

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

**Authority**

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

**Source and Effective Date**

R.1995 d.247, effective April 17, 1995.  
See: 27 N.J.R. 265(a), 27 N.J.R. 1977(b).

**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.247, effective April 17, 1995. See: Source and Effective Date. 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 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 opportunities for New Jersey residents particularly those of low and moderate income;

3. Enhancing the production capacity of the private sector in meeting the housing needs of residents of 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

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

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

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

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

"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, improvement, rehabilitation or acquisition of existing buildings or units, which is designed for the primary purpose of providing multi-family rental housing or acquisition of sites for future multi-family rental housing, including an assisted living residence.

"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.

“Special needs project” means a project serving special needs populations under the developmental disability housing programs, transitional housing revolving loan programs, shelter plus care programs, HIV/AIDS programs, and similar special needs housing programs, including individuals and families who are in need of certain types of home and/or community-based supportive services. Supportive services range across a wide continuum of care and will vary from person to person depending on their particular physical, psychosocial, and/or mental limitations, and may vary for one person over time. Examples of targeted populations that fall within a special needs project are:

1. Persons with AIDS/HIV-related illness;
2. Homeless;
3. Mentally ill;
4. Frail elderly;
5. Alcohol substance abusers;
6. Persons with physical disabilities;
7. Mentally retarded/developmentally disabled;
8. Pregnant/parenting teens;
9. Victims of domestic violence; or
10. Orphans, children in foster care, and children who are wards of the Division of Youth and Family Services (DYFS).

“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.

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

Inserted “Assisted living”, and “Assisted living residence”; and rewrote “Housing Project” or “Project”.

Amended by R.1999 d.329, effective October 4, 1999.  
See: 30 N.J.R. 3355(a), 31 N.J.R. 2878(b).

Inserted definition of “Special needs project”.

#### 5:80-1.4 Regulations regarding Housing Projects

(a) All Agency financing in connection with Housing Projects having more than 25 units, including eligible loans and loans to lenders made with regard to Housing Projects, shall be subject to N.J.A.C. 5:80-2 through 9, 17, 18, 20, and 29 through 32. Where appropriate, other regulations within this chapter are specifically made applicable to Housing Projects. N.J.A.C. 5:80-2 through 9, 17, 18, 20, and 29 through 32 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

v. Special needs projects;

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

3. Any Housing Project for which construction or substantial rehabilitation commenced more than one year prior to the actual date of the Agency’s having provided financing for the project.

Amended by R.1998 d.80, effective February 2, 1998.

See: 29 N.J.R. 3214(a), 30 N.J.R. 539(b).

In (a), inserted “having more than 25 units,” following “Projects”, and inserted references to subchapters 20, 29 and 30 through 32. Amended by R.1999 d.329, effective October 4, 1999.

See: 30 N.J.R. 3355(a), 31 N.J.R. 2878(b).

In (a), updated references, and added (a)1v.

## SUBCHAPTER 2. ACTIONS REGARDING HOUSING SPONSORS

### 5:80-2.1 Rights of housing sponsors

(a) Wherever possible, the Agency will permit, provide for and encourage the right of local housing sponsors to exercise their own initiative and competence in the administration of their assets and the conduct and operation of housing projects, and exercise their rights and responsibilities to the fullest extent permitted by law.

(b) The provisions of the Act pertaining to the regulation and assumption of powers and duties of housing sponsors shall be for the purposes of protecting the collateral for any loan or loans; implementing or enforcing any condition, requirement or criterion for loans or any agreement between the housing sponsor and the Agency; securing the rights and remedies of lenders and bondholders; and protecting the interests of tenants at the projects.

### 5:80-2.2 Consultation with housing sponsors

(a) Prior to the adoption, amendment, or repeal of any rule governing the operation of Agency-financed housing projects, the Agency shall:

1. Submit a proposed form of the rule to be adopted, amended or repealed to the Office of Administrative Law for publication in the New Jersey Register for a 30 day public comment period, in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.; and

2. Give housing sponsors or their agent(s) written notice of the proposed rule to be adopted, amended or repealed. The notice shall be given prior to or simultaneously with the date the proposed rule will be published in the New Jersey Register for public comment.

(b) The notice to housing sponsors shall consist of a copy of the proposed rule to be adopted, amended or repealed and shall indicate the date the 30-day public comment period expires, as published in the New Jersey Register.

(c) Any housing sponsor wishing to submit data, views, or arguments concerning the proposed rule may do so in writing prior to the expiration of the public comment period as established in the New Jersey Register.

(d) The Agency will consider all timely submitted data, views or arguments from housing sponsors before taking final action on the rule to be adopted, amended or repealed.

(e) The Agency shall respond in writing to each housing sponsor, submitting data, views, or arguments concerning the proposed rule.

(f) No rule governing the operation of a housing project shall be effective unless adopted in substantial compliance with N.J.A.C. 5:80-2.

(g) Upon substantial compliance with N.J.A.C. 5:80-2, the Agency may approve the proposed rule for final adoption. Once the Agency approves the final version of the rule, it will be submitted to the Office of Administrative Law for publication and adoption in the New Jersey Register.

(h) The Agency also shall give direct notice concerning the adoption, amendment or repeal of any rules to any interested party who annually files a request for such information with the Executive Director.

(i) Whenever feasible, the Agency will circulate to housing sponsors notices of proposed changes in Federal Regulations that would affect the operation of Agency financed housing projects on which the Agency intends to rely. The sponsor may submit comments or opinions on any proposed changes to the Executive Director of the Agency for possible inclusion in the Agency comments. All comments will be forwarded to the office or the individual that the Federal Government designates in the notice.

Amended by R.1991 d.408, effective August 5, 1991.

See: 22 N.J.R. 3669(b), 23 N.J.R. 2306(b).

Added new (a)1; clarified length of comment period and promulgation process throughout section.

### **5:80-2.3 Temporary appointment of Agency representative to perform functions on behalf of housing sponsors**

(a) The Agency will exercise its remedies and powers under N.J.S.A. 55:14K-7b(6) only with regard to material violations and after reasonable notice and reasonable opportunity to correct the violation is provided to the housing sponsor in accordance with the procedures set forth below.

(b) General areas in which material violations could result in Agency action include:

1. A material violation by the housing sponsor of the terms of any mortgage, mortgage note or regulatory agreement between the Agency and the housing sponsor;

2. A material violation by the housing sponsor of an agreement with the municipality under which it has been granted tax exemption;

3. A material violation by the housing sponsor of the Act or any rules and regulations of the Agency;

4. A determination by the Agency that any loan or advance from the Housing Development Fund pursuant to N.J.S.A. 55:14K-30 is in jeopardy of not being repaid.

(c) Specific material violations of the Act shall include, but are not limited to the following events, which shall generally be sufficient to give rise to the exercise of remedies under N.J.S.A. 55:14K-7b(6) in accordance with the procedure noted in (e) below. The time periods specified here relate solely to initiating action under N.J.S.A. 55:14K-7b(6) and are in no way intended to waive or supersede any time period specified in any other contract, policy or procedure and all obligations of the housing sponsor and any rights and remedies of the Agency with regard thereto remain unchanged.

1. Violation of subsidy contract as declared by HUD which is not corrected to HUD's satisfaction within the time frame as established by HUD;

2. Failure to submit final cost certification within seven months of substantial completion of construction;

3. Failure to submit a rent determination and annual operating budget at least 30 days prior to the end of the fiscal year;

4. Failure to submit the proposed name of a qualified management firm at least 30 days prior to the end of an existing contract or 120 days prior to initial occupancy of the project;

5. Failure to submit an accountant engagement agreement at least 30 days prior to the end of the fiscal year and/or failure to submit the certified annual audit within five months after the close of the fiscal year;

6. Three months arrears of debt service;

7. Failure to maintain at required levels any reserve account required by the Agency in conjunction with the operation of the Project;

8. Failure to correct a physical condition which jeopardizes the safety of tenants or the public or the integrity of any primary building system;

9. Failure to pay any utility bill after a receipt of written notice indicating that service would be terminated;

10. Failure to pay any lien or judgement, including municipal liens, which could jeopardize the financial viability of the development.

(d) It is the obligation of the Agency to give written notice to a sponsor that a condition exists which is of sufficient gravity to warrant exercise of remedies, under N.J.S.A. 55:14K-7b(6). The Agency will provide written notice of the specific material violation(s) to the sponsor, and may suggest courses of action to correct the violation(s).

(e) The housing sponsor shall take the following corrective actions:

1. Within 15 days of the receipt of the notice described in (d) above, the sponsor shall submit a statement to the Director of Management of the Agency setting forth its proposal for curing the violations indicated and a definite time schedule for the corrective actions.

2. If the sponsor is unable to develop a statement within 15 days, it shall submit a written request for an extension of time to prepare the plan to the Director of Management within the 15 day period.

3. The Director of Management may grant extensions of time for up to an additional 30 days for submission of the statement outlining the actions that the sponsor intends to take.



6. If the Agency determines that as a result of restrictions on development costs, rents or other factors, that the actual amount of return on equity which can be paid in any year will be significantly below that allowed by the Agency pursuant to 2 through 5 above, the Agency may set a return on equity limit which may be paid or earned on an annual, cumulative but not compounded basis, not to exceed the base rate plus 10 percent.

(d) For assisted living residences (ALRs) which receive a loan from the Agency, the housing sponsor may receive a return on investment annually as follows:

1. The first 20 percent annual return on investment;

2. When an ALR realizes a greater than 20 percent annual return on investment in any given year, a special service subsidy fund (Fund) shall be established and held by the Agency in which the next 10 percent or any part thereof above the first 20 percent return on investment shall be placed for the sole purpose of subsidizing rent and services to the low and/or moderate income residents of the ALR who may need assistance;

3. The housing sponsor may receive any and all annual return on investment which is greater than 30 percent for that calendar year in which it is earned.

Amended by R.1989 d.259, effective May 15, 1989.

See: 21 N.J.R. 94(a), 21 N.J.R. 1331(b).

Redesignated old (b) as (c) with no change in text and added new (b) regarding loans made under the New Jersey Urban Multi-Family Production Program.

Amended by R.1998 d.80, effective February 2, 1998.

See: 29 N.J.R. 3214(a), 30 N.J.R. 539(b).

Added (d).

#### Case Notes

Tax abatement did not violate constitutional profits and dividends limitation. *Township of North Bergen v. City of Jersey City*, 232 N.J.Super. 219, 556 A.2d 1255 (A.D.1989), certification denied 117 N.J. 632, 569 A.2d 1334.

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

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

1. A final mortgage closing must be held, unless a waiver is granted in accordance with (b) below;

2. The project must be current in all financial obligations including debt service, repair and replacement reserve, tax and insurance escrows;

3. All required reports and statements must be submitted by the Housing Sponsor;

4. Surplus cash must be available at the time of the request;

5. The Housing Sponsor must utilize forms as required by the Agency when requesting a return on equity;

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

1. Submission of Development Cost Certification.

2. Submission of Bank Statements on the Construction Loan Account.

3. Execution of a Memorandum of Understanding setting forth agreement as to the final mortgage amount including any funds necessary for final construction payment and any additional development costs which are approved by the Agency; and agreement, if applicable, regarding a reduction in the original mortgage loan amount.

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

1. The ALR shall have a sustaining occupancy for two full consecutive years; and

2. The operating reserve fund established pursuant to N.J.A.C. 5:80-1.4(c)3 shall be fully funded with 75 days worth of operating expenses, including expenses of tenants' meals and basic services.

Amended by R.1998 d.80, effective February 2, 1998.

See: 29 N.J.R. 3214(a), 30 N.J.R. 539(b).

Added (c).

#### 5:80-3.5 Waiver

If the Agency grants any waiver pursuant to N.J.A.C. 5:80-19 which by its nature affects a rate of return established by this subchapter, then the Agency in granting such waiver will establish a revised rate of return for any affected project.

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#### SUBCHAPTER 4. (RESERVED)

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#### SUBCHAPTER 5. TRANSFER OF OWNERSHIP INTERESTS

##### 5:80-5.1 Definitions

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

"Agency" is the New Jersey Housing and Mortgage Finance Agency.

"Cash proceeds" means that portion of the purchase price paid by the buyer to the seller in cash equivalent acceptable to the agency at closing or in successive years following the closing as determined by the agency.

"Closing" means the date on which title or other interest in the housing project is transferred from seller to buyer.

"Conversion" means transfers involving sale of the housing project owned by a nonprofit corporation to an ownership entity having profit motivated status such as a limited partnership.

"Portfolio Reserve Account" means that fund established pursuant to N.J.A.C. 5:80-5.9(b) intended primarily for financial support for any housing project financed by the agency.

"Purchase price" includes the cash proceeds plus secondary financing, if any, plus existing mortgage(s) assumed by the buyer.

"Secondary financing", both secured and unsecured, as any portion of the purchase price which is not paid in cash proceeds or by assuming an existing indebtedness. Secondary financing will be permitted as set forth in N.J.A.C. 5:80-5.7.

"Seller" is the existing mortgagor and owner of the housing project having a loan from the New Jersey Housing and Mortgage Finance Agency.

Amended by R.1990 d.504, effective October 15, 1990.  
See: 22 N.J.R. 1971(a), 22 N.J.R. 3220(a).

Definition for conversion amended; definitions for development costs, housing project, limited dividend corporation, net proceeds, resyndication and transaction cost deleted.

### 5:80-5.2 General policy

(a) To be effective, all proposed changes in ownership interests of an agency financed housing project must receive the prior review and written approval of the Agency's executive director.

(b) The prior specific review and approval of the Agency members is required if a proposed change involves a general partner, or shareholder with more than a 10 percent interest, or where the change involves a transfer of control of the housing sponsor.

(c) Changes in ownership processed under these rules shall not result in a modification of the statutory, regulatory or contractual requirements governing the housing sponsor and housing project except as may be provided in cases of prepayment pursuant to N.J.A.C. 5:80-5.10.

(d) The Agency is under no obligation to approve the transfer or resale, unless the proposed buyer has the financial sufficiency, organizational capabilities, background and previous housing experience which will help ensure that the buyer will be capable of operating the project.

(e) The approval of the Public Housing and Development Authority must be obtained where necessary pursuant to N.J.S.A. 55:16-1 et seq.

Amended by R.1990 d.504, effective October 15, 1990.  
See: 22 N.J.R. 1971(a), 22 N.J.R. 3220(a).

Text at (b) amended to include shareholder and transfer of control exception added to (d); provision on general partner's withdrawal Federal subsidy contract deleted at (e) and (g).  
Amended by R.1995 d.247, effective May 15, 1995.  
See: 27 N.J.R. 265(a), 27 N.J.R. 1977(b).

### 5:80-5.3 Applicability

(a) The regulations in this subchapter are applicable in their entirety to all proposed changes or transfers of ownership interests except the following:

1. Changes or transfers which are fully encompassed by the separate regulations involving nonprofit conversions (N.J.A.C. 5:80-6). The conversion regulation shall be applicable to transfers involving conversions unless the Agency determines that such treatment would jeopardize the viability of the housing project, in which case the Agency, in its discretion, may apply these regulations to such conversion. In the event, however, of any conflict or inconsistency between the provisions of these regulations and N.J.A.C. 5:80-6 as it applies to such conversion, the provisions N.J.A.C. 5:80-6 shall control;

2. Changes or transfers which represent the first sale of partnership or shareholder interests in order to provide syndication proceeds on nonprofit conversions provided such sale occurs within nine months of the conversion closing;

3. Changes or transfers for projects which had profit motivated ownership status at initial mortgage closing and where such changes or transfers occur within three months of the Agency's recognition of completion of construction or rehabilitation of the project, for projects receiving both construction and permanent financing or within three months following the mortgage closing for projects receiving permanent financing only;

4. In the case of proposed changes or transfers of ownership of assisted living residences (ALRs), if any provision(s) of this chapter are in conflict with any provision(s) of N.J.A.C. 8:36 the provision(s) of N.J.A.C. 8:36 shall govern.

(b) Changes or transfers which fall within (a)2 and 3 above shall be governed by the general policy as set forth in N.J.A.C. 5:80-5.2 as well as the required documents submission set forth in N.J.A.C. 5:80-5.6(a) for a modified review. In addition, the fee set forth at N.J.A.C. 5:80-5.9(a)3 shall apply except that in no event shall the fee be less than \$1,000.

(c) The rules within this subchapter shall also be applicable to changes or transfers in ownership in cooperative or condominium projects financed by the Agency.

Amended by R.1985 d.241, effective May 20, 1985.  
See: 17 N.J.R. 505(a), 17 N.J.R. 1258(b).

Old text deleted and new text substituted.

Amended by R.1990 d.504, effective October 15, 1990.  
See: 22 N.J.R. 1971(a), 22 N.J.R. 3220(a).

Examples deleted from (a); exception at (a)3 clarified; lower limit of fee in (b) set at \$1,000; (c) added.

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

In (a), added 4.

