

**5:80-3.4 Conditions required for distribution**

(a) The following conditions must be met before a return on investment will be authorized by the Agency:

1. A final mortgage closing must be held, unless a waiver is granted in accordance with (b) below;
2. The project must be current in all financial obligations, including debt service, repair and replacement reserve and tax and insurance escrows. For purposes of this paragraph, project reserve accounts shall be considered current if they are funded to an acceptable level, as determined by the Agency, in accordance with the Agency's funding schedule;
3. Compliance with all repairs required by the Agency based upon the Agency's most recent physical inspection report;
4. All required reports and statements must be submitted by the housing sponsor;
5. Surplus cash must be available at the time of the request; and
6. The housing sponsor must use forms as required by the Agency when requesting a return on investment.

(b) The requirement of a final mortgage closing prior to receiving a return on investment may be waived by the Executive Director if it is determined that the closing is being delayed due to circumstances beyond the control of the housing sponsor (for example, construction litigation). In addition to the need for such a determination, in order to have such requirement waived, the housing sponsor must

complete the following to the satisfaction of the Executive Director:

1. Submission of Development Cost Certification.
2. Submission of Bank Statements on the Construction Loan Account.
3. Execution of a Memorandum of Understanding setting forth agreement as to the final mortgage amount including any funds necessary for final construction payment and any additional development costs that are approved by the Agency; and agreement, if applicable, regarding a reduction in the original mortgage loan amount.

(c) In addition to the conditions listed in (a) above, the following conditions shall be met by assisted living residences (ALRs) before return on investment shall be approved by the Agency and disbursed to the housing sponsor:

1. The ALR shall have a sustaining occupancy for two full consecutive years; and
2. The operating reserve fund established pursuant to N.J.A.C. 5:80-1.4(c) 3 shall be fully funded with 75 days worth of operating expenses, including expenses of tenants' meals and basic services.

Amended by R.1998 d.80, effective February 2, 1998.  
See: 29 N.J.R. 3214(a), 30 N.J.R. 539(b).

Added (c).  
Amended by R.2000 d.132, effective March 20, 2000.

for unamortized Federal loans shall be recognized in eligible basis; and

2. Duplicative professional costs shall not be recognized in eligible basis. For example, for HOPE VI applications in which both the public housing authority and the developer retain their own construction managers, architects, engineers, etc., only the fees for services retained by the developer shall be recognized in eligible basis.

“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 projects which qualify as “housing for older persons” under the Fair Housing Act may reserve units for rental exclusively to the frail elderly.

“Historic building(s)” means any building or buildings that meet one or more of the following criteria:

1. Building(s) listed on the New Jersey or National Register of Historic Places either individually or as a contributing building to a historic district;
2. Building(s) that have been issued a Determination of Eligibility by the Keeper of the National Register of Historic Places;
3. Building(s) identified as a contributing building to Local Historic Districts which have been certified by the Keeper of the National Register as substantially meeting the National Register Criteria; or
4. Building(s) with a State Historic Preservation Officer Opinion or Certification that the property is eligible to be listed on the National Register of Historic Places either individually or as a contributing building to a historic district.

“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 NJHMFA’s Low Income Housing Tax Credit Program.

“Low-density” means a building having one to four residential floors or stories.

“Minimum rehab project” means any project undertaking only a minimum amount of rehabilitation. Minimum rehab is defined as construction cost 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 Supportive Housing Cycle and Final Cycle. In the Final Cycle, unless it is a preservation project, a minimum rehab project shall be funded only if there are no other projects left to fund. NJHMFA shall utilize an amount not less than 33.33 percent of developer fee based on building acquisition costs as a funding source in its evaluation required under 26 U.S.C. §42(m)(2).

“Mixed income project” qualifying for the Mixed Income set-aside in the Family Cycle means a project with an applicable fraction of no more than 50 percent where at least 50 percent of the tax credit units are at or below 50 percent of area median income.

