

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.

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

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

Added (g).

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), (b), amended N.J.A.C. reference.

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.

“At risk of losing its affordability controls” means a project with a deed restriction that expires within five years that is “likely” to convert to market rate (as supported by the market analysis at N.J.A.C. 5:80-33.12(c)1ii), project based assistance that expires within five years, a project that may be condemned or a project that is subject to foreclosure, unless NJHMFA determines such acquisition is part of an arrangement a purpose of which is to terminate such affordability controls.

“At risk of losing its level of affordability” means that operating expenses or capital repair needs are so high that without an award of tax credits, only very high rent increases will keep the project in an acceptable condition and financially feasible. If the current owner or a related party of the current owner shall retain an ownership interest in the project post-rehabilitation, the owner must demonstrate it did not materially contribute to the decline of the property that created the high operating expenses or capital repair needs.

“Brownfield site” means, pursuant to the Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-1 et seq., “any former or current commercial or industrial site that is currently vacant or underutilized and on which there has been, or there is suspected to have been, a discharge of a contaminant.” For the purposes of this subchapter, the proposed redevelopment for the site under consideration may also have 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.

“Community revitalization plan” means a plan endorsed by the municipality to designate an area in need of redevelopment. An adopted redevelopment plan, as defined at N.J.S.A. 40A:12A-3, or an approved neighborhood revitalization plan, as defined at N.J.S.A. 52:27D-491, that includes a subject LIHTC project within its boundaries meets the criteria for a community revitalization plan. This plan is intended to incorporate a vision for future growth that will lead to comprehensive neighborhood revitalization in the target area. For purposes of this subchapter, a community revitalization plan shall include the following criteria:

1. A tax map that delineates revitalization area boundaries and locates the subject LIHTC project within the boundaries;
2. A description of the community revitalization planning process;
3. A list of stakeholders that developed the community revitalization plan;
4. A parcel map that delineates land uses and vacant buildings and lots in the target area;
5. Demographic, social and economic profiles of the revitalization area;
6. A narrative describing the revitalization area and the long-term vision and objectives for the area;
7. A description of the subject LIHTC project and how it furthers the community revitalization plan; and
8. An implementation strategy that contains:
 - i. A list of organizations participating in the implementation phase of the community revitalization plan; and
 - ii. A list of projects, programs and steps identified in the community revitalization plan to revitalize the area.

“Community service facility” means, as established at Section 42(d)(4)(C)(iii) of the Code, “any facility designed to serve primarily individuals whose income is 60 percent or less of area median income within the meaning of 26 U.S.C. §42(g)(1)(B).” For example, a community room, clubhouse or recreation center may be a community service facility. Lobbies and laundry facilities are not within the scope of this definition.

“Complete application” means an application submitted to NJHMFA, including the application fee, completed application forms and certifications, and all eligibility requirements.

“Core operating expenses” means expenses for administration, salaries, maintenance and repairs, maintenance contracts and insurance.

“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. Determination of whether a project is the recipient of a density bonus subsidy shall be made by the entity with jurisdiction over the municipality (either the Executive Director of COAH or the Superior Court Judge or Special Master with jurisdiction over the suit).

“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.

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 the 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.

To the extent there is a reasonable expectation of repayment (as evidenced by available cash flow and/or confirmation by the applicant’s syndicator/investor), 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 Supportive Housing populations.

The non-deferred portion of the developer fee shall not exceed eight percent (13 percent for the three types of housing referenced at i, ii and iii above) of total development cost excluding land, working capital, marketing expenses, escrows, operating deficit reserves, step-in-the-shoes costs and costs associated with syndication.

The cost of acquiring a building shall not be allowed in the calculation of the developer fee if the acquisition is between related parties.

“Eligible basis limits” are limitations on total eligible basis (except for projects in the Supportive Housing Cycle or those projects that receive credits from volume cap) based on whether or not the application is receiving HOPE VI assistance from the U.S. Department of Housing and Urban Development (HUD). 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). For all projects receiving credits from the State housing credit ceiling, NJHMFA shall also limit the eligible basis used for calculating the tax credit in the following manner:

1. A maximum of three percent per annum construction loan interest on unamortized, soft financing (for example, Balanced Housing, FHLB) or up to the Applicable Federal Rate as published by the U.S. Department of the Treasury 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.

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

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

“Mid-rise” means a building having five 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 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 Final Cycle, 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);
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. The areas defined as smart growth areas are Planning Area 1, Planning Area 2 (sewered), Designated Centers, Proposed Centers (sewered) and Identified Centers (sewered).

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 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, NJHMFPA 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 NJHMFPA 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".

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 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. There are four set-asides in the Family Cycle:

1. **Affordability set-aside:** The first 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.

2. **HOPE VI set-aside:** The second 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.

3. **Nonprofit set-aside:** The third 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 third 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.

4. **Mixed Income set-aside:** The fourth 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.

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).

5:80-33.5 Senior Cycle

(a) Senior projects may apply to this cycle. Not less than \$2,400,000 will be available in the Senior Cycle, and the maximum annual allocation of credits to developments competing in this cycle is \$1,200,000. 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 are two set-asides in the Senior Cycle:

1. **Affordability set-aside:** The first reservation of credits from the Senior Cycle will 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 Senior Cycle for use by other applications.

2. HOPE VI set-aside: The second reservation of credits from the Senior 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 Senior 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 project 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.

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), substituted 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).

5:80-33.6 Supportive Housing Cycle

(a) Projects in which a minimum of 10 units or 25 percent of the total project units, whichever is greater, are rented to a special needs client population and at least three appropriate services are provided may apply to the Supportive Housing Cycle. There will be not less than \$1,800,000 available in the Supportive Housing Cycle and the maximum annual allocation of credits to projects competing in this cycle is \$900,000.

