

# HOUSING AND MORTGAGE FINANCE AGENCY

## SUBCHAPTER 23. (RESERVED)

## SUBCHAPTER 24. LEASE-PURCHASE PROGRAM

- 5:80-24.1 Authority
- 5:80-24.2 Purpose
- 5:80-24.3 Definitions
- 5:80-24.4 Authority to enter into purchase agreements
- 5:80-24.5 Purchase agreement requirements
- 5:80-24.6 Application
- 5:80-24.7 Authority to enter into lease-purchase agreements

## SUBCHAPTER 25. (RESERVED)

## SUBCHAPTER 26. HOUSING AFFORDABILITY CONTROLS

- 5:80-26.1 Purpose and applicability
- 5:80-26.2 Definitions
- 5:80-26.3 Affordability average; bedroom distribution
- 5:80-26.4 Occupancy standards
- 5:80-26.5 Control periods for ownership units
- 5:80-26.6 Price restrictions for ownership units
- 5:80-26.7 Buyer income eligibility for ownership units
- 5:80-26.8 Limitations on indebtedness secured by ownership unit; subordination
- 5:80-26.9 Capital improvements to ownership units
- 5:80-26.10 Maintenance of restricted ownership units
- 5:80-26.11 Control periods for rental units
- 5:80-26.12 Restrictions on rents
- 5:80-26.13 Tenant income eligibility
- 5:80-26.14 Administrative agent
- 5:80-26.15 Affirmative marketing
- 5:80-26.16 Household certification and referral; related project information
- 5:80-26.17 Procedures for changing administrative agents
- 5:80-26.18 Enforcement
- 5:80-26.19 Appeals
- 5:80-26.20 Option to buy 95/5 units
- 5:80-26.21 Municipal option on 95/5 units
- 5:80-26.22 State option on 95/5 units
- 5:80-26.23 Non-profit option on 95/5 units
- 5:80-26.24 Seller option on 95/5 units
- 5:80-26.25 Municipal rejection of repayment option on 95/5 units
- 5:80-26.26 Continued application of options to create, rehabilitate or maintain 95/5 units

## APPENDIX A. MANDATORY DEED FORM FOR OWNERSHIP UNITS

## APPENDIX B. MANDATORY DEED FORM FOR OWNERSHIP 95/5 UNITS

## APPENDIX C. RESTRICTIVE COVENANT REQUIRED BY SECTION 5:80-26.5(d)

## APPENDIX D. MANDATORY DEED FORM FOR OWNERSHIP UNITS SUBJECT TO RESTRICTIVE COVENANT REQUIRED BY SECTION 5:80-26.5(d)

## APPENDIX E. MANDATORY DEED RESTRICTION FOR RENTAL PROJECTS

## APPENDIX F. FORM OF RELEASE (Quitclaim Deed) FOR RESTRICTED UNITS

## APPENDIX G. FORM OF NOTE FOR PAYMENT OF RECAPTURE AMOUNT FOR A 95/5 UNIT

## APPENDIX H. FORM OF MORTGAGE SECURING PAYMENT OF RECAPTURE AMOUNT FOR A 95/5 UNIT

## APPENDIX I. FORM OF HAS MUNICIPAL AGREEMENT CONTRACT FOR THE PROVISION OF HOUSING AFFORDABILITY CONTROL SERVICES

## APPENDIX J. FORM OF CERTIFICATE FOR APPLICANTS CERTIFIED TO OWNERSHIP UNIT, REQUIRED BY SECTION 5:80-26.18(c)2

## APPENDIX K. FORM OF CERTIFICATE FOR APPLICANTS CERTIFIED TO RENTAL UNIT, REQUIRED BY SECTION 5:80-26.18(c)2

## APPENDIX L. FORM OF RECAPTURE MORTGAGE NOTE IN FAVOR OF STATE, REQUIRED BY SECTION 5:80-26.5(c)

## APPENDIX M. FORM OF MORTGAGE SECURING PAYMENT OF RECAPTURE NOTE IN FAVOR OF THE STATE, REQUIRED BY SECTION 5:80-26.5(c)

## APPENDIX N. FORM OF RECAPTURE MORTGAGE NOTE IN FAVOR OF MUNICIPALITY, REQUIRED BY SECTION 5:80-26.5(c)

## APPENDIX O. FORM OF MORTGAGE SECURING PAYMENT OF RECAPTURE NOTE IN FAVOR OF THE MUNICIPALITY, REQUIRED BY SECTION 5:80-26.5(c)

## APPENDIX P. FORM OF RECAPTURE MORTGAGE NOTE FOR UHOP AND MONI UNITS, REQUIRED BY SECTION 5:80-26.5(c)

## APPENDIX Q. FORM OF MORTGAGE SECURING PAYMENT OF RECAPTURE NOTE IN FAVOR OF THE AGENCY, REQUIRED BY SECTION 5:80-26.5(c)

## SUBCHAPTER 27. (RESERVED)

## SUBCHAPTER 28. NONPUBLIC RECORDS

- 5:80-28.1 Nonpublic records

## SUBCHAPTER 29. INVESTMENT OF HOUSING PROJECT FUNDS

- 5:80-29.1 Permitted investments
- 5:80-29.2 (Reserved)
- 5:80-29.3 General applicability

## SUBCHAPTER 30. RESIDUAL RECEIPTS

- 5:80-30.1 Definitions
- 5:80-30.2 Uses of residual receipts
- 5:80-30.3 Request for use of residual receipts
- 5:80-30.4 Agency review and approval
- 5:80-30.5 Disbursement of residual receipts

## SUBCHAPTER 31. ATTORNEY SERVICES

- 5:80-31.1 Applicability
- 5:80-31.2 Scope of services
- 5:80-31.3 Maximum fees
- 5:80-31.4 Agency approval

## SUBCHAPTER 32. HOUSING INVESTMENT SALES

- 5:80-32.1 Definitions
- 5:80-32.2 Realization of maximum additional return
- 5:80-32.3 Application procedure
- 5:80-32.4 Required documents
- 5:80-32.5 Fee
- 5:80-32.6 Closing
- 5:80-32.7 Developer's fee and return on equity

## APPENDIX. EXAMPLE OF APPLICATION OF SUBCHAPTER RULES

**SUBCHAPTER 33. LOW INCOME HOUSING TAX CREDIT QUALIFIED ALLOCATION PLAN**

- 5:80-33.1 Introduction
- 5:80-33.2 Definitions
- 5:80-33.3 Application cycles
- 5:80-33.4 Family Cycle
- 5:80-33.5 Senior Cycle
- 5:80-33.6 Supportive Housing Cycle
- 5:80-33.7 Final Cycle
- 5:80-33.8 Reserve
- 5:80-33.9 Volume cap credits
- 5:80-33.10 Application fee schedule
- 5:80-33.11 Cycle deadlines
- 5:80-33.12 Application to a cycle/eligibility requirements
- 5:80-33.13 Application for additional credits
- 5:80-33.14 Scoring and ranking
- 5:80-33.15 Point system for the Family Cycle
- 5:80-33.16 Point system for the Senior Cycle
- 5:80-33.17 Point system for the Supportive Housing Cycle
- 5:80-33.18 Point system for the Final Cycle
- 5:80-33.19 Tiebreaker system
- 5:80-33.20 Municipal comment
- 5:80-33.21 Application needs analysis
- 5:80-33.22 Committee review and reconsideration process
- 5:80-33.23 Allocation needs analysis
- 5:80-33.24 Reservations, allocations and binding commitments
- 5:80-33.25 Allocation/issuance fee schedule
- 5:80-33.26 Obtaining IRS Form 8609: deadlines and extension fees
- 5:80-33.27 Placed in service needs analysis
- 5:80-33.28 Project cost certification and contractor fee limits
- 5:80-33.29 Extended use agreement
- 5:80-33.30 Returning credits
- 5:80-33.31 Applicant's affirmative obligation to disclose changes
- 5:80-33.32 Compliance monitoring
- 5:80-33.33 Owner's annual reports: deadlines
- 5:80-33.34 NJHMFA review and inspection
- 5:80-33.35 Notification of noncompliance
- 5:80-33.36 Confidentiality of tax credit applications and information
- 5:80-33.37 Exchange of credits
- 5:80-33.38 through 5:80-33.40 (Reserved)

**APPENDIX**

**SUBCHAPTER 1. GENERAL PROVISIONS**

**5:80-1.1 Authority**

These regulations are issued pursuant to the authority of the New Jersey Housing and Mortgage Finance Agency Law of 1983, N.J.S.A. 55:14K-1 et seq., and specifically section 5g thereof, N.J.S.A. 55:14K-5g.

Amended by R.2005 d.219, effective July 5, 2005.  
See: 37 N.J.R. 970(a), 37 N.J.R. 2476(a).  
Rewrote the section.

**5:80-1.2 Purpose and objective**

(a) These regulations are established to effectuate and shall be applied to accomplish the general purposes of the New Jersey Housing and Mortgage Finance Agency including:

1. Assuring the availability of rental and owner-occupied housing in the State of New Jersey (State);
2. Stimulating the construction, rehabilitation and improvement of adequate and affordable housing in the State so as to increase the number of housing opportunities for New Jersey residents, particularly those of low and moderate income;
3. Enhancing the production capacity of the private sector in meeting the housing needs of residents of the State;
4. Assisting in the revitalization of the State's urban areas; and
5. Responding to changing housing demographic and economic circumstances by the development of innovative and flexible financing vehicles.

Amended by R.2005 d.219, effective July 5, 2005.  
See: 37 N.J.R. 970(a), 37 N.J.R. 2476(a).

In (a), inserted "in the State of New Jersey (State)" at the end of 1, substituted "the State" for "New Jersey" in 3, and substituted "by" for "for" following "and economic circumstances" in 5.

**5:80-1.3 General definitions**

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

"Act" means the New Jersey Housing and Mortgage Finance Agency Law of 1983, P.L.1983, c.530 (N.J.S.A. 55:14K-1 et seq.).

"Agency" means the New Jersey Housing and Mortgage Finance Agency, created by section 4 of the Act, N.J.S.A. 55:14K-4.

"Assisted living" means a coordinated array of supportive personal and health services, available 24 hours per day, to residents who have been assessed to need these services, including residents who require formal long-term care. Assisted living promotes resident self direction and participation in decisions that emphasize independence, individuality, privacy, dignity, and homelike surroundings.

"Assisted living residence" (ALR) means a housing project which is a facility licensed by the New Jersey Department of Health and Senior Services to provide apartment-style housing and congregate dining and to assure that assisted living services are available when needed, for four or more adult persons unrelated to the proprietor. Apartment units in ALRs offer, at a minimum, one unfurnished room, a private bathroom, a kitchenette and a lockable door on the unit entrance.

3. Three months of operating expenses (for senior citizen projects) or six months of operating expenses (for family projects), which includes debt service and reserve payments, of the latest Agency approved annual budget;
4. Full funding of all required reserve accounts;
5. Anticipated or proposed capital improvements;
6. Any other current obligations of the qualifying development; and
7. Accrued but undistributed return on equity.

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

Added "Residual receipts"; amended "Available cash", "Housing investment sale", "Maximum additional return", and "Purchase price"; and changed the name of "MAR Revolving Account" to "Housing Investment Sale Account".

Amended by R.2005 d.197, effective June 20, 2005.  
See: 37 N.J.R. 569(a), 37 N.J.R. 2203(a).

In "Housing investment sale", inserted "through the end of the additional 35 years" preceding "for monitoring the restrictions" in 1.

#### 5:80-32.2 Realization of maximum additional return

Upon the approval of its members in the exercise of their authority under the Fair Housing Act, N.J.S.A. 52:27D-321f, the Agency shall waive any or all of the investment-return restrictions imposed under the HMFA Law, N.J.S.A. 55:14K-1 et seq., in order to permit an eligible LD sponsor to realize, from available proceeds upon the closing of a housing investment sale, a maximum additional return, as well as any return otherwise allowable under the HMFA law. Sponsors who agree to comply with the requirements of this subchapter will meet the waiver criteria.

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

Substituted "proceeds" for "cash".

#### 5:80-32.3 Application procedure

(a) The eligible LD sponsor proposing to sell its project in a housing investment sale must submit to the Executive Director of the Agency a written request for approval of the sale, containing a detailed description of the terms of the sale. The request must also include a detailed project report presenting the current physical, financial, management and tenant needs of the housing project. The Agency will review this report for completeness and accuracy, may require additional information and may conduct its own review of the housing project's condition and operation. Full and complete disclosure of all material facts relating to the proposed sale must be made to the Agency in the request for approval, and the seller and all other parties to the transaction shall be under a continuing obligation to disclose such material facts through the closing of the sale.

(b) In selecting the prospective buyer for the project, the seller may solicit as many proposals as it deems necessary. Bidding is not required. The seller may negotiate among prospective buyers to obtain the best offer.

(c) The housing investment sale shall include an assignment from the seller and an assumption by the buyer of all existing project indebtedness. If the sale includes any supplemental financing, the amount of such financing shall not exceed the debt that the project can reasonably sustain from project income through the remainder of the Housing Assistance Payments (HAP) contract or, if no HAP contract exists, through the remainder of the original mortgage term, without jeopardizing the viability of the project as a low-income project for the remainder of the original mortgage term. Supplemental financing may be provided by the Agency or other lender or may be provided by the seller. The terms of any supplemental financing shall be subject to the approval of the Agency provided, however, that: in no event may the aggregate principal repayment of such indebtedness result in amounts in excess of the amounts payable to the seller under N.J.A.C. 5:80-32.6(b)3i and ii; and all such indebtedness must be subordinate to the Agency's first mortgage lien and security interest in the project. The Agency's approval of a sale requiring supplemental financing shall be subject to the receipt of an opinion by nationally recognized bond counsel, in form and substance satisfactory to the Agency and the Attorney General, that such financing is permitted under any Bond resolution to which the payments under the Agency's mortgage on the project are pledged, and does not adversely affect the Federal and State tax treatment of any outstanding bonds, notes or other obligations of the Agency. The cost of such opinion shall be borne by the seller.

(d) As a condition of approving the sale, the Agency will require that the housing project be restored to sound physical condition in accordance with the report submitted by the seller under (a) above and the independent review by the Agency. Deferred maintenance must be completed no later than the closing of the sale, unless otherwise agreed by the Agency. Necessary repairs and capital improvements must be completed within a time frame acceptable to the Agency.

(e) As a condition of approving the sale, the Agency will also require payment of debt service arrearage, current unpaid invoices, total operating expenses covering three months (for senior citizen projects) and six months (for family projects), full funding of all reserves and any other obligations of the project.

(f) Upon assignment and assumption of the Agency's mortgage, provisions shall be included in the deed restriction clearly specifying the Agency's right to enforce these regulations for the 35-year period after the expiration of the term of the Agency's first mortgage.

(g) Any prepayment of the first mortgage subsequent to a housing investment sale as may be permitted by the Agency's regulations on prepayment shall not operate to relieve the buyer of the continuing requirements of this subchapter. As a condition to prepayment, a new or amended deed restriction as may be required by the Agency shall be recorded upon prepayment and shall contain the same

affordability restrictions as the project's deed restriction in effect at the time of prepayment. These affordability provisions shall continue from the date of prepayment through the end of the regulatory period as required by this subchapter and the project's deed restriction in effect at the time of prepayment.

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

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

In (c), inserted text "Supplemental Financing may be provided . . . prepay the Agency's first mortgage." and "is permitted under any Bond resolution . . . project are pledged, and"; and in (f), substituted reference to inserting a provision in the deed for reference to modifying the mortgage, and inserted reference to 35-year post expiration period. Amended by R.2005 d.197, effective June 20, 2005.

See: 37 N.J.R. 569(a), 37 N.J.R. 2203(a).

In (c), rewrote the fourth sentence; added (g).

#### 5:80-32.4 Required documents

(a) To assist the Agency in its review of an eligible LD sponsor's request for approval of a housing investment sale, as described in N.J.A.C. 5:80-32.3(a), the seller shall supply the Agency with the following documents, in form and substance satisfactory to the Executive Director:

1. Administrative questionnaires for the buyer;
2. Copies of the buyer's organizational documents;
3. Any Previous Participation Certificates (form 2530) for the buyer;
4. A physical inspection report approved by the Agency;
5. A financial report on project operations approved by the Agency; and
6. Any other documents or other information requested by the Agency that would reasonably assist it in reviewing the proposed housing investment sale.

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

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

Deleted (a)4, relating to a buyer's certified financial statement, and recodified former (a)5 through (a)7 as (a)4 through (a)6.

#### 5:80-32.5 Fee

The eligible LD sponsor seller shall pay a processing fee to the Agency in such amount, as determined by the Agency, as will reimburse the Agency for its administrative cost (that is, Agency staff time and actual expenses incurred) in reviewing and processing the seller's request to engage in a housing investment sale. With its initial request for approval of the sale, the seller shall submit a non-refundable \$5,000 deposit that shall be credited toward the processing fee. The seller will be billed for any balance due at the closing of the sale, and said balance shall be due and payable at that time.

#### 5:80-32.6 Closing

(a) At the closing of any approved housing investment sale, the following documents, in form and substance satisfactory to the Agency, shall be delivered:

1. Legal opinions from the seller's and buyer's attorneys to the effect that the respective entities' participation in the housing investment sale is fully lawful; and
2. Any legal opinion of nationally recognized bond counsel reasonably required by the Agency relating to the proposed housing investment sale or its effect upon any outstanding obligations of the Agency.

(b) At the closing of any approved housing investment sale, the following shall occur:

1. The eligible LD sponsor shall transfer title to the realty and tangible personalty comprising its project, as well as any required project accounts, escrows and reserves, to the buyer;
2. The buyer shall pay to the eligible LD sponsor the purchase price for the project by assuming the project indebtedness of the eligible LD sponsor and paying the balance of the purchase price in cash and indebtedness of the buyer in favor of the seller; and
3. The Agency shall review and approve the following payments to be made from the available cash of the eligible LD sponsor:

i. To the eligible LD sponsor, an amount equal to its investment in the project, as determined under the HMFA Law payable in cash and/or permitted indebtedness of the buyer;

ii. To the eligible LD sponsor, an amount equal to 50 percent of its maximum additional return payable in cash and/or permitted indebtedness of the buyer;

iii. To the Housing Investment Sales Account, an amount equal to 50 percent of the maximum additional return of the eligible LD sponsor payable in cash and/or permitted indebtedness of the buyer to the seller assigned by the seller to the Agency;

iv. To the State Treasurer, the balance of eligible LD sponsor's available cash, as required under the Limited Dividend Law payable in cash only;

v. In the case of indebtedness of the buyer in favor of the seller, the amount payable to the Agency under (b)3iii above representing such indebtedness is not required to be paid in cash at closing. Instead, the Agency shall receive such amount through assignment by the seller to the Agency of 50 percent of the annual repayment of the indebtedness of the buyer in favor of the seller.

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

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

In (b)2, inserted reference to payment by buyer's indebtedness to the seller; in (b)3i and (b)3ii, inserted reference to payment in cash and/or indebtedness; in (b)3ii, substituted "Housing Investment Sales Account" for "MAR Revolving Account"; in (b)3iv, inserted "payable in cash only"; and added (b)3v.

**5:80-32.7 Developer's fee and return on equity**

(a) The Agency may credit buyers with a developer's fee of 10 percent of the purchase price at the time of closing. The developer's fee may only be pledged as equity in the project. No project funds or available cash may be used to pay a developer's fee to the buyer.

