

1. The capital improvement account would be in addition to the reserve for repair and replacement account, the operating reserve account, and any rehabilitation expenditures escrow funded in connection with secondary financing. The capital improvement account shall be used for capital improvements, repairs, maintenance and any other expense of the project which will help ensure that the project is maintained as safe and sanitary rental housing during the mortgage term and thereafter. Ten percent of the annual residual receipts must be deposited into the capital improvement account prior to distribution of the residual receipts between the Agency and owner;

2. The buyer shall execute a deed restriction which preserves the project as affordable rental housing for an additional 15-year period, subject to the same Agency restrictions as are applicable during the 35-year period under the definition of housing investment sales in N.J.A.C. 5:80-32.1;

3. The Agency's annual share of the residual receipts shall be deposited into the Housing Investment Sales Account;

4. Buyers which elect to participate in this option must make such election at the time of closing. Buyers may elect to participate subsequent to closing, provided they fund the capital improvement account with an amount equivalent to the amount which would have been required since closing and distribute 50 percent of the accumulated residual receipts to the Agency for deposit into the Housing Investment Sales Account.

(d) The distribution of amounts to the buyer pursuant to this section shall be subject to those conditions set forth at N.J.A.C. 5:80-3.4.

New Rule, R.1997 d.102, effective March 3, 1997.
See: 28 N.J.R. 321(a), 29 N.J.R. 763(a).

APPENDIX

Example of Application of Subchapter Rules

(a) A group of individuals formed an eligible LD sponsor and invested \$1,500,000 in it: \$1,000,000 was invested in the physical assets of the project (that is, its realty and tangible personalty) and was recognized as investment in the project under the HMFA Law; \$500,000 represented promoters' fees and was not recognized as investment in the project under the HMFA Law. The eligible LD sponsor received a non-recourse loan of \$9,000,000 from the HMFA.

(b) If the Agency had recognized the entire \$1,500,000 as investment in the project, which it was not required to do, the eligible LD sponsor would have been entitled to an additional return on its investment of \$40,000 in each year of operation. For 15 years the project generated revenues sufficient to cover this additional \$40,000. The \$600,000 (15 years x \$40,000) aggregate representing this additional re-

turn, along with other surpluses, was invested and earned a total of \$200,000 in interest income over the 15 years.

(c) Fifteen years after the formation of the eligible LD sponsor, a qualified housing sponsor proposes to buy the physical assets of the eligible LD sponsor in a housing investment sale. At the time of the sale, the eligible LD sponsor has repaid \$1,800,000 of the HMFA loan and has received the full annual return on investment permitted under the HMFA Law. At the closing of the housing investment sale, the project's residual receipts, as defined in N.J.A.C. 5:80-30.1 were \$2,200,000. The purchase price paid by the buyer to the eligible LD sponsor is \$10,900,000, paid by assuming the \$7,200,000 mortgage loan still outstanding and paying \$3,700,000 cash at closing.

(d) At the closing of the housing investment sale, \$200,000 of the purchase price is applied to transaction costs. Thus, the available proceeds of the eligible LD sponsor is \$5,700,000, computed as follows: \$3,500,000 (the cash portion of the Purchase Price, \$3,700,000, less \$200,000 in transaction costs), plus \$2,200,000 (the residual receipts). (See N.J.A.C. 5:80-32.1, "available cash".)

(e) The maximum additional return is \$4,000,000, computed as follows:

1. \$500,000 cash invested by the owners of the eligible LD sponsor that was not recognized as investment in the project (see N.J.A.C. 5:80-32.1, "maximum additional return" paragraph 1), plus
2. \$600,000 representing cumulative annual return on the \$500,000 described in (e)1 above (see N.J.A.C. 5:80-32.1, "maximum additional return" paragraph 2), plus
3. \$200,000 investment income earned on the \$600,000 described in (e)2 above (see N.J.A.C. 5:80-32.1, "maximum additional return" paragraph 3), plus
4. \$1,800,000 representing amortization of principal on the Agency's mortgage loan (see N.J.A.C. 5:80-32.1, "maximum additional return" paragraph 4), plus
5. \$900,000 in market appreciation of realty and tangible personalty (that is, the purchase price of \$10,900,000 less investment in the project of \$1,000,000 and original mortgage loan of \$9,000,000, as provided in N.J.A.C. 5:80-32.1, "maximum additional return" paragraph 5).

(f) At closing, the following payments are made from the available proceeds:

1. To the eligible LD sponsor, \$1,000,000, representing its investment in the project, as determined under the HMFA Law (see N.J.A.C. 5:80-32.6(b)3i);
2. To the eligible LD sponsor, \$2,000,000, representing 50 percent of its maximum additional return (see N.J.A.C. 5:80-32.6(b)3ii);
3. To the Housing Investment Sales Account, \$2,000,000 representing 50 percent of the maximum additional return (see N.J.A.C. 5:80-32.6(b)3iii); and

4. To the State Treasurer, \$700,000, representing the balance of available proceeds (see N.J.A.C. 5:80-32.6(b)3iv).

Amended by R.1997 d.102, effective March 3, 1997.

See: 28 N.J.R. 321(a), 29 N.J.R. 763(a).

In (d), (f), and (f)4, substituted "proceeds" for "cash"; and in (f)3, substituted "Housing Investment Sales Account" for "MAR Revolving Account".

SUBCHAPTER 33. LOW INCOME HOUSING TAX CREDIT QUALIFIED ALLOCATION PLAN

5:80-33.1 Introduction

(a) Section 42 of the Internal Revenue Code of 1986 (Code), 26 U.S.C. § 42, establishes a low income housing tax credit that may be applied against the Federal income tax of persons or associations who or which have invested in certain buildings providing housing for families of low income. As the housing credit agency for the State of New Jersey, the New Jersey Housing and Mortgage Finance Agency (NJHMFA) allocates these credits to qualified taxpayers and thereafter monitors their compliance with Section 42 of the Code. The rules in this subchapter set forth the standards and procedures used by NJHMFA to perform its allocation and monitoring responsibilities and this subchapter represents the qualified allocation plan for New Jersey required by Section 42 of the Code.

(b) In each calendar year, the total dollar value of the credits that can be allocated under these rules, except for the credits issued in connection with buildings financed with the proceeds of certain tax exempt bonds, is limited by the State housing credit ceiling provided in Section 42 of the Code. NJHMFA, therefore, has determined to award these limited credits on a competitive basis. Applicants seeking an allocation of these credits must apply under one of the cycles set forth in N.J.A.C. 5:80-33.4, 33.5, 33.6, 33.7 or 33.8. NJHMFA ranks the applications received in each cycle according to the respective point scales provided in N.J.A.C. 5:80-33.16, 33.17, 33.18, 33.19 and 33.20. The credits assigned to each cycle are then reserved for the highest ranking applications that meet the eligibility requirements set forth in N.J.A.C. 5:80-33.13.

(c) Credits issued in connection with buildings financed with the proceeds of tax exempt bonds subject to the volume cap restrictions provided in Section 42(h)(4) of the Code are not limited by the State housing credit ceiling and, therefore, are not allocated on a competitive basis. Applicants seeking such "volume cap tax credits" are directed to the provisions of N.J.A.C. 5:80-33.10.

(d) It is the burden of every applicant to comply literally with the requirements of these rules and to ensure that any application presented to NJHMFA is clear, unambiguous and complete in all respects at the time of submission.

(e) These rules shall be construed and administered in a manner consistent and in accordance with the Code and regulations promulgated thereunder.

(f) Compliance with the requirements of the Code is the sole responsibility of the owner of the building for which the credit is allowable. NJHMFA makes no representations to the owner or anyone else as to compliance with the Code, Federal regulations issued under the Code, or any other laws or regulations governing Low Income Housing Tax Credits, or as to the financial viability of any project. All applicants should consult their accountant, tax attorney or advisor as to the specific requirements of Section 42 of the Code governing the Low Income Housing Tax Credit Program.

Amended by R.1998 d.279, effective June 1, 1998.

See: 30 N.J.R. 1132(a), 30 N.J.R. 1978(a).

Rewrote (a); added new (b) through (d); and recodified former (b) and (c) as (e) and (f).

Amended by R.1999 d.120, effective April 5, 1999.

See: 31 N.J.R. 122(a), 31 N.J.R. 860(a).

In (b) and (c), changed N.J.A.C. references.

5:80-33.2 Definitions

The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Brownfield site" means a site that has been identified by the New Jersey Department of Environmental Protection and has received an approved New Jersey Department of Environmental Protection Remedial Action Work Plan.

"COAH" means the New Jersey State Council on Affordable Housing.

"COAH obligation" means a low or moderate-income rental project in a plan that is either COAH-certified or under COAH's jurisdiction as the result of a petition to receive substantive certification or to amend a plan that has previously received substantive certification.

"Code" means the Internal Revenue Code, 26 U.S.C. §§ 1 et seq.