(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 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.

(c) 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 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).

Substantially amended section.

Recodified from N.J.A.C. 5:80-33.6 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. 5:80-33.8, Reserve, was recodified to N.J.A.C. 5:80-33.10.

Recodified from N.J.A.C. 5:80-33.8 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), substituted "tax credit" for "total number of" preceding "units" in the first sentence, and rewrote 1. Former N.J.A.C. 5:80-33.7, Mixed Income Cycle, repealed.

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 "(10 percent of the tax credit units for Work First projects)" following "credit units" in the introductory paragraph, substituted "\$210,000" for "\$300,000" in the first sentence in 1, and rewrote 2; and in (b), substituted "Work First" for "HIV/AIDS" throughout.

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; and 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).

Rewrote the section.

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. 5:80-33.6, Special Needs Cycle, was recodified to N.J.A.C. 5:80-33.8.

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.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. 5:80-33.7 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 (a), (b); and in (c), amended N.J.A.C. reference.

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 "Special Needs Cycle"; rewrote (a) and (b).

5:80-33.7 Final Cycle

(a) All projects, including minimum rehab projects, may apply to this cycle. There is at least \$1,805,000 available in the Final Cycle and the maximum annual allocation of credits to projects competing in this cycle is \$1,800,000. There are two set-asides in the Final Cycle:

1. HOPE VI set-aside: The first reservation of credits from the Final 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 the HOPE VI set-aside shall be released into the Final Cycle for use by other eligible applications.

2. Preservation set-aside: The second reservation of credits from the Final Cycle shall be given to the highest-ranking eligible application from a preservation project. 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 Final Cycle for use by other eligible applications.

(b) In the unlikely event that less than 10 percent of the ceiling has been awarded to qualified nonprofit organizations, then awards from the Final Cycle shall first be made to such organizations until not less than 10 percent of the credit ceiling has been awarded to such organizations. If the Federal nonprofit requirement as stated in 26 U.S.C. §42(h)(5)(A) is satisfied, reservations shall be awarded to the highest-ranking eligible HOPE VI project. Then reservations shall be awarded to the highest-ranking eligible preservation project. Then, 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.

(c) Projects can qualify 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.

(d) Should NJHMFA receive any returned credits after the Final Cycle awards have been made, NJHMFA may, in its discretion, reallocate them to the next-highest ranking eligible project(s) from the Final Cycle.

(e) Projects that were admitted to a cycle in the same allocation year but did not receive a reservation of credits may reapply in the Final Cycle by submitting the reapplication fee and a sponsor certification for reapplication in which the applicant:

1. Certifies that there are no changes whatsoever to the previously submitted application; or
2. Identifies any and all changes to the previously submitted application, along with supporting documentation.

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

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

Inserted references to Rural Cycle.

Recodified from N.J.A.C. 5:80-33.7 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), inserted "including minimum rehab projects" following "All projects". Former N.J.A.C. 5:80-33.9, Application fee schedule, was recodified to N.J.A.C. 5:80-33.12.

Recodified from N.J.A.C. 5:80-33.9 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. 5:80-33.8, Special Needs Cycle, recodified to N.J.A.C. 5:80-33.7.

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

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

Rewrote 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. 5:80-33.8 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 (a), (b); in (c), amended N.J.A.C. reference; in (d), inserted "eligible" following "ranking"; in (e), introductory paragraph deleted "simply"; rewrote 2. Former N.J.A.C. 5:80-33.7, Special needs cycle, recodified to N.J.A.C. 5:80-33.6.

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

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

In introductory paragraph (a), added "at least"; in (b), added "general partner/managing member" and substituted "Supportive Housing" for "Special Needs".

5:80-33.8 Reserve

(a) Projects that need credits because of technical errors and severe hardship can submit a reapplication for credits from the Reserve. The Reserve may also be used to fund supplemental awards or for unforeseen circumstances beyond the developer's control where NJHMFA determines that a project's financial feasibility is jeopardized. Any credits not dedicated to the Family, Senior, Supportive Housing and Final Cycles shall be deposited into the Reserve. Awards of credits from the Reserve are subject to availability and to NJHMFA's evaluation of the request.

1. Since NJHMFA does not award partial allocations, one of the purposes of the Reserve is to provide supplemental awards to eligible projects that can only be

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, Home Express or State HOME funds: Projects applying for Balanced Housing or Home Express funds and tax credits shall comply with the applicable rules of these programs. 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, Home Express and HOME commitments at the same time NJHMFA awards the reservations of tax credits. An applicant with a Balanced Housing or Home Express commitment may not include Balanced Housing or Home Express funds as an initial funding source unless, at the time of the application deadline, the municipality in which the project is located has formally received substantive certification from the Council on Affordable Housing (COAH) and/or has entered into a judicially approved compliance agreement to settle its fair share housing obligation and/or has been designated as a receiving municipality under a regional contribution agreement and project plan approved by COAH and/or has, at any time since Fiscal Year 1988, been eligible to receive State aid pursuant to P.L. 1978, c. 14 (N.J.S.A. 52:27D-178 et seq.). Where such events have not occurred by the application deadline, the applicant shall provide a fully committed alternate initial source of funding that will later be replaced with the Balanced Housing or Home Express monies and include the Balanced Housing or Home Express 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 applicant (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/ordinance 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 and deferred developer fee: 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 deferred, applicants shall specify the amount, and when and how it will be paid. (NJHMFA establishes maximum developer fees.) Projects which utilize more than 50 percent of the

total developer fee as a funding source at the application stage shall be declared infeasible, unless such use of the developer fee is on an interim basis (that is, if an anticipated funding source to replace the deferred developer fee is identified in the application, and the commitment of said funds is received no later than the issuance of the carryover allocation). Failure to secure said funding source and subsequently reduce the deferred portion of the developer fee to 50 percent of the total amount by carryover shall result in a cancellation of the tax credit reservation. Contractor fees cannot be pledged. Applicant equity or deferred developer fee may be subsequently replaced by State HOME or Balanced Housing resources only if the project is a COAH/Court-ordered project referenced in (c)6ii above or if the application for State HOME or Balanced Housing resources has been submitted by the tax credit application deadline.

