient or subsequent purchaser and which was obtained by him/her from a source independent of the contractor.

RECEIVED
1978
OFFICE OF HEARING
EXAMINERS

STATE OF MINNESOTA

COUNTY OF RAMSEY

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE MINNESOTA HOUSING FINANCE AGENCY RELATING TO THE HOME IMPROVEMENT LOAN, ACCESSIBILITY IMPROVEMENT GRANT, AND WARRANTY CLAIM PROGRAMS.

AFFIDAVIT

The undersigned, being first duly sworn, on oath deposes and says:

1. That he/she is an employee of the Minnesota Housing Finance Agency.

2. That on the 22nd day of AUGUST, 1978 he/she went to the office of the Secretary of State of the State of Minnesota and requested a current list of all representatives of associations or other interested groups or persons who had registered their names with the Secretary of State for the purpose of obtaining notices of public hearings relating to the promulgation of rules pursuant to Minnesota Statutes §15.0412.

3. That on the 22nd day of AUGUST, 1978, in response to the above request the Secretary of State provided him/her with such list, a copy of which is attached hereto and incorporated herein by this reference.

Further Affiant saith not.

Michael A. Percy

Subscribed and sworn to before
me this 22nd day of August, 1978

Roseann M. Koran
NOTARY PUBLIC

ROSEANN M. KORAN
Notary Public, Ramsey County, Minn.
MY COMMISSION EXPIRES
March 14, 1979

Agis Exhibit No. F
File No.
Date

STATE OF MINNESOTA

COUNTY OF RAMSEY

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE MINNESOTA HOUSING FINANCE AGENCY RELATING TO THE HOME IMPROVEMENT LOAN, ACCESSIBILITY IMPROVEMENT GRANT, AND WARRANTY CLAIM PROGRAMS.

CERTIFICATE

I hereby certify that the attached 487 + 2 pages labels constitute the complete list of persons, associations and other interested groups who as of 11:00A m., this 22nd day of August, 1978, have requested pursuant to Minnesota Statutes §15.0412, that their names be placed on file with the Secretary of State for the purpose of receiving notice of public hearings on proposed rules on the above-captioned subject.

Joan Anderson Growe

Secretary of State

BY Donna M Scott

STATE OF MINNESOTA

COUNTY OF RAMSEY

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE MINNESOTA HOUSING FINANCE AGENCY RELATING TO THE HOME IMPROVEMENT LOAN, ACCESSIBILITY IMPROVEMENT GRANT, AND WARRANTY CLAIM PROGRAMS.

AFFIDAVIT OF MAILING

Bonnie Nelson, being first duly sworn, deposes and says:

That on the 25 day of August 25, 1978 at the City of St. Paul, County of Ramsey, State of Minnesota, he/she served the attached Notice of Hearing by depositing in the United States mail at said City of St. Paul, a true and correct copy thereof, properly enveloped, with postage prepaid, to all persons and associations at the addresses listed on the attached Certificate of the Secretary of State as well as the persons authorized to accept notice of said hearing on behalf of the Minnesota Legislature.

Bonnie Nelson

Subscribed and sworn to before
me this 25th day of August, 1978.

Roseann M. Koran

ROSEANN M. KORAN
Notary Public, Ramsey County, Minn.
MY COMMISSION EXPIRES
March 14, 1979

Agyle Exhibit No. 6
File No.
Date

STATE OF MINNESOTA

MINNESOTA HOUSING FINANCE AGENCY

RECEIVED
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OFFICE OF ADMINISTRATIVE PROCEDURE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE MINNESOTA HOUSING FINANCE AGENCY RELATING TO THE HOME IMPROVEMENT LOAN, ACCESSIBILITY IMPROVEMENT GRANT, AND WARRANTY CLAIM PROGRAMS.

STATEMENT OF NEED AND REASONABLENESS

The above-captioned rules contain amendments to existing rules of the Minnesota Housing Finance Agency relating to the Home Improvement Loan, Accessibility Improvement Grant, and Warranty Claim Programs. The most recent formal amendment of the rules of the Minnesota Housing Finance Agency was May 4, 1978.

In general, the need to adopt these rules arises because of a legislative mandate contained in Minn. Stat. §15.0412, subd. 3 and Minn. Stat. §462A.06, subd.11 that the Agency adopt rules setting forth the nature and requirements of the procedures relating to Agency programs. In particular the rules are necessary:

a) To clarify the types of ownership required for participation in the Home Improvement Loan Program, and the individuals whose signatures must appear on the application and loan documents, as authorized by Minn. Stat. §462A.05, subd. 14;

b) To establish a program to assist in the financing of improvements to make residential housing more accessible to the handicapped, as authorized by Minn. Stat. §462A.05, subd. 15; and

c) To delineate the circumstances under which the Agency will pay for claims arising out of defects in construction or rehabilitation financed through the Agnecy's Limited-Unit Development Mortgage Loan or Home Improvement Loan Programs, as authorized by Minn. Stat. §462A.05, subd. 16.

It is the considered judgment of the Agency that the rules as proposed are necessary to delineate program administration and are required to discharge the legislative mandate noted.

At the public hearing to be held concerning these proposed rules, the Agency will introduce the following evidence to establish the need for and reasonableness of the proposed rules:

A. HOME IMPROVEMENT LOAN PROGRAM

12 MCAR §3.051 Eligible Applications

This rule defines the requirements for applications for Home Improvement Loans. Subparagraph A is amended by the proposed rules to add holders of life estates in the properties to be improved as eligible applicants and to clarify which persons must sign the application and loan documents.

