

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 1044C

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 7-2-84
DATE FOR REVIEW 7-11-84
DATE DUE 7-16-84

Adopted w/a hearing _____
Adopted w/o hearing ✓
Temporary rule _____

Approved July 16, 1984 (COS) Disapproved _____ Returned to Agency _____

Resubmitted _____ Due _____
Approved _____ Disapproved _____ Returned to Agency _____

Date filed w/Secretary of State 7-17-84 Revisor approved 7/3/84 disapproved _____

✓ Rule as Adopted

✓ Rule as Proposed

✓ Order Adopting 6.28.84 Date

N/A Notice of Intent to Solicit Outside Opinion

✓ Order for rulemaking
N/A date of Hearing

✓ Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
✓ Sufficiency

✓ Affidavit of Mailing Notice or rulemaking
5.11.84 At least 30 days prior to ~~hearing~~/adoption

✓ Mailing list Certificate

✓ Publication in State Register
5.14.84 At least 30/~~20~~ days prior to ~~hearing~~/adoption

N/A Hearing Examiner's Report

_____ Chief Hearing Examiner's Report(s)
_____ Approving H.E.'s Report
_____ Approving agency action

_____ Agency's Findings of Fact

_____ LCRAR Report or agency Affidavit

✓ Certificate of Board's Resolution Adopting Rules

_____ Order Approving Incorporation by Reference

✓ Statement of Need and Reasonableness contains sm. biz statement

N/A Petition for Adoption of a Rule

✓ Record (includes transcript or tape, exhibits, comments received by agency, requests for a hearing, and other relevant materials)

✓ Certificate of Compliance w/Rulemaking Procedures

N/A Affidavit of Mailing Notice of Submission to Attorney General

✓ Notice of Submission to the Attorney General

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : ALAN L. HANS, Deputy Director
Minnesota Housing Finance Agency

DATE: 7/16/84

Attn: KARL J. HERMAN/Special Assist. Att. General

FROM : LARRY D. STARNS
Special Assistant LDS
Attorney General

PHONE: 297-3493

SUBJECT: In the Matter of the Proposed Adoption of Rules Governing Accessory Apartment Loans Without a Public Hearing.

Enclosed herewith are the rules you have submitted for approval. These rules have been approved by this office and filed with the Secretary of State. Please note that they have not been filed with the State Register. This must be done promptly by your agency.

Upon receipt and before transmittal to your agency, however, it is important that you recheck these rules as to:

1. Affixation of stamps of the Attorney General and Secretary of State;

2. Coverage by these stamps of all rules submitted; and

3. Inclusion of all pages to the rules in the approved set.

If you have any questions in this regard, please contact me.

Encs.

cc: Ms. Kathy Burek
Mr. Duane Harves

LDS: sa

MINNESOTA HOUSING FINANCE AGENCY

June 29, 1984

Mr. Larry Starns
Special Assistant Attorney General
G-25 Administration Building
50 Sherburne Avenue
St. Paul, Minnesota 55155

RE: In the Matter of the Proposed Adoption of Rules Governing Accessory Apartment Loans Without a Public Hearing

Dear Mr. Starns:

Enclosed please find for your review pursuant to Minnesota Statutes Sections 14.21 through 14.28, the adopted rules of the Minnesota Housing Finance Agency.

The following materials are submitted to you for your review pursuant to Minnesota Rules, Part 2000.0400:

Rule as Adopted;

Order Adopting;

Certificate of Board's Resolution Adopting the Rule;

Order of Notice to Adopt Rules Without a Public Hearing;

Certificate of Agency's Authorizing Resolution;

Notice of Intent to Adopt Rule Without a Public Hearing;

Affidavit of Mailing Notice of Intent to Adopt a Rule Without a Public Hearing;

Mailing List Certificate;

Rule as Proposed;

Statement of Need and Reasonableness; and

Certificate of Compliance with Rulemaking Procedures.

The Agency did not publish a Notice of Intent to Solicit Outside Opinion in connection with this rule. No requests for a hearing were received during the 30 day comment period. The Agency did not receive any commnets during the 30 day comment

period, nor did it receive any requests from persons desiring notice of the date of submission of the proposed rule to the Attorney General. The Adopted rules are the same as the Proposed rules.

Sincerely,

Alan L. Hans
Deputy Director

ALH/kjj

Encl.

Ag Copy

Housing Finance Agency

Adopted Rules Governing Accessory Apartment Loans

Rules as Adopted

4900.0581 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of parts 4900.0581 to 4900.0584, the following terms have the meanings given them.

Subp. 2. **Accessory apartment loan.** "Accessory apartment loan" means a loan the proceeds of which are used to construct an additional dwelling unit within a structure, or to improve not more than two rental dwelling units located in a structure that, at the time of the loan application, contains a total of not more than three dwelling units.

Subp. 3. **Borrower.** "Borrower" means one or more persons who apply for and receive an accessory apartment loan and who are the makers of a note in evidence of the loan.

Subp. 4. **Dwelling unit.** "Dwelling unit" means a housing unit that includes self-contained cooking, sleeping, and bathroom facilities, and is located in the structure. A dwelling unit may be occupied by either a tenant or the owner of the structure.

Subp. 5. **Rental dwelling unit.** "Rental dwelling unit" means a dwelling unit that is occupied by a person or household other than the owner of the structure and for which rent in cash or in kind is received by the owner.

