

**CHAPTER 80
NEW JERSEY HOUSING AND MORTGAGE
FINANCE AGENCY**

Authority

N.J.S.A. 55:14K-5g.

Source and Effective Date

R.1995 d.281, effective June 5, 1995.
See: 27 N.J.R. 986(a), 27 N.J.R. 2190(a).

Executive Order No. 66(1978) Expiration Date

Chapter 80, New Jersey Housing and Mortgage Finance Agency, expires on April 17, 2000.

Chapter Historical Note

Chapter 80, New Jersey Housing and Mortgage Finance Agency, was originally titled "Housing Finance Agency" and became effective March 4, 1977 as R.1977 d.71. See: 9 N.J.R. 62(c), 9 N.J.R. 164(c). Amendments were filed and became effective May 30, 1980 as R.1980 d.234. See: 12 N.J.R. 170(c), 12 N.J.R. 388(a). The Housing Finance Agency and the Mortgage Finance Agency merged and N.J.A.C. 19:1 was incorporated under this chapter, effective May 20, 1985 as R.1985 d.241. See: 17 N.J.R. 505(a), 17 N.J.R. 1258(b). Chapter 80 was readopted without change as R.1990 d.248. See: 22 N.J.R. 277(b), 22 N.J.R. 1556(a). Chapter 80 was readopted as R.1995 d.281, effective June 5, 1995. Subchapter 33 was adopted as R.1995 d. 281, effective June 5, 1995. See: 27 N.J.R. 986(a), 27 N.J.R. 2190(a). See: Source and Effective Date.

See subchapter and section levels for further amendments.

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SUBCHAPTER 1. GENERAL PROVISIONS**5:80-1.1 Authority**

These regulations are issued under and pursuant to the authority of the New Jersey Housing and Mortgage Finance Agency Law of 1983 constituting Chapter 530 of the Laws of 1983, N.J.S.A. 55:14K-1 et seq.; specifically N.J.S.A. 55:14K-5(g).

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;
2. Stimulating the construction, rehabilitation and improvement of adequate and affordable housing in the State so as to increase the number of housing opportuni-

ties 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 New Jersey;

4. Assisting in the revitalization of the State's urban areas; and

5. Responding to changing housing demographic and economic circumstances for the development of innovative and flexible financing vehicles.

5:80-1.3 General definitions

"Act" shall mean the New Jersey Housing and Mortgage Finance Agency Law, N.J.S.A. 55:14K-1 et seq.

"Collateral" shall mean with respect to any Loan those securities, mortgages or other instruments defined as eligible pursuant to the terms of the Assignment of Collateral and Trust Agreement relating to such Loan.

"Collateral Requirement" shall mean, as of any date of calculation and with respect to any Loan, the amount at which Collateral securing such Loan is required to be maintained pursuant to the terms of the Assignment of Collateral and Trust Agreement relating to such Loan.

"Home Improvement Loan Program Commitment" shall mean the aggregate unpaid principal amount of Home Improvement Loans which a Mortgage Seller offers to deliver and sell to the Agency and the Agency agrees to purchase, such sale and purchase to be made under a Note Purchase Agreement.

"Housing Project" or "Project" shall mean any work or undertaking other than a continuing care retirement community, whether new construction or rehabilitation which is designed for the primary purpose of providing rental housing of more than 25 dwelling units.

"Housing Sponsor" shall mean any person, partnership, corporation or association to which the Agency has made or proposes to make a loan, either directly or indirectly through an institutional lender, for a Housing Project.

"Mortgage Purchase Agreement" shall mean an agreement, entered into between a Mortgage Seller and the Agency, under which the Mortgage Seller agrees to deliver and sell to the Agency and the Agency agrees to purchase Mortgage Loans.

"Mortgage Servicing Agreement" shall mean an agreement entered into between a Mortgage Seller or other person acceptable to the Agency, under which the Mortgage Seller or other person agrees to service the Mortgage Loans purchased by the Agency from such Mortgage Seller under a Mortgage Purchase Agreement.

"Note Purchase Agreement" shall mean an agreement, entered into between a Mortgage Seller and the Agency, under which the Mortgage Seller agrees to deliver and sell to the Agency and the Agency agrees to purchase single-family home improvement loans.

"Notice of Acceptance" shall mean the Notice of Acceptance by the Agency to the mortgage Seller of an Application.

"Primarily residential in character" as set forth in N.J.S.A. 55:14K-3(e) shall mean:

1. With regard to an individual unit, structure, or property, that at least 60 percent of the net sheltered area, not including areas for circulation, utilities and common space, is or will be upon completion of scheduled improvements used exclusively as a residence for one or more persons; or

2. With regard to a Project or area, that at least 60 percent of the properties in the area or 60 percent of the floor area in the Project, not including areas for circulation, utilities, and open space, consists of units, properties, or structures devoted primarily to residential use.

"Single family mortgage loan" shall mean any mortgage loan for a structure which contains no more than four dwelling units at least one of which is owner-occupied and may include an owner-occupied single dwelling unit within a condominium or cooperative apartment. Those areas which are non-residential in use shall not exceed those specified by the Federal Housing Administration Property Standards for one or two living units as in effect from time to time.

"Single family home improvement loan" shall mean an eligible loan for the rehabilitation or improvement of a unit or structure which contains no more than four dwelling units where at least 90 percent of said structure or single dwelling unit is devoted to residential use, and at least one such dwelling unit is owner-occupied.

"Term sheet" shall mean the statement of terms, constituting part of the Notice of Acceptance of a Commitment, governing the sale and purchase of Mortgage Loans pursuant to a Commitment.

