**Section 310.802 Developments Eligible for Increased Rate of Return**

a) Subject to applicable federal law, any Development for which the Authority has issued a conditional commitment letter effective on or after August 9, 1984 is eligible for the establishment of an alternate basic rate of return in excess of 6% if, either:

1) the Director or, in his or her absence, the Deputy Director determines it to be necessary in order to attract private enterprise to construct, rehabilitate, operate and maintain housing for Very Low, Low and Moderate Income persons. The standard or test for determining whether a higher rate of return is necessary is that, but for the higher rate of return, private enterprise would be unable to acquire, construct, rehabilitate, operate and maintain housing for Very Low, Low and Moderate Income persons. In making this determination, the Director or, in his or her absence, the Deputy Director shall consider but not be limited to the competing market interest rates, the alternative lending sources, financial projections based upon anticipated rents, debt service, utilities, taxes and other expenses and the comparative severity of the housing needs; or

2) the Authority determines, pursuant to resolution of its Members, that an increase in the basic rate of return is necessary to preserve the Development as affordable for persons or families of Very Low, Low and Moderate Income or that the increase provides for the creation of additional units of housing affordable to persons or families of Very Low, Low and Moderate Income in the State. It shall be a condition to an increase in the basic rate of return pursuant to this subsection (a)(2) that:

A) the Authority give its prior written consent to any increase in the rental charges for the Development; and

B) the Authority determine, in its sole discretion, that:

i) the Reserve Fund for Replacements is sufficient to pay the costs set forth in Section 310.405 for the subsequent five years; and

ii) the amount needed to complete any deferred maintenance on the Development is less than one year's funding requirement for the Reserve Fund for Replacements.

b) If the Authority makes a determination pursuant to subsection (a)(2), then, prior to the Authority increasing the basic rate of return, the Authority shall require that the Owner execute an agreement evidencing the increase in the basic rate of return and containing the Owner's agreement either to preserve the Development as affordable for persons or families of Very Low, Low and Moderate Income for a period not less than five years (starting from the later of the date on which the owner acquires the right to prepay its Mortgage Loan or the date on which the increase in Equity is granted) or increase the number of units affordable to persons or families of Very Low, Low and Moderate Income.

c) Any increase in the basic rate of return approved pursuant to this Section shall conform to any relevant federal statutes, rules or regulations.

(Source: Amended at 31 Ill. Reg. 4392, effective February 28, 2007)