"Complete application" means an application including the application fee, completed application forms and certifications, and all eligibility requirements.

"Court-ordered obligation" means a low or moderate-income rental project that is part of a judgment of repose, as defined by COAH at N.J.A.C. 5:93-1.3, or a court settlement resulting from an exclusionary zoning lawsuit. For the purpose of this definition, a project shall be deemed to be part of a judgment of repose or a court settlement if the applicant provides a letter from the Superior Court judge or special master with jurisdiction over the suit stating that the project will be included in a final judgment of repose or court settlement.

“Density bonus subsidy” means an economic benefit for low and moderate-income housing resulting from a zoning change that increases permitted density.

“Designated center” means a center designated by the New Jersey State Planning Commission. These consist of urban centers, regional centers, towns, villages and hamlets. For scattered site projects where not all the sites are in a designated center, a majority of the units must be located in the designated center to qualify for the designated center points. In order to qualify for points, centers shall be designated by the application deadline.

“Developer fee” or “development fee” means the fee that covers the overhead and profit of the developer. Certain fees are subsumed within the developer fee—such as acquisition fees, compensation to the general partner, financial consultants, employees of the developer, construction managers/monitors, clerk of the works and syndicator-required consultants. Professional fees not paid out of the developer fee are the fees for the architect, engineer, lawyer, accountant, surveyor, appraiser, soil investigator, professional planner, historical consultant and environmental consultant. (If there are costs listed under the professional planner, the executed contract shall be submitted. Only those costs determined by NJHMFA to be for planning purposes shall be shown as a separate line item.) All other consultant and professional fees shall be included in the developer fee and are not allowed to be shown as separate line items on the tax credit application; otherwise, those fees shown separately will be added to the developer fee line item and may result in a lower point score for the project.

The developer fee contained in the application shall be the maximum fee (dollar amount) recognized by NJHMFA at the time of cost certification so long as the project scope remains the same. NJHMFA may recalculate the fee at time of cost certification using the developer fee percentage in the project’s application, possibly resulting in a higher or lower dollar amount, if NJHMFA determines that there are significant increases or decreases in the project scope (substantial new additions to or deletions in the number of units, amenities, etc.).

Any fee paid to the developer in excess of the developer fee, such as an acquisition fee, incentive developer fee, or other pseudonym, shall be treated as a funding source and may not be recognized as a use of funds.

One of the scoring criteria is a lower developer fee. For scoring purposes, no additional points will be awarded for developer fees that drop below a “floor” of eight percent.

The amount of developer fee allowed is limited to 15 percent of total development cost excluding land, working capital, marketing expenses, escrows, operating deficit reserves, step-in-the-shoes costs and costs associated with syndication. However, a developer fee of up to 20 percent (of total development cost excluding land, working capital,

marketing expenses, escrows, operating deficit reserves, step-in-the-shoes costs and costs associated with syndication) is allowed for the following types of housing:

- i. Scattered site single-family detached or duplex housing;
- ii. Projects of 25 units or less; or
- iii. Housing for special needs populations (see definition).

The cost of acquiring a building shall not be allowed in the calculation of the developer fee if the acquisition is between related parties (see definition) or if it is a minimum rehab project (see definition).

“Developmentally disabled” means a severe, chronic disability of a person which:

1. Is attributable to a mental or physical impairment or combination of mental or physical impairments;
2. Is manifested before the person attains age 22;
3. Is likely to continue indefinitely;
4. Results in substantial functional limitations in three or more of the following areas of major life activity:
 - i. Self-care;
 - ii. Receptive and expressive languages;
 - iii. Learning;
 - iv. Mobility;
 - v. Self-direction;
 - vi. Capacity for independent living; and
 - vii. Economic sufficiency; and
5. Reflects the person’s need for a combination and sequence of special, interdisciplinary, or generic care, treatment or other services which are of lifelong or extended duration and are individually planned and coordinated.

“Eligible basis limits” are limitations on total eligible basis (except for projects in the Special Needs Cycle or those projects that receive any credits from volume cap) based on site location and whether or not a project has elevators. The limits are a specified percentage above the Section 221(d)(3) limits published in 24 C.F.R. Part 200 by HUD as of the first of the year. A project whose total eligible basis exceeds its applicable eligible basis limit may participate in the tax credit program; however, the maximum amount of credits allowed to the project will be limited to the amount of the eligible basis limit applicable to the project. The eligible basis limit is not a per se limit on eligible basis as defined in the Code but is a mechanism that facilitates NJHMFA’s exercise of its authority to limit tax credits to what is necessary to finance projects. See Code Section 42(m).

“Endorsed plan” means a municipal, county or regional plan which has been formally endorsed by the State Planning Commission (by the application deadline) as a result of finding it consistent with the State Plan. For scattered site projects where not all the sites are in an endorsed plan area, a majority of the units must be located in the endorsed plan area to qualify for the endorsed plan points.

“Equity factor” means the pricing of the tax credit in terms of cents per tax credit dollar. The equity factor is listed in the application and may change as market conditions dictate.

“Frail elderly” means a person at least 62 years of age who requires assistance in performing at least two activities of daily living or instrumental activities of daily living (that is, eating, dressing, grooming and household management activities). Only special needs projects which also qualify as “housing for older persons” under the Fair Housing Act may reserve units for rental exclusively to the frail elderly.

“High rise” means a building having eight or more residential floors or stories.

“HUD” means the United States Department of Housing and Urban Development.

“Large family unit” means a unit within a non-age-restricted project with three or more bedrooms. For every three bedrooms, there must be at least 1.5 bathrooms. A three bedroom unit must measure no less than 950 square feet. A four-bedroom unit should measure no less than 1,150 square feet. (Excluded from the calculation are common halls, stairways, unfinished basements and attics, garages, balconies and porches.) Developments must be structured in conjunction with realistic market demands (that is, if a developer’s market analysis does not show a need or demand for all three bedroom units, the developer should not be developing all three bedroom units).

“LIHTC project” means a project participating in the Low Income Housing Tax Credit Program.

“Low rise” means a building having one to three residential floors or stories.

“Mid-rise” means a building having four to seven residential floors or stories.

“Minimum rehab project” means any project undertaking only a minimum amount of rehabilitation. Minimum rehab is defined as construction costs totaling less than 50 percent of the acquisition cost where construction cost equals the total of the lines listed under Construction (less any costs associated with step-in-the-shoes basis) on the breakdown of costs and basis form and acquisition cost equals the total of the lines listed under “Acquisition” plus the land cost. Minimum rehab projects are eligible to apply only in the Special Needs Cycle and Final Cycle. In the Final Cycle, they shall be funded only if there are no other projects left to fund.

“Mixed income project” qualifying for the mixed income set-aside in the Suburban Cycle means a project with an applicable fraction between 50 percent and 80 percent.

“NPP projects” means projects located in neighborhoods that are participating in the Department of Community Affairs’ Neighborhood Preservation Program. Cities with such neighborhoods must be under the supervision of the Local Finance Board and the Director of the Division of Local Government Services as determined by the application of Article 4 of the Local Government Supervision Act (1947), N.J.S.A. 52:27BB-54 et seq., and, specifically, section 56 thereof, N.J.S.A. 52:27BB-56.

“Preservation project” means an existing, currently occupied affordable housing project at risk of losing its affordability controls. In order to qualify for the preservation set-aside, the application shall include the following:

1. A copy of all deed restrictions on the property to evidence proof of imminent expiration (within two years) of affordability controls;
2. An agreement precluding the involuntary displacement of non-tax credit qualifying tenants;
3. A maximum applicable fraction of 80 percent in recognition that some tenants will not qualify under the low income housing tax credit program;
4. A 10 percent vacancy rate on non-tax credit units to account for “Next Available Unit” Rule;
5. An election of 20 percent at 50 percent Federal set-aside;
6. A capital needs assessment which illustrates that the proposed rehabilitation exceeds the criteria of a minimum rehab project (see definition); and
7. Letters from tax attorney and investor identifying all project funding sources that are considered Federal subsidies (if any).

For projects that compete in the preservation set-aside, calculation of the developer fee for building acquisition costs shall be limited to five percent.

“Qualified census tract,” as defined in Section 42(d)(5)(C) of the Code, means a census tract designated by the Secretary of Housing and Urban Development in which 50 percent or more of households have an income less than 60 percent of the area median gross income or in which there exists a poverty rate of 25 percent or greater.

“Qualified nonprofit organization” means, pursuant to Section 42(h)(5)(B) of the Code, an entity that owns an interest in the project (directly or through a partnership) and materially participates (within the meaning of Section 469(h) of the Code) in the development and operation of the project throughout the compliance period and is not affiliated with or controlled by a for-profit organization.

1. Section 42(h)(5)(C) defines a qualified nonprofit organization as follows:

“(i) Such organization is described in paragraph (3) or (4) of Section 501(c) and is exempt from tax under Section 501(a);

(ii) Such organization is determined by the State housing credit agency not to be affiliated with or controlled by a for-profit organization; and

(iii) 1 of the exempt purposes of such organization includes the fostering of low-income housing.”

