MULTIFAMILY HOUSING DIVISION

Effective date:
SEPTEMBER 1, 2025

WAIVER RULES

HFA 117

NEW HAMPSHIRE HOUSING

NEW HAMPSHIRE HOUSING FINANCE AUTHORITY

WAIVER RULES
HFA 117

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HFA 117 PART ONE: Overview, Purpose, Applicability, Rulemaking

HFA 117.01 Overview and Purpose

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 that an Applicant may seek relief from Policies and Rules. This Waiver Rule provides the standards for waivers of Policies and Rules. The procedures for making Waiver Requests, either of rules or policies, and how decisions for relief will be granted or denied are outlined in a separate Waiver Requests Procedure Standards document.

HFA 117.02 Applicability

(a) This Waiver Rule applies to programs administered by NH Housing's Multifamily Housing Division (MHD).

(b) NH Housing does not have the authority to waive Laws unless the applicable Law provides such authority.

(c) These rules shall be read in conjunction with the Laws that apply to the program under which the funding is being provided.

(d) When there is a conflict between these rules and the Law, the Law controls.

HFA 117.03 Rulemaking

This rule is adopted pursuant to RSA 204-C:9, which empowers NH Housing to adopt rules related to programs and operations.

HFA 117 PART TWO: Definitions

HFA 117.04 Definitions

In addition to the definitions in HFA 101.04, these words or terms shall have the following meanings throughout this Waiver Rule.

“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 reservations 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.

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

“Committee” means NH Housing’s Multifamily Housing Committee.

“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 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 as the Applicant.

“Law(s)” means the applicable state and federal laws, regulations and 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 reason for granting the Request.

“Request Form” means the NH Housing required document to file 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.

“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.

“Website” means the New Hampshire Housing Website.

HFA 117 PART THREE: General Rules

HFA 117.05 Waiver Request Overview

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

HFA 117.06 Policy Waiver Request

(a) The Executive Director, or designee, may waive policies.
(b) All delegations of policy waiver authority from the Executive Director to other staff and any further delegations of Rule waiver authority from the Executive Director to the staff is contained in a policy document which also details the process for requesting, reviewing and approving or denying a waiver request, and how to appeal a denial.
(c) Policy waivers are project specific and can be requested by Applicants for or Recipients of NH Housing funding for an affordable housing development.
(d) The Applicant has the burden to show that “Good Cause” exists to grant the Waiver Request.

HFA 117.07 Rule Waiver Request

(a) The Board may waive rules.
  (1) Any delegation of Rule waiver authority from the Board to the Executive Director is contained in this Rule.
    A. The Board delegates waiver authority to the Executive Director for certain provisions of HFA 111, Design and Construction Policy Rule, listed here:
      i Construction Manager Procurement through competitive bidding
      ii Subcontractor Procurement through competitive bidding
      iii Construction Manager limits on self-performed work

iv Construction Management contingency limit
v General Contracting Procurement through competitive bidding
vi Design-Build Procurement
vii Bids over Budget
viii Identity of Interest between Construction Manager or General Contractor with the developer
ix Subcontractor procurement and number of trade contractors involved if the developer is directly contracting with subcontractors
x Requirements to allow for Letters of Credit (LOC) in lieu of Payment & Performance Bond (P&PB)
xi Approval of other forms of surety (other than P&PB and LOC)

(2) There are two types of rule waivers:
A. Project-specific Waivers, which are initiated by the Applicant and, if granted, only apply to that project; and
B. Board-initiated Waivers, which will apply to all impacted projects.

HFA 117.08 Project-specific Rule Waiver Request

(a) An applicant for or recipient of NH Housing funding for an affordable housing development may submit a Rule Waiver request. The process to request a Rule Waiver and the standard to meet for approval, as well as the process that provides Impacted Parties, if applicable, notice and an opportunity to participate in the process, is outlined in the HFA 117 Waiver Requests Procedure Standards document.

(b) The Applicant has the burden to show that “Good Cause” exists to grant the Waiver Request.

HFA 117.09 Board-Initiated Rule Waiver

(a) The Board can initiate a Rule Waiver. Generally, these Board-initiated Waivers shall be when the Board determines a Rule should be waived for all parties seeking funding or already funded under a specific program.

(b) When such a Waiver is being considered, the Board agenda shall include the proposed Waiver and the Board minutes shall include the results of the vote. No hearing shall be necessary.

HFA 117.10 Executive Director Authority to Convert a Policy Waiver to a Rule Waiver

The Executive Director may decide to treat a policy waiver Request as a rule waiver Request that would then require the Committee to review and decide that Request.

HFA 117.11 Conditions with Granted Waivers

(a) In granting a Waiver, NH Housing may impose conditions on the Applicant that could include:
    (1) Additional requirements for the project;
    (2) Penalties or conditions for any future funding applications from the Applicant; and/or
    (3) Such other conditions as determined necessary by NH Housing at its sole discretion.

HFA 117.12 Consideration of Decisions

(a) Decisions on Requests are not a binding precedent for 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.

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