

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 \$9,000,000 will be available in the Family Cycle, and the maximum annual allocation of credits to developments competing in this cycle is \$2,250,000. 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 tax credit 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 two set-asides in the Family Cycle:

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

2. Nonprofit set-aside: The second reservation of credits from the Family Cycle shall 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.

(b) If the highest-ranking eligible project in the HOPE VI/Replacement Housing set-aside also applies for and

qualifies for the nonprofit set-aside, the project shall be deemed to satisfy NJHMFA's obligation to fund both set-asides. In such a case, the project shall have an ongoing obligation to meet the requirements for both set-asides. This overlapping of set-asides shall expand the amount of credits available in the general competition. However, projects which receive negative points under N.J.A.C. 5:80-33.15(a)16, 18 or 19 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, NJHMFA shall fund no more than two projects per year from the same municipality. 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)3, substituted "40" for "15" following "credit program," and deleted a former fourth sentence.

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

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

Rewrote (a)1; in (a)3, substituted "25" for "40" preceding "percent"; and in (c), added the 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.

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

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

Section was "Urban Cycle".

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) and (c).

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

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

Rewrote (a); and in (c), inserted the last sentence.

Amended by R.2008 d.133, effective May 19, 2008.

See: 40 N.J.R. 839(a), 40 N.J.R. 2429(b).

In the introductory paragraph of (a), substituted "\$7,000,000" for "\$5,000,000" and "\$2,000,000" for "\$1,800,000" and inserted "tax credit" following "one-bedroom"; in (a)2, inserted "or elects to restrict 10 percent of the tax credit units to households earning 35 percent or less of area median income adjusted for family size", deleted "20 percent at 50 percent" preceding "election shall", inserted "/or" and inserted "eligible" preceding "applications"; in (a)3, inserted "/Replacement Housing" twice, inserted "or Replacement Housing factor" and inserted "eligible" preceding "applications"; in (a)4, inserted "either", substituted an open-

ing parenthesis for a semicolon preceding "that is", inserted "(") or offers services, such as daycare, job training or other community services, to the qualified census tract in which the project is located" and deleted "located within the qualified census tract in which the project is located" following the third occurrence of "organization"; in (a)5, substituted "income" for the first occurrence of "Income" and substituted "mixed income" for "Mixed Income" twice; in (b), updated the N.J.A.C. reference; and in (c), deleted "or developer" following the first occurrence of "municipality" and deleted "and/or developer/general partner/managing member" following the second occurrence of "municipality". Amended by R.2009 d.154, effective May 4, 2009. See: 41 N.J.R. 917(a), 41 N.J.R. 1994(a).

In the introductory paragraph of (a), substituted "\$9,000,000" for "\$7,000,000", "\$2,250,000" for "\$2,000,000" and "two" for "five"; deleted former (a)1 and (a)2; recodified former (a)3 and (a)4 as (a)1 and (a)2; in (a)1, substituted "first" for "third"; rewrote (a)2; deleted (a)5; rewrote (b); and in (c), substituted "two" for "three" and deleted "and two projects per cycle" preceding the first occurrence of "year".

### 5:80-33.5 Senior Cycle

(a) Senior projects may apply to this cycle. Not less than \$3,000,000 will be available in the Senior Cycle, and the maximum annual allocation of credits to developments competing in this cycle is \$1,750,000. Minimum rehab projects are not eligible to apply in this cycle. Unless market area demographics demonstrate otherwise, one-bedroom units should comprise at least 85 percent of the project. There is one set-aside in the Senior Cycle:

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

(b) Projects which receive negative points under N.J.A.C. 5:80-33.15(a)16, 18 or 19 shall not be eligible to compete in any set-aside.

(c) Reservations shall first be awarded to the highest-ranking eligible project qualifying for the aforementioned prioritized set-aside. 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, NJHMFA shall fund no more than two projects per year from the same municipality. 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).

Substituted references to family project or family set-aside for references to senior project or senior set-aside throughout; in (a), sub-

stituted reference to municipalities on the Urban Cycle List for reference specifying types of municipalities; rewrote (a)1; and in (a)2, inserted references to the Rural Cycle.

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.