Subp. 6. **Structure.** "Structure" means a building that was originally built as a single-family residence and that satisfies the eligibility requirements of part 4900.0582, subpart 5.

4900.0582 ELIGIBILITY REQUIREMENTS.

Subpart 1. **Property interest.** A borrower shall individually or in the aggregate possess at least a one-third interest in a fee ownership of, a contract for deed for, or a life estate in the property on which the structure to be improved is located.

Subp. 2. **Occupancy.** If the proceeds of an accessory apartment loan are used to construct an additional dwelling unit, at least one of the borrowers shall occupy the structure as his or her principal residence at the time of loan application or shall occupy one dwelling unit within the structure within 60 days of the date of the note in evidence of the loan.

If the proceeds from an accessory apartment loan are used to improve one or more dwelling units, at least one of the borrowers shall occupy one of the dwelling units as his or her principal residence at the time of loan application.

Subp. 3. **Credit worthiness.** A borrower shall be a reasonable credit risk and shall be able to pay the loan obligation as determined under part 4900.0080.

Subp. 4. **Borrower eligibility.** A borrower shall meet either of the following standards to be eligible for an accessory apartment loan:

A. a borrower shall be a person or household of low or moderate income as defined in part 4900.0010, subpart 23; or

B. a borrower shall agree to rent all of the dwelling units that he or she does not occupy at a rate not to exceed the current United States Department of Housing and Urban Development (HUD) Fair Market Rents for Existing Dwellings in the section 8 program under the United States Housing Act of 1937, United States Code, title 42, sections 1437 et seq. as amended through December 31, 1983, as determined and adjusted from time to time by HUD, for a period of at least one year from the date the dwelling unit is first occupied by a renter.

Subp. 5. **Eligibility of structure.** The structure to be improved or modified with the proceeds of an accessory apartment loan must comply with applicable zoning ordinances or other applicable land use guides upon completion of the construction or improvements.

If a borrower qualifies for a loan by satisfying the requirement in subpart 4, item A, the structure to be modified or improved must have been completed and occupied as a residence

for at least 90 days at the time of the loan application.

If a borrower qualifies for a loan solely by satisfying the requirements in subpart 4, item B, the structure to be modified or improved must be at least 15 years old at the time of loan application.

4900.0583 ELIGIBLE IMPROVEMENTS.

Subpart 1. **Permanent general improvements.** Proceeds from an accessory apartment loan must be used to finance only permanent general improvements. Permanent general improvements include additions, alterations, renovations, or repairs upon or in connection with existing structures. Permanent general improvements do not include materials, fixtures, or landscaping of a type or quality exceeding that customarily used in the locality for properties of the same general type as the structure to be modified or improved.

Subp. 2. **Loan proceed restrictions.** The proceeds from an accessory apartment loan must be used to finance only improvements or modifications to, or in connection with, an existing structure. The proceeds from an accessory apartment loan may be used as follows:

A. to add not more than one dwelling unit to a structure that is a single-family residence at the time of the loan application; or

B. to improve a structure that, at the time of the loan application, contains one or two rental dwelling units in addition to a dwelling unit occupied by the owner of the structure. Use of the proceeds from an accessory apartment loan for the type of structure described in this item is restricted to improvements that will bring all rental dwelling units into compliance with local zoning ordinances and other applicable health, fire prevention, building, and housing codes and standards.

The proceeds from an accessory apartment loan must not be used to pay for assessments for public improvements except if the improvements will bring an individual sewage disposal system (including septic system) located on the property on which the

structure is located into compliance with local, state, or federal environmental and sanitary standards.

Subp. 3. **Energy conservation.** If an existing or newly constructed rental dwelling unit does not comply with the state energy conservation standards for rental housing, the proceeds from an accessory apartment loan must be used to bring the rental dwelling unit into compliance with these standards.

Subp. 4. **Time of completion.** Improvements or construction financed in whole or in part by an accessory apartment loan must be completed within nine months of the date of the first disbursement of the loan except for delays due to causes beyond the borrower's reasonable control, such as fire, strike, and shortage of materials.

4900.0584 OTHER REQUIREMENTS.

Subpart 1. **Unavailability of financing.** At the time of application for an accessory apartment loan, conventional financing for this purpose must not be available from private lenders upon equivalent terms and conditions.

Subp. 2. **Other codes and standards.** Following the completion of construction or improvement, all rental dwelling units must comply with all applicable health, fire prevention, building, and housing codes and standards. However, an accessory apartment loan shall not be denied solely because the construction or improvements to be financed by it will not bring the entire structure into full compliance with these codes and standards.

Subp. 3. **Warranty of workmanship and materials.** Contracts for construction or improvement of a dwelling unit that are financed in whole or in part by the proceeds from an accessory apartment loan must contain a warranty of workmanship and materials that is approved by the agency.

APPROVED AS TO LEGALITY

July 16, 1984

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY Jerry D. Jerome
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
JUL 17 1984
Joan Anderson Growe
Secretary of State

10:35
A.M.

STATE OF MINNESOTA

MINNESOTA HOUSING FINANCE AGENCY

In the Matter of the Proposed Adoption
of Rules Governing Accessory Apartment
Loans Without a Public Hearing

ORDER ADOPTING RULES

Notice of the Agency's intent to adopt the above-entitled rules without a public hearing was published in the State Register on May 14, 1984 and was sent by United States mail to all persons on the list maintained by the Agency pursuant to Minnesota Statutes Section 14.14 Subdivision 1 on May 11, 1984. After affording interested and affected persons an opportunity to submit comments for 30 days, receiving fewer than twenty-five written requests for a public hearing within the 30 day comment period, reviewing and considering the comments, and determining the need for and reasonableness of the above-captioned rules.