2. Section 42(h)(5)(D) describes how certain subsidiaries meet the definition of a qualified nonprofit organization as follows:

“(i) In general. For purposes of this paragraph, a qualified nonprofit organization shall be treated as satisfying the ownership and material participation test of subparagraph (B) if any qualified corporation in which such organization holds stock satisfies such test.

(ii) Qualified corporation. For purposes of clause (i), the term ‘qualified corporation’ means any corporation if 100 percent of the stock of such corporation is held by 1 or more qualified nonprofit organizations at all times during the period such corporation is in existence.”

The nonprofit set-aside is available exclusively to Section 501(c)(3) or (4) housing sponsors who comprise 100 percent of the general partner interest in the final ownership entity (the limited partnership). Limited liability companies and limited liability partnerships are not eligible for the nonprofit set-aside.

In order to qualify for the nonprofit set-aside, the application shall include:

1. A fully executed Nonprofit Certification;
2. The IRS determination letter granting tax-exempt status under Code section 501(c)(3) or 501(c)(4);
3. The by-laws or articles of incorporation of each general partner, which clearly state that one of the exempt purposes of said organization includes the fostering of low-income housing; and
4. If applicable, the contract establishing a turnkey relationship.

At the point the project places in service, the sponsor shall be required to submit an attorney opinion letter which states that neither the for-profit developer with a financial interest in the project nor any member of the investor limited partner is or has been a member of the qualified nonprofit organization’s board of directors.

“Related party” means a relationship between parties when there is a spousal or family relationship, parent-subsidiary relationship or where owners, officers, directors,

partners, stockholders, or members of one business entity hold a 10 percent or more interest in the other business entity.

“Retention factor” means an increase to the equity factor used to calculate the value of the tax credits. NJHMFA will add a retention factor to non-syndicated tax credit projects, or projects where the general partner (and/or related entity) will retain two percent ownership interest or more. For projects where the general partner’s ownership interest is between two and five percent, \$.05 shall be added to the equity factor. If the general partner’s ownership interest is five to 49 percent, \$.10 shall be added to the equity factor. If the general partner’s ownership interest is 50 percent or more, \$.20 shall be added to the equity factor.

“Scattered site project” means a project that consists of buildings which are not all proximate to one another within the same municipality or contiguous municipalities, financed pursuant to a common financing plan and 100 percent occupied by qualified low-income households.

“Senior project” means “housing for older persons” as defined in Section 807(b)(2) of the Fair Housing Act, 42 U.S.C. § 3607, as it may be amended. In order to be eligible for the senior set-aside, the project must meet one of the three categories of exempt “housing for older persons” as defined by the Fair Housing Act:

1. At least 80 percent of the occupied units in the building are each occupied by at least one person 55 years or older and the property must be clearly intended for older persons as evidenced by policies and procedures that demonstrate the intent that the property be housing for older persons (55+);
2. All the residents are 62 or older; or
3. Housing that the Secretary of HUD has designated as housing for older persons.

The familial status provisions of the Fair Housing Act prohibit discrimination against households with children under 18. This protection extends to pregnant women, foster families, legal guardians, and those in the process of obtaining guardianship or of adopting minor children. The only exception to this prohibition against discrimination based on familial status is for property that qualifies under a Fair Housing Act exemption as “housing for older persons.”

Refusing to rent to households with children is allowed under the exemption for housing for older persons as long as the age restrictions are met. Accordingly, in these properties, managers must verify the age of residents. Age verification documentation must be available on site; failure may lead to a loss of the exemption. For questions about whether a property qualifies for the exemption as housing for older persons, a fair housing attorney or other fair housing professional should be consulted.

“SNAP neighborhood” means a neighborhood participating in the Strategic Neighborhood Assistance Program with an approved neighborhood plan as confirmed by the Department of Community Affairs. For scattered site projects where not all the sites are in a SNAP neighborhood, a majority of the units must be located in a SNAP neighborhood to qualify for the targeted neighborhood/SNAP neighborhood set-aside. SNAP neighborhoods must be designated by the application deadline.

“Social service coordinator” means a person who is responsible for linking the residents of a tax credit property to appropriate supportive services. The major functions of the social service coordinator include, but are not limited to:

1. Providing information and referrals to residents on programs and resources on local, State and Federal levels;
2. Interviewing and screening residents for eligibility for programs and entitlements and assisting with application procedures;
3. Assessing the needs of residents, including physical, mental, social and financial needs, and developing a plan for service delivery;
4. Monitoring and evaluating service delivery, and reassessing as necessary;
5. Establishing links with agencies and service providers;
6. Serving as residents’ advocate/liaison; and
7. Planning and implementing monthly programs and activities to meet the needs of residents, including establishment of social, educational and recreational programs.

“Social services model” means any project which submits an executed agreement between a housing and social service provider or otherwise demonstrates to the satisfaction of NJHMFA that one or more of the following types of services shall be provided for at least the term of the compliance period to improve the quality of life of the residents of the project. The services must be affordable, appropriate, available and accessible to the project’s tenants and the social service provider must have the capacity to perform such services. The services include, but are not limited to:

1. Hiring a full-time social service coordinator. If a social service coordinator is being provided through a third party, then a signed agreement between the two parties is required, and the coordinator must be dedicated to the tax credit project for at least 20 hours a week;
2. Providing child care services either on site or linked to outside child care centers;
3. Providing health care services either on site or linked with a local health care provider;
4. Providing job training programs on site or linked with a local training center;

5. Providing personal care and/or housekeeping services on site;
6. Providing at least one congregate meal on site;
7. Providing adult day-care services; and/or
8. Providing transportation services for the residents.

Social service coordinator, case manager and linkages coordinator/ provider are not counted as separate and distinct services. NJHMFA shall view these services as all being part of the same service.

“Special needs project” means a project which shall rent a minimum of 25 percent of the tax credit units (with the exception of Work First projects, which shall rent a minimum of 10 percent of the tax credit units) in the project to one (or more) of the targeted special needs populations referred to below, and must make available a minimum of three daily services addressing the needs of the identified group, one of which must be a social service coordinator. If a social service coordinator is being provided through a third party, then a signed agreement between the two parties is required, and the coordinator must be dedicated to the tax credit project for at least 20 hours a week. Project sponsors may rent more than 25 percent (or 10 percent for Work First projects) of the tax credit units to one or more of these targeted populations. However, sponsors should also be aware that for certain types of special needs projects, when more than 30 percent of the units are set aside for persons with special needs, “saturation” may occur resulting in an institution-type atmosphere. Special needs populations include individuals and families who are in need of certain types of homes and/or community-based supportive services, usually on an ongoing basis, in order to remain capable of independent living in communities. Supportive services range across a wide continuum of care (such as meals preparation, assistance with housecleaning, etc.) to high level (such as substance abuse and mental health supports) to medically intense (such as skilled nursing) and will vary from person to person depending on their particular physical, psycho-social, and/or mental limitations, and may vary for one person over time. Each special needs tenant does not have to utilize all of the services provided by the project; however, the services must be available. If tenants are not utilizing the services that are available, NJHMFA may call into question whether or not the project is serving a special needs population.

1. Examples of targeted special needs populations are:
 - i. Persons with AIDS/HIV-related illness;
 - ii. Homeless;
 - iii. Mentally ill;
 - iv. Frail elderly (see definition);
 - v. Alcohol/substance abusers;
 - vi. Persons with physical disabilities;

- vii. Mentally retarded/developmentally disabled;
 - viii. Pregnant/parenting teens;
 - ix. Participants of the Work First Temporary Assistance to Needy Families Program;
 - x. Participants of the Work First General Assistance Program; and
 - xi. Victims of domestic violence.
2. Examples of support services include, but are not limited to, the following:
- i. Social service coordinator (see definition)/case manager;
 - ii. Counseling and crisis intervention;
 - iii. Health care advocacy and linkages;
 - iv. Assistance with activities of daily living and/or instrumental activities of daily living;
 - v. Recreational activities;
 - vi. Entitlement counseling and advocacy;
 - vii. Employment counseling and training;
 - viii. Support groups;
 - ix. Home-based personal or medical assistance;
 - x. Skilled nursing;
 - xi. Meals preparation;
 - xii. Housekeeping;
 - xiii. Substance abuse and mental health supports; and
 - xiv. Child care/adult day care.

“Sponsor certification” means the certification submitted by the sponsor for application, reapplication, carryover request or IRS Form 8609 request which identifies the anticipated or actual date that the project is placed in service. The certification shall also include a statement whereby the sponsor agrees to abide by the low income housing tax credit requirements of the Code and a statement, under penalty of perjury, that the information contained in the certification is true and complete.