“Preservation project” means an existing, currently occupied housing project at risk of losing its affordability controls or at risk of losing its level of affordability. In order to qualify for the preservation set-aside in the Family, Senior and Final Cycles, the application shall include the following:

1. Documentation that the property is at risk of losing its affordability controls or level of affordability;
2. An agreement precluding the involuntary displacement of any existing resident (other than for good cause) and, in the case of scattered site projects, a copy of the relocation plan for over-income residents;
3. Documentation of how rents will remain at or near existing levels;
4. Utilization of an applicable fraction based on an analysis of both the income levels of existing residents and the market analysis required under N.J.A.C. 5:80-33.12(c)1ii;
5. A capital needs assessment which illustrates that the proposed rehabilitation meets identified critical repair items and 12-month physical needs; and
6. Letters from tax attorney and investor identifying all project funding sources that are considered Federal subsidies (if any).

For all preservation projects, calculation of the developer fee for building acquisition costs shall be limited to eight percent of the acquisition amount. In addition, the non-deferred amount of this portion of the developer fee shall not exceed four percent of the acquisition amount.

“Qualified Census Tract,” as defined in Section 42(d)(5)(C) of the Code, means a census tract designated by the Secretary of HUD 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 and non-profit points in the Supportive Housing Cycle are 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 or the non-profit points in the Supportive Housing Cycle.

In order to qualify for the nonprofit set-aside or the non-profit points in the Supportive Housing Cycle, 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 owner 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 at least two percent ownership interest. 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 at least 50 percent, \$.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, is financed pursuant to a common financing plan and 100 percent of the residential rental units are occupied by qualified low-income households.

“School renaissance zone” means an area that surrounds an Abbott school and contains new or restored housing, recreation or community centers, and promotes commercial development. The New Jersey Department of Education is responsible for designating neighborhoods that qualify for the school renaissance zone program.

“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 Cycle, 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 of 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.

"Smart growth areas" means locations that will provide for much of the State's future development and redevelopment. Smart growth areas promote growth in compact forms and protect the character of existing stable communities. An area shall be considered to be a smart growth area if it is within Planning Area 1 or Planning Area 2 (sewered) on the State Plan Policy Map, within a Designated Center, Proposed Center (sewered) or an Identified Center (sewered) or within an area designated for development in a municipality that has received Plan Endorsement from the State Planning Commission.

Planning Areas are large masses of land that share a common set of conditions, such as population density, infrastructure systems, level of development or natural systems. Centers are compact forms of development that, compared to sprawl development, consume less land, deplete fewer natural resources and are more efficient in the delivery of public services. For more information about the State Development and Redevelopment Plan (State Plan), contact the New Jersey Office of Smart Growth. The State Plan is not itself a regulation but a statement of State policy that has been adopted by the State Planning Commission pursuant to a statute to guide State, regional and local agencies in the exercise of their statutory authority.

"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 case management services to the residents and/or providing linkages to community resources by providing a signed agreement between the parties;

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

"Social services plan" means a description of the scope of social and support services to be provided for supportive housing projects, including a staffing plan and how the services will be delivered and funded. The services must be affordable and appropriate to the target population to the satisfaction of NJHMFA, 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.

"Sponsor certification" means the certification signed by the developer, applicant and general partner submitted at 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 signed breakdown of costs and basis and a statement whereby the owner 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. 5:80-33.11(c)1 and 3 or an application with a total of six or more defects as described at N.J.A.C. 5:80-33.11(c)1, 2 and 3. An application deemed to be substantially incomplete is not eligible for the 48-hour period to cure such defects under N.J.A.C. 5:80-33.11(c).

“Supplemental award” means an award of credits from the Reserve in order to fund the final eligible project awarded credits 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.

“Supportive Housing project” means a project which shall rent a minimum of 10 units or 25 percent of the total project units, whichever is greater, 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. 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. Targeted special needs populations are:
  - i. Persons with AIDS/HIV-related illness;
  - ii. Homeless;
  - iii. Persons with a mental health disability;
  - iv. Alcohol/substance abusers;
  - v. Persons with physical disabilities;

- vi. Mentally retarded/developmentally disabled;
- vii. Pregnant/parenting teens;
- viii. Participants of the Work First New Jersey/Temporary Assistance to Needy Families program;
- ix. Victims of domestic violence;
- x. Ex-offenders and youth offenders;
- xi. Youth aging-out of foster care, runaway youth and homeless youth;
- xii. Special needs children;
- xiii. The blind, visually impaired and hearing impaired; and
- xiv. Any other emerging special needs population approved by a State department or agency.