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), inserted a new second sentence in the introductory paragraph. 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), substituted "are three set-asides" for "is one set-aside" and added new 2 and 3; rewrote (b) and added new (c). 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.

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

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

Section was "Suburban/Rural Cycle".

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) and (c).

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

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

Rewrote (a); and in (c), inserted the last sentence.

Amended by R.2008 d.133, effective May 19, 2008.

See: 40 N.J.R. 839(a), 40 N.J.R. 2429(b).

In the introductory paragraph of (a), substituted "\$3,000,000" for "\$2,400,000" and "\$1,500,000" for "\$1,200,000"; in (a)2, inserted "or elects to restrict 10 percent of the tax credit units to households earning 35 percent or less of area median income adjusted for family size", deleted "20 percent at 50 percent" preceding "election shall", inserted "/or" and inserted "eligible" preceding "applications"; in (a)3, inserted "Replacement Housing" twice, inserted "or Replacement Housing factor" and inserted "eligible" preceding "applications"; in (b), updated the N.J.A.C. reference; and in (c), deleted "or developer" following the first occurrence of "municipality" and deleted "and/or developer/general partner/managing member" following the second occurrence of "municipality".

Amended by R.2009 d.154, effective May 4, 2009.

See: 41 N.J.R. 917(a), 41 N.J.R. 1994(a).

In the introductory paragraph of (a), substituted "\$1,750,000" for "\$1,500,000" and "is one set-aside" for "are three set-asides"; deleted former (a)1 and (a)2; recodified former (a)3 as (a)1; in (a)1, substituted "first" for "third"; rewrote (b); and in (c), substituted "two" for "three" and deleted "and two projects per cycle" following "projects per year".

### 5:80-33.6 Supportive Housing Cycle

(a) Supportive housing projects in which a minimum of 10 units or 25 percent of the total project units, whichever is greater, are rented to individuals with special needs and at least three appropriate services are provided may apply to the Supportive Housing Cycle. There must be an executed agreement between the proposed owner entity and a supportive services provider that will submit a social services plan consistent with requirements of this subsection for the Supportive Housing Cycle and approved by NJHMFA. There will be not less than \$2,000,000 available in the Supportive Housing Cycle and the maximum annual allocation of credits to projects competing in this cycle is \$1,200,000.

(b) 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, NJHMFA shall fund no more than two projects per year from the same municipality. Funding of projects shall be prioritized in the following

of services (that is, on-site or in the community) and documentation to support how these services will be funded;

(3) A description of how the service provider will facilitate tenant/landlord relationships, including detailed eligibility and ineligibility criteria for tenant selection and screening, as well as a plan for problem resolution to minimize evictions for supportive housing tenants; and

(4) Provision of at least one of the following services:

(A) Twenty-four-hour, seven-day a week on-call crisis response capability;

(B) Financial management training from a qualified provider and ongoing budget support; and

(C) Linkage and ongoing follow-up services to health care, including dental care, and physical health care and primary health care prevention services.

2. Up to two points will be awarded as follows: one point will be awarded to applicants that will provide on-site or off-site education for tenants of the supportive housing units; and one point will be awarded to applicants that will provide job training and job search assistance and support to tenants of the supportive housing units. Applicants shall provide evidence of funding commitments and signed agreements with qualified service providers specifically identifying a detailed scope of services to be provided and term for the provision of these services. The identified education and/or employment service provider must have a verifiable track record for the provision of these services.

3. Applicants that plan to develop all of the units as lease-based permanent supportive housing (no time limit for tenancy and/or program participation) shall be awarded two points.

4. Applications that evidence rental assistance funding commitments from the HUD McKinney-Vento Programs or other government source(s) of project-based or sponsor-based rental assistance for all the special needs units shall be awarded two points.

5. Applications submitted by a qualified nonprofit organization shall be awarded two points.

6. Projects that encourage integrated community living opportunities, including mixed-income projects, mixed-special needs projects, and scattered site projects, shall be awarded two points.

7. Five points shall be awarded to projects that meet all of the following minimum living standards:

i. Dwelling units in which each bedroom measures not less than 100 square feet;

ii. Unrelated residents have their own bedroom;

iii. No more than four unrelated adults share a bathroom; and

iv. Residents have access to a full kitchen for meal preparation.