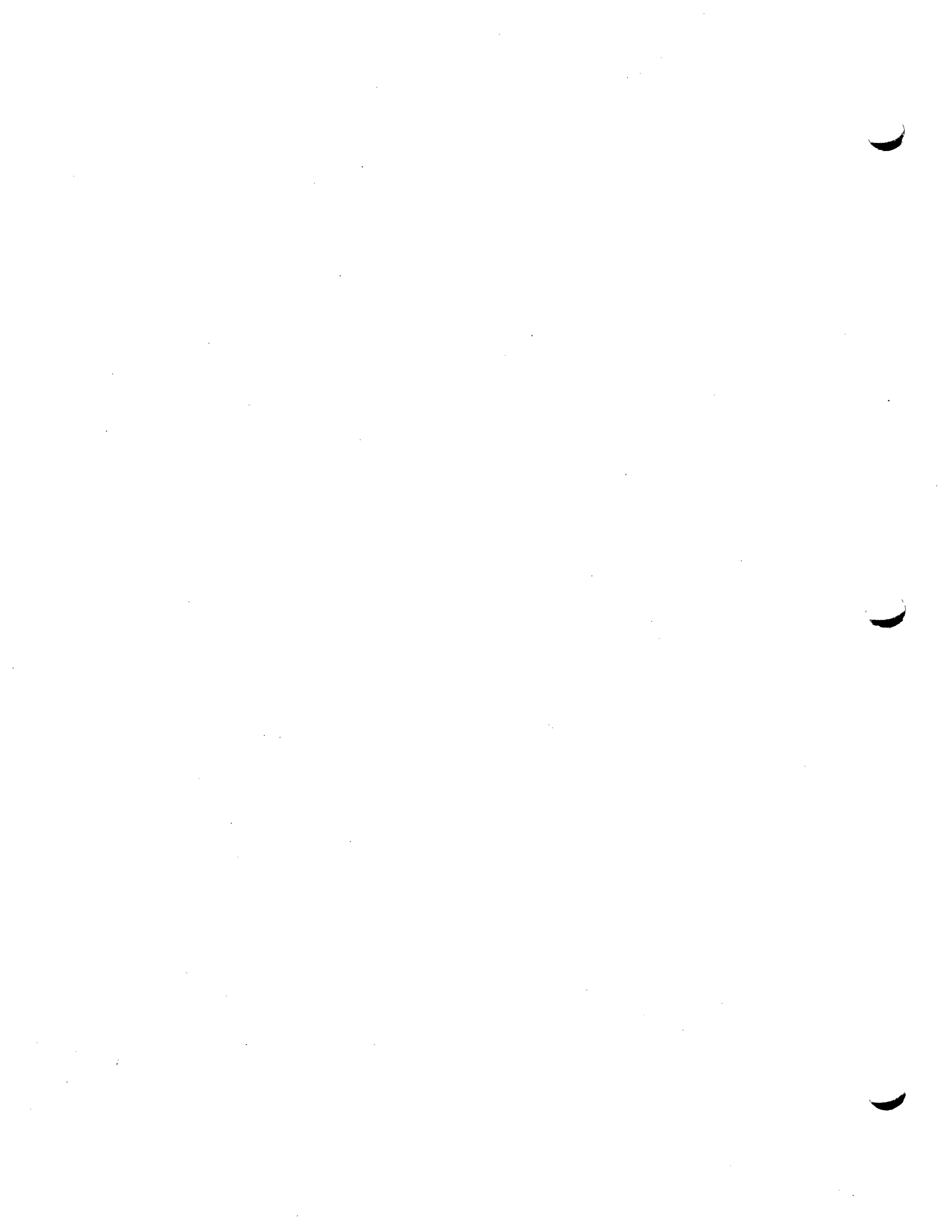
5:80-1.4 Regulations regarding Housing Projects

(a) All Agency financing in connection with Housing Projects, including eligible loans and loans to lenders made with regard to Housing Projects, shall be subject to the regulations in subchapters 2 through 9, 17 and 18. Where appropriate, other regulations within this chapter are specifically made applicable to Housing Projects. The regulations of subchapters 2 through 9, 17 and 18 shall not apply to:

1. The construction or rehabilitation of:

- i. Continuing care retirement communities;
- ii. Nonresidential facilities or structures (other than those permitted within a housing project);
- iii. Boarding houses;
- iv. Residential developments having 25 dwelling units or less; or

2. The improvement, acquisition, operation, maintenance or repair of Housing Projects or any other structure or improvement financed by the Agency (other than that determined by the Agency to constitute substantial rehabilitation). Notwithstanding the foregoing the Agency may require applicable provisions of N.J.A.C. 5:80-4 to apply to any such improvement, maintenance or repair, if it deems such application necessary; or



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

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

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

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

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

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

APPENDIX

Example of Application of Subchapter Rules

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SUBCHAPTER 33. LOW INCOME HOUSING TAX CREDIT QUALIFIED ALLOCATION PLAN

Authority

N.J.S.A. 55:14K-5g.

Source and Effective Date

R.1996 d.255, effective June 3, 1996.
See: 28 N.J.R. 1443(b), 28 N.J.R. 2843(a).

Subchapter Historical Note

Subchapter 33, Low Income Housing Tax Credit Qualified Allocation Plan, was adopted as new rules by R.1995 d.281, effective June 5, 1995. See: 27 N.J.R. 986(a), 27 N.J.R. 2190(a); Subchapter 33, Low Income Housing Tax Credit Qualified Allocation Plan, was repealed and a new Subchapter 33, Low Income Housing Tax Credit Qualified Allocation Plan, was adopted by R.1996 d.255, effective June 3, 1996. See: Source and Effective Date.

5:80-33.1 Introduction

(a) The New Jersey Housing and Mortgage Finance Agency ("NJHMFA") is the designated agency for the State of New Jersey to be responsible for the oversight of the Federal Low Income Housing Tax Credit Program. This oversight includes the allocation of the tax credits to qualified applicants and the monitoring of those projects for compliance with Section 42 of the Internal Revenue Code ("Code").

(b) In order to provide for the effective coordination of New Jersey's Low Income Housing Tax Credit Program under the Code, these rules shall be construed and administered in a manner consistent and in accordance with the Code and regulations promulgated thereunder.

(c) 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 tax accountant, attorney or advisor as to the specific requirements of Section 42 of the Code governing the Low Income Housing Tax Credit Program.

5:80-33.2 Definitions

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

"After-school program" means a program that is integrated and cooperative with local support systems, which provides educational, health care, recreational, mental health and social services to residents five to 18 years of age who reside in the building. Services can be on-site or in the community. Appropriate adult supervision must be provided.

"COAH obligation" means a low/moderate income rental project that is in a COAH-certified plan or in a plan that is currently under COAH's jurisdiction as the result of a petition for substantive certification.

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

"Court-ordered obligation" means a low/moderate income rental project that is part of a judgment of repose, a pending judgment of repose, and/or a court settlement that is the result of an exclusionary zoning lawsuit. Projects being constructed pursuant to a density bonus are not eligible for the tax credit program. However, a project may be considered eligible for funding if 100 percent of the units are affordable and if the project is not identified, by sale or transfer or any other means, with an inclusionary development.

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

"Day care" means adult or child (infant through and including four years of age) day care services which are either on site or linked to outside centers. This service must be both available and accessible. Evidence of State licenses must be provided.

"De minimis award" means an award of credits from the Reserve in order to fund the last highest ranking project in a cycle if such project cannot receive a full reservation. De minimis awards are generally capped at \$100,000. Applicants do not apply for de minimis awards. Example: There are 10 projects in the Suburban Cycle. They are ranked highest to lowest. There are enough credits to fully fund the first five projects. The sixth project needs \$100,000 but there is only \$10,000 left in the cycle. NJHMFA may take \$90,000 from the Reserve and award it to the project. Note: If the last highest ranking project is not able to be fully funded by using the amount left in the cycle plus a de minimis award, the applicant may opt to keep the reservation and shall have to apply to a later cycle and compete for the balance of the credits.

