

Michigan Office of Administrative Hearings and Rules

Administrative Rules Division (ARD)

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**REGULATORY IMPACT STATEMENT
and COST-BENEFIT ANALYSIS (RIS)**

Agency Information:

Department name:

Labor and Economic Opportunity

Bureau name:

Michigan Housing Development Authority

Name of person filling out RIS:

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Rule Set Information:

ARD assigned rule set number:

2021-70 LE

Title of proposed rule set:

State Housing Development Authority – General Rules

Comparison of Rule(s) to Federal/State/Association Standard

1. Compare the proposed rules to parallel federal rules or standards set by a state or national licensing agency or accreditation association, if any exist.

No parallel federal rules or standards set by a state or national licensing agency or accreditation association exist.

A. Are these rules required by state law or federal mandate?

No. Permissive rulemaking authority is granted by MCL 125.1422(o), MCL 125.1424(3), MCL 125.1444a(5), MCL 125.1458b(7).

B. If these rules exceed a federal standard, please identify the federal standard or citation, describe why it is necessary that the proposed rules exceed the federal standard or law, and specify the costs and benefits arising out of the deviation.

The rules adopt federal standards, but do not exceed federal standards.

2. Compare the proposed rules to standards in similarly situated states, based on geographic location, topography, natural resources, commonalities, or economic similarities.

No agency from another state is similarly situated to MSHDA. Other states have housing authorities that serve a more limited purpose, a limited geographical reach within their respective states, and/or lack comparable lending programs.

A. If the rules exceed standards in those states, please explain why and specify the costs and benefits arising out of the deviation.

The proposed rules do not exceed comparable rules from other states.

3. Identify any laws, rules, and other legal requirements that may duplicate, overlap, or conflict with the proposed rules.

There are none. All of the proposed rules are derived solely from the State Housing Development Authority Act of 1966. No other agency's rules address the same topic areas.

A. Explain how the rules have been coordinated, to the extent practicable, with other federal, state, and local laws applicable to the same activity or subject matter. This section should include a discussion of the efforts undertaken by the agency to avoid or minimize duplication.

Federal housing laws and regulations that set industry standards for defined terms and concepts are integrated into the proposed rules for consistency. This proposed ruleset has been reviewed for internal duplication and consistency by a workgroup of agency attorneys, experienced staff, and external stakeholders.

4. If MCL 24.232(8) applies and the proposed rules are more stringent than the applicable federally mandated standard, provide a statement of specific facts that establish the clear and convincing need to adopt the more stringent rules.

MCL 24.232(8) does not apply: the proposed ruleset contains neither emergency rules nor federally mandated rules.

5. If MCL 24.232(9) applies and the proposed rules are more stringent than the applicable federal standard, provide either the Michigan statute that specifically authorizes the more stringent rules OR a statement of the specific facts that establish the clear and convincing need to adopt the more stringent rules.

The proposed rule set does not adopt any rule that is more stringent than any applicable federal standard.

Purpose and Objectives of the Rule(s)

6. Identify the behavior and frequency of behavior that the proposed rules are designed to alter.

The proposed rules address non-federally funded lending programs and fundamental administrative procedure; the behavior the rules address, lending programs, is frequent, but the proposed rules do not alter that behavior relative to the existing rule set.

A. Estimate the change in the frequency of the targeted behavior expected from the proposed rules.

There is no change in frequency of targeted behavior is expected from the proposed rules.

B. Describe the difference between current behavior/practice and desired behavior/practice.

The proposed changes modernize language usage, eliminate unnecessary rules, and correct grammar issues. No behavior change is set forth within the proposed rules nor intended.

C. What is the desired outcome?

The desired outcome is improved ease of usage by stakeholders.

7. Identify the harm resulting from the behavior that the proposed rules are designed to alter and the likelihood that the harm will occur in the absence of the rule.

The current rule set uses outdated language and outdated industry concepts, the proposed ruleset corrects and updates for ease of use.

A. What is the rationale for changing the rules instead of leaving them as currently written?

The current ruleset uses outdated language and outdated industry concepts, the proposed ruleset corrects and updates for ease of use.

8. Describe how the proposed rules protect the health, safety, and welfare of Michigan citizens while promoting a regulatory environment in Michigan that is the least burdensome alternative for those required to comply.