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), inserted reference to Rural Cycle and amended N.J.A.C. reference; in (a)1, inserted "up to a maximum of 10 points"; in (a)3, substituted "the sponsor/social service" for "its social service"; and in (a)4, added last two sentences.

Recodified from N.J.A.C. 5:80-33.16 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), rewrote the introductory paragraph and 4, and deleted 7. Former N.J.A.C. 5:80-33.21, Committee review, was recodified to N.J.A.C. 5:80-33.26.

Recodified from N.J.A.C. 5:80-33.21 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. references in the introductory paragraph, substituted "sponsor and/or social" for "sponsor/social" in 3, and substituted a reference to six points for a reference to four points in 5. Former N.J.A.C. 5:80-33.19, HOPE VI Cycle, recodified to N.J.A.C. 5:80-33.18.

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), rewrote the introductory paragraph and 1, inserted "stated in the application" at the end of the first sentence in 2, inserted "housing" following "needs" in 3, inserted ", available, appropriate" following "affordable" in 4, and added 7.

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.

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

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

In (a), amended N.J.A.C. references in the first sentence and deleted the second sentence in the introductory paragraph, deleted 1 and i; in (b), substituted "applicant" for "sponsor" in 3 and 6, and substituted "owner" for "sponsor" in 4.

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

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

Recodified from N.J.A.C. 5:80-33.15 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), changed N.J.A.C. reference in the introductory paragraph. Former N.J.A.C. 5:80-33.18, Tie-breaker system, was recodified to N.J.A.C. 5:80-33.23.

Recodified from N.J.A.C. 5:80-33.18 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. 5:80-33.17, Point system for the Urban Cycle, recodified to N.J.A.C. 5:80-33.16.

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 (a)1; added a new (a)2; recodified former (a)2 as (a)3 and added the last sentence; added (c).

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

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

In (a), amended the N.J.A.C. reference in the introductory paragraph, rewrote 3; rewrote (c).

Recodified from N.J.A.C. 5:80-33.19 and amended by R.2003 d.300, effective July 21, 2003.

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

In (a), substituted "Family" for "Suburban/Rural", amended N.J.A.C. reference; in (b), added 7.

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

Section heading was "Point system for the Special Needs Cycle"; substituted "Supportive Housing" for "Special Needs" throughout; rewrote (b).

Amended by R.2008 d.133, effective May 19, 2008.  
See: 40 N.J.R. 839(a), 40 N.J.R. 2429(b).

Rewrote (b)1; added new (b)2; recodified former (b)2 through (b)5 as (b)3 through (b)6; rewrote (b)3; in (b)4, inserted "lease-based"; in (b)5, substituted "project-based or sponsor-based" for "project based" and substituted "all the special needs units" for "at least 50 percent of the project"; in (b)6, substituted "one point" for "two points"; and added (b)7.

Amended by R.2009 d.154, effective May 4, 2009.  
See: 41 N.J.R. 917(a), 41 N.J.R. 1994(a).

Rewrote (b).

### 5:80-33.18 Point system for the Final Cycle

The point system for the Final Cycle is the same as for the Family Cycle.

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

Former N.J.A.C. 5:80-33.19, Municipal comment, was recodified to N.J.A.C. 5:80-33.24.

Recodified from N.J.A.C. 5:80-33.19 and amended by R.1999 d.120, effective April 5, 1999.

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

Changed N.J.A.C. reference, and deleted "and the point category in N.J.A.C. 5:80-33.17(a)9 concerning HUD troubled projects" at the end. Former N.J.A.C. 5:80-33.18, Point system for the Suburban/Rural Cycle, recodified to N.J.A.C. 5:80-33.17.

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

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

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

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

Amended N.J.A.C. reference, deleted "municipal, county and" preceding "public housing" and substituted "waiting lists" for "support" following "authority".

Recodified from N.J.A.C. 5:80-33.20 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.

### 5:80-33.19 Tiebreaker system

(a) The following tiebreaker system shall be used in all cycles to break ties between projects with the same score:

1. If competing projects within a cycle have a tie score, a tax credit reservation shall be awarded to the project with the least amount of Balanced Housing/Home Express funds per Balanced Housing/Home Express unit.

2. If there is still a tie after the first tiebreaker, the tax credit reservation shall be awarded to the project with a lower total development cost per bedroom.