"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/rehabilitation fees, financial consultants, employees of the developer, related party construction managers/monitors, and syndicator-required consultants. Professional fees not included in the developer fee are the fees for the architect, engineer, lawyer, accountant, surveyor, appraiser, soil investigator, professional planner, historical consultant and environmental consultant. All other consultant fees shall be included in the developer fee and are not allowed to be shown as separate line items on the tax credit application. The developer fee contained in the application shall be the maximum fee recognized by the NJHMFA at the time of cost certification. One of the scoring criteria is a lower developer fee; however, applicants must keep in mind that a developer fee cannot increase beyond the amount shown in the application. For scoring purposes, no additional points will be awarded for developer fees that drop below a "floor" of eight percent. There are different levels of developer fees allowed for various types of projects:

1. Developer fee for projects with no identity of interest: The amount of developer fee allowed in eligible basis 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, any step-in-the-shoes costs and costs associated with syndication) is allowed for the following types of housing:

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

2. Developer fee/contractor profit for projects with an identity of interest: For projects where there is an identity of interest between the developer and contractor, applicants are limited in the amount of developer fee and contractor profit allowed in basis. The combined devel-

oper fee/general contractor profit may not exceed 18 percent (or 23 percent if special needs, 25 units or less, or scattered site single family or duplex project) of total development cost minus land, working capital, marketing, escrows, operating deficit reserves, step-in-the-shoes costs and costs associated with syndication. An identity of interest exists between the owner (or developer) and the general contractor if any of the following conditions exist: when there is any financial interest between the developer and the general contractor; when one or more of the officers, directors, stockholders, voting members or partners of the developer is also an officer, director, stockholder, voting member or partner of the general contractor; when any officers, directors, stockholders, voting members or partners of the developer has any interest whatsoever in the general contractor.

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

“Intermediary fees” means all costs in the breakdown of costs and basis except costs of residential structures and acquisition costs (building and land). In other words, intermediary fees are costs associated with the following: relocation, demolition, off-site improvements, non-residential structures, site plan approvals, environmental clearances, surety and bonding, building permits, contractor overhead, contractor profit, general requirements, appraiser, architect, attorney, accounting, engineering, environmental consultant, historical consultant, professional planner, soil investigator, surveyor, interest, points and bank fees, tax credit fees, property taxes, property insurance, title insurance and recording, utility connection fees, contingency, developer fee, marketing expenses, syndication expenses, escrows, and step-in-the-shoes costs.

“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).

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

“Partial allocation” means an allocation made to a project where the amount allocated is less than the tax credit need as determined by NJHMFA staff at the time the allocation was made.

“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 must not be affiliated with or controlled by a for-profit organization.

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

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

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

(3) one 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:

“(1) 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.

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

The nonprofit set-aside and qualified nonprofit reservation fee are available exclusively to section 501(c)(3) or (4) housing sponsors which are the sole general partner of the final ownership entity (the limited partnership). Limited liability companies and limited liability partnerships are not eligible for the nonprofit set-aside.

“Related party” means a relationship between parties when there is a 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.

“Senior project” means an aged-restricted project dedicated to households whose head, spouse or sole member is 62 years of age or older. A portion of the units may also be made available to:

1. The handicapped, that is a person with a physical or mental impairment which:

- i. Is expected to be of long or indefinite duration;
- ii. Substantially impedes his or her ability to live independently; and
- iii. Is of such a nature that the person's ability to live independently could be improved by more suitable housing conditions;

2. The disabled, that is a person that meets the definition of disabled under Section 223 of the Social Security Act; or

3. A person that has a severe, chronic disability which:

- i. Is attributable to a mental and/or physical impairment;
- ii. Was manifested before the age of 22;
- iii. Is likely to continue indefinitely;
- iv. Results in substantial functional limitations in three or more of the following areas: capacity for independent living; self-care; receptive and expressive language; learning; mobility; self-direction; and economic self-sufficiency; and

v. Requires special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.

In order to be eligible for the senior set-aside, 100 percent of the project must meet the above definition.

"SNAP neighborhood" means a neighborhood participating in the Strategic Neighborhood Assistance Program as confirmed by the Department of Community Affairs. For scattered site projects where not all the sites are in a SNAP neighborhood, at least one site must be located in a SNAP Neighborhood to qualify for the Targeted Neighborhood/SNAP Neighborhood set-aside. SNAP Neighborhoods must be designated by the application deadline.

"Social services model" means any project which submits an executed agreement between a housing and social service provider or otherwise demonstrates to the satisfaction of NJHMFA that one or more of the following types of services shall be provided to improve the quality of life of the residents of the project. The services include, but are not limited to:

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

3. Providing health care services either on site or linked with a local health care provider;

4. Providing job training programs on site or linked with a local training center;

5. Providing personal care and/or housekeeping services on site;

6. Providing at least one congregate meal on site;

7. Providing adult day-care services; and/or

8. Providing transportation services for the residents.

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

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

1. Examples of targeted special needs populations are:

- i. Persons with AIDS/HIV-related illness;
- ii. Homeless;
- iii. Mentally ill;
- iv. Frail elderly;
- v. Alcohol/substance abusers;

- vi. Persons with physical disabilities;
- vii. Mentally retarded/developmentally disabled;
- viii. Pregnant/parenting teens; and
- ix. Victims of domestic violence.

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

- i. Social service coordinator/case manager;
- ii. Counseling and crisis intervention;
- iii. Health care advocacy and linkages;
- iv. Assistance with activities of daily living and/or instrumental activities of daily living;
- v. Recreational activities;
- vi. Entitlement counseling and advocacy;
- vii. Employment counseling and training;
- viii. Support groups;
- ix. Home-based personal or medical assistance;
- x. Skilled nursing;
- xi. Meals preparation;
- xii. Housekeeping;
- xiii. Substance abuse and mental health supports; and
- xiv. Child care/adult day care.

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

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

“Targeted neighborhood” any neighborhood which has been selected for implementation of a specific revitalization plan within a city designated by the Governor’s Urban Coordinating Council. For scattered site projects where not all the sites are in a Targeted Neighborhood, at least one site must be located in a Targeted Neighborhood to qualify for the Targeted Neighborhood/SNAP Neighborhood set-aside. Targeted Neighborhoods must be designated by the application deadline.

“Urban aid municipality” means any municipality on the Urban Aid Recipients list produced by the Division of Local Government Services within the New Jersey Department of Community Affairs. Applicants should consult the list in effect as of January 1 in determining whether to apply to the Urban or Suburban Cycle. NJHMFA will make this list available in the tax credit application.

“Urban center” means a city designated by the State Development and Redevelopment Plan for the State of New Jersey that is of Statewide importance.

5:80-33.3 Reservation cycles

Each year, NJHMFA shall establish funding cycles and the amount of credits available in each cycle. They will be advertised in The Atlantic City Press, The Record, Newark Star Ledger, The Courier News, The Asbury Park Press, The Camden Courier Post, Bridgeton Evening News and The Times. NJHMFA shall set the eligibility cut-off dates in each year for receipt of completed applications. 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. No project will be allocated more than \$2,000,000 in credits in any one calendar year.