NOW, THEREFORE, IT IS ORDERED that these rules identified as Rules of the Minnesota Housing Finance Agency Governing Accessory Apartment Loans are adopted this 28th day of June, 1984 pursuant to authority vested in the Agency by Minnesota Statutes Section 462A.06, Subdivisions 4 and 11.

Alan L. Hans, Deputy Director

STATE OF MINNESOTA

MINNESOTA HOUSING FINANCE AGENCY

In the Matter of the Proposed Adoption of Rules Governing Accessory Apartment Loans

ORDER FOR NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING

It is ordered this 26th day of April, 1984 that a Notice of Intent to Adopt Rules without a Public Hearing in the above-entitled matter be given to all persons who have registered their names with the Minnesota Housing Finance Agency for that purpose and be published in the State Register.

MINNESOTA HOUSING FINANCE AGENCY

James J. Solem, Executive Director

CERTIFICATE OF AGENCY'S

AUTHORIZING RESOLUTION

I, Robert A. Worthington, do hereby certify that I am Chairman of the Minnesota Housing Finance Agency, an Agency duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Agency and properly called and held on the 26th day of April, 1984, that a quorum was present at said meeting, that a majority of those present voted for the resolution and that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

> "RESOLVED, that James J. Solem, Executive Director of the Minnesota Housing Finance Agency, be and he hereby is authorized and directed to give public notice for the purpose of promulgating rules of the Minnesota Housing Finance Agency without a public hearing, said rules relating to Governing Accessory Apartment Loans, as well as to perform any and all acts incidental thereto, including the signing of a notice of intent to adopt rules without a public hearing."

IN WITNESS WHEREOF, I have hereunto subscribed my name this 26th day of April, 1984.

Robert A. Worthington

Chairman

MINNESOTA HOUSING FINANCE AGENCY

In the Matter of the Proposed Adoption of
Rules Relating to Accessory Apartment Loans

NOTICE OF INTENT TO
ADOPT RULES WITHOUT
A PUBLIC HEARING

Notice is hereby given that the Minnesota Housing Finance Agency ("agency") proposes to adopt the above-entitled rules without a public hearing. The agency has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minn. Stat. § 14.21 to 14.28.

Persons interested in these rules shall have 30 days to submit comments on the proposed rules within the 30-day comment period. The rule may be modified as the result of comments received if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language. Unless seven or more persons submit written requests for a public hearing on the proposed rule within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minn. Stat. § 14.13 et. seq. If a public hearing is requested, identification of the particular objection, the suggested modifications to the proposed language, and the reasons or data relied on to support the suggested modifications is desired.

Persons who wish to submit comments or a written request for a public hearing should submit such comments or request to:

Kathleen J. Johnson
Legal Division
Minnesota Housing Finance Agency
Suite 200
333 Sibley Street
St. Paul, Minnesota 55101
Telephone: 612/296-9793

Authority for the adoption of these rules is contained in Minn. Stat. § 462A.06, Subd. 4 and 11. Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules, and that identifies the data and information relied upon to support the proposed rules has been prepared and is available from Kathleen J. Johnson upon request.

Upon adoption of the final rules without a public hearing, the proposed rules, this notice, the Statement of Need and Reasonableness, all written comments received, and the final rules as adopted will be delivered to a designee of the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of these rules for approval, or who wish to receive a copy of the final rules as adopted, should submit a written statement of such request to Kathleen J. Johnson.

A copy of the proposed rule is attached to this notice. Additional copies may be obtained by contacting Kathleen J. Johnson.

Please be advised that Minn. Stat. Ch. 10A.03 requires each lobbyist to register with the State Ethical Practices Board within five (5) days after he or she commences

lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, Subd. 11 as any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250.00, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than $250.00, not including his own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, (612) 296-5615.

Dated: May 11, 1984

James J. Solem
Executive Director

Rules as Proposed (all new material)

4900.0581 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of parts 4900.0581 to 4900.0584, the following terms have the meanings given them.

Subp. 2. **Accessory apartment loan.** "Accessory apartment loan" means a loan the proceeds of which are used to construct an additional dwelling unit within a structure, or to improve not more than two rental dwelling units located in a structure that, at the time of the loan application, contains a total of not more than three dwelling units.

Subp. 3. **Borrower.** "Borrower" means one or more persons who apply for and receive an accessory apartment loan and who are the makers of a note in evidence of the loan.

Subp. 4. **Dwelling unit.** "Dwelling unit" means a housing unit that includes self-contained cooking, sleeping, and bathroom facilities, and is located in the structure. A dwelling unit may be occupied by either a tenant or the owner of the structure.

Subp. 5. **Rental dwelling unit.** "Rental dwelling unit" means a dwelling unit that is occupied by a person or household other than the owner of the structure and for which rent in cash or in kind is received by the owner.

Subp. 6. **Structure.** "Structure" means a building that was originally built as a single-family residence and that satisfies the eligibility requirements of part 4900.0582, subpart 5.