The Agency rules at present require that borrowers possess an ownership interest in the dwelling to be improved. Holders of a life estate in a property, while technically not fee holders, have as a practical matter an "ownership interest" in that the only substantial attribute of ownership missing is the right to determine the disposition of the property after their death. The typical holder of a life estate will be an elderly person who has deeded the homestead to the children retaining the right to live there until

death. The homes of such persons are often in need of repair, but the resident, living on a fixed income, lacks the funds necessary to carry out rehabilitation. Such persons fall precisely within the class of persons which the Home Improvement Loan Program was intended to help. The federal insurance program for rehabilitation loans permits HUD to insure loans to borrowers who possess a life estate in the property to be improved. 24 CFR §201.1 (i)(2). By the proposed rule change, the Agency's criteria will be liberalized to correspond more closely with those of HUD, by whom all Agency loans are to be insured.

The new rule will also require that all applicants and all persons who aggregate their ownership interest, of whatever type, in order to achieve the minimum interest necessary to qualify under the Program, must sign the application and loan documents. Since the date of promulgation of the proposed rules, the Agency has noted a potential source of confusion in the existing rule. The Agency has consistently administered the ownership requirement of 12 MCAR §3.051-A in the light of the federal regulations governing the insurability of home improvement loans. HUD regulations (24 CFR §201.1 (i)(2)) permit loans to persons whose interest in the property to be improved equals or exceeds one-third. These regulations are applied by the Agency by defining an "ownership interest" as a one-third or more interest in a fee, contract for deed, or (in the future) a life estate. If an applicant owns less than a one-third interest, he may aggregate his interest with another co-owner or owners so as to bring their joint interest up to the one-third minimum. In that situation such persons are deemed to be joint applicants; both are required to sign the application and the debt instrument.

Because 12 MCAR §3.051-A might be understood as requiring complete ownership in one person, the Agency will propose an amendment at the

hearing to change the first sentence of the rule as follows:

"A. Each applicant must individually or in the aggregate ~~be an individual~~ possess at least a one-third interest in a fee, ~~owner, or~~ a contract for deed ~~purchaser of~~, or [the holder of a] life estate in the property to be improved."

The change, which merely defines the meaning of ownership interest, does not reflect any change in Agency practice, and does not create a fundamental change in the rule. The proposed amendment which on its face liberalizes the standards for admission to the Home Improvement Loan Program, will not affect the substantive rights of any applicant, and is therefore appropriate for presentation at the hearing.

The proposed rule as published also requires that all adult members of the applicant's living unit whose income is to be counted to determine whether the applicant is of low or moderate income under 12MCAR §3.002 N, as well as the spouse of the applicant, must sign the application and the loan documents. Agency policy has always been to regard the income of all persons living in one residential unit, whether or not they are related by blood or marriage, as the unit whose income is available for the housing costs of the unit. All the persons in a single residence are likely to benefit from rehabilitation work which is carried out on the house in which they are living. Therefore, it is reasonable that such persons should be liable for the loan which finances such work. This new rule would not require the signatures of persons residing in a living unit as bona fide boarders of the owner with rental agreements, rather than as part of a community for shelter purposes.

Signatures of spouses are required because the marriage relationship as a practical and legal matter creates a potential ownership interest in the

joint property such that a spouse, even if separated or in the process of becoming divorced,may benefit from the improved property or even, upon divorce, become the primary owner of it. Information on spousal income and the requirement of the spouse's signature on the loan agreements, avoids fraudulent applications based on an artificial allocation of family assets between spouses. In the unlikely situation where a spouse has left the other for a long period of time and is not locatable or is unwillingly to cooperate in the loan agreement the Agency could in its discretion waive the requirement.

The requirement of the spouse's signature must appear in the rules to satisfy the Federal Regulations pertaining to the Equal Credit Opportunity Act, which forbids discrimination in the extension of credit on the basis, inter alia, of marital status. 15 USC §1691(a):"It shall be unlawful for any creditor to discriminate against any applicant, with respect to any aspect of a credit transaction---(1) on the basis of race, color, religion, national origin, sex or marital status, or age..." The Federal law provides an exemption for "affirmative action" in credit programs oriented toward a particular group of people, including the economically disadvantaged. 15 USC §1691 (c) (1). The regulation governing this provision (11 CFR §202.8 (d)) states:

> "If financial need is or will be one of the criteria for the extension of credit under a special purpose program . . . a creditor may obtain the signature of an applicant's spouse or other person on an application or credit instrument relating to a special purpose program if required by Federal or State Law..."

A special purpose program includes "any credit assistance program expressly authorized by Federal or State law for the benefit of an economically

disadvantaged class of persons..." 11 CFR §202.8(a) (1). The Federal Reserve Board has held that the term "State law" in this regulation includes state regulations. Interpretation No. 5, CCH Consumer Credit Guide, Vol. 5, paragraph 40855.01. The Federal Reserve Board which administers these regulations thus gives deference to the determination by a State agency, arrived at after a rule-making process, that a spouse's signature is required for the particular program, and is not used for the purpose of discrimination. The Home Improvement Loan Program, of course, being limited to persons and families of low and moderate income, qualifies as a "special purpose credit program" under 11 CFR §202.8(a)(1). Upon passage of this regulation the Agency will be permitted to require a spousal signature on loan applications without contravening the Equal Credit Opportunity Act. A State law also forbids discrimination in credit, Minn. Stat. §363.03, subd. 8 providing :

> "It is an unfair discriminatory practice to discriminate in the extension of credit to a person because of sex or marital status."

The state statute does not contain any reference to special credit assistance programs authorized by law for economically disadvantaged persons. Nevertheless it is submitted that the requirement of obtaining information on spousal income and spousal signatures on the loan documents does not constitute discrimination in the extension of credit on the basis of marital status under state law. In interpreting this state law, which is being administered without regulations, it seems reasonable to use the interpretations developed by the Federal Reserve Bank for the similarly worded Federal law. The proposed rule requiring information on spouse's income is necessary in order to have a full evaluation of the applicant's financial need and to be able to determine whether the applicant

qualifies as a person or family of low or moderate income. It is not discrimination on the basis of marital status to take into account all income in which the applicant has an interest.