The proposed rules adopt modern industry standards to establish clearer, more concise language, enhancing ease of use without impacting substantive requirements, and is more consistent with the Michigan Administrative Procedures Act.

9. Describe any rules in the affected rule set that are obsolete or unnecessary and can be rescinded.

No existing rules are entirely obsolete or unnecessary. Portions of rules have been found to be obsolete and with the proposed ruleset are revised to be made relevant.

Fiscal Impact on the Agency

Fiscal impact is an increase or decrease in expenditures from the current level of expenditures, i.e. hiring additional staff, higher contract costs, programming costs, changes in reimbursements rates, etc. over and above what is currently expended for that function. It does not include more intangible costs for benefits, such as opportunity costs, the value of time saved or lost, etc., unless those issues result in a measurable impact on expenditures.

10. Please provide the fiscal impact on the agency (an estimate of the cost of rule imposition or potential savings for the agency promulgating the rule).

There is no fiscal impact on the agency; no substantive changes are proposed.

11. Describe whether or not an agency appropriation has been made or a funding source provided for any expenditures associated with the proposed rules.

No agency appropriation has been made or is necessary; no expenditure is associated with the proposed rules.

12. Describe how the proposed rules are necessary and suitable to accomplish their purpose, in relationship to the burden(s) the rules place on individuals. Burdens may include fiscal or administrative burdens, or duplicative acts.

The proposed rules provide clarity and update to modern industry concepts without increasing fiscal or administrative burdens. The burden of complying with lending parameters is necessary to responsible administration of lending programs and the scope of that burden is not altered by the proposed rule changes.

A. Despite the identified burden(s), identify how the requirements in the rules are still needed and reasonable compared to the burdens.

The proposed rules address non-federal lending programs and fundamental administrative concepts and are therefore necessary to the function of the agency. Only three new provisions are introduced: an addition to Rule 103, as 103(c) which defines the frequently used term “Low-income persons and families” that had otherwise been undefined in the rules; a new Rule 104 Rules of Construction which clarifies the interaction between statutory term definitions and rule definitions set forth in the administrative rules; an addition to Rule 111, as 111(c), which institutes a 60-day appeal window from certain final decisions of the agency. Because no burden is increased the changes are a reasonable exercise in favor of improving ease of use.

Impact on Other State or Local Governmental Units

13. Estimate any increase or decrease in revenues to other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. Estimate the cost increases or reductions for other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. Include the cost of equipment, supplies, labor, and increased administrative costs in both the initial imposition of the rule and any ongoing monitoring.

MSHDA estimates that there will be no increase or decrease in revenues, and no cost increases or reductions, to other state or local governmental units as a result of the rule.

14. Discuss any program, service, duty, or responsibility imposed upon any city, county, town, village, or school district by the rules.

No new imposition is created by the proposed rule set relative to the existing rule set.

A. Describe any actions that governmental units must take to be in compliance with the rules. This section should include items such as record keeping and reporting requirements or changing operational practices.

No new actions are imposed in the proposed ruleset relative to the existing rule set.

15. Describe whether or not an appropriation to state or local governmental units has been made or a funding source provided for any additional expenditures associated with the proposed rules.

No appropriation to state or local government has been made, nor any additional expenditures necessitated by the proposed rules.

Rural Impact

16. In general, what impact will the rules have on rural areas?

No additional impact will affect rural areas. Agency lending in rural areas will continue in a manner unaffected by the proposed rules.

A. Describe the types of public or private interests in rural areas that will be affected by the rules.

Borrowers of funds for multifamily and single-family housing construction and rehabilitation.

Environmental Impact

17. Do the proposed rules have any impact on the environment? If yes, please explain.

The proposed rules have no impact on the environment.

Small Business Impact Statement

18. Describe whether and how the agency considered exempting small businesses from the proposed rules.

Because the agency lends funds for multi-family and single-family housing rehabilitation and construction entirely to individuals and small businesses, lending money in the absence of such rules would violate the State Housing Development Authority Act and would be infeasible.

19. If small businesses are not exempt, describe (a) the manner in which the agency reduced the economic impact of the proposed rules on small businesses, including a detailed recitation of the efforts of the agency to comply with the mandate to reduce the disproportionate impact of the rules upon small businesses as described below (in accordance with MCL 24.240(1)(a-d)), or (b) the reasons such a reduction was not lawful or feasible.