5:80-33.4 Urban cycles

(a) Projects located in the following four types of municipalities are eligible to apply in the Urban Cycle: Urban Centers, Urban Aid Municipalities, Targeted Cities, and SNAP Cities. The lists of these cities change periodically and are available in the application. Minimum rehab projects are not eligible to apply in this cycle. There are three set-asides in the Urban Cycle:

1. Targeted Neighborhood/SNAP Neighborhood Set-Aside (“Neighborhood Set-Aside”): 15 percent of the credits available in the Urban Cycle shall be set aside for projects within targeted neighborhoods (within targeted cities) and for projects in designated SNAP neighborhoods. Targeted neighborhood and SNAP projects are eligible for Urban Cycle credits beyond the set-aside. If, because of lack of demand, this set-aside is not fully utilized, remaining credits in this set-aside shall be released into the Urban Cycle for use by other projects.

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

3. Nonprofit Set-Aside: In order to encourage the participation of local and/or State tax-exempt organizations in the tax credit program, 15 percent of the credits available in the Urban Cycle shall be set aside for qualified nonprofit organizations. Nonprofits are eligible for Urban Cycle credits beyond the set-aside. If, however, there is not enough nonprofit demand, credits remaining in the nonprofit set-aside shall be made available to other projects in the Urban cycle so long as no more than 90 percent of the total state housing credit ceiling, as per Section 42(h)(5)(A) of the Code, is allocated to for-profit sponsored projects. In order to qualify for credits from the nonprofit set-aside and for the nonprofit reservation fee, applicants must certify that they are a qualified nonprofit organization under the meaning of the Code and these rules.

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

(c) Projects can qualify for multiple set-asides. For example, if a targeted neighborhood project qualified as a senior and a nonprofit project, the project would be meeting all three set-asides.

5:80-33.5 Suburban cycle

(a) All projects not located in an Urban Center, SNAP or Targeted City or in an Urban Aid Municipality may apply in this cycle. Minimum rehab projects are not eligible to apply in this cycle. There are two set-asides in the Suburban Cycle:

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

2. Nonprofit Set-Aside: In order to encourage the participation of local and/or State tax-exempt organizations in the tax credit program, 15 percent of the credits available in the Suburban Cycle shall be set aside for qualified nonprofit organizations. Nonprofits are eligible for Suburban Cycle credits beyond the set-aside. If, however, there is not enough nonprofit demand, credits remaining in the nonprofit set-aside shall be made available to other projects in the Suburban Cycle so long as no more than 90 percent of the total State housing credit ceiling, as per Section 42(h)(5)(A) of the Code, is allocated to for-profit sponsored projects. In order to qualify for credits from the nonprofit set-aside and for the nonprofit reservation fee, organizations shall certify that they are a qualified nonprofit organization under the meaning of the Code and this allocation plan.

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

(c) Projects can qualify for multiple set-asides. For example, a nonprofit senior project counts toward both set-asides.

5:80-33.6 Special needs cycle

(a) Special needs projects may be located anywhere in the State. To qualify for this cycle, at least 25 percent of the total number of units must be reserved for the special needs client population and at least three appropriate services must be provided. Minimum rehab projects are not eligible to apply in this cycle. There is one set-aside in the Special Needs Cycle.

(b) Fifteen percent of the credits available in the Special Needs Cycle shall be available for a small project set-aside. A small project is one having 25 units or less. Small projects are eligible for Special Needs Cycle credits beyond the set-aside. If, because of lack of demand, the small project set-aside is not fully utilized, remaining credits in the small project set-aside shall be released into the Special Needs Cycle for use by other projects.

5:80-33.7 Final cycle

(a) The Final Cycle shall take place only in the event there are unused credits from the Urban, Suburban or Special Needs Cycles or the Reserve or if New Jersey is awarded an allocation from the National Pool. All projects may apply to this cycle. If all credits are not reserved in the Suburban, Urban and Special Needs Cycles, the remaining amount shall be made available in this cycle. Any National Pool as well as any remaining credits in the Reserve shall also be made available in this cycle. Minimum rehab projects are eligible to apply in this cycle. There are no set-asides in this cycle. However, in the unlikely event 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.

(b) Should NJHMFA receive any returned credits after the Final Cycle awards have been made, NJHMFA shall, to the extent possible, try to reallocate them before December 31. They shall be allocated to the next-highest ranking project(s) from the Final Cycle provided such project(s) can meet the 10 percent carryover test.

(c) Projects that were admitted to a cycle in the same allocation year but did not receive a reservation of credits may re-apply in the Final Cycle by simply submitting the re-application fee and a sponsor certification for re-application in which the applicant:

1. Certifies that there are no changes whatsoever to the previously submitted application; or

2. Documents any and all changes to the previously submitted application.

5:80-33.8 Reserve

The NJHMFA shall set aside a portion of the State's population credits, any returned credits and any carryforward credits as a Reserve for projects that need additional credits because of technical errors, partial allocations from the previous year's Final Cycle, de minimis awards, and severe hardship. It may also be used for other unforeseen circumstances where NJHMFA determines that a project's financial feasibility is jeopardized. Reservations of credits from the Reserve for technical errors and hardships are limited to \$100,000 per project. Hardship requests must be documented to the satisfaction of NJHMFA and must demonstrate the existence of an emergency situation where the completion of the project is jeopardized without an award of additional low income housing tax credits. Applicants cannot apply for hardship credits from the Reserve until the year in which the project places in service. No carryover allocations shall be issued to projects for hardship requests to the Reserve. Hardship applications to the Reserve are accepted on an on-going basis until one month before the deadline for the Final Cycle. Credits from the Reserve are subject to availability. \$100,000 of the Reserve shall be set aside for technical errors, etc., until allocations are ready to be made in the Final Cycle. To apply to the Reserve for a hardship of additional credit, applicants must follow the procedures at N.J.A.C. 5:80-33.12.

5:80-33.9 Application fee schedule

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

1. An application fee of \$1,000 shall be paid by applicants for projects applying to the Urban, Suburban or Special Needs Cycle (and any first-time applications to the Final Cycle).

2. A re-application fee of \$100.00 is due for projects requesting hardship credits from the Reserve and for projects that applied to the Urban, Suburban or Special Needs Cycle, which did not receive a reservation of credits, and wish to re-apply in the Final Cycle. Projects that applied to the Urban, Suburban or Special Needs Cycle but did not receive a reservation of credits can re-apply to the Final Cycle by submitting a re-application fee and sponsor certification for re-application in which the applicant certifies that there are no changes whatsoever to the previously submitted application or documents any and all changes to the previously submitted application. Projects that are in essence new projects (for example, changes in the project composition, sites, or sponsor or developer entities) shall submit a new application and Application Fee.

(b) Application fees and re-application fees are nonrefundable.

5:80-33.10 Cycle deadlines

(a) Application cycles shall be announced by NJHMFA via notices sent to its mailing list no later than 45 days prior to the deadline. Applications shall be accepted beginning one month prior to the deadline date. Late and incomplete applications shall not be admitted into a cycle and will be returned to the applicant.