(b) Buyers shall be eligible to earn a return on equity based upon any equity investment in the project including the developer's fee which is being pledged as equity. The rate of return shall be established pursuant to N.J.A.C. 5:80-3.3(e), unless the buyer elects to qualify for enhanced return on equity under (c) below. During the regulatory period, after expiration of the term of the Agency mortgage, the return on equity restrictions shall continue as provided in this section until the owner funds an operating reserve account in the amount provided in N.J.A.C. 5:80-5.10(b)7. The operating reserve account shall be maintained until the expiration of the deed restriction and administered as provided in N.J.A.C. 5:80-5.10(b)7. If the operating reserve account is used, the return on equity restrictions hereunder shall be reinstated until the operating reserve account is again fully funded.

(c) Buyers who agreed to fund a capital improvement account, and agree to preserve the low-income status of the project for an additional 15 years, as provided below, may receive enhanced return on equity during the term of the Agency's mortgage through a split of the project's residual receipts on a 50/50 basis with the Agency.

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

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

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

4. Buyers who elect to participate in this option must make such election at the time of closing. Buyers may elect to participate subsequent to closing, provided they fund the capital improvement account with an amount equivalent to the amount that would have been required since closing

and distribute 50 percent of the accumulated residual receipts to the Agency for deposit into the Housing Investment Sales Account.

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

New Rule, R.1997 d.102, effective March 3, 1997.

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

Amended by R.2005 d.197, effective June 20, 2005.

See: 37 N.J.R. 569(a), 37 N.J.R. 2203(a).

In (b), amended the N.J.A.C. references in the third and fourth sentences; in (c), substituted "who" for "which" in the introductory paragraph and the first sentence of 4, and substituted "that" for "which" in the second sentence of 4.

Amended by R.2005 d.408, effective November 21, 2005.

See: 37 N.J.R. 2596(a), 37 N.J.R. 4400(b).

In (b), substituted "N.J.A.C. 5:80-3.3(e)" for "N.J.A.C. 5:80-3.3(b)."

**APPENDIX****Example of Application of Subchapter Rules**

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

(b) If the Agency had recognized the entire \$1,500,000 as investment in the project, which it was not required to do, the eligible LD sponsor would have been entitled to an additional return on its investment of \$40,000 in each year of operation. For 15 years the project generated revenues sufficient to cover this additional \$40,000. The \$600,000 (15 years x \$40,000) aggregate representing this additional return, along with other surpluses, was invested and earned a total of \$200,000 in interest income over the 15 years.

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

(d) At the closing of the housing investment sale, \$200,000 of the purchase price is applied to transaction costs. Thus, the available proceeds of the eligible LD sponsor is \$5,700,000, computed as follows: \$3,500,000 (the cash portion of the Purchase Price, \$3,700,000, less \$200,000 in transaction

costs), plus \$2,200,000 (the residual receipts). (See N.J.A.C. 5:80-32.1, "available cash".)

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

1. \$500,000 cash invested by the owners of the eligible LD sponsor that was not recognized as investment in the project (see N.J.A.C. 5:80-32.1, "maximum additional return" paragraph 1), plus

2. \$600,000 representing cumulative annual return on the \$500,000 described in (e)1 above (see N.J.A.C. 5:80-32.1, "maximum additional return" paragraph 2), plus

3. \$200,000 investment income earned on the \$600,000 described in (e)2 above (see N.J.A.C. 5:80-32.1, "maximum additional return" paragraph 3), plus

4. \$1,800,000 representing amortization of principal on the Agency's mortgage loan (see N.J.A.C. 5:80-32.1, "maximum additional return" paragraph 4), plus

5. \$900,000 in market appreciation of realty and tangible personalty (that is, the purchase price of \$10,900,000 less investment in the project of \$1,000,000 and original mortgage loan of \$9,000,000, as provided in N.J.A.C. 5:80-32.1, "maximum additional return" paragraph 5).

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

1. To the eligible LD sponsor, \$1,000,000, representing its investment in the project, as determined under the HMFA Law (see N.J.A.C. 5:80-32.6(b)3i);

2. To the eligible LD sponsor, \$2,000,000, representing 50 percent of its maximum additional return (see N.J.A.C. 5:80-32.6(b)3ii);

3. To the Housing Investment Sales Account, \$2,000,000 representing 50 percent of the maximum additional return (see N.J.A.C. 5:80-32.6(b)3iii); and

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

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

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

### SUBCHAPTER 33. LOW INCOME HOUSING TAX CREDIT QUALIFIED ALLOCATION PLAN

#### 5:80-33.1 Introduction

(a) Section 42 of the Internal Revenue Code of 1986 (Code), 26 U.S.C. § 42, establishes a low income housing tax

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

(b) In each calendar year, the total dollar value of the credits that can be allocated under these rules, except for the credits issued in connection with buildings financed with the proceeds of certain tax-exempt bonds, is limited by the State housing credit ceiling provided in Section 42 of the Code. NJHMFA, therefore, has determined to award these limited credits on a competitive basis. Applicants seeking an allocation of these credits must apply under one of the cycles set forth in N.J.A.C. 5:80-33.4, 33.5, 33.6 or 33.7. NJHMFA ranks the applications received in each cycle according to the respective point scales provided in N.J.A.C. 5:80-33.15, 33.16, 33.17 and 33.18. The credits assigned to each cycle are then reserved for the highest ranking applications that meet the eligibility requirements set forth in N.J.A.C. 5:80-33.12.

(c) Credits issued in connection with buildings financed with the proceeds of tax exempt bonds subject to the volume cap restrictions provided in Section 42(h)(4) of the Code are not limited by the State housing credit ceiling and, therefore, are not allocated on a competitive basis. Applicants seeking such "volume cap tax credits" are directed to the provisions of N.J.A.C. 5:80-33.9.

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

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

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

(g) These rules have been promulgated in a manner consistent with the smart growth initiatives required under Executive Order No. 4(2002).

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. For multi-phase projects, forestalling of a foreclosure by funding of the initial phase shall not preclude latter phases of the same project from qualifying for the set-asides at N.J.A.C. 5:80-33.4(a)1, 33.5(a)1 and 33.7(a)2, provided the latter phases satisfy the remaining elements of the definition of “preservation project” below.

“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.

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

“Common area” means, for purposes of the point category at N.J.A.C. 5:80-33.15(a)13ii, the area in a sub/individually-metered project where electric usage is not paid for by a tenant or the area in a master-metered project where utility

usage cannot be attributed to individual dwelling units, whether bedrooms, apartments, townhomes or condominiums.

“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.

“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 municipality or, in the case of a court-ordered project, 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 or tax attorney), 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). 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 shall be recognized in eligible basis; and
2. Duplicative professional costs shall not be recognized in eligible basis. For example, for HOPE VI/Replacement Housing projects in which both the public housing authority and the developer retain their own construction managers, architects, engineers, etc., only the fees for ser-

vices retained by the developer shall be recognized in eligible basis.

"Equity range" means the range of tax credit pricing that NJHMFA shall utilize in its needs analysis. The equity range is listed in the application and may change as market conditions dictate.

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

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

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

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

"Individuals and families who are homeless" means any individual or family who does not have stable housing. Individuals coming out of a State psychiatric hospital, transitional living program, half-way house, jail or a correctional facility, with no place to live upon release may be considered homeless.

"Individuals in treatment for substance abuse" means any individual who is a client of programs funded and/or licensed by the New Jersey Department of Human Services, Division of Addiction Services.

"Individuals with mental illness" means any individual with a mental illness as that term is defined at N.J.S.A. 30:4-27.2, incorporated herein by reference, as amended and supplemented, and/or any individual with a mental illness eligible for housing or services funded by the Division of Mental Health Services in the New Jersey Department of Human Services.

“Individuals with physical or developmental disabilities” means any individual with a severe, chronic disability that is attributable to a mental or physical impairment or combination of mental or physical impairments, is manifested before the person attains 22 years of age, and is likely to continue indefinitely. The disability results in substantial functional limitations in three or more of the following areas of major life activity: self-care, receptive and expressive languages, learning, mobility, self-direction, capacity for independent living, and economic sufficiency, and reflects the person’s need for a combination and sequence of special, interdisciplinary, or generic care, treatment or other services that are of lifelong or extended duration and are individually planned and coordinated.

“Individuals with special needs” means:

1. Individuals with mental illness;
2. Individuals with physical or developmental disabilities;
3. Victims of domestic violence;
4. Ex-offenders and youth offenders;
5. Youth aging out of foster care;
6. Runaway and homeless youth;
7. Individuals and families who are homeless;
8. Disabled and homeless veterans;
9. Individuals with AIDS/HIV;
10. Individuals in treatment for substance abuse; and
11. Individuals in other emerging special needs groups identified by State agencies.

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

“LIHTC project” means a project participating in NJHMFA’s Low Income Housing Tax Credit Program.

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

“Minimum rehab project” means any project undertaking only a minimum amount of rehabilitation. Minimum rehab is defined as construction cost totaling less than \$25,000 per unit. 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).

“Preservation project” means an existing housing project that is at least 50 percent occupied and is 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, the proposal must be for the rehabilitation of 100 percent of the affordable units and no demolition of the existing building is permitted. The application shall include the following:

1. Documentation that the property is at risk of losing its affordability controls or level of affordability;
2. An agreement precluding the involuntary displacement of any existing resident (other than for good cause) and, in the case of scattered site projects, a copy of the relocation plan for over-income residents;
3. Documentation of how rents will remain at or near existing levels;
4. Utilization of an applicable fraction based on an analysis of both the income levels of existing residents and the market analysis required under N.J.A.C. 5:80-33.12(c)1ii;
5. A capital needs assessment certified by the project architect 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).

“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 points are available exclusively to Section 501(c)(3) or (4) housing sponsors who comprise at least 50 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 points.

In order to qualify for the nonprofit points, 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 or joint venture agreement that clearly defines the nonprofit’s ownership interest and participation in the development and operation of the project.

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.

“Ready to grow area” means an area that has the capacity for growth and has received recognition from the State of this capacity, either through a planning process or through the presence of water supply and wastewater infrastructure to serve the project. A project shall be considered to be in a ready to grow area if it is located within at least one of the

areas designated in 1 through 3 below by the tax credit application deadline:

1. A smart growth area;
2. An area designated as a smart growth area on the Draft Final State Plan Policy Map in a county that has completed the Cross-Acceptance III Process; or
3. An area that has the water and wastewater capacity and infrastructure to serve the project and that also has at least one of the features in 3i through iv below:
  - i. Is an area in need of redevelopment or an area in need of rehabilitation, as those terms are defined at N.J.S.A. 40A:12A-3;
  - ii. Was a Proposed Center on the 2001 State Plan Policy Map or a previously Designated Center;
  - iii. Is in a municipality whose master plan has received Plan Endorsement from the State Planning Commission and the project is consistent with the housing element within the endorsed master plan; or
  - iv. Contains an existing building footprint within which the project will be built.

“Redevelopment project” means a project located within a designated “redevelopment area,” as defined at N.J.S.A. 40A:12A-3, an “area in need of rehabilitation,” as defined at N.J.S.A. 40A:12A-3 or within the boundary of an approved “neighborhood revitalization plan,” as defined at N.J.S.A. 52:27D-491. No later than the application deadline, the redevelopment plan must be approved by the municipal governing body or the neighborhood revitalization must be approved by the Commissioner of the Department of Community Affairs. The project must further the goals and objectives of the approved plan.

“Rehabilitation” or “rehab” means the repair, renovation, alteration or reconstruction of any building or structure.

“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 base of the equity range 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 base of the equity range. If the general partner’s ownership interest is five to 49 percent, \$0.10 shall be added to the base of the equity range. If the general partner’s ownership interest is at least 50 percent, \$0.20 shall be added to the base of the equity range.

“Scattered site project” means a project that consists of buildings which are not all proximate to one another, is financed pursuant to a common financing plan and 100 percent of the residential rental units of which are rent-restricted within the meaning of section 42(g)(2) of the Code.

“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 areas that promote growth in compact forms and protect the character of existing stable communities. An area shall be considered to be a smart growth area if it is within Planning Area 1, Planning Area 2 or within a Designated Center on the State Plan Policy Map.

Planning Areas are large masses of land that share a common set of conditions, such as population density, infrastructure systems, level of development or natural systems. Centers are compact forms of development that, compared to sprawl development, consume less land, deplete fewer natural resources and are more efficient in the delivery of public services. For more information about the State Development and Redevelopment Plan (State Plan), contact the New Jersey Office for Planning Advocacy. 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.

For more information on whether a project is located within a smart growth area, visit the site evaluator website at [www.njlocator.gov](http://www.njlocator.gov) or contact the NJHMFA Director of Policy and Planning at (609) 278-7400.

“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 re-assessing 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 social services plan must address the target population’s(s’) support service needs and may include a range of services across a wide continuum of care and intensity appropriate to the target population(s). Appropriate and needed services must be supported by evidence-based practice, research and/or direct practice experience. Each special needs tenant does not have to utilize all of the services provided by the project; however, the services must be available. The social services plan shall address, but is not limited to, the following items:

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. A description of the targeted population(s), including criteria which will qualify proposed tenants for the supportive housing units and expected support services that are likely to be required;

3. A description of the proposed services, including how services respond to need areas of tenants, how services will be funded, and service location (on site or in the community);

4. A description of how services will be coordinated or made available to all special need tenants, including a listing of referral sources; and

5. A description of tenant/landlord relationships, including roles of the service provider and developer in tenant/landlord relationships, how prospective tenants will be recruited, screened, and selected, and the plan for problem resolution to minimize evictions for supportive housing tenants.

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(s), applicant(s) and general partner(s) 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.

“Start construction” means to issue a notice to proceed to a project’s contractor, mobilize equipment on the site, and physically commence construction/site work. It is the responsibility of the developer and contractor to ensure that all applicable local and State permits, Federal approvals, inspections, surveys and/or reports have been received before work has commenced. NJHMFA reserves the right to conduct a site inspection to ensure the timely start of construction.

“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 population needs analysis” means a needs analysis that demonstrates the current and projected need and demand for housing for the targeted population(s). A supportive housing population needs analysis shall address the following:

1. The scope of the current and 15-year projected need of the target population(s) for supportive housing;
2. Define the market area, including sources of referrals for supportive housing;
3. Current and estimated population needs assessment for the defined market area. Applicants can obtain this information from Federal, State and local agencies and sources;
4. The estimated time it will take to fill the units;
5. The estimated income and sources of income for the target population(s); and
6. The number of supportive housing and other types of designated housing serving the target population(s) in the defined market area.

“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 individuals with special needs. At a minimum, a supportive housing project must have a social service coordinator and a social services plan that addresses the needs of the identified special needs population. 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 meal preparation, assistance with housecleaning, etc.) to high level (such as substance abuse and mental health supports) to medically intense (such as skilled nursing) and will vary from person to person depending on their particular physical, psycho-social, and/or mental limitations, and may vary for one person over time. Each special needs tenant does not have to utilize all of the services provided by the project; however, the services must be available. If tenants are not utilizing the services that are available, NJHMFA may call into question whether or not the project is serving a special needs population.

Examples of supportive services include, but are not limited to, the following:

1. Social service coordinator/case manager;
2. Counseling and crisis intervention;

3. Health care advocacy and linkages;
4. Assistance with activities of daily living and/or instrumental activities of daily living;
5. Entitlement counseling and advocacy;
6. Employment counseling and training;
7. Home-based personal or medical assistance;
8. Skilled nursing;
9. Meals preparation;
10. Housekeeping;
11. Substance abuse and mental health supports; and
12. Child care/adult day care.

“Supportive housing unit” means a unit within a project that is rented to an individual with special needs, with a social service coordinator, a supportive services plan that addresses the needs of the identified special needs population and the provision of supportive services, just as with supportive housing projects, as defined above in this section.

“Transit oriented development” or “TOD” means a mixed use development within walking distance (1/2 mile) of a rail, light rail, subway, ferry or major bus corridor station.

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

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

1. A violation of State and local building codes or health ordinances;
2. Failure of one or more major systems (for example, roof, HVAC, elevators, plumbing and electric);
3. Failure to fulfill any Qualified Allocation Plan provisions as represented by an owner in a project’s New Jersey LIHTC application; or
4. Failure of the owner to complete and fully execute the Deed of Easement and Restrictive Covenant for Extended Low-Income Occupancy.

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

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

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

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

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

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

Amended by R.2000 d.132, effective March 20, 2000.  
See: 32 N.J.R. 191(a), 32 N.J.R. 1065(a).

Rewrote the section.  
Amended by R.2001 d.170, effective May 21, 2001.  
See: 33 N.J.R. 932(a), 33 N.J.R. 1573(b).

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

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

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

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

Added definitions “At risk of losing its affordability controls,” “At risk of losing its level of affordability” and “Supportive Housing project”; rewrote definitions “Brownfields site,” “Community revitalization plan,” “Community service facility,” “Court-ordered obligation,” “Density bonus subsidy,” “Developer fee,” “Eligible basis limits,” “Frail elderly,” “Minimum rehab project,” “Mixed income project,” “Preservation Project,” “Qualified Census Tract,” “Qualified nonprofit organization,” “Social service coordinator,” “Social services model,” “Sponsor certification,” “Substantially incomplete” and “Voluntary compliance with the courts”; deleted definition “Special needs project”.

Amended by R.2007 d.168, effective May 21, 2007.  
See: 39 N.J.R. 281(a), 39 N.J.R. 2011(a).

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

for over-income residents"; and rewrote definition "Smart growth areas".

Amended by R.2007 d.297, effective September 17, 2007.

See: 39 N.J.R. 2302(a), 39 N.J.R. 3913(a).

Added definition "Ready to grow area"; and rewrote definition "Smart growth areas".

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

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

In definition "At risk of losing its affordability controls", inserted the last sentence; in definition "COAH obligation", inserted a hyphen following "low", inserted "or that is or will be included in a municipal resolution of intent to petition COAH" and substituted "shall" for "may" and "the" for "certain" preceding "requirements"; in definition "Common area", updated the N.J.A.C. reference; in definition "Court-ordered obligation", inserted "or if the project is included within a municipal resolution of intent to file a declaratory judgment action with the court", substituted "shall" for "may" and substituted "the" for "certain" preceding "requirements"; in definition "Density bonus subsidy", deleted "entity with jurisdiction over the" preceding "municipality" and deleted "(either the Executive Director of COAH" following "municipality", inserted "in the case of a court-ordered project", substituted "judge" for "Judge" and "special master" for "Special Master" and deleted the closing parenthesis following "suit"; in the introductory paragraph of definition "Eligible basis limits", substituted "/Replacement Housing Factor funds" for "assistance", in paragraph 2 of definition "Eligible basis limits", substituted "/Replacement Housing projects" for "applications"; rewrote definitions "Minimum rehab project", "Scattered site project" and "Social services plan"; substituted definition "Supportive housing project" for definition "Supportive Housing project"; rewrote definition "Supportive housing project"; and added definition "Supportive housing population needs analysis".