Because the agency lends funds for multi-family and single-family housing rehabilitation and construction entirely to individuals and small businesses, lending money in the absence of such rules would violate the State Housing Development Authority Act and would be infeasible; there is no disproportionate impact on small businesses.

A. Identify and estimate the number of small businesses affected by the proposed rules and the probable effect on small businesses.

As of the end of fiscal year 2021, the agency was carrying approximately \$1.6 billion in loans to small businesses for the construction and rehabilitation of multifamily housing, and approximately \$2.0 billion in single-family mortgage loans. The proposed rules will have no effect upon agency lending activity, and will affect small businesses no differently than under the current rules.

B. Describe how the agency established differing compliance or reporting requirements or timetables for small businesses under the rules after projecting the required reporting, record-keeping, and other administrative costs.

Because all of the agency's lending activity involves small businesses and individuals, there are no differing compliance or reporting requirements relative to large businesses.

C. Describe how the agency consolidated or simplified the compliance and reporting requirements for small businesses and identify the skills necessary to comply with the reporting requirements.

The proposed ruleset represents the maximum consolidation and simplification as there could be, relative to the underwriting standards necessary to maintain lending program integrity and compliance with the State Housing Development Authority Act.

D. Describe how the agency established performance standards to replace design or operation standards required by the proposed rules.

No design nor operation standards are required by the proposed rules.

20. Identify any disproportionate impact the proposed rules may have on small businesses because of their size or geographic location.

The proposed rules will have no impact on small businesses because of small business's size or geographic location.

21. Identify the nature of any report and the estimated cost of its preparation by small businesses required to comply with the proposed rules.

No report preparation is required by the proposed rules, and so the estimated cost to small businesses for compliance is \$0.

22. Analyze the costs of compliance for all small businesses affected by the proposed rules, including costs of equipment, supplies, labor, and increased administrative costs.

The proposed changes will not result in any change in compliance costs for small businesses beyond current compliance costs. The proposed rules are written to provide the minimum amount of regulation required by the Act and as necessary to protect the integrity of Authority programs and result in no increased burden upon small businesses.

23. Identify the nature and estimated cost of any legal, consulting, or accounting services that small businesses would incur in complying with the proposed rules.

There are no increased legal, consulting, or accounting services that small businesses would incur by nature of the revised and amended rule set.

24. Estimate the ability of small businesses to absorb the costs without suffering economic harm and without adversely affecting competition in the marketplace.

All persons and small businesses doing business with the Authority are subject to the same requirements and costs as a result of the proposed rules, and as such so there are no expected costs that will adversely affect competition in the marketplace.

25. Estimate the cost, if any, to the agency of administering or enforcing a rule that exempts or sets lesser standards for compliance by small businesses.

Exempting small businesses from any existing or proposed rule is not allowed by the State Housing Development Act. Any such exemption undermines the integrity of Authority lending programs.

26. Identify the impact on the public interest of exempting or setting lesser standards of compliance for small businesses.

Exempting small businesses from any existing or proposed rule is not allowed by the State Housing Development Act. Any such exemption undermines the integrity of Authority lending programs. This would result in the inability of the Authority accomplish its fundamental functions and thus would thwart the purposes of the State Housing Development Authority Act.

27. Describe whether and how the agency has involved small businesses in the development of the proposed rules.

Private legal counsel for a spectrum of small businesses that interact with the Authority were provided draft copies of the proposed ruleset, and their comments are integrated into the ruleset submission.

A. If small businesses were involved in the development of the rules, please identify the business(es).

As a matter of legal privilege, the agency cannot compel the small-businesses' private legal counsel consulted to divulge the identifies of their clients. The private legal counsel consulted for input are known to the Authority to represent or have represented a significant portion of borrowers of Authority funds.

Cost-Benefit Analysis of Rules (independent of statutory impact)

28. Estimate the actual statewide compliance costs of the rule amendments on businesses or groups.

The estimated actual statewide compliance costs of the rule amendments on businesses or groups is \$0.

A. Identify the businesses or groups who will be directly affected by, bear the cost of, or directly benefit from the proposed rules.

No direct costs are imposed by the proposed rule set. All borrowers of Authority funds will benefit from more concise, clearer rules that are updated to include modern industry parlance. As will the existing rule set, borrowers of Authority funds will continue to pay administrative fees associated with Authority lending programs.