(b) After the application deadline, telephone calls or other oral communications on behalf of a tax credit applicant (for example, from a project's development team, elected representatives, etc.) shall not be accepted until reservation awards have been announced. Written communication shall be accepted; however, written communication altering the application so as to cure a prior incompleteness or ineligibility or increase its competitiveness shall not be considered.

5:80-33.11 Application to a cycle/eligibility requirements

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

1. The type of housing proposed and all amenities and services shall be described in a narrative format, including 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.

2. The applicant shall be either the owner or developer of the project and shall demonstrate that it has site control of the property via any one of the following: fee simple title; long-term leasehold interest (for a minimum term of the compliance and extended use periods); option to purchase or lease, including evidence that options are renewable until at least the start of construction; executed land sales contract or other enforceable agreement for acquisition of the property; or an executed disposition and development agreement with a public agency. Title ownership is not required for carryover allocations.

3. Applicants shall submit a copy of the preliminary or final site plan resolution as well as all other approvals. For substantial rehabilitation projects 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 project is not subject to site plan approval shall be provided. It is the applicant's responsibility to demonstrate that the project complies with all applicable local land use and zoning ordinances and that nothing at the local level interferes with the project obtaining all necessary permits.

4. Applicants shall certify that all necessary environmental approvals have been obtained, or at a minimum, applied for. If a Phase I environmental study has been completed for the project, the findings shall be submitted. If remediation is necessary, the remediation plan shall be submitted, costed in detail and accounted for in total development costs.

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)(i) 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. Expired commitments, letters of interest 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) and all conditions. The commitment shall have been approved by the lender's final approval authority (for example, loan review committee). The maximum mortgage supportable shall have been obtained.

ii. State Balanced Housing or State HOME funds: Applicants requesting such funds from the Department of Community Affairs (DCA) shall submit a letter from DCA, evidencing that the application has been received and is complete. DCA will inform NJHMFA of the projects it intends to fund and the subsidy amounts if those projects are sufficiently competitive to receive tax credits. DCA will announce the Balanced Housing and HOME commitments at the same time NJHMFA awards the reservations of tax credits.

iii. Grants: Commitment letters for grants (that is, Federal Home Loan Bank) must be firm or contain only conditions that are under the control of the sponsor (that is, grant commitments cannot be conditioned

on the availability of funds). All grants whether private, Federal, State or local 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.

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

v. Owner equity/loans: All applicants representing that they shall be contributing equity beyond that generated by the tax credit shall disclose the amount, the source and all terms. Applicants "coming out-of-pocket" to fill the equity 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. If the developer fee is pledged, applicants shall specify the amount, and when and how it will be paid. (NJHMFA establishes maximum developer fees.) Contractor fees cannot be pledged. Applicant equity or pledges cannot be subsequently replaced by State HOME or Balanced Housing resources.

vi. Investor commitments: Applicants who do not have an agreement with a syndicator/investor at the time of application may still apply for tax credits. For projects that do not have an investor at the time of application, NJHMFA shall underwrite at an equity factor to be determined from time to time based on current market conditions. Applicants wishing to have their project underwritten at a price higher than the NJHMFA equity factor shall include in their application a commitment letter 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 more than a one percent ownership interest shall disclose the percentage ownership and credit retention beyond one percent (that is, applies to projects where the limited partner(s) will own less than a 99 percent interest in the project).

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 (a)6v above and shall have a retention factor added to the NJHMFA equity factor. Applicants of the projects in the latter category shall submit a fully executed investor commitment evidencing the pricing per credit dollar and total anticipated net proceeds shown in the application. If there is sufficient cash flow to amortize debt, the applicant shall obtain a mortgage commitment for such debt.

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. Applicants shall submit a 15-year cash flow proforma, which must precisely reflect the rent structure in the tax credit application, all lenders' assumptions such as principal and interest payments, non-rental income, operating expenses, required reserves, annual fees, etc., as well as other characteristics of the application that impact financial feasibility (for example, cost of social services). For example, a project's Balanced Housing application (or other lender application) must mirror the development cost, operating assumptions, rent structure, etc., shown in the tax credit application.

8. Resumes of the development team (to the extent they have been selected at the time of application for tax credits) shall be submitted. This includes the project owner (general partner and limited partner or syndicator if selected), developer, architect, consultant, general contractor, and management company. The sponsor, developer, and general partner (or voting member if a limited liability company) shall disclose prior or current defaults or foreclosures on their part or on the part of any of their related entities (see definition of "related party"), or, if none, provide a statement that affirms no involvement in such actions. Misrepresentation of any information about the experience, financial capacity or defaults or foreclosures of any team member shall be grounds for denial or loss of the credits and may affect the person's future participation in the tax credit program.

9. All projects shall complete the identity of interest disclosure certification. The certification must include disclosure by the developer of any financial, ownership or other interest with the contractor. Projects with an identity of interest between the developer and contractor are limited in the amount of combined developer fee and contractor profit allowed in eligible basis. (NJHMFA establishes maximum developer fees.)

10. Applicants requesting acquisition credits shall include an attorney opinion regarding each building's eligibility for acquisition credits unless the deed(s) conveying title to the previous owner clearly shows that the building has not changed ownership in the past 10 years. As long as the sale is an arms-length transaction, the sale price of the building shall be used in determining acquisition basis. If the sale is not an arms-length transaction, the applicant shall submit an appraisal not older than six months. The acquisition basis shall be limited to the lesser of the purchase price or appraised value of the building. NJHMFA reserves the right to require an appraisal.

11. In order to qualify for credits from the nonprofit set-aside and for the nonprofit reservation fee, applicants shall certify that they are a qualified nonprofit organization under the meaning of the Code as well as under these rules.

12. 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.

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

14. All applicants anticipating receiving Section 8 Project Based Rental Assistance or any other type of rental subsidy from a government or private source shall submit with the tax credit application evidence of receipt of such assistance. Evidence of Section 8 shall include, at a minimum, a letter from the Public Housing Authority (PHA) firmly approving the project for Section 8 Project Based Assistance subject to the completion of the subsidy layering review. For projects involved in the AFL-CIO Pension Fund Program, a preliminary commitment from the AFL-CIO shall suffice. For other types of (non-Section 8) rental assistance, evidence shall include a fully executed rental assistance contract that specifies the source and term of the subsidy. Projects underwritten at fair market rents (FMRs) must include the Section 8 evidence described above; however, applicants that underwrite their project at the tax credit rents and can show their project is feasible at the tax credit rents do not have to submit evidence of Section 8 assistance.

15. Applicants shall support their claim to provide social services and/or serve special needs populations by providing the following:

- i. Evidence of funding sources or documentation of how or by whom the services will 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 with service providers for the services.

16. 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 developer and rental agent shall certify that the project was affirmatively marketed.