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)1, substituted "the lowest amount ... per low-income bedroom" for "lower intermediary fees per low income unit"; in (a)2, substituted "per bedroom" for "per unit"; and deleted (a)3 and 4.

Recodified from N.J.A.C. 5:80-33.18 by R.1998 d.279, effective June 1, 1998.

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

Former N.J.A.C. 5:80-33.23, Reservations, allocations and binding commitments, was recodified to N.J.A.C. 5:80-33.28.

Recodified from N.J.A.C. 5:80-33.23 by R.1999 d.120, effective April 5, 1999.

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

Former N.J.A.C. 5:80-33.21, Point system for the Special Needs Cycle, recodified to N.J.A.C. 5:80-33.19.

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

See: 3 N.J.R. 932(a), 33 N.J.R. 1573(b).

In (a)1, added the last sentence.

Recodified from N.J.A.C. 5:80-33.21 by 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. 5:80-33.19, Point system for the Special Needs Cycle, recodified to N.J.A.C. 5:80-33.17.

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)1.

Amended by R.2008 d.133, effective May 19, 2008.

See: 40 N.J.R. 839(a), 40 N.J.R. 2429(b).

Rewrote (a)1.

### 5:80-33.20 Municipal comment

The Code requires that the chief executive officer of the municipality in which the project is to be located be given the opportunity to comment on the project. The application may include a letter from the chief executive officer of the municipality or NJHMFA staff shall notify the chief executive officer of the municipality and allow him or her a reasonable opportunity to comment on the project.

Recodified from N.J.A.C. 5:80-33.19 by R.1998 d.279, effective June 1, 1998.

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

Former N.J.A.C. 5:80-33.24, Obtaining IRS Form 8609, was recodified to N.J.A.C. 5:80-33.29.

Recodified from N.J.A.C. 5:80-33.24 by R.1999 d.120, effective April 5, 1999.

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

Former N.J.A.C. 5:80-33.22, Point system for the Final Cycle, recodified to N.J.A.C. 5:80-33.20.

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

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

Amended the second sentence.

Recodified from N.J.A.C. 5:80-33.22 by 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. 5:80-33.20, Point system for the Final Cycle, recodified to N.J.A.C. 5:80-33.18.

### 5:80-33.21 Application needs analysis

(a) Section 42(m)(2)(a) of the Code provides: "The housing credit dollar amount allocated to a project shall not exceed the amount the housing credit agency determines is necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the credit period." This determination, known as the "needs analysis," shall be performed by NJHMFA with respect to those applications fulfilling the eligibility requirements at N.J.A.C. 5:80-33.12. In the needs analysis, NJHMFA shall compare the project's total development costs to the funding sources the applicant has identified to meet those costs. If the total funding sources not including tax credit equity are less than the total development costs, then a funding gap exists and the applicant has demonstrated a need for credits, provided however, that the following conditions are satisfied:

1. The project's development and operational costs are reasonable as required under Section 42(m)(2)(B)(iv) of the Code;

2. Funding sources identified by the applicant meet the requirements listed under N.J.A.C. 5:80-33.12(c)6;

3. The project is financially feasible in terms of the existence of sufficient sources to pay for total development costs; and

4. The project shall remain viable throughout the credit period.

(b) Financing arrangements shall be evaluated to ensure that projects are not structured to artificially increase basis. Such arrangements include drawing down entire bridge or secondary loans at construction closing instead of using such financing on an as-needed basis. NJHMFA reserves the right to assume a mortgage higher than the mortgage commitment submitted by the applicant if it is determined that the mortgage amount stated in the commitment is underestimated. If NJHMFA has a reasonable basis for concluding the equity factor submitted by the applicant is inconsistent with market conditions, NJHMFA reserves the right to adjust the equity factor in its underwriting. NJHMFA reserves the right to require an appraisal at the applicant's expense. If the applicant acquires the property for more than appraised value, the overage shall be added to the sources of funds so as not to create artificial need.

