MULTIFAMILY HOUSING DIVISION

Effective date:
DECEMBER 1, 2025

WAIVER REQUESTS PROCEDURE STANDARDS

HFA 117

NEW HAMPSHIRE HOUSING

NEW HAMPSHIRE HOUSING FINANCE AUTHORITY
WAIVER REQUESTS PROCEDURE STANDARDS

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HFA 117 Waiver Requests Procedure Standards

New Hampshire Housing (NH Housing) allocates scarce public resources through a variety of processes, including via the Qualified Allocation Plan (QAP), notices of funding opportunities and the annual NH Housing Program Plan. Further, NH Housing has created Policies and Rules to advance certain objectives, including ensuring well-built housing and controlling costs. NH Housing recognizes that there will be times when an Applicant may seek relief from Policies and Rules.

Therefore, NH Housing has promulgated HFA 117 Waiver Rule (the Rule). The Rule explains that a waiver is any instance when an Applicant makes a request to be allowed to forgo strict adherence to a standard, whether contained in a rule or policy. The procedures for making Waiver Requests, either of rules or policies, and how decisions for relief will be granted or denied are outlined in this implementation guide, the HFA 117 Waiver Requests Procedure Standards (Implementation Guide).

While the Applicant will be impacted by the decision on their Request, because NH Housing awards funds via a competitive process, the decision could also impact others. Therefore, these procedures aim to provide a fair process to Applicants and to Impacted Parties. Specifically, these rules provide notice to Impacted Parties when a Waiver is requested during an Active Competitive Funding Round.

The Implementation Guide is intended to:

(1) Provide a defined process for seeking, deciding, and appealing a Waiver;
(2) Treat parties, including Applicants and Impacted Parties, fairly and consistently, especially when allocating scarce resources;
(3) Recognize that each project can bring unique realities and at times there can be extenuating circumstances that will warrant granting a waiver; and
(4) Provide an efficient process so NH Housing can make prompt and sound decisions at the appropriate level.

1. Definitions

In addition to the definitions in HFA 101.04, these words or terms shall have the following meanings throughout these rules and its Implementation Guide.

“Active Competitive Funding Round” means the period between: i) the first day of the application period to accept preliminary or final applications for funding; and ii) the date NH Housing makes funding decisions for a round as evidenced by the dates on funding reservation letters, inclusive of the appeal period detailed in the letter and any subsequent appeals. The applicable Active Competitive Funding Round is the round directly related to the Request. A Request in anticipation of a funding round shall be considered part of an Active Competitive Funding Round. An approved request will be valid for six months as long as the same conditions and project scope exist. After six months, if the Applicant has not come into the next available funding round they will have to make the request again for a future round.

“Applicant” means the party seeking a Waiver for its own project.
“Approving Authority” means the staff person who has the ability to approve or deny a Policy Waiver request.

“Assigned Staff” means Senior Manager, Multifamily Lending or Construction Services Manager, or their designee.

“Board” means NH Housing’s Board of Directors.

“Committee” means a Committee of NH Housing’s Board of Directors.

“Executive Director” means NH Housing’s Executive Director or designee.

“Good Cause” means based on the judgement of the decision authority, e.g., staff, Executive Director, Committee, or Board, the facts, circumstances and policy considerations support granting a Request. Good Cause exists when the Applicant has demonstrated through a written narrative all of the following:

(1) The Request is consistent with applicable state and federal: laws, regulations, policies and/or standards;
(2) Adherence to the Rule or Policy would otherwise create an unnecessary hardship; and,
(3) The request improves project feasibility.

For Requests that impact the eligibility of a project to be evaluated under the scoring criteria, to show Good Cause, the Applicant must demonstrate that all potential reasonable options have been exhausted.

“Impacted Parties” means parties that are applying for NH Housing resources and that have a substantial and immediate interest in the Request because NH Housing’s decision on the Request would have a substantial and immediate impact on that impacted party’s application. A party with a general interest or theoretical interest is not an Impacted Party. Example of an Impacted Party: A developer that is competing for the same resources in the same round as the Applicant.

“Law(s)” means the applicable state and federal laws, regulations, and policies (not NH Housing rules or policies).

“NH Housing” means New Hampshire Housing Finance Authority.

“Policy” means a NH Housing-established policy or standard that is published on the Website.

“Request” means the formal written request by the Applicant for a Waiver, using the Request Form and stating the Good Cause for granting the Request.

“Request Form” means the NH Housing required document to submit and seek a Request.

“Rule(s)” means a NH Housing-promulgated rule under RSA 204-C:9 that has been approved by the Board and published as an “HFA” rule on the Website.

"Supervisor" means the Assigned Staff's supervisor or the Managing Director of the Multifamily Housing Division, or designee.