4900.0582 ELIGIBILITY REQUIREMENTS.

Subpart 1. **Property interest.** A borrower shall individually or in the aggregate possess at least a one-third interest in a fee ownership of, a contract for deed for, or a life estate in the property on which the structure to be improved is located.

Subp. 2. **Occupancy.** If the proceeds of an accessory apartment loan are used to construct an additional dwelling unit, at least one of the borrowers shall occupy the structure as his or her principal residence at the time of loan

APPROVED BY THE REVISOR OF STATUTES OFFICE BY:

application or shall occupy one dwelling unit within the structure within 60 days of the date of the note in evidence of the loan.

If the proceeds from an accessory apartment loan are used to improve one or more dwelling units, at least one of the borrowers shall occupy one of the dwelling units as his or her principal residence at the time of loan application.

Subp. 3. **Credit worthiness.** A borrower shall be a reasonable credit risk and shall be able to pay the loan obligation as determined under part 4900.0080.

Subp. 4. **Borrower eligibility.** A borrower shall meet either of the following standards to be eligible for an accessory apartment loan:

A. a borrower shall be a person or household of low or moderate income as defined in part 4900.0010, subpart 23; or

B. a borrower shall agree to rent all of the dwelling units that he or she does not occupy at a rate not to exceed the current United States Department of Housing and Urban Development (HUD) Fair Market Rents for Existing Dwellings in the section 8 program under the United States Housing Act of 1937, United States Code, title 42, sections 1437 et seq. as amended through December 31, 1983, as determined and adjusted from time to time by HUD, for a period of at least one year from the date the dwelling unit is first occupied by a renter.

Subp. 5. **Eligibility of structure.** The structure to be improved or modified with the proceeds of an accessory apartment loan must comply with applicable zoning ordinances or other applicable land use guides upon completion of the construction or improvements.

If a borrower qualifies for a loan by satisfying the requirement in subpart 4, item A, the structure to be modified or improved must have been completed and occupied as a residence for at least 90 days at the time of the loan application.

If a borrower qualifies for a loan solely by satisfying the requirements in subpart 4, item B, the structure to be modified or improved must be at least 15 years old at the time of loan

APPROVED BY THE REVISOR OF STATUTES OFFICE BY:

application.

4900.0583 ELIGIBLE IMPROVEMENTS.

Subpart 1. **Permanent general improvements.** Proceeds from an accessory apartment loan must be used to finance only permanent general improvements. Permanent general improvements include additions, alterations, renovations, or repairs upon or in connection with existing structures. Permanent general improvements do not include materials, fixtures, or landscaping of a type or quality exceeding that customarily used in the locality for properties of the same general type as the structure to be modified or improved.

Subp. 2. **Loan proceed restrictions.** The proceeds from an accessory apartment loan must be used to finance only improvements or modifications to, or in connection with, an existing structure. The proceeds from an accessory apartment loan may be used as follows:

A. to add not more than one dwelling unit to a structure that is a single-family residence at the time of the loan application; or

B. to improve a structure that, at the time of the loan application, contains one or two rental dwelling units in addition to a dwelling unit occupied by the owner of the structure. Use of the proceeds from an accessory apartment loan for the type of structure described in this item is restricted to improvements that will bring all rental dwelling units into compliance with local zoning ordinances and other applicable health, fire prevention, building, and housing codes and standards.

The proceeds from an accessory apartment loan must not be used to pay for assessments for public improvements except if the improvements will bring an individual sewage disposal system (including septic system) located on the property on which the structure is located into compliance with local, state, or federal environmental and sanitary standards.

Subp. 3. **Energy conservation.** If an existing or newly constructed rental dwelling unit does not comply with the state

APPROVED BY THE REVISOR OF STATUTES OFFICE BY:

energy conservation standards for rental housing, the proceeds from an accessory apartment loan must be used to bring the rental dwelling unit into compliance with these standards.

Subp. 4. **Time of completion.** Improvements or construction financed in whole or in part by an accessory apartment loan must be completed within nine months of the date of the first disbursement of the loan except for delays due to causes beyond the borrower's reasonable control, such as fire, strike, and shortage of materials.

4900.0584 OTHER REQUIREMENTS.

Subpart 1. **Unavailability of financing.** At the time of application for an accessory apartment loan, conventional financing for this purpose must not be available from private lenders upon equivalent terms and conditions.

Subp. 2. **Other codes and standards.** Following the completion of construction or improvement, all rental dwelling units must comply with all applicable health, fire prevention, building, and housing codes and standards. However, an accessory apartment loan shall not be denied solely because the construction or improvements to be financed by it will not bring the entire structure into full compliance with these codes and standards.

Subp. 3. **Warranty of workmanship and materials.** Contracts for construction or improvement of a dwelling unit that are financed in whole or in part by the proceeds from an accessory apartment loan must contain a warranty of workmanship and materials that is approved by the agency.