In the ordinary credit situation, a creditor may not request any information concerning the spouse or former spouse of an applicant as long as the applicant has applied for individual unsecured credit, unless the spouse will be contractually liable upon the account or unless the applicant is relying on the spouse's income as a basis for repayment of the credit requested. 11 CFR §202.5. In the normal situation a creditor will look to the applicant's income and property to determine whether he or she meets its standards for minimum credit worthiness. Once the threshold of credit worthiness is met by the individual applicant, to require additional information from married persons and not from unmarried persons (unless the applicant chooses to include his or her spouse in the credit determination) would constitute discrimination on the basis of marital status.

In the Agency program, however, the Agency as creditor is seeking information on income, not to determine whether the applicant is creditworthy but whether he or she is poor enough to come within the definition of low and moderate income. Thus, it is relevant to seek information about the entire income pool available to the applicant, whether married or not, and the seeking of such information is not discriminatory.

The signature of the spouse is required on the application in part as a certification that the statements made thereon concerning the spouse's income are correct, and to ensure that the spouse is aware that a rehabilitation

loan is being applied for with regard to property in which he or she might possess an interest. No claim of discrimination in the extension of credit on the basis of marital status seems possible in regard to this requirement.

With regard to the spousal signature on the debt instrument itself, a Federal regulation forbids a creditor from requiring the signature of an applicant's spouse on any credit instrument if the applicant alone qualifies under the creditor's standards of creditworthiness for the amount and terms of the credit requested. 11 CFR §202.7(d). In the situation of home improvement loans for persons of low or moderate income, the Agency always must rely on the income of the entire family to determine eligibility and to measure repayment capacity. The Federal regulation permits the requirement of spousal signature in situations of unsecured credit where the applicant relies in part upon property to establish creditworthiness, if the signature of the spouse is reasonably believed to be necessary under applicable State law to make the property relied upon available to satisfy the debt in the event of default. 11 CFR §202.7(d)(2). The Agency as creditor here is relying on all the property and income of all the beneficiaries of this loan to the extent permitted by State law to satisfy the debt in case of default. The marriage laws affect the income and property available to each spouse. Thus it is reasonable to require the signature of both spouses.

Federal regulation also provides that in case an applicant does not meet a creditor's standards of creditworthiness and the personal liability of an additional party is necessary to support the extension of the credit requested, the creditor may request a co-signer. The applicant's spouse may serve as an additional party in such a case but the creditor may not require that the spouse be that additional party. 11 CFR §202.7(d)(5). This provision is not applicable to the Agency loan situation because the intent of the Agency in requiring the signature is not to reach a defined level of creditworthiness but to increase the chances of the loan being paid by including all beneficiaries of the loan on the debt instrument even though none of the signatories qualify as creditworthy under normal standards.

The remaining subparagraphs of 12 MCAR §3.051 are unchanged.

B. HOME IMPROVEMENT GRANT PROGRAM

Introduction

The Home Improvement Grant Program provides grants to persons and families earning below $5,000 a year for the purpose of assisting in the rehabilitation of residential housing. In 1976 the legislature amended Minn. Stat. §462A.05, subd. 15 which governs the Home Improvement Grant Program to provide additional funding for the purpose of improving the accessibility of residential housing for handicapped occupants. The proposed regulations are to implement that program.

12 MCAR §3.063 Amount of Grant

Existing regulations, in accordance with the original language of

Minn. Stat. 462A.05, subd. 15, provide that no rehabilitation grant may exceed $5,000. In 1976 the legislature added that "...a grant may exceed $5,000 by an amount, up to $2,500, necessary to improve the accessibility of residential housing to a handicapped occupant." Accordingly the proposed regulation will now permit a grant of up to $7,500 in the case of Accessibility Improvement Grants. In cases where a single grant is made for rehabilitation which partially improves accessibility to a handicapped person and partially makes other improvements, the portion which can be used for improvements other than Accessibility Improvements may not exceed $5,000 and the total grant may not exceed $7,500. For example, if a rehabilitation grant is made to repair a roof, bring the electrical system up to code, and lower the electrical switches such that a person in a wheelchair can reach them, the applicant may receive up to $7,500 for this work. However, no more than $5,000 of that may be spent on repairing the roof and bringing the electrical system up to code, because neither of these are Accessibility Improvements. In this example the applicant could spend up to $5,000 for the roof plus the electrical improvements, and $2,500 in addition to lower the switches in the house. On the other hand, the entire $7,500 could be spent on Accessibility Improvements. The intent of this rule is to carry out the legislative purpose of permitting grants of over $5,000 only for Accessibility Improvements.

12 MCAR 3.069 Emergency Home Improvement Grant Fund

The Fund established under this section was intended under the previous rules to provide a source of financing free of the normal allocation

requirements of the Program to enable the Agency to meet emergency needs in situations where a structure was rendered uninhabitable. This section is now proposed to be amended to include emergency situations whereby a dwelling becomes hazardous to a handicapped person. A house could suffer damage which would leave it habitable to the non-handicapped but dangerous for a handicapped person to live in. An emergency occurrence under this rule would include both an event which rendered the structure itself defective and an unexpected catastrophe whereby a resident of the house was rendered handicapped, thereby causing a hazardous living situation for that person. Where an emergency Accessibility Improvement Grant is necessary the rule requires not only that there be no funds available to the Administering Entity from the regular program but also that the Accessibility Improvement Fund have no funds available for this purpose.

12 MCAR §3.070 Accessibility Improvement Fund

This entirely new rule establishes the fund from which Accessibility Improvement Grants shall be made for the purpose of improving the accessibility of residential housing to handicapped persons as provided in Minn. Stat. §462A.05, subd. 15, as amended in 1976. Because this fund is aimed at the relatively small portion of the population who are handicapped, it can be administered better on a state-wide basis, rather than be allocated by regions as is done for the normal home improvement grant program. Of course, regular grant funds may also be applied to "accessibility improvements" as was done occasionally in the past.