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 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.

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 (Family, Senior or Supportive Housing 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 deferred 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 at or below the set-aside selected. For example, 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 50 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, including 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 pro forma shall show stabilized operations. If the pro forma reflects negative cash flows in any year, the application shall demonstrate the funding and utilization of an Operating Deficit Escrow Account (ODEA). Assumptions regarding interest on the ODEA shall 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 (c)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, Supportive Housing projects shall be underwritten at rents no more than 20 percent of area median income

adjusted for family size. For non-Supportive Housing 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 core operating expenses between \$1,800 and \$3,400 per unit. For those projects with core operating expenses less than \$1,800 per unit or more than \$3,400 per unit, the application shall include an explanation supported by audited financial statements as to why the per unit operating expenses fall outside this recommended range, except that no family project shall have core operating expenses below \$1,800 per unit and no senior project shall have core operating expenses above \$3,400 per unit. Other operating expenses will be evaluated for reasonableness given the characteristics of the project.

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. Successful participation in the Environmental Protection Agency's (EPA) ENERGY STAR Homes Program or equivalent (for example, New Jersey's ENERGY STAR Homes Program) shall be required for all applications except master-metered rehabilitation, preservation projects and minimum rehab projects. Applications shall include a copy of the signed ENERGY STAR Partnership Agreement or Specification Form between the applicant and the EPA (or equivalent) or a letter from the project architect certifying that individually metered units in the proposed rehabilitation project would be impractical. At the time a project places in service, owners shall submit

to NJHMFA the ENERGY STAR Homes Certificate issued by the EPA (or equivalent) for each building in the project.

9. Applicants requesting acquisition credits shall include an attorney's opinion regarding each building's eligibility for acquisition credits. 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. NJHMFA reserves the right to require an independent appraisal which conforms to the Uniform Standards of Professional Appraisal Practice (USPAP) for those projects that have land acquisition costs totaling over \$7,500 per unit.

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. 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, Supportive Housing projects shall be underwritten at rents no more than 20 percent of area median income adjusted for family size. For non-Supportive Housing 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. Supportive Housing projects applying to any cycle shall submit the following items in addition to those items at N.J.A.C. 5:80-33.15(a)5:

- i. A Supportive Housing marketing analysis;
- ii. A Supportive Housing marketing plan;
- iii. Evidence of the Supportive Housing development or management experience of the social service provider (or the applicant); and
- iv. A social services plan that describes the scope of services, including how the services will be funded, the staffing plan, and how the services will be delivered. The plan must include, at a minimum, the following three services: service coordination/case management; linkages to mainstream resources, including entitlement programs; and linkages to health care and treatment programs as needed. Services should be designed to assist people to maintain their housing and/or residential opportunity. The tenant selection policy must be included. An explanation is required if any populations are excluded from the eligibility criteria. The applicant must also provide evidence of firm agreement(s) (executed contracts) with service providers for services and provide evidence of funding sources or documentation of how and by whom the services will be paid to qualify for points in this category. For projects targeting people who are at 30 percent of median income or below, all services included in the social services plan must be provided at no charge to the tenants.

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 set-asides 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 as 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 funds and all debt. This analysis shall incorporate the same assumptions utilized in the 15-year cash flow pro forma 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.

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. 5:80-33.13 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. 5:80-33.12, Cycle deadlines, recodified to N.J.A.C. 5:80-33.11.

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

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

Rewrote (c).

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 Penrose, 346 N.J.Super. 479, 788 A.2d 787.

5:80-33.13 Application for additional credits

(a) Applicants may apply for additional credits in one of two ways: through a hardship request from the Reserve or by applying under one of the cycles set forth at N.J.A.C. 5:80-33.4 through 33.7.

1. Hardship requests up to \$100,000 shall apply to the Reserve. See N.J.A.C. 5:80-33.8 for a description of the Reserve. Applicants shall submit all of the following before NJHMFA will consider any hardship request:

- i. The re-application fee;
- ii. A Sponsor Certification for Re-Application (including all updates to original application);
- iii. 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)";
- iv. 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;
- v. Evidence that at least 50 percent of the developer fee is deferred 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. The developer fee cannot exceed that stated in the original application; and
- vi. 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.)

2. Requests for additional credit of more than \$100,000 shall be made through application to a competitive cycle. Such submission shall consist of the complete application as well as items (a)liv through vi above. The original allocation plus the additional credit shall be used to calculate the tiebreaker at N.J.A.C. 5:80-33.19(a)1.

(b) Should additional credits be awarded to a project, an allocation/issuance fee shall be paid as provided in N.J.A.C. 5:80-33.25.

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).

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. 5:80-33.14 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), amended N.J.A.C. reference in the introductory paragraph; in 2, deleted "(see definition)"; in (b), amended N.J.A.C. reference. Former N.J.A.C. 5:80-33.13, Application to a cycle/eligibility requirements, recodified to N.J.A.C. 5:80-33.12.