#### 5:80-5.4 Procedure

(a) The seller must initially submit to the executive director of the Agency a written request for approval of any proposed change in ownership. The request must contain a detailed description of the terms of sale or other ownership changes and a statement of the reasons for the proposed sale. The seller must also identify in detail and in a written report, the present physical, financial, management and tenant needs of the housing project. The Agency will review this report for completeness and accuracy, may require additional information or revisions to the report and may conduct its own review of the housing project's condition and operation.

(b) All essential parties within the seller's organization documents must approve the transfer or sale. An affidavit and opinion of the seller's legal counsel must be submitted to the Agency as proof of the legality of the transfer pursuant to the seller's Partnership Agreement or any other document and all applicable laws and regulations. An opinion of the buyer's legal counsel may also be requested by the Agency.

(c) In selecting the prospective buyer, the seller may solicit as many proposals as it deems necessary. Bidding is not required. The seller may negotiate among prospective buyers to obtain the best financial package/offer. Full and complete disclosure as to the nature and amount of the transaction must be made in writing to the Agency.

(d) As a condition of approving the transfer, the Agency will require that the housing project be restored to sound physical condition in accordance with the report submitted by the seller and the independent review by the Agency. Deferred maintenance must be corrected at the time of transfer unless otherwise approved by the Agency. Necessary repairs and capital improvements must be completed within a time frame acceptable to the Agency. A schedule for performing the work and a letter of credit or bond in the amount needed to complete the work must be provided to the Agency at closing.

(e) Cash contributions must be sufficient to fund both immediate and anticipated reserve needs. The mortgage and all fees and charges due the Agency must be current at the time of closing. All housing project reserve accounts must be funded to an acceptable level, as determined by the Agency, within 12 months from the date of transfer in accordance with the Agency's repair and replacement funding schedule.

(f) Contributions toward the purchase price from any sources other than cash proceeds, must be identified.

(g) Upon assignment and assumption of the Agency's mortgage, modifications shall be made to the mortgage clearly specifying the Agency's right to enforce these regulations.

#### 5:80-5.5 Scope of review

(a) The scope of the Agency's review of transfer depends on the nature of the interest to be transferred. A transfer of 90 percent or more of the ownership interest requires full review. Full review is also required in the following instances.

1. Transfer of title from the seller to any other party;
2. Any conveyance or attempted conveyance by land contract;
3. Transfer of 90 percent or more of the interest in the partnership/owner within a five year period;

Amended by R.1989 d.524, effective October 2, 1989.

See: 21 N.J.R. 1509(b), 21 N.J.R. 3090(a).

Changed text to "project" from "development" throughout.

In (a)1: added "including ... determined by the Agency."

#### **5:80-6.6 Use of funds with regard to projects subsidized under Section 236 Interest Reduction Program**

(a) These regulations recognize the essential difference between the Section 236 and Section 8 Program. In projects subsidized through interest reductions, tenants must bear the full responsibility for all other operating costs. Accordingly after payments required by N.J.A.C. 5:80-6.4, all proceeds of the sale of the project will be primarily pledged to easing the burden on the tenants by subsidizing repair and maintenance or operating costs. If, however, the nonprofit can demonstrate that the project is in sound physical and financial condition and will likely remain so for the foreseeable future, a portion of the proceeds or investment income on the proceeds may be deposited into a CDE.

(b) All cash proceeds received on the sale of a development subsidized under Section 236 shall, after payment required under N.J.A.C. 5:80-6.4 be deposited into a Project Subsidy Reserve (PSR). The income and principal on the PSR may be utilized in the following manner:

1. First to pay any existing operating deficits, including debt service arrearages of the development;
2. To fund any capital improvements or repairs which are required for the viable operation of the project and cannot be funded out of other reserves at the development;
3. To provide an additional source of operating revenue to assist in financing the normal operations of the project including debt service so that future rent increases can be moderated or so that rents may be maintained, to the extent feasible, at a level which is appropriate to the tenant population for which the development is intended;
4. After the nonprofit has demonstrated, based on information required under N.J.A.C. 5:80-6.4(a)6, that the funds in the PSR are not required for any of the purposes listed in (b)1-3 above and will not be required for the foreseeable future, it may request that a portion of these funds or the investment income on these funds be deposited into a CDE as described in N.J.A.C. 5:80-6.5.

Amended by R.1989 d.524, effective October 2, 1989.

See: 21 N.J.R. 1509(b), 21 N.J.R. 3090(a).

In (b): deleted "of the fees" in regard to payments.

#### **5:80-6.7 Investment income earned on the PSR, DCE and CDE**

(a) After the payment of the fee specified in N.J.A.C. 5:80-6.4(a)5 the investment income earned on the DCE and CDE may be used:

1. To fund current operating deficits and/or arrearages including debt service arrearages of the development;

2. To pay the partners a return on equity to the extent allowed by law and to the extent not paid from operating revenues of the development, but only if there are no operating deficits or arrearages at the development;

3. In accordance with the designated uses of the accounts or for other purposes requested by the nonprofit and approved by the Agency.

(b) After funding the uses described in N.J.A.C. 5:80-6.6(b)1-3 and the required fee specified in N.J.A.C. 5:80-6.4(a)5, the investment income on the PSR may be utilized in the manner set forth in (a) above.

#### **5:80-6.8 Use of DCE and CDE for development of housing**

(a) In addition to uses permitted under N.J.A.C. 5:80-6.5, 6.6, and 6.7, housing sponsors, or the authorized entity with the housing sponsor's organizational structure with financial control over the DCE/CDE accounts, may, with Agency approval, use DCE and CDE funds, and interest thereon, for the development, operation, maintenance, construction, rehabilitation or improvement of or investment in additional housing within the community or in other communities. DCE and CDE funds may only be used for such purposes if the Agency determines that DCE and CDE funds are not needed to insure the financial viability or physical structure of the project. This includes, but is not limited to, a finding by the Agency that the project has surplus cash and that DCE and CDE funds are not needed for providing an additional source of operating revenue to assist in financing any other aspect of the current or future operations of the project.

(b) Housing sponsor's, or the authorized entity within the housing sponsor's organizational structure with financial control over the DCE/CDE accounts, may use DCE and CDE funds as specified in (a) above or may deposit DCE and CDE funds with the Agency to be used by the Agency or by the Agency in conjunction with other developers for the purposes and under the conditions outlined in (a) above.

New Rule, R.1989 d.524, effective October 2, 1989.

See: 21 N.J.R. 1509(b), 21 N.J.R. 3090(a).

Renumbered 5:80-6.8, "Additional terms of purchase," to 6.9.

#### **5:80-6.9 Additional terms of purchase**

(a) The terms and conditions between the selling nonprofit and the purchasing partnership may vary from transaction to transaction. However, the following matter should be considered:

1. The role of the nonprofit in the purchasing partnership must be determined based on the past performance record of the nonprofit and the extent to which it desires to remain actively involved in the development;

2. Deferred purchase payments in the form of a debt owed by the purchaser to the nonprofit will only be permitted to the extent allowable under applicable bond

resolutions and shall incorporate at least the following provisions:

- i. That the second mortgage, security agreement, or any other debt instrument must be subordinate to any existing mortgage of the Agency;
  - ii. That in the event of declaration of a default on any existing mortgage of the Agency, the debt and all rights thereunder to rent or any other project income or assets shall be assigned to the Agency;
3. Upon sale or refinancing of the development, or upon termination of the mortgage other than by default, any remaining assets of the development may be shared among the nonprofit, other partners, the Agency and municipality to the extent allowed by law.

Renumbered from 5:80-6.8 by R.1989 d.524, effective October 2, 1989.  
See: 21 N.J.R. 1509(b), 21 N.J.R. 3090(a).

#### 5:80-6.10 Tax obligations

- (a) The partnership shall be responsible for all tax consequences arising out of the sale of the profit.
- (b) All existing contractors shall be notified of the sale and of the fact that they shall be responsible for the payment of all New Jersey sales tax and other taxes arising out of the loss of nonprofit status by the owner from the date of closing forward.

Renumbered from 5:80-6.9 by R.1989 d.524, effective October 2, 1989.  
See: 21 N.J.R. 1509(b), 21 N.J.R. 3090(a).

#### 5:80-6.11 Approval and disclosure requirements

The Agency specifically reserves the right to investigate and approve any party involved in the transaction including without limitation all limited and general partners, attorneys, syndicators, brokers or consultants, as well as any partners or shareholders thereof. Prior to its approval the Agency may require any party to disclose such information as may be reasonably related to the transaction and may require any party to sign such waivers, releases or affidavits as may be necessary to authenticate or investigate the information requested.

Renumbered from 5:80-6.10 by R.1989 d.524, effective October 2, 1989.  
See: 21 N.J.R. 1509(b), 21 N.J.R. 3090(a).

#### 5:80-6.12 Request for use of escrow funds

All uses of escrow funds or the investment income earned thereon must receive written approval by the Agency in accordance with procedures adopted from time to time by the Agency.

Renumbered from 5:80-6.11 by R.1989 d.524, effective October 2, 1989.  
See: 21 N.J.R. 1509(b), 21 N.J.R. 3090(a).

#### 5:80-6.13 (Reserved)

Repealed by R.1985 d.241, effective May 20, 1985.  
See: 17 N.J.R. 505(a), 17 N.J.R. 1258(b).

Renumbered from 5:80-6.12 by R.1989 d.524, effective October 2, 1989.  
See: 21 N.J.R. 1509(b), 21 N.J.R. 3090(a).

### SUBCHAPTER 7. TENANT SELECTION STANDARDS

#### 5:80-7.1 Definitions

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

“Affirmative Fair Housing Marketing Plan” is a plan to attract those people who would least likely apply for residence.

“Disabled person” is a person who is under a disability as defined in Section 223 of the Social Security Act or a person who has a “developmental disability” which is mental in nature as defined by Developmental Disabilities Amendments of 1970 (42 USC 60001).

“Displaced person” is a family or individual who has been displaced by governmental action or otherwise formally recognized pursuant to Federal disaster or otherwise has been involuntarily displaced.

“Elderly family” is one in which the head of household, spouse or sole member is 62 years of age or older, handicapped or disabled.

“Family” is two or more persons sharing residency and related by blood, marriage or operation of law, or who demonstrate a stable relationship which has existed over a period of time.

“Handicapped” is a person having a physical or mental impairment which is expected to be of long continued and indefinite duration and which substantially impedes his or her ability to live independently and which is of such a nature that such ability could be improved by more suitable housing conditions.

“Household” is one or more persons which share or will share a residence.

“Housing needs” is circumstances beyond the control of a family which are not one of the priorities set forth such as substandard housing, overcrowding, living with family or others, dangerous neighborhood, housing unsuitable because of medical reasons, etc.

“HUD” is the United States Department of Housing and Urban Development.

**5:80-13.10 Return on equity for eligible loans**

For each eligible loan made for owner-occupied structures of four dwelling units or less, there is no general restriction on the rate of return which the owner may receive on its investment whether from rental of the other units in the structure or on sale of the property. However, the Agency may establish limitations on the rate of return on investment for owner-occupied, one to four family units, either at the time of the making of the original loan or upon the sale, of all or a portion of the property and improvement, upon a finding that such restrictions are necessary to assure the continued use of the property for individuals of low to moderate income.

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**SUBCHAPTER 14. MAKING OR PURCHASING ELIGIBLE LOANS FOR SINGLE FAMILY HOME IMPROVEMENT**

**5:80-14.1 Commitment applications**

(a) Upon request, the Agency shall make available to all mortgage sellers a single family home improvement loan application form. Such form will be provided at least 14 days in advance of the date all such applications must be submitted to the Agency. The single family home improvement loan application shall contain, among other things:

1. Provision for the mortgage seller to state the maximum principal amount of single home improvement loans which the mortgage seller offers to the Agency;
2. The date by which the commitment application must be submitted to the Agency in order to be considered for an allocation of funds and the date by which program commitments will be accepted by the Agency;
3. A form of the proposed note purchase agreement to be executed by the mortgage seller; and
4. Provision for the mortgage seller to furnish information regarding its residential loan origination activities during a time period to be prescribed by the Agency.

**5:80-14.2 Allocation of commitments**

(a) In allocating funds available to meet the commitments requested by mortgage sellers, the Agency shall consider, among other things:

1. The amounts of the program commitments requested by the various mortgage sellers;
2. The adequacy of supply of affordable single family home improvement loans in the areas in which the mortgage seller proposes to originate single family home improvement loans;
3. The financial strength and stability of the mortgage seller;

4. The residential loan originating activity reported in the commitment application and the ability of the mortgage seller to originate single family home improvement loans under the terms and conditions of the note purchase agreement.

**5:80-14.3 Execution of note purchase agreement**

Upon notice of acceptance by the Agency to a mortgage seller of all or a portion of the home improvement loan program commitment requested by it, the Agency shall specify the date by which the Agency shall execute the note purchase agreement executed by the mortgage seller.

**5:80-14.4 Unsecured single family home improvement loans**

Single family home improvement loans which are not secured by a mortgage on the property being improved or rehabilitated shall be limited to loans specified in the Term Sheet for each single family Home Improvement Loan Program fully insured under the Federal Housing Administration Title I Property Improvement Loan Program.

**5:80-14.5 Eligibility requirements**

The Agency may designate income and other limitations with respect to persons eligible to receive single family home improvement loans and with respect to the use of proceeds of single family home improvement loans by such persons, which limitations may vary according to geographical area, in order that the purchase of single family home improvement loans by the Agency shall best effectuate the general purpose of the Act and the objectives of expansion and the supply of funds in the State available for single family home improvement loans, provisions of additional housing needed to remedy the shortage of adequate housing in the State and elimination of substandard and energy inefficient dwellings. The Agency may set limitations on the principal amounts of a single family home improvement loan to effectuate the aforesaid purposes of the Act.

**5:80-14.6 Regulations of points charged by mortgage sellers**

The Agency may regulate, limit or prohibit the charge or collection of any commitment fee, premium, bonus, points or other fees in connection with the origination of single family home improvement loans by Mortgage Seller to be purchased by the Agency.

**5:80-14.7 Refinancing of pre-existing debt**

The Agency shall not acquire any single family home improvement loans made for the purpose of refinancing pre-existing debt.

**5:80-14.8 Purchase of Agency bonds**

No mortgage seller (including any related person thereof, as defined in Section 103(b)(6)(C) of the Internal Revenue Code) shall, pursuant to any arrangement, formal or infor-

mal, purchase the bonds of the Agency in an amount related to the amount of the single family home improvement loans to be purchased from such mortgage seller (or related person, as aforesaid) by the Agency.

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## SUBCHAPTERS 15 THROUGH 16. (RESERVED)

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### SUBCHAPTER 17. PREVAILING WAGES

#### 5:80-17.1 Authority

This subchapter is promulgated pursuant to the authority of N.J.S.A. 55:14K-42.

#### 5:80-17.2 Applicability of prevailing wages

(a) Prevailing wage rates shall be paid in the construction or rehabilitation of Housing Projects by all Housing Sponsors or builders, contractors or subcontractors engaged by Housing Sponsors, except as may be provided under the provisions of N.J.A.C. 5:80-1.4 or N.J.S.A. 55:14K-5y. The Agency may also require prevailing wage rates to be paid in connection with the operation, repair or improvement of any Housing Project or in conjunction with the construction or rehabilitation of any improvement or development financed by a loan from the Agency.

(b) Prevailing wage rates required to be paid pursuant to (a) above shall be determined in accordance with N.J.S.A. 55:14K-42.

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## SUBCHAPTER 18. DEBARMENT AND SUSPENSION FROM AGENCY CONTRACTING

#### 5:80-18.1 Definitions

When used in this subchapter, the following terms shall have the following meanings:

"Affiliates" means persons having an overt or covert relationship such that any one of them directly or indirectly controls or has the power to control another.

"Agency contracting" means any arrangement giving rise to an obligation to supply anything to or perform any service for the Agency, other than by virtue of State or Agency employment, or to supply anything to or perform any service for a private or public person where Agency provides substantial financial assistance and retains the right to approve or disapprove the cost, nature or quality of the goods or service or the persons who may supply or perform the same.

"Debarment" means an exclusion from the New Jersey Housing and Mortgage Finance Agency (Agency) contracting, on the basis of a lack of responsibility evidenced by an offense, failure, or inadequacy of performance, for a reasonable period of time commensurate with the seriousness of the offense, failure, or inadequacy of performance.

"Person" means any natural person, company, firm, association, corporation or other entity that is engaged in or offers or proposes to be engaged in Agency contracting.

"Suspension" means an exclusion from Agency contracting for a temporary period of time, pending the completion of an investigation or legal proceedings.

Amended by R.1990 d.247, effective May 21, 1990.

See: 21 N.J.R. 3350(a), 22 N.J.R. 1556(b).

Definitions of agency contracting and person added.

#### Case Notes

Cited as former codification N.J.A.C. 5:80-4.1. New Jersey Housing Finance Agency v. Canino, 7 N.J.A.R. 182 (1983).

#### 5:80-18.2 Causes for debarment of a person(s)

(a) In the public interest, the Agency may debar a person for any of the following causes:

1. Commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract, or subcontract thereunder, or in the performance of such contract or subcontract.

2. Violation of the Federal Organized Crime Control Act of 1970, or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, perjury, false swearing, receiving stolen property, obstruction of justice, or any other offense indicating a lack of business integrity or honesty.