"Threshold Requirement" means any project requirement that is listed in a Rule (including the Qualified Allocation Plan) or Notice of Funding Opportunity as a threshold requirement.

"Unnecessary hardship" means:
(1) The hardship must be related to the project itself and not to personal considerations of the Applicant;
(2) The hardship must be based on unique conditions of the project; and
(3) The hardship must not be self-created.

"Waiver" means any instance when an Applicant makes a request to be allowed to forgo strict adherence to a NH Housing written standard, whether contained in a policy or rule.

Waivers include the following:

(1) Complete noncompliance with a Rule or Policy; or,
(2) Modification of a Rule or Policy whether or not the project is part of an Active Competitive Funding Round.

2. Waiver Request Overview

(a) To Request a Waiver of a Policy or a Rule, the Applicant shall:
(1) Complete and submit a Request Form; and
(2) Provide all required documents and detailed information to support the Request; summary statements are not sufficient as the Applicant must fully support the request.

(b) NH Housing will only act on a Request when the Applicant has submitted the required Request Form, has fully completed that form and has provided all information requested by NH Housing. NH Housing may reject, without review, an incomplete Request, including Requests that lack necessary supporting documents and information.

(c) The Request Form can be found on NH Housing's Website, which shall include the following information to be completed by the Applicant:
(1) The project's name and address and the NH Housing program for which the development is seeking or has received resources, e.g., 9% Low-Income Housing Tax Credits (LIHTCs), tax-exempt bonds combined with 4% LIHTCs, supportive housing, or any other NH Housing administered funding;
(2) Whether the Applicant is seeking a Waiver of a Policy or a Rule.
(3) The Applicant's name, title, contact information;
(4) NH Housing Policy or Rule for which relief is requested, including stating the specific section or provision;
(5) The reasons supporting the request, which shall include providing Good Cause for granting the Request;
(6) Any documents that support the Request; and
(7) Such other information deemed warranted by the Applicant or by NH Housing.
(8) Requests should be submitted to Assigned Staff.

3. Request and Appeal Process for Policy Waivers

(a) The Assigned Staff will provide a recommendation to the Approving Authority and the Approving Authority may grant or deny a waiver of a Policy when the Applicant has shown Good Cause for granting the Request submitted in accordance with Section 2 above. The chart below outlines who should receive the request from the Applicant and who the Approving and Appeal Authority is for specific Multifamily Policies and Standards.

Policy/Standard	Initial Request Sent to	Approving Authority	Appeal Authority
Underwriting Standards & Development Policies for Multifamily Finance	Assigned Staff – Senior Manager, Multifamily Lending	Senior Director, Development & Finance	Executive Director
Underwriting Standards & Development Policies for Supportive Housing	Assigned Staff – Senior Manager, Multifamily Lending	Senior Director, Development & Finance	Executive Director
Technical Design and Construction Standards	Assigned Staff – Construction Services Manager	Construction Services Manager	Senior Director, Development & Finance
Technical Design and Construction Standards for Rehabilitation	Assigned Staff – Construction Services Manager	Construction Services Manager	Senior Director, Development & Finance
Waiver Requests Procedure Standards	Assigned Staff – Senior Manager, Multifamily Lending	Senior Director, Development & Finance	Executive Director

(b) Upon making the decision, NH Housing shall notify the Applicant in writing (via email shall be sufficient written notice).

(c) If the Policy Waiver Request is denied by the Approving Authority, the Applicant may, in writing, within seven (7) business days of the written notification of the denial, appeal this decision to the Appeal Authority. Failure to timely submit an appeal means the decision is final and no longer appealable.

(d) The Appeal Authority shall:
  (1) Review the Request, the supporting material, and the staff decision, making any inquiries deemed warranted; and
  (2) Either affirm or alter the staff decision.

(e) The Appeal Authority's decision shall then be provided to the Applicant in writing (via email shall be sufficient written notice). The Appeal Authority's decision shall be final with no further appeal.

(f) For a Policy Waiver, notice need not be given to any other party.

4. Request and Appeal Process for Rule Waivers Delegated to Executive Director

(a) The Assigned Staff will provide a recommendation to the Executive Director, and the Executive Director may grant or deny a waiver of the enumerated provisions in HFA 117 when the Applicant has shown Good Cause for granting the Request.

(b) Upon making the decision, NH Housing shall notify the Applicant in writing (via email shall be sufficient written notice).

(c) If the Executive Director denies a Waiver Request under this section, the Applicant may, in writing, within seven (7) business days of the written notification of the denial, submit an appeal that will be heard by the Multifamily Committee. This appeal request should be submitted to the Assigned Staff. Failure to timely submit an appeal means the decision is final and no longer appealable.