17. Applicants applying to the Special Needs Cycle shall submit the following additional items:

- i. A special needs marketing analysis;
- ii. A special needs marketing plan; and

iii. Evidence of the special needs housing development or management experience of the social service provider (or the applicant).

18. Projects with a full allocation from the previous year or the year before seeking additional credits of over \$100,000 because the project has increased in scope or has encountered severe cost overruns shall compete in a scheduled cycle. In addition to the other application requirements, the following information shall be included in order for the application to be deemed complete:

- i. A Sponsor Certification for Re-Application (including all updates to original application);
- ii. An explanation why additional credits are being sought plus supporting documentation;

iii. A Sponsor Certification and audited breakdown of costs and basis. The audited breakdown of costs and basis must itemize the costs incurred or to be incurred by the sponsor in developing the project. An independent C.P.A. shall have audited the project and certified the breakdown of costs and basis (which includes disclosure of all funding sources and amounts). For projects still incurring eligible costs (for example, security system, landscaping), NJHMFA shall consider awarding additional credits based on the audited breakdown of costs and basis incurred to date and the applicant'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; and

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

(b) Should additional credits be awarded to a project, a reservation fee for the additional credit amount shall be provided. The developer fee shown in eligible basis cannot exceed that shown on the previous sponsor certification.

(c) 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 a rejection, but simply as an attempt to clarify the application.

5:80-33.12 Application to the reserve

(a) Applications for additional credits from the Reserve must be received no later than one month prior to the deadline for the Final Cycle. NJHMFA shall award additional credits out of the Reserve on an on-going basis until one month before the deadline for the Final Cycle. Awards are subject to NJHMFA's evaluation of the request and

availability of credits. Hardship requests from the Reserve are limited to not more than \$100,000. The developer fee shown in eligible basis cannot exceed that shown on the previous Sponsor Certification. Applicants shall submit all of the following before NJHMFA will consider any hardship request:

1. The re-application fee;
2. A Sponsor Certification for Re-Application (including all updates to original application);
3. An explanation why additional credits are being sought plus supporting documentation; and
4. A letter from the syndicator/investor (if known) which addresses the eligibility and specific need for the additional credits. (If the applicant is still incurring costs and is using a projection of costs and basis in his or her application for additional credits, the investor shall verify the projection.)

(b) Should additional credits be awarded to a project, a reservation fee for the additional credit amount shall be provided.

5:80-33.13 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. Therefore, all projects shall be initially scored and ranked in accordance with the scoring system of the cycle to which they are applying and with the tie-breaker system. NJHMFA will then examine the eligibility requirements of only those projects that rank sufficiently high enough 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.

5:80-33.14 Point system for the Urban Cycle

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

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

- i. For increases in the compliance period, zero to 15 points shall be awarded. The minimum term of the low income occupancy commitment is 30 years: a 15-year compliance period plus a 15-year extended use period. NJHMFA shall award points to projects which extend their compliance 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. The point system provides one point for every additional year the compliance period is extended. Points are maximized where the sponsor elects to extend the compliance period by an additional 15 years. Example: a sponsor 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 sponsor 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 the NJHMFA and future tenants via a deed of easement and restrictive covenant which shall be recorded by the NJHMFA pursuant to State law.

- ii. For conversions to tenant ownership, 10 points shall be awarded. 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. Low income set-aside (eight to 10 points):

- i. For applicants selecting the 20 percent at 50 percent Federal set-aside, 10 points are awarded. This election is irrevocable. If this 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. This election shall be reflected on each building's IRS Form 8609 and on the deed of easement and restrictive covenant.

- ii. For applicants selecting the 40 percent at 60 percent Federal set-aside and 60 percent at 50 percent State set-aside, eight points are awarded. If this election is selected, 40 percent of the units shall be restricted to no more than 60 percent of the area median income adjusted for family size and the remaining 60 percent of the project shall be restricted to 50 percent of area median income adjusted for family size. Note: This election is irrevocable. The 40 percent at 60 percent Federal set-aside shall be reflected on each building's IRS Form 8609. Both the Federal set-aside and the State set-aside will be reflected in the deed of easement and restrictive covenant.

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

4. Zero to 10 points shall be awarded based on the percentage of the project containing units meeting the definition of a large family unit. Points are maximized when large family units make up 30 percent of the project.

5. Five points are awarded to projects that secure tax abatements for a term of at least 15 years. The tax abatement for the first 15 years must be at a fixed rate. Additional points are awarded to projects which secure a tax abatement for the term of the low income housing tax credit compliance period which exceeds 15 years. These points are calculated at one point for every year beyond year 15 up to a maximum of 10 additional points.

6. Two points are given to projects which evidence the contribution of at least 75 percent of the project site(s) including land and any existing buildings by a municipality, municipal subsidiary, or public housing agency. This contribution for nominal consideration (for example, \$1.00) can be either the conveyance of a fee interest or a leasehold interest for a minimum term of the compliance and extended use period.

7. One point is awarded to projects that have obtained a municipal waiver of all building permit fees.

8. One point is awarded to projects that have a county or municipal permanent mortgage guarantee. The guarantee must have a term of at least five years.

9. Because the availability of social services greatly improves the quality of life for residents, NJHMFA awards up to five points for the provision of up to three social services. One point shall be awarded per service offered unless the service is either day care or an after school program, in which case the award will be two points per service. Applications shall provide executed contracts for the provision of social services.

10. Four points are awarded to projects which pledge to expend a sum equalling at least 15 percent of construction cost on contractors and subcontractors which are certified as minority business enterprises (MBE) and women business enterprises (WBE) by the New Jersey Department of Commerce and Economic Development ("Certified MBE's and WBE's"). If the project fails to meet this goal, NJHMFA shall recapture the allocation.

11. Substantial rehabilitation of former HUD troubled projects shall receive three points.

12. Projects located in an Urban Center shall receive two points.

13. Three points shall be awarded to applications which include a final site plan resolution or copies of all building permits. A letter from a construction official stating that all building permits will be issued upon receipt of payment can be submitted in lieu of copies of the building permits.

14. Syndicator/investor letter or agreement:

i. Applications which include a letter signed by the syndicator or investor specifying net pricing and net capital contributions in excess of NJHMFA's equity factor (see definition for "equity factor") shall receive one point; or

ii. Applications which include an executed agreement signed by the syndicator or investor and applicant which specifies net pricing and net capital contributions in excess of NJHMFA's equity factor shall receive three points. The commitment must be a firm commitment subject only to the allocation of tax credits (that is, not subject to any conditions such as committee review, due diligence, etc.).

15. Applications which meet the 10 percent carryover test shall receive one point. All requisite carryover documentation shall be included in the application.

16. Applications shall receive one point per percentage point reduction in the developer fee up to a maximum of seven points. For example, an application by a 25 unit project which lists a 15 percent developer fee shall receive five points because it is five percentage points below the maximum allowance of 20 percent.