12 MCAR §3.071 Maximum Grant

The original content of this section, which was formerly lettered 12 MCAR §3.065 D, provided that only one rehabilitation grant could be made for a single property within a 5-year period, except in emergency situations. This rule is proposed to be changed to permit a second grant for Accessibility Improvements in the situation in which a resident becomes handicapped, or a handicapped person establishes residency in the house, after the date of approval of the initial Home Improvement Grant. The general intent of the rule is to encourage all rehabilitation needing to be done upon a property to be done at one time and to maximize the number of properties for which the grant funds can be used. However, if a residence did not contain a handicapped person at the time of the initial rehabilitation grant there would have been no reason to make Accessibility Improvements. Accessibility Improvements should not be denied when the need arises because of earlier rehabilitation work. A new grant made for Accessibility Improvements under this provision can amount to up to $7,500.

Paragraph B of this section deals with the situation which has arisen because the Accessibility Improvement Grant Program has only been in operation since September 1, 1977. Prior to September 1, 1977, no fund was specifically earmarked for Accessibility Improvements and therefore rehabilitation work might have been done on a structure containing a handicapped person without being able to take advantage of the increased grant available for Accessibility Improvements. Handicapped persons should now be eligible to receive the additional $2,500 available for Accessibility Improvements

without being penalized for having had other work done before the change in the law. To avoid a windfall from the change in the law, the rule provides that the cumulative total for all grants for Accessibility Improvements for a single dwelling should not exceed the statutory limit of $7,500 within the five-year period.

12 MCAR §3.072 Definitions

Subparagraph A defines a "Handicapped Person" for the purposes of this program. The emphasis is placed on the extent to which the disability reduces the person's capacity to function in a residential setting. The intent of the fund is to improve the ability of the handicapped person to live more independently, or at least ouside of an institutional setting, by making such physical changes in their dwellings as will accommodate their particular disabilities. A disability that is only temporary does not qualify under this program because the limited funds available should not be spent on structural changes that will be of use for only a forseeably restricted period of time. The condition must not be "correctable" because the type of disability that medication or a device such as braces or glasses can correct should not require changes in the structure of the dwelling. A written certificate of a physician is required in the cases where a device to increase mobility is not used,as a precaution against fraud.

The definition of "Accessibility Improvement" in paragraph B again concentrates on the criteria of improving the handicapped person's ability to function in a residential setting. It is broadly defined to include any interior or exterior improvement with that effect and includes such structural

changes as the construction of interior or exterior ramps, installation of lever-action hardware, bathroom and kitchen improvements such as elevated water closets, grab bars, and shower stalls, construction or replacement of cupboards and appliances to provide access to sinks, ovens, and storage areas, insulation of hot water pipes, and modification of rooms to allow for five-foot turning radius in the work space.

C. WARRANTY CLAIM PROGRAM

Introduction

The legislature in Minn. Stat. §462A.05, subd. 16, permitted the Agency to establish a program to correct defects in construction funded by Agency sponsored loans. The Agency has determined that it has sufficient resources in the Housing Development Fund to establish such a program under this authority. The program provides that payments may be made to correct deficiencies or defects which substantially affect the livability of dwellings constructed or rehabilitated by Agency loans, if these defects occur within specific time limits. Nothing in this program, however, affects the basic right of the owner or loan recipient individually to pursue any remedies that he may have against the contractor who carried out the work which contains the defects or against the seller of the home which later proved to be defective. This program merely permits the Agency in emergency situations to pay for the repairs itself and then be subrogated to the owner's right to pursue whatever legal remedies are available.

12 MCAR §3.140 Defects Covered by Warranty Claim Program

This section provides that in the case of defects (which term includes defective work or materials, and also problems caused by work or materials improperly omitted) in construction or rehabilitation financed by an Agency loan program the Agency may pay to correct such defects under certain limited circumstances, as follows:

1. Defects which result in damage to the load-bearing portions of the structure. This provision corresponds to the definition of "major construction defect" under the State Warranty Act. Minn. Stat. §327A.01, subdivision 5. By its nature such a defect constitutes an emergency situation because of the danger of collapse of the structure if it is not repaired.

2. Other defects which do not affect the load-bearing function, as long as they are of such a character as to render the house unsafe or unlivable for the average person. To qualify under this section the defect must be serious. For example, a leaky basement which causes a small amount of water to enter on occasion would not be covered by this program. On the other hand, a leak so bad that the foundations could possibly be affected or which results in constant standing water such as to create a health hazard would be a defect correctable under this program.

3. Defects which constitute an imminent hazard to a handicapped person. A defect in a dwelling which normally might not qualify as dangerous could become dangerous to the health of a handicapped resident because of his or her special needs, and therefore constitute the kind of emergency situation in which Agency intervention is appropriate.

The Agency wishes to avoid being inserted into every controversy between borrower, purchaser, and contractor where Agency funds have been used. This would involve the Agency in numerous, often petty disputes at great administrative cost, in situations where Agency involvement in most cases would be unnecessary to the resolution of the dispute. The homeowner is normally in the best position to determine how and whether he will pursue his remedies against an allegedly incompetent contractor. The existence of conciliation courts, legal aid offices, and lawyers willing to work on contingency fee bases are all available to aid those recipients who would otherwise have difficulty pursuing their legal remedies. Only where there is truly a major defect with the possibility of grave consequences to life or property from delay in repair is it advisable for the Agency to intervene.