APPROVED BY THE REVISOR OF STATUTES OFFICE BY:

OFFICE OF THE REVISOR OF STATUTES

Proposed Rule

RD510

Agency: Minnesota Housing Finance Agency

Division:

Agency Contact: Kathy Johnson 6-9793

Minnesota Rules: Parts 4900.0581 to 4900.0584

Title: Proposed Rules Governing Accessory Apartment Loans

Type of Rules: Permanent

Incorporations by Reference: None

Duplication of Statutory Language: None

Steven C. Cross
Revisor of Statutes

Maryanne V. Hruby
Assistant Revisor
Phone: 297-2948
Date: May 7, 1984

STATE OF MINNESOTA

COUNTY OF RAMSEY

In the Matter of the Proposed Adoption of Rules Governing Accessory Apartment Loans Without a Public Hearing

AFFIDAVIT OF MAILING

Kathleen J. Johnson, being first duly sworn, deposes and says:

That on the 11th day of May, 1984, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Intent to Adopt Rules Without a Public Hearing by depositing in the United States mail at said City of St. Paul, a copy thereof, properly enveloped, with postage prepaid to all persons and associations who have requested that their names be placed on file with the Minnesota Housing Finance Agency for the purpose of receiving notice of the proposed adoption of rules by this Agency.

Kathleen J. Johnson

Subscribed and sworn to before me this 11th day of May, 1984.

Faye Louise Smiles
Notary Public

FAYE LOUISE SMILES
NOTARY PUBLIC—MINNESOTA
RAMSEY COUNTY
My Commission Expires June 30 1984

STATE OF MINNESOTA

MINNESOTA HOUSING FINANCE AGENCY

MAILING LIST CERTIFICATE

In the Matter of the Proposed Adoption
of Rules Governing Accessory Apartment
Loans Without a Public Hearing

I hereby certify that the list of persons, associations and other interested groups who have requested, pursuant to Minnesota Statutes Section 14.14 Subdivision 1, that their names be placed on file with and maintained by the Minnesota Housing Finance Agency for the purpose of receiving notice of the proposed adoption of rules by this Agency is accurate and complete the 11th day May, 1984.

Kathleen J. Johnson

PROPOSED RULES

Pursuant to Minn. Stat. of 1980, §§ 14.21, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless 25 or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules;

and

4. that the rule may be modified if modifications are supported by the data and views submitted.

If, during the 30-day comment period, 25 or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of §§ 14.13-14.20 which state that if an agency decides to hold a public hearing, it must publish in the *State Register* a notice of its intent to do so. This notice must appear at least 30 days prior to the date set for the hearing, along with the full text of the proposed rules. (If the agency has followed the provisions of subd. 4h and has already published the proposed rules, a citation to the prior publication may be substituted for republication.)

Pursuant to Minn. Stat. § 14.29, when a statute, federal law or court order to adopt, suspend or repeal a rule does not allow time for the usual rulemaking process, temporary rules may be proposed. Proposed temporary rules are published in the *State Register*, and for at least 20 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Commerce

Proposed Rules Relating to Trade Conduct—Claims Settlement

Notice of Withdrawal of Proposed Rules

Notice is hereby given that the Department of Commerce is withdrawing the above-entitled rules. These rules were published as proposed on January 2, 1984. This should also serve as notice that the continuation of hearing on these rules, scheduled for May 21, 1984, has been cancelled.

These rules are being withdrawn because of the passage of H.F. 1896 and S.F. 1862 which adopte most, if not all, of the elements of the proposed Claims Settlement Rules. Copies of the act are available from the Chief Clerk of the House, Room 214 Capitol, (612) 296-2314, or the Secretary of the Senate, Room 231 Capitol, (612) 296-2343. The bill was enacted on April 26, 1984 and was effective the day thereafter.

Michael A. Hatch
Commissioner of Commerce

Housing Finance Agency

Proposed Rules Governing Accessory Apartment Loans

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Minnesota Housing Finance Agency ("agency") proposes to adopt the above-entitled rules without a public hearing. The agency has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minn. Stat. §§ 14.21 to 14.28.

Persons interested in these rules shall have 30 days to submit comments on the proposed rules within the 30-day comment period. The rule may be modified as the result of comments received if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language. Unless 25 or more persons submit written requests for a public hearing on the proposed rule within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minn. Stat. § 14.13 *et. seq.* If a public hearing is requested, identification of the particular objection, the suggested modifications to the proposed language, and the reasons or data relied on to support the suggested modifications is desired.

Persons who wish to submit comments or a written request for a public hearing should submit such comments or request to:

Kathleen J. Johnson
Legal Division
Minnesota Housing Finance Agency
Suite 200
333 Sibley Street
St. Paul, Minnesota 55101
Telephone: 612/296-9793

Authority for the adoption of these rules is contained in Minn. Stat. § 462A.06. Subd. 4 and 11. Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules, and that identifies the data and information relied upon to support the proposed rules has been prepared and is available from Kathleen J. Johnson upon request.

Upon adoption of the final rules without a public hearing, the proposed rules, this notice, Statement of Need and Reasonableness, all written comments received, and the final rules as adopted will be delivered to a designee of the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of these rules for approval, or who wish to receive a copy of the final rules as adopted, should submit a written statement of such request to Kathleen J. Johnson.

A copy of the proposed rule is attached to this notice. Additional copies may be obtained by contacting Kathleen J. Johnson.

Please be advised that Minn. Stat. Ch. 10A.03 requires each lobbyist to register with the State Ethical Practices Board within five (5) days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, Subd. 11 as any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250.00, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than $250.00, not including his own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, (612) 296-5615.

May 11, 1984

James J. Solem
Executive Director

Rules as Proposed (all new material)

4900.0581 DEFINITIONS.

Subpart 1. Scope. For the purposes of parts 4900.0581 to 4900.0584, the following terms have the meanings given them.