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

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

Rewrote the introductory paragraph to definition "Community revitalization plan"; in the fourth paragraph of definition "Developer fee" inserted "or tax attorney"; in definition "Eligible basis limits", rewrote the introductory paragraph and paragraph 1; deleted definitions "Equity factor", "Mixed income project", and "School renaissance zone"; added definitions "Equity range", "Individuals and families who are homeless", "Individuals in treatment for substance abuse", "Individuals with mental illness", "Individuals with physical or developmental disabilities", "Individuals with special needs" and "Start construction"; in definition "Preservation project", in the introductory paragraph, deleted "currently occupied" following "existing" and "in the Family, Senior and Final Cycles" following "set-aside" and inserted "that is at least 50 percent occupied and is", in paragraph 5, inserted "certified by the project architect", and deleted the final undesignated paragraph; rewrote definitions "Qualified nonprofit organization" and "Supported housing project"; rewrote paragraph 3ii of definition "Ready to grow area"; in definition "Retention factor", inserted "base of the" throughout and substituted "range" for "factor" throughout; and in definition "Sponsor certification", substituted "developer(s)" for "developer", "applicant(s)" for "applicant" and "partner(s)" for "partner".

Amended by R.2011 d.239, effective September 6, 2011.

See: 43 N.J.R. 917(a), 43 N.J.R. 2293(a).

Deleted definitions "COAH", "COAH obligation", "Community revitalization plan", "Court-ordered obligation", "Supportive housing population needs analysis", and "Voluntary compliance with the courts"; in definition "Preservation project", rewrote the introductory paragraph; in definition "Qualified nonprofit organization", deleted "nonprofit set-aside or" and "nonprofit set-aside and" preceding "nonprofit points" throughout; in definition "Ready to grow area", substituted "Draft Final" for "Preliminary" in paragraph 2, and rewrote paragraph 3i; in definition "Smart growth areas", substituted "for Planning Advocacy" for "of Smart Growth" in the second paragraph, and substituted "site evaluator" for "smart growth locator" in the third paragraph; added definitions "Re-development project", "Rehabilitation" or "rehab", "Supportive housing population needs analysis", "Supporting housing unit", and "Transit oriented development" or "TOD"; and in definition "Uncorrected noncompliance", deleted "or" at the end of paragraph 2, substituted "or" for a period at the end of paragraph 3; and added paragraph 4.

### Case Notes

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

### 5:80-33.3 Application cycles

Each year, NJHMFA shall establish funding cycles and the amount of credits available in each cycle. They will be advertised on the NJHMFA website [www.nj-hmfa.com](http://www.nj-hmfa.com) and in at least five of the following newspapers: Atlantic City Press, The Record, Newark Star Ledger, The Courier News, The Asbury Park Press, The Camden Courier Post, Bridgeton Evening News and The Times. NJHMFA shall set the eligibility cut-off dates in each year for receipt of completed applications. Applications shall be submitted to NJHMFA by 12 noon of the application deadline date in order to be considered for review. The application filing deadlines and the credits available in each cycle shall be announced as early in the year as possible. Reservations shall be announced approximately 90 days (or the next business day if the 90th day is a weekend or holiday) after the deadline for the cycle. NJHMFA may adjust the number of cycles or adjust the award dates if required by the timing of passage of Federal legislation or adoption of IRS rules and regulations or for other compelling circumstances. A project cannot compete in more than one cycle simultaneously.

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

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

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

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

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

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

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

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

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

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

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

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

### 5:80-33.4 Family Cycle

(a) Non-age restricted developments may apply to this cycle. Not less than 50 percent of the available tax credit authority attributable to a particular calendar year will be available in the Family Cycle, and the maximum annual allocation of credits to developments competing in this cycle is the lesser of \$1,750,000 in tax credits or the credit equivalent of \$200,000 in eligible basis per tax credit unit. Total development costs shall not exceed \$250,000 per unit. If multiple tranches of this cycle are awarded, all set-asides for this cycle will be applicable to each tranche. Minimum rehab projects are not eligible to apply in this cycle. Unless market

area demographics and/or financial feasibility demonstrate otherwise, all non-age-restricted projects (except minimum rehabilitation, preservation and historic rehabilitation projects) must adhere to the following minimum bedroom distributions: the combined number of efficiency and one-bedroom tax credit units shall be no greater than 20 percent of the tax credit units; at least 30 percent of the tax credit units shall be two-bedroom units; and at least 20 percent of the tax credit units shall be three-bedroom units. There are two set-asides in the Family Cycle:

1. **Redevelopment set-aside:** The first reservation of credits from the Family Cycle shall be given to the highest-ranking eligible application from a redevelopment project located within a Qualified Census Tract. If, because of lack of demand, the redevelopment set-aside is not utilized, the credits in this set-aside shall be released into the Family Cycle for use by other eligible applications after satisfaction of any other set-aside, as applicable.

2. **Preservation set-aside:** The second reservation of credits from the Family Cycle shall be given to the highest-ranking eligible application from a preservation project. The maximum annual allocation of credits to developments competing in this set-aside is \$1,250,000. HOPE VI/Replacement Housing/CFRC projects do not qualify for this set-aside. If, because of lack of demand, the preservation set-aside is not utilized, the credits in the preservation set-aside shall be released into the Family Cycle for use by other eligible applications after satisfaction of any other set-aside, as applicable.

(b) If the highest-ranking eligible project in the redevelopment set-aside also applies for and qualifies for the preservation set-aside, the project shall be deemed to satisfy NJHMFA's obligation to fund both set-asides. In such a case, the project shall have an ongoing obligation to meet the requirements for both set-asides. This overlapping of set-asides shall expand the amount of credits available in the general competition. However, projects which receive negative points under N.J.A.C. 5:80-33.15(a)16, 18 or 19 shall not be eligible to compete in any set-aside.

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

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

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

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

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

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

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

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

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

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

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

In (a)3, substituted "40" for "15" following "credit program," and deleted a former fourth sentence.

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

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

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

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

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

Rewrote the section.

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

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

Section was "Urban Cycle".

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

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

Rewrote (a) and (c).

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

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

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

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

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

In the introductory paragraph of (a), substituted "\$7,000,000" for "\$5,000,000" and "\$2,000,000" for "\$1,800,000" and inserted "tax credit" following "one-bedroom"; in (a)2, inserted "or elects to restrict 10 percent of the tax credit units to households earning 35 percent or less of area median income adjusted for family size"; deleted "20 percent at 50 percent" preceding "election shall"; inserted "/or" and inserted "eligible" preceding "applications"; in (a)3, inserted "/Replacement Housing" twice, inserted "or Replacement Housing factor" and inserted "eligible" preceding "applications"; in (a)4, inserted "either"; substituted an opening parenthesis for a semicolon preceding "that is"; inserted ")" or offers services, such as daycare, job training or other community services, to the qualified census tract in which the project is located" and deleted "located within the qualified census tract in which the project is located" following the third occurrence of "organization"; in (a)5, substituted "income" for the first occurrence of "Income" and substituted "mixed income" for "Mixed Income" twice; in (b), updated the N.J.A.C. reference; and in (c), deleted "or developer" following the first occurrence of "municipality" and deleted "and/or developer/general partner/managing member" following the second occurrence of "municipality".

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

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

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

Amended by R.2010 d.060, effective April 19, 2010.

See: 42 N.J.R. 583(a), 42 N.J.R. 776(a).

In (a)1, inserted "/CFRC" twice, substituted a comma for "or" preceding "Replacement Housing Factor", and inserted "or Capital Fund Recovery Competition (CFRC)".

Amended by R.2011 d.239, effective September 6, 2011.

See: 43 N.J.R. 917(a), 43 N.J.R. 2293(a).

Rewrote (a); and in (b), substituted "redevelopment" for "HOPE VI Replacement Housing" and "preservation" for "nonprofit".

### 5:80-33.5 Senior Cycle

(a) Senior projects may apply to this cycle. Not less than 20 percent of the available tax credit authority attributable to

a particular calendar year will be available in the Senior Cycle, and the maximum annual allocation of credits to developments competing in this cycle is the lesser of \$1,400,000 in tax credits or the credit equivalent of \$200,000 in eligible basis per tax credit unit. Total development costs shall not exceed \$250,000 per unit. If multiple tranches of this cycle are awarded, all set-asides for this cycle will be applicable to each tranche. Minimum rehab projects are not eligible to apply in this cycle. Unless market area demographics demonstrate otherwise, one-bedroom units should comprise at least 85 percent of the project. There is one set-aside in the Senior Cycle:

1. **Redevelopment set-aside:** The first reservation of credits from the Senior Cycle shall be given to the highest-ranking eligible application from a redevelopment project located within a Qualified Census Tract. If, because of lack of demand, the redevelopment set-aside is not utilized, the credits in this set-aside shall be released into the Family Cycle for use by other eligible applications.

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

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

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

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

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

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

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

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

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

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

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

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

In the introductory paragraph of (a), substituted "\$1,750,00" for "\$1,500,00" and "is one set-aside" for "are three set-asides"; deleted former (a)1 and (a)2; recodified former (a)3 as (a)1; in (a)1, substituted "first" for "third"; rewrote (b); and in (c), substituted "two" for "three" and deleted "and two projects per cycle" following "projects per year".

Amended by R.2010 d.060, effective April 19, 2010.

See: 42 N.J.R. 583(a), 42 N.J.R. 776(a).

In (a)1, inserted "/CFRC" twice, substituted a comma for "or" preceding "Replacement Housing Factor", and inserted "or Capital Fund Recovery Competition (CFRC)".

Amended by R.2011 d.239, effective September 6, 2011.

See: 43 N.J.R. 917(a), 43 N.J.R. 2293(a).

Rewrote (a).

### 5:80-33.6 Supportive Housing Cycle

(a) Supportive housing projects in which a minimum of 10 units or 25 percent of the total project units, whichever is greater, are rented to individuals with special needs and at least three appropriate services are provided may apply to the Supportive Housing Cycle. There must be an executed agreement between the proposed owner entity and a supportive services provider that will submit a social services plan consistent with requirements of this subsection for the Supportive Housing Cycle and approved by NJHMFA. There will be not less than 12.5 percent of the available tax credit authority attributable to a particular calendar year available in the Supportive Housing Cycle and the maximum annual allocation of credits to projects competing in this cycle is \$1,000,000. Total development costs shall not exceed \$250,000 per unit. If multiple tranches of this cycle are awarded, all set-asides for this cycle will be applicable to each tranche.

(b) Reservations shall be awarded to the highest-ranking eligible projects. To insure equitable distribution if there are both excess demand and multiple ranking eligible applications from a single municipality, NJHMFA shall fund no more than two projects per year from the same municipality. Funding of projects shall be prioritized in the following manner: the highest-ranking eligible project(s) in the Family Cycle, the Senior Cycle, the Supportive Housing Cycle and lastly, the Final Cycle. Projects that received an award of credits in a previous year that are now re-competing shall not

be included in the totals for purposes of the equitable distribution provision described herein.

(c) Projects which receive negative points under N.J.A.C. 5:80-33.15(a)16, 18 or 19 shall not be eligible to compete in 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" through-out.

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).

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

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

In (b), inserted the last sentence.

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

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

In the introductory paragraph of (a), substituted "\$2,000,000" for "\$1,800,000"; in (b), deleted "or developer" following the first occurrence of "municipality" and deleted "and/or developer/general partner/managing member" following the second occurrence of "municipality"; and in (c), updated the N.J.A.C. reference.

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

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

In (a), substituted "Supportive housing projects" for "Projects", "individuals with special needs" for "a special needs client population" and "\$1,200,000" for "\$900,000", and inserted the second sentence; in (b), substituted "two" for "three" and deleted "and two projects per cycle" following "projects per year".

Amended by R.2011 d.239, effective September 6, 2011.

See: 43 N.J.R. 917(a), 43 N.J.R. 2293(a).

In (a), substituted "12.5 percent of the available tax credit authority attributable to a particular calendar year" for "\$2,000,000" and "\$1,000,000" for "\$1,200,000"; and added the last two sentences.

## 5:80-33.7 Final Cycle

(a) All projects, including minimum rehab projects, may apply to this cycle. All credits not utilized under N.J.A.C. 5:80-33.4 through 33.6 and 33.8 (if any) shall be made available in the Final Cycle and the maximum annual allocation of credits to projects competing in this cycle is the lesser of \$1,750,000 in tax credits or the credit equivalent of \$200,000 in eligible basis per tax credit unit. Total development costs shall not exceed \$250,000 per unit. Unless market area demographics and/or financial feasibility demonstrate otherwise, all non-age-restricted projects (except minimum rehabilitation, preservation and historic rehabilitation projects) must adhere to the following minimum bedroom distributions: the combined number of efficiency and one-bedroom tax credit units shall be no greater than 20 percent of the tax credit units; at least 30 percent of the tax credit units shall be two-bedroom units; and at least 20 percent of the tax credit units shall be three-bedroom units.

(b) If 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 projects. To insure equitable distribution if there are both excess demand and multiple ranking eligible applications from a single municipality, NJHMFA shall fund no more than two projects per year from the same municipality. Funding of projects shall be prioritized in the following manner: the highest ranking eligible project(s) in the Family Cycle, the Senior Cycle, the Supportive Housing Cycle and lastly, the Final Cycle. Projects that received an award of credits in a previous year that are now re-competing shall not be included in the totals for purposes of the equitable distribution provision described herein.

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

(d) 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".

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

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

In (a), inserted the third sentence; and in (b), inserted a comma following "Then" in the third sentence; and inserted the last sentence.

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

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

In the introductory paragraph of (a), rewrote the second sentence and inserted "tax credit" following "one-bedroom" in the third sentence; in (a)1, inserted "/Replacement Housing" twice, inserted "or Replacement Housing Factor" and substituted "this" for "the HOPE VI" preceding "set-aside"; in (b), substituted "IF" for "In the unlikely event that", inserted "/Replacement Housing" and deleted "or developer" following the first occurrence of "municipality" and deleted "and/or developer/general partner/managing member" following the second occurrence of "municipality"; and in (c), updated the N.J.A.C. reference.

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

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

Rewrote (a) and (c); in (b), substituted "preservation" for "HOPE VI/Replacement Housing", deleted the former third sentence, substituted "two" for "three" and deleted "and two projects per cycle" following "projects per year"; deleted former (d); and recodified former (e) as (d).

Amended by R.2011 d.239, effective September 6, 2011.

See: 43 N.J.R. 917(a), 43 N.J.R. 2293(a).

Rewrote (a); and in (b), deleted "reservations shall be awarded to the highest-ranking eligible preservation project. Then" following "satisfied."

### 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 partially funded with the credits remaining in their respective cy-

cles. Supplemental awards are given first to the highest-ranking, partially funded eligible project from the Family Cycle. NJHMFA then evaluates the highest-ranking, partially funded eligible projects from the Senior and Supportive Housing Cycles. The next supplemental awards shall be given to the project which requires the least amount of credits from the Reserve to achieve the maximum eligible credit amount. Should sufficient credits exist in the Reserve, NJHMFA shall give a supplemental award to the highest-ranking, partially funded eligible projects from both the Senior and Supportive Housing Cycles. Simultaneously, credits remaining from cycles that did not receive a supplemental award shall be deposited into the Reserve.

2. Hardship requests for additional credits from the Reserve are limited to \$100,000 per project. Hardship requests must be documented to the satisfaction of NJHMFA and must demonstrate the existence of an unforeseen emergency situation where the completion of the project is jeopardized without an award of additional low-income housing tax credits. No more than one hardship award shall be approved with respect to a given project. Hardship applications to the Reserve are accepted on an ongoing basis until May 15. To apply to the Reserve for a hardship reservation of additional credit, applicants must follow the procedures at N.J.A.C. 5:80-33.13(a)1.

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. 5:80-33.8 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. 5:80-33.10, Cycle deadlines, was recodified to N.J.A.C. 5:80-33.13.

Recodified from N.J.A.C. 5:80-33.10 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. 5:80-33.9, Final Cycle, recodified to N.J.A.C. 5:80-33.8.

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

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

Rewrote (a).

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 1 and inserted "for additional credits from the Reserve" following "Hardship requests" in the first sentence and amended N.J.A.C. reference in 2.

Recodified from N.J.A.C. 5:80-33.9 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. 5:80-33.8, Final cycle, recodified to N.J.A.C. 5:80-33.7.

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

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

Rewrote (a)1, deleted (a)3.

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

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

In the introductory paragraph of (a), substituted "Family, Senior, and Supportive Housing Cycles and Final Cycles" for "Family, Senior, Supportive Housing and Final Cycles"; and in (a)2, rewrote the third sentence and deleted the former fourth and fifth sentences.

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

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

In the introductory paragraph of (a), deleted “and” preceding “Supportive” and substituted a comma for “Cycles” following “Housing”; in (a)2, substituted “May” for “July”; and added (a)3.  
Amended by R.2011 d.239, effective September 6, 2011.  
See: 43 N.J.R. 917(a), 43 N.J.R. 2293(a).  
Deleted (a)3.

### 5:80-33.9 Volume cap credits

(a) Projects financed by tax-exempt bonds that request tax credits pursuant to Section 42(h)(4) of the Code are required by Section 42(m)(1)(D) of the Code to satisfy the requirements for allocation of a housing credit dollar amount under the qualified allocation plan. Projects requesting tax credits entirely from volume cap do not have to compete and there are no cycle deadlines. However, complete applications shall be submitted at least one month before the tax-exempt bonds are sold. The following information shall be included in order for the application to be deemed complete: all applicable sections of the application corresponding to eligibility requirements at N.J.A.C. 5:80-33.12; those sections of the application corresponding to the point categories for period of restriction, conversion to tenant ownership (if applicable), tax abatement (if applicable) and the negative point categories; and a sponsor certification and breakdown of costs and basis. A copy of the appraisal/market study required by the applicant’s lender and/or syndicator may be submitted in lieu of the market study required at N.J.A.C. 5:80-33.12(c)1ii.

1. The governmental unit issuing the bonds is required by Section 42(m)(2)(D) of the Code to determine the credit amount needed for feasibility and viability of the project. If NJHMFA is the bond issuer, NJHMFA shall make this credit determination. If NJHMFA is not the bond issuer, the bond issuer shall provide a letter to NJHMFA assigning its responsibility under Section 42(m)(2)(D) to NJHMFA.

2. In order for a project to qualify for all of its tax credits from volume cap, Section 42(h)(4) of the Code requires that 50 percent or more of the aggregate basis of the building and the land on which it is located be financed with tax-exempt bonds. Qualifying tax-exempt bonds are obligations the interest on which is exempt from tax under Section 103 of the Code if such obligation is taken into account under Section 146 of the Code, and the principal payments on such financing are applied within a reasonable period to redeem obligations the proceeds of which were used to provide such financing.

3. Projects that request both volume cap credits and ceiling (competitive) credits shall comply with the application requirements for both.

4. Projects that would have received negative points under N.J.A.C. 5:80-33.15(a)16, 18 or 19 shall not be issued tax credits until such items are corrected.

5. Projects that receive volume cap credits shall pay an allocation/issuance fee as described at N.J.A.C. 5:80-33.25.

(b) If a municipality has created a density bonus subsidy to assist the low- or moderate-income units in a project, the

project may not receive volume cap credits unless the applicant can conclusively demonstrate that the market rate residential or commercial units are unable to internally subsidize the affordable units despite the density bonus and the affordable units are developed contemporaneously with the commercial or market rate residential units. In evaluating these criteria, NJHMFA shall adopt the standards as promulgated by the Department of Community Affairs for similar types of projects seeking Balanced Housing funds. This subsection shall not be evaded by failing to apply all or any portion of the subsidy to the low- or moderate-income units, by diverting all or any portion of the subsidy to other uses or by using any other device in which all or any portion of the subsidy is not used to benefit low- or moderate-income housing.