17. For-profit/nonprofit joint venture or turnkey relationship:

i. One point shall be awarded to applications which have a New Jersey non-profit corporation having some interest in the general partnership or voting membership; or

ii. One point shall be awarded to applications where an experienced developer develops the property and turns it over to a New Jersey non-profit corporation, a limited partnership where the general partner is a New Jersey non-profit corporation or a limited liability company where the voting member is a New Jersey non-profit corporation.

18. Applications which have a general partner, voting member, developer, or related party who was involved in a foreclosure during the past seven years shall have three points deducted from the application's score.

19. Applications which have a general partner, voting member, developer, or related party that meet all of the following conditions shall have three points deducted from the application's score:

i. Involvement in a full credit recapture or return if:

(1) The credit recapture or return occurred within the past two years; and

(2) The credit recapture or return occurred after the voluntary return deadline stated in the Qualified Allocation Plan of the year the project is scheduled to place in service.

5:80-33.15 Point system for the Suburban Cycle

(a) The point system for the Suburban Cycle includes all point categories of the Urban Cycle except that the point category in N.J.A.C. 5:80-33.14(a)12 concerning a project located in an urban center is replaced with the following:

1. Projects meeting the definition of a COAH obligation or court ordered obligation shall be awarded five points.

5:80-33.16 Point system for the Special Needs Cycle

(a) The point system for the Special Needs Cycle includes all point categories of the Suburban Cycle except for the point category in N.J.A.C. 5:80-33.14(a)9 concerning social services. The Special Needs Cycle also includes the following point categories:

1. Applications shall be awarded one point per year of guaranteed funding of all social programs for special needs populations. Sponsor pledges or escrows established by the developer or limited partner investors shall not qualify for this point category.

2. Applications shall earn one point for each year of experience its social service provider has in providing social services to a special needs population. No points shall be awarded if the special needs provider has less than three years of experience. The maximum points available for this category is six.

3. Applications shall earn one point for each special needs project that its social service provider has successfully developed or managed. The maximum points available for this category is six.

4. To qualify for the Special Needs Cycle, at least three services for the targeted special needs population shall be provided. If the sponsor of the project is capable of providing additional appropriate services, NJHMFA shall award two points per additional service up to a maximum of three additional services.

5. Applications in which the social service provider has greater than a 50 percent interest in the general partnership or voting membership in a limited liability company shall earn an additional four points.

6. Applications demonstrating provision of appropriate services at no charge to the tenants shall earn one point for each free service up to a maximum of three points. The sponsor shall provide evidence of funding for these services.

7. Projects located in an Urban Center shall receive two points.

5:80-33.17 Point system for the Final Cycle

(a) The point system for the Final Cycle is the same as the Suburban Cycle with the exception of the following three additional categories, and increased points in two existing categories:

1. Applications that are eligible to apply to the Urban Cycle (see N.J.A.C. 5:80-33.4) shall be awarded six points.

2. Applications shall be awarded two points if there is evidence that the sponsor had taken title to the land.

3. Projects located in an Urban Center shall receive two points.

4. Applications which meet the 10 percent carryover test shall receive eight points. All requisite carryover documentation shall be included in the application.

5. Five points shall be awarded to applications which include a final site plan resolution or copies of all building permits. A letter from a construction official stating that all building permits will be issued upon receipt of payment can be submitted in lieu of copies of the building permits.

5:80-33.18 Tie-breaker system

(a) The following tie-breaker 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 lower intermediary fees per low income unit.

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

3. If there is still a tie after the second tie-breaker, the tax credit reservation shall be awarded to the project with the lower developer fee per unit.

4. If there is a tie after the third tie-breaker, the tax credit reservation shall be awarded to the project with a lower amount of Federal low income tax credits per low income unit.

5:80-33.19 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. NJHMFA staff shall notify the chief executive officer of the municipality and allow him or her a reasonable opportunity to comment on the project.

5:80-33.20 Application needs analysis

(a) 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 Section 42(m)(2)(A) of the Code." This determination, known as the "needs analysis," shall be performed by the NJHMFA with respect to those applications fulfilling the eligibility requirements at N.J.A.C. 5:80-33.11. In the needs analysis, the NJHMFA shall compare the project's total development costs to the funding sources the applicant has identified to meet that cost. 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)(B)(iv) of the Code;

2. Funding sources identified by the applicant meet the requirements listed under N.J.A.C. 5:80-33.11(a)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. 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. 5:80-33.22 and 33.24) 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.

5:80-33.21 Committee review

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

(b) The Committee shall review the rankings, eligibility and tie-breaker decisions as well as requests for reservations from the Reserve. Committee decisions are final. 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. Recipients have 30 days from the date of the reservation letter to pay the reservation fee. A reservation is not complete until the reservation fee is paid.

(c) The reservation fee schedule is as follows:

1. For for-profit-sponsored projects, one percent of the allocation amount over the 10-year credit period.

2. For qualified nonprofit-sponsored projects, one-half of one percent of the allocation amount over the 10-year credit period.

5:80-33.22 Allocation needs analysis

In accordance with Section 42(m)(2) of the Code, NJHMFA evaluates the need for the tax credit at application, at 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. 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. 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.

5:80-33.23 Types of allocations

(a) There are three potential ways a project can receive an allocation: through a binding commitment, a carryover, or a placed in service allocation.

1. NJHMFA may enter into a binding agreement to allocate credits from the next year's tax credit authority to the last allocated project in a given credit year if that project received only a partial allocation from the Final Cycle as a consequence of NJHMFA exhausting its tax credit authority. Binding commitments are not available to any other project.

2. The IRS does not recognize the reservation processes of housing credit agencies. Certain criteria must be met by the project in order for NJHMFA to process the reservation into an allocation. For carryover allocations, which make up the bulk of NJHMFA allocations, applicants shall submit by November 1 a Sponsor Certification for Carryover and a certification from an independent C.P.A. The certification must show that more than 10 percent of reasonably expected basis has been incurred; that all sources shown on the Sponsor's Carryover Schedule are accurate; and that the costs shown in eligible basis are allowable under the Code. On a case-by-case basis, NJHMFA may extend its filing deadline if the sponsor can show good cause. 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.

3. Some projects apply for and receive a reservation of tax credits from the NJHMFA in the same year the project places in service. For these projects, the allocating document is the IRS Form 8609. (A carryover is not issued.) Again, certain criteria must be met by the project in order for NJHMFA to process the reservation into an allocation. For placed in service allocations, applicants shall submit by November 1 all the requirements listed under N.J.A.C. 5:80-33.24. A building which received a reservation and which placed in service in the same year but failed to receive an allocation (evidenced by a signed

IRS Form 8609 from NJHMFA) by the end of the year in which it placed in service is ineligible to receive an allocation for those improvements in the subsequent year.

5:80-33.24 Obtaining IRS Form 8609

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. Prior to issuance of the IRS Form 8609, NJHMFA must receive the cost certification, perform the final needs analysis, receive the monitoring fee, and file the extended use agreement. Upon completion of these items and any other information requested by NJHMFA, the 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.