(d) Provided an Applicant is entitled to submit an appeal and has submitted a timely appeal, the Applicant will be informed of the hearing date within 30 days of the submission of the appeal request. The Committee will hold the appeal hearing within 90 days of receipt of the submission of the appeal request.

(e) The Committee will hear from the Applicant, any other parties in attendance, and NH Housing staff, and the Committee shall issue a decision that will be recorded in the Committee minutes.

(f) NH Housing need not provide notice of the hearing to any other party.

(g) The Committee's decision is final. There is no appeal of the Committee's decision to the Board.

5. Request and Appeal Process for Project-Specific Rule Waiver Requests[1]

(a) Upon receipt of a Rule Waiver Request under Section 2 above, NH Housing will:
  (1) Review the Request and all related information;
  (2) Provide a staff recommendation to the Multifamily Committee, with written notification of the staff's recommendation to the Applicant and Impacted Parties however staff cannot discuss the waiver request or the staff's recommendation with any parties before the Committee's hearing;
  (3) The Applicant will be informed of the hearing date before the Multifamily Committee within 30 days of the submission of the request;
  (4) The Committee will hold the request hearing within 90 days of receipt of the submission of the request; and

[1] Note that points that were awarded in a previous 9% LIHTC funding round in accordance with HFA 109 cannot be waived in the future; inability to fulfill that point category may result in negative points on a future application per HFA 109.

(5) Notify the Applicant and any Impacted Parties of the Committee hearing date.

(b) At the Committee hearing on the Request, the Committee shall:
   (1) Open a public hearing on the Request;
   (2) Provide the Applicant a reasonable opportunity to present the reasons for the Request and to answer any Committee questions;
   (3) Hear from NH Housing staff about the Request, including the staff's recommendation;
   (4) Provide Impacted Parties a reasonable opportunity to present information to the Committee and to answer any Committee questions; and
   (5) Close the public hearing, after which no further input or comments will be accepted.

(c) Once the public hearing is closed, the Committee, within the public meeting, shall:
   (1) Deliberate on the Request;
   (2) Decide the Request based on all of the presented information and the Committee's own judgment; and
   (3) Memorialize the decision in a Committee motion that will be voted on by Committee members and included in the Committee minutes.
   (4) Within two (2) business days of the Committee's meeting, staff will inform the Applicant and any Impacted Parties in writing (via email shall be sufficient written notice) of their decision.

(d) Appeal of Committee Decision
   (1) The Applicant or any Impacted Party that is not satisfied with the Committee's decision may, in writing, within two (2) business days of written notification of the Committee decision, submit an appeal that will be heard by the Board. This appeal request should be submitted to the Assigned Staff. Failure to timely submit an appeal means the decision is final and no longer appealable.
   (2) If an appeal is submitted, NH Housing shall schedule the appeal request for the next Board meeting, provided, however, that NH Housing can provide the Applicant and any Impacted Party with at least 24 hours' notice, excluding Sundays and legal holidays, of the meeting. Notice of the meeting will be sent via email to the interested parties.

(e) During a public meeting, the Board will:
   (1) Review all of the information for the Request that was presented at the hearing before the Committee, including the Request form, the staff recommendation, the information from any Impacted Party, and the Committee's decision;
   (2) Deliberate on the Request;
   (3) Decide the Request based on all of the presented information; and
   (4) Memorialize the decision in a Board motion that will be voted on by the Board and included in the Board minutes.

(f) Unless the Board decides to open a public hearing, appeals shall be handled as a public meeting; therefore the Board will not receive any new information or hear from any party.

6. Recording of Decisions on Rule Waivers

(a) To ensure consistency and to create a record of decisions on Requests:
  (1) Committee and Board actions on each Request shall be maintained in the Committee or Board minutes; and
  (2) Staff-level and Executive Director decisions shall be recorded in a waiver report log by NH Housing staff, including:
    A. Project name and program funding;
    B. Applicant name;
    C. Request, including the specific citation to the Rule or Policy;
    D. Approving authority responsible for the decision; and
    E. Summary of the decision.

(b) This waiver report log shall be shared with NH Housing's internal multifamily working group and Multifamily Committee. The Senior Manager, Multifamily Lending, is responsible to ensure the updating and maintenance of the waiver report log and backup documentation.

7. Consideration of Decisions

(a) Decisions on Requests are not binding precedent in other Requests.

(b) In deciding Requests, NH Housing may review prior decisions to strive for consistency and fairness, while recognizing that projects and Requests can present unique circumstances.

NEW HAMPSHIRE
HOUSING

PO Box 5087, Manchester, NH 03108
603.472.8623 800.640.7239
TDD: 603.472.2089
info@nhhfa.org
NHHousing.org

New Hampshire Housing promotes, finances, and supports housing solutions for the people of New Hampshire.