3. Violation of the Federal or State Antitrust Statutes, or of the Federal Anti-Kickback Act (18 U.S.C. 874, 40 U.S.C. 276b, c).

4. Violations of any of the laws governing the conduct of elections of the Federal Government, of the State of New Jersey, or of its political subdivisions.

5. Violation of the "Law Against Discrimination" (P.L. 1945, c.169, C. 10:5-1 et seq. as supplemented by P.L. 1975, c.127), or of the act banning discrimination in public works employment (C. 10:2-1 et seq.) or of the act prohibiting discrimination by industries engaged in defense work in the employment of persons therein (C. 114, L. 1942, C. 10:1-10 et seq.).

6. Violations of any laws governing hours of labor, minimum wage standards, prevailing wage standards, discrimination in wages, or child labor.

7. Violations of any laws governing the conduct of occupations or professions or regulated industries.

8. Violations of any other laws which may bear upon a lack of responsibility or moral integrity.

9. Willful failure to perform in accordance with contract specifications or within contractual time limits.

10. A record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts, provided that such failure or unsatisfactory performance has occurred within a reasonable time preceding the determination to debar and was caused by acts within the control of the person debarred.

11. Violation of contractual or statutory provisions regulating contingent fees.

12. Any other cause affecting responsibility as an Agency contractor of such serious and compelling nature as may be determined by the Agency to warrant debarment, even if such conduct has not been or may not be prosecuted as violations of such laws or contracts.

13. Debarment by some other department or agency in the Executive Branch.

14. Debarment by the Department of Housing and Urban Development, Federal Housing Administration or any other instrumentality, agency or department of the United States Government.

15. Any violation of the prohibited activities listed at N.J.A.C. 5:80-18.8(a) or failure to report violations of prohibited activities as required under N.J.A.C. 5:80-18.8(b).

Amended by R.1985 d.559, effective November 4, 1985.  
See: 17 N.J.R. 1174(b), 17 N.J.R. 2607(a).

(a)12 deleted text "including such conduct as may be proscribed by the laws or contracts enumerated in this section".

(a)14 added.

Amended by R.1990 d.247, effective May 21, 1990.  
See: 21 N.J.R. 3350(a), 22 N.J.R. 1556(b).

Text at 15 added.

#### Case Notes

Offenses indicating lack of business integrity or honesty as grounds for disbarment (citing former codification N.J.A.C. 5:80-4.2). *New Jersey Housing Finance Agency v. Canino*, 7 N.J.A.R. 182 (1983).

#### 5:80-18.3 Conditions affecting the debarment of a person(s)

(a) The following conditions shall apply concerning debarment:

1. Debarment shall be made only upon approval of the members of the Agency, upon their own action or upon recommendation by the Executive Director of the Agency, except as otherwise provided by law.

2. The existence of any of the causes set forth in N.J.A.C. 5:80-18.2 shall not necessarily require that a person be debarred. In each instance, the decision to debar shall be made within the discretion of the members of the Agency, upon their own action or upon recommen-

ation by the Executive Director of the Agency, unless otherwise required by law, and shall be rendered in the best interests of the State.

3. All mitigating factors shall be considered in determining the seriousness of the offense, failure or inadequacy of performance, in deciding whether debarment is warranted.

4. The existence of a cause set forth in N.J.A.C. 5:80-18.2(a)1-8 shall be established upon the rendering of a final judgment or conviction, including a guilty plea or a plea of nolo contendere by a court of competent jurisdiction or by an administrative agency empowered to render such judgment. In the event an appeal taken from such judgment or conviction results in reversal thereof, the debarment shall be removed upon the request of the debarred person unless other cause for debarment exists.

5. The existence of a cause set forth in N.J.A.C. 5:80-18.2(a)9-12 and 15 shall be established by evidence which the Agency determines to be clear and convincing in nature.

6. Debarment for the cause set forth in N.J.A.C. 5:80-18.2(a)13 and 14 shall be proper, provided that one of the causes set forth in N.J.A.C. 5:80-18.2(a)1-12 was the basis for debarment by the original debarring agency. Such debarment may be based entirely on the record of facts obtained by the original debarring agency, or upon a combination of such facts and additional facts.

Amended by R.1990 d.247, effective May 21, 1990.  
See: 21 N.J.R. 3350(a), 22 N.J.R. 1556(b).

References to 5:80-18.2(a)14 and 15 added at (a)6 and (a)5.

#### 5:80-18.4 Procedures; period of debarment; scope of debarment affecting the debarment of a person(s)

(a) Agency seeking to debar a person or his affiliates shall furnish such party with a written notice:

1. Stating that debarment is being considered;
2. Setting forth the reasons for the proposed debarment; and
3. Indicating that such party will be afforded an opportunity for a hearing if he so requests within a stated period of time. All such hearings shall be conducted in accordance with the provisions of the Administrative Procedure Act. However, where another department or agency has imposed debarment upon a party, the Agency may also impose a similar debarment without affording an opportunity for a hearing, provided that the Agency furnishes notice of the proposed similar debarment to that party, and affords that party an opportunity to present information in his behalf to explain why the proposed similar debarment should not be imposed in whole or in part.

(b) Debarment shall be for a reasonable, definitely stated period of time which as a general rule shall not exceed five years. Debarment for an additional period shall be permitted provided that notice thereof is furnished and the party is afforded an opportunity to present information in his behalf to explain why the additional period of debarment should not be imposed.

(c) Except as otherwise provided by law, a debarment may be removed or the period thereof may be reduced in the discretion of the members of the Agency upon their own action or upon recommendation by the Executive Director of the Agency upon the submission of a good faith application under oath, supported by documentary evidence, setting forth substantial and appropriate grounds for the granting of relief, such as newly discovered material evidence, reversal of a conviction or judgment, actual change of ownership, management or control, or the elimination of the causes for which the debarment was imposed.

(d) A debarment may include all known affiliates of a person, provided that each decision to include an affiliate is made on a case by case basis after giving due regard to all relevant facts and circumstances.

(e) The offense, failure or inadequacy of performance of an individual may be imputed to a person with whom he is affiliated, where such conduct was accomplished within the course of his official duty or was effected by him with the knowledge or approval of such person.

Amended by R.1985 d.559, effective November 4, 1985.

See: 17 N.J.R. 1174(b), 17 N.J.R. 2607(a).

(d) substantially amended; (e) added.

#### Case Notes

Affiliates controlled directly or indirectly by offender also subject to debarment (citing former codification N.J.A.C. 5:80-4.4). *New Jersey Housing Finance Agency v. Canino*, 7 N.J.A.R. 182 (1983).

Suspension of defendants from agency contracting pending formal debarment hearing constitutional (citing former codification N.J.A.C. 5:80-4); suspension to run from original notice of suspension rather than from date of final agency decision (appeal modification). *New Jersey Housing Finance Agency v. Canino*, 7 N.J.A.R. 182 (1983).

#### 5:80-18.5 Causes for suspension of a person(s)

In the public interest, the Agency, upon approval of the Attorney General, may suspend a person for any cause specified in N.J.A.C. 5:80-18.2 or upon a reasonable suspicion that such cause exists.

#### Case Notes

Cited as former codification N.J.A.C. 5:80-4.5. *New Jersey Housing Finance Agency v. Canino*, 7 N.J.A.R. 182 (1983).

#### 5:80-18.6 Conditions for suspension of a person(s)

(a) The following conditions concerning suspension are to be adhered to:

1. Suspension shall be imposed only upon approval of the members of Agency, upon their own action or upon recommendation by the Executive Director of the Agency, and upon approval of the Attorney General, except as otherwise provided by law.

2. The existence of any cause for suspension shall not require that a suspension be imposed, and a decision to suspend shall be made at the discretion of the members of the Agency, upon their own action or upon recommendation by the Executive Director of the Agency, and at the discretion of the Attorney General, and shall be rendered in the best interests of the State.

3. Suspension shall not be based upon unsupported accusation, but upon adequate evidence that cause exists or upon evidence adequate to create a reasonable suspicion that cause exists.

4. In assessing whether adequate evidence exists, consideration shall be given to the amount of credible evidence which is available, to the existence or absence of corroboration as to important allegations, and to inferences which may properly be drawn from the existence or absence of affirmative facts.

5. Reasonable suspicion of the existence of a cause described in N.J.A.C. 5:80-18.2(a)1-8 may be established by the rendering of a final judgment or conviction by a court or administrative agency of competent jurisdiction, by grand jury indictment, or by evidence that such violations of civil or criminal law did in fact occur.

6. A suspension invoked by another agency for any of the causes described in N.J.A.C. 5:80-18.2(a)1-13 may be the basis for the imposition of a concurrent suspension by the Agency, which suspension may be imposed when found to be in the best interest of the State.

#### 5:80-18.7 Procedures; period of suspension; scope of suspension affecting the suspension of a person(s)

(a) The following provisions regarding procedures, period of suspension and scope of suspension shall be adhered to by the Agency.

1. Upon approval of the Attorney General, the Agency, may suspend a person or his affiliates, provided that within 10 days after the effective date of the suspension, the Agency, provides such party with a written notice:

i. Stating that a suspension has been imposed and its effective date;

ii. Setting forth the reasons for the suspension to the extent that the Attorney General determines that such reasons may be properly disclosed;

iii. Stating that the suspension is for a temporary period pending the completion of an investigation and such legal proceedings as may ensue; and

iv. Indicating that, if such legal proceedings are not commenced or the suspension removed within 60 days of the date of such notice, the party will be given either a statement of the reasons for the suspension and an opportunity for a hearing if he so requests, or a statement declining to give such reasons and setting forth the Agency's position regarding the continuation of the suspension. Where a suspension by another agency has been the basis for suspension by the Agency, the latter shall note that fact as a reason for its suspension.

2. A suspension shall not continue beyond 18 months from its effective date unless civil or criminal action regarding the alleged violation shall have been initiated within that period, or unless debarment action has been commenced. Whenever prosecution or debarment action has been initiated, the suspension may continue until the legal proceedings are completed.

3. A suspension may include all known affiliates of a person, provided that each decision to include an affiliate is made on a case by case basis after giving due regard to all relevant facts and circumstances.

4. The offense, failure or inadequacy of performance of an individual may be imputed to a person with whom he is affiliated, where such conduct was accomplished within the course of his official duty or was effectuated by him with the knowledge or approval of such person.

Amended by R.1985 d.559, effective November 4, 1985.

See: 17 N.J.R. 1174(b), 17 N.J.R. 2607(a).

(a)3 substantially amended; (a)4 added.

### 5:80-18.8 Prohibited activities of persons; reporting requirement

(a) In order to ensure that all persons meet a standard of responsibility which assures the Agency, State of New Jersey and its citizens that such persons will both compete and perform honestly in their dealings with the Agency and avoid conflicts of interest, all persons are prohibited from engaging in the following activities:

1. No person shall pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any Agency member or employee or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13i, of any such member or employee, or to any partnership, firm, or corporation with which such member, employee or member of their immediate family is employed or associated, or in which such member or employee has an interest within the meaning of N.J.S.A. 52:13D-13g.

2. No person may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such person to, any Agency member employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property

or services by or to the Agency. No person may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such person to any individual, firm or entity with which such member or employee is employed or associated or has an interest within the meaning of N.J.S.A. 52:13D-13g. Any relationships subject to this provision shall be reported in writing forthwith to the Executive Commission on Ethical Standards, which may grant a waiver of this restriction upon application of the member or employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest.

3. No person shall influence, or attempt to influence or cause to be influenced, any Agency member or employee in his official capacity in any manner which might tend to impair the objectivity or independence of judgment of said member or employee.

4. No person shall cause or influence, or attempt to cause or influence, any Agency member or employee to use, or attempt to use, his official position to secure unwarranted privileges or advantages for the person or any other individual or entity.

(b) All persons shall report to the Attorney General of New Jersey and the Executive Commission on Ethical Standards the solicitation of such persons of any fee, commission, compensation, gift, gratuity or other thing of value by an Agency member or employee.

(c) The prohibited activities in (a)1 through 4 above shall not be construed to prohibit a person from offering or giving gifts to or contracting with an Agency member or employee, nor be construed to prohibit an Agency member or employee from receiving gifts from or contracting with a person, and shall not be grounds for debarment pursuant to N.J.A.C. 5:80-18.2(a)15, provided that such activities are offered or made under the same terms and conditions that are available to members of the general public and are consistent with any rules promulgated by the Executive Commission on Ethical Standards.

(d) The Agency shall include the prohibited activities and reporting requirements in (a) and (b) above in requests for proposals by the Agency and in all contracts with every person.

New Rule, R.1990 d.247, effective May 21, 1990.  
See: 21 N.J.R. 3350(a), 22 N.J.R. 1556(b).

#### Case Notes

Cited as former codification N.J.A.C. 5:80-4.8. New Jersey Housing Finance Agency v. Canino, 7 N.J.A.R. 182 (1983).

**5:80-18.9 Extent of debarment and suspension**

The exclusion from the Agency contracting by virtue of debarment or suspension shall extend to all contracting and subcontracting within the control or jurisdiction of the Agency including any contracts which utilize Agency funds. When it is determined by the members of the Agency, upon their own action or upon recommendation by the Executive Director of Agency, to be essential to the public interest, and upon filing of a finding thereof with the Attorney General, and in the case of suspension, upon approval of the Attorney General, an exemption from total exclusion may be made by respect to a particular Agency contract.

**5:80-18.10 Prior notice by the Agency**

Insofar as practicable, prior notice of any proposed debarment or suspension shall be given by the Agency to the Attorney General and Treasurer.

**5:80-18.11 List of debarred and suspended**

The Agency shall supply to the State Treasurer a monthly list of all persons having been debarred or suspended in accordance with the procedures prescribed herein, including the effective date and term, if any, of such debarment or suspension. Such list shall at all times be available for public inspection.

**5:80-18.12 Discretion**

Nothing contained herein shall be construed to limit the authority of the Agency to contract or to refrain from contracting within the discretion allowed by law.

**5:80-18.13 Lists of other agencies**

Notwithstanding the failure of the Agency to debar or suspend any person or contractor pursuant to these regulations, whenever the Agency participates in any program financed, issued or guaranteed by any department, agency or instrumentality of the United States Government, it may rely on and distribute lists of persons suspended or debarred by such agency, department or instrumentality and prevent the listed person from participating in that program.

New Rule, R.1985 d.559, effective November 4, 1985.  
See: 17 N.J.R. 1174(b), 17 N.J.R. 2607(a).

**SUBCHAPTER 19. WAIVERS****5:80-19.1 Waivers**

Any party desiring a waiver or release from the express provisions of any of the regulations in this chapter may submit a written request to the Agency to the attention of the Executive Director. Waivers may be granted only by the Agency Board when such waiver would not contravene the provisions of N.J.S.A. 55:14K-1 et seq. and upon a finding that, in granting the waiver, the Board will be promoting the statutory purposes of the Agency.

**SUBCHAPTER 20. CERTIFICATION AND  
RECERTIFICATION OF INCOME****5:80-20.1 Authority**

This subchapter is promulgated pursuant to the authority of N.J.S.A. 55:14K-8b.

**5:80-20.2 General applicability**

(a) Regulations within this subchapter shall apply to all housing projects financed by a loan from the Agency.

(b) In addition to (a) above, if a unit within a housing project is assisted by subsidies provided by the United States Department of Housing and Urban Development, (HUD) such as Section 8 (Housing Assistance Payments) and Section 236 (Interest Reduction Payments) of the National Housing Act of 1937, or is financed pursuant to Section 103(b)(4) of the Internal Revenue Code, or is financed by a loan from the Agency which is insured or guaranteed by the United States or any agency thereof, then any additional Federal regulations, if applicable, regarding certification and recertification of income shall also apply to the unit. In such cases, the Housing Sponsor shall notify families that they are residing in housing projects which are subject to such Federal regulation. In the event there are any inconsistencies between the regulations in this subchapter and said Federal regulations, the Federal regulations shall prevail.

(c) References to any statutes, State or Federal, within this subchapter include any amendments which have been or may be made to such statutes.

**5:80-20.3 Documentation**

(a) Each family applying for admission to or occupying a unit within a housing project shall provide information and documentation which verifies, to the satisfaction of the Agency, gross aggregate family income. The documentation which the Agency shall require families to submit to housing sponsors may include but is not necessarily limited to:

1. A copy of the first page of their most recent Federal income tax return, or a signed certification stating that no tax return was filed;
2. Permission for the Agency and Housing Sponsor to contact the Internal Revenue Service for additional information which is necessary to verify gross aggregate family income and/or copies of the first page of a family's income tax returns;
3. Verification of employment;
4. Check stubs from employers, pensions, annuities, social security, unemployment, public assistance and workers' compensation;
5. A copy of court order for alimony and child support;

6. Confirmation of income from assets (for example, bank statements).

(b) In addition to documentation required pursuant to (a) above, any family applying for admission to or occupying a unit within a housing project assisted by subsidies provided by HUD, such as Section 8 and 236, and/or financed pursuant to Section 103(b)(4) of the Internal Revenue Code, may be required to submit additional documentation as required by Federal regulations regarding certification and recertification of income.