5:80-33.25 Placed in service needs analysis

(a) Pursuant to Section 42(m)(2) of the Code, NJHMFA shall conduct the last of its required needs analyses evaluations at the time the project places in service. The analysis shall be based on the audit report of an independent C.P.A. and the permanent financing sources. 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. 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 will not necessarily reduce the credit on those projects that use the "excess" credits to cover cost overruns, provide betterments in the project 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 eligible basis amount 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.

5:80-33.26 Project cost certification

(a) An independent C.P.A. shall audit the project in accordance with generally accepted auditing standards. The audit report, in a form acceptable to NJHMFA, must be submitted to NJHMFA as soon as possible after the project has placed in service but no later than November 1. To make sure that the necessary paperwork is submitted to NJHMFA by the November 1 deadline, sponsors shall ensure that the cost certification process begins immediately upon construction completion. On a case-by-case basis, NJHMFA may extend its filing deadline if the sponsor can show good cause.

(b) 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 (for example, security system, landscaping), NJHMFA shall consider the sponsor'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.

(c) 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.

5:80-33.27 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 the NJHMFA's deed of easement and restrictive covenant. Upon receipt and review of a complete and fully executed agreement, NJHMFA shall file the restrictive covenant pursuant to State law. Applicants are responsible for paying the fee required to record the agreement in the County Clerk's office. 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.

5:80-33.28 Returning credits

Projects unable to utilize their allocation should return their allocation to the NJHMFA as soon as possible. As an incentive to turn in unused credits early, projects that return credits by November 1 shall have their previously paid reservation fee credited toward their next reservation fee. Projects returning credits after November 1 that receive a reservation the next year shall have to pay a new reservation fee. Returned credits are deposited into the Reserve or in the Final Cycle if returned after the Reserve deadline.

5:80-33.29 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. NJHMFA shall require the sponsor 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) Failure to disclose all relevant information is grounds for disqualification of the application or recapture of the allocation.

5:80-33.30 Compliance monitoring

(a) The owner of all projects with an allocation of low income housing tax credits must submit to the NJHMFA a copy of the completed IRS Form 8609 (Part I completed by the NJHMFA and Part II completed by the owner) within 30 days of the owner's filing of the IRS Form 8609 with the Internal Revenue Service. This form contains information necessary for the NJHMFA to monitor the project for compliance. Failure to submit a copy of the completed IRS Form 8609 within the specified timeframe may constitute noncompliance and may be reported by the NJHMFA to the IRS.

(b) 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 in each low income unit, but only if rent is determined by the number of occupants in each unit under Section 42(g)(2) of the Code (as in effect before the Revenue Reconciliation Act of 1989);
5. The low income unit vacancies in the building and information that shows when and to whom the next available units were rented;
6. The annual income certification of each low income tenant per unit. For an exception to this requirement,

see Section 42(g)(8)(B) of the Code which provides a special rule for a 100 percent low-income building;

7. Documentation to support each low income tenant's income certification (that is, a copy of the tenant's Federal income tax return, W-2 form or 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;

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 (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).

(c) 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.

3. 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.

(d) 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 by providing an Annual Project Certification to the NJHMFA. The Annual Project Certification shall be sent annually to the 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 the Code's Section 42(g)(1)(A) or the 40-60 test under Section 42(g)(1)(B) or the 40-50 test under Section 42(i)(2)(E)(i); whichever minimum set-aside test was applicable to the project; and, if applicable to the project, the 15-40 test under Sections 42(g)(4) and 142(d)(4)(B) for "deep rent skewed" projects;

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

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

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

5. That all units in the project were for use by the general public and used on a nontransient 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;

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. 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. 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, that unit may continue to be counted as a low income unit as long as the next available unit of comparable or smaller size in the project was or will be rented to tenants having a qualifying income; and

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.

5:80-33.31 NJHMFA review

(a) Pursuant to Section 1.42-5(c)(2)(ii)(C) of the Code, the NJHMFA requires the owners of all low income housing projects to submit annually to the NJHMFA for review of the Annual Project Certification and the Occupancy Status Report. The occupancy status report must indicate the income of and rent charged to tenants for each low income unit.

(b) In addition, throughout the year, owners of at least 20 percent of all tax credit projects shall submit to the NJHMFA for compliance review the following information for a minimum of 20 percent of all low income units (units shall be identified by the 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) The 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 submitted. Reviews may occur more frequently than on a 12-month basis, provided that all months within each 12-month period are subject to certification.

5:80-33.32 Compliance monitoring fee

NJHMFA charges a fee for monitoring compliance for the 15-year compliance period or a one-time up-front fee. Failure to pay such fee may constitute noncompliance and may be reported by the NJHMFA to the IRS. The monitoring fee is \$625.00 per unit one-time up-front fee or \$60.00 per unit if paid on an annual basis.

5:80-33.33 Inspection

The NJHMFA reserves the right to perform an on-site inspection of any low-income housing project at least through the end of the compliance period and have access to all books and records which would document compliance.

5:80-33.34 Notification of noncompliance

(a) Upon determination by the NJHMFA of noncompliance with Section 42 of the Code, N.J.A.C. 5:80-33.30, or any other relevant rules, regulations, or procedures, the NJHMFA shall give notice to the owner of the noncompliance. The owner shall then be given sufficient notice to correct the noncompliance.

(b) The 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.

5:80-33.35 Tax-exempt financed projects

(a) Projects financed by tax-exempt bonds that request tax credits pursuant to Section 42(h)(4)(B) of the Code are required by Section 42(m)(1)(D) to satisfy the requirements for allocation of a housing credit dollar amount under the qualified allocation plan. Accordingly, tax-exempt projects requesting "volume cap" tax credits shall submit a complete application; however, such applications do not have to compete and there are no cycle deadlines. Applications should be submitted before the tax-exempt bonds are sold.

(b) 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.

(c) In order to qualify for volume cap credits, 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 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. Tax-exempt financing is Federal funding; therefore, the applicable percentage is four percent (see Section 42(b)(1)(B)(i).)

5:80-33.36 Credit applications as public records

(a) Applications submitted to the NJHMFA for tax credits and all supporting documents submitted by the applicant pursuant to these rules shall be confidential, non-public records until the Final Cycle awards are announced by NJHMFA. Thereafter, applications and all supporting documents submitted shall be deemed to be public records, except the following supporting documents shall remain non-public records:

1. Financing information and syndication documents submitted in compliance with N.J.A.C. 5:80-33.1(a)5. However, the applicant's certification of the extent of Federal, State and local subsidies shall be a public record; and

2. Financing commitments and other documents submitted in compliance with N.J.A.C. 5:80-33.1(a)6 evidencing:

i. Mortgage commitments from banks and other lending institutions;

ii. Owner equity pledges or loans (including the required C.P.A. certifications); and

iii. Investor commitments.

(b) All other financing information and documents submitted shall be maintained as public records.