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. 5:80-33.11, Application to a cycle/eligibility requirements, was recodified to N.J.A.C. 5:80-33.14.

Recodified from N.J.A.C. 5:80-33.11 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, added the last sentence in the introductory paragraph, and added the last sentence in 1. Former N.J.A.C. 5:80-33.10, Reserve, recodified to N.J.A.C. 5:80-33.9. Amended by R.2000 d.132, effective March 20, 2000.

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

Added paragraph (b).

In (a), rewrote the fourth sentence in the introductory paragraph, and changed N.J.A.C. reference in 4; and added (b).

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

See: 32 N.J.R. 932(a), 33 N.J.R. 1573(b).

In (a), inserted “except the eligibility requirement at N.J.A.C. 5:80-33.13(c)8 concerning strategic neighborhood plan;” following NJAC reference; added (a)5.

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), inserted “, ENERGY STAR Homes participation (new construction projects only)” following “(if applicable)” and amended N.J.A.C. reference in the introductory paragraph and amended N.J.A.C. reference in 4.

Recodified from N.J.A.C. 5:80-33.10 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), introductory paragraph inserted “of the Code” following “Section 42(m)(1)(D)”, substituted “33.12” for “33.13 except the eligibility requirement at N.J.A.C. 5:80-33.13(c) concerning strategic neighborhood plan”, amended N.J.A.C. references throughout. Former N.J.A.C. 5:80-33.9, Reserve, recodified to N.J.A.C. 5:80-33.8.

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

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

In the introductory paragraph of (a), substituted the first occurrence of “shall” for “should” and inserted “at least one month”; and in (a)4, updated the N.J.A.C. reference.

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

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

Rewrote (b).

### 5:80-33.10 Application fee schedule

(a) The following fees shall be submitted at the time the application or reapplication is submitted:

1. An application fee of \$2,500 shall be paid by applicants for projects applying to the Family, Senior or Supportive Housing Cycle, and any first-time applications to the Final Cycle, as well as for projects applying for volume cap tax credits.

2. A reapplication fee of \$100.00 for projects requesting credits from the Reserve and for projects that applied to the Family, Senior or Supportive Housing Cycle, which did not receive a reservation of credits and wish to reapply in the Final Cycle of the same allocation year. Projects that are in essence new projects (for example, changes in the project composition, sites, or owner or developer entities) shall submit a new application fee.

(b) Application fees and reapplication fees are non-refundable.

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

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

In (a)1, inserted reference to Rural Cycle and added "as well as for projects applying for volume cap tax credits"; and in (a)2, inserted "B" following "Reserve" and inserted reference to Rural Cycle.

Recodified from N.J.A.C. 5:80-33.9 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 references to HOPE VI, Mixed Income. Former N.J.A.C. 5:80-33.12, Application to the Reserve (B), was recodified to N.J.A.C. 5:80-33.15.

Recodified from N.J.A.C. 5:80-33.12 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), deleted references to the Mixed Income Cycle throughout. Former N.J.A.C. 5:80-33.11, Volume cap credits, recodified to N.J.A.C. 5:80-33.10.

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)2, substituted "owner" for "sponsor" following "sites, or".

Recodified from N.J.A.C. 5:80-33.11. 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)1, substituted "\$2,500" for "\$1,000" "Family, Senior" for "Urban, Suburban/Rural, HOPE VI" throughout. Former N.J.A.C. 5:80-33.10, Volume cap credits, recodified to N.J.A.C. 5:80-33.9.

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)1 and 2, substituted "Supportive Housing" for "Special Needs".

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

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

In (a)2, deleted "is due" preceding and "hardship" following "for projects requesting" and deleted a comma following "reservation of credits".

### 5:80-33.11 Cycle deadlines

(a) Application cycles shall be announced by NJHMFA via notices sent to the mailing list maintained by the Tax Credit Division no later than 45 days prior to the deadline. Applications shall be accepted beginning one month prior to the deadline date. Applications shall be submitted to NJHMFA by 12 noon of the application deadline date in order to be considered for review. Late and substantially incomplete applications shall not be admitted into a cycle. Late applications shall be returned to the applicant.

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

(c) Applicants shall be given 48 hours to cure defects as follows, except for applications that NJHMFA deems to be substantially incomplete:

1. If the applicant has failed to include a required document, the applicant may supply the document; provided, however, that the document existed on the application deadline date and, if the document is a legal agreement or instrument, the document was legally effective on the application deadline date.

2. If statements or items in the application are contradictory or mutually inconsistent, the applicant may present information resolving the contradiction or inconsistency; provided, however, that the information accurately reflects the state of affairs on the application deadline date.

3. The applicant may provide any required signature that has been omitted.

(d) Except for applications that NJHMFA deems to be substantially incomplete, NJHMFA shall notify the applicant of any curable defects it discovers by telephone and, simultaneously, in writing by facsimile transmission. The applicant's corrective submission shall not be considered unless it is received by NJHMFA no later than 48 hours (excluding weekends and legal holidays) from the applicant's receipt of the facsimile transmission. NJHMFA shall notify applicants of curable defects on Mondays, Tuesdays or Wednesdays. No application will receive more than one notice for a curable defect. A project that has previously applied for competitive credits (a reapplication) may receive notification of a curable defect regardless of whether such project has received notification in the past.

(e) If an applicant cures one or more defects in the manner set forth at (c)1 or 3 above, NJHMFA will deduct one point for each defect cured from the project's score in determining its ranking in the application cycle.

(f) If an applicant fails to respond to NJHMFA's notification of curable defects within the 48-hour cure period, or if an applicant's response is non-responsive to the question asked, a negative inference shall be drawn. Failure to respond to an item in a cure letter will result in the denial of points if the question is with respect to a point category; negative points if with respect to the point categories at N.J.A.C. 5:80-33.15(a)15 to 19; or ineligibility if with respect to an eligibility requirement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Recodified from N.J.A.C. 5:80-33.12 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), inserted "date" preceding the third sentence, deleted "(see definition)" following "incomplete"; in (f) substituted "Failure" for "For example, failure", amended N.J.A.C. reference; in (g), substituted "pursuant to (d) and (e) above" for "under the cure period", inserted "or considered" following "accepted". Former N.J.A.C. 5:80-33.11, Application fee schedule, recodified to N.J.A.C. 5:80-33.10.

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 "maintained by the Tax Credit Division" and "Late applications"; rewrote introductory paragraph (c); in (d), added "Except for applications that NJHMFA deems to be substantially incomplete" and the last sentence.

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

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

In (f), updated the N.J.A.C. reference.

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

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

In (a), substituted "shall" for "will" in the last sentence.

### **5:80-33.12 Application to a cycle/eligibility requirements**

(a) If a municipality has created a density bonus subsidy to assist the low- or moderate-income units in a project, the project may not compete for tax credits (ceiling tax credits) unless the applicant can conclusively demonstrate that the market rate residential or commercial units are unable to internally subsidize the affordable units despite the density bonus and the affordable units are developed contemporaneously with the commercial or market rate residential units. In evaluating these criteria, NJHMFA shall adopt the standards as promulgated by the Department of Community Affairs for similar types of projects seeking Balanced Housing funds. This subsection shall not be evaded by failing to apply all or any portion of the subsidy to the low- or moderate-income units, by diverting all or any portion of the subsidy to other uses or by using any other device by which all or any portion of the subsidy is not used to benefit low- or moderate-income housing. For example, if a site was originally zoned at four units per acre and a rezoning resulted in six units per acre with a 20 percent set-aside for low- and/or moderate-income units, then the site would be the recipient of a density bonus subsidy. If the developer built at six market units per acre, subdivided a portion of the acreage and donated that land to a for-profit or nonprofit developer, then the new owner may not compete for ceiling tax credits if the market rate residential units were able to subsidize the af-

fordable units. Alternatively, if on the same site the number of low- and moderate-income units is increased without a corresponding increase in density, then the additional affordable units would be eligible to compete for ceiling tax credits.

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

(c) Applications shall meet all of the eligibility requirements listed in this section in order to be admitted into a cycle. NJHMFA reserves the right to contact the applicant if the need arises.

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

i. The proposed development, including all amenities and services, shall be described in a narrative format by the applicant. The narrative shall include an explanation of how the services shall be paid for, as well as the need and demand for the project and its impact upon the neighborhood. Commercial space, if any, shall be disclosed. Photographs of the site and existing structures shall be provided from all significant perspectives and show all significant nearby land uses, including, but not limited to, those land uses listed at N.J.A.C. 5:80-33.15(a)11. Preliminary drawings of the finished project, including the site plan, floor plan and elevations drawn to scale, shall be submitted with the narrative.

ii. A market study, certified to both the applicant and NJHMFA in the analyst's Certification, shall be submitted for all projects. Two copies of the report shall be submitted. The market study shall be no more than six months old; therefore, unsuccessful Spring Cycle applicants may have to update their market study prior to applying to the Final Cycle. Projects applying for additional credits (either from the Reserve or a competitive cycle) that have already received a previous allocation of tax credits shall not be required to submit a new market study. The analyst shall state in the certification that all market study requirements have been fully addressed. If any relevant information cannot be obtained, the analyst shall explain why the information cannot be obtained. The study shall also identify any assumptions, estimates, projections and models used in the analysis. The assumptions used in the market study (for example, project rents, unit mix, amenities, etc.) must precisely reflect the information provided in the tax credit application. The data and analysis shall clearly indicate enough demand

in the market to support the proposed development. Any additional information appropriate to the market area and the project shall be submitted to demonstrate the demand for the proposed housing project. The report shall include, at a minimum:

(1) A brief executive summary which includes the appropriate vacancy rate, capture rate, absorption period and the discount from comparable market rate units given the rents projected by the applicant, as well as a detailed table of contents which clearly identifies the location of the items listed below;

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

(3) Geographic definition and analysis of the market area, including a comprehensive and reasonable rationale for the suggested market area with supporting evidence. For example, the market area may be defined as the area in which similar properties compete with the subject property for tenants, or the area immediately surrounding the project from which 60 to 70 percent of the residents are expected to be drawn, taking into account political and natural boundaries, socioeconomic characteristics, and the areas from which nearby rental developments draw new tenants. The market area shall be evaluated on the basis of employment and income levels and trends, the presence of local revitalization projects, the number of substandard units in the market and the number of cost burdened households in the market. Interviews shall be conducted with area apartment managers to establish mobility patterns in the area. Particular attention should be given to tax credit properties. The results of the interviews shall be provided in a chart showing the percentage of residents by neighborhood/community. For cases in which the subject property is an existing rental development or later phase of an existing development, detailed tenure by prior residence must be shown. Additional explanation shall be provided for any market area with boundaries in excess of three miles (urban site) or five miles (rural site) of the site;

(4) A demographic analysis of the households in the market area in (c)1ii(3) above which are income eligible and can afford to pay the rent (assuming

potential households may spend up to 40 percent of their income on housing expenses). When appropriate, the eligible population shall also be analyzed by tenure (owner/renter), size of renter households, and age. Market studies submitted for projects applying to the Senior Cycle shall include an evaluation of the market for the eligible population over 70 years old. Demographics from the last census shall be updated to reflect current market conditions and shall be the basis for projected demographics. This research data shall be provided in the appendix and shall be from an organization such as Claritas or a governmental source. Supportive Housing projects shall also provide demographics on the special needs population in the project in order to substantiate need and demand at projected rent levels;

(5) Rent, vacancy and amenity surveys by unit size of both market and subsidized properties. The subsidized property survey shall include a representative sample of all LIHTC properties in the market area and those projects that are currently under construction or have received preliminary site plan approval. In addition, a rent adjustment analysis shall be provided of the properties most comparable to the subject property. Data shall include, at a minimum, a grid analysis by unit size for rents, amenities, unit square footage, age, number of bathrooms, tenant-paid utilities, rent per square foot, location, physical condition and curb appeal. Rents shall be adjusted, especially for utility and amenity charges, so that fair comparisons can be made. The rent discount for the proposed project in relation to comparable market rate projects should be at least 10 percent. Additional information concerning unit mix, vacancy and turnover rates, operating expenses, rent trends, rent concessions, rent control, waiting lists, absorption per month, design, name of property contact and contact phone number shall be provided in a grid or narrative format when available. The market study shall contain a minimum of three rent comparables for each unit size. All comparable properties should be within the delineated market area. In cases where a comparable project has to be chosen from outside the market area (for example, where there is not enough similar rental product in the market area), appropriate concessions should be made for location differences. At least one picture of each comparable and a detailed street map which shows the location of each comparable shall be provided. In addition, if the building that is the subject of the tax credit application is currently occupied, rent rolls and current tenant incomes shall be provided and analyzed;

(6) The capture rate, absorption period and the effect of the proposed rental housing on the market area. The capture rate is the number of units in the project divided by the net demand for the project, where the net demand is the number of households

which are income eligible and can afford to pay the rent minus the number of comparable subsidized units in the market area. For purposes of the market study, the maximum annual household income for the tax credit units shall be equal to 50 or 60 percent of the area median income (depending on whether the applicant chooses the 20 percent at 50 percent or 40 percent at 60 percent Federal set-aside) of a household. The household size to be used shall be 1.5 persons per the number of bedrooms in the largest tax credit unit. For single room occupancy projects, assume one person per unit. The minimum annual household income for the tax credit units shall be equal to the lowest tax credit gross rent multiplied by 30 (which assumes that potential households may spend up to 40 percent of their income on housing expenses on a monthly basis). The absorption period is a forecast of the number of months that will elapse from the completion of construction to the achievement of stabilization of the project as a whole, taking into consideration a reasonable vacancy rate. Sample calculations of capture rate and absorption period shall be shown in the report, and NJHMFA shall be able to reconstruct the estimates using the data and methods in the market study. When additional analysis is appropriate, methods shall consider demographic trends, age of householders, the size of renter households, the unit mix of the project, the amount of home ownership in the target population, the cost of home ownership in the market area, approved projects not yet placed in service and any other significant factors. The impact of the subject project on existing housing in the market area shall also be addressed;

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

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

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

(A) He or she is an independent, third party professional with no financial interest in the project other than in the practice of his or her profession (for example, his or her fee for preparing the report

is not contingent upon project completion and/or an award of tax credits);

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

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

(D) He or she has conducted the study in accordance with Standards 4 and 5 of the 2001 edition of the Uniform Standards of Professional Appraisal Practice (USPAP), incorporated herein by reference, as amended and supplemented.

(10) The provisions of N.J.A.C. 5:80-33.11(d) and (e) shall not apply to market studies submitted under this subsection. Instead, during the market study review process, a reviewer contracted by NJHMFA shall notify the independent, third-party professional who completed the market study by telephone and, simultaneously, in writing by facsimile transmission about significant missing or unclear components of the market study. A copy of such correspondence shall also be simultaneously sent to NJHMFA and the tax credit applicant. Failure of the independent, third-party professional who completed the market study to provide a sufficient response within five business days about significant missing or unclear components of a market study shall result in an application being declared ineligible.

iii. For projects of 25 units or less and projects receiving Project Based Section 8 rental assistance for 100 percent of the units, the form of market analysis described below may be submitted in lieu of the market study requirements listed in (c)1ii(1) through (6) above:

(1) The third party analyst shall provide a description of the proposed site and proposed improvements, a geographic definition and analysis of the market area, age and income demographics within the defined market area and rent, vacancy and amenity surveys by unit size of both market and subsidized properties. In addition, a rent adjustment analysis shall be provided of the properties most comparable to the subject property. For suggestions, see related subsections of (c)1ii above; and

(2) The requirements at (c)1ii(7) through (10) above shall be complied with.

iv. Updates of market studies more than six months old shall reflect a recent site visit by the market analyst, updated information on the comparable properties and an analysis of any significant changes to the subject development. Updated demographic information is not required if the market study is less than two years old unless relevant new decennial census data has become available since the original study.

2. Applications shall include the information set forth in (c)2i and ii below in order to demonstrate site control:

i. The applicant shall be either the owner or developer of the project and shall demonstrate that it has site control of the property via any one or a combination of the following: fee simple title; long-term leasehold interest (for a minimum term of the compliance and extended use periods); option to purchase or lease, including evidence that options are renewable until at least the start of construction; executed land sales contract or other enforceable agreement for acquisition of the property; and/or an executed disposition and development agreement with a public agency that specifies the site(s) to be acquired and, if the property is to be or may be acquired by eminent domain, identifies the condemnor, as such term is defined at N.J.S.A. 20:3-1 et seq. or its successor.

ii. The applicant assumes the full burden of disclosing with certainty in its application how it shall obtain and maintain site control. The application shall set forth with specificity by what means each parcel of the project's real property is to be acquired if such acquisition has not yet been perfected; applications shall not indicate alternate means of acquisition for any particular parcel. For all forms of site control, a copy of the current owner's recorded deed (or equivalent) shall be submitted as supporting documentation. In the case of a municipality or other entity acquiring property through eminent domain, at a minimum, the applicant shall submit as part of its application a copy of all written offers, as described at N.J.S.A. 20:3-6 or its successor, executed by the condemnor to the condemnee(s) with regard to all real property comprising the project which is to be acquired by this means, which offers must be in effect and valid at the time of submission to NJHMFA. If additional documents have been executed and/or filed with regard to eminent domain at the time of application deadline, the applicant shall append a copy of those documents with its application and shall continue to supplement the application with such documents as required by N.J.A.C. 5:80-33.31; additionally, the declaration of taking shall be recorded within three months from the date of the Tax Credit Committee meeting at which awards/decisions are announced.

3. Applicants shall submit a copy of the preliminary or final site plan resolution as well as all other approvals. For rehabilitation projects with sites that are not required by the municipality to obtain site plan approval, a letter from the planning board (or appropriate municipal official) stating that the sites are not subject to site plan approval shall be provided. It is the applicant's responsibility to insure that the project complies with all applicable local land use and zoning ordinances and that nothing at the local or county level will interfere with the project obtaining all necessary permits.

4. Applicants shall disclose the existence of any known environmental conditions/constraints including, but not limited to, wetlands, stream encroachment, and steep slope grading, which may impact development on the project site. In addition, applicants shall certify that all necessary environmental approvals have been obtained from the Department of Environmental Protection or, at a minimum, applied for. If remediation is necessary, the remediation plan shall be accounted for in total development costs. If a Phase I environmental study conducted in accordance with A.S.T.M. E1527-97, Standard and Poors Enhanced Protocol (which includes testing for lead, asbestos and radon) has been completed for the project, the findings shall be submitted. A Phase I is not required; however, if a project is awarded credits and a Phase I was not submitted with the application, the applicant shall not be allowed to apply for hardship credits for unforeseen environmental issues.