#### 5:80-20.4 Calculation of income

(a) For families applying for admission to or occupying a unit which is assisted by HUD subsidies such as Section 8 and 236 or families occupying a unit within a housing project financed pursuant to Section 103(b)(4) of the Internal Revenue Code, where such unit is restricted to families of low and moderate income as defined in Section 103(b)(12)(c), gross aggregate family income shall be calculated in accordance with applicable Federal regulations.

(b) For all other families, gross aggregate family income shall be calculated by the total annual income of all family members, from whatever source derived, including but not limited to pension, annuity, retirement and social security benefits. However, the calculation for gross aggregate family income shall not include such income as the Agency determines may be excluded. Such excludable income shall include but is not limited to the following:

1. Income from a dependent minor under 18 years of age, who is not the head of household or spouse of the head of household;
2. Lump-sum additions to family assets such as inheritances, capital gains, insurance payments included under health, accident, hazard or worker's compensation policies, and settlements for personal or property losses;
3. For income from dependents who are secondary wage earners but who are not included within (b)1 above, such wages up to a maximum of \$3,000.

(c) The calculation of gross aggregate family income with regard to (b) above, shall include an allowance of \$480.00 for each dependent minor under 18 years of age who is not the head of household or spouse of the head of household.

#### 5:80-20.5 Recertification periods and procedures

(a) Family income shall be recertified on an annual basis for:

1. Families occupying a unit which is assisted by HUD subsidies, such as Section 8 and 236.
2. Families occupying a unit within a housing project financed under Section 103(b)(4) of the Internal Revenue Code where such unit is restricted to families of low and moderate income as defined in Section 103(B)(12)(c).

(b) Family income shall be recertified at least every three years but not more than once each year, for all other families not included within (a)1 or 2 above.

(c) Housing sponsors shall notify each family in writing, not more than 100 days and not less than 91 days prior to expiration of a family's lease, that they must recertify family income. Such notification shall include but is not necessarily limited to:

1. A statement that families must recertify within 30 days of the notice;
2. A list of the documentation required for recertification;
3. A statement that families who fail to recertify income are subject to provisions set forth in N.J.A.C. 5:80-20.6, such statement including a description of such provisions;
4. A statement that after recertification, families whose income is in excess of the Federal or Agency maximum income limit may be subject to provisions set forth in N.J.A.C. 5:80-20.7, such statement including a description of such provisions.

(d) After recertification, Housing Sponsors shall calculate a family's gross aggregate family income. If there will be an adjustment in HUD subsidy or imposition of a surcharge as provided by N.J.A.C. 5:80-20.7, sponsors shall provide families with notice at least 30 days prior to the expiration of the lease. If requested by families, Sponsors shall provide an explanation of how they calculated the family's income and arrived at the adjustment of subsidy or imposition of a surcharge. Housing sponsors must submit all family recertification calculations and supporting documents to the Agency at least 30 days prior to the expiration of a family's lease.

(e) The Agency shall review the recertification calculations and supporting documents and notify the Housing Sponsor of its approval or any adjustments to the calculations within 30 days of receipt. If the review results in an adjustment which will decrease or further decrease a family's HUD subsidy or impose or increase a surcharge, Housing Sponsors shall provide the family with an additional 30 days notice prior to implementing such adjustment.

(f) Failure of the housing sponsor to comply with the time requirements in (c) and (d) above shall not relieve families of their obligation to complete their recertification within 30 days of receiving notice to recertify.

(g) Housing sponsors shall provide a written acknowledgment indicating the documents submitted, if requested at the time of submission.

#### Case Notes

Regulations requiring housing project sponsor to follow specific procedure in notifying tenants about recertifying their income and possibility of eviction upon failing to do so did not apply only to

noncertifying tenants whose income made them ineligible to remain tenants. N.C. Housing Associates, No. 100 v. Hightower-Cooper, 281 N.J.Super. 317, 657 A.2d 478 (L.1995).

**5:80-20.6 Failure to recertify**

(a) Any family which fails to recertify income after notification pursuant to this subchapter shall be subject to the following:

1. For families occupying a unit which is assisted by HUD subsidies, such as Section 8 and 236, such subsidies shall be terminated as needed to comply with applicable Federal regulations.

2. For all other families, they shall be subject to imposition of surcharges pursuant to N.J.A.C. 5:80-20.8, and may also be subject to eviction pursuant to N.J.A.C. 5:80-20.9.

(b) Families subject to the provisions in (a) above, upon satisfactory completion of recertification, may have subsidies restored, provided said subsidies are available, or may, with Agency approval, have surcharges removed. Surcharges paid to the Agency for failure to recertify, as required by N.J.A.C. 5:80-20.8(d) may be returned, with Agency approval, if satisfactory completion of recertification is made within six months of the notice to recertify. Neither the Agency or the Sponsor is responsible for return of surcharges paid to the municipality.

**5:80-20.7 Adjustments in tenancy**

(a) For families occupying a unit assisted by HUD subsidies such as Section 8 and 236, upon recertification, families whose income is in excess of the maximum income limit under applicable federal regulations are subject to adjustment or termination of HUD subsidies as needed to comply with applicable Federal regulations.

(b) For all other families, upon recertification, those whose income is in excess of the maximum income limit under N.J.A.C. 5:80-8.2 may be subject to surcharges pursuant to N.J.A.C. 5:80-20.8, and may also be subject to eviction pursuant to N.J.A.C. 5:80-20.9.

(c) Upon recertification, Housing Sponsors must assure that the project contains the required number of low and moderate income families as required by N.J.A.C. 5:80-8.3.

**5:80-20.8 Surcharges**

(a) Upon recertification, if the gross aggregate family income exceeds the maximum income limit pursuant to N.J.A.C. 5:80-8.2 by 25 percent or less, the family shall continue to occupy the unit without the imposition of any surcharges. If the gross aggregate family income exceeds the maximum income limit by more than 25 percent, the family may continue to occupy the unit, subject to payment of a surcharge as outlined in (c) below. Such surcharges may only be imposed with approval of the Agency. When imposing surcharges, housing sponsors shall give families notice that they may be subject to eviction if their income continues to exceed the maximum income limit for six months from the expiration of the family's lease.

(b) Families subject to surcharges for failing to complete the recertification process (see N.J.A.C. 5:80-20.6) shall be surcharged at the maximum rate outlined in (c) below and may also be subject to eviction in accordance with N.J.A.C. 5:80-20.9. Sponsors shall provide families with notice at least 30 days prior to the expiration of the lease that a surcharge will be imposed for failure to recertify. Such surcharges or eviction actions require Agency approval.

(c) Surcharges imposed shall be based upon a family's unit rent in accordance with the following schedule:

Percentage that Gross Aggregate Income exceeds the Maximum Income Limit	Surcharge on Unit Rent
Up to and including 125%	None
In excess of 125% up to and including 130%	5%
In excess of 130% up to and including 135%	10%
In excess of 135% up to and including 140%	15%
In excess of 140% up to and including 145%	20%
In excess of 145% up to and including 150%	25%
In excess of 150%	30%

(d) Housing sponsors shall pay the surcharge to the municipality granting tax exemption to the project but only up to an amount that, together with payments made to the municipality in lieu of taxes and for any land taxes, equals 25 percent of the total rents or carrying charges of the project for the current and any prior years that the project has been in operation. For projects on which the Agency has made a loan, financed with the proceeds of bonds issued prior to January 1, 1973 any remainder of the surcharge or the total surcharge, if tax exemption has not been granted, shall be paid into the Agency's housing finance fund securing the bonds issued to finance the project. For projects financed on or after January 1, 1973, any remainder of the surcharge or the total surcharge, if tax exemption has not been granted, shall be paid to the Agency.

(e) Surcharges shall be imposed upon expiration of the lease provided families have received 30 days notice pursuant to N.J.A.C. 5:80-20.5. Families which have not received 30 days notice prior to lease expiration shall not have surcharges imposed until the 30 day notice has expired.

**5:80-20.9 Eviction**

(a) Families who fail to recertify income following notification pursuant to N.J.A.C. 5:80-20.5 may, with Agency approval, be evicted by the housing sponsor if such failure continues for at least six months from expiration of lease.

(b) Upon recertification, families whose gross aggregate family income exceeds the maximum income limit pursuant to N.J.A.C. 5:80-8.2 by more than 25 percent and continues to do so for at least six months after expiration of the lease may, with Agency approval, be evicted by the housing sponsor.

(c) Prior to eviction under this section, Housing Sponsors must provide families with written notice at the end of the six month period indicating that eviction procedures will begin unless they recertify within 10 days of the notice and show that family income has decreased below the maximum income limit. Families who fail to recertify within the 10 days or upon recertification are in excess of the maximum income limit may be evicted by following the provisions of N.J.S.A. 2A:18-61.1 et seq.

(d) In the case of tenants of income-restricted ALR units, neither failure to recertify nor income exceeding the maximum income limit shall be cause for eviction. However, the next available nonincome-restricted ALR unit shall be rented to an income-eligible tenant and shall be deemed an income-restricted ALR unit thereafter.

Amended by R.1998 d.80, effective February 2, 1998.

See: 29 N.J.R. 3214(a), 30 N.J.R. 539(b).

Added (d).

#### 5:80-20.10 Confidentiality

Housing Sponsors shall maintain files on the certification and recertification of family income at the project. Such files are to be kept as confidential and shall not be accessible to nor shall information contained therein be disclosed to any person except authorized representatives of the Housing Sponsor, Agency, HUD. Housing Sponsors shall require identification from each person claiming authority to review such confidential files and maintain a list of individuals who have been provided access to same. If a Housing Sponsor is not satisfied that a person requesting review has proper authority, review shall be denied and the matter referred to the Agency for final determination. Any copies of family files sent to the Agency pursuant to the certification or recertification process shall be maintained in the same confidential manner. If requested by a family at the time of submission, submitted material shall be returned to a family, when it is no longer needed.

### SUBCHAPTER 21. TRANSFER OF SERVICING OF SINGLE FAMILY MORTGAGE LOANS

#### 5:80-21.1 General applicability

(a) The rules set forth within N.J.A.C. 5:80-21.1 through 21.4 shall apply to all servicers of Agency single family mortgage program loans upon:

1. Sale or transfer of a majority interest in the servicing company or entity;
2. Sale or transfer of a majority ownership interest of the holding company;
3. Sale or transfer of the portfolio of Agency loans to another service; or

#### 4. Merger.

(b) The rules within this subchapter shall also apply to any change in the servicer's organizational structure, which in the Agency's determination, amounts to the type of transfer specified in (a) above. In determining whether a change in the servicer's organizational structure is a transfer subject to these rules, the Agency may consider:

1. Name change of servicer;
2. Change of location of servicer;
3. Staff changes by servicer;
4. Legal or other significant organizational changes in the servicer's structure; and
5. Compensation paid to the servicer.

(c) The rules within this subchapter shall not apply to loan originators who are not servicers or to newly originated loans that are being transferred from the originating lender to an approved servicer.

Amended by R.1997 d.523, effective December 15, 1997.

See: 28 N.J.R. 4833(a), 29 N.J.R. 5285(a).

Rewrote (a)1 through (a)3, inserted (a)4 and (b)5; and in (c), extended the exception to newly originated loans transferred to an approved servicer.

#### 5:80-21.2 Agency review and approval of transfer

(a) No servicer may enter into any transfer as specified in N.J.A.C. 5:80-21.1 without obtaining prior written consent of the Agency. Approval of all transfers shall be made by the Executive Director of the Agency.

(b) In order for a transfer to be approved, the successor servicer must meet all of the following requirements:

1. Is a currently approved Agency seller/servicer and has a demonstrable ability to service an Agency portfolio, of the size to be transferred;
2. Have a net worth consistent with the standards set forth by the Federal National Mortgage Association (FNMA) and acceptable to bond insurers, where applicable;
3. Have a servicing portfolio of at least \$25 million dollars in total outstanding principal balances;
4. Be an approved servicer for the FNMA or Federal Home Loan Mortgage Corporation (FHLMC). If the servicer is not FNMA/FHLMC approved, the Agency reserves the right to make its own determination;
5. Have current certified financial statements and servicing and delinquency statistics that are satisfactory to the Agency;
6. Completion of the participation application to the satisfaction of the Agency;

7. Completion of the Agency's Questionnaire for Servicing Transfers to the satisfaction of the Agency. This form must also be completed by the transferring servicer;

8. Evidence of fidelity insurance, errors and omission insurance and other insurance required by the Agency;

9. If a successor servicer is an existing Agency servicer, there must be a record of acceptable servicing performance, as determined by the Agency; and

10. Be approved by any entity which has provided insurance for the specified bonds, if required by that entity.

(c) In addition to the requirements in (b) above, the successor servicer shall meet all requirements of the Agency's General Resolution and other documents issued in connection with the sale of bonds from which the financing for the serviced loans has been provided.

Amended by R.1997 d.523, effective December 15, 1997.  
See: 28 N.J.R. 4833(a), 29 N.J.R. 5285(a).

Renamed the section; rewrote (b)1 and (b)2; in (b)3, deleted the requirement that the servicing portfolio contain at least 200 loans, and increased the minimum portfolio size to \$25 million dollars; and added (b)10 and (c).

### 5:80-21.3 Compensation adjustment due on transfer

(a) The compensation paid to the Agency shall be adjusted upon sale or transfer by a servicer of Agency loans. At the time of the transfer, the servicer shall pay to the Agency an amount equal to three times the service fee earned for the month during which the transfer occurs.

(b) Compensation adjustment shall not be paid on loans in foreclosure or loans in default over 60 days.

(c) The compensation adjustment set forth in (a) above shall not apply to:

1. Newly originated loans sold or transferred by sellers (originators) who are not Agency approved servicers;
2. Servicers of portfolios with 150 loans or less that are transferring their entire Agency portfolio;
3. Servicers who are subject to a servicer's agreement that provides for compensation adjustment of amounts less than those provided by these rules; and
4. Loan sale or organizational transactions for which no compensation is involved.

Amended by R.1997 d.523, effective December 15, 1997.  
See: 28 N.J.R. 4833(a), 29 N.J.R. 5285(a).

Renamed the section; rewrote (a); in (b) substituted "Compensation adjustment" for "A transfer fee" and added (c).

### 5:80-21.4 Subsequent transfers

(a) The rules within this subchapter and all terms and conditions of the then current agreements between the Agency and the transferring servicer shall apply in their entirety to any subsequent transfers by servicers who became successor servicers under the provisions of these rules.

(b) Successors servicers shall assume and abide by all the terms, including compensation adjustments, of the applicable mortgage servicing agreements on the loans being serviced unless different terms are agreed to in writing by the successor servicer and the Agency. Portfolio records shall be delivered to the successor, including, but not limited to, current and past status, escrow balances, and prepayment and curtailment information. Transferor and transferee shall fully indemnify the Agency against losses or claims resulting from the transfer.

Amended by R.1997 d.523, effective December 15, 1997.  
See: 28 N.J.R. 4833(a), 29 N.J.R. 5285(a).

In (a), inserted a reference to agreements between the Agency and the transferring servicer; and in (b), inserted the second sentence.

### 5:80-21.5 Termination of servicing by Agency

(a) The Agency may terminate the servicing agreement with a servicer with or without cause. If termination without cause the Agency shall pay to the servicer 50 basis points of the outstanding principal loan balance of any loan that is less than 84 months old and that is not in default by 60 or more days. No compensation shall be paid for any loan that is older than seven years.

(b) If the Agency terminates the servicing agreement with cause, in accordance with the agreement, no compensation adjustment shall be paid unless the Agency permits the servicer to transfer servicing, in which case the rules set forth in N.J.A.C. 5:80-21.1 through 21.4 shall apply.

(c) In the event that the Agency terminates the servicing agreement, the servicer shall compensate and indemnify the Agency for losses to the Agency or for which the Agency becomes responsible, which are attributable to the servicer. In addition, the servicer shall not receive a compensation adjustment as may have otherwise been provided under (a) above, unless the servicer shall have first made the Agency whole. The servicer shall not be permitted to set off any compensation adjustment under (a) above against its obligations to the Agency.

New Rule, R.1997 d.523, effective December 15, 1997.  
See: 28 N.J.R. 4833(a), 29 N.J.R. 5285(a).

## SUBCHAPTER 22. AFFIRMATIVE FAIR HOUSING MARKETING

### 5:80-22.1 Definitions

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

(d) Only eligible households shall have an opportunity to be considered for low and moderate income housing. The Agency shall have the authority to approve all eligible households.

(e) To the greatest extent possible, eligible household shall be referred to available units using the following accepted standards for occupancy, provided that in no case shall a household be referred to a unit that provides for more than one extra bedroom per family occupancy requirement:

1. A maximum of two persons per bedroom.
2. Children of same sex in same bedroom.
3. Unrelated adults or persons of the opposite sex other than husband and wife in separate bedrooms.
4. Children not in same bedroom with parents.

Amended by R.1993 d.640, effective December 6, 1993.  
See: 25 N.J.R. 4369(a), 25 N.J.R. 5471(a).