2. Examples of support services include, but are not limited to, the following:

- i. Social service coordinator/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. Entitlement counseling and advocacy;
- vi. Employment counseling and training;
- vii. Home-based personal or medical assistance;
- viii. Skilled nursing;
- ix. Meals preparation;
- x. Housekeeping;
- xi. Substance abuse and mental health supports; and
- xii. Child care/adult day care.

“Transit village” means a community with a bus, train, light rail, or ferry station that has developed a plan to achieve its goals. The transit village program is designed to spur economic development, urban revitalization, and private-sector investment around passenger rail stations. The New Jersey Department of Transportation coordinates a task force of different State agencies to review applications and make recommendations. Transit villages must be designated by the Transit Village Task Force by the tax credit 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 fair share obligation either by a petition to the Council on Affordable Housing (COAH) or by a request to the court and its 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.

Amended by R.2002 d.233, effective July 15, 2002.  
See: 34 N.J.R. 1574(a), 34 N.J.R. 2417(a).

Rewrote the section.

Amended by R.2003 d.300, effective July 21, 2003.  
See: 35 N.J.R. 1616(a), 35 N.J.R. 3298(b).

Rewrote the section.

Amended by R.2006 d.112, effective March 20, 2006.  
See: 37 N.J.R. 3879(a), 38 N.J.R. 1432(a).

Added definitions "At risk of losing its affordability controls," "At risk of losing its level of affordability" and "Supportive Housing project"; rewrote definitions "Brownfields site," "Community revitalization plan," "Community service facility," "Court-ordered obligation," "Density bonus subsidy," "Developer fee," "Eligible basis limits," "Frail elderly," "Minimum rehab project," "Mixed income project," "Preservation Project," "Qualified Census Tract," "Qualified nonprofit organization," "Social service coordinator," "Social services model," "Sponsor certification," "Substantially incomplete" and "Voluntary compliance with the courts"; deleted definition "Special needs project".  
Amended by R.2007 d.168, effective May 21, 2007.  
See: 39 N.J.R. 281(a), 39 N.J.R. 2011(a).

In definitions "COAH obligation" and "Court-ordered obligation", inserted the last sentence; added definition "Common area"; deleted definitions "High-rise" and "Mid-rise"; substituted definition "Low-density" for "Low-rise"; in introductory paragraph of definition "Preservation Project", substituted "Family, Senior and Final Cycles" for "Final Cycle"; in paragraph 2 of definition "Preservation Project", inserted "and, in the case of scattered site projects, a copy of the relocation plan for over-income residents"; and rewrote definition "Smart growth areas".

#### Case Notes

A developer's receipt of any form of zoning relief or other accommodation from a municipality does not bar low income housing tax credits against federal income taxes under the regulation that prohibits such credits if the developer has received a density bonus subsidy to assist the low or moderate income units in a project; the definition of "density bonus subsidy" as a zoning change that increases permitted density refers to the permitted density of housing units. In re Tax Credit of Pennrose, 346 N.J.Super. 479, 788 A.2d 787.

#### 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 on the NJHMFA website [www.nj-hmfa.com](http://www.nj-hmfa.com) and in at least five of the following newspapers: 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 as early in the year as possible. Reservations 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.

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".

Amended by R.2002 d.233, effective July 15, 2002.  
See: 34 N.J.R. 1574(a), 34 N.J.R. 2417(a).

Inserted "as early in the year as possible. Reservations shall be announced" following "shall be announced" in the fifth and sixth sentences; deleted the last sentence.

Amended by R.2006 d.112, effective March 20, 2006.

See: 37 N.J.R. 3879(a), 38 N.J.R. 1432(a).

Added the NJHMFA website and narrowed the advertisements to at least five of the listed newspapers.