The legislature did not appropriate any funds to operate this Program. Nor does the Agency receive appropriations to cover its general operating costs. The only source of funds for such expenses is the Agency's General Reserve Account which contains the earnings from Agency loans and short-term investments. A warranty claim program which did not limit Agency payments to emergency situations would subject the General Reserve Account to being drawn down beyond its capacity and ultimately endanger the Agency's ability to operate.

In 1977 the legislature passed the State Warranty Act (Minn. Stat. §327.01 et seq.) which sets the minimum standards for new housing construction in the State. The Agency believes this statute to be the most recent, thorough attempt by the legislature to impose warranties on the housing construction industry and therefore these rules have adopted it as a guide to the defects which are to be considered below warranty standard and appropriate for Agency intervention.

12 MCAR §3.141 Eligible Recipients for Warranty Claim Payments

This proposed section establishes the requirements for recipients of warranty claim payments from the Agency. Sections A, B, and C which require the recipient to be a person of low and moderate income, a recipient of an Agency loan or a purchaser of a home from a recipient of an Agency loan, and an owner and occupant of the home where the defect has occurred are required by Minn. Stat. §462A.05, subd. 16.

Subparagraph D requires that the applicant have taken all steps necessary to maintain all warranties applicable to the work in question. For a defect to be repaired under the Warranty Claim Program, Minn. Stat. §462A.05, subd. 16, requires that the original work be covered by an Agency approved warranty. The Agency requires such warranties as a matter of course at the time that the loans are arranged for. Subdivision D requires that the applicants also do their part to keep in effect those warranties demanded by the Agency, and also any other warranties which might be applicable, such as, for example, those supplied with products used in construction, or any additional warranties which may be made by the contractor above the minimum required. The intent of the Warranty Claim Program is not that the Agency bear the cost of correcting all defects that occur in Agency financed construction but only that the Agency bear the risk of collection from the responsible contractor in those instances where the repair must be promptly accomplished. Under this program the Agency payments are made in the first instance to the Owner or repair person and then the Agency is empowered to pursue whatever legal rights the owner may have had against the person responsible for the defects. Thus, subdivision D's requirement that the warranties be maintained in effect merely ensures that the owner preserve such legal rights as may exist for the Agency to use in recovering payments it has made. If the owner has allowed the Warranties to lapse such that no

further legal rights are available against the person who caused the defect then the owner should bear the cost of making the repairs.

Subdivision E for similar reasons requires the cooperation of the owner in any steps the Agency takes to recoup its payments from the person responsible for the defects. The right of the Agency to be subrogated to the right of the owner to recover damages against any party calculated to be responsible for such damages is specifically provided for in Minn. Stat. §462A.05, subd. 16(b). Examples of cooperation that the Agency may require from the applicant include signing of the subrogation documents, and testifying in proceedings that the Agency may bring against the contractor on the Agency's behalf.

12 MCAR §3.142 and 143 Eligible Applications

These two sections establish the time limits within which Agency payments may be made. Minn. Stat. §462A.05, subd. 16, which establishes the Warranty Claim Program, differentiates between rehabilitation and new housing construction, and requires that applications for assistance under the Warranty Claim Program be made to the Agency within two years after the issuance of a rehabilitation loan or within four years after the issuance of a mortgage loan. These limitations are calculated from the time that the loan issues without regard to the date or nature of the work done and are thus in the nature of a statute of limitations. These statutory limitations are specifically listed in the proposed rules, along with a more general requirement that any other statute of limitations which might require that legal action be taken by the owner within a shorter period of time than that specified by §462A.05, subd. 16, be complied with as well.

(The normal statute of limitations for a cause of action based in contract is six years (Minn. Stat. §541.05, subd. 1(1)) and therefore would not constitute a limitation under this program. An example of a shorter limitation might be the notice requirements often imposed in order to preserve an action against a municipality.) The purpose of this Rule is to further the general principle that the Agency's right to take action against the person responsible for the defect must be preserved before payments can be made under this program.

In addition to the requirement that the Agency be notified of a defect within a certain time limit is the requirement that the defect itself have occurred within a certain period after the construction has taken place. For these time limits, which are more in the nature of warranty limits, the rules look to the State Warranty Act which sets standards for the construction trade. The State Warranty Act requires that the construction work be free from defects for a varying length of time depending on the kind of work involved, providing that during a one-year period after the completion of the work the dwelling should be free from defects caused by faulty workmanship and defective materials, during two years the dwelling should be free from defects caused by faulty installation of plumbing, electrical, heating, and cooling systems, and during ten years the dwelling should be free from major construction defects. Minn. Stat. §327A.02, subd. 1. The proposed rules incorporate these warranty limitations, with the modifications necessary to conform them to the statute of limitations. 12 MCAR §3.142, applicable to rehabilitation loans, thus provides a one-year warranty for faulty workmanship and a two-year warranty for faulty installation of plumbing, electrical, heating, or cooling systems and for defects in

load-bearing portions of the dwelling. The longer ten-year warranty for major construction defects which is provided for in the State Warranty Act is irrelevant because of the statutory limitation of two years from the issuance of the loan, demanded by the Warranty Claims statute. Similarly in 12 MCAR §3.143 the warranty on load-bearing portions of the dwelling is extended to four years after date of initial occupancy because the statute of limitations on mortgage loans is four years from the date of issuance of the loan.

Another minor deviation between the Rules and the State Warranty Act concerns the date from which the warranty will be calculated. For rehabilitation work, the rule provides that the warranty will run from the date of completion of construction whereas in the mortgage loan situation, the warranty runs from the date of initial occupancy of the dwelling, which is the date selected by the State Warranty Act. The difference is due to the fact that rehabilitation work tends to be relatively minor in character, and the date of completion of any particular job can be easily calculated, whereas in the construction of a new home, which may take place over several months and in which many aspects of the work are so inter-related that it is not feasible to define a completion date for any particular portion of the work, the only feasible date on which to calculate a warranty is the date of initial occupancy of the house, the date on which the contractor turns over the house to the recipient.