#### 5:80-26.20 Assignment or sublease of rental units

Provided that assignment or sublease is permitted under the terms of the lease or rental agreement, the tenant may assign or lease the unit, provided the assignee or sub-lessee qualifies as an eligible household. Tenants shall submit a written request to the Agency or municipality administering affordability controls for approval to assign or sublease the unit. Any units which are assigned or sublet will remain subject to rent adjustment controls of 5:80-26.16.

#### 5:80-26.21 Foreclosure: owner-occupied and rental units

(a) A judgment of foreclosure by a first money mortgagee on any restricted owner-occupied unit will result in a termination of resale controls, unless otherwise ordered by the court. The affordability controls of this subchapter shall remain in effect in the event of judgments of foreclosure on rental units (except for rental units contained in owner-occupied units).

(b) Notice of foreclosure shall allow the municipality to purchase the unit at the maximum approved price and hold, rent or convey the unit to an eligible household, provided the municipality purchases the unit prior to the judgment of foreclosure.

(c) In the event of a foreclosure sale by the first purchase money mortgagee, after the first purchase money mortgage, including costs of foreclosure and any second mortgages have been satisfied, any surplus funds exceeding the maximum allowable resale price as calculated by the approved index, shall be paid to the Agency. Any remaining funds in excess of outstanding grants or loans will be returned to the municipality.

Amended by R.1988 d.331, effective July 18, 1988.  
See: 20 N.J.R. 862(a), 20 N.J.R. 1688(b).

(a) Amended so that controls will terminate upon foreclosure of owner-occupied units only and only upon foreclosure by a first money mortgagee.

(b) Amended to conform to the language of a similar provision in the Council of Affordable Housing's rules.

#### 5:80-26.22 Agency grants or loans

(a) In order to receive approval for a grant or loan including, but not limited to, mortgage financing or set-asides of mortgage financing from the Agency a municipality must provide a plan for assuring that the assisted housing will remain affordable to and occupied by low and moderate income households for the time periods prescribed in these rules or pursuant to court order or court approved settlement. The municipality may adopt and administer its own plan for establishing affordability controls, provided the plan is approved by the Agency, or may request that the Agency administer affordability controls on behalf of the municipality as provided by N.J.A.C. 5:80-26.23. The rules in this subchapter will be used as a standard for the review and approval of any affordability control plan adopted and to be administered by a municipality.

(b) Loans or grants made by the Agency may be subject to recapture if any unit(s) financed by such grant or loan is lost to the low or moderate income housing stock during the affordability control period established in N.J.A.C. 5:80-26.3.

#### 5:80-26.23 Contractual agreements with municipalities or developers

(a) The Agency shall enter into contracts for the administration of affordability controls upon request by a municipality provided that the municipality has no appropriate administrative agency to administer the controls for a given project. The municipality shall adopt a resolution containing the following provisions:

1. A statement declaring that no appropriate administrative agency exists for a given project within the municipality to administer affordability controls;
2. A statement authorizing the municipality to enter into contractual agreements with the Agency whereby the Agency will administer affordability controls for the municipality;
3. A statement which identifies the municipal officer(s) who have authority to enter into contractual agreements on behalf of the municipality; and
4. A current inventory of the units to be subject to affordability controls.

(b) The Agency shall enter into contracts for the administration of affordability controls upon request by a developer of an inclusionary development in municipalities where no appropriate administrative agency exists to administer such controls. The developer shall submit a declaration of intent from the appropriate person or body (for example, corporate resolution, letter from its president) indicating its will-

ingness to enter into contractual agreements with the Agency whereby the Agency will administer resale and rent controls on behalf of the developer.

(c) Whenever the Agency administers affordability controls on behalf of a municipality or developer of an inclusionary development, it will do so in accordance with the rules in this subchapter. In the event that a municipality is not receiving a grant or loan from the Agency and has an affordability control plan approved by the Agency under subchapter 12 of the rules of the Council on Affordable Housing (N.J.A.C. 5:92-12), the Agency may administer the plan approved under subchapter 12. In the event the municipality is implementing a program pursuant to court order, or court approved settlement, the Agency may administer the affordability control plan provided under such order or settlement.

(d) Municipalities and developers of inclusionary developments who enter into contractual agreements with the Agency for the administration of affordability controls shall pay a servicing fee to the Agency, said fee to be established by the Agency according to methods or schedules approved by the State Treasurer.

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## SUBCHAPTER 27. (RESERVED)

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## SUBCHAPTER 28. NONPUBLIC RECORDS

### 5:80-28.1 Nonpublic records

(a) The documents, files, data and other records of the New Jersey Housing and Mortgage Finance Agency which are listed below shall not be deemed to be public records pursuant to N.J.S.A. 47:1A-1 et seq. Such records shall not be available for inspection, examination or copying by members of the public or by any other individual except authorized members and employees of the Agency or except as provided by order of the Governor of New Jersey, a court of competent jurisdiction, or applicable law.

1. All confidential reports, executive memoranda and evaluations submitted to the Executive Director of the Agency, the members of the Agency or to any other State Agency;
2. All personnel records;
3. All records concerning applications for employment with the Agency;
4. All records concerning personal or financial information submitted by applicants for or tenants of rental housing units financed by the Agency;

5. All records concerning personal or financial information submitted by applicants for or recipients of any single family mortgage loan or home improvement loan of the Agency;

6. All records concerning personal or financial information, including Agency form, Certification and Questionnaire, submitted by individuals, corporations, partnerships and other entities doing or seeking to do business with the Agency; and

7. All reports, correspondence and other documents or data provided or discussed at the Executive Session of the meetings held by the members of the Agency, except that any action taken or other information required to be disclosed to the public pursuant to N.J.S.A. 10:4-6 et seq. shall not be deemed to be nonpublic records within the scope of this subchapter.

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## SUBCHAPTER 29. INVESTMENT OF HOUSING PROJECT FUNDS

### 5:80-29.1 Permitted investments

(a) Housing sponsors whose mortgages are insured by the U.S. Department of Housing and Urban Development (HUD), may, with prior Agency approval, invest available funds including escrow funds in taxable or tax free investments permitted by HUD, provided that they have not incurred operating losses for the past three years and provided that all escrows are fully funded at the time of the request.

(b) Housing sponsors of all other projects, with prior Agency approval, may invest available funds including escrow funds in the following, provided that they have not incurred operating losses for the past three years and provided that all escrows are fully funded at the time of the request:

1. State of New Jersey general obligation bonds;
2. New Jersey Housing and Mortgage Finance Agency bonds, which shall be rated A or higher;
3. Bonds of municipalities, instrumentalities or agencies of the State of New Jersey, which shall be rated A or higher and whose rating of A or higher has been confirmed within the past 12 months;
4. New Jersey bond funds (consisting of bonds of any of the entities in (b)1 through 3 above) of which at least 90 percent of the bonds within the fund are rated A or higher and whose ratings have been confirmed within the past 12 months;

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) Section 42 of the Internal Revenue Code of 1986 (Code), 26 U.S.C. § 42, establishes a low-income housing tax credit that may be applied against the Federal income tax of persons or associations who or which have invested in certain buildings providing housing for families of low-income. As the housing credit agency for the State of New Jersey, the New Jersey Housing and Mortgage Finance Agency (NJHMFA) allocates these credits to qualified taxpayers and thereafter monitors their compliance with Section 42 of the Code. The rules in this subchapter set forth the standards and procedures used by NJHMFA to perform its allocation and monitoring responsibilities and this subchapter represents the qualified allocation plan for New Jersey required by Section 42 of the Code.

(b) In each calendar year, the total dollar value of the credits that can be allocated under these rules, except for the credits issued in connection with buildings financed with the proceeds of certain tax exempt bonds, is limited by the State housing credit ceiling provided in Section 42 of the Code. NJHMFA, therefore, has determined to award these limited credits on a competitive basis. Applicants seeking an allocation of these credits must apply under one of the cycles set forth in N.J.A.C. 5:80-33.4, 33.5, 33.6, 33.7 or 33.8. NJHMFA ranks the applications received in each cycle according to the respective point scales provided in N.J.A.C. 5:80-33.16, 33.17, 33.18, 33.19 and 33.20. The credits assigned to each cycle are then reserved for the highest ranking applications that meet the eligibility requirements set forth in N.J.A.C. 5:80-33.13.

(c) Credits issued in connection with buildings financed with the proceeds of tax exempt bonds subject to the volume cap restrictions provided in Section 42(h)(4) of the Code are not limited by the State housing credit ceiling and, therefore, are not allocated on a competitive basis. Applicants seeking such "volume cap tax credits" are directed to the provisions of N.J.A.C. 5:80-33.10.

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

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

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

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

Rewrote (a); added new (b) through (d); and recodified former (b) and (c) as (e) and (f).

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

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

In (b) and (c), changed N.J.A.C. references.

#### 5:80-33.2 Definitions

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

"COAH" means the New Jersey State Council on Affordable Housing.

"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. Generally, projects being constructed pursuant to a density bonus are not eligible to apply for tax credits from the State's housing credit ceiling. However, a project may be considered eligible for ceiling credits 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 or non-residential zoning. In addition, a density bonus project may be eligible for tax credits from the State's volume cap if the density bonus is insufficient to yield the affordable rental units. In such circumstances, the COAH Executive Director will review the project for funding eligibility and provide written verification to NJHMFA at or before an application for tax credits is filed.

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

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

“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. Generally, projects being constructed pursuant to a density bonus are not eligible to apply for tax credits from the State’s housing credit ceiling program. However, a project may be considered eligible for ceiling credits 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 or non-residential zoning. In addition, a density bonus project may be eligible for tax credits from the State’s volume cap if the density bonus is insufficient to yield the affordable rental units. In such circumstances, the applicable court master will review the project for funding eligibility and provide written verification to NJHMFA at or before the time an application for tax credits is filed.

“Density bonus” means a zoning change that results in an increase in density from the original zoning in order to provide for both market-rate units as per COAH regulations and low and moderate-income units.

“Designated center” means a center designated by the New Jersey State Planning Commission, or located within the boundaries of an Urban Complex or Corridor Region Development Plan endorsed by the State Planning Commission. These consist of urban centers, regional centers, towns, villages and hamlets. For scattered site projects where not all the sites are in a designated center, a majority of the units must be located in the designated center to qualify for the designated center points. In order to qualify for points, centers shall be designated by the application deadline.

“Developer fee” or “development fee” means the fee that covers the overhead and profit of the developer. Certain fees are subsumed within the developer fee—such as acquisition fees, compensation to the general partner, financial consultants, employees of the developer, construction managers/monitors, and syndicator-required consultants. Professional fees not paid out of the developer fee are the fees for the architect, engineer, lawyer, accountant, surveyor, appraiser, soil investigator, professional planner, historical consultant and environmental consultant. (If there are costs listed under the professional planner, the executed contract shall be submitted. Only those costs determined by NJHMFA to be for planning purposes shall be shown as a separate line item.) All other consultant and professional fees shall be included in the developer fee and are not allowed to be shown as separate line items on the tax credit application; otherwise, those fees shown separately will be

added to the developer fee line item and may result in a lower point score for the project.

The developer fee contained in the application shall be the maximum fee (dollar amount) recognized by NJHMFA at the time of cost certification so long as the project scope remains the same. NJHMFA may recalculate the fee at time of cost certification using the developer fee percentage in the project’s application, possibly resulting in a higher or lower dollar amount, if NJHMFA determines that there are significant increases or decreases in the project scope (substantial new additions to or deletions in the number of units, amenities, etc.).

Any fee paid to the developer in excess of the developer fee, such as an acquisition fee, incentive developer fee, or other pseudonym, shall be treated as a funding source and may not be recognized as a use of funds.

One of the scoring criteria is a lower developer fee. For scoring purposes, no additional points will be awarded for developer fees that drop below a “floor” of eight percent.

1. The amount of developer fee allowed is limited to 15 percent of total development cost excluding land, working capital, marketing expenses, escrows, operating deficit reserves, step-in-the-shoes costs and costs associated with syndication. However, a developer fee of up to 20 percent (of total development cost excluding land, working capital, marketing expenses, escrows, operating deficit reserves, step-in-the-shoes costs and costs associated with syndication) is allowed for the following types of housing:

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

The cost of acquiring a building shall not be allowed in the calculation of the developer fee if the acquisition is between related parties (see definition) or if it is a minimum rehab project (see definition).

“Developmentally disabled” means a severe, chronic disability of a person which:

1. Is attributable to a mental or physical impairment or combination of mental or physical impairments;
2. Is manifested before the person attains age 22;
3. Is likely to continue indefinitely;
4. Results in substantial functional limitations in three or more of the following areas of major life activity:
  - i. Self-care;
  - ii. Receptive and expressive languages;
  - iii. Learning;
  - iv. Mobility;
  - v. Self-direction;
  - vi. Capacity for independent living; and

vii. Economic sufficiency; and

5. Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment or other services which are of lifelong or extended duration and are individually planned and coordinated.

"Eligible basis limits" are limitations on total eligible basis (except in the Special Needs Cycle, those projects that receive any credits from volume cap and those projects in the Reserve whose initial allocation was not subject to limits on eligible basis) based on site location and whether or not a project has elevators. The limits are a specified percentage above the Section 221(d)(3) limits published in 24 C.F.R. Part 200 by the U.S. Department of Housing and Urban Development as of the first of the year. A project whose total eligible basis exceeds its applicable eligible basis limit may participate in the tax credit program; however, the maximum amount of credits allowed to the project will be limited to the amount of the eligible basis limit applicable to the project. The eligible basis limit is not a per se limit on eligible basis as defined in the Code but is a mechanism that facilitates NJHMFA's exercise of its authority to limit tax credits to what is necessary to finance projects. See IRC Section 42(m).

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

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

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

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

"Inclusionary development" means a development containing all low and moderate income units or a mix of market units and low and moderate income units.

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

"LIHTC project" means a project participating in the Low Income Housing Tax Credit Program.

"Low rise" means a building having one to three residential floors or stories.

"Mid-rise" means a building having four to seven residential floors or stories.

"Minimum rehab project" means any project undertaking only a minimum amount of rehabilitation. Minimum rehab is defined as construction costs totaling less than 50 percent of the acquisition cost where construction cost equals the total of the lines listed under Construction (less any costs associated with step-in-the-shoes basis) on the breakdown of costs and basis form and acquisition cost equals the total of the lines listed under "Acquisition" plus the land cost. Minimum rehab projects are eligible to apply only in the Special Needs Cycle and Final Cycle. In the Final Cycle, they shall be funded only if there are no other projects left to fund.

"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, nonprofit reservation fee and nonprofit points are available exclusively to Section 501(c)(3) or (4) housing sponsors who comprise 100 percent of the general partner interest in the final ownership entity (the limited partnership). Limited liability companies and limited liability partnerships are not eligible for the nonprofit set-aside, nonprofit reservation fee or nonprofit points.

“Related party” means a relationship between parties when there is a spousal or family relationship, parent-subsidiary relationship or where owners, officers, directors, partners, stockholders, or members of one business entity hold a 10 percent or more interest in the other business entity.

“Retention factor” means an increase to the equity factor used to calculate the value of the tax credits. NJHMFA will add a retention factor to non-syndicated tax credit projects, or projects where the general partner (and/or related entity) will retain two percent ownership interest or more. For projects where the general partner’s ownership interest is between two and five percent, \$.05 shall be added to the equity factor. If the general partner’s ownership interest is five to 49 percent, \$.10 shall be added to the equity factor. If the general partner’s ownership interest is 50 percent or more, \$.20 shall be added to the equity factor.

“Scattered site project” means a project that consists of buildings which are not all proximate to one another within the same municipality or contiguous municipalities, financed pursuant to a common financing plan and 100 percent occupied by qualified low-income households. For scattered site projects, all sites must qualify for a point category in order to receive the points with the exception of the geographic distribution and designated center point categories, where a majority of the units must be located within the municipality or designated center to qualify.

“Senior project” means “housing for older persons” as defined in Section 807(b)(2) of the Fair Housing Act, 42 U.S.C. § 3607, as it may be amended.

In order to be eligible for the senior set-aside, the project must meet the definition of “housing for older persons” as defined by the Fair Housing Act.

“SNAP neighborhood” means a neighborhood participating in the Strategic Neighborhood Assistance Program with an approved neighborhood plan as confirmed by the Department of Community Affairs. For scattered site projects where not all the sites are in a SNAP neighborhood, a majority of the units 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 for at least the term of the compliance period to improve the quality of life of the residents of the project. The services must be affordable, appropriate and accessible to the project’s tenants and the social service provider must have the capacity to perform such services. The services include, but are not limited to:

1. Hiring a full-time social service coordinator. If a social service coordinator is being provided through a third party, then a signed agreement between the two parties is required, and the coordinator must be dedicated to the tax credit project for at least 20 hours a week;
2. Providing child care services either on site or linked to outside child care centers;
3. Providing health care services either on site or linked with a local health care provider;
4. Providing job training programs on site or linked with a local training center;
5. Providing personal care and/or housekeeping services on site;
6. Providing at least one congregate meal on site;
7. Providing adult day-care services; and/or
8. Providing transportation services for the residents.