(c) NJHMFA shall perform needs analyses at three separate times: application, allocation, and at the time the project is placed in service. (See N.J.A.C. 5:80-33.23 and 33.27.) Pursuant to the Housing and Economic Recovery Act of 2008, Pub. L. 110-289 (HR 3221), the applicable credit percentage shall be nine percent for the 70 percent present value credit for buildings that place in service between July 31, 2008 and December 31, 2013. NJHMFA shall announce the tax credit percentage for the 30 percent present value credit to be used for application purposes, by written and/or electronic notices to the mailing list maintained by the Tax Credit Division, at least 30 days prior to the application deadline. The credit amount reserved is limited to the lesser of:

1. The credit amount based on the needs analysis; or

2. The credit amount generated from the project's qualified basis, as (potentially) capped by the eligible basis limits. Unless a project has an alternate funding source such as a developer fee able to be deferred, a project whose eligible basis is reduced by the eligible basis limits (thereby reducing the credit amount) may be declared infeasible due to a funding gap caused by the resulting shortfall in syndication proceeds.

(d) Buildings placed in service after July 30, 2008 that receive the 70 percent value credit shall be eligible for up to a 30 percent boost in eligible basis to the extent that the developer can demonstrate that the boost is necessary to achieve financial feasibility.

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 "Section 42(m)(2)(a) of the Code" for "The Code"; in (b), amended N.J.A.C. reference; in (b)2, inserted ", as (potentially) ... syndication proceeds".

Recodified from N.J.A.C. 5:80-33.20 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), changed N.J.A.C. references in the introductory paragraph and in 2; in (b), added a new last sentence; and in (c), changed the N.J.A.C. reference in the introductory paragraph. Former N.J.A.C. 5:80-33.25, Placed in service needs analysis, was recodified to N.J.A.C. 5:80-33.30. Recodified from N.J.A.C. 5:80-33.25 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) and (c), changed N.J.A.C. references throughout. Former N.J.A.C. 5:80-33.23, Tie-breaker system, recodified to N.J.A.C. 5:80-33.21.

Administrative change.

See: 31 N.J.R. 1311(b).

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)2, changed N.J.A.C. reference; and in (b), added the last two sentences.

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

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

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

Recodified from N.J.A.C. 5:80-33.23 and amended by 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. 5:80-33.21, Tiebreaker system, recodified to N.J.A.C. 5:80-33.19.

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

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

In (c)2, substituted "deferred" for "pledged".

Amended by R.2008 d.133, effective May 19, 2008.

See: 40 N.J.R. 839(a), 40 N.J.R. 2429(b).

Rewrote the introductory paragraph of (c).

Amended by R.2009 d.154, effective May 4, 2009.

See: 41 N.J.R. 917(a), 41 N.J.R. 1994(a).

In the introductory paragraph of (c), inserted the second sentence and inserted "for the 30 percent present value credit" in the third sentence; and added (d).

### 5:80-33.22 Committee review and reconsideration process

(a) Based on the rankings, eligibility review and needs analysis, NJHMFA shall make reservation award recommendations to the Tax Credit Committee. The Tax Credit Committee shall consist of the Commissioner of the Department of Community Affairs or designee, the Executive Director of NJHMFA and three members of the NJHMFA executive staff designated by the Executive Director.

(b) The Committee shall review the rankings, eligibility and tiebreaker decisions as well as requests for reservations from the Reserve. All applicants shall be notified in writing whether their projects received a reservation or not and the basis for the decision. A reservation commitment letter shall be mailed to all reservation recipients.

(c) An applicant may appeal any decision of the Tax Credit Committee by submitting a written request for reconsideration to the Executive Director of NJHMFA no later than 10 business days from the date of the Tax Credit Committee meeting at which awards/decisions are announced. The request shall include a comprehensive discussion of the basis

for reconsideration. Such requests will be considered promptly by the Tax Credit Committee and the Committee's disposition of the request shall constitute final agency action. In the absence of a request for reconsideration, the date of the Tax Credit Committee meeting at which awards/ decisions are announced shall constitute the date of final agency action.

Recodified from N.J.A.C. 5:80-33.21 by R.1998 d.279, effective June 1, 1998.

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

Former N.J.A.C. 5:80-33.26, Project cost certification, was recodified to N.J.A.C. 5:80-33.31.

Recodified from N.J.A.C. 5:80-33.26 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 (c), rewrote 1 and 2. Former N.J.A.C. 5:80-33.24, Municipal comment, recodified to N.J.A.C. 5:80-33.22.