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

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

Deleted "The developer fee cannot exceed that stated in the original application" from (a)lii and added the language to (a)lv; also in (a)lv, substituted "deferred" for "pledged"; in (a)2, added the last sentence.

5:80-33.14 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. In addition to meeting the eligibility criteria described at N.J.A.C. 5:80-33.12, applications that fail to satisfy a minimum of 65 percent of the maximum score under the ranking criteria established under N.J.A.C. 5:80-33.15 through 33.18 shall be declared ineligible to obtain a reservation of tax 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. 5:80-33.15 through 33.18.

(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 (or its authorized designee). 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).

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

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

In (c), amended the N.J.A.C. reference; in (d), substituted "(or its authorized designee)" for "staff" following "NJHMFA".

Recodified from N.J.A.C. 5:80-33.15 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 (a); in (c), amended N.J.A.C. reference. Former N.J.A.C. 5:80-33.14, Application for additional credits, recodified to N.J.A.C. 5:80-33.13.

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

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

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-rise 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. Mid-rise or high-rise rehabilitation projects 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 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 the qualifying area and the qualifying area shall be delineated by the application deadline. 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 or contact the NJHMFA Manager of Policy, Research 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 obligation, 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. A 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. A washer and dryer;
- v. A 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, as appropriate. Amenities must be appropriate to the proposed tenant population. Applicants may select any combination of the following amenities in order to receive the maximum two points. 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 playground (family projects only);
- ii. A community room/building (minimum 1,600 square feet);
- iii. Laundry facilities in each building;
- iv. Community gardens;
- v. Average interior unit sizes of 500 square feet for efficiencies, 650 square feet for one bedroom, 800 square feet for two bedrooms, 1,100 square feet for three bedrooms and 1,200 square feet for four bedrooms;
- vi. 1.0 parking spaces per unit (may be off-street: garage, parking lot, pad or driveway, or on-street: designated/permit); and
- vii. A 25 year manufacturer's warranty on roof shingles for sloped roofs, 20 year for low slope roofing.

10. Projects which demonstrate community policing or public safety enhancements shall be awarded one point. Applicants may select any of the following strategies in order to receive the point. The list provided below is not all-inclusive. Substitutions are permitted at NJHMFA discretion; however, it is incumbent upon the applicant to demonstrate how the proposed substitution provides a

comparable benefit to the tenants as those items listed below.

- i. An evening hour security guard;
 - ii. On-site community policing station;
 - iii. Camera/security system in each building;
 - iv. Coordination/training for community policing groups and/or property manager by a governmental law enforcement agency;
 - v. Incorporation of Community Policing Through Environmental Design (CPTED) characteristics in the design, layout and construction of buildings and on-site facilities;
 - vi. Partnerships or agreements which increase on-site police and security patrols on the development site (that is, leveraging partnerships with other funding sources for police salaries such as State Urban Enterprise Zones, Special Improvement Districts, Community Oriented Policing grants, etc.);
 - vii. Innovative approaches which increase the number of community policing volunteers as residents of the development (including rent reductions or subsidies where allowable); and
 - viii. Using operating funds or alternative funding sources such as Urban Enterprise Zone funds or HUD grants to purchase or subsidize the purchase of take-home police vehicles for law enforcement officers in the development.
11. Applications may receive up to a maximum of two points for the following (to be eligible for points in this category, proximity to the following locations shall be addressed in the market analysis as required at N.J.A.C. 5:80-33.12(c)1):
- i. Projects located within a school renaissance zone shall be awarded two points. To qualify for this point category, a majority of the units shall be located within the qualifying area and the qualifying area shall be delineated by the application deadline;
 - ii. Projects located within one-half mile of the positive land uses below shall receive one point for proximity to each of the following:
 - (1) Primary/elementary school (family projects only);
 - (2) Day care center;
 - (3) Food store;
 - (4) Community center or faith-based organization;
 - (5) Public transportation;
 - (6) Park.

iii. Projects located within one mile of the following negative land uses shall have two points deducted from the project score:

- (1) Land fill;
- (2) Garbage dump;
- (3) Trash incinerator;
- (4) Nuclear power plant;
- (5) Oil/chemical refinery;
- (6) Unremediated Superfund or toxic waste site as identified by the Environmental Protection Agency (EPA) or the New Jersey Department of Environmental Protection (DEP).

iv. Example: A project is located within one-half mile of an elementary school, a food store and an oil refinery. The project shall be awarded zero points.

12. Projects with a property manager that will have successfully completed an NJHMFA approved tax credit certification course prior to the project being placed in service shall receive two points. For the list of approved tax credit certification courses, please contact NJHMFA's Division of Tax Credit Services at (609) 278-8818.

13. Applications which include a commitment letter signed by the syndicator or investor specifying net pricing and net capital contributions at least one full cent higher than NJHMFA's equity factor shall receive one point. Applicants utilizing the credits themselves do not have to submit a syndicator letter to receive the point. Term sheets do not qualify for this point.

14. Applications that select one of the following shall receive one point:

i. Successful participation in the New Jersey Affordable Green Program. In order to qualify for this point, the application shall include a copy of the completed and submitted Green Homes application and executed letter of intent between the developer and the New Jersey Green Homes office. The letter of intent shall include a project description and a narrative defining the green goals of the project and how the developer intends to achieve the goals. (Note: Developments participating in the New Jersey Affordable Green Program may be eligible for subsidies to cover the incremental costs of green building features.)

ii. Incorporation of solar photovoltaic into the project. The solar photovoltaic system must meet the following standards: Be sized to cover at least 75 percent of the project's common area electrical expense and be at least a 20 kilowatt system. Documentation for this point includes a written and signed quote from a Board of Public Utilities (BPU)-certified solar installer indicating the location, size, type, cost, and energy output of the proposed system and a signed affidavit

from the developer agreeing to purchase, install and maintain the system for a minimum of 20 years. (Note: Contact the BPU for information on rebates for solar photovoltaic installations.)