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

“Special needs project” means a project which shall rent a minimum of 25 percent of the tax credit units in the project to one (or more) of the targeted special needs populations referred to below, and must make available a minimum of three daily services addressing the needs of the identified group, one of which must be a social 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 rent more than 25 percent of the tax credit units to 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 housecleaning, etc.) to high level (such as substance abuse and mental health supports) to medically intense (such as

skilled nursing) and will vary from person to person depending on their particular physical, psycho-social, and/or mental limitations, and may vary for one person over time. Each special needs tenant does not have to utilize all of the services provided by the project; however, the services must be available. If tenants are not utilizing the services that are available, NJHMFA may call into question whether or not the project is serving a special needs population.

1. Examples of targeted special needs populations are:
  - i. Persons with AIDS/HIV-related illness;
  - ii. Homeless;
  - iii. Mentally ill;
  - iv. Frail elderly (see definition);
  - 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 IRS Form 8609 request 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.

“Supplemental award” means an award of credits from the Reserve in order to fund the last highest ranking project in a cycle if there are insufficient credits in the cycle to provide a full reservation for the project. Applicants do not apply for supplemental awards. Example: There are 10 projects in the Suburban/Rural 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.

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

“Targeted neighborhood” means any neighborhood which has been selected for implementation of a specific revitalization plan within a city designated by the Governor’s Urban Coordinating Council (“UCC”). To qualify for the Targeted Neighborhood/SNAP Neighborhood Set-Aside, the project must be part of a neighborhood plan approved by the UCC. For scattered site projects where not all the sites are in a Targeted Neighborhood, a majority of the units 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.

“Uncorrected noncompliance” applies only with respect to the uncorrected noncompliance point category and means any one of the following which was reported to the owner by NJHMFA via a formal notice of noncompliance and remains uncorrected as of the date of the tax credit application deadline:

1. A violation of State and local building codes or health ordinances;
2. Failure of one or more major systems (for example, roof, HVAC, elevators, etc.); or
3. Failure to provide the special needs program, social services, unit or project amenities specified in a project’s New Jersey LIHTC application.

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

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

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

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

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

### 5:80-33.3 Application cycles

Each year, NJHMFA shall establish funding cycles and the amount of credits available in each cycle. They will be advertised 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 \$ 1,500,000 in credits in any one calendar year.

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

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

### 5:80-33.4 Urban Cycle

(a) Projects located in the municipalities listed on the Urban Cycle List, except for projects receiving HOPE VI funding, are eligible to apply in the Urban Cycle. The list of these cities changes periodically and is 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 that are part of an approved neighborhood plan 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 (see definition). 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, for the nonprofit reservation fee and for the nonprofit points, 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.

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

In (a), substituted reference to municipalities on the Urban Cycle List for reference specifying types of municipalities.  
Amended by R.1998 d.279, effective June 1, 1998.  
See: 30 N.J.R. 1132(a), 30 N.J.R. 1978(a).

In (a), inserted a reference to HOPE VI funding in the introductory paragraph and inserted "that are part of an approved neighborhood plan" preceding "within targeted neighborhoods" in 1.  
Amended by R.1999 d.120, effective April 5, 1999.  
See: 31 N.J.R. 122(a), 31 N.J.R. 860(a).

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

### 5:80-33.5 Suburban/Rural Cycle

(a) Projects not located in municipalities listed on the Urban Cycle List may apply in this cycle. Minimum rehab projects are not eligible to apply in this cycle. There is one set-aside in the Suburban/ Rural Cycle:

1. 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/Rural Cycle shall be set aside for qualified nonprofit organizations (see definition). Nonprofits are eligible for Suburban/Rural 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/Rural 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, for the nonprofit reservation fee and for the nonprofit points, 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 nonprofit-sponsored projects until the nonprofit set-aside has been fully reserved. Then, reservations shall be awarded to the applications with the highest rankings.

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

Substituted references to family project or family set-aside for references to senior project or senior set-aside throughout; in (a), substituted reference to municipalities on the Urban Cycle List for reference specifying types of municipalities; rewrote (a)1; and in (a)2, inserted references to the Rural Cycle.

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

Rewrote the section.

### 5:80-33.6 HOPE VI Cycle

Projects located in municipalities on the Urban Cycle list which utilize HOPE VI funds from HUD are eligible to apply in the HOPE VI Cycle. HOPE VI projects may only apply to the HOPE VI or Final Cycles; they are ineligible to apply to the Urban, Suburban/Rural and Special Needs Cycles. Minimum rehab projects are not eligible to apply in this cycle. There are no set-asides in this cycle.

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

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

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

Rewrote the section.

### 5:80-33.7 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 tax credit units must be rented to the special needs client population and at least three appropriate services must be provided. There are two set-asides in the Special Needs Cycle:

1. Developmentally Disabled Set-Aside: \$300,000 in the Special Needs Cycle shall be set aside for projects providing housing for the developmentally disabled. Projects must ultimately result in the reduction of the waiting list described in the Developmental Disabilities Waiting List Reduction and Human Services Facilities Construction Bond Act of 1994 (P.L. 1994, c.108). Sponsors of projects seeking credits from the developmentally disabled set-aside must demonstrate experience both as a social service provider and housing developer. For example, if the project sponsor is strictly a social service provider, it must joint venture with an experienced developer or hire a housing consultant. Conversely, if the project sponsor is a developer with no experience in providing social services, it must joint venture with an experienced service provider. Sponsors shall provide in their application a letter from the Department of Human Services, Division of Developmental Disabilities ("DDD") which describes and approves the manner in which the project will reduce the waiting list and confirms the availability of operating and social service funding for all of the DDD units in the project. Projects serving the developmentally disabled populations are eligible for Special Needs Cycle credits beyond the set-aside. If, because of lack of demand, the developmentally disabled set-aside is not fully utilized, remaining credits in the developmentally disabled set-aside shall be released into the Special Needs Cycle for use by other projects.

2. HIV +/AIDS Set-Aside: \$100,000 in the Special Needs Cycle shall be set-aside for projects providing housing for people who are homeless or at risk of homelessness and who are HIV + or who have been diagnosed with AIDS. Sponsors of projects seeking credits from the HIV +/AIDS set-aside must demonstrate experience both as an HIV +/AIDS service provider (three+ years) and housing developer. For example, if the project sponsor is strictly a social service provider, it must joint venture with an experienced developer or hire a housing consultant. Conversely, if the project sponsor is a developer with no experience in providing social services, it must joint venture with an experienced service provider. Projects providing housing for people with HIV +/AIDS are eligible for Special Needs Cycle credits beyond the set-aside. If, because of lack of demand, the HIV +/AIDS set-aside is not fully utilized, remaining credits in this set-aside shall be released into the Special Needs Cycle for use by other projects.

(b) Reservations shall first be awarded to the highest ranking developmentally disabled project until the developmentally disabled set-aside has been fully reserved. Once the developmentally disabled set-aside has been fully reserved, reservations shall be awarded to the highest ranking HIV +/AIDS projects until the HIV +/AIDS set-aside has been fully reserved. Then, reservations shall be awarded to the applications with the highest rankings.

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

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

Substantially amended section.

Recodified from N.J.A.C. 5:80-33.6 and amended by R.1998 d.279, effective June 1, 1998.

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

Rewrote (a). Former N.J.A.C. 5:80-33.8, Reserve, was recodified to N.J.A.C. 5:80-33.10.

Recodified from N.J.A.C. 5:80-33.8 and amended by R.1999 d.120, effective April 5, 1999.

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

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

### 5:80-33.8 Final Cycle

(a) The Final Cycle shall take place only if NJHMFA determines there are sufficient credits from the Reserve to administer a Final Cycle. In the event the Final Cycle is canceled, NJHMFA shall announce the cancellation via notices to its mailing list as soon as the determination has been made.

(b) All projects, including minimum rehab projects, may apply to 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.

(c) Should NJHMFA receive any returned credits after the Final Cycle awards have been made, NJHMFA may, in its discretion, reallocate them to the next-highest ranking project(s) from the Final Cycle provided such project(s) can meet the 10 percent carryover test.

(d) 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.

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

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

Inserted references to Rural Cycle.

Recodified from N.J.A.C. 5:80-33.7 and amended by R.1998 d.279, effective June 1, 1998.

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

In (a), inserted "including minimum rehab projects" following "all projects". Former N.J.A.C. 5:80-33.9, Application fee schedule, was recodified to N.J.A.C. 5:80-33.12.

Recodified from N.J.A.C. 5:80-33.9 and amended by R.1999 d.120, effective April 5, 1999.

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

Rewrote the section. Former N.J.A.C. 5:80-33.8, Special Needs Cycle, recodified to N.J.A.C. 5:80-33.7.

### 5:80-33.9 Reserve

(a) Projects that need additional credits because of technical errors and severe hardship can submit a reapplication for credits from the Reserve. The Reserve may also be used to fund supplemental awards (see definition) or for unforeseen circumstances where NJHMFA determines that a project's financial feasibility is jeopardized. Hardship requests are limited to \$100,000 per project. Hardship requests must be documented to the satisfaction of NJHMFA and must demonstrate the existence of an unforeseen emergency situation where the completion of the project is jeopardized without an award of additional low-income housing tax credits. Applicants cannot apply for hardship credits if they have already received the maximum credit allocation allowed by the eligible basis limits that were in effect at the time the project was awarded credits. Applicants cannot apply for hardship credits from the Reserve until the year in which the project places in service. If a project receiving a reservation of hardship credits from the Reserve fails to place in service that same year, no allocation shall be issued to the project and the project will have to re-apply to the Reserve in the following year. Hardship applications to the Reserve are accepted on an ongoing basis until the first Friday in June. Awards of credits from the Reserve are subject to availability and to NJHMFA's evaluation of the request. If sufficient credits remain from the Reserve, they will be transferred into the Final Cycle. To apply to the Reserve for a hardship reservation of additional credit, applicants must follow the procedures at N.J.A.C. 5:80-33.14.

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

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

Substantially amended section.

Recodified from N.J.A.C. 5:80-33.8 and amended by R.1998 d.279, effective June 1, 1998.

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

Rewrote (a). Former N.J.A.C. 5:80-33.10, Cycle deadlines, was recodified to N.J.A.C. 5:80-33.13.

Recodified from N.J.A.C. 5:80-33.10 and amended by R.1999 d.120, effective April 5, 1999.

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

Rewrote (a). Former N.J.A.C. 5:80-33.9, Final Cycle, recodified to N.J.A.C. 5:80-33.8.

### 5:80-33.10 Volume cap credits

(a) Projects financed by tax-exempt bonds that request tax credits pursuant to Section 42(h)(4) of the Code are required by Section 42(m)(1)(D) to satisfy the requirements for allocation of a housing credit dollar amount under the qualified allocation plan. Projects requesting tax credits entirely from volume cap do not have to compete and there are no cycle deadlines. However, complete applications should be submitted before the tax-exempt bonds are sold. The following information shall be included in order for the application to be deemed complete: all applicable sections of the application corresponding to eligibility requirements at N.J.A.C. 5:80-33.13; those sections of the application corresponding to the point categories for low-income set-aside, period of restriction, conversion to tenant ownership

(if applicable) and tax abatement (if applicable); a sponsor certification and breakdown of cost and basis; and, if the tax-exempt project is being constructed pursuant to a density bonus, a letter from the COAH Executive Director or the applicable Court Master approving the project's application for tax credits. (See definitions of "COAH obligation" and "court-ordered obligation.") A copy of the appraisal/market study required by the applicant's lender and/or syndicator may be submitted in lieu of the market study required at N.J.A.C. 5:80-33.13(a)1ii.

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

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

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

4. Projects that would have received negative points under N.J.A.C. 5:80-33.16(a)19, 21 and 22 shall not be issued tax credits until such items are corrected.

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

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

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

Recodified from N.J.A.C. 5:80-33.11 and amended by R.1999 d.120, effective April 5, 1999.

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

In (a), changed N.J.A.C. references throughout, added the last sentence in the introductory paragraph, and added the last sentence in 1. Former N.J.A.C. 5:80-33.10, Reserve, recodified to N.J.A.C. 5:80-33.9.

#### 5:80-33.11 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/Rural, HOPE VI or Special Needs Cycle, and any first-time applications to the Final Cycle, as well as for projects applying for volume cap tax credits.

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/Rural, HOPE VI or Special Needs Cycle, which did not receive a reservation of credits, and wish to re-apply in the Final Cycle of the same allocation year. Projects that are in essence new projects (for example, changes in the project composition, sites, or sponsor or developer entities) shall submit a new application and application fee.

(b) Application fees and re-application fees are non-refundable.

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

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

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

Recodified from N.J.A.C. 5:80-33.9 and amended by R.1998 d.279, effective June 1, 1998.

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

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

Recodified from N.J.A.C. 5:80-33.12 and amended by R.1999 d.120, effective April 5, 1999.

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

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

#### 5:80-33.12 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 substantially incomplete applications shall not be admitted into a cycle and will be returned to the applicant.

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

(c) Applications that are substantially incomplete cannot be accepted, but applicants shall be given 48 hours to cure defects as follows:

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

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

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

(d) NJHMFA shall notify the applicant of any curable defects it discovers by telephone and, simultaneously, in writing by facsimile transmission. The applicant's corrective submission shall not be considered unless it is received by NJHMFA no later than 48 hours (excluding weekends and legal holidays) from the applicant's receipt of the facsimile transmission. NJHMFA shall notify applicants of curable defects on Mondays, Tuesdays or Wednesdays. No application will receive more than one notice for a curable defect.

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

(f) If an applicant fails to respond to NJHMFA's notification of curable defects within the 48-hour cure period, or if an applicant's response is non-responsive to the question asked, a negative inference shall be drawn. (For example, failure to respond to an item in a cure letter will result in the denial of points if the question is with respect to a point category; negative points if with respect to the point categories at N.J.A.C. 5:80-33.16(a)18 to 22; or ineligibility if with respect to an eligibility requirement.)

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

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

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

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

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

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

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

### 5:80-33.13 Application to a cycle/eligibility requirements

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

1. Applications shall include the following in order to demonstrate the need for the proposed project in a market area. Based on the information provided therein, if NJHMFA determines an insufficient market need exists, the project shall be deemed ineligible.

i. 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. Photographs of the site and/or preliminary renderings of the finished project shall be submitted with the narrative.

ii. A market study, certified to both the sponsor and NJHMFA for review and due diligence analysis, shall be submitted for all projects except those listed under (a)1iii below. Two copies of the report shall be submitted. The market study shall be no more than six months old; therefore, unsuccessful Spring Cycle applicants may have to update their market study prior to applying to the Final Cycle. The assumptions used in the market study (for example, project rents, unit mix, amenities, etc.) must precisely reflect the information provided in the tax credit application. The report shall include, at a minimum:

(1) A description of the proposed site, including unit and design mix, proposed amenities;

(2) A demographic analysis of the age eligible households and income in the market area (assuming potential tenants may spend up to 40 percent of their income on housing expenses);

(3) Geographic definition and analysis of the market area, including a reasonable rationale for the suggested market area;

(4) Data on comparable developments in the area which include those projects that are currently under construction or have received preliminary site plan approval and an indication of the most directly comparable projects. Data shall include, at a minimum, a narrative and grid analysis for rents, vacancy and turn-over rates, operating expenses (if available), size and amenities;

(5) The capture rate, absorption period and the effect of the proposed rental housing on the market area;

(6) If applicable, the appropriate vacancy factor based on market conditions for any commercial space in the project;

(7) A conclusion analysis from the research data supporting the potential viability of the proposed project; and

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

(A) He or she is an independent, third party professional with no financial interest in the project other than in the practice of his or her profession (for example, his or her fee for preparing the report is not contingent upon project completion and/or an award of tax credits);

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

(C) He or she has conducted the study in accordance with Standards 4 and 5 of the Uniform Standards of Professional Appraisal Practice (USPAP).

iii. The following projects shall not be required to submit a market study: projects of 25 units or less, projects receiving Project Based Section 8 rental assistance for 100 percent of the units and projects in which all of the units reduce the waiting list described at N.J.A.C. 5:80-33.7(a)1. In lieu of a market study, the applicant shall provide age and salary demographics within a one-mile radius of the proposed project and comparable data also within a one-mile radius of the project. Comparable data must include a listing of comparable rental projects, their locations, rents, vacancy rates, whether they have waiting lists, their unit and project amenities, and proximity to public services and support facilities.

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. For all forms of site control, a copy of the current owner's recorded deed shall be submitted as supporting documentation.

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 remediation is necessary, the remediation plan shall be accounted for in total development costs. If a Phase I environmental study has been completed for the project, the findings shall be submitted. A Phase I is not required; however, if a project is awarded credits and a Phase I was not submitted with the application, the applicant shall not be allowed to apply for hardship credits from the Reserve for unforeseen environmental issues.