Any defect which appears after the time limit set by the State Warranty Act, as incorporated by these rules, would by definition not be covered by the warranty. The contractor would thus not have breached his

warranty to the owner and the owner would be left to bear the cost of any repairs. In such a situation it is not appropriate that the Agency bear this cost as the Agency would not be able to pass it on to the contractor. Thus, in order to qualify for payment under the Warranty Claim Program an applicant must meet all applicable time limits, both in terms of the date on which the defect first appeared, and the time in which the applicant must have notified the Agency of his claim under the Act.

12 MCAR §3.144 Exclusions

This rule contains examples of the kinds of losses which will not be covered by the Agency Warranty Claim Program, and correspond to the exclusions of the State Warranty Act. As limits on the warranties given by contractors, these exclusions should also apply to the Agency Warranty Claim Program because the Agency should not be liable for defects which the contractor itself was not liable for. Only minor changes were made in the statutory language when putting it in rule form. Paragraph B was expanded to clarify the term "secondary loss" which includes incidental loss such as the cost of alternate shelter, and consequential loss such as the diminution in value of the dwelling.

The Agency intends to call Mary Tingerthal, Gail Vetter, George Reilly, and Harold Prust as expert witnesses to testify at the hearing on these proposed rules. The Agency will rely upon the statutes cited above, and on the Rules and Regulations of the Minnesota Housing Finance Agency.

MINNESOTA HOUSING FINANCE AGENCY

BY M. Patricia Schaffer

M. Patricia Schaffer
Attorney for the Minnesota
Housing Finance Agency

DATED: August 31, 1978

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE MINNESOTA HOUSING FINANCE AGENCY

In the Matter of the Proposed Adoption of Rules of the Minnesota Housing Finance Agency Relating to the Home Improvement Loan, Accessibility Improvement Grant, and Warranty Claim Programs.

REPORT OF HEARING EXAMINER

The above-entitled matter came on for hearing in St. Paul on September 27, 1978, before Steve M. Mihalchick, Hearing Examiner assigned by the Chief Hearing Examiner.

This is a rules hearing pursuant to Minn. Stat. Ch. 15, to determine whether proposed changes to and new rules codified as 12 MCAR §§ 3.051 A., 3.063, 3.065 D., 3.069-3.072 B. and 3.140-3.144 should be adopted.

Mary Tingerthal, Gail Vetter, and George Prust of the Minnesota Housing Finance Agency, and George Reilly, Attorney at Law, appeared as expert witnesses. M. Patricia Schaffer, Special Attorney, appeared for the Minnesota Housing Finance Agency (hereinafter "Agency"). Three persons attending the hearing signed the register.

Pursuant to Minn. Stat. § 15.0412, subd. 4, this Report shall be available for review to all affected individuals upon request for at least five days.

The Agency shall, if it proposes to adopt the rules as originally proposed or amended, submit the complete hearing record, including its Findings and Order, to the Chief Hearing Examiner no earlier than five days subsequent to the receipt of this Report. This submission shall clearly indicate any changes made to the rules as originally proposed, preferably in the format that will be submitted to the State Register for publication. The Chief Hearing Examiner shall complete his review and submit his Report to the Agency on the issues of substantial changes in the rule and compliance with Minn. Stat. § 15.0412 within ten calendar days. Thereafter, the Agency shall be responsible for filing the rules with the Attorney General and for notifying persons who have indicated that they wish to be notified of such filing.

Based upon all the records and proceedings herein, the Examiner makes the following:

FINDINGS OF FACT

PROCEDURAL REQUIREMENTS

1. On August 7, 1978, the Agency filed the following documents with the Chief Hearing Examiner:

   (a) A copy of the proposed rules;
   (b) A proposed Order for Hearing;
   (c) A proposed Notice of Hearing; and
   (d) A Statement of the estimated length and number of people attending the hearing.

2. On August 28, 1978, a Notice of Hearing and a copy of the proposed rules were published at 3 State Register 309.

3. On August 25, 1978, the Agency mailed the Notice of Hearing to all persons and associations who had registered their names with the Secretary of State for the purpose of receiving such notice.

4. On September 1, 1978, the Agency filed the following documents:

(a) The Order for Hearing and Authorizing Resolution;
(b) The Notice of Hearing as mailed;
(c) The Affidavit of Receipt of the Secretary of State's list;
(d) The Affidavit of Mailing;
(e) The Secretary of State's Certificate; and
(f) The Statement of Need and Reasonableness, including the names of Agency personnel who will represent the Agency.

The documents were available for inspection at the Office of Hearing Examiners from the date of filing to the date of the hearing.

5. The record remained open through October 4, 1978, for the receipt of written comments and statements. One comment was received which supported the proposed rules.

STATUTORY AUTHORITY

6. Minn. Stat. §§ 462A.06, subd. 11, grants the Agency the following authority:

> It may make and publish rules and regulations respecting its mortgage lending, construction lending, rehabilitation lending, grants, and temporary lending, and any such other rules and regulations as are necessary to effectuate its corporate purpose.

Minn. Stat. §§ 462A.05, subd. 14 (Supp. 1977) provides that the Agency:

> . . . may agree to purchase, make or otherwise participate in the making, and may enter into commitments for the purchase, making or participation in the making, of eligible loans for rehabilitation to persons and families of low and moderate income, and to owners of existing residential housing for occupancy by such persons and families, for the rehabilitation of existing residential housing owned by them.

Minn. Stat. § 462A.05, subd. 15 (Supp. 1977) authorizes the Agency to:

> . . . make grants to persons and families of low and moderate income . . . to rehabilitate or to assist in rehabilitating existing residential housing owned or occupied by such persons or families. . . . The amount of such grant shall not exceed the lesser of (a) $5,000, or (b) the actual cost of the work performed, or (c) that portion of the cost of rehabilitation which the agency determines cannot otherwise be paid by the person or family without spending an unreasonable portion of the income of the person or family thereon; provided, however, that a grant may exceed $5,000 by an amount, up to $2,500, necessary to improve the accessibility of residential housing to a handicapped occupant.