“Substantially incomplete” means an application with a total of three or more defects as described at N.J.A.C. 5:80-33.12(c)1 and 3 or an application with a total of six or more defects as described at N.J.A.C. 5:80-33.12(c)1, 2 and 3.

“Supplemental award” means an award of credits from the Reserve in order to fund the last highest ranking project in a cycle if there are insufficient credits in the cycle to provide a full reservation for the project. Applicants do not apply for supplemental awards.

“Targeted city” means any city designated by the Governor’s Urban Coordinating Council. Cities must be designated by the application deadline.

“Targeted neighborhood” means any neighborhood which has been selected for implementation of a specific revitalization plan within a city designated by the Governor’s Urban Coordinating Council (“UCC”). To qualify for the targeted neighborhood/SNAP neighborhood set-aside, the project must be part of a neighborhood plan approved by the UCC. For scattered site projects where not all the sites are in a targeted neighborhood, a majority of the units must be located in a targeted neighborhood to qualify for the targeted neighborhood/SNAP neighborhood set-aside. Targeted neighborhoods must be designated by the application deadline.

“Uncorrected noncompliance” applies only with respect to the uncorrected noncompliance point category and means any one of the following which was reported to the owner by NJHMFA and remains uncorrected as of the date of the tax credit application deadline or the correction date set forth in the formal notice of non-compliance, whichever occurs later:

1. A violation of State and local building codes or health ordinances;
2. Failure of one or more major systems (for example, roof, HVAC, elevators, plumbing and electric); or
3. Failure to fulfill any Qualified Allocation Plan provisions as represented by an owner in a project’s New Jersey LIHTC application.

Owners shall be notified of the noncompliance by either a formal notice of noncompliance or by the non-issuance of the IRS Form 8609.

“Voluntary compliance with the courts” means a project located in a municipality that has voluntarily complied with its second round fair share obligation either by a petition to the Council on Affordable Housing (COAH) or by a request to the court and its second round obligation was not the subject of an exclusionary zoning lawsuit. Voluntary compliance shall be verified by the entity with jurisdiction over the municipality (either the executive director of COAH or the special master).

Amended by R.1997 d.284, effective July 7, 1997.
See: 29 N.J.R. 1441(a), 29 N.J.R. 2818(a).

Added “COAH”, “Density bonus”, “Designated center”, “Developmentally disabled”, “Eligible basis limits”, “High-rise”, “HUD”, “Inclusionary development”, “Low-rise”, “Mid-rise”, “Retention factor”, and “Uncorrected noncompliance”; amended “COAH obligation”, “Court-ordered obligation”, “De minimis award”, “Developer fee”, “Minimum rehab project”, “Related party”, “Social services model”, and “Sponsor certification”; and deleted “After-school program”, “Day-care”, “Intermediary fees”, “Partial allocation”, “Urban aid municipality”, and “Urban center”.

Amended by R.1998 d.279, effective June 1, 1998.
See: 30 N.J.R. 1132(a), 30 N.J.R. 1978(a).

Rewrote the section.

Amended by R.1999 d.120, effective April 5, 1999.
See: 31 N.J.R. 122(a), 31 N.J.R. 860(a).

Substituted "clearly" for "already" in the introductory paragraph; in "COAH obligation" and "Court-ordered obligation", deleted "to encourage family rental units in non-urban municipalities," following "addition," and substituted a reference to affordable rental units for a reference to family rental units in the fourth sentences, and deleted former sixth sentences; deleted "De minimis award"; in "Developer fee" or "development fee", rewrote the first paragraph; in "Eligible basis limits", deleted a reference to the Mixed Income Cycle; in "Qualified nonprofit organization", rewrote the concluding paragraph; rewrote "Retention factor"; in "Social services model", inserted "appropriate" in the second sentence of the introductory paragraph; in "Special needs project", substituted "tax credit units in the project to" for "total units in the project for occupancy by" in the first sentence, and substituted "the tax credit units to" for "their affordable units for occupancy by" in the third sentence; inserted "Supplemental award"; and rewrote "Uncorrected noncompliance".

Amended by R.2000 d.132, effective March 20, 2000.

See: 32 N.J.R. 191(a), 32 N.J.R. 1065(a).

Rewrote the section.

Amended by R.2001 d.170, effective May 21, 2001.

See: 33 N.J.R. 932(a), 33 N.J.R. 1573(b).

Added "Brownfield site", "Mixed income project", "NPP projects", "Preservation project", "Qualified census tract", "Substantially incomplete" and "Voluntary compliance with the courts"; and in "Scattered site project", deleted last sentence.

5:80-33.3 Application cycles

Each year, NJHMFA shall establish funding cycles and the amount of credits available in each cycle. They will be advertised in the Atlantic City Press, The Record, Newark Star Ledger, The Courier News, The Asbury Park Press, The Camden Courier Post, Bridgeton Evening News and The Times. NJHMFA shall set the eligibility cut-off dates in each year for receipt of completed applications. Applications shall be submitted to NJHMFA by 12 noon of the application deadline date in order to be considered for review. The application filing deadlines and the credits available in each cycle shall be announced approximately 90 days (or the next business day if the 90th day is a weekend or holiday) after the deadline for the cycle. NJHMFA may adjust the number of cycles or adjust the award dates if required by the timing of passage of Federal legislation or adoption of IRS rules and regulations or for other compelling circumstances. A project cannot compete in more than one cycle simultaneously. No project will be allocated more than \$1,500,000 in credits in any one calendar year.

Amended by R.1997 d.284, effective July 7, 1997.

See: 29 N.J.R. 1441(a), 29 N.J.R. 2818(a).

Lowered maximum yearly credit allocation from \$2,000,000 to \$1,500,000.

Amended by R.2001 d.170, effective May 21, 2001.

See: 33 N.J.R. 932(a), 33 N.J.R. 1573(b).

Inserted "Applications shall be submitted to NJHMFA by 12 noon of the application deadline date in order to be considered for review".

5:80-33.4 Urban Cycle

(a) Projects located in the municipalities listed on the Urban Cycle List, except for projects receiving HOPE VI funding, are eligible to apply in the Urban Cycle. The list of these municipalities changes periodically and is available in the application. Minimum rehab projects are not eligible to apply in this cycle. There are three set-asides in the Urban Cycle:

1. Neighborhood Set Aside: 25 percent of the credits available in the Urban Cycle shall be set aside for projects that are part of an approved neighborhood plan within targeted neighborhoods (within targeted cities) (see definition), for projects in designated SNAP neighborhoods and for NPP projects (see definition). Targeted neighborhood, SNAP and NPP projects are eligible for Urban Cycle credits beyond the set-aside. If, because of lack of demand, this set-aside is not fully utilized, remaining credits in this set-aside shall be released into the Urban Cycle for use by other projects.

2. Senior set-aside: 15 percent of the credits available in the Urban Cycle shall be set aside for senior citizen projects. Senior citizen projects are eligible for Urban Cycle credits beyond the set-aside. If, because of lack of demand, the senior set-aside is not fully utilized, remaining credits in the senior set-aside shall be released into the Urban Cycle for use by other projects.

3. Nonprofit set-aside: In order to encourage the participation of local and/or State tax-exempt organizations in the tax credit program, 25 percent of the credits available in the Urban Cycle shall be set aside for qualified nonprofit organizations (see definition). Nonprofits are eligible for Urban Cycle credits beyond the set-aside. If, however, there is not enough nonprofit demand, credits remaining in the nonprofit set-aside shall be made available to other projects in the Urban Cycle so long as no more than 90 percent of the total State housing credit ceiling, as per Section 42(h)(5)(A) of the Code, is allocated to for-profit sponsored projects.

(b) Reservations shall first be awarded to the highest ranking project in targeted neighborhoods until the neighborhood set-aside has been met. Once the neighborhood set-aside has been fully reserved to projects in targeted neighborhoods, reservations shall be awarded to the highest ranking senior projects until the senior set-aside has been met. Once the senior set-aside has been fully reserved to senior projects, reservations shall be awarded to the highest ranking nonprofit-sponsored projects until the nonprofit set-aside has been fully reserved. Then, reservations shall be awarded to the applications with the highest rankings.

(c) Projects can qualify for multiple set-asides. For example, if a targeted neighborhood project qualified as a senior and a nonprofit project, the project would be meeting all three set-asides. However, projects which receive negative points under N.J.A.C. 5:80-33.16(a)21, 23 or 24 shall not be eligible to compete in a set-aside.

Amended by R.1997 d.284, effective July 7, 1997.

See: 29 N.J.R. 1441(a), 29 N.J.R. 2818(a).

In (a), substituted reference to municipalities on the Urban Cycle List for reference specifying types of municipalities.

Amended by R.1998 d.279, effective June 1, 1998.

See: 30 N.J.R. 1132(a), 30 N.J.R. 1978(a).

In (a), inserted a reference to HOPE VI funding in the introductory paragraph and inserted "that are part of an approved neighborhood plan" preceding "within targeted neighborhoods" in 1.