#### 5:80-33.4 Family Cycle

(a) Non-age restricted developments may apply to this cycle. Not less than \$5,000,000 will be available in the Family Cycle, and the maximum annual allocation of credits to developments competing in this cycle is \$1,800,000. Minimum rehab projects are not eligible to apply in this cycle. Unless market area demographics and/or financial feasibility demonstrate otherwise, all non-age-restricted projects (except minimum rehabilitation, preservation and historic rehabilitation projects) must adhere to the following minimum bedroom distributions: the combined number of efficiency and one-bedroom units shall be no greater than 20 percent of the tax credit units; at least 30 percent of the tax credit units shall be two-bedroom units; and at least 20 percent of the tax credit units shall be three-bedroom units. There are five set-asides in the Family Cycle:

1. Preservation set-aside: The first reservation of credits from the Family Cycle shall be given to the highest-ranking eligible application from a preservation project. This set-aside shall be expanded to insure funding of the highest-ranking eligible preservation project sponsored by a qualified nonprofit organization, should any apply. If, because of lack of demand, the preservation set-aside is not utilized, the credits in the preservation set-aside shall be released into the Family Cycle for use by other eligible applications.

2. Affordability set-aside: The second reservation of credits from the Family Cycle shall be given to the highest-ranking eligible application that has selected the 20 percent at 50 percent Federal set aside as defined under Section 42(g)(1)(A) of the Code. If the 20 percent at 50 percent election is selected, all tax credit units shall be restricted to 50 percent of the area median income adjusted for family size. For example, if the project has an applicable fraction of 100 percent, 100 percent of the units shall be restricted to 50 percent of the area median income adjusted for family size. The 20 percent at 50 percent election shall be reflected on each building's IRS Form 8609 and on the deed of easement and restrictive covenant. If, because of lack of demand, the affordability set-aside is not utilized, the credits in this set-aside shall be released into the Family Cycle for use by other applications.

3. HOPE VI set-aside: The third reservation of credits from the Family Cycle shall be given to the highest-ranking eligible application which utilizes HOPE VI funds from HUD or is included in an approved HOPE VI proposal. If, because of lack of demand, the HOPE VI set-aside is not utilized, the credits in this set-aside shall be released into the Family Cycle for use by other applications.

4. Nonprofit set-aside: The fourth reservation of credits from the Family Cycle shall be given to the highest-ranking eligible application from a qualified nonprofit organization that is community based within the qualified census tract in which the project is located; that is, an organization that operates and is developing housing within a geographically defined service area within a qualified census tract. If there are no eligible applications from a community based qualified nonprofit organization located within the qualified census tract in which the project is located, then the fourth reservation of credits from the Family Cycle will be given to the highest-ranking eligible application from a qualified nonprofit organization. If, because of lack of demand, the nonprofit set-aside is not utilized, the credits in this set-aside shall be released into the Family Cycle for use by other applications.

5. Mixed Income set-aside: The fifth reservation of credits from the Family Cycle shall be given to the highest-ranking eligible application from a Mixed Income project. If, because of lack of demand, the Mixed Income set-aside is not utilized, the credits in this set-aside shall be released into the Family Cycle for use by other applications.

(b) Projects can qualify and apply for multiple set-asides. This potential overlapping of set-asides may expand the amount of credits in the general competition. However, projects which receive negative points under N.J.A.C. 5:80-33.15(a)17, 19 or 20 shall not be eligible to compete in any set-aside.

(c) Reservations shall first be awarded to the highest-ranking eligible projects qualifying for the aforementioned prioritized set-asides. Thereafter, reservations shall be awarded to the highest-ranking eligible projects. To insure equitable distribution if there are both excess demand and multiple ranking eligible applications from a single municipality or developer, NJHMFA shall fund no more than three projects per year and two projects per cycle from the same municipality and/or developer/general partner/managing member. Funding of projects shall be prioritized in the following manner: the highest ranking eligible project(s) in the Family Cycle, the Senior Cycle, the Supportive Housing Cycle and lastly, the Final Cycle. Projects that received an award of credits in a previous year that are now re-competing shall not be included in the totals for purposes of the equitable distribution provision described herein.

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.

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

In (a)3, inserted a reference to nonprofit points in the last sentence.

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), deleted “; with the exception of the highest-ranking and otherwise eligible application in the preservation set-aside under N.J.A.C. 5:80-33.7(a)2”.

Amended by R.2007 d.168, effective May 21, 2007.

See: 39 N.J.R. 281(a), 39 N.J.R. 2011(a).