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

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

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

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

In (b), deleted the last two sentences; deleted (c).

Recodified from N.J.A.C. 5:80-33.24 and amended by R.2003 d.300, effective July 21, 2003.

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

In (b), deleted "Committee decisions are final" preceding the second sentence; added (c). Former N.J.A.C. 5:80-33.22, Municipal comment, recodified to N.J.A.C. 5:80-33.20.

### 5:80-33.23 Allocation needs analysis

In accordance with Section 42(m)(2) of the Code, NJHMFA evaluates the need for the tax credit at the time of application, the time of allocation, and after the building is placed in service. The credit amount allocated is limited to the lesser of the credit amount based on the needs analysis or the credit amount generated from the project's qualified basis (as potentially capped by the eligible basis limits). The determination of whether the credit amount reserved is needed for the financial feasibility and continued viability of the project shall include an examination as to whether there have been increases or decreases in project costs, other funding sources or rental subsidies which would result in a higher allocation than needed. If NJHMFA has a reasonable basis for concluding the equity factor submitted by the applicant is inconsistent with market conditions, NJHMFA reserves the right to adjust the equity factor in its underwriting. Any substantive changes to the project's financing plan or costs shall be explained in detail and may cause the project to be reconsidered by NJHMFA.

Recodified from N.J.A.C. 5:80-33.22 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 fourth sentence. Former N.J.A.C. 5:80-33.27, Extended use agreement, was recodified to N.J.A.C. 5:80-33.32.

Recodified from N.J.A.C. 5:80-33.27 by R.1999 d.120, effective April 5, 1999.

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

Former N.J.A.C. 5:80-33.25, Application needs analysis, recodified to N.J.A.C. 5:80-33.23.

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

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

Inserted "at the time" following "tax credit" in the first sentence.

Recodified from N.J.A.C. 5:80-33.25 by 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. 5:80-33.23, Application needs analysis, recodified to N.J.A.C. 5:80-33.21.

### 5:80-33.24 Reservations, allocations and binding commitments

(a) Once the reservation is final as described in N.J.A.C. 5:80-33.22(b), projects must meet allocation criteria established by the Code and these rules in order to qualify for an allocation of tax credits. (The IRS does not recognize the reservation processes of housing credit agencies.) The deadline for meeting the allocation criteria described in (a)1 and 2 below is November 30 or the next business day if the 30th is a weekend or holiday. The deadline for meeting the 10-percent test required under 26 U.S.C. § 42(h)(1)(E)(ii) is six months from the date the carryover allocation agreement is executed by NJHMFA. The NJHMFA form evidencing satisfaction of this test must be completed and certified by an independent certified public accountant. Accrued developer fees in carryover basis shall not exceed the lesser of the fee earned to date or 20 percent of the total developer fee. On a case-by-case basis, NJHMFA may extend its filing deadline if the owner can show good cause; however, in order to defray the added expense and regulatory burden of processing allocation requests that arrive after the deadline, an extension fee of \$1,000 shall be payable to NJHMFA for each week or part thereof that the owner is late in submitting a complete package. NJHMFA reserves the right to rescind a reservation if a deadline is unmet.

1. Owners requesting a carryover allocation shall submit their certification for carryover which demonstrates that all sources shown on the owner's carryover schedule are accurate; and that the costs shown in eligible basis are allowable under the Code. Title ownership is not required for carryover allocations, but site control must be maintained. Projects receiving carryover allocations have until the end of the second year after the execution of the carryover allocation agreement to place the project in service.

2. Owners requesting an allocation for a building in the same year the building places in service may receive a carryover allocation or a placed in service allocation depending upon the building's placed in service date. A building must be issued an allocation no later than December 31 of the year it is placed in service.

i. If the building is placed in service on or prior to August 1, the allocating document shall be the IRS Form 8609 and the owner shall submit all requirements listed in N.J.A.C. 5:80-33.26 by the filing deadline established in (a) above.

ii. If the building is placed in service after August 1, and if the timing of the final project cost certification, permanent closing and the like do not allow for the timely issuance of an IRS Form 8609 by December 31, a carryover allocation shall be issued to the project provided that the owner submits to NJHMFA an updated 10