Example: A project has an estimated common area electricity need of 50 kilowatts. The roof of the project can accommodate a 40 kilowatt system. The developer is eligible for the solar point since the 40 kilowatt system covers 80 percent of the common area usage and the system is larger than 20 kilowatts.

15. Applicants may select one of the following options. To qualify for this point category, a significant component of the development (40 percent or more of the units) shall be located within a historic building, a building being adaptively re-used or a building located on a Brownfields site:

i. Rehabilitation of historic buildings shall receive two points. If the project is also utilizing the historic tax credit recited under Section 47 of the Code, an additional one point shall be awarded. In order to qualify for the historic tax credit point, the application shall include a copy of Part 1 Evaluation of Significance and Part 2 Description of Rehabilitation of the Historic Preservation Certification application approved by the National Park Service. A copy of the Request for Certification of Completed Work shall be submitted to NJHMFA at the time the project places in service;

ii. Projects which involve the adaptive re-use of a non-residential building shall receive two points; or

iii. Projects which are developed on a Brownfields site shall receive two points. In order to qualify for the Brownfields points, the application must include the site's Brownfields Site Marketing Inventory (BSMI) Project Tracking Number ("OSP BF#") or, if the site does not have a tracking number, a copy of the approved New Jersey Department of Environmental Protection Remedial Action Work Plan shall be submitted. For a list of Brownfields sites and the corresponding tracking numbers, please call the Office of Smart Growth in the New Jersey Department of Community Affairs at (609) 633-7730.

16. Applications which have a general partner, voting member, developer or a related party who owned a managing or controlling interest in a LIHTC project when title was foreclosed by entry of judgment or deed in lieu of foreclosure during the past seven years shall have three 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.

17. 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 with an uncorrected noncompliance shall have the following

points deducted from the application's score: 10 points shall be deducted for violations of State and local building codes or health ordinances or failure of one or more major systems (for example, roof, HVAC, elevators, plumbing and electric); and five points shall be deducted for a failure to fulfill any Qualified Allocation Plan provisions as represented by an owner in a project's New Jersey LIHTC application. For noncompliance that cannot be corrected, points under this category shall only be deducted for the first year each application is submitted. 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.

18. Three points shall be deducted from applications which have a general partner, voting member, developer, or related party that was involved in a full return of tax credits to NJHMFA within the past two years and such return occurred after October 15 of the year in which the project would have been required to be placed in service. Failure to respond to this point category shall result in the deduction of points as provided under this paragraph.

19. 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 pay NJHMFA monitoring fees (unless 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).

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

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.) 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.

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".

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 October 15 (November 30 for Final Cycle reservations) or the next business day if the 15th (or 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 three months from the date a tax credit reservation is issued by the Tax Credit Committee. 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 percent letter from the partnership's accountant reflecting the new reasonably expected basis in the building.

(b) NJHMFA may, in its discretion, enter into a binding commitment to allocate credits from future years' tax credit authority to projects described below:

1. Projects in a competitive cycle affected by a technical error as determined by the Tax Credit Committee. The Tax Credit Committee may fund technical errors wholly from the Reserve (if sufficient credits exist), wholly through a binding commitment or through a combination of Reserve credits and a binding commitment. Projects receiving credits from the Reserve must meet the 10 percent carryover test within the time frame described in (a) above. In no event shall the project receive credits and/or a binding commitment exceeding the maximum eligible tax credit amount; or

2. The next-highest ranking eligible project in the Final Cycle if that project received only a partial allocation because NJHMFA exhausted its tax credit authority for the current year. Together, the partial carryover allocation and

the binding commitment shall not exceed the maximum eligible tax credit amount.

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

Deleted former (a); recodified former (a)1 through 3 as (a) through (c); in (b), substituted "October 15 (November 15 for Final Cycle reservations)" for "November 1st", and inserted sixth through eighth sentences; and in (c), inserted "typically" following "allocating document is", substituted "October 15 (November 15 for Final Cycle reservations) all items required by" for "November 1st all the requirements listed under", inserted fifth and sixth sentences, and deleted "(evidenced by a signed IRS Form 8609 from NJHMFA) following failed to receive an allocation".

Recodified from N.J.A.C. 5:80-33.23 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 the section. Former N.J.A.C. 5:80-33.28, Returning credits, was recodified to N.J.A.C. 5:80-33.33.

Recodified from N.J.A.C. 5:80-33.28 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 throughout; and in (b), deleted "provided such project can meet the ten percent carryover test" at the end of the introductory paragraph, rewrote 1, and inserted a new third sentence in 2. Former N.J.A.C. 5:80-33.26, Committee review, recodified to N.J.A.C. 5:80-33.24.

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)1, inserted ", fully executed deed of easement and restrictive covenant (if the property has been acquired by the carryover allocation date)" following "carryover"; and in (b)1, deleted "(or the Reserve if the Final Cycle is cancelled)" following "Final Cycle" in the first sentence, and inserted a new second sentence.

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 "30" for "15", inserted "or the 30th" after "15th", substituted "an" for "a graduated" following "deadline" and deleted "\$500.00 per week or part thereof in November and" following "Cycle"; and in (a)2i, changed N.J.A.C. reference.