Minn. Stat. § 462A.05, subd. 16, authorizes the Agency to:

> . . . make payments or expenditures from the housing development fund to persons of low or moderate income, who are recipients of an eligible loan . . . or who have purchased residential housing from a recipient of such eligible loan, and who are owners and occupants of residential housing constructed or rehabilitated . . . when, in the agency's determination, such residential housing contains defects or omissions which affect the structural soundness, or the use and the livability of such housing . . . for the purposes of (i) correcting such defects, or (ii) paying the claims of the owner arising from such defects, provided, that this authority shall exist only if the owner has requested assistance from the agency not later than four years after the issuance of the eligible loan, or where such residential housing was rehabilitated . . . only if the owner has requested assistance from the agency not later than two years after issuance of the eligible loan.

These laws provide the statutory authority and the general need for the promulgation of the proposed rules. The proposed rules deal with the following three subjects: The type of ownership required for participation in the Home Improvement Loan Program and the persons whose signatures are required on the application and loan documents; improvement grants to make residential homes more accessible to the handicapped; and Agency financing to correct defects in construction or rehabilitation financed through the Agency's Limited-Unit Development Mortgage Loan or House Improvement Loan Programs.

12 MCAR § 3.051 - ELIGIBLE APPLICATIONS

7. The amendment proposed to § 3.051 A. establishes who must sign the application and loan documents for Home Improvement Loans. The Examiner adopts the Agency's Statement of Need and Reasonableness as his Finding in regard to signatures on the application and loan documents. The Statement is attached hereto.

8. Section 3.051 A. also defines the kind of ownership required for loan eligiblity. The proposed amendment adds holders of life estates as eligible applicants. The Examiner adopts as his Finding the Agency's Statement of Need and Reasonableness insofar as it relates to the addition of holders of life estates as eligible applicants.

At hearing, the Agency proposed further modification to this provision to make it clear that ownership of a dwelling can be aggregated to qualify for a Home Improvement Loan. The Examiner adopts the attached Agency's Statement of Need and Reasonableness as his Finding with respect to the proposed amendment and further finds that the proposed final rule does not affect a class of persons not represented at the hearing or go to a new subject matter of significant substantive effect, or make a major substantive change that was not raised by the original Notice of Hearing in such a way to invite reaction at the hearing or result in a rule fundamentally different from that contained in the Notice of Hearing.

12 MCAR § 3.063 - AMOUNT OF GRANT

9. The Agency proposes to add a provision for the amount of Accessibility Improvement Grants to conform with statutory additions in Minn. Laws 1977, Ch. 401, § 5. As discussed at the hearing, the language of the last sentence of the rule should be altered slightly. As it stands, the latter half of the sentence might be interpreted to place a ceiling on the total amount a grant recipient can spend on the improvement. The fourth line of the sentence should read "and the total amount of the grant for [aggregate cost of] such other eligible improvements and the Accessibility Improvements shall not exceed $7,500" to clarify that the ceiling is placed on the amount of the grant and not the amount of the expenditure. The Examiner finds the modified rule to be needed and reasonable for the reasons given in the Statement of Need and Reasonableness. The modification is not a substantial change to the proposed rule.

12 MCAR § 3.069 - EMERGENCY HOME IMPROVEMENT GRANT FUND

10. The proposal amends the existing rule relating to eligibility for emergency home improvements to include emergencies rendering a dwell-

ing imminently hazardous to a handicapped person. The Examiner finds the proposed rule necessary and reasonable for the reasons set forth in the Statement of Need and Reasonableness.

12 MCAR § 3.070 - ACCESSIBILITY IMPROVEMENT FUND

11. § 3.070 establishes the fund from which accessibility grants may be made. The rule further provides that grants from the fund will not be subject to allocation-by-region requirements. Instead, the grants will be administered on a state-wide basis. For the reasons stated in the Statement of Need and Reasonableness, the Examiner finds the rule to be needed and reasonable.

12 MCAR § 3.071 - MAXIMUM GRANT

12. This rule was previously numbered § 3.065 D., and permitted a second Home Improvement Grant within a five-year period to be made only if damage arising out of an emergency occurred. The proposed amendment preserves the emergency occurrence provision and further allows a second grant to be made for accessibility improvements if an occupant became handicapped or a handicapped person became a resident in a dwelling after the first Home Improvement Grant was approved. The rule also allows dwellings improved under a Home Improvement Grant prior to the availability of the Accessibility Improvement Grants to receive up to $2,500 in additional grant money if the dwelling was occupied by a handicapped person and was improved prior to September 1, 1977, when accessiblity grants became available. This portion of the rule was especially praised by public testimony at the hearing. The rule is necessary and reasonable for this reason and those set forth in the Statement of Need and Reasonableness.

12 MCAR § 3.072 - DEFINITIONS

13. The rule defines "Handicapped Person" and "Accessibility Improvement." The respective definitions focus on the permanency of disabilities and dwelling improvements designed to adapt a dwelling to a handicapped person's needs. The rule is necessary and reasonable for the reasons given in the Statement of Need and Reasonableness.

12 MCAR § 3.140 - DEFECTS COVERED BY WARRANTY CLAIM PROGRAM

14. This rule sets forth specific types of defects which the Agency may pay to correct. The first of these corresponds to the definition of "major construction defect" in the State Warranty Act. The second type includes those defects which might make a dwelling uninhabitable. The third type includes defects which might make a dwelling uninhabitable for a handicapped person. For the reasons stated in the Statement of Need and Reasonableness, the Examiner finds the rule to be needed and reasonable.