Amended by R.1999 d.120, effective April 5, 1999.

(f) If an applicant fails to respond to NJHMFA's notification of curable defects within the 48-hour cure period, or if an applicant's response is non-responsive to the question asked, a negative inference shall be drawn. (For example, failure to respond to an item in a cure letter will result in the denial of points if the question is with respect to a point category; negative points if with respect to the point categories at N.J.A.C. 5:80-33.16(a)20 to 24; or ineligibility if with respect to an eligibility requirement.)

(g) After the application deadline, telephone calls or other oral or written communications on behalf of a tax credit applicant (for example, from a project's development team, elected representatives, etc.) other than information submitted under the cure period shall not be accepted before reservation awards have been announced.

Recodified from N.J.A.C. 5:80-33.10 and amended by R.1998 d.279, effective June 1, 1998.

See: 30 N.J.R. 1132(a), 30 N.J.R. 1978(a).

Added new (b) through (e); and recodified former (b) as (f). Former N.J.A.C. 5:80-33.13, Scoring and ranking, was recodified to N.J.A.C. 5:80-33.16.

Recodified from N.J.A.C. 5:80-33.13 and amended by R.1999 d.120, effective April 5, 1999.

See: 31 N.J.R. 122(a), 31 N.J.R. 860(a).

In (e), changed the deduction from two points to one point; inserted a new (f); and recodified former (f) as (g). Former N.J.A.C. 5:80-33.12, Application fee schedule, recodified to N.J.A.C. 5:80-33.11. Amended by R.2000 d.132, effective March 20, 2000.

See: 32 N.J.R. 191(a), 32 N.J.R. 1065(a).

In (f), changed N.J.A.C. reference.

Amended by R.2001 d.170, effective May 21, 2001.

See: 33 N.J.R. 932(a), 33 N.J.R. 1573(b).

In (a), inserted "Applications shall be submitted to NJHMFA by 12 noon of the application deadline date in order to be considered for law review" and "(see definition)"; in (c), inserted "(see definition)" following "incomplete"; in (e), inserted "for each defect cured" following "point".

5:80-33.13 Application to a cycle/eligibility requirements

(a) If a municipality has created a density bonus subsidy to assist the low or moderate-income units in a project, the project may not compete for tax credits (ceiling tax credits). This subsection shall not be evaded by failing to apply all or any portion of the subsidy to the low or moderate-income units, by diverting all or any portion of the subsidy to other uses or by using any other device by which all or any portion of the subsidy is not used to benefit low or moderate-income housing.

(b) In performing its review of all applicable eligibility requirements, NJHMFA staff may contact the applicant to ask questions if there are unclear aspects of the application. Such contact should not be construed by the applicant as an approval or rejection, but simply as an attempt to clarify the application.

(c) Applications shall meet all of the eligibility requirements listed in this section in order to be admitted into a cycle.

1. Applications shall include the information set forth in (c)1i and either (c)1ii or (c)1iii below in order to demonstrate the need and demand for the proposed project in a market area. If NJHMFA determines an insufficient market need or demand exists, the project shall be deemed ineligible.

i. The type of housing proposed and all amenities and services shall be described in a narrative format by the project sponsor. The narrative shall include an explanation of how the services shall be paid for, as well as the need and demand for the project and its impact upon the neighborhood. Commercial space, if any, shall be disclosed. Photographs of the site and existing structures shall be provided from all significant perspectives and show all significant nearby land uses, including, but not limited to, those land uses listed at N.J.A.C. 5:80-33.16(a)15. Preliminary drawings of the finished project, including the site plan, floor plan, cross-sections and elevations drawn to scale, shall be submitted with the narrative.

ii. A market study, certified to both the sponsor and NJHMFA in the analyst's Certification, shall be submitted for all projects except those listed under (c)1iii below. Two copies of the report shall be submitted. The market study shall be no more than six months old; therefore, unsuccessful Spring Cycle applicants may have to update their market study prior to applying to the Final Cycle. Projects applying for additional credits (either from the Reserve or a competitive cycle) that have already received a previous allocation of tax credits, shall not be required to submit a new market study. The engagement letter and instructions to the analyst which require conformance with this section shall be bound in the market study. The analyst shall disclose steps taken to conform to this section and state that all requirements have been fully addressed. If any relevant information cannot be obtained, the analyst shall explain the steps taken to obtain the information in an appendix of the report. The study shall also identify any assumptions, estimates, projections and models used in the analysis. The assumptions used in the market study (for example, project rents, unit mix, amenities, etc.) must precisely reflect the information provided in the tax credit application. The data and analysis shall clearly indicate enough demand in the market to support the proposed development. Any additional information appropriate to the market area and the project shall be submitted to demonstrate the demand for the proposed housing project. The report shall include, at a minimum:

(1) A brief executive summary which includes the appropriate vacancy rate, capture rate and absorption period given the rents projected by the sponsor, as well as a table of contents which clearly identifies the location of each of the items listed below;

(2) A description of the proposed site, including unit mix, pictures of the site and existing structures, pictures of the immediate neighborhood, a commentary on the preliminary drawings including size and design, proposed project and unit amenities and any applicable tenant charges, visibility/access/ exposure, proximity to retail and employment, detailed neighborhood and market area maps showing all significant nearby land uses, block and lot numbers of each parcel, site acreage, tenant-paid utilities, project-paid utilities, available public services and public transportation, and existing infrastructure;

(3) Geographic definition and analysis of the market area, including a reasonable rationale for the suggested market area. For example, the market area may be defined as the area in which similar properties compete with the subject property for tenants, or the area immediately surrounding the project from which 60 to 70 percent of the residents are expected to be drawn, taking into account political and natural boundaries, socioeconomic characteristics, and the experience of nearby rental developments. The market area shall be evaluated on the basis of employment and income levels and trends, the presence of local revitalization projects, the number of substandard units in the market and the number of cost burdened households in the market;

(4) A demographic analysis of the households in the market area in (c)1iii(3) above which are income eligible and can afford to pay the rent (assuming potential households may spend up to 40 percent of their income on housing expenses). The eligible population shall be further segmented by tenure (owner/renter), size of renter households, and age (for senior projects). Demographics from the last census shall be updated to reflect current market conditions and shall be the basis for projected demographics. This research data shall be provided in the appendix and shall be from an organization such as Claritas, Easy Analytic Software, National Decision Systems or a governmental source. Special needs projects shall also provide demographics on the special needs population in the project in order to substantiate need and demand at projected rent levels;

(5) Rent, vacancy and amenity surveys by unit size of both market and subsidized properties. The subsidized property survey shall include all LIHTC properties in the market area. Include those projects that are currently under construction or have received preliminary site plan approval. In addition, a rent adjustment analysis shall be provided of the properties most comparable to the subject property. Data shall include, at a minimum, a narrative and grid analysis by unit size for rents, vacancy and turn-over rates, operating expenses (if available), amenities, unit square footage, age, number of bathrooms, tenant-paid utilities, rent per square foot, rent trends, rent concessions, waiting lists, absorption per month, design, curb appeal, name of property contact and phone number. Rents shall be adjusted, especially for utility and amenity charges, so that fair comparisons can be made. The market study shall contain a minimum of three rent comparables for each unit size, which may require analyst to examine the single-family rental market to get enough comparables for large units. At least one picture of each comparable and a detailed street map which shows the location of each comparable shall be provided;

(6) The capture rate, absorption period and the effect of the proposed rental housing on the market area. The capture rate is the number of units in the project divided by the net demand for the project, where the net demand is the number of households which are income eligible and can afford to pay the rent minus the number of comparable subsidized units in the market area. Income qualification shall be based upon gross rent levels with the lowest gross rent level setting the minimum income requirement. The absorption period is a forecast of the number of months that will elapse from the completion of construction to the achievement of stabilization of the project as a whole, taking into consideration a reasonable vacancy rate. Sample calculations of capture rate and absorption period shall be shown in the report, and NJHMFA shall be able to reconstruct the estimates using the data and methods in the market study. Methods shall consider demographic trends, the size of renter households, the unit mix of the project, the amount of home ownership in the target population, the cost of home ownership in the market area, approved projects not yet placed in service and any other significant factors. The impact of the subject project on existing housing in the market area shall also be addressed;

(7) If applicable, the appropriate rent per square foot and vacancy factor based on market conditions for any commercial space in the project;

(8) A conclusion forecast regarding the potential viability of the proposed project which states the strengths and weaknesses of the project, compatibility of surrounding land uses, appropriateness of project design and amenities, and the reasonableness of projected rents. In addition, the analyst shall state whether sufficient demand from targeted households exists for the development as proposed. Suggestions to make the project more marketable shall be provided if appropriate. All conclusions shall be based on data analyzed in the body of the report; and

(9) A statement of the competency of the analyst conducting the study. The market analyst shall certify that:

(A) He or she is an independent, third party professional with no financial interest in the project other than in the practice of his or her profession (for example, his or her fee for preparing the report is not contingent upon project completion and/or an award of tax credits);

(B) He or she has the requisite knowledge to proceed with the study;

(C) He or she has personally inspected the subject property and the comparable properties analyzed in the report; and

(D) He or she has conducted the study in accordance with Standards 4 and 5 of the Uniform Standards of Professional Appraisal Practice (USPAP).

iii. In lieu of the market study requirements listed in (c)1ii above, the following types of projects may submit the form of market analysis described below; however, this analysis must be performed by a disinterested third party: projects of 25 units or less, projects receiving Project Based Section 8 rental assistance for 100 percent of the units and projects in which all of the units are funded by the Division of Developmental Disabilities as described under the developmentally disabled set-aside described at N.J.A.C. 5:80-33.7(a)1. The third party analyst shall provide age and salary demographics within a one-mile radius of the proposed project and comparable data also within a one-mile radius of the project. Demographics from the last census shall be updated to reflect current conditions and shall provide the basis for the projected demographics. This research data shall be provided by an organization such as Claritas, Easy Analytic Software, National Decision Systems or a governmental source. Special needs projects shall also provide demographics on the special needs population in the project in order to substantiate need and demand at projected rent levels. Comparable data must include a listing of comparable rental projects, their locations, rents, vacancy rates, whether they have waiting lists, their unit and project amenities, proximity to public services and support facilities, unit square footage, age, number of bathrooms, tenant-paid utilities, rent per square foot, rent trends, rent concessions, absorption per month, design, curb appeal, name of property contact and phone number. Rents shall be adjusted, especially for utility and amenity charges, so that fair comparisons can be made. The analyst shall provide a minimum of three rent comparables for each unit size, which may require analysts to examine the single-family rental market to get enough comparables for large units. At least one picture of each comparable and a detailed street map which shows the location of each comparable shall be provided.

2. The applicant shall be either the owner or developer of the project and shall demonstrate that it has site control of the property via any one of the following: fee simple title; long-term leasehold interest (for a minimum term of the compliance and extended use periods); option to purchase or lease, including evidence that options are renewable until at least the start of construction; executed land sales contract or other enforceable agreement for acquisition of the property; or an executed disposition and development agreement with a public agency that specifies the site to be acquired. For all forms of site control, a copy of the current owner's recorded deed shall be submitted as supporting documentation.

3. Applicants shall submit a copy of the preliminary or final site plan resolution as well as all other approvals.

For substantial rehabilitation projects with sites that are not required by the municipality to obtain site plan approval, a letter from the planning board (or appropriate municipal official) stating that the sites are not subject to site plan approval shall be provided. It is the applicant's responsibility to demonstrate that the project complies with all applicable local land use and zoning ordinances and that nothing at the local level interferes with the project obtaining all necessary permits.

4. Applicants shall certify that all necessary environmental approvals have been obtained, or at a minimum, applied for. If remediation is necessary, the remediation plan shall be accounted for in total development costs. If a Phase I environmental study conducted in accordance with A.S.T.M. E1527-97, Standard and Poors Enhanced Protocol (which includes testing for lead, asbestos and radon) has been completed for the project, the findings shall be submitted. A Phase I is not required; however, if a project is awarded credits and a Phase I was not submitted with the application, the applicant shall not be allowed to apply for hardship credits from the Reserve for unforeseen environmental issues.

5. As required by Section 42(m)(2)(B)(i) of the Code, all financing information shall be disclosed in the application, including information about letters of interest and other undertakings that the applicant does not identify as funding sources in the application. The applicant shall provide all syndication documents in existence at the time of application including, but not limited to, the prospectus (offering memorandum), limited partnership agreement, joint venture agreement, partnership administration services agreement, development agreement and any amendments to the aforementioned documents and any relevant agreement between and among the relevant parties setting forth the terms of the financial arrangements, commitment letters, if any (firm or otherwise) and mortgage documents. All documents must include all exhibits and schedules. In addition, Section 42(m)(2)(C)(ii) of the Code requires the taxpayer to "certify to the housing credit agency the full extent of all Federal, State, and local subsidies which apply (or which the taxpayer expects to apply) with respect to the building."

6. All funding sources planned for the project shall be committed to the project. The amount and all terms of the funding commitment shall be listed in the documentation provided under (a)6i through viii below. The amount and terms shall be used by NJHMFA in its underwriting analysis. Expired commitments, letters of interest/intent and term sheets do not qualify as commitments. To evidence commitments for funding sources, the following is required:

i. Banks and other lending institutions: Commitment letters for construction and permanent financing must indicate the interest rate (or the basis on which the interest rate will be set), term of the loan (at least 15 years for permanent financing, or if less than 15

years, loan must be fully amortizing) and all conditions. If the interest rate is floating after permanent loan closing, a maximum interest rate shall be stated in the commitment letter, and shall be the rate at which NJHMFA conducts its underwriting analysis. The commitment shall have been approved by the lender's final approval authority (for example, from a bank's loan review committee or if a lending consortium, from the consortium itself) and shall be countersigned/accepted by the applicant. The maximum mortgage supportable shall have been obtained.

ii. State Balanced Housing or State HOME funds: The Department of Community Affairs (DCA) shall inform NJHMFA of those projects that have submitted a complete application for State Balanced Housing or State HOME funds by the tax credit application deadline. DCA will inform NJHMFA of the projects it intends to fund and the subsidy amounts if those projects are sufficiently competitive to receive tax credits. DCA will announce the Balanced Housing and HOME commitments at the same time NJHMFA awards the reservations of tax credits. The expenditure of Balanced Housing funds is conditioned upon the entry of a judgment of repose (in the case of a project meeting a court-ordered obligation) or upon the receipt of substantive certification (in the case of a project meeting a COAH obligation). Thus, an applicant with a Balanced Housing commitment may not include Balanced Housing funds as an initial funding source unless, at the time of the application deadline, any applicable judgment of repose or grant of substantive certification has occurred. Where such events have not occurred by the application deadline, the applicant shall (a) provide a fully committed alternate source of funding that will later be replaced with the Balanced Housing monies and (b) include the Balanced Housing commitment as a part of the overall plan of funding for the project.

iii. Grants: Commitment letters for grants must be firm or contain only conditions that are under the control of the sponsor (that is, grant commitments cannot be conditioned on the availability of funds). All private, State or local grants shall be deducted from basis unless the grantee is taking the grant into income and paying income tax on it or the grantee is making a loan to the partnership. All Federal grants must be subtracted from basis.

iv. Municipal, county or PHA grants or loans: Funding approvals for municipal or county grants or loans (for example, CDBG, RCA, HOME) vary from county to county and from municipality to municipality.

NJHMFA is sensitive to the regulatory constraints and administrative processes of local governmental funding sources. Therefore, evidence of firm commitments may vary from one government entity to the next. Generally, it is the municipal council and county board of freeholders that have final approval authority; therefore, a copy of the county or municipal resolution approving the funds for the project is required to be submitted with the application. However, for governmental entities where that is not the standard approval process, NJHMFA shall accept comparable commitments. For example, for projects receiving HOME funds from participating jurisdictions ("PJs"), NJHMFA shall accept one of four forms of commitments in light of the many ways that local governmental entities combine their local approval process with Federal HOME regulations. First, applicants may simply submit an approved municipal or county resolution described in the beginning of this subsection. Second, an applicant may submit a copy of the HUD form 7015.15 "Request for Release of Funds & Certification" along with a copy of the PJ's cover letter transmitting it to HUD. Third, the applicant may submit a copy of their PJ's Comprehensive Housing Affordability Strategy (CHAS) with the project and the funding amount specifically cited in the CHAS along with a copy of the PJ's resolution approving the CHAS. Fourth, for those PJs that have authorized their staff to make final funding decisions, a commitment letter signed by the authorized signatory (that is, the person having final approval authority) shall be sufficient so long as documentation delegating final approval authority to the signatory is also submitted.

v. Owner equity/loans: All applicants representing that they shall be contributing equity beyond that generated by the tax credit shall disclose the amount, the source and all terms. Applicants "coming out-of-pocket" to fill a funding gap shall provide a letter from an independent C.P.A. who certifies that the applicant has the amount of cash that is needed to fill the funding gap. Cash already expended on the project by the applicant can be utilized as a source of funds if said expenditures are verified by an independent C.P.A. and said cash is not an advance of other project funding sources. If the developer fee is pledged, applicants shall specify the amount, and when and how it will be paid. (NJHMFA establishes maximum developer fees.) Contractor fees cannot be pledged. Applicant equity or pledges cannot be subsequently replaced by State HOME or Balanced Housing resources except for those COAH/Court-ordered projects referenced in (c)6ii above.