In (a), inserted the fourth and fifth sentences; and in (d), deleted the last sentence.

### 5:80-33.15 Point system for the Family Cycle

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

1. Applicants may select one of the following options: (10 to 15 points):

i. Projects not located within qualified census tracts which extend their compliance period for an additional 15 years shall receive 15 points. The minimum term of the low-income occupancy commitment is 30 years: a 15-year compliance period plus a 15-year extended use period. Extension of the compliance period bars the utilization of Section 42(h)(6)(I) of the Code until the beginning of the last year of the extended compliance period. An owner electing to extend the compliance period for 15 years will be restricting the property for 45 years—a 30-year compliance period and a 15-year extended use period. Therefore, the owner cannot request the housing credit agency to find a buyer for the tax credit project until the beginning of year 30. This restriction will be enforceable by NJHMFA and future tenants via a deed of easement and restrictive covenant which shall be recorded by NJHMFA pursuant to State law at the latter of the carryover allocation described at N.J.A.C. 5:80-33.24(a)1 or acquisition of the property;

ii. Projects located in qualified census tracts shall be awarded 15 points. To qualify for this point category, a majority of the units shall be located within a qualified census tract; or

iii. For single family and duplex housing which will convert to tenant ownership, 10 points shall be awarded. Such projects must convert to home ownership at the end of the compliance period. Syndication documents must reflect the conversion. The deed of easement and restrictive covenant shall reflect a right of first refusal to be granted by the owner to the tenants.

2. A project shall receive one point if the project utilizes public housing waiting lists.

3. Applicants may select one of the following options (three to seven points):

i. Low-density buildings where at least 30 percent of the units are large family units shall receive seven points. Points are based on the percentage of large family units with respect to the total number of units, not on square footage; or

ii. Rehabilitation projects that do not meet the definition of low-density shall receive three points.

4. Applicants may select one of the following options for municipal, county and public housing authority (PHA) support.

i. Projects that receive a fixed rate tax abatement for a 15-year term shall receive five points. If the specifics of the tax abatement (for example, percentage of rent roll, term) are not recited in the resolution/ordinance, the financial agreement to the tax abatement shall be included with the application. Proof of an applicant's tax-exempt nonprofit status is not sufficient to qualify for points for a tax abatement. In order to receive points under this category, the resolution/ordinance approving the abatement shall be submitted and must cite the proper statutory authority. For projects receiving a tax abatement under the New Jersey Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq., the first stage of the exemption period shall be for no less than 15 years. Only projects utilizing financing from NJHMFA may be granted an abatement under N.J.S.A. 55:14K-37(b). For information regarding NJHMFA financing, please contact the NJHMFA Business Development Officer at (609) 278-7527.

ii. Projects that capitalize an escrow in an amount equal to two years worth of taxes, have a 1.20 debt coverage ratio with a minimum of \$2,600 per unit core operating expenses and receive municipal, county or PHA support of more than five percent of total project costs shall receive four points.

iii. Projects that capitalize an escrow in an amount equal to two years worth of taxes, have a 1.20 debt coverage ratio with a minimum of \$2,600 per unit core operating expenses and receive municipal, county or PHA support totaling five percent of total project costs shall receive three points.

iv. Projects that capitalize an escrow in an amount equal to two years worth of taxes, have a 1.20 debt coverage ratio with a minimum of \$2,600 per unit core operating expenses and receive municipal, county or PHA support of more than one percent and less than five percent of total project costs shall receive two points.

v. For purposes of this point category, municipal, county or PHA support means contribution of land for nominal consideration (\$100.00 per parcel or less) or monetary contribution to the project (for example, HOME, RCA, CDBG, UDAG). Evidence of support shall be in the form of an authorized resolution or ordinance from the appropriate authority, and all steps necessary to make the resolution or ordinance legally binding shall have been completed. As evidence of the fair market value of a land contribution, the application shall include an appraisal (not older than six months) stating the value of contributed land. The tax escrow shall equal the two year amount reflected in the cash flow pro forma, and shall be confirmed by the municipality prior

to the application deadline as the anticipated tax assessment when the project is completed.