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), rewrote the introductory paragraph and substituted "Owners" for "Sponsors" throughout; in (b), rewrote 1 and added 3.

Recodified from N.J.A.C. 5:80-33.26 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), amended N.J.A.C. reference in the introductory paragraph; in 1, substituted "which demonstrates" for ", fully executed deed of easement and restrictive covenant (if the property has been acquired by the carryover allocation date); rewrote (b). Former N.J.A.C. 5:80-33.24, Committee review, recodified to N.J.A.C. 5:80-33.22.

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

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

In (b)2, deleted "is a preservation project and".

5:80-33.25 Allocation/issuance fee schedule

Projects requesting an allocation of tax credits shall pay a fee equaling two percent of the allocation amount over the 10-year credit period. One-half of the fee shall be paid at the time the allocation criteria described above at N.J.A.C. 5:80-33.24(a) is submitted to NJHMFA. For projects requesting an issuance of tax credits from volume cap, the issuance fee shall equal two percent of the issuance amount over the 10-year credit period for NJHMFA financed projects and three percent of the issuance amount over the 10-year credit period for non-NJHMFA financed projects. One-half of the fee shall be paid at the time the credit determination described at N.J.A.C. 5:80-33.9(a)1 is made. For both types of project, the

balance (adjusted higher if volume cap tax credit issuance increases) shall be paid prior to issuance of the IRS Form 8609.

New Rule, R.2001 d.170, effective May 21, 2001.

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

Former N.J.A.C. 5:80-33.27, Obtaining IRS Form 8609, recodified to N.J.A.C. 5:80-33.28.

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. 5:80-33.27 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. 5:80-33.25, Allocation needs analysis, recodified to N.J.A.C. 5:80-33.23.

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

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

Deleted "carryover".

5:80-33.26 Obtaining IRS Form 8609: deadlines and extension fees

(a) The IRS Form 8609 is the form used by owners to claim the low-income housing tax credit. A form is issued for each building in the project that contains tax credit units. Prior to issuance of the IRS Form 8609, NJHMFA must receive all required information from the owner, including the allocation/issuance fee described at N.J.A.C. 5:80-33.25. For projects receiving credits from the nonprofit set-aside, this shall include an attorney's opinion letter which states that no for-profit developer or member of the investor limited partner held a seat on the nonprofit's board of directors. NJHMFA (or its authorized designee) may also conduct an on-site inspection of the project to confirm that all representations made in the project's tax credit application have been met. Upon completion of the NJHMFA evaluation (which includes the placed in service needs analysis) and attendance by the project owner and managing agent at an NJHMFA-sponsored compliance monitoring seminar, NJHMFA shall complete Part I of the IRS Form 8609 and shall forward a copy, as filed with the IRS, to the project owner. Owners should be sure to make copies of the signed IRS Form 8609 as a copy must be filed each year with Federal tax returns.

(b) The entire IRS Form 8609 request package, including the allocation/issuance fee described at N.J.A.C. 5:80-33.25 and the audit report, in a form acceptable to NJHMFA, must be submitted to NJHMFA at the latter of six months following the issuance of the final certificate of occupancy for the project or two months after the first year of the credit period. 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 IRS Form 8609 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 recapture an allocation if a deadline is unmet.

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

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

In third sentence, substituted reference to required information for reference to specified required items and in the fourth sentence substituted reference to completed NJHMFA evaluation and placed in service needs analysis for reference to completed items and any other requested information.

Recodified from N.J.A.C. 5:80-33.24 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. 5:80-33.29, Returning credits, was recodified to N.J.A.C. 5:80-33.34.

Recodified from N.J.A.C. 5:80-33.29 and amended by R.1999 d.120, effective April 5, 1999.

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

Inserted a new third sentence. Former N.J.A.C. 5:80-33.27, Allocation needs analysis, recodified to N.J.A.C. 5:80-33.25.

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

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

Inserted a new fourth sentence, and inserted "and attendance by the project owner and managing agent at an NJHMFA-sponsored compliance monitoring seminar," following "needs analysis" in the new sixth sentence.

Recodified from N.J.A.C. 5:80-33.27 and amended by R.2001 d.170, effective May 21, 2001.

See: 33 N.J.R. 973(a), 33 N.J.R. 1573(b).

Rewrote the second sentence. Former N.J.A.C. 5:80-33.28, Placed in service needs analysis, recodified to N.J.A.C. 5:80-33.29.

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

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

Designated the existing text as (a) and substituted "(or its authorized designee)" for "staff" following "NJHMFA"; added (b).

Recodified from N.J.A.C. 5:80-33.28 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), amended N.J.A.C. reference; in (b), substituted "Form 8609" for "form", amended N.J.A.C. reference. Former N.J.A.C. 5:80-33.26, Reservations, allocations and binding commitments, recodified to N.J.A.C. 5:80-33.24.

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

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

In (a), added "that contains tax credit units" and substituted "may" for "shall".

5:80-33.27 Placed in service needs analysis

(a) Pursuant to Section 42(m)(2) of the Code, NJHMFA shall conduct the last of its required needs analysis evaluations at the time the project places in service. The analysis shall be based on the project cost certification of an independent C.P.A. and the permanent financing sources (see N.J.A.C. 5:80-33.28). If the amount of the tax credit request is not needed for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the credit period, the amount of the tax credit shall be reduced to the needed amount.