5. As required by Section 42(m)(2)(B)(I) of the Code, all financing information shall be disclosed in the application, including information about letters of interest and other undertakings that the applicant does not identify as funding sources in the application. The applicant shall provide all syndication documents in existence at the time of application including, but not limited to, the prospectus (offering memorandum), limited partnership agreement, joint venture agreement, partnership administration services agreement, development agreement and any amendments to the aforementioned documents and any relevant agreement between and among the relevant parties setting forth the terms of the financial arrangements, commitment letters, if any (firm or otherwise) and mortgage documents. All documents must include all exhibits and schedules. In addition, Section 42(m)(2)(C)(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. The amount and all terms of the funding commitment shall be listed in the documentation provided under (a)6i through viii below. The amount and terms shall be used by NJHMFA in its underwriting analysis. 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, or if less than 15 years, loan must be fully amortizing) and all conditions. The commitment shall have been approved by the lender's final approval authority (for example, from a bank's loan review committee or if a lending consortium, from the consortium itself) and shall be countersigned/accepted by the applicant. The maximum mortgage supportable shall have been obtained.

ii. State Balanced Housing 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 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 private, State or local grants shall be deducted from basis unless the grantee is taking the grant into income and paying income tax on it or the grantee is making a loan to the partnership. All Federal grants must be subtracted from basis.

iv. Municipal, county or PHA grants or loans: Funding approvals for municipal or county grants or loans (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 a funding gap shall provide a letter from an independent C.P.A. who certifies that the applicant has the amount of cash that is needed to fill the funding gap. Cash already expended on the project by the applicant can be utilized as a source of funds if said expenditures are verified by an independent C.P.A. and said cash is not an advance of other project funding sources. If the developer fee is 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 or who have only received an investor's term sheet may still apply for tax credits; however, NJHMFA shall underwrite the project at the NJHMFA equity factor (see definition) to be determined from time to time based on current market conditions. Applicants that have an investment agreement with their investor shall have their project underwritten at a price higher than the NJHMFA equity factor and shall include in their application a commitment letter (not a term sheet) from an investor evidencing the net pricing (cents per credit dollar) and total anticipated net proceeds. Applicants of projects where the general partner(s) (or equivalent) will be retaining two or more percent ownership interest will have a retention factor added to the NJHMFA equity factor or the project's net pricing (see definition of retention factor and equity factor).

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.

viii. Federal Home Loan Bank (FHLB): Applicants simultaneously applying in the Spring funding cycles for tax credits (Urban, Suburban/Rural, HOPE VI, Mixed Income or Special Needs Cycle) and in the FHLB Affordable Housing Program (Spring window only) shall not be required to submit a commitment letter from FHLB by the application deadline so long as the FHLB awards are scheduled to be announced during the Spring tax credit cycles. If a project fails to receive FHLB funding, the project may be declared infeasible unless there is an alternate source of financing, such as a pledged developer fee, identified in the tax credit application. Final Cycle applicants must submit their FHLB commitment with the application by the Final Cycle application deadline.

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

i. Projects shall be underwritten to demonstrate project feasibility at a household median income percentage that is 2.5 percent below the set-aside selected. Therefore, if the 20 percent at 50 percent Federal set-aside is selected, the project shall be underwritten with rents affordable to tenants at or below 47.5 percent of the area median income adjusted for family size. If the 40 percent at 60 percent Federal set-aside is selected in conjunction with the 60 percent at 50 percent State set-aside, the project shall be underwritten with rents affordable to tenants at or below 57.5 percent and 47.5 percent of the area median income adjusted for family size.

ii. Applicants shall submit a 15-year cash flow proforma signed by the first mortgagee (or syndicator/investor if the project has no hard debt) which exclusively reflects the following language verbatim: "We acknowledge that this proforma substantially matches the assumptions used in our underwriting of the mortgage (equity investment)."

iii. The proforma 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.

iv. If the proforma reflects negative cash flows in any year, the application must demonstrate the funding and utilization of an Operating Deficit Escrow Account (ODEA). Assumptions regarding interest on the ODEA must be reasonable.

v. The proforma may reflect rental assistance only if such assistance is project based and is evidenced by the submission requirements described in (a)11 below. The subsidy may be illustrated only for the initial contractual term; that is, future renewals of project based subsidy contracts cannot be assumed.

vi. NJHMFA reserves the right to require a residual value analysis (conducted by the partnership's accountant) of any project with significant soft debt, at any time during the application and/or allocation process.

vii. Projects with market-rate units shall distribute the low and moderate income units among the different sized units to reflect the same percentage distribution as the number of different sized units bear to the total number of units. A greater percentage of the low and moderate income units may, however, be allocated to the larger units. Additionally, low and moderate income units shall be distributed throughout the project such that the tenants of such units will have equal access to, and enjoyment of, all common facilities of the project. (See N.J.A.C. 5:80-8.3.)

8. Applicants requesting acquisition credits shall include an attorney's 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. Applicants shall submit an appraisal not older than six months or the entire application shall be deemed ineligible to compete (regardless of whether the project is still feasible without the acquisition credit). 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 at the applicant's expense. If the purchaser pays more than appraised value, the overage shall be added to the sources of funds so as not to create artificial need.

9. For all projects that are claiming a prior owner's expenditures in basis, a C.P.A. shall itemize the step-in-the-shoes costs and certify that the amount of the step-in-the-shoes costs shown in the application has indeed been spent and is accurately reflected in eligible basis. Prior owner's developer fees shall not be recognized.

10. 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.

11. All applicants receiving rental subsidy from a government or private source shall submit with the tax credit application evidence of receipt of such assistance. Evidence of Project Based Section 8 Rental Assistance shall include, at a minimum, a letter from the Public Housing Authority (PHA) firmly approving the project for Section 8 Project Based Assistance subject to the completion of the subsidy layering review. For projects involved in the AFL-CIO Pension Fund Program, a preliminary commitment from the AFL-CIO shall suffice. For other types of (non-Section 8) rental assistance, evidence shall include a fully executed rental assistance contract that specifies the source and term of the subsidy. Only projects receiving Project Based Section 8 Rental Assistance may underwrite the project using the fair market rents (FMRs) as defined by the project's approved HAP contract. Upon the expiration of project based rental assistance, the project must be underwritten at rents which meet tax credit rules as well as market conditions.

12. Special needs projects applying to any cycle shall submit the following items in addition to those items at N.J.A.C. 5:80-33.16(a)7.

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

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

iv. For projects applying to the Developmentally Disabled Set-Aside, sponsors shall provide in their application a letter from the New Jersey Department of Human Services, Division of Developmental Disabilities (DDD) which describes and approves the manner in which the project will reduce the waiting list described in the Developmental Disabilities Waiting List Reduction and Human Services Facilities Construction Bond Act of 1994 (P.L. 1994, c.108) and confirms the availability of operating and social service funding for all of the DDD units in the project.

13. NJHMFA encourages all owners/developers to affirmatively market their projects. For projects over 25 units, applicants shall submit an Affirmative Fair Housing Marketing Plan, which, in short, documents how the project will be marketed to those people who are least likely to apply. For instance, if the proposed development is located in an area predominantly populated by Caucasians, outreach should be directed to non-Caucasians. Conversely, if the population is predominantly African-American, outreach should be directed to non-African-American groups. At the time the units are placed in service, the owner/developer and rental agent shall certify that the project was affirmatively marketed.

14. Applicants applying in the HOPE VI Cycle shall submit the following:

i. A copy of the commitment letter from HUD awarding funds to the public housing authority. The applicant shall disclose the terms and conditions of the HOPE VI grant to the public housing authority that funds the project, as well the terms and conditions of the funding arrangements between the public housing authority and the applicant.

ii. An opinion of tax counsel in support of the dollar amount of the eligible basis for the project set forth in the application. Attached to this opinion, and incorporated therein, shall be the accountant's analysis required in (a)14iii below.

iii. An analysis conducted by the applicant's accountant of anticipated project cash flow and residual value demonstrating a reasonable prospect of repayment of all loans funded by the proceeds of the HOPE VI grant and all debt; and

iv. The applicant shall demonstrate that any HOPE VI funds used in the application to establish eligible basis at any time during the credit period are received under contractual financing provisions that, when viewed in the context of reasonably anticipated project cash flow and residual value, constitute lawful basis under the Code and applicable law.

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

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

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

Substantially amended paragraphs under (a); deleted former (b), relating to requirements upon additional award of credits; and recodified former (c) as (b).

Recodified from N.J.A.C. 5:80-33.11 and amended by R.1998 d.279, effective June 1, 1998.

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

Rewrote (a). Former N.J.A.C. 5:80-33.14, Point system for the Urban Cycle, was recodified to N.J.A.C. 5:80-33.17.

Recodified from N.J.A.C. 5:80-33.14 and amended by R.1999 d.120, effective April 5, 1999.

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

Rewrote (a). Former N.J.A.C. 5:80-33.13, Cycle deadlines, recodified to N.J.A.C. 5:80-33.12.

#### 5:80-33.14 Application to the Reserve

(a) See N.J.A.C. 5:80-33.9 for a description of the Reserve. 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. The developer fee cannot exceed that stated in the original application);
3. A rent qualification chart, income and expense statements and 15-year cash flow proforma all reflecting current projections. The proforma shall be signed by the first mortgagee (or syndicator/investor if the project has no hard debt) exclusively reflecting the following language verbatim: "We acknowledge that this proforma substantially matches the assumptions used in our underwriting of the mortgage (equity investment)."
4. An explanation why additional credits are being sought plus supporting documentation. Projects that did not submit a Phase I environmental assessment with their original application for tax credits are not eligible for additional credits for environmental overruns;
5. Evidence that at least 50 percent of the developer fee is pledged and that applicant has attempted to increase funding from every other source (except State Balanced Housing from the New Jersey Department of Community Affairs) before applying to the Reserve for additional credits; and
6. A letter from the syndicator/investor which addresses the eligibility and specific need for the additional credits. (If the applicant is still incurring costs and is using a projection of costs and basis in his or her application for additional credits, the investor shall verify the projection.)

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

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

In (a), deleted text relating to requirements for additional credit applications and awards, and inserted "See N.J.A.C. 5:80-33.8 for a description of the Reserve B."; and in (a)2, inserted reference to developer fee.

Recodified from N.J.A.C. 5:80-33.12 and amended by R.1998 d.279, effective June 1, 1998.

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

In (a), added new 3 and 5 and recodified former 3 and 4 as 4 and 6. Former N.J.A.C. 5:80-33.15, Point system for the Suburban/Rural Cycle, was recodified to N.J.A.C. 5:80-33.18.

Recodified from N.J.A.C. 5:80-33.15 and amended by R.1999 d.120, effective April 5, 1999.

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

In (a), changed N.J.A.C. reference in the introductory paragraph, and inserted "(or syndicator/investor if the project has no hard debt)" and "(equity investment)" in 3. Former N.J.A.C. 5:80-33.14, Application to a cycle/eligibility requirements, recodified to N.J.A.C. 5:80-33.13.

### 5:80-33.15 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. NJHMFA will rank projects according to the score sheet submitted in the project's application. Based on this ranking, NJHMFA will then examine the applications of only those projects that rank sufficiently high to receive credits. Once it is determined that an application meets all eligibility requirements, it is admitted into the cycle and underwritten.

(b) Applications shall receive points based on the point system for the particular cycle in which they compete. In the event of a tie score, projects shall be ranked according to the tie-breaker system. Then, reservations shall be awarded to the applications with the highest scores and to the applications that win the tie-breakers, with reservations first going to projects in the set-asides.

(c) All units in the project must qualify for a point category in order for the application to receive the points with the exception of the following categories:

1. For the geographic distribution, strategic neighborhood plan and designated center point categories, a majority of the units must be located within the municipality, neighborhood plan or designated center to qualify.

2. For scattered site projects seeking points for county, municipal or PHA support under the contribution of land option, at least 75 percent of the parcels shall be contributed to qualify.

(d) Applicants who are successful in receiving tax credits are strongly advised to closely oversee during construction the implementation of all categories for which the application received points. Implementation shall be verified through certifications and on-site inspection by NJHMFA staff. The IRS Form(s) 8609 shall not be issued until all owner representations have been fulfilled. If they are incapable of being fulfilled in a timely manner, NJHMFA may unilaterally cancel the allocation to the project.

Recodified from N.J.A.C. 5:80-33.13 and amended by R.1998 d.279, effective June 1, 1998.

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

Added a new (c). Former N.J.A.C. 5:80-33.16, Point system for the Special Needs Cycle, was recodified to N.J.A.C. 5:80-33.21.

Recodified from N.J.A.C. 5:80-33.16 and amended by R.1999 d.120, effective April 5, 1999.

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

Rewrote the section. Former N.J.A.C. 5:80-33.15, Application to the Reserve, recodified to N.J.A.C. 5:80-33.14.

### 5:80-33.16 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 (8 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 in the project shall be restricted to no more than 60 percent of the area median income adjusted for family size. To meet the State set-aside, 60 percent of the tax credit units 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 shall 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 low-income units meeting the definition of a large family unit. Points are based on the percentage of large family units with respect to the total number of low-income units; it is not based on square footage. Points are maximized when large family units make up 30 percent of the low-income units for low-rise, garden apartments, single family and townhome/rowhome projects. New construction mid-rise and high-rise projects cannot qualify for these points. Mid-rise and high-rise rehabilitation projects maximize their point score in this category where 15 percent of the low-income units meet the large family unit definition.

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-third of one point for every year beyond year 15 up to a maximum of five additional points (that is, the maximum score is 10 points for a 30-year abatement). The municipal resolution granting the tax abatement must be included in the application. If the specifics of the tax abatement (for example, percentage of rent roll, term) are not recited in the resolution, the financial agreement to the tax abatement should be included with the application. Proof of a project sponsor's tax-exempt nonprofit status is not sufficient to qualify for points for a tax abatement.

6. Two points are given to projects which provide evidence of municipal, county or public housing authority (PHA) support in the form of an authorized resolution from the appropriate authority for any of the following: contribution of land (must be 100 percent of the project's land with the exception of a scattered site project in which case at least 75 percent of the parcels must be contributed); monetary contribution to the project (for example, HOME, RCA, CDBG, UDAG) totaling at least five percent of the total project cost; or waiver of local

building permit fees. If land is being contributed, the recorded deed into the current owner, and all agreements pertaining to the transfer of the land shall be provided.

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

i. Evidence of funding sources or documentation of how or by whom the services shall be paid;

ii. Evidence of experience of the service provider for both provision of social service and fulfillment of prior private or governmental contracts; and

iii. Evidence of firm agreements (executed contracts) with service providers for the services.

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

9. Projects located in a Designated Center shall receive two points.

10. To encourage the distribution of tax credits throughout the State, one point shall be awarded to projects located in municipalities which have less than five projects that have received tax credit allocations in the past three years.

11. One point shall be awarded to projects that are part of a municipally supported, comprehensive strategic neighborhood plan for substantial community development which includes a housing component and may include an economic or social services component. In order to receive the point, applicants shall provide a copy of the strategic neighborhood plan, the municipal resolution that approves and adopts said plan and municipal documentation of the following: a description of how the project is specifically addressing the goals of the plan; evidence of the municipality's prior commitments to the neighborhood (for example, other projects in the neighborhood that have received municipal funding/support); and a description of how the municipality proposes to address the goals of the plan in the future. If the project is located within a particular neighborhood that is part of the Department of Community Affairs' Neighborhood Preservation Program, and there is an approved plan by the Department of Community Affairs, the project shall receive this one point. In addition, projects located in a

Targeted Neighborhood and/or a SNAP Neighborhood shall receive this one point.

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

- i. A security alarm;
- ii. A washer and dryer hook-up with drip pan or floor drain;
- iii. A frost free refrigerator of 14 cubic feet for one bedroom, 16 cubic feet for two bedrooms and 18 cubic feet for three bedrooms;
- iv. A washer and dryer;
- v. A dishwasher;
- vi. Central air conditioning;
- vii. A minimum bedroom size of 100 square feet;
- viii. Minimum kitchen cabinets of 14 linear feet (for up to two bedrooms) and 16 linear feet (for three bedrooms or more);
- ix. Minimum closet space of 14 linear feet for one bedroom, 24 linear feet for two bedrooms and 30 linear feet for 3 bedrooms;
- x. Emergency pull cords/call button—senior projects only;
- xi. Garages;
- xii. Patios;
- xiii. Outside storage lockers.

13. NJHMFA awards points for the provision of project amenities, up to a maximum two points. One point will be awarded per amenity provided, with the exception of the amenity listed at (a)13x below, which shall be worth two points. The costs of the amenities must be shown in the capital and/or operating budgets, as appropriate. Amenities must be appropriate to the proposed tenant population. Applicants may select any combination of the following amenities in order to receive the maximum two points. The list provided below is not all-inclusive. Substitutions are permitted at NJHMFA discretion; however, it is incumbent upon the applicant to demonstrate how each substitute amenity provides a comparable benefit to the tenants as those amenities listed below.

- i. A playground (family projects only);

ii. A community room/building (minimum 1,600 square feet);

- iii. Laundry facilities in each building;
- iv. Community gardens;
- v. Proximity to public transit (within ¼ mile);
- vi. An evening hour security guard;

vii. Average interior unit sizes of 500 square feet for efficiencies, 650 square feet for one bedroom, 800 square feet for two bedrooms, 1,100 square feet for three bedrooms and 1,200 square feet for four bedrooms;

viii. 1.0 parking spaces per unit (may be off-street, garage, pad or driveway, designated/permit, on-street);

ix. A 25 year manufacturer's warranty on roof shingles for sloped roofs, 20 year for low slope roofing; and

x. Participation in the Environmental Protection Agency's (EPA) ENERGY STAR Homes Program.