5. Because the availability of social services greatly improves the quality of life for residents, NJHMFA awards up to three points for the provision of up to three social services for the compliance period. One point will be awarded per service offered. The services shall be affordable, appropriate, available and accessible to the project's tenants. Applicants shall support their claim to provide social services by providing the following:

- i. Evidence of funding sources or documentation of how or by whom the services shall be paid;
- ii. Evidence of experience of the service provider for both provision of social service and fulfillment of prior private or governmental contracts; and
- iii. Evidence of firm agreements (executed contracts) with service providers for the services.

6. Four points are awarded to projects which pledge to expend a sum equaling at least 15 percent of construction cost on contractors, subcontractors and material suppliers which are certified as minority business enterprises (MBE) and women business enterprises (WBE) by the New Jersey Department of Commerce and Economic Development ("Certified MBE's and WBE's").

7. NJHMFA supports the implementation of the New Jersey State Plan for housing development. The State Plan identifies the unique natural and built infrastructure in areas across the State and presents specific recommendations for growth. To qualify for this point category, a majority of the units shall be located within a designated smart growth area as defined at N.J.A.C. 5:80-33.2. A project shall be considered to be within a smart growth area and eligible for points in this category if the proposed project location is either within an area that has been designated as a smart growth area prior to the application deadline or, prior to the application deadline, is in a location that is within a smart growth area based upon its designation on the Preliminary State Plan Policy Map, provided that the county within which the project is located has completed cross-acceptance of the Preliminary State Plan Policy Map. In order to receive points as a project satisfying a COAH obligation, the petition for substantive certification or amendment to a plan that has previously received substantive certification must be received by COAH by the tax credit application deadline. For more information on whether projects are located in smart growth areas, visit the NJHMFA website at [www.nj-hmfa.com](http://www.nj-hmfa.com) or contact the NJHMFA Director of Policy and Planning at (609) 278-7400. Applicants may select one of the following options:

- i. Projects located within a smart growth area that are not located in a qualified census tract but which satisfy a COAH obligation, satisfy a court-ordered ob-

ligation, are in voluntary compliance with the courts or are within a transit village shall be awarded 10 points;

- ii. Projects located within both a smart growth area and a qualified census tract which contribute to a concerted community revitalization plan shall be awarded seven points. HOPE VI projects shall not be required to submit a community revitalization plan to be eligible for points in this point category; or

- iii. Projects located within a smart growth area only shall be awarded five points.

8. NJHMFA awards up to three points for the provision of unit amenities. One point will be awarded per amenity offered. The costs of the amenities must be shown in the capital and/or operating budgets, as appropriate. Amenities must be appropriate to the proposed tenant population. The list provided below is not all-inclusive. Substitutions are permitted at NJHMFA discretion; however, it is incumbent upon the applicant to demonstrate how each substitute amenity provides a comparable benefit to the tenants as those amenities listed below.

- i. A security alarm;
- ii. A washer and dryer hook-up with drip pan or floor drain;
- iii. An ENERGY STAR-labeled frost free refrigerator of 14 cubic feet for efficiencies and one bedroom, 16 cubic feet for two bedrooms, 18 cubic feet for three bedrooms and 20 cubic feet for four bedrooms;
- iv. An ENERGY STAR-labeled washer and dryer;
- v. An ENERGY STAR-labeled dishwasher;
- vi. Central air conditioning;
- vii. A minimum bedroom size of 100 square feet;
- viii. Minimum kitchen cabinets of 14 linear feet (for up to two bedrooms) and 16 linear feet (for three bedrooms or more);
- ix. Minimum closet space of 14 linear feet for efficiencies and one bedroom, 24 linear feet for two bedrooms, 30 linear feet for three bedrooms and 35 linear feet for four bedrooms;
- x. Emergency pull cords/call button—senior projects only;
- xi. Garages;
- xii. Patios;
- xiii. Outside storage lockers; and
- xiv. High speed internet access.

9. NJHMFA awards points for the provision of project amenities, up to a maximum of two points. One point will be awarded per amenity provided. The costs of the amenities must be shown in the capital and/or operating budgets,

NJHMFA has formally issued a deferral) shall have 10 points deducted from the application's score. Failure to respond to this point category shall result in the deduction of points as provided under this paragraph. Applications that receive negative points in this category do not qualify for the set-asides described at N.J.A.C. 5:80-33.4, 33.5, 33.6 and 33.7.