(b) The determination of whether the amount requested is needed for 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. The Code requires that NJHMFA reduce the credit amount based upon need; however, this does not mean that NJHMFA will jeopardize the long-term financial feasibility and viability of

the project by arbitrarily taking back credits. For example, if the equity market improved so that projects were able to get better pricing from investors, NJHMFA would not necessarily reduce the credit on those projects that use the "excess" credits to cover cost overruns or provide betterments in the projects such as upgrading the security system, landscaping, provision of appliances such as washers, and the like. NJHMFA shall not allow these additional funds to be used to increase the developer fee over that shown on the application.

(c) For each needs analysis, a Sponsor Certification shall be submitted. 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.

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

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

Deleted "eligible basis amount" following "increase the developer fee".

Recodified from N.J.A.C. 5:80-33.24 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; and in (b), added a new second sentence. Former N.J.A.C. 5:80-33.29, Returning credits, was recodified to N.J.A.C. 5:80-33.34.

Recodified from N.J.A.C. 5:80-33.30 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), rewrote the second sentence. Former N.J.A.C. 5:80-33.28, Reservations, allocations and binding commitments, recodified to N.J.A.C. 5:80-33.26.

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

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

Recodified from N.J.A.C. 5:80-33.28 and 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), changed N.J.A.C. reference. Former N.J.A.C. 5:80-33.29, Project cost certification, recodified to N.J.A.C. 5:80-33.30.

Recodified from N.J.A.C. 5:80-33.29 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), amended N.J.A.C. reference. Former N.J.A.C. 5:80-33.27, Allocation/issuance fee schedule, recodified to N.J.A.C. 5:80-33.25.

5:80-33.28 Project cost certification and contractor fee limits

(a) An independent C.P.A. shall audit the development costs of the project in accordance with generally accepted auditing standards. To make sure that the necessary paperwork is submitted to NJHMFA in a timely manner, owners shall ensure that the cost certification process begins immediately upon construction completion. NJHMFA reserves the right to require a compilation of the construction costs of the project as approved by an independent C.P.A.

(b) "Contractor fee limits" with regard to contractor profit and overhead shall be set in accordance with the schedule below. Maximum fees include the base profit and overhead and any incentive cost savings fee realized. Costs included on the general conditions line must be broken out on a separate schedule. Unreasonable costs shall be disallowed. For purposes of calculating the contractor fee limits below, the construction contract amount shall not include contractor overhead and profit.

6. The annual income certification of each low-income tenant per unit;

7. Documentation to support each low-income tenant's income certification (that is, income verification from third parties such as employers or agencies paying unemployment compensation). Tenant income is calculated in a manner consistent with the determination of annual income under Section 8 of the United States Housing Act of 1937, not in accordance with the determination of gross income for Federal income tax liability. In the case of a tenant receiving housing assistance payments under Section 8, the documentation requirement is satisfied if the public housing authority provides a statement to the building owner declaring that the tenant's income does not exceed the applicable income limit under Section 42(g) of the Code. For an exception to this requirement, see Section 42(g)(8)(B) of the Code which provides a special rule for a 100 percent low-income building;

8. The eligible basis and qualified basis of the building at the end of the first year of the credit period; and

9. The character and use of the non-residential portion of the building included in the building's eligible basis under Section 42(d) of the Code (that is, tenant facilities that are available on a comparable basis to all tenants and for which no separate fee is charged for use of the facilities, or facilities reasonably required by the project).

(e) Owners/agents are required to retain records for each qualified low-income housing project as follows:

1. Owners/agents are required to retain the records described above for at least six years after the due date (with extensions) for filing the Federal income tax return for that year.

2. The records for the first year of the credit period, however, shall be retained for the entire compliance period plus six years beyond the due date (with extensions) for filing the Federal income tax return for the last year of the compliance period of the building. Therefore, records for the first year of the compliance period shall be retained for a minimum of 21 years. If credits were allocated based on a compliance period that was greater than 15 years, all first year records shall be retained for six years beyond the compliance period. (For example: If credits were allocated in 1996 based on a compliance period of 25 years, all first year records must be retained for 31 years or 25 years plus six years.) Records for each year thereafter shall be retained for six years after filing the Federal income tax return for that particular year.

(f) The owner/agent of a low-income housing project shall certify, under penalty of perjury, that it has complied with the low-income housing tax credit restrictions of the Code, the Qualified Allocation Plan and the project's tax credit application by providing an Owner's Certificate of Continuing Program Compliance to NJHMFA. The Owner's Certificate of Continuing Program Compliance shall be sent

annually to NJHMFA for each year of the compliance period for the preceding 12-month period and contain the following:

1. That the project met the requirements of the 20-50 test under Code Section 42(g)(1)(A) or the 40-60 test under Section 42(g)(1)(B), whichever Federal minimum set-aside test was applicable to the project, and, if applicable to the project, the 40-50 HOME test under Section 42(i)(2)(E)(i) and the 15-40 test under Sections 42(g)(4) and 142(d)(4)(B) for "deep rent skewed" projects;

2. That there was no change in the applicable fraction of any building in the project (as defined by Section 42(c)(1)(B) of the Code) or that there was a change and a description of the change;

3. That the owner received an annual income certification from each low-income tenant and documentation to support that certification, or, in the case of a tenant receiving Section 8 Housing Assistance Payments, the statement from a public housing authority declaring that the tenant's income does not exceed the applicable limit under Section 42(g) of the Code. For an exception to the portion of this requirement regarding supporting documentation, see Section 42(g)(8)(B) of the Code which provides a special rule for a 100 percent low-income building;

4. That each low-income unit in the project was rent restricted under Section 42(g)(2) of the Code;

5. That all units in the project were for use by the general public and used on a non-transient basis (except for transitional housing for the homeless provided under Section 42(i)(3)(B)(iii) of the Code);