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

6. All funding sources planned for the project shall be committed to the project. Commitments shall be firm and contain only conditions that are under the control of the applicant (that is, commitments cannot be conditioned on the availability of funds). The amount and all terms of the funding commitment shall be listed in the documentation provided under (c)6i through viii below. The amount and terms shall be used by NJHMFA in its underwriting analysis. Commitment letters shall be countersigned/accepted in writing by the applicant. Expired commitments, letters of interest/intent and term sheets do not qualify as commitments. To evidence commitments for funding sources, the following is required:

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

interest rate is floating after permanent loan closing, a maximum interest rate shall be stated in the commitment letter, and shall be the rate at which NJHMFA conducts its underwriting analysis. The commitment shall have been approved by the lender's final approval authority (for example, from a bank's loan review committee or if a lending consortium, from the consortium itself). 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.

iii. Grants: 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, 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 and recognizes that 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 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 lowest level of the NJHMFA equity range. Applicants that have an investment agreement with their investor shall have their project underwritten at a higher price, upon request, provided the equity pricing falls within the NJHMFA equity range. The applicant shall include in the 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 base of the equity range or the project's net pricing. Only projects that have closed with their equity investor and

submitted the executed partnership/operating agreement shall be permitted to utilize an equity pricing in excess of the NJHMFA equity range.

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 base of the NJHMFA equity range. 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 for tax credits and the FHLB Affordable Housing Program shall not be required to submit a commitment letter from FHLB by the application deadline. 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 and commitment of the alternate funding is received by issuance of the carryover allocation.

ix. Regional contribution agreements (RCAs): A copy of the municipal resolution/ordinance approving the funds for the project or the project plan amendment that includes the project and is approved by the receiving municipality is required to be submitted with the application.

x. Municipal Affordable Housing Trust Funds: A copy of the current spending plan listing the project which has been approved by the municipality and submitted to DCA by the application deadline shall be submitted in the application.

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

i. Projects shall be underwritten to demonstrate project feasibility at a household median income percentage that is 2.5 percent below the set-aside selected. 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 47.5 percent of the area median income adjusted for family size.

ii. Applicants shall submit a 15-year cash flow pro forma signed by the first mortgagee (or syndicator/investor if the project has no hard debt) which exclu-

sively 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)13 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 \$3,000 and \$4,000 per unit. For those projects with core operating expenses less than \$3,000 per unit or more than \$4,000 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 \$3,000 per unit and no senior project shall have core operating expenses above \$4,000 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) or an NJHMFA Form 10 signed by the NJHMFA Property Management Division. 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 (per the Guide to NJHMFA Energy Star Requirements (Guide), incorporated herein by reference as the subchapter Appendix) shall be required for all applications. All applicants shall comply with the requirements of the Guide. Applications shall include a copy of the signed ENERGY STAR Partnership Agreement between the applicant and the EPA (or equivalent) and a signed letter of intent provided by NJHMFA, which states that the applicant has read the Guide and will comply with all requirements thereof. 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 dwelling unit/building, as applicable, in the project.

9. Successful completion of an NJHMFA-approved tax credit certification program with a continuing education component prior to the project being placed in service. The staff person responsible for verification of tenant income must be the person to successfully pass the certification examination and maintain the certification for the term of the compliance and extended use periods. For the list of approved tax credit certification programs, please contact NJHMFA's Division of Tax Credit Services at (609) 278-7400.

10. 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 the "as-is" 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 a capital needs assessment for any project seeking acquisition credits and/or 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. For all projects seeking acquisition credits, 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.

11. 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.

12. All projects funded by the United States Department of Agriculture (USDA) Rural Development shall provide a letter from the State Director approving the loan and stating that the funds have been obligated. Because USDA Rural Development 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.

13. 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 Project Based Section 8 Rental 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 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. Projects applying for rental subsidy from the State Rental Assistance Program (SRAP) and tax credits shall comply with the applicable rules of these programs. The Department of Community Affairs (DCA) will inform NJHMFA of those projects that have submitted a complete application for SRAP 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 SRAP commitments at the same time NJHMFA awards the reservations of tax credits.

14. Supportive housing projects or projects applying to any cycle that contain supportive housing units 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 population needs analysis;
- ii. A supportive housing marketing plan;

iii. Evidence of the supportive housing development, management and/or supportive services experience of the owner entity, property management entity and/or social service provider who will be providing the property management and supportive services to the residents;

iv. Sources of funding and a social services plan that includes a detailed description of the scope of services to be provided to the individuals with special needs. If the social service provider is partnering with other community services, that relationship must be substantiated with executed letters of agreement detailing the services to be provided and the term thereof;

v. An executed supportive services agreement between the supportive services provider and the owner entity; and

vi. Evidence of the receipt of rental assistance or operating subsidy commitment(s) for special needs populations below 30 percent of area median income and/or evidence that the supportive housing units are affordable to the target population.

15. 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.

16. Projects with HOPE VI/Replacement Housing funding 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/Replacement Housing 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 incorpo-

rated therein, shall be the accountant's analysis required in (c)15iii below;

iii. An analysis conducted by an independent auditor 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/Replacement Housing 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/Replacement Housing 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).

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

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

Rewrote (c)6ii, and the introductory paragraph of (c)8; added (c)8i through (c)8iii; in (c)9, inserted "the 'as-is'"; and in (c)11, substituted "United States Department of Agriculture (USDA) Rural Development" for "U.S. Department of Rural Economic and Community Development (RE & CD)" and "USDA Rural Development" for "RE & CD".

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

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

In (c)2ii, inserted "(or equivalent)"; in (c)6iv, deleted "RCA," preceding "HOME" and substituted "and recognizes that" for ". Therefore,"; added (c)6ix; in (c)7ii(3), substituted "13" for "12", "supportive housing" for "Supportive Housing" and "non-supportive housing" for "non-Supportive Housing"; rewrote (c)8; added new (c)9; recodified former (c)9 through (c)15 as (c)10 through (c)16; in the introductory paragraph of (c)14, substituted "housing" for "Housing"; rewrote (c)14i through (c)14iv; added (c)14v; in the introductory paragraph of (c)16, (c)16i, (c)16iii and (c)16iv, inserted "/Replacement Housing".

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

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

Rewrote (a); in the introductory paragraph of (c)1, substituted "(c)1i" for "(c)1"; in (c)1ii(1), substituted a comma for "and" following "rate" and inserted "and the discount from comparable market rate units"; in (c)1ii(3), inserted the last four sentences; in (c)1ii(5), inserted the sixth, ninth and tenth sentences; in the introductory paragraph of (c)6, inserted the second and fifth sentences; in (c)6i, deleted "and shall be counter-signed/accepted by the applicant" following "itself"; in (c)6iii, deleted the former first sentence; rewrote (c)6vi and (c)6viii; in (c)6vii, inserted "base of the" preceding "NJHMFA" and substituted "range" for "factor"; in (c)6ix, inserted "or the project plan amendment that includes the project and is approved by the receiving municipality"; added (c)6x; in (c)7i, deleted "at or" following "that is", inserted "2.5 percent" and substituted "47.5" for "50"; in (c)7ii, substituted "assumptions" for "assumption"; in (c)7ii(4), substituted "\$2,200" for "\$1,800" three times and "\$3,800" for "\$3,400" three times; in (c)7iii, inserted "or an NJHMFA Form 10 signed by the NJHMFA Property Management Division"; rewrote (c)9 and (c)14; in (c)10, inserted the last two sentences; in (c)13, deleted "Section 8" preceding and inserted "Section 8 Rental" following "Project Based", substituted "project based rental assistance" for "Project Based Section 8 Rental Assistance" and inserted the last four sentences; and in (c)16iii, substituted "an independent auditor" for "the applicant's accountant".

Amended by R.2011 d.239, effective September 6, 2011.

See: 43 N.J.R. 917(a), 43 N.J.R. 2293(a).

Deleted (c)6ii(1) and (c)6ii(2); in (c)6v, deleted "the project is a COAH/Court-ordered project referenced in (c)6ii above or if" following "only if"; in (c)6x, substituted "DCA" for "COAH"; in (c)7ii(4), substituted "\$3,000" for "\$2,200" and "\$4,000" for "\$3,800" throughout; in (c)10, inserted "a capital needs assessment for any project seeking acquisition credits and/or"; in the introductory paragraph of (c)14, inserted "or projects" and "that contain supportive housing units"; and in the introductory paragraph of (c)16, substituted "Projects with" for "Applicants applying in the" and "funding" for "set-asides".

#### 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.

### 5:80-33.13 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 agreement with the syndicator/investor which addresses the pricing to be paid for the original and 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.) The agreement shall also identify the intended end user/purchaser of the tax credits.

2. Requests for additional credit that do not qualify for application under N.J.A.C. 5:80-33.8(a)2 or 3 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)1ii and added the language to (a)1v; also in (a)1v, substituted "deferred" for "pledged"; in (a)2, added the last sentence.

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

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

In (a)1vi, deleted "eligibility and" preceding "specific" and inserted "and the pricing to be paid for the additional credits".

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

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

In (a)1vi, substituted "agreement with" for "from", deleted "the specific need for the additional credits and" following "addresses", inserted "original and" and inserted the last sentence; in (a)2, substituted "that do not qualify for application under N.J.A.C. 5:80-33.8(a)2 or 3" for "of more than \$100,000".

### 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. Should an applicant fail to include a completed self-score sheet, the application shall be ranked utilizing a preliminary score as determined by NJHMFA. NJHMFA shall perform a cursory review of the application and shall assume the maximum score for each of the criteria under N.J.A.C. 5:80-33.13 through 33.18 provided the requisite documentation has been submitted. 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).

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".

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

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

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

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

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

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

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

which shall be recorded by NJHMFA pursuant to State law at the latter of the carryover allocation described at N.J.A.C. 5:80-33.24(a)1 or acquisition of the property;

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

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

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

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

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

ii. Rehabilitation projects that do not qualify under (a)3i above shall receive three points.

iii. A weighted average of the units shall be used to calculate points for multi-building projects where not all of the buildings qualify under (a)3i or ii above.

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

i. Projects that receive a fixed rate tax abatement for a 15-year term shall receive five points. If the specifics of the tax abatement (for example, percentage of rent roll, term) are not recited in the resolution/ordinance, the financial agreement to the tax abatement shall be included with the application. Proof of an applicant's tax-exempt nonprofit status is not sufficient to qualify for points for a tax abatement. In order to receive points under this category, the resolution/ordinance approving the abatement shall be submitted and must cite the proper statutory authority. For projects receiving a tax abatement under the New Jersey Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq., the first stage of the exemption period shall be for no less than 15 years. Only projects utilizing financing from NJHMFA may be granted an abatement under N.J.S.A. 55:14K-37(b). For information regarding NJHMFA financing, please contact the NJHMFA Division of Multi-family Programs and Credit at (609) 278-7400.

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 \$3,000 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 \$3,000 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 \$3,000 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 Division of Minority and Women Business Development in the New Jersey Department of the Treasury (“Certified MBE’s and WBE’s”).

7. Applicants may select one of the following options:

i. Projects located within a ready to grow area that are either outside of a qualified census tract or are within a transit village shall be awarded 10 points; or

ii. Projects located within both a ready to grow area and a qualified census tract shall be awarded seven 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. Substitution of amenities is only permitted with prior approval from NJHMFA. It is incumbent upon the applicant to demonstrate how each substitute amenity provides a comparable benefit to the tenants as those amenities listed below.

i. A security alarm;

ii. A washer and dryer hook-up with drip pan or floor drain;

iii. An ENERGY STAR-labeled frost free refrigerator of 14 cubic feet for efficiencies and one bedroom, 16 cubic feet for two bedrooms, 18 cubic feet for three bedrooms and 20 cubic feet for four bedrooms;

iv. An ENERGY STAR-labeled washer and dryer;

v. An ENERGY STAR-labeled dishwasher;

vi. Through the wall, individual dwelling unit 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. Substitution of amenities is only permitted with prior approval from NJHMFA. 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. On-site laundry facilities, using ENERGY STAR-labeled commercial equipment;

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 30-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 only permitted with prior approval from NJHMFA. 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 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.

ii. 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).

iii. 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. Applications which include a commitment letter signed by the syndicator or investor specifying net pricing and net capital contributions within the NJHMFA equity range shall receive one point. Applicants utilizing the cred-

its themselves do not have to submit a syndicator letter to receive the point. Term sheets do not qualify for this point.

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

i. Successful participation in the New Jersey Housing and Mortgage Finance Agency Green Future Program. In order to qualify for this point, the application shall include a copy of the completed, signed and submitted letter of intent from the developer to NJHMFA.

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.

iii. Leadership in Energy and Environmental Design (LEED) Certification. In order to qualify for this point, the applicant shall submit the following:

- (1) A signed letter of intent to become LEED certified;
- (2) A copy of the applicant's contract with an LEED accredited professional;
- (3) The LEED accredited professional's accreditation certificate; and
- (4) The LEED accredited professional's experience documentation.

iv. Microload—Achievement of a Final Home Energy Rating System (HERS) Index of 45 or below for each unit. In order to qualify for this point, the applicant shall include:

- (1) A copy of the completed, signed and submitted letter of intent from the developer to NJHMFA; and
- (2) A signed letter from MaGrann Associates, Market Manager for the New Jersey Clean Energy Program's ENERGY STAR Homes Program, confirming acceptance into the ENERGY STAR Microload Homes Pilot Program. MaGrann Associates'

main office is at 240 West Route 38, Moorestown, New Jersey 08057 and its telephone numbers are 1-888-624-7266 and 856-722-9799.

14. 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. Brownfields projects that have a Remedial Action Work Plan approved by the New Jersey Department of Environmental Protection (DEP) or its designee, or a No Further Action letter issued by the DEP for an unrestricted use within the past 10 years shall receive two points; or

iv. Projects that have a Brownfields Site Marketing Inventory (BSMI) Project Tracking Number that has been verified by the municipality shall receive one point. For a list of Brownfields sites and the corresponding tracking numbers, please call the Office for Planning Advocacy in the New Jersey Department of Community Affairs at (609) 292-7156 or visit <http://www.njbrownfieldsproperties.com/>.

15. 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.

16. 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 appli-

cation. 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.

17. 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. This point category shall only apply to the first application from the involved general partner, voting member, developer or related party following the full return of credits.

18. 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.

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 submit its annual project certifications and/or annual tenant information 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 with a general partner, voting member, developer, or related party (with at least a 50 percent interest in the general partner/managing member) that has successfully developed and operated at least two other tax credit properties shall receive two points. Successful completion is defined as a tax credit property with no outstanding issues of noncompliance that has achieved 93 percent occupancy and has maintained a permanent debt service coverage ratio of at least 1.15 percent for six consecutive months as of the application deadline.

21. Projects that rent a minimum of five units or five percent of the total project costs, whichever is greater, to individuals with special needs and meet the criteria of N.J.A.C. 5:80-33.12(c)14 shall receive one point.

22. Projects that select the 20 percent at 50 percent Federal set aside as defined under Section 42(g)(1)(A) of the Code or elect to restrict 10 percent of the tax credit units to households earning 30 percent or less of area median income adjusted for family size shall receive one point. 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 election shall be reflected on each building's IRS Form 8609 and/or on the deed of easement and restrictive covenant. Projects that select the 10 percent at 30 percent option must still satisfy the Code minimum tenant income elections at Section 42(g)(1)(A) or (B) and demonstrate that best efforts will be made to distribute the 30 percent units proportionately across all unit sizes.

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

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

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

Substantially amended section.

Recodified from N.J.A.C. 5:80-33.14 and amended by R.1998 d.279, effective June 1, 1998.

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

Rewrote (a). Former N.J.A.C. 5:80-33.17, Point system for the Final Cycle, was recodified to N.J.A.C. 5:80-33.22.

Recodified from N.J.A.C. 5:80-33.17 and amended by R.1999 d.120, effective April 5, 1999.

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

Rewrote (a). Former N.J.A.C. 5:80-33.16, Scoring and ranking, recodified to N.J.A.C. 5:80-33.15.

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

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

Rewrote the section.

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

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

Rewrote the section.

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

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

Rewrote the section.

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

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

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

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

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

Rewrote (a).

Administrative correction.

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

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

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

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

Amended by R.2007 d.297, effective September 17, 2007.

See: 39 N.J.R. 2302(a), 39 N.J.R. 3913(a).

Rewrote (a)7.

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

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

In the introductory paragraph of (a)3, substituted "or" for "to"; in (a)3i, inserted "tax credit" twice; in (a)7i, inserted "or the resolution of intent to petition COAH must be submitted to NJHMFA"; in (a)7ii, inserted "only"; deleted former (a)12; recodified (a)13 through (a)21 as (a)12 through (a)20; in (a)13i, deleted "Affordable" preceding "Green" and inserted "Future"; added (a)13iii; and in (a)17, inserted the last sentence.

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

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

Rewrote (a).

Amended by R.2011 d.239, effective September 6, 2011.

See: 43 N.J.R. 917(a), 43 N.J.R. 2293(a).

In (a)3i, inserted "or projects located within a transit oriented development"; in (a)3ii, substituted "qualify under (a)3i above" for "meet the definition of low-density"; rewrote (a)7i; deleted former (a)7ii; recodified former (a)7iii as (a)7ii; rewrote (a)7ii; deleted (a)7iv; in the introductory paragraphs of (a)8 and (a)9, substituted "Substitution of amenities is only permitted with prior approval from NJHMFA. It" for "Substitutions are permitted at NJHMFA discretion; however, it"; in the introductory paragraph (a)10, substituted "Substitutions are only permitted with prior approval from NJHMFA. It" for "Substitutions are permitted at NJHMFA discretion; however, it"; rewrote (a)14iii; added designation (a)14iv; rewrote (a)14(iv); in (a)19, substituted "annual tenant information" for "building status reports"; rewrote (a)21; and in (a)22, inserted the last sentence.

### 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 ready to grow areas is replaced with the following:

#### 1. Applicants may select one of the following options:

i. Projects located within both a ready to grow area and a qualified census tract shall be awarded seven points; or

ii. Projects located within a ready to grow area that are either outside of a qualified census tract or are within a transit village shall be awarded 10 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.

Amended by R.2007 d.297, effective September 17, 2007.

See: 39 N.J.R. 2302(a), 39 N.J.R. 3913(a).

In the introductory paragraph of (a) and in (a)li through (a)liii, substituted "ready to grow" for "smart growth"; and in (a)lii, inserted ". 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".

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

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

In (a)li, inserted "only"; and in (a)lii, inserted "or the resolution of intent to petition COAH must be submitted to NJHMFA".

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

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

In (a)li, substituted "seven" for "10"; and rewrote (a)lii.

Amended by R.2011 d.239, effective September 6, 2011.

See: 43 N.J.R. 917(a), 43 N.J.R. 2293(a).

Rewrote (a)li and (a)lii; and deleted (a)liii.

### 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 large family units and N.J.A.C. 5:80-33.15(a)5 concerning social services.

(b) The Supportive Housing Cycle also includes the following point categories:

1. Applicants shall be awarded up to five points to the extent the social services plan required at N.J.A.C. 5:80-33.12(c)14iv incorporates the following:

i. A description of the target population's(s') supportive service needs, which may include a range of services across a wide continuum of care and intensity appropriate to the target population(s). The description must acknowledge that each special needs tenant does not have to utilize the services appropriate to the target population(s). The social services plan must address the specific appropriate and needed services to assist tenants to maintain their housing and stable community living at no cost to the tenant. Appropriate and needed services must be supported by supportive service agreements and evidence-based practice, research and/or direct practice experience. Supportive housing projects must have, at a minimum, a social service coordinator. The supportive services plan must address the following:

(1) The social service provider(s) must demonstrate three or more years of experience in providing social services to the target population(s) or to a related special needs population;

(2) A description of the proposed services that will benefit the targeted population, including location of services (that is, on-site or in the community) and documentation to support how these services will be funded;

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

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

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

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

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

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

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

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

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

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

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

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

ii. Unrelated residents have their own bedroom;

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

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

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

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

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

Recodified from N.J.A.C. 5:80-33.16 and amended by R.1998 d.279, effective June 1, 1998.