B. What additional costs will be imposed on businesses and other groups as a result of these proposed rules (i.e. new equipment, supplies, labor, accounting, or recordkeeping)? Please identify the types and number of businesses and groups. Be sure to quantify how each entity will be affected.

No additional costs will be imposed on businesses or other groups as a result of these proposed rules.

29. Estimate the actual statewide compliance costs of the proposed rules on individuals (regulated individuals or the public). Include the costs of education, training, application fees, examination fees, license fees, new equipment, supplies, labor, accounting, or recordkeeping.

No statewide compliance costs are imposed by the proposed rules on individuals.

A. How many and what category of individuals will be affected by the rules?

Only borrowers of non-federal single-family and multifamily lending programs will be affected by the rules. This may affect 10 to 50 small businesses annually, and thousands of families annually.

B. What qualitative and quantitative impact do the proposed changes in rules have on these individuals?

Qualitatively, all borrowers of Authority funds will benefit from more concise, clearer rules that are updated to include modern industry parlance. There will be no quantitative impact as no substantive rules are to be changed.

30. Quantify any cost reductions to businesses, individuals, groups of individuals, or governmental units as a result of the proposed rules.

No cost reductions are created for businesses, individuals, groups of individuals, or government units as result of the proposed rules.

31. Estimate the primary and direct benefits and any secondary or indirect benefits of the proposed rules. Please provide both quantitative and qualitative information, as well as your assumptions.

All borrowers of Authority funds will benefit from more concise, clearer rules that are updated to include modern industry parlance.

32. Explain how the proposed rules will impact business growth and job creation (or elimination) in Michigan.

All borrowers of Authority funds will benefit from more concise, clearer rules that are updated to include modern industry parlance. Authority lending programs generally lead to construction industry and property management job creation; that trend is unaffected by the proposed rules.

33. Identify any individuals or businesses who will be disproportionately affected by the rules as a result of their industrial sector, segment of the public, business size, or geographic location.

No individuals or businesses will be disproportionately affected by the result of their industrial sector segment of the public, business size, or geographic location.

34. Identify the sources the agency relied upon in compiling the regulatory impact statement, including the methodology utilized in determining the existence and extent of the impact of the proposed rules and a cost-benefit analysis of the proposed rules.

Agency staff and industry stakeholders have agreed there would be no impact. All borrowers of Authority funds will benefit from more concise, clearer rules that are updated to include modern industry parlance.

A. How were estimates made, and what were your assumptions? Include internal and external sources, published reports, information provided by associations or organizations, etc., that demonstrate a need for the proposed rules.

A team of experienced staff, working with industry stakeholders, compared the existing rules to the proposed rules, and unanimously determined that mere improvements to clarity, deleting outdated and superseded language, and updated industry parlance would be prudent for the Authority and helpful to stakeholders.

Alternative to Regulation

35. Identify any reasonable alternatives to the proposed rules that would achieve the same or similar goals.

The only alternative to providing more concise, clearer rules that are updated to include modern industry parlance, is to leave the current rule in its outdated state. No substantive changes are proposed with this rule set.

A. Please include any statutory amendments that may be necessary to achieve such alternatives.

No statutory amendments will be necessary.

36. Discuss the feasibility of establishing a regulatory program similar to that proposed in the rules that would operate through private market-based mechanisms. Please include a discussion of private market-based systems utilized by other states.

The Authority's regulatory program is mandated by the State Housing Development Authority Act and a spectrum of federal programs. No private market mechanism may by state and federal law operate such a regulatory program.

37. Discuss all significant alternatives the agency considered during rule development and why they were not incorporated into the rules. This section should include ideas considered both during internal discussions and discussions with stakeholders, affected parties, or advisory groups.

The primary alternative is to leave in place out-date rules that use outdated terminology. For example, when faced with unnecessarily gendered language, the alternatives are to leave it as is, remove unnecessary gender references in the interest of inclusion, or reinforce existing unnecessarily gendered language. When faced with industry terminology that has been updated in the last twenty years, the alternatives are to continue to use outdated industry terminology, update to existing terminology, or use terminology not recognized by industry. The Authority has elected to clarify and modernize the rule language in recognition that doing so is the only alternative that benefits all stakeholders.

Additional Information

38. As required by MCL 24.245b(1)(c), please describe any instructions regarding the method of complying with the rules, if applicable.

Compliance with the proposed rules requires no special instruction.