vi. Investor commitments: Applicants who do not have an agreement with a syndicator/investor at the time of application or who have only received an investor's term sheet may still apply for tax credits; however, NJHMFA shall underwrite the project at the NJHMFA equity factor (see definition) to be determined from time to time based on current market conditions. Applicants that have an investment agreement with their investor shall have their project underwritten at a price higher than the NJHMFA equity factor and shall include in their application a commitment letter (not a term sheet) from an investor evidencing the net pricing (cents per credit dollar) and total anticipated net proceeds. Applicants of projects where the general partner(s) (or equivalent) will be retaining two or more percent ownership interest will have a retention factor added to the NJHMFA equity factor or the project's net pricing (see definition of retention factor and equity factor).

vii. All-equity projects: Such projects include those where the applicant is financing the project and is taking the credits itself and those where the project is permanently financed solely on tax credit proceeds (that is, no mortgage, grants, etc.). Applicants of projects in the former category shall comply with (c)6v above and shall have a retention factor added to the NJHMFA equity factor. Applicants of the projects in the latter category shall submit a fully executed investor commitment evidencing the pricing per credit dollar and total anticipated net proceeds shown in the application. If there is sufficient cash flow to amortize debt, the applicant shall obtain a mortgage commitment for such debt.

viii. Federal Home Loan Bank (FHLB): Applicants simultaneously applying in the Spring funding cycles for tax credits (Urban, Suburban/Rural, HOPE VI, Mixed Income or Special Needs Cycle) and in the FHLB Affordable Housing Program (Spring window only) shall not be required to submit a commitment letter from FHLB by the application deadline so long as the FHLB awards are scheduled to be announced during the Spring tax credit cycles. If a project fails to receive FHLB funding, the project may be declared infeasible unless there is an alternate source of financing, such as a pledged developer fee, identified in the tax credit application. Final Cycle applicants must submit their FHLB commitment with the application by the Final Cycle application deadline.

7. In accordance with the Code, NJHMFA shall examine the reasonableness of the operational costs of the project. Applicants shall demonstrate that their project is financially feasible and viable as a qualified low-income housing project throughout the tax credit compliance period.

i. Projects shall be underwritten to demonstrate project feasibility at a household median income percentage that is 2.5 percent below the set-aside selected. Therefore, if the 20 percent at 50 percent Federal set-aside is selected, the project shall be underwritten with rents affordable to tenants at or below 47.5 percent of the area median income adjusted for family size. If the 40 percent at 60 percent Federal set-aside is selected in conjunction with the 60 percent at 50 percent State set-aside, the project shall be underwritten with rents affordable to tenants at or below 57.5 percent and 47.5 percent of the area median income adjusted for family size. If the 40 percent at 60 percent Federal set-aside is selected in conjunction with the three-tier State set-aside as detailed in N.J.A.C. 5:80-33.16(a)2ii, the project shall be underwritten with rents affordable to tenants at or below 57.5 percent, 47.5 percent and 37.5 percent of area median income adjusted for family size. If the project is eligible for the Work First set-aside and the 40 percent at 60 percent Federal set-aside is selected in conjunction with the 10 percent at 20 percent State set-aside, the project shall be underwritten with rents affordable to tenants at or below 57.5 percent and 17.5 percent of the area median income adjusted for family size.

ii. Applicants shall submit a 15-year cash flow pro forma signed by the first mortgagee (or syndicator/investor if the project has no hard debt) which exclusively reflects the following language verbatim: "We acknowledge that this pro forma substantially matches the assumptions used in our underwriting of the mortgage (equity investment)."

(1) The proforma must precisely reflect the rent structure in the tax credit application, all lenders' assumptions such as principal and interest payments, non-rental income, operating expenses, required reserves, annual fees, etc. as well as other characteristics of the application that impact financial feasibility (for example, cost of social services). For example, a project's Balanced Housing application (or other lender application) must mirror the development cost, operating assumptions, rent structure, etc., shown in the tax credit application.

(2) Year one of the proforma shall show stabilized operations. If the proforma reflects negative cash flows in any year, the application must demonstrate the funding and utilization of an Operating Deficit Escrow Account (ODEA). Assumptions regarding interest on the ODEA must be reasonable.

(3) The pro forma may reflect rental assistance only if such assistance is project based and is evidenced by the submission requirements described in (a)12 below. The subsidy may be illustrated only for the initial contractual term; that is, future renewals of project based subsidy contracts cannot be assumed. Upon the expiration of project based rental assistance, Special Needs projects shall be underwritten at rents no more than 20 percent of area median income adjusted for family size. For non-Special Needs projects, the project shall be underwritten at rents that are appropriate for market conditions (and are thus supported by the market study required at (c)1ii above); however, in no event shall rents exceed 50 percent of area median income adjusted for family size.

(4) Year one of the pro forma should reflect operating expenses between \$4,200 and \$5,000 per unit. For those projects with total operating expenses less than \$4,200 per unit or more than \$5,000 per unit, the application shall include an explanation as to why the per unit operating expenses fall outside this recommended range.

iii. Applicants shall submit at least two forms of data supporting the operating expenses stated in the proforma (for example, database information, comparable project information, Institute of Real Estate Management (IREM) statistics). NJHMFA reserves the right to require submission of the audited financial statements for comparable projects owned by the applicant.

iv. NJHMFA reserves the right to require a residual value analysis (conducted by the partnership's accountant) of any project with significant soft debt, at any time during the application and/or allocation process.

v. Projects with market-rate units shall distribute the low and moderate income units among the different sized units to reflect the same percentage distribution as the number of different sized units bear to the total number of units. A greater percentage of the low and moderate income units may, however, be allocated to the larger units. Additionally, low and moderate income units shall be distributed throughout the project such that the tenants of such units will have equal access to, and enjoyment of, all common facilities of the project. (See N.J.A.C. 5:80-8.3.)

8. For all projects except those applying to the Special Needs Cycle or those projects that receive any credits from volume cap, a majority of the units in the project shall be part of a municipally supported, comprehensive strategic neighborhood plan for substantial community development which includes a housing component and may include an economic or social services component. Applicants shall provide a copy of the strategic neighborhood plan, map of the strategic neighborhood with the project site clearly indicated, the municipal resolution that approves and adopts said plan, and municipal documentation of: a description of how the project is specifically addressing the goals of the plan; evidence of the municipality's prior commitments to the neighborhood (for example, other projects in the neighborhood that have received municipal funding/support); and a description of how the municipality proposes to address the goals of the plan in the future. Projects located within a targeted neighborhood, a SNAP neighborhood or a neighborhood that has been approved by the DCA Neighborhood Preservation Program shall not be required to submit the aforementioned documentation.

9. Applicants requesting acquisition credits shall include an attorney's opinion regarding each building's eligibility for acquisition credits unless the deed(s) conveying title to the previous owner clearly shows that the building has not changed ownership in the past 10 years. Applicants shall submit an appraisal not older than six months. The acquisition basis shall be limited to the lesser of the purchase price or appraised value of the building. If acquisition credits are denied, the application shall still be considered for rehabilitation credits so long as the project remains feasible without the acquisition credit.

10. For all projects that are claiming a prior owner's expenditures in basis, a C.P.A. shall itemize the step-in-the-shoes costs and certify that the amount of the step-in-the-shoes costs shown in the application has indeed been spent and is accurately reflected in eligible basis. Prior owner's developer fees shall not be recognized.

11. All projects funded by the U.S. Department of Rural Economic and Community Development (RE&CD) shall provide a letter from the State Director approving the loan and stating that the funds have been obligated. Because RE&CD does not fund a developer fee, the allocated credit amount may be limited to an amount sufficient to pay only the developer fee. The NJHMFA establishes the maximum developer fee.

12. All applicants receiving rental subsidy from a government or private source shall submit with the tax credit application evidence of receipt of such assistance. Evidence of Project Based Section 8 Rental Assistance shall include, at a minimum, a letter from the Public Housing Authority (PHA) firmly approving the project for Section 8 Project Based Assistance subject to the completion of the subsidy layering review. For projects involved in the AFL-CIO Pension Fund Program, a preliminary commitment from the AFL-CIO shall suffice. For other types of (non-Section 8) rental assistance, evidence shall include a fully executed rental assistance contract that specifies the source and term of the subsidy. Only projects receiving Project Based Section 8 Rental Assistance may underwrite the project using the fair market rents (FMRs) as defined by the project's approved HAP contract. Upon the expiration of project based rental assistance, Special Needs projects shall be underwritten at rents no more than 20 percent of area median income adjusted for family size. For non-Special Needs projects, the project shall be underwritten at rents that are appropriate for market conditions (and are thus supported by the market study required at (c)1ii above); however, in no event shall rents exceed 50 percent of area median income adjusted for family size.