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

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

Recodified from N.J.A.C. 5:80-33.21 and amended by R.1999 d.120, effective April 5, 1999.

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

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

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

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

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

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

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

Rewrote section.

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

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

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

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

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

Recodified from N.J.A.C. 5:80-33.15 and amended by R.1998 d.279, effective June 1, 1998.

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

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

Recodified from N.J.A.C. 5:80-33.18 and amended by R.1999 d.120, effective April 5, 1999.

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

Rewrote (a). Former N.J.A.C. 5:80-33.17, Point system for the Urban Cycle, recodified to N.J.A.C. 5:80-33.16.

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

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

Rewrote the section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Rewrote (b).

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

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

New Rule, R.1998 d.279, effective June 1, 1998.

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

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

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

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

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

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

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

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

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

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

Recodified from N.J.A.C. 5:80-33.20 and amended by R.2003 d.300, effective July 21, 2003.

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

Rewrote the section.

### 5:80-33.19 Tiebreaker system

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

1. If competing projects within a cycle have a tie score, a tax credit reservation shall be awarded to the project with the least amount of tax credits per tax credit bedroom.

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

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

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

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

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

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

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

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

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

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

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

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

In (a)1, added the last sentence.

Recodified from N.J.A.C. 5:80-33.21 by R.2003 d.300, effective July 21, 2003.

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

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

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

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

Rewrote (a)1.

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

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

Rewrote (a)1.

Amended by R.2010 d.060, effective April 19, 2010.

See: 42 N.J.R. 583(a), 42 N.J.R. 776(a).

In (a)1, substituted "tax credits per tax credit unit" for "Balanced Housing/Home Express funds per Balanced Housing/Home Express unit".

Amended by R.2011 d.239, effective September 6, 2011.

See: 43 N.J.R. 917(a), 43 N.J.R. 2293(a).

In (a)1, substituted "bedroom" for "unit".

**5:80-33.20 Municipal comment**

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

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

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

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

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

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

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

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

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

Amended the second sentence.

Recodified from N.J.A.C. 5:80-33.22 by R.2003 d.300, effective July 21, 2003.

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

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

**5:80-33.21 Application needs analysis**

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

1. The project's development and operational costs are reasonable as required under Section 42(m)(2)(B)(iv) of the Code;
2. Funding sources identified by the applicant meet the requirements listed under N.J.A.C. 5:80-33.12(c)6;
3. The project is financially feasible in terms of the existence of sufficient sources to pay for total development costs; and
4. The project shall remain viable throughout the credit period.

(b) Financing arrangements shall be evaluated to ensure that projects are not structured to artificially increase basis. Such arrangements include drawing down entire bridge or

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

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

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

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

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

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

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

Recodified from N.J.A.C. 5:80-33.20 and amended by R.1998 d.279, effective June 1, 1998.

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

In (a), changed N.J.A.C. references in the introductory paragraph and in 2; in (b), added a new last sentence; and in (c), changed the N.J.A.C. reference in the introductory paragraph. Former N.J.A.C. 5:80-33.25, Placed in service needs analysis, was recodified to N.J.A.C. 5:80-33.30. Recodified from N.J.A.C. 5:80-33.25 and amended by R.1999 d.120, effective April 5, 1999.

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

In (a) and (c), changed N.J.A.C. references throughout. Former N.J.A.C. 5:80-33.23, Tie-breaker system, recodified to N.J.A.C. 5:80-33.21.

Administrative change.

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

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

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

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

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

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

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

Recodified from N.J.A.C. 5:80-33.23 and amended by R.2003 d.300, effective July 21, 2003.

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

Former N.J.A.C. 5:80-33.21, Tiebreaker system, recodified to N.J.A.C. 5:80-33.19.

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

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

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

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

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

Rewrote the introductory paragraph of (c).

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

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

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

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

(a) Based on the rankings, eligibility review and needs analysis, NJHMFA shall make reservation award recommendations to a quorum of the Tax Credit Committee. The Tax Credit Committee shall consist of the Commissioner of the Department of Community Affairs or designee, the Executive Director and three members of the NJHMFA staff designated by the Executive Director. After projects have been awarded tax credits based on their competitive rankings, the Tax Credit Committee shall have the authority to adjust the amount of Tax Credit Assistance Program (TCAP) subsidies, Tax Credit Exchange Program (TCX) subsidies and tax credits awarded to a project in order to fully exhaust subsidies provided under the American Recovery and Reinvestment Act of 2009, P.L. 111-5 (ARRA).

(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.

Amended by R.2010 d.060, effective April 19, 2010.

See: 42 N.J.R. 583(a), 42 N.J.R. 776(a).

In (a), deleted "of NJHMFA" following "Executive Director" and inserted the last sentence.

Amended by R.2011 d.239, effective September 6, 2011.

See: 43 N.J.R. 917(a), 43 N.J.R. 2293(a).

In (a), inserted "a quorum of", and deleted "executive" preceding "staff".

### 5:80-33.23 Allocation needs analysis

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

Recodified from N.J.A.C. 5:80-33.22 and amended by R.1998 d.279, effective June 1, 1998.

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

Added a new fourth sentence. Former N.J.A.C. 5:80-33.27, Extended use agreement, was recodified to N.J.A.C. 5:80-33.32.

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

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

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

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

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

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

Recodified from N.J.A.C. 5:80-33.25 by R.2003 d.300, effective July 21, 2003.

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

Former N.J.A.C. 5:80-33.23, Application needs analysis, recodified to N.J.A.C. 5:80-33.21.

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

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

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

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

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

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

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 fund projects that successfully compete in additional tranches of the Cycles at N.J.A.C. 5:80-33.4 through 33.7, subject to any set-asides thereunder, as the Tax Credit Committee may decide to conduct in its discretion, or projects in a competitive cycle affected by an error as determined by the Tax Credit Committee. In no event shall the project receive credits and/or a binding commitment exceeding 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".

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

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

In (a), substituted "November 30 or the next business day if the 30th is a weekend" for "October 15 (November 30 for Final Cycle reservations) or the next business day if the 15th (or the 30th) is a weekend";

and "the carryover allocation agreement is executed" for "a tax credit reservation is issued by the Tax Credit Committee".

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

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

In the introductory paragraph of (a), inserted "by NJHMFA".

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

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

In the introductory paragraph of (a), substituted "six" for "three".

Amended by R.2011 d.239, effective September 6, 2011.

See: 43 N.J.R. 917(a), 43 N.J.R. 2293(a).

Rewrote (b).

### 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. Allocation/issuance fees are non-refundable.

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".

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

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

Inserted the last sentence.

### 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 or representative 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 within 90 days after the last building in the development is placed in service pursuant to IRS Notice 88-116. 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.

(c) Failure of a project to fulfill all representations made in its application may result in a delay and/or non-issuance of the IRS Form 8609. At its sole discretion, NJHMFA may impose penalties for failure to comply with eligibility or point requirements, such penalties to include, but not be limited to, the imposition of financial penalties, a reduction in the allocated credit amount or the unilateral cancellation of an allocation. Generally, a financial penalty or reduction in the amount of credits will be imposed in an amount commensurate with the violation. For example, if a project fails to meet the minimum expenditures under N.J.A.C. 5:80-33.15(a)6, credits may be reduced by or a financial penalty imposed in the delinquent amount, which amount may be affected by remedial measures, if any, taken in order to comply with the representation(s). However, NJHMFA reserves the right to unilaterally cancel an allocation for severe and/or persistent violations.

(d) IRS Form 8609 shall not be issued to projects that 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 until such noncompliance is corrected.

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".

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

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

Added (c) and (d).

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

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

In (b), substituted "within 90 days after the last building in the development is placed in service pursuant to IRS Notice 88-116" for "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".

Amended by R.2011 d.239, effective September 6, 2011.

See: 43 N.J.R. 917(a), 43 N.J.R. 2293(a).

In (a), substituted "or representative" for "and managing agent".

### 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.

#### CONTRACTOR FEE SCHEDULE

Construction Contract Amount	Fee (Overhead and Profit)
\$ 0 – \$ 500,000+	11.75 percent
\$ 500,001 – \$ 1,000,000+	10.75 percent
\$ 1,000,001 – \$ 5,000,000+	9.50 percent
\$ 5,000,001 – \$10,000,000+	8.50 percent
\$10,000,001 – \$15,000,000+	7.00 percent
\$15,000,001 – \$20,000,000+	6.70 percent
\$20,000,000+	6.20 percent

(c) For projects seeking IRS Form 8609 allocations and for projects with carryover allocations, where completion is scheduled to occur close to the end of the year, interim audits should be taking place throughout construction so that when the certificate of occupancy is issued, the final cost certification is virtually complete. For projects still incurring eligible costs, NJHMFA may consider the owner's projection of costs and basis incurred through the end of the first year of the credit period. The projection shall be based on executed contracts with contractors/vendors for amenities such as security system, playground, and landscaping.

(d) In addition to the audit report, the owner shall submit a Sponsor Certification for Placed in Service showing all sources, uses and eligible basis items as well as the pricing from the limited partner investor.

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), in the first sentence inserted "both the development and construction costs of", inserted the second sentence, and in third and fourth sentences, substituted "October 15" for "November 1st"; inserted new (b); recodified former (b) and (c) as (c) and (d); and in (c), substituted "may consider" for "shall consider".

Recodified from N.J.A.C. 5:80-33.26 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 (b), changed the date from 1997 to 1998 in the Contractor Fee Schedule. Former N.J.A.C. 5:80-33.31, NJHMFA review, was recodified to N.J.A.C. 5:80-33.36.

Recodified from N.J.A.C. 5:80-33.31 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 (b), changed year in table heading. Former N.J.A.C. 5:80-33.29, Obtaining IRS Form 8609, recodified to N.J.A.C. 5:80-33.27.

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

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

Rewrote (a); in (b), substituted "CONTRACTOR FEE SCHEDULE" for "1999 Low Income Housing Tax Credit" and substituted "\$20,000,000+" for "\$20,000, 001+" in the table; and in (c), inserted "playground" following "system" in the last sentence.

Recodified from N.J.A.C. 5:80-33.29 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 first through third sentences. Former N.J.A.C. 5:80-33.30, Extended use agreement, recodified to N.J.A.C. 5:80-33.31.

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

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

Rewrote (a), and substituted references to owner for sponsor throughout.

Recodified from N.J.A.C. 5:80-33.30 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), added last sentence. Former N.J.A.C. 5:80-33.28, Obtaining IRS Form 8690: deadlines and extension, recodified to N.J.A.C. 5:80-33.26.

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 last sentence to introductory paragraph (b).

### 5:80-33.29 Extended use agreement

Section 42(h)(6) of the Code requires the project owner to enter into an "extended low-income housing commitment agreement" that adds an additional 15-year low-income occupancy requirement to the initial 15-year compliance period. The agreement shall be recorded in order to claim the tax credits when filing Federal tax returns. Owners must complete NJHMFA's deed of easement and restrictive covenant at the latter of the carryover allocation described at N.J.A.C. 5:80-33.24(a)1 or acquisition of the property. Upon receipt and review of a complete and fully executed agreement, NJHMFA shall file the restrictive covenant pursuant to State law. Note: For projects which received points for agreeing to extend the project compliance period beyond the minimum 15-year period, the deed of easement and restrictive covenant shall reflect the increased compliance term stated in the application.

Recodified from N.J.A.C. 5:80-33.27 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. 5:80-33.32, Compliance monitoring fee, was recodified to N.J.A.C. 5:80-33.37.

Recodified from N.J.A.C. 5:80-33.32 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. 5:80-33.30, Placed in service needs analysis, recodified to N.J.A.C. 5:80-33.28.

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

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

Substituted "at the later of the carryover allocation described at N.J.A.C. 5:80-33.26(a)1 or acquisition of the property" for "above" at the end of the third sentence.

Recodified from N.J.A.C. 5:80-33.30 by 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. 5:80-33.31, Returning credits, recodified to N.J.A.C. 5:80-33.32.

Recodified from N.J.A.C. 5:80-33.31 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. 5:80-33.29, Placed in service needs analysis, recodified to N.J.A.C. 5:80-33.27.

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

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

Deleted "Applicants are responsible for paying the fee required to record the agreement in the County Clerk's Office".

### 5:80-33.30 Returning credits

Applicants unable to utilize their allocation should return their allocation to NJHMFA as soon as possible. NJHMFA

shall deposit returned or recaptured credits into the Reserve or in the Final Cycle. In addition, for credits returned within the same calendar year of award, NJHMFA reserves the right to fund the next highest ranking eligible project from the cycle in which the initial award was made.

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

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

Substituted "applicants" for "projects" and "October 15" for "November 1st" throughout.

Recodified from N.J.A.C. 5:80-33.28 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. 5:80-33.33, Inspection, was recodified to N.J.A.C. 5:80-33.38.

Recodified from N.J.A.C. 5:80-33.33 and amended by R.1999 d.120, effective April 5, 1999.

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

Substituted "administered" for "returned after the Reserve deadline" at the end. Former N.J.A.C. 5:80-33.31, Project cost certification, recodified to N.J.A.C. 5:80-33.29.

Recodified from N.J.A.C. 5:80-33.31 and amended by R.2001 d.170, effective May 21, 2001.

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

Deleted second and third sentence. Former N.J.A.C. 5:80-33.32, Applicant's affirmative obligation to disclose changes, recodified to N.J.A.C. 5:80-33.33.

Recodified from N.J.A.C. 5:80-33.32 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 "the Reserved has been fully utilized" for "administered". Former N.J.A.C. 5:80-33.30, Project cost certification and contractor fee limits, recodified to N.J.A.C. 5:80-33.28.

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

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

Rewrote the section.

### 5:80-33.31 Applicant's affirmative obligation to disclose changes

(a) Applicants are under a continuing affirmative obligation to advise NJHMFA of any changes to any aspect of the proposed development and provide relevant information as it becomes available, including pending/anticipated litigation which may affect the proposed development. NJHMFA shall require the owner to certify and may require further documentation to verify that all representations made in the application concerning the proposed development, including representations relied upon to determine the applicant's eligibility, scoring and ranking, are, and continue to be, true at the time of carryover allocation and issuance of the IRS Form 8609. Substantive changes may cause the project's allocation to be reconsidered by NJHMFA. NJHMFA reserves the right to ask for any documentation necessary throughout the application, reservation, carryover and placed in service processes.

(b) NJHMFA shall have the authority to rescind a reservation or an allocation if any representations made in the application are mistakenly or intentionally misrepresented or not fulfilled.

(c) Any transfer of a general partner/managing member interest shall require pre-approval by the NJHMFA Division of Tax Credit Services.

(d) Failure to disclose all relevant information is grounds for disqualification of the application or recapture of the allocation.

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

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

Inserted new (b); recodified former (b) as (c).

Recodified from N.J.A.C. 5:80-33.29 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. 5:80-33.34, Notification of noncompliance, was recodified to N.J.A.C. 5:80-33.39.

Recodified from N.J.A.C. 5:80-33.34 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. 5:80-33.32, Extended use agreement, recodified to N.J.A.C. 5:80-33.30.

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. 5:80-33.32 by 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. 5:80-33.33, Compliance monitoring, recodified to N.J.A.C. 5:80-33.34.

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), substituted "owner" for "sponsor" preceding "to certify".

Recodified from N.J.A.C. 5:80-33.33 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), inserted "including pending/anticipated litigation which may affect the proposed development" preceding the second sentence. Former N.J.A.C. 5:80-33.31, Extended use agreement, recodified to N.J.A.C. 5:80-33.29.

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

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

Added new (c); and recodified former (c) as (d).

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

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

In (c), inserted "the" and "Division of Tax Credit Services".

### 5:80-33.32 Compliance monitoring

(a) The owners of all projects with an allocation of low-income housing tax credits must contact NJHMFA's compliance monitoring section before the project places in service and prior to rent up. In addition, the owner must submit to NJHMFA a copy of the completed IRS Form 8609 (Part I completed by NJHMFA and Part II completed by the owner) within 30 days of completion of Part II of the IRS Form 8609 and the filing of same with the Internal Revenue Service. This form contains information necessary for NJHMFA to monitor the project for compliance. Failure to submit a copy of the completed IRS Form 8609 within the specified time frame may constitute noncompliance and may be reported by NJHMFA to the IRS.

(b) The owner of a tax credit project shall agree to submit to NJHMFA copies of any correspondence, notice or other document the owner receives from the Internal Revenue Service regarding compliance or noncompliance issues, audits, or other forms of communication regarding their low income tax credit project(s).

(c) Owners shall submit to NJHMFA on an annual basis a copy of the project's most recent audited financial statements, including a detailed income and expense schedule and vacancy rate calculation by January 31.

(d) Owners/agents are required to keep records for each qualified low-income building in the project which will show for each year of the compliance period the following information:

1. The total number of residential rental units in the building, including the number of bedrooms and the size in square feet of each residential rental unit;

2. The percentage of residential rental units in the building that are low-income units;

3. The rent charged on each residential rental unit in the building, including any utility allowances;

4. The number of occupants and the number of full-time students in each low-income household;

5. The low-income unit vacancies in the building and information that shows when and to whom the next available units (whether market rate or low-income) were rented;

6. The annual income certification of each low-income household;

7. Documentation to support each low-income tenant's income (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 100 percent tax credit properties, an initial certification shall be required at move-in, followed by a re-certification on the one-year anniversary of move-in. Re-certification shall no longer be required in subsequent years, provided the property continues to operate as 100 percent affordable. While a resident shall still be required to complete the Tenant Income Certification and other forms on an annual basis, third-party verification of income shall no longer be required;

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;

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.

(g) As required by the Housing and Economic Recovery Act of 2008, 110 P.L. 289 (HR 3221) (HERA), owners are required to submit, on an annual basis, data pertaining to the residents of low-income housing tax credit (LIHTC)-funded

units. Such data must contain, but is not limited to, income, rental assistance, disability status, monthly rental payment, race, ethnicity, family composition and age.

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).

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

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

In (c), inserted "most recent", deleted "for the prior fiscal year" following "financial statements" and substituted "January 31" for "May 1"; and rewrote (d)7.

Amended by R.2011 d.239, effective September 6, 2011.

See: 43 N.J.R. 917(a), 43 N.J.R. 2293(a).

In (d)4, deleted "college" preceding "students"; in (d)6, substituted "household" for "tenant per unit"; rewrote (d)7 and (f)3; and added (g).

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

Pursuant to Section 1.42-5 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 via electronic copy and the annual tenant information. The annual tenant information must indicate the income of and rent charged to tenants for each unit. This package shall be submitted on an annual basis via the MITAS/NJHMFA Low Income Housing Tax Credit Internet System 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.

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

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

Deleted "(c)(2)(ii)(C)" following "Section 1.42-5"; and substituted "in digital format" for "(preferably in digital format)".

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

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

Deleted "low-income" preceding "unit" and substituted "via the MITAS/NJHMFA Low Income Housing Tax Credit Internet System" for "in digital format".

Amended by R.2011 d.239, effective September 6, 2011.

See: 43 N.J.R. 917(a), 43 N.J.R. 2293(a).