6. That each building in the project was suitable for occupancy, taking into account local health, safety and building codes (or other habitability standards), and the State and local government unit responsible for making building code inspections did not issue a report of a violation for any building or low-income unit in the project;

7. That there was no change in the eligible basis (as defined in Section 42(d) of the Code) of any building in the project or, if there was a change, the nature of the change (that is, a common area has become commercial space, or a fee is now charged for a tenant facility formerly provided without charge);

8. That all tenant facilities included in the eligible basis under Section 42(d) of the Code of any building in the project, such as swimming pools, other recreational facilities, and parking areas, were provided on a comparable basis without charge to all tenants in the building;

9. That if a low-income unit in the project became vacant during the year, that reasonable attempts were or are being made to rent that unit or the next available unit of comparable or smaller size to tenants having a qualifying income before any units in the project were or will be rented to tenants not having a qualifying income;

10. That if the income of tenants of a low-income unit, which was previously verified, increases above 140 percent of the applicable limit allowed in Section 42(g)(2)(D)(ii) of the Code, the next available unit of comparable or smaller size in the project was or will be rented to tenants having a qualifying income;

11. That an extended low-income housing commitment as described in Section 42(h)(6) of the Code was in effect for buildings subject to Section 7108-(c)(1) of the Revenue Reconciliation Act of 1989, including the requirement under Section 42(h)(6)(B)(iv) that the owner cannot refuse to lease a unit in the project to an applicant because the applicant holds a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1937, 42 U.S.C. §1437f. In addition, that the owner has not refused to lease a unit to an applicant based solely on his or her status as a holder of a Section 8 voucher and the project otherwise meets the provisions, including any special provisions, as outlined in the extended low-income housing commitment;

12. That no finding of discrimination under the Fair Housing Act, 42 U.S.C. §§ 3601 through 3619, has occurred for the project. A finding of discrimination includes an adverse final decision by the Secretary of Housing and Urban Development, 24 C.F.R. § 180.680, an adverse final decision by a substantially equivalent State or local fair housing agency, 42 U.S.C. § 3616a(a)(1), or an adverse judgment from a Federal court;

13. That if the owner received its credit allocation from the Nonprofit Set Aside (section 42(h)(5) of the Code), that the nonprofit entity materially participated in the operation of the development within the meaning of section 469(h) of the Code; and

14. That there has been no change in the ownership or management of the project or that there was a change and a description of the change.

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

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

In (b)9, inserted "that is," preceding "tenant facilities that are available"; in (d)1, inserted "Federal" and moved reference to the 40-50 test.

Recodified from N.J.A.C. 5:80-33.30 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) and (c) and recodified former (b) through (d) as (d) through (f). Former N.J.A.C. 5:80-33.35, Confidentiality of tax credit applications, and information, was recodified to N.J.A.C. 5:80-33.40.

Recodified from N.J.A.C. 5:80-33.35 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. 5:80-33.33, Returning credits, recodified to N.J.A.C. 5:80-33.31.

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 "contact NJHMFA's compliance monitoring section before the project places in service and prior to rent up. In addition, the owner must" following "credits must"; and in (c), substituted "120" for "90" following "later than".

Recodified from N.J.A.C. 5:80-33.33 and 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), rewrote the second sentence; in (d), rewrote 4 and 5; in (f), rewrote the introductory paragraph, 6 and 11 and inserted 12 through 14. Former N.J.A.C. 5:80-33.34, NJHMFA review, recodified to N.J.A.C. 5:80-33.35.

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. 5:80-33.34 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 "owners" for "owner", inserted "Completion of Part II of the IRS Form 8609 and the filing of same with the Internal Revenue Service" preceding the third sentence; rewrote (d)4. Former N.J.A.C. 5:80-33.32, Returning credits, recodified to N.J.A.C. 5:80-33.30.

Administrative correction.

See: 38 N.J.R. 3530(a).

5:80-33.33 Owner's annual reports: deadlines

Pursuant to Section 1.42-5(c)(2)(ii)(C) of the IRS Regulations, NJHMFA requires the owners of all low-income housing projects to submit annually to NJHMFA for review the Owner's Certificate of Continuing Program Compliance and the Building Status Report. The Building Status Report must indicate the income of and rent charged to tenants for each low-income unit. This package shall be submitted on an annual basis (preferably in digital format) and is due on January 31. Requests for extensions beyond the January 31 deadline must be submitted by December 31 of the prior year.

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. 5:80-33.31 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) and recodified former (c) as (d).

Recodified from N.J.A.C. 5:80-33.36 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. 5:80-33.34, Applicant's affirmative obligation to disclose changes, recodified to N.J.A.C. 5:80-33.32.

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

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

Recodified from N.J.A.C. 5:80-33.34 and 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) and (c), substituted "33" for "20" preceding "percent"; in (c), rewrote the first sentence and inserted a second sentence. Former N.J.A.C. 5:80-33.35, Compliance monitoring fee, repealed.

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. 5:80-33.35 and amended by R.2003 d.300, effective July 21, 2003.

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

Substituted "IRS Regulations" for "Code". Former N.J.A.C. 5:80-33.33, Applicant's affirmative obligation to disclose changes, recodified to N.J.A.C. 5:80-33.31.

5:80-33.34 NJHMFA review and inspection

(a) Prior to the issuance of the IRS Form 8609, NJHMFA (or its authorized designee) may conduct an on-site inspection of the project to confirm that all representations made in the project's tax credit application have been met. (See N.J.A.C. 5:80-33.26.) NJHMFA (or its authorized designee) shall