Subp. 2. Accessory apartment loan. "Accessory apartment loan" means a loan the proceeds of which are used to construct an additional dwelling unit within a structure, or to improve not more than two rental dwelling units located in a structure that, at the time of the loan application, contains a total of not more than three dwelling units.

Subp. 3. Borrower. "Borrower" means one or more persons who apply for and receive an accessory apartment loan and who are the makers of a note in evidence of the loan.

Subp. 4. Dwelling unit. "Dwelling unit" means a housing unit that includes self-contained cooking, sleeping, and bathroom facilities, and is located in the structure. A dwelling unit may be occupied by either a tenant or the owner of the structure.

Subp. 5. Rental dwelling unit. "Rental dwelling unit" means a dwelling unit that is occupied by a person or household other than the owner of the structure and for which rent in cash or in kind is received by the owner.

Supb. 6. Structure. "Structure" means a building that was originally built as a single-family residence and that satisfies the eligibility requirements of part 4900.0582, subpart 5.

4900.0582 ELIGIBILITY REQUIREMENTS.

Subpart 1. Property interest. A borrower shall individually or in the aggregate possess at least a one-third interest in a fee ownership of, a contract for deed for, or a life estate in the property on which the structure to be improved is located.

Subp. 2. Occupancy. If the proceeds of an accessory apartment loan are used to construct an additional dwelling unit, at least one of the borrowers shall occupy the structure as his or her principal residence at the time of loan application or shall occupy one dwelling unit within the structure within 60 days of the date of the note in evidence of the loan.

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If the proceeds from an accessory apartment loan are used to improve one or more dwelling units, at least one of the borrowers shall occupy one of the dwelling units as his or her principal residence at the time of loan application.

Subp. 3. Credit worthiness. A borrower shall be a reasonable credit risk and shall be able to pay the loan obligation as determined under part 4900.0080.

Subp. 4. Borrower eligibility. A borrower shall meet either of the following standards to be eligible for an accessory apartment loan:

A. a borrower shall be a person or household of low or moderate income as defined in part 4900.0010, subpart 23; or

B. a borrower shall agree to rent all of the dwelling units that he or she does not occupy at a rate not to exceed the current United States Department of Housing and Urban Development (HUD) Fair Market Rents for Existing Dwellings in the section 8 program under the United States Housing Act of 1937, United States Code, title 42, sections 1437 et seq. as amended through December 31, 1983, as determined and adjusted from time to time by HUD, for a period of at least one year from the date the dwelling unit is first occupied by a renter.

Subp. 5. Eligibility of structure. The structure to be improved or modified with the proceeds of an accessory apartment loan must comply with applicable zoning ordinances or other applicable land use guides upon completion of the construction or improvements.

If a borrower qualifies for a loan by satisfying the requirement in subpart 4, item A, the structure to be modified or improved must have been completed and occupied as a residence for at least 90 days at the time of the loan application.

If a borrower qualifies for a loan solely by satisfying the requirements in subpart 4, item B, the structure to be modified or improved must be at least 15 years old at the time of loan application.

4900.0583 ELIGIBLE IMPROVEMENTS.

Subpart 1. Permanent general improvements. Proceeds from an accessory apartment loan must be used to finance only permanent general improvements. Permanent general improvements include additions, alterations, renovations, or repairs upon or in connection with existing structures. Permanent general improvements do not include materials, fixtures, or landscaping of a type or quality exceeding that customarily used in the locality for properties of the same general type as the structure to be modified or improved.

Subp. 2. Loan proceed restrictions. The proceeds from an accessory apartment loan must be used to finance only improvements or modifications to, or in connection with, an existing structure. The proceeds from an accessory apartment loan may be used as follows:

A. to add not more than one dwelling unit to a structure that is a single-family residence at the time of the loan application; or

B. to improve a structure that, at the time of the loan application, contains one or two rental dwelling units in addition to a dwelling unit occupied by the owner of the structure. Use of the proceeds from an accessory apartment loan for the type of structure described in this item is restricted to improvements that will bring all rental dwelling units into compliance with local zoning ordinances and other applicable health, fire prevention, building, and housing codes and standards.

The proceeds from an accessory apartment loan must not be used to pay for assessments for public improvements except if the improvements will bring an individual sewage disposal system (including septic system) located on the property on which the structure is located into compliance with local, state, or federal environmental and sanitary standards.

Subp. 3. Energy conservation. If an existing or newly constructed rental dwelling unit does not comply with the state energy conservation standards for rental housing, the proceeds from an accessory apartment loan must be used to bring the rental dwelling unit into compliance with these standards.

Subp. 4. Time of completion. Improvements or construction financed in whole or in part by an accessory apartment loan must be completed within nine months of the date of the first disbursement of the loan except for delays due to causes beyond the borrower's reasonable control, such as fire, strike, and shortage of materials.

4900.0584 OTHER REQUIREMENTS.

Subpart 1. Unavailability of financing. At the time of application for an accessory apartment loan, conventional financing for this purpose must not be available from private lenders upon equivalent terms and conditions.

Subp. 2. Other codes and standards. Following the completion of construction or improvement, all rental dwelling units must comply with all applicable health, fire prevention, building, and housing codes and standards. However, an accessory apartment loan shall not be denied solely because the construction or improvements to be financed by it will not bring the entire structure into full compliance with these codes and standards.