Inserted "via electronic copy", and substituted "annual tenant information" for "Building Status Report" twice.

### 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 perform its first inspection of the project no later than the end of the second calendar year following the year the last building in the project is placed in service. NJHMFA also reserves the right to perform an on-site inspection of any low-income housing project through the end of the extended use period and have access to all books and records which would document compliance.

(b) On an annual basis, owners of at least 33 percent of all tax credit projects shall submit to NJHMFA for compliance review the following information for a minimum of 20 percent of all low-income units (units shall be identified by NJHMFA):

1. A copy of the annual income certification for the household;
2. The documentation the owner has received to support the certification; and
3. The rent record.

(c) NJHMFA (or its authorized designee) shall also, on an annual basis, select 33 percent of all tax credit developments and shall perform physical inspections of the low-income units corresponding to (b) above to determine suitability for occupancy, taking into account State and local health, safety and building codes. NJHMFA (or its authorized designee) shall also perform physical inspections of every building and every vacant unit in the development. If NJHMFA (or its authorized designee) determines a violation(s) exist(s) which could render a building unsuitable for occupancy, such violation may be considered an issue of noncompliance which must be reported to the Internal Revenue Service. The owner shall be given a reasonable period of time to correct the violation(s). At the end of the correction period, NJHMFA shall notify the IRS whether the owner has or has not corrected the violation(s). Such violation(s) may also be reported for appropriate action to the Division of Codes and Standards, Bureau of Housing Inspection in the New Jersey Department of Community Affairs.

(d) NJHMFA shall select which projects shall undergo NJHMFA review and give owners reasonable notice that their project has been chosen as well as identify which documents shall need to be made available. Reviews may occur more frequently than on a 12-month basis, provided that all months within each 12-month period are subject to certification. The method of choosing the sample files or units to be inspected will not give the owner advance notice of which units and tenant records are to be inspected and reviewed.

Recodified from N.J.A.C. 5:80-33.33 by R.1998 d.279, effective June 1, 1998.

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

Recodified from N.J.A.C. 5:80-33.38 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. 5:80-33.36, NJHMFA review, recodified to N.J.A.C. 5:80-33.34.

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

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

In first sentence, substituted "may" for "shall" and changed N.J.A.C. reference; and inserted the second 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.

Recodified from N.J.A.C. 5:80-33.36 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. 5:80-33.34, Compliance monitoring, recodified to N.J.A.C. 5:80-33.32.

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), substituted "may" for "shall".

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

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

In (a), deleted "at least" preceding "through" and substituted "extended use" for "compliance"; and in (c), inserted "and every vacant unit".

Amended by R.2011 d.239, effective September 6, 2011.

See: 43 N.J.R. 917(a), 43 N.J.R. 2293(a).

In (d), substituted "made available" for "submitted", and inserted the last sentence.

### 5:80-33.35 Notification of noncompliance

(a) Upon determination by NJHMFA of noncompliance with Section 42 of the Code, this subchapter, or any other rel-

evant rules, regulations, or procedures, NJHMFA shall give notice to the owner of the noncompliance. The owner shall then be given sufficient notice to correct the noncompliance.

(b) NJHMFA is required to notify the IRS, via IRS Form 8823, within 45 days after the end of the correction period, of all noncompliance and whether the owner has or has not corrected such noncompliance.

Recodified from N.J.A.C. 5:80-33.34 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 the N.J.A.C. reference.

Recodified from N.J.A.C. 5:80-33.39 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. Former N.J.A.C. 5:80-33.37, Compliance monitoring fee, recodified to N.J.A.C. 5:80-33.35.

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 (a), 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), substituted "this subchapter" for the N.J.A.C. reference.

Recodified from N.J.A.C. 5:80-33.37 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. 5:80-33.35, Owner's annual reports: deadlines, recodified to N.J.A.C. 5:80-33.33.

### 5:80-33.36 Confidentiality of tax credit applications and information

(a) Applications and all supporting documents submitted to NJHMFA for tax credit reservations shall be confidential, non-public records until Final Cycle awards are announced or until cancellation of the Final Cycle is announced by NJHMFA. Thereafter, applications and all supporting documents submitted to NJHMFA for tax credit reservations shall be deemed to be public records, except the documents set forth in item (c) below shall remain confidential, non-public records.

(b) Applications and all supporting documents submitted to NJHMFA for volume cap tax credits shall be confidential, non-public records until NJHMFA has issued a determination letter. Thereafter, applications and all supporting documents submitted to NJHMFA for volume cap tax credits shall be deemed to be public records, except the documents set forth in item (c) below shall remain confidential, non-public records.

(c) To the extent they constitute "trade secrets" or "proprietary commercial or financial information" within the meaning of the New Jersey Open Public Records Act, N.J.S.A. 47:1A-1 et seq., the following documents are confidential, non-public records:

1. Financing information and syndication documents submitted in compliance with N.J.A.C. 5:80-33.12(c)5. However, an applicant's certification of the extent of Federal, State and local subsidies shall be a public record;
2. Funding commitments and other documents submitted in compliance with N.J.A.C. 5:80-33.12(c)6;

3. Documents and other information, including 15-year cash flow proforma, submitted in compliance with N.J.A.C. 5:80-33.12(c)7;

4. Financing information and Breakdown of Costs and Basis submitted in support of the application needs analysis described at N.J.A.C. 5:80-33.21; and

5. Data submitted for comparable projects pursuant to N.J.A.C. 5:80-33.12(c)7iii.

(d) Information or documents submitted or prepared with respect to binding commitments, carryover applications, placed in service allocations, and IRS Form 8609 shall be confidential and shall be disclosed only as authorized by Section 6103 of the Code.

(e) Information submitted to NJHMFA by or on behalf of a project owner with respect to compliance monitoring and reports, compliance notices, and IRS Forms 8823 prepared by NJHMFA with respect to monitoring the compliance of any project shall be confidential and shall be disclosed only as authorized by Section 6103 of the Code.

Recodified from 5:80-33.36 and 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 (a); in (a)1 and 2, amended N.J.A.C. reference; rewrote (b); and added (c). Former section "Tax exempt financed projects" was recodified to N.J.A.C. 5:80-33.11(a)17.

Recodified from N.J.A.C. 5:80-33.35 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)1 and 2, changed N.J.A.C. references.

Recodified from N.J.A.C. 5:80-33.40 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), inserted a reference to cancellation of the Final Cycle in the first sentence, and changed N.J.A.C. references in 1 and 2. Former N.J.A.C. 5:80-33.38, Inspection, recodified to N.J.A.C. 5:80-33.36.

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, changed N.J.A.C. reference.

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

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

Added (a)3 and 4.

Recodified from N.J.A.C. 5:80-33.38 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), 1 through 4 amended N.J.A.C. reference; in (b), deleted "forward" after "binding". Former N.J.A.C. 5:80-33.36, NJHMFA review and inspection, recodified to N.J.A.C. 5:80-33.34.

Administrative correction.

See: 36 N.J.R. 1776(a).

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

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

Rewrote the section.

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

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

In (c)3, deleted "and" from the end; in (c)4, substituted "; and" for a period at the end; and added (c)5.

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

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

Rewrote the introductory paragraph of (c).

credits or, at the discretion of NJHMFA, a binding commitment to allocate credits from future years' tax credit authority if the exchange is made after September 30, in an amount not to exceed the amount of the returned credits, if the sponsor establishes to the satisfaction of the Tax Credit Committee that the sponsor, despite its timely and diligent efforts, is in jeopardy of failing to meet the placed-in-service deadline for the building with respect to which the prior credits were allocated as a result of either:

1. Litigation that the sponsor could not reasonably have anticipated at the time of application submission; provided, however, that the sponsor has used its best efforts to obtain expeditious review; or

2. Catastrophic events that the sponsor could not reasonably have anticipated or controlled.

(b) Projects that receive an award of credits under N.J.A.C. 5:80-33.8(a)3 shall also be eligible to return previously allocated credits to the Reserve if the sponsor establishes to the satisfaction of the Tax Credit Committee that the project is unable to secure an investor to purchase the credits without such an exchange. An exchange under this subsection shall not count against the per project limitations in (f) below.

(c) To qualify for the exchange permitted in this section, the sponsor must provide the Tax Credit Committee with evidence of:

1. The due diligence performed by the sponsor in attempting to meet the placed-in-service deadline;

2. The specific circumstances causing the delay that jeopardizes the sponsor's compliance with the placed-in-service deadline;

3. The attempted remedial measures taken by the sponsor in order to mitigate the delay; and

4. Any other information that may be requested by NJHMFA staff on behalf of the Tax Credit Committee.

(d) To be eligible for the exchange permitted under this section, the sponsor must establish to the satisfaction of the Tax Credit Committee that:

1. The project with respect to which the prior credits were allocated will meet the Energy Star requirements set forth in the QAP in effect at the time the exchange is requested, if applicable to the type of building; and

2. The project would receive at least 65 percent of the maximum score under the QAP in effect at the time the exchange is requested, based on the point system applicable to the type of project for which the exchange of credits is sought. Negative points related to the full return of tax credits to NJHMFA under the QAP in effect at the time the exchange is requested shall not be imposed based upon an exchange pursuant to this section.

### 5:80-33.37 Exchange of credits

(a) A sponsor may return previously allocated credits to the Reserve in exchange for an allocation of current year

(e) A sponsor who receives an exchange of credits as provided in this section, as well as any affiliate entity effectively under the sponsor's control and any entity that is a related party with respect to the sponsor, shall be precluded from applying for tax credits for a new project for the next tax credit cycle following the day on which the Tax Credit Committee approves the exchange. When the sponsor, affiliate entity and any related party may again apply for tax credits for a new project, negative points related to the full return of tax credits to NJHMFA under the QAP in effect at the time the exchange is requested shall not be imposed based on an exchange pursuant to this section.

(f) No more than one exchange of credits may be approved with respect to a given project, but a sponsor may, in a single application, ask to exchange more than one year's allocation of credits.

(g) To request an exchange of credits, a sponsor must submit to the Tax Credit Committee, by no later than November 1 of the year in which the project is required to place in service based on the original allocation, a letter setting forth the reasons justifying the exchange and including the following:

1. A Sponsor Certification for Reapplication;
2. The reapplication fee set forth at the QAP's fee provision in effect at the time the exchange is requested;
3. Evidence of the project's continued eligibility under the requirements of the QAP as in effect at the time of the original allocation; and
4. Evidence of the project's continued financial feasibility as required by 26 U.S.C. §42.

(h) Projects that request an exchange of a binding commitment of credits shall be subject to the timing, application, and eligibility/justification limitations and requirements of this section.

Recodified to N.J.A.C. 5:80-33.35 by R.2003 d.300, effective July 21, 2003.

See: 35 N.J.R. 1616(a), 35 N.J.R. 3298(b).  
New Rule, R.2005 d.271, effective August 15, 2005.

See: 37 N.J.R. 1109(a), 37 N.J.R. 3036(a).

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 "or, at the discretion of NJHMFA, a binding commitment to allocate credits from future years' tax credit authority if the exchange is made after September 30"; in (d), substituted "the next tax credit cycle" for "a period of 365 days".

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

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

In (a)1, deleted "brought by parties other than the sponsor and" following "Litigation" and inserted "at the time of application submission".

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

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

Added new (b); recodified former (b) through (e) as (c) through (g); in the introductory paragraph of (g), inserted a comma following "exchange of credits"; and added (h).

#### **5:80-33.38 (Reserved)**

Recodified to N.J.A.C. 5:80-33.36 by R.2003 d.300, effective July 21, 2003.

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

#### **5:80-33.39 (Reserved)**

Recodified to N.J.A.C. 5:80-33.37 by R.1999 d.120, effective April 5, 1999.

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

#### **5:80-33.40 (Reserved)**

Recodified to N.J.A.C. 5:80-33.38 by R.1999 d.120, effective April 5, 1999.

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



## APPENDIX

## New Jersey Housing and Mortgage Finance Agency Guide to NJHMFA ENERGY STAR Requirements

**For instances when a funding program monitored by NJHMFA requires ENERGY STAR Certification**

2008

This document was created as a handbook to explain the documents HMFA requires for successful completion of an ENERGY STAR Certification requirement. We acknowledge that the 2007 ENERGY STAR Homes program did not address master metered, moderate rehabilitation, historic, or high-rise residential construction. There are new programs under development for 2008 that will address those projects that cannot participate in ENERGY STAR Homes. The requirements within this guide are specific to HMFA financed projects – although we encourage other New Jersey state agencies and local government entities to reference this document when setting up similar green building and energy efficiency requirements, in order to have consistency across the state.

### FOR MORE INFORMATION & TO SUBMIT DOCUMENTATION:

Mary Ushak  
NJ Green Homes Office  
[njgreen@njhmfa.state.nj.us](mailto:njgreen@njhmfa.state.nj.us)  
Phone: 609.278.7408  
Fax: 609.278.1754

For U.S. Post Office:  
P.O. Box 18550  
Trenton, NJ 08650-2085

For Fed Ex, UPS, Visitors, etc:  
637 S. Clinton Ave.  
Trenton, NJ 08611

### CONTENTS:

- NJHMFA Programs Requiring ENERGY STAR Certification
- Important Notes
- EPA ENERGY STAR Homes
- NJ ENERGY STAR Homes
- NJ Home Performance with ENERGY STAR
- NJ Pay for Performance
- NJ Direct Install
- For those who cannot participate in a formal program
- Comments on Master-Metered Projects
- Comments on Electric Heating
- Appendices: Letter of Intent & ES Equivalency Letter

### NJHMFA PROGRAMS REQUIRING ENERGY STAR CERTIFICATION:

#### Low Income Housing Tax Credits 4% and 9%

The 2008 Qualified Allocation Plan's ENERGY STAR requirement can be found in the following location:

*"5:80-33.12 Application to a cycle/eligibility requirements*

*(c) Applications shall meet all of the eligibility requirements listed in this section in order to be admitted into a cycle. NJHMFA reserves the right to contact the applicant if the need arises.*

**8. Successful participation in the Environmental Protection Agency's (EPA) ENERGY STAR Homes Program or equivalent . . ."**

### **Balanced Housing & Home Express**

Please reference the NJHMFA 'BH\_HE Green Requirements 2008' document (found on the Green Homes Office website, [www.njgreen.gov](http://www.njgreen.gov), and within the UNIAP):

*"On July 2, 2007, amendments to the NJ DCA Balanced Housing program rules were adopted and will affect Balanced Housing and Home Express requirements. One of the changes includes green building requirements, outlined in Appendix M (see Appendix M within this document). The NJ Green Homes Office is located within the NJ Housing & Mortgage Finance Agency and has been tasked with confirming implementation of green requirements within projects that are funded by Balanced Housing or Home Express and NJHMFA. Please carefully read through the following notes to see if this document applies to you . . .*

*. . . 5:43 – 2.4 Eligibility requirements*

*. . . (l) All projects shall conform with the Balanced Housing Green Building Requirements pursuant to chapter Appendix M . . .*

*Appendix M*

*Balanced Housing Green Building Requirements*

[The Additions in brackets are in reference to the Green Future numbering system explained within this document – to be used as a reference] . . .

[EE-1] *All units must adhere to current New Jersey Energy Star Certification requirements."*

### **NJ Green Future**

The 2008 Green Future program documents can be found on the Green Homes Office website, [www.njgreen.gov](http://www.njgreen.gov).

*"EE-1: All units ENERGY STAR Certified"*

### **CHOICE**

Please reference the CHOICE guidelines. All CHOICE projects are single-family new construction or gut rehabilitations. Single-family new construction and gut rehabilitation projects are eligible to participate in the EPA or NJ ENERGY STAR Homes programs.

### **IMPORTANT NOTES:**

*The program chosen for compliance with HMFA ENERGY STAR requirements must receive approval from the NJ Green Homes Office prior to submission of any HMFA funding application, unless able to participate in the NJ ENERGY STAR Homes program (most new construction or gut rehabilitation projects).*

- The first course of action is to see if your project can participate in the NJ ENERGY STAR Homes program. If not, then NJHMFA will require a letter from the NJ ENERGY STAR Homes Program Manager - or designated representative - stating why your project cannot participate. There are currently protocols within the 2008 NJ ENERGY STAR Homes program to address a range of residential building types.
- The NJ Office of Clean Energy, under the New Jersey Clean Energy Program, is developing new programs for 2008. Some are not scheduled to start until later in 2008. These programs would provide options for high-rise, historic, and moderate rehabilitation multifamily properties.
  - NJ ENERGY STAR Homes is working to expand and address some master metered projects (if submetered, etc) and pilot a select number of high-rise multifamily buildings for EPA.
  - NJ Home Performance with ENERGY STAR is working to expand and include multifamily buildings that are no more than three floors and have no elevator.
  - The NJ Pay for Performance program is a whole-building energy audit program that includes incentives for implementation and actual energy savings.
  - The NJ Direct Install program will provide incentives for replacing a range of commercial equipment.
- These NJ Clean Energy Programs, once adopted, will be state-authorized, created by informed professionals, sources of third-party verification, and good alternatives for compliance with HMFA's ENERGY STAR requirements (if not able to participate in EPA or NJ ENERGY STAR Homes).
- NJHMFA is not responsible for advising or monitoring for program compliance; we only look for checkpoints and final certification / completion.
- If you cannot find an equivalency program within this document that fits your project, then contact the NJ Green Homes Office to set up a meeting and work out an equivalency agreement (see sample letter at the end of this document). The NJ GHO will be responsible for confirming ENERGY STAR Equivalency if you are not participating in an NJ Clean Energy Program.
- Manufactured housing must meet specific additional EPA ENERGY STAR requirements – check with the NJ ENERGY STAR Homes Program prior to contracting to get a certified manufacturer.

**EPA ENERGY STAR HOMES:**

[www.energystar.gov](http://www.energystar.gov)

[http://www.energystar.gov/index.cfm?c=bldrs\\_lenders\\_raters.pt\\_bldr](http://www.energystar.gov/index.cfm?c=bldrs_lenders_raters.pt_bldr)

“Homes that earn the ENERGY STAR must meet guidelines for energy efficiency set by the U.S. Environmental Protection Agency. ENERGY STAR qualified homes are at least 15 percent more energy efficient than homes built to the 2004 International Residential Code (IRC), and include additional energy-saving features that typically make them 20–30% more efficient than standard homes.”

In order to receive EPA ENERGY STAR Homes certification, you will need to hire a certified HERS Rater to review your plans, conduct the necessary inspections, and issue an ENERGY STAR Certificate. The ENERGY STAR Homes program is geared specifically towards single-family homes and low-rise (up to 3 stories) new construction or gut rehabilitation projects.