20. Applications which have a general partner, voting member, developer, or related party that owns a managing or controlling interest in a New Jersey LIHTC project that has failed to submit its annual project certifications and/or building status reports shall have 10 points deducted from the application's score. Failure to respond to this point category shall result in the deduction of points as provided under this paragraph. Applications that receive negative points in this category do not qualify for the set-asides described at N.J.A.C. 5:80-33.4, 33.5, 33.6 and 33.7.

21. Applicants that utilize the cure period in N.J.A.C. 5:80-33.11(c)1 or 3 shall have one point per each defect cured deducted from the application's score.

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 section.

Recodified from N.J.A.C. 5:80-33.14 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. 5:80-33.17, Point system for the Final Cycle, was recodified to N.J.A.C. 5:80-33.22.

Recodified from N.J.A.C. 5:80-33.17 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. 5:80-33.16, Scoring and ranking, recodified to N.J.A.C. 5:80-33.15.

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 the section.

Amended by R.2002 d.233, effective July 15, 2002.

See: 34 N.J.R. 1574(a), 34 N.J.R. 2417(a).

Rewrote the section.

Recodified from N.J.A.C. 5:80-33.16 and amended by R.2003 d.300, effective July 21, 2003.

See: 35 N.J.R. 1616(a), 35 N.J.R. 3298(b).

Rewrote the section. Former N.J.A.C. 5:80-33.15, Scoring and ranking, recodified to N.J.A.C. 5:80-33.14.

Amended by R.2006 d.112, effective March 20, 2006.

See: 37 N.J.R. 3879(a), 38 N.J.R. 1432(a).

Rewrote (a).

Administrative correction.

See: 38 N.J.R. 2796(a).

Amended by R.2007 d.168, effective May 21, 2007.

See: 39 N.J.R. 281(a), 39 N.J.R. 2011(a).

In (a)3i, substituted "Low-density" for "Low-rise"; in (a)3ii, substituted "Rehabilitation projects that do not meet the definition of low-density" for "Mid-rise or high-rise rehabilitation projects"; in (a)4i, inserted "shall be submitted and"; rewrote (a)7, in (a)8iii, (a)8iv, and (a)8v, substituted "An ENERGY STAR-labeled" for "A"; in (a)9iii, inserted ", using ENERGY STAR-labeled commercial equipment"; in (a)9vii, substituted "30-year" for "25 year" and "20-year" for "20 year"; and rewrote (a)12 and (a)14i.

### 5:80-33.16 Point system for the Senior Cycle

(a) The point system for the Senior Cycle includes all point categories of the Family Cycle except the point category at N.J.A.C. 5:80-33.15(a)3 concerning large family units and the point category at N.J.A.C. 5:80-33.15(a)7 concerning smart growth areas is replaced with the following:

1. Applicants may select one of the following options:

i. Projects located within both a smart growth area and a qualified census tract which contribute to a concerted community revitalization plan shall be awarded 10 points. HOPE VI projects shall not be required to submit a community revitalization plan to be eligible for points in this point category;

ii. Projects located within a smart growth area that are not located in a qualified census tract but which satisfy a COAH obligation, satisfy a court-ordered obligation, are in voluntary compliance with the courts or are within a transit village shall be awarded seven points; or

iii. Projects located within a smart growth area only shall be awarded five points.

2. Projects that set-aside 20 percent of the units for the frail elderly shall receive one point.

New Rule, R.2003 d.300, effective July 21, 2003.

See: 35 N.J.R. 1616(a), 35 N.J.R. 3298(b).

Former N.J.A.C. 5:80-33.16, Point system for the urban cycle, recodified to N.J.A.C. 5:80-33.15.

Amended by R.2006 d.112, effective March 20, 2006.

See: 37 N.J.R. 3879(a), 38 N.J.R. 1432(a).

Added (a)2.

### 5:80-33.17 Point system for the Supportive Housing Cycle

(a) The point system for the Supportive Housing Cycle includes all point categories of the Family Cycle except for the point categories in N.J.A.C. 5:80-33.15(a)3 concerning