Subp. 3. Warranty of workmanship and materials. Contracts for construction or improvement of a dwelling unit that are financed in whole or in part by the proceeds from an accessory apartment loan must contain a warranty of workmanship and materials that is approved by the agency.

Housing Finance Agency

Proposed Rules Governing Cooperative or Rental Multifamily Housing Innovative Loans

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Minnesota Housing Finance Agency ("agency") proposes to adopt the above-entitled rules without a public hearing. The agency has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minn. Stat. §§ 14.21 to 14.28.

Persons interested in these rules shall have 30 days to submit comments on the proposed rules within the 30-day comment period. The rule may be modified as the result of comments received if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language. Unless 25 or more persons submit written requests for a public hearing on the proposed rule within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minn. Stat. § 14.13 et. seq. If a public hearing is requested, identification of the particular objection, the suggested modifications to the proposed language, and the reasons or data relied on to support the suggested modifications is desired.

Persons who wish to submit comments or a written request for a public hearing should submit such comments or request to:

Kathleen J. Johnson
Legal Division
Minnesota Housing Finance Agency
Suite 200
333 Sibley Street
St. Paul, Minnesota 55101
Telephone: 612/296-9793

Authority for the adoption of these rules is contained in Minn. Stat. § 462A.06, Subd. 4 and 11. Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules, and that identifies the data and information relied upon to support the proposed rules has been prepared and is available from Kathleen J. Johnson upon request.

Upon adoption of the final rules without a public hearing, the proposed rules, this notice, Statement of Need and Reasonableness, all written comments received, and the final rules as adopted will be delivered to a designee of the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of these rules for approval, or who wish to receive a copy of the final rules as adopted, should submit a written statement of such request to Kathleen J. Johnson.

A copy of the proposed rule is attached to this notice. Additional copies may be obtained by contacting Kathleen J. Johnson.

Please be advised that Minn. Stat. Ch. 10A.03 requires each lobbyist to register with the State Ethical Practices Board within five (5) days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, Subd. 11 as any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250.00, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than $250.00, not including his own traveling expenses and membership dues, in any year for the

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STATE OF MINNESOTA

MINNESOTA HOUSING FINANCE AGENCY

In the Matter of the Proposed Adoption of Rules Governing Accessory Apartment Loans Without a Public Hearing

CERTIFICATE OF BOARD'S RESOLUTION ADOPTING RULES

I, Robert A. Worthington, do hereby certify that I am Chairman of the Minnesota Housing Finance Agency, an agency duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Agency, duly and properly called and held on the 28th day of June, 1984, that a quorum was present at said meeting, that a majority of those present voted for the resolution and that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

> "RESOLVED, that the rules relating to Accessory Apartment Loans attached hereto as Exhibit A be and they hereby are approved and adopted pursuant to authority vested in us by Minnesota Statutes Section 462A.06, Subdivisions 4 and 11 and that Alan L. Hans, Deputy Director of the Agency, be and hereby is authorized to sign an order adopting these rules and further is authorized to perform the necessary acts to provide that these rules shall have the force and effect of law."

IN WITNESS WHEREOF, I have hereunto subscribed my name this 28th day of June, 1984.

Robert A. Worthington

Chairman

STATE OF MINNESOTA

MINNESOTA HOUSING FINANCE AGENCY

In the Matter of the Proposed Adoption of
Rules of the Minnesota Housing Finance
Agency Governing the Accessory Apartment
Loan Program

Statement of Need and Reasonableness

4900.0581

This part sets forth definitions for the purposes of parts 4900.0581 to 4900.0584.

Subp. 2 Accessory Apartment Loan is defined as a loan used to finance the construction of an additional dwelling unit within a structure or the improvement of up to two rental dwelling units in a structure. The definition is necessary to clarify the eligible uses for funds expended under this program. The limitations are reasonable because the purpose of the program is to demonstrate the usefulness of excess space for rental purposes within single family homes.

Subp. 3 The definition of Borrower provides a single word to describe either one person or several persons who receive an accessory apartment loan.

Subp. 4 Dwelling Unit is defined as a self-contained housing unit with cooking, sleeping and bathroom facilities. This definition is necessary because not all housing units contain all of the facilities listed. The limitation is reasonable because the program will be financed with the proceeds of tax-exempt bonds. The regulations governing such bonds allow the financing only of dwelling units which contain all of the facilities listed above.

Subp. 5 Rental Dwelling Unit is defined as a dwelling occupied by a party other than the owner and for which the owner receives rent. This definition is necessary in order to clarify references to specific portions of eligible structures throughout parts 4900.0581 to 4900.0584.

Subp. 6 Structure is defined as a single-family residence that satisfies the eligibility requirements of part 4900.0582, subp. 5. The necessity of these requirements will be discussed in that section of this statement.

4900.0582

This part establishes eligibility criteria for the borrower and the property in the Accessory Apartment Loan Program.

Subp. 1 This subpart establishes the requirement that the borrower must have at least a one-third interest in the property to be improved. This requirement is necessary because the agency will insure all accessory apartment loans under the FHA Title I program. The ownership requirement is a condition for such insurance.

Subp. 2 This subpart specifies that at least one of the borrowers must occupy the structure to be improved as their principal residence. This requirement is necessary because it is a requirement of the federal regulations which govern the use of tax-exempt bond proceeds, which will be used to fund this program.