13. Special needs projects applying to any cycle shall submit the following items in addition to those items at N.J.A.C. 5:80-33.16(a)7;

- i. A special needs marketing analysis;
- ii. A special needs marketing plan;
- iii. Evidence of the special needs housing development or management experience of the social service provider (or the applicant); and
- iv. For projects applying to the Developmentally Disabled Set Aside, sponsors shall provide in their application a letter from the New Jersey Department of Human Services, Division of Developmental Disabilities (Division) which confirms that the Division has reviewed and agreed to the sponsor's service plan and that the cost is within the amount the Division has available for the operating and social service funding for at least 25 percent of the tax credit units in the project.

14. NJHMFA encourages all owners/developers to affirmatively market their projects. For projects over 25 units, applicants shall submit an Affirmative Fair Housing Marketing Plan, which, in short, documents how the project will be marketed to those people who are least likely to apply. For instance, if the proposed development is located in an area predominantly populated by Caucasians, outreach should be directed to non-Caucasians. Conversely, if the population is predominantly African-American, outreach should be directed to non-African-American groups. At the time the units are

placed in service, the owner/developer and rental agent shall certify that the project was affirmatively marketed.

15. Applicants applying in the HOPE VI Cycle shall submit the following:

i. A copy of the commitment letter from HUD awarding funds to the public housing authority. The applicant shall disclose the terms and conditions of the HOPE VI grant to the public housing authority that funds the project, as well the terms and conditions of the funding arrangements between the public housing authority and the applicant.

ii. An opinion of tax counsel in support of the dollar amount of the eligible basis for the project set forth in the application. Attached to this opinion, and incorporated therein, shall be the accountant's analysis required in (c)15iii below.

iii. An analysis conducted by the applicant's accountant of anticipated project cash flow and residual value demonstrating a reasonable prospect of repayment of all loans funded by the proceeds of the HOPE VI grant and all debt. This analysis shall incorporate the same assumptions utilized in the 15-year operating proforma submitted pursuant to (c)7ii above; and

iv. The applicant shall demonstrate that any HOPE VI funds used in the application to establish eligible basis at any time during the credit period are received under contractual financing provisions that, when viewed in the context of reasonably anticipated project cash flow and residual value, constitute lawful basis under the Code and applicable law.

Amended by R.1997 d.284, effective July 7, 1997.

See: 29 N.J.R. 1441(a), 29 N.J.R. 2818(a).

Substantially amended paragraphs under (a); deleted former (b), relating to requirements upon additional award of credits; and recodified former (c) as (b).

Recodified from N.J.A.C. 5:80-33.11 and amended by R.1998 d.279, effective June 1, 1998.

See: 30 N.J.R. 1132(a), 30 N.J.R. 1978(a).

Rewrote (a). Former N.J.A.C. 5:80-33.14, Point system for the Urban Cycle, was recodified to N.J.A.C. 5:80-33.17.

Recodified from N.J.A.C. 5:80-33.14 and amended by R.1999 d.120, effective April 5, 1999.

See: 31 N.J.R. 122(a), 31 N.J.R. 860(a).

Rewrote (a). Former N.J.A.C. 5:80-33.13, Cycle deadlines, recodified to N.J.A.C. 5:80-33.12.

Amended by R.2000 d.132, effective March 20, 2000.

See: 32 N.J.R. 191(a), 32 N.J.R. 1065(a).

Rewrote the section.

Amended by R.2001 d.170, effective May 21, 2001.

See: 33 N.J.R. 932(a), 33 N.J.R. 1573(b).

Rewrote section.

5:80-33.14 Application to the Reserve

(a) See N.J.A.C. 5:80-33.9 for a description of the Reserve. Applicants shall submit all of the following before NJHMFA will consider any hardship request.

1. The re-application fee;

2. A Sponsor Certification for Re-Application (including all updates to original application. The developer fee cannot exceed that stated in the original application);

3. A rent qualification chart, income and expense statements and 15-year cash flow proforma all reflecting current projections. The proforma shall be signed by the first mortgagee (or syndicator/investor if the project has no hard debt) exclusively reflecting the following language verbatim: "We acknowledge that this proforma substantially matches the assumptions used in our underwriting of the mortgage (equity investment)";

4. An explanation why additional credits are being sought plus supporting documentation. Projects that did not submit a Phase I environmental assessment (conducted in accordance with A.S.T.M. E1527-97, Standard and Poors Enhanced Protocol) with their original application for tax credits are not eligible for additional credits for environmental overruns;

5. Evidence that at least 50 percent of the developer fee is pledged and that the applicant has attempted to increase funding from every other source (except State Balanced Housing from the New Jersey Department of Community Affairs) before applying to the Reserve for additional credits; and

6. A letter from the syndicator/investor which addresses the eligibility and specific need for the additional credits. (If the applicant is still incurring costs and is using a projection of costs and basis in his or her application for additional credits, the investor shall verify the projection.)

(b) Should additional credits be awarded to a project, an allocation/issuance fee equaling two percent of the additional credit amount over the 10-year credit period shall be paid as provided in N.J.A.C. 5:80-33.27.

Amended by R.1997 d.284, effective July 7, 1997.

See: 29 N.J.R. 1441(a), 29 N.J.R. 2818(a).

In (a), deleted text relating to requirements for additional credit applications and awards, and inserted "See N.J.A.C. 5:80-33.8 for a description of the Reserve B."; and in (a)2, inserted reference to developer fee.

Recodified from N.J.A.C. 5:80-33.12 and amended by R.1998 d.279, effective June 1, 1998.

See: 30 N.J.R. 1132(a), 30 N.J.R. 1978(a).

In (a), added new 3 and 5 and recodified former 3 and 4 as 4 and 6. Former N.J.A.C. 5:80-33.15, Point system for the Suburban/Rural Cycle, was recodified to N.J.A.C. 5:80-33.18.

Recodified from N.J.A.C. 5:80-33.15 and amended by R.1999 d.120, effective April 5, 1999.

See: 31 N.J.R. 122(a), 31 N.J.R. 860(a).

In (a), changed N.J.A.C. reference in the introductory paragraph, and inserted "(or syndicator/investor if the project has no hard debt)" and "(equity investment)" in 3. Former N.J.A.C. 5:80-33.14, Application to a cycle/eligibility requirements, recodified to N.J.A.C. 5:80-33.13.

Amended by R.2000 d.132, effective March 20, 2000.

See: 32 N.J.R. 191(a), 32 N.J.R. 1065(a).

In (a)4, inserted "(conducted in accordance with A.S.T.M. E1527-97, Standard and Poors Enhanced Protocol)" following "environmental assessment".

Amended by R.2001 d.170, effective May 21, 2001.

See: 33 N.J.R. 932(a), 33 N.J.R. 1573(b).

Rewrote (b).

5:80-33.15 Scoring and ranking

(a) Because of the limited amount of credits and the high volume of applications to NJHMFA, only a fraction of the projects that apply typically receive credits. NJHMFA will rank projects according to the score sheet submitted in the project's application. Based on this ranking, NJHMFA will then examine the applications of only those projects that rank sufficiently high to receive credits. Once it is determined that an application meets all eligibility requirements, it is admitted into the cycle and underwritten.

(b) Applications shall receive points based on the point system for the particular cycle in which they compete. In the event of a tie score, projects shall be ranked according to the tie-breaker system. Then, reservations shall be awarded to the applications with the highest scores and to the applications that win the tie-breakers, with reservations first going to projects in the set-asides.

(c) All units in the project must qualify for a point category in order for the application to receive the points, unless expressly stated otherwise in the point categories described at N.J.A.C. 5:80-33.16 and 33.17.

(d) Applicants who are successful in receiving tax credits are strongly advised to closely oversee during construction the implementation of all categories for which the application received points. Implementation shall be verified through certifications and on-site inspection by NJHMFA staff. The IRS Form(s) 8609 shall not be issued until all owner representations have been fulfilled. If they are incapable of being fulfilled in a timely manner, NJHMFA may unilaterally cancel the allocation to the project.

Recodified from N.J.A.C. 5:80-33.13 and amended by R.1998 d.279, effective June 1, 1998.

See: 30 N.J.R. 1132(a), 30 N.J.R. 1978(a).

Added a new (c). Former N.J.A.C. 5:80-33.16, Point system for the Special Needs Cycle, was recodified to N.J.A.C. 5:80-33.21.

Recodified from N.J.A.C. 5:80-33.16 and amended by R.1999 d.120, effective April 5, 1999.

See: 31 N.J.R. 122(a), 31 N.J.R. 860(a).

Rewrote the section. Former N.J.A.C. 5:80-33.15, Application to the Reserve, recodified to N.J.A.C. 5:80-33.14.

Amended by R.2000 d.132, effective March 20, 2000.

See: 32 N.J.R. 191(a), 32 N.J.R. 1065(a).

Rewrote (c)1.

Amended by R.2001 d.170, effective May 21, 2001.

See: 33 N.J.R. 932(a), 33 N.J.R. 1573(b).

Rewrote (c).

5:80-33.16 Point System for the Urban Cycle

(a) The point system for the Urban Cycle shall be as follows:

1. Increase in compliance period or conversion to tenant ownership (zero to 15 points):