**PROCESS & SUBMITTALS:**

1. When applying for a commitment of funds include the following in your application:

- A copy of your ENERGY STAR Partnership Agreement, available online through [www.energystar.gov](http://www.energystar.gov)
- A Signed Letter of Intent, found within the appendices of this document

2. Prior to closing on construction financing and/or starting construction, submit the following documentation:

- Signed Builder Upgrade Package (includes Upgrade Letter and Builder Acknowledgement form)

3. During the course of construction, make sure that your ENERGY STAR representative is at your first construction meeting and submit the following:

- Copy of your Pre-Drywall ENERGY STAR Inspection (including EPA Thermal Bypass Checklist)

4. At construction completion, prior to NJHMFA's release of retention funds and/or closing for permanent financing, submit the following:

- Copies of your EPA ENERGY STAR Homes Certificate(s)

**NJ ENERGY STAR HOMES:**

New Jersey's Clean Energy Program  
[www.njcleanenergy.com](http://www.njcleanenergy.com)  
 c/o MaGrann Associates  
 1-800-NJ-SMART

The New Jersey ENERGY STAR Homes program is an EPA verified ENERGY STAR program. NJ ENERGY STAR Homes is the same as the EPA ENERGY STAR Homes Program except for the following:

- There are a few more requirements under the NJ ENERGY STAR Homes program.
- The NJ BPU Office of Clean Energy has hired a Program Manager (MaGrann Associates, under the Honeywell Market Manager) to certify projects – this includes reviewing plans, issuing a builder upgrade letter, conducting site inspections, providing NJ ENERGY STAR Homes certification, and issuing applicable incentives. The developer does not need to hire an ENERGY STAR rater.
- The NJ ENERGY STAR Homes program provides financial incentives, whereas the federal program does not.
- This program requires that at least one utility be individually metered or submetered (either electric or gas), with individual heating and/or cooling systems for each dwelling unit.
- The proposed 2008 Program Upgrade includes creating a Pilot for the EPA ENERGY STAR Multifamily program. A select few may participate – at the discretion of the program manager.

**Incentives (Proposed for 2008):**

The program has been revised to include three (3) tiers of energy efficiency, with relative incentives for each.

Tier 1: Must meet either the EPA ENERGY STAR Homes performance standard (currently a HERS index of 85 or lower in NJ) or the alternative prescriptive EPA National Building Option Package (specific to climate zones). Project must comply with additional energy efficiency measures to receive certification.

Tier 2: Must meet all of the Tier 1 requirements AND achieve an energy rating HERS index of 65 or less (approximately equivalent to the federal tax credit efficiency level).

Tier 3: A limited number of projects will be 'Microload Homes.' Each project will be custom designed and approved with the assistance of the NJ ENERGY STAR Homes Management Team, NJHMFA, DCA Codes & Standards, and NJ Institute of Technology.

**Financial ('Direct') Builder Incentives per Unit (Proposed for 2008)**

Building Type	'Old' 2007	2008 Tier 1	2008 Tier 2	2008 Tier 3
Single Family	\$2,780	\$1,800	\$2,800	Custom (est. avg. \$17,500)
Townhome	\$1,830	\$1,300	\$1,800	
Multifamily	\$1,200	\$1,000	\$1,200	
<b>Supplemental Incentives</b>		<b>All Tiers</b>		
ES Lighting	\$20/fixture & \$30/recessed can (over 3)	\$20/fixture (surface mount or recessed) over 3 AND/OR screw based CFL lighting supplied free of charge for builder installation in more than 50% of sockets		
HVAC QIV	N/A	\$100 per system		
ES Appliances	\$175/washer	N/A		

**PROCESS & SUBMITTALS for NJ ENERGY STAR Homes:**

1. When applying for a commitment of funds include the following in your application:

- A copy of your ENERGY STAR Partnership Agreement, available online through [www.energystar.gov](http://www.energystar.gov)
- A Signed Letter of Intent, found within the appendices of this document

2. Prior to closing on construction financing and/or starting construction, submit the following documentation:

- Signed Builder Upgrade Package (includes Upgrade Letter and Builder Acknowledgement form)

3. During the course of construction, make sure that your NJ ENERGY STAR Homes representative is at your first construction meeting and submit the following:

- Copy of your Pre-Drywall ENERGY STAR Inspection (including EPA Thermal Bypass Checklist)

4. At construction completion, prior to NJHMFA's release of retention funds and/or closing for permanent financing, submit the following:

- Copies of your NJ ENERGY STAR Homes Certificate(s)

**NJ HOME PERFORMANCE WITH ENERGY STAR (Working towards April 2008):**

New Jersey's Clean Energy Program  
[www.njcleanenergy.com](http://www.njcleanenergy.com)  
 c/o Conservation Services Group  
 1-800-NJ-SMART

Through this program, contractors certified by the Building Performance Institute, a national resource for building science technology that sets standards for assessing and improving the energy performance of homes, OR the Home Performance with ENERGY STAR program manager (Conservation Services Group) will conduct an energy audit on single-family homes and some low-rise buildings (up to 3 stories with no elevator) for a nominal fee. The inspector will generate a list of items to be implemented with a bid estimate.

Select the comprehensive package offered for compliance with HMFA ENERGY STAR requirements.

A BPI certified contractor must be hired to do the work, which then makes available low-interest financing and other incentives through this program. There are no application fees or closing costs, and the loan does not require a down payment. Additional assistance may be available if owners meet certain income eligibility requirements.

The contractor will work with the owner to identify sources of wasted energy and help make money-saving improvements, such as insulation and air-sealing, windows and doors, lighting and appliances, and upgraded heating and cooling systems. Equipment incentives offered through this program cannot be combined with other Office of Clean Energy equipment incentives. Any contractor in the state of New Jersey may apply to become BPI certified.

***In addition to minimum requirements outlined within this program, the following replacements are required for all moderate rehab:***

*Apartment lighting shall have three or more ENERGY STAR qualified light fixtures and/or ceiling fans equipped with light fixtures, and common area lighting shall have ENERGY STAR qualified light fixtures with photocells, timers, or occupancy sensors as needed.*

– NJ GHO

**Incentives:**

**For Building Performance Institute Certified contractor**

Incentive Tier	Requirements	Contractor Incentive
Tier 0	Program does a comprehensive home assessment and provides the lead to contractors	TBD
Tier 1	Contractor does the comprehensive home assessment and installs at least 2 eligible measures, but package does not have an SIR of 1.0	TBD
Tier 2	Contractor does the comprehensive home assessment, installs a minimum of 3 eligible measures and the package has an SIR of 1.0	TBD
Tier 3	Contractor does the comprehensive home assessment and installs a comprehensive package that includes all cost-effective measures	TBD

**For Customer / Consumer / Owner**

Incentive Tier	Requirements	Customer Incentive
Tier 1	Install at least 2 eligible measures and package does not meet SIR 1.0	TBD
Tier 2	Install at least 3 eligible measures and package has SIR 1.0	TBD
Tier 3	Install all recommended cost-effective efficiency measures, with projected heating energy savings of at least 25%	TBD

- **An additional note:** In 2008, the Customer On-site Renewable Energy (CORE) Program (see SUNLIT at [www.njgreen.gov](http://www.njgreen.gov)) is proposing to offer an additional amount per installed Watt for qualified residential installations of photovoltaic systems on homes that participate in the Home Performance with ENERGY STAR program and meet the Tier 3 Customer Incentive requirements. However, photovoltaic systems that receive an incentive under the CORE program will not be eligible for subsidized loans or Homeowner Financing Incentives from Home Performance with ENERGY STAR.

Participants will be issued a Certificate of Completion when the work is done and any required inspections performed. The Certificate of Completion can be used as proof of program participation in order to qualify for the additional CORE Program rebate.

**PROCESS & SUBMITTALS for NJ Home Performance with ENERGY STAR:**

1. When applying for a commitment of funds include the following in your application:
  - A signed agreement with the BPI contractor you will use (not provided by program)
  - A Signed Letter of Intent, found within the appendices of this document

2. Prior to closing on construction financing and/or starting construction, submit the following documentation:

- Data Collection Form – Initial Audit BA & Envelope
- Data Collection Form – Initial Audit Heating & Cooling
- Comprehensive Package List
- Signed Contract with BPI certified contractor
- Contractor Application for Consumer Financing
- Contractor Participation Agreement for Consumer Financing
- Customer Credit Application
- NJ Home Performance with ENERGY STAR financing confirmation letter

3. During the course of construction, make sure that your BPI-certified contractor is at your first construction meeting.

4. At construction completion, prior to NJHMFA's release of retention funds and/or closing for permanent financing, submit the following:

- Certification of completion of work from contractor
- Copies of funds disbursed via the NJ Home Performance with ENERGY STAR Program

**NJ PAY FOR PERFORMANCE PROGRAM (Working towards April 2008)**

Market Manager  
New Jersey's Clean Energy Program  
c/o TRC Solutions  
1-866-433-4479

The Commercial and Industrial Pay for Performance Program will take a comprehensive, whole building approach to energy efficiency in commercial and industrial buildings. A unique component of this Program will be the requirement that an Energy Reduction Plan be developed and submitted for all projects. The Energy Reduction Plan includes the whole-building technical analysis component of a traditional energy audit along with a financial plan for funding the energy efficiency improvements and a construction schedule for installation. A minimum performance level, such as some reduced percentage of total building energy consumption, will be required of all projects and will be based on the EPA's Portfolio Manager Benchmarking Tool and approved whole-building energy simulation.

The C&I Pay for Performance Program is open to all commercial and industrial customers. Participants will be required to work with an approved Pay for Performance Partner to develop the Energy Reduction Plan and facilitate installation of the recommended package of energy efficiency improvements. In order to receive the full suite of incentives offered in the Pay for Performance Program, the submitted Energy Reduction Plan must include a package of energy efficiency measures that achieve a minimum performance threshold.

**Incentives:**

Program incentives will be performance-based and not specifically tied to the project cost or the recommended energy efficiency measures. Incentives will be released upon satisfactory completion of three Program milestones, which are:

1. Submittal of a complete Energy Reduction Plan
  - a. Incentive based on facility square footage
  - b. With a minimum incentive
  - c. Projects that cannot identify efficiency improvements that meet the minimum performance level will be referred to the appropriate SmartStart Buildings Program.
2. Installation of all recommended measures per the Energy Reduction Plan
  - a. Incentive based on estimated savings levels
  - b. Peak Demand Bonus
3. Completion of M&V Report which reflects that the minimum performance threshold has been met or exceeded

**PROCESS & SUBMITTALS:**

1. When applying for a commitment of funds include the following in your application:
  - A copy of your program application and contract with selected Pay for Performance Partner
  - A Signed Letter of Intent, found within the appendices of this document
2. Prior to closing on construction financing and/or starting construction, submit the following documentation (these items will be confirmed when the program is developed by BPU):
3. At construction completion, prior to NJHMFA's release of retention funds and/or closing for permanent financing, submit the following:
  - Copy of documentation noting successful completion of the NJ Pay for Performance program
  - Copies of funds disbursed or approved for disbursement from the NJ Pay for Performance Program manager

**NJ DIRECT INSTALL (Working towards April 2008)**

Market Manager  
 New Jersey's Clean Energy Program  
 c/o TRC Solutions  
 1-866-433-4479

The Direct Install Program offers eligible small business customers the opportunity to retrofit existing equipment with more energy efficient systems. This program is open to all commercial and industrial customers with an average annual total utility cost of \$100,000 or less.

The Program identifies all cost-effective efficiency retrofit opportunities and provides direct installation, financial incentives, education, and other strategies to encourage the early replacement of existing equipment with high efficiency alternatives, as well as the installation of new equipment. All energy-using systems are eligible for improvements including lighting, controls, refrigeration, HVAC, motors, and variable speed drives.

*In this program, an energy audit is performed and all cost effective measures should be implemented (measures with a payback less than the life of the equipment). -NJ GHO*

**Incentives:**

Customer incentives will be offered to reduce the cost of installing energy efficient equipment and will be based on the total installed cost of the retrofits. Qualifying commercial and industrial customers will be eligible for an incentive based on the installed cost of the approved project. Incentives will be paid to the installation contractor and the contractor bills the customer for the remaining balance of the installation.

**PROCESS & SUBMITTALS:**

1. When applying for a commitment of funds include the following in your application:

- A Signed Letter of Intent, found within the appendices of this document
- Letter or Email from NJ Green Homes Office approving this program (it is less comprehensive than the other options)

2. Prior to closing on construction financing and/or starting construction, submit the following documentation (these items will be confirmed when the program is developed by BPU):

3. At construction completion, prior to NJHMFA's release of retention funds and/or closing for permanent financing, submit the following:

- Copy of documentation noting successful completion of the NJ Direct Install program
- Copies of funds disbursed or approved for disbursement from the NJ Direct Install program manager (TRC Solutions)

**FOR THOSE WHO CANNOT PARTICIPATE IN A FORMAL PROGRAM**

- Submit letters or emails from NJ ENERGY STAR Homes and other programs attempted from above - stating that you cannot participate in their program(s).
- Submit the Letter of Intent included within the appendices of this document.
- Meet with the NJHMFA Green Homes Office soon after funds are awarded. We will review the project and come up with a modified version of the ENERGY STAR Equivalent Letter of Understanding - sample included within this document. This letter shall be signed prior to start of construction and/or close of construction financing.
- Submit photographs of items in Letter of Understanding in the quantity to be determined by your HMFA Field Inspector to the Green Technical Services Person.
- The Green Technical Services Person will confirm that items have been implemented satisfactorily prior to permanent financing.

**COMMENTS ON MASTER-METERED PROJECTS:**

Here are several policies to consider:

- NJHMFA strongly prefers that at least one utility (electric or gas) be individually metered. This will encourage demand-side efficiencies.
- NJ ENERGY STAR Homes requires that at least one utility (electric or gas) be individually metered or submetered. EPA ENERGY STAR Homes does not.
- As an example, it is acceptable to have radiator heating on a common boiler and gas line while individually metering electric use, for cooling.

Here are a couple of scenarios where a project might be Master-Metered:

- Special Needs project where the owner/manager will be paying all utility bills. Please keep in mind that for permanent placement housing and transitional housing projects, NJHMFA encourages tenants to pay for their own utilities.
- A moderate/minimum-rehabilitation multifamily project that has an existing master-metered system and/or an historic project.

Also, consider participating in the NJHMFA Submetering Pilot program for existing buildings. Only NJHMFA financed multifamily projects are allowed to submeter in New Jersey.

**COMMENTS ON ELECTRIC HEATING:**

- NJHMFA would prefer that heating not be solely electric, especially if tenants are expected to pay their own electric bills. If the developer wishes to provide electric-only, individually-metered heating, submit documentation covering at least the expected costs to tenants, various alternate heating design scenarios/sketches, and construction costs for various systems, etc.
- Electric resistance heating (except within heat pumps) should be avoided and will almost always eliminate a project from compliance with ENERGY STAR due to the impact on projected energy consumption.



**New Jersey Housing and Mortgage Finance Agency**  
**ENERGY STAR LETTER OF INTENT:**

**By signing this document, I certify the following (“we” refers to the applicant organization):**

1. We understand that ENERGY STAR certification (or equivalent) is a prerequisite to participation in the Home Express / Green Future / Low-Income Housing Tax Credit / CHOICE (circle applicable) program(s), we agree to complete the ENERGY STAR certification process (or equivalent), and will comply with the submission requirements listed in the NJHMFA ENERGY STAR requirements document.
2. We understand that no projects are exempt from this requirement and have reviewed the alternative programs (if needed) for compliance - as indicated in the NJHMFA ENERGY STAR requirements document.
3. If requested we will allow the NJHMFA Green Homes Office, or designee, access to the project site pre, during and post construction for the purpose of but not limited to confirming ENERGY STAR compliance.
4. I am an authorized representative of the organization.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Name of signer: \_\_\_\_\_

Title: \_\_\_\_\_

Project Name: \_\_\_\_\_

Organization: \_\_\_\_\_

NJHMFA ENERGY STAR Requirement Program most likely to participate in:

\_\_\_\_\_



**ENERGY STAR EQUIVALENT LETTER OF UNDERSTANDING:**

**New Jersey Housing and Mortgage Finance Agency**  
For Compliance with ENERGY STAR requirements  
Letter of Intent for [name of project], [city], NJ

By signing this document, I certify the following ("we" refers to the applicant organization):

We understand that our project is not exempt from ENERGY STAR requirements and that we have attempted and are unable to participate in one of the formal programs presented within the 2008 'Guide to NJHMFA ENERGY STAR Requirements' document. This project shall fulfill the threshold ENERGY STAR requirement for the purposes of the Home Express / Green Future / Low-Income Housing Tax Credit / CHOICE (circle applicable) program(s) by complying with the minimum standards set forth in (1) through (4) below. The minimum rehab project named \_\_\_\_\_, located at \_\_\_\_\_, \_\_\_\_\_, NJ, will comply with the following minimum requirements, which will be confirmed by the NJHMFA Green Homes Office.

1. Structural Work:
  - a. Specified new Tyvek is to be installed per manufacturer's instructions that include taping at all seams – if siding is replaced.
  - b. If penetrations in exterior or inter-unit walls are exposed during renovation (from either interior or exterior sides), they are to be air-sealed with either foam or caulk sealant (Fiber Glass batts, Thermo-fiber or Rock wool is not acceptable).
  - c. If the moderate rehab requires/includes demolition of the walls/ceilings in contact with the exterior envelope, the following insulation levels will be installed:
  - d. Walls.....R-13
  - e. Roof/ceilings.....R-19 to R-30 (depending on joist/rafter sizes)
  - f. Unfinished basement.....R-10 walls; R-19 floor above
  
2. General Apartment Renovation:
  - a. All windows (other than Historic facades) will be replaced with energy efficient windows having a low-e coating. Windows to have maximum U-factor of 0.35 and a maximum solar heat gain coefficient (SHGC) of 0.39.
  - b. All appliances (refrigerators, ranges (electric) and range hoods) will be ENERGY STAR rated.
  - c. All light fixtures (interior and exterior building mounted) will be replaced with energy efficient fixtures having the ENERGY STAR label (excludes closets and unfinished basement areas). The closets and unfinished basement fixtures will have a screw-in compact fluorescent.
  - d. A much as possible floors, walls, and ceilings are to be air sealed with caulk or foam at any and all penetrations through sheetrock and/or floor (i.e., mechanical, electrical and or plumbing penetrations) or where one construction material meets another, (i.e., replaced window sills)
  - e. Flooring: if framing to sub-floor/flooring of perimeter of apartment is exposed during installation, seal at this joint with caulk to prevent exterior, inter-unit or unit-to-hallway infiltration.
  
3. Boilers, Heating & Plumbing Work:
  - a. If the existing hot air furnace is replaced, it will be replaced with 90% AFUE (efficiency) units.
  - b. If air conditioning is to be provided, it will be provided with SEER 13 and 11.0 EEF (efficiency) units.
  - c. If the existing hot water heater is replaced, it will be replaced with gas efficiency: 40 gal = 0.61, 60 gal = 0.57; electric efficiency: 40 gal = 0.93, 50 gal = 0.92.
  - d. New thermostats will be specified/installed with ENERGY STAR qualified type.
  
4. All bathroom ventilation fans will be replaced with fan having a maximum 0.5 watts/CFM and 2.0 sones on automatic controls.

We understand that the requirements for minimum rehab projects include the following submissions to the NJHMFA Green Homes Office: Photographs will be submitted on each of the items above for a number of sites as determined reasonable by the project's designated HMFA Field Representative.

If requested we will allow the NJHMFA Green Homes Office, or designee, access to the project site pre, during and post construction for the purpose of but not limited to confirming compliance with the above requirements.

I am an authorized representative of the organization.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Name of signer: \_\_\_\_\_

Title: \_\_\_\_\_

Project Name: \_\_\_\_\_

Organization: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Name of signer: \_\_\_\_\_

Title: NJ Green Homes Office

Organization: NJ Housing & Mortgage Finance Agency

New Rule, R.2008 d.133, effective May 19, 2008.

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