**Section 310.803 Retroactive Adjustments**

a) Developments for which the Authority has issued a conditional commitment letter effective prior to August 9, 1984 are not eligible for an alternate basic rate of return in excess of 6%, unless:

1) the Development is a troubled Development as determined by the Director or, in his or her absence, the Deputy Director. A "troubled Development" for purposes of this Section is one for which a delinquency of more than 60 days exists for replacement reserve, tax and insurance reserve, or principal or interest payments and/or an alternate basic rate of return is necessary, as determined by the Director or, in his or her absence, the Deputy Director, to encourage a new Owner to acquire the Development, or to encourage an existing Owner to invest monies into the Development, or to assist an existing Owner to meet its financial obligations. In regard to the delinquencies, it shall be established to the satisfaction of the Director or, in his or her absence, the Deputy Director, that the increase in the rate of return is essential for the Development to meet these delinquency obligations. The standard to be applied shall be that but for the increased rate of return the Development would not be able to make these past due payments current. In making the determination whether one or more delinquencies exist, the Director or, in his or her absence, the Deputy Director shall consider, but not be limited to, an examination of all books and records the Authority has in regard to the delinquencies as well as all documentation submitted by or on behalf of the Development, and anticipated rents, debt service, utilities, taxes and other expenses of the Development; 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 Development or otherwise 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 of 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) In regard to an alternate basic rate of return to encourage a new Owner to acquire the Development, it shall be established to the satisfaction of the Director or, in his or her absence, the Deputy Director that, but for the increase in the rate of return, a new Owner could not be found to acquire the Development. In making this determination, the Director or, in his or her absence, the Deputy Director shall consider but not be limited to competing market interest rates, alternative lending sources, financial projections based upon anticipated rents, debt service, utilities, taxes and other expenses and the comparative severity of the housing needs.

c) If the Authority makes the determination pursuant to subsection (a)(2), the Authority, prior to increasing the basic rate of return pursuant to subsection (a)(2), shall require that the Owner execute an agreement evidencing the increase in the 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 rate of return is granted) or to increase the number of units affordable to persons or families of Very Low, Low and Moderate Income.

d) 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)