14. Projects with a property manager that will have successfully completed an NJHMFA approved tax credit certification course prior to the project being placed in service shall receive two points. For the list of approved tax credit certification courses, please contact NJHMFA.

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

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. Projects which are sponsored by a qualified non-profit organization will receive two points. In order to qualify for the nonprofit points (as well as the nonprofit set-aside and nonprofit reservation fee), the application shall include a fully executed Nonprofit Certification, the resume and by-laws of each general partner. If applicable, the contract establishing a turnkey relationship shall also be provided.

18. Applications which have a general partner, voting member, developer or a related party who owned a managing or controlling interest in a LIHTC project when title was foreclosed by entry of judgment or deed in lieu of foreclosure during the past seven years shall have three points deducted from the application's score. Failure to respond to this point category shall result in the deduction of points as provided under this paragraph.

19. Applications which have a general partner, voting member, developer, or related party that owns a managing or controlling interest in a New Jersey LIHTC project with an uncorrected noncompliance shall have 10 points deducted from the application's score (see definition of "uncorrected noncompliance"). Failure to respond to this point category shall result in the deduction of points as provided under this paragraph.

20. Applications which have a general partner, voting member, developer, or a related party that meet all of the conditions in (a)20i below shall have three points deducted from the application's score. Failure to respond to this point category shall result in the deduction of points as provided under this paragraph.

i. Involvement in a full return of tax credits to NJHMFA where:

- (1) The credit return occurred within the past two years; and
- (2) The credit return occurred after the voluntary return deadline stated in the Qualified Allocation Plan of the year the project is scheduled to place in service.

21. Applications which have a general partner, voting member, developer, or related party that owns a managing or controlling interest in a New Jersey LIHTC project that has failed to pay NJHMFA monitoring fees (unless NJHMFA has formally issued a deferral) shall have 10 points deducted from the application's score. Failure to respond to this point category shall result in the deduction of points as provided under this paragraph.

22. Applications which have a general partner, voting member, developer, or related party that owns a managing or controlling interest in a New Jersey LIHTC project that has failed to submit its annual project certifications shall have 10 points deducted from the application's score. Failure to respond to this point category shall result in the deduction of points as provided under this paragraph.

23. Applicants that utilize the cure period in N.J.A.C. 5:80-33.12(c)1 or 3 shall have one point deducted from the application's score.

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

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

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

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

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

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

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

### 5:80-33.17 Point system for the Suburban/Rural Cycle

(a) The point system for the Suburban/Rural Cycle includes all point categories of the Urban Cycle except that the point category in N.J.A.C. 5:80-33.16(a)9 concerning a project located in a Designated Center is replaced with the following:

1. Projects meeting the definition of a COAH obligation or court-ordered obligation shall be awarded five points; or
2. Projects located in a Designated Center shall be awarded two points.

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

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

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

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

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

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

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

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

### 5:80-33.18 HOPE VI Cycle

The point system for the HOPE VI Cycle includes all point categories of the Urban Cycle except for the point category in N.J.A.C. 5:80-33.16(a)6 concerning municipal, county and public housing authority support.

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

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

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

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

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

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

### 5:80-33.19 Point system for the Special Needs Cycle

(a) The point system for the Special Needs Cycle includes all point categories of the Suburban/Rural Cycle except for the point category in N.J.A.C. 5:80-33.16(a)7 concerning social services and the point category in N.J.A.C. 5:80-33.16(a)11 concerning strategic neighborhood plan. 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 up to a maximum of 10 points. 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 the sponsor and/or social service provider has successfully developed or managed. The maximum number of 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. Services shall be affordable and accessible to the project's tenants. Applicants shall support their claim to provide social services by providing the following:

- i. Evidence of funding sources or documentation of how or by whom the services 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 (executed contracts) with service providers for the 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 six 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.

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

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

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

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

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

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

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

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

### 5:80-33.20 Point system for the Final Cycle

(a) The point system for the Final Cycle is the same as the Suburban/ Rural Cycle with the exception of the following three additional point 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. Note that projects cannot qualify for both points in this category and the points from the COAH/Designated Center category.

2. Applications shall be awarded two points if there is evidence that the sponsor had taken title to the land or executed a lease agreement for at least the term of the compliance period and extended use period.

3. Applications which meet the 10 percent carryover test shall receive eight points. All requisite carryover documentation shall be included in the application. Accrued developer fees in carryover basis shall not exceed the lesser of the fee earned to date or 20 percent of the total developer fee.

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

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

In (a), inserted reference to Rural Cycle and substituted "one existing category" for "two existing category"; in (a)1, added second sentence; in (a)2, added "or executed a lease ... extended use period"; deleted (a)3, relating to points for projects in Urban Centers; recodified former (a)4 and 5 as (a)3 and 4; and in (a)3, added last sentence.

Recodified from N.J.A.C. 5:80-33.17 and amended by R.1998 d.279, effective June 1, 1998.

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

In (a)1, changed N.J.A.C. reference. Former N.J.A.C. 5:80-33.22, Allocation needs analysis, was recodified to N.J.A.C. 5:80-33.27.

Recodified from N.J.A.C. 5:80-33.22 and amended by R.1999 d.120, effective April 5, 1999.

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

In (a), deleted ", and increased points in one existing category" at the end of the introductory paragraph, and deleted a former 4. Former N.J.A.C. 5:80-33.20, Mixed Income Cycle, repealed.

### 5:80-33.21 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 the lowest amount of low-income housing tax credits (unadjusted for the 130 percent difficult development area or qualified census tract bonus) per low-income bedroom.

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 bedroom.

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

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

In (a)1, substituted "the lowest amount ... per low-income bedroom" for "lower intermediary fees per low income unit"; in (a)2, substituted "per bedroom" for "per unit"; and deleted (a)3 and 4. Recodified from N.J.A.C. 5:80-33.18 by R.1998 d.279, effective June 1, 1998.

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

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

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

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

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

### 5:80-33.22 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.

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

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

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

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

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

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

### 5:80-33.23 Application needs analysis

(a) Section 42(m)(2)(A) of the Code provides: "The housing credit dollar amount allocated to a project shall not exceed the amount the housing credit agency determines is necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the credit period." This determination, known as the "needs analysis," shall be performed by NJHMFA with respect to those applications fulfilling the eligibility requirements at N.J.A.C. 5:80-33.13. In the needs analysis, 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)(2)(B)(iv) of the Code;
2. Funding sources identified by the applicant meet the requirements listed under N.J.A.C. 5:80-33.13(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. If NJHMFA has a reasonable basis for concluding the equity factor submitted by the applicant is inconsistent with market conditions, NJHMFA reserves the right to adjust the equity factor in its underwriting.

(c) NJHMFA shall perform needs analyses at three separate times: application, allocation, and at the time the project is placed in service. (See N.J.A.C. 5:80-33.25 and 33.28) The credit amount reserved is limited to the lesser of:

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

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

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

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

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

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

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

Recodified from N.J.A.C. 5:80-33.25 and amended by R.1999 d.120, effective April 5, 1999.

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

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

Administrative change.

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

### 5:80-33.24 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-profit reservation fee: one percent of the allocation amount over the 10-year credit period.
2. Qualified nonprofit reservation fee: one-half of one percent of the allocation amount over the 10-year credit period.

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

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

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

Recodified from N.J.A.C. 5:80-33.26 and amended by R.1999 d.120, effective April 5, 1999.

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

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

#### 5:80-33.25 Allocation needs analysis

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

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

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

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

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

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

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

#### 5:80-33.26 Reservations, allocations and binding commitments

(a) Once the reservation is final as described in N.J.A.C. 5:80-33.24(b), projects must meet allocation criteria established by the Code and these rules in order to qualify for an allocation of tax credits. (The IRS does not recognize the reservation processes of housing credit agencies.) The deadline for meeting the allocation criteria described in (a)1 and 2 below is October 15 (November 15 for Final Cycle reservations), or the next business day if the 15th is a weekend or holiday. On a case-by-case basis, NJHMFA may extend its filing deadline if the sponsor can show good cause; however, in order to defray the added expense and regulatory burden of processing allocation requests that arrive after the deadline, a graduated extension fee shall be payable to NJHMFA for each week or part thereof that the sponsor is late in submitting a complete package (that is, in the Spring Cycle, \$500.00 per week or part thereof in October and \$1,000 per week or part thereof in November and December for each week the package is late; in the Final Cycle, \$500.00 per week or part thereof in November and \$1,000 per week or part thereof in December for each week the package is late). NJHMFA reserves the right to rescind a reservation if a deadline is unmet.

1. Sponsors requesting a carryover allocation shall submit their certification for carryover and a certification from an independent C.P.A. which shows that more than 10 percent of the project's 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. Accrued developer fees in carryover basis shall not exceed the lesser of the fee earned to date or 20 percent of the total developer fee. Title ownership is not required for carryover allocations, but site control must be maintained. Projects receiving carryover allocations have until the end of the second year after the execution of the carryover allocation agreement to place the project in service.

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

i. If the building is placed in service on or prior to August 1, the allocating document shall be the IRS Form 8609 and the sponsor shall submit all requirements listed in N.J.A.C. 5:80-33.27 by the filing deadline established in (a) above.

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

(b) NJHMFA may enter into a binding commitment to allocate credits from the next year's tax credit authority to projects described below:

1. The next-highest ranking project in the Final Cycle (or the Reserve if the Final Cycle is canceled) if that project received only a partial allocation as a consequence of NJHMFA exhausting its tax credit authority for the current year, provided such project can meet the 10 percent carryover test. Together, the partial carryover allocation and the binding forward commitment shall not exceed the maximum eligible tax credit amount; or

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

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

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

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

Recodified from N.J.A.C. 5:80-33.23 and amended by R.1998 d.279, effective June 1, 1998.

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

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

Recodified from N.J.A.C. 5:80-33.28 and amended by R.1999 d.120, effective April 5, 1999.

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

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

### 5:80-33.27 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 all required information from the owner. NJHMFA staff shall also conduct an on-site inspection of the project to confirm that all representations made in the project's tax credit application have been met. Upon completion of the NJHMFA evaluation, which includes the placed in service needs analysis, 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.

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

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

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

Recodified from N.J.A.C. 5:80-33.24 by R.1998 d.279, effective June 1, 1998.

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

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

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

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

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

### 5:80-33.28 Placed in service needs analysis

(a) Pursuant to Section 42(m)(2) of the Code, NJHMFA shall conduct the last of its required needs analysis evaluations at the time the project places in service. The analysis shall be based on the project cost certification of an independent C.P.A. and the permanent financing sources (see N.J.A.C. 5:80-33.29). If the amount of the tax credit request is not needed for the financial feasibility of the

project and its viability as a qualified low-income housing project throughout the credit period, the amount of the tax credit shall be reduced to the needed amount.

(b) The determination of whether the amount requested is needed for financial feasibility and continued viability of the project shall include an examination as to whether there have been increases or decreases in project costs, other funding sources or rental subsidies which would result in a higher allocation than needed. If NJHMFA has a reasonable basis for concluding the equity factor submitted by the applicant is inconsistent with market conditions, NJHMFA reserves the right to adjust the equity factor in its underwriting. The Code requires that NJHMFA reduce the credit amount based upon need; however, this does not mean that NJHMFA will jeopardize the long-term financial feasibility and viability of the project by arbitrarily taking back credits. For example, if the equity market improved so that projects were able to get better pricing from investors, NJHMFA will not necessarily reduce the credit on those projects that use the "excess" credits to cover cost overruns, provide betterments in the projects such as upgrading the security system, landscaping, provision of appliances such as washers and the like. NJHMFA shall not allow these additional funds to be used to increase the developer fee over that shown on the application.

(c) For each needs analysis, a Sponsor Certification shall be submitted. Any substantive changes to the project's financing plan or costs shall be explained in detail and may cause the project to be reconsidered by NJHMFA.

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

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

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

Recodified from N.J.A.C. 5:80-33.24 and amended by R.1998 d.279, effective June 1, 1998.

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

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

Recodified from N.J.A.C. 5:80-33.30 and amended by R.1999 d.120, effective April 5, 1999.

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

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

### 5:80-33.29 Project cost certification

(a) An independent C.P.A. shall audit both the development and construction costs of the project in accordance with generally accepted auditing standards. Fixed price contracts shall also be audited. 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 October 15. To make sure that the necessary paperwork is submitted to NJHMFA by the October 15 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) "Contractor fee limits" with regard to contractor profit and overhead shall be set in accordance with the schedule below. Maximum fees include the base profit and overhead and any incentive cost savings fee realized. Costs included on the general conditions line must be broken out on a separate schedule. Unreasonable costs shall be disallowed.

1999 Low Income Housing Tax Credit CONTRACTOR FEE SCHEDULE	
Construction Contract Amount	Fee (Overhead and Profit)
\$ 0 - \$ 500,000	11.75 percent
\$ 500,001 - \$ 1,000,000	10.75 percent
\$ 1,000,001 - \$ 5,000,000	9.50 percent
\$ 5,000,001 - \$10,000,000	8.50 percent
\$10,000,001 - \$15,000,000	7.00 percent
\$15,000,001 - \$20,000,000	6.70 percent
\$20,000,001 +	6.20 percent

(c) For projects seeking IRS Form 8609 allocations and for projects with carryover allocations, where completion is scheduled to occur close to the end of the year, interim audits should be taking place throughout construction so that when the certificate of occupancy is issued, the final cost certification is virtually complete. For projects still incurring eligible costs, NJHMFA may consider the 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 for amenities such as security system and landscaping.

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

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

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

Recodified from N.J.A.C. 5:80-33.26 and amended by R.1998 d.279, effective June 1, 1998.

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

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

Recodified from N.J.A.C. 5:80-33.31 and amended by R.1999 d.120, effective April 5, 1999.

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

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

### 5:80-33.30 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.

Recodified from N.J.A.C. 5:80-33.27 by R.1998 d.279, effective June 1, 1998.

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

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

Recodified from N.J.A.C. 5:80-33.32 by R.1999 d.120, effective April 5, 1999.

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

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

### 5:80-33.31 Returning credits

Applicants unable to utilize their allocation should return their allocation to NJHMFA as soon as possible. As an incentive to turn in unused credits early, applicants that return credits by October 15 shall have their previously paid reservation fee credited toward their next reservation fee. Applicants returning credits after October 15 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 administered.

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

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

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

Recodified from N.J.A.C. 5:80-33.28 by R.1998 d.279, effective June 1, 1998.

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

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

Recodified from N.J.A.C. 5:80-33.33 and amended by R.1999 d.120, effective April 5, 1999.

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

Substituted "administered" for "returned after the Reserve deadline" at the end. Former N.J.A.C. 5:80-33.31, Project cost certification, recodified to N.J.A.C. 5:80-33.29.

**5:80-33.32 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) The NJHMFA shall have the authority to rescind a reservation or an allocation if any representations made in the application are mistakenly or intentionally misrepresented or not fulfilled.

(c) Failure to disclose all relevant information is grounds for disqualification of the application or recapture of the allocation.

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

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

Inserted new (b); recodified former (b) as (c).

Recodified from N.J.A.C. 5:80-33.29 by R.1998 d.279, effective June 1, 1998.

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

Former N.J.A.C. 5:80-33.34, Notification of noncompliance, was recodified to N.J.A.C. 5:80-33.39.

Recodified from N.J.A.C. 5:80-33.34 by R.1999 d.120, effective April 5, 1999.

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

Former N.J.A.C. 5:80-33.32, Extended use agreement, recodified to N.J.A.C. 5:80-33.30.

**5:80-33.33 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) The owner of a tax credit project shall agree to submit to NJHMFA copies of any correspondence, notice or other document the owner receives from the Internal Revenue Service regarding compliance or noncompliance issues, audits, or other forms of communication regarding their low income tax credit project(s).

(c) No later than 90 days after the close of each fiscal year during the compliance period of a project, its owners shall submit to NJHMFA a copy of the project's audited financial statements for the fiscal year, including a detailed income and expense schedule and vacancy rate calculation.

(d) Owners/agents are required to keep records for each qualified low income building in the project which will show for each year of the compliance period the following information:

1. The total number of residential rental units in the building, including the number of bedrooms and the size in square feet of each residential rental unit;

2. The percentage of residential rental units in the building that are low income units;

3. The rent charged on each residential rental unit in the building, including any utility allowances;

4. The number of occupants 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 (that is, tenant facilities that are available on a comparable basis to all tenants and for which no separate fee is charged for use of the facilities, or facilities reasonably required by the project).

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

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

2. The records for the first year of the credit period, however, shall be retained for the entire compliance period plus six years beyond the due date (with extensions) for filing the Federal income tax return for the last year of the compliance period of the building.

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.

(f) The owner/agent of a low income housing project shall certify, under penalty of perjury, that it has complied with the low income housing tax credit