Subp. 3 This subpart establishes that the borrower must be a reasonable credit risk. This requirement is reasonable because the agency must warrant to its bond holders that it uses normal and prudent underwriting standards in accepting loans for its portfolio.

Subp. 4 This subpart establishes two separate standards by which the borrower may establish eligibility for the program. It is necessary to establish two standards because the agency intends to make loans available both to owners who are themselves of low and moderate income and to owners who are not of low and moderate income, but who will make the rental dwelling unit available at rates affordable to low and moderate income households.

The first of these standards, set forth in paragraph A, requires that the borrower be a person or household of low and moderate income as defined in part 4900.0010, subpart 23, paragraph E (Home Improvement Loan Program). This standard is reasonable because loans will be provided to borrowers of accessory apartment loans at the same rates and conditions as those offered to borrowers of home improvement loans.

The second of these standards, set forth in paragraph B, requires that, if the borrower does not qualify under the provisions of paragraph A, the accessory apartment unit must be rented at a rate less than a specified rent index for at least one year. This provision is necessary so that the agency may fulfill its purpose of providing housing for low and moderate income households. The rent index specified is one which is determined by the federal Department of Housing and Urban Development to be affordable to low and moderate income households and which is periodically adjusted for inflation.

Subp. 5 This subpart specifies certain eligibility requirements relating to age of the property and compliance with zoning ordinances.

The first paragraph specifies that, upon completion of the work financed, the structure must be in compliance with applicable zoning ordinances. This is a reasonable requirement because this program will generally have the effect of changing the number of units within the structure. Since the number of units is one of the primary concerns of zoning ordinances, it is essential that this item be addressed.

The second paragraph specifies that a structure owned by a borrower who qualifies by virtue of being of low and moderate income must have been completed for at least 90 days. This is a requirement of the FHA Title I insurance program which will be used to insure these loans.

The third paragraph specifies that a structure owned by a borrower who is not of low and moderate income must be at least 15 years old. This provision is necessary because the portion of the agency statute which authorized loans to owners of rental property without regard to income of the owner restricts such loans to properties which are at least 15 years old.

4900.0583

This part establishes standards for improvements eligible to be financed with the proceeds of accessory apartment loans.

Subp. 1 This subpart requires that all improvements must be permanent general improvements. This requirement is necessary because it is a requirement of the FHA Title I insurance program, under which these loans will be insured.

Subp. 2 This subpart sets forth conditions on the uses of the loan proceeds based on the number units in the structure at the time of loan application.

Paragraph A establishes that, for a single-family residence, not more than one additional dwelling unit may be constructed. This restriction is reasonable because the maximum loan amount, as established by FHA Title I requirements, is $15,000. Based on cost estimates compiled by the agency in a study of accessory apartments, it is unlikely that two rental dwelling units could be constructured within most structures within the $15,000 loan amount limit.

Paragraph B establishes that, for structures with one or two rental dwelling units, loan proceeds may be used only to bring the structure into compliance with local zoning and building codes. This provision is reasonable because the primary purpose of the program is to promote the construction of new rental dwelling units as set forth in paragraph A. However, a study conducted by the agency shows that many existing accessory apartment units are not in compliance with applicable codes. It is therefore reasonable to also provide financing to make these existing units into safe, habitable and legally occupiable units.

The final paragraph includes language regarding individual septic systems which is required by the FHA Title I insurance regulations.

Subp. 3 This subpart requires that all rental dwelling units constructed or improved with the proceeds of an accessory apartment loan must be in compliance with the state energy conservation standards for rental housing. This requirement is reasonable because these standards are mandatory for all residential rental properties in Minnesota.

Subp. 4 This subpart establishes a completion deadline for improvements financed with an accessory apartment loan. This standard is a requirement of the FHA Title I insurance program.

4900.0584

This part sets forth several additional standards which apply to accessory apartment loans.

Subp. 1 This subpart states that funds for accessory apartments must not be available from private lenders or equivalent terms and conditions. This is a provision contained in the agency statute.

Subp. 2 This subpart requires that all construction must be completed in compliance with applicable codes. This a a provision contained in the agency statute.

Subp. 3 This subpart requires an agency-approved warranty for all workmanship and materials. This is a provision contained in the agency statute.

The Agency is cognizant of the provisions of Section 14.115 of the Minnesota Statutes, entitled Small Business Considerations in Rulemaking, however, the proposed rules do not establish any compliance or reporting requirements, design or operational standards, or directly affect the way any business must operate. Further, to the extent the proposed rules may have an indirect effect on small businesses, the effect is to make funds

available for the creation of accessory apartments more readily available, and, as a result, the proposed rule has no negative effect on small businesses. Therefore, the provisions contained in Minn. Stat §14.115 (1983 Supp.) do not apply to the proposed rules discussed herein.

STATE OF MINNESOTA

MINNESOTA HOUSING FINANCE AGENCY

In the Matter of the Proposed Adoption of Rules Governing Accessory Apartment Loans Without a Public Hearing

STATEMENT OF COMPLIANCE WITH THE RULEMAKING PROCEDURES

I, Special Assistant Attorney General, Karl J. Herman, do hereby declare that I have examined the rules and all related documents and that, based on my examination and personal familiarity with the application procedures, the Administrative Procedure Act, the rules of the Office of Administrative Hearings, and the rules of the Attorney General have been followed. Any exceptions are noted below.

Dated: June 29, 1984

Karl J. Herman
Special Assistant Attorney General