12 MCAR § 3.141 - ELIGIBLE RECIPIENTS FOR WARRANTY CLAIM PAYMENTS

15. This rule requires a recipient of warranty claim payments to be a person of low or moderate income, to be a recipient of an agency loan or a purchaser from such a recipient, and to be the owner and occupant of the dwelling containing the defect. Pursuant to Minn. Stat. § 462.05, subd. 16, only defects originally covered by an Agency-approved warranty may be repaired through the program. The applicant must have kept the warranties

good and must assist the Agency in recovering under the warranties. At hearing, the Agency proposed an amendment to § 3.141 C. The amendment clarifies the extent of ownership required for eligibility. The ownership requirements under the amended rule conform to the ownership requirements in the Agency's proposed amendment to § 3.051 A. Like the proposed amendment to § 3051 A., the proposed amendment to § 3.141 C. is not substantially different from the proposed rule and is intended for clarification only. For this reason, and for the reasons set forth in the Statement of Need and Reasonableness, the Examiner finds that the proposed rule as modified is necessary and reasonable.

12 MCAR § 3.142 - ELIGIBLE APPLICATIONS: REHABILITATION

16. This rule establishes a two-year limitation on applications for warranty claim payments based on work done under a rehabilitation loan. The rule further requires that the applicant show that defects arose within a specified period after completion of the work, the period being one or two years depending on the kind of work involved. The Examiner finds the time limits reasonable and necessary for the reasons given in the Statement of Need and Reasonableness.

12 MCAR § 3.143 - ELIGIBLE APPLICATIONS: LIMITED-UNIT MORTGAGE LOANS

17. This rule establishes a four-year limitation on applications for warranty claim payments based on work done under a Limited-Unit Mortgage Loan. Like § 3.142, it requires applicants to show that the defect arose within a specified time period depending on the kind of work giving rise to the defect. Section 3.143 differs from § 3.142 in the dates from which the period runs. While § 3.142 measures the time period from the date of completion, § 3.143 measures the time period from the date of occupancy of the dwelling. The differing starting dates arise from the practical difficulties of determining when a new home is completed. For this reason and others set forth in the Statement of Need and Reasonableness, the Examiner finds the proposed rule necessary and reasonable.

12 MCAR § 3.144 - EXCLUSIONS

18. This rule states the losses for which Agency payments will not be made. The exclusions listed in the State Warranty Act are relied on by the Agency in this rule. The Examiner finds the exclusions necessary and reasonable for the reasons given in the Statement of Need and Reasonableness.

C O N C L U S I O N S

1. Due, timely and adequate notice of the hearing was properly served and published by the Agency. All substantive and procedural requirements have been fulfilled.

2. The Agency has demonstrated its statutory authority to adopt the proposed rules.

3. The Agency has demonstrated the need and reasonableness of the proposed rules and amendments, as modified, by an affirmative presentation of facts.

4. The modifications to the proposed rules made by the Agency are not substantial changes.

R E C O M M E N D A T I O N

The Hearing Examiner recommends that the proposed rules be modified as suggested in Findings Nos. 8, 9 and 15, and that the rules so modified be adopted.

Dated this 25th day of October, 1978.

STEVE M. MIHALCHICK
Hearing Examiner

STATE OF MINNESOTA)
(ss.
COUNTY OF RAMSEY)

AFFIDAVIT OF SERVICE

Eileen A. Gaiovnik, being first duly sworn, deposes and says that on the 25th day of October, 1978, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached

Report of Hearing Examiner, HFA-79-001-SM

unstamped, by placing in the designated tray to be collected by messenger for delivery to the central mailing station as required by Minn. Stat. § 16.54 (1974), a true and correct copy thereof on the individual indicated below. ~~all persons at the addresses shown on the attached mailing list.~~

Eileen A. Gaiovnik

Subscribed and sworn to before me this

25th day of October, 1978.

Sandra A. Haven

SANDRA A. HAVEN
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires July 29, 1983

Ms. M. Patricia Schaffer
Leonard, Street and Deinard
Attorneys at Law
1200 National City Bank Building
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Minneapolis, Minnesota - 55402

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE MINNESOTA HOUSING FINANCE AGENCY

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE MINNESOTA HOUSING FINANCE AGENCY RELATING TO THE HOME IMPROVEMENT LOAN, ACCESSIBILITY IMPROVEMENT GRANT, AND WARRANTY CLAIM PROGRAMS.	REPORT OF THE CHIEF HEARING EXAMINER

WHEREAS, a hearing was held on September 27, 1978, before Steve M. Mihalchick, a Hearing Examiner of the State Office of Hearing Examiners, on the above-entitled matter in compliance with Minn. Stat. § 15.0412, Subd. 4; and

WHEREAS, the Report of Hearing Examiner made pursuant to Minn. Stat. § 15.052, Subd. 3, was issued to the Housing Finance Agency on October 25, 1978; and

WHEREAS, the Housing Finance Agency has now determined to adopt rules pursuant to Minn. Stat. § 15.0412, Subd. 4; and

WHEREAS, the Housing Finance Agency has submitted said rules to the Chief Hearing Examiner for review pursuant to Minn. Stat. § 15.052, Subd. 4, and Rule HE 110; and

WHEREAS, the Chief Hearing Examiner finds that the final proposed rules are not substantially different from those proposed at the public hearing and that the Housing Finance Agency has met all requirements of Minn. Stat. § 15.0412, Subd. 4.

NOW, THEREFORE, upon receipt of this Report, the Housing Finance Agency has the responsibility of submitting the complete hearing record and the rules as adopted by the Agency to the Attorney General and to publish in the State Register, all pursuant to Minn. Stat. § 15.0412, Subd. 4.

Dated this 8th day
of November, 1978.

DUANE R. HARVES
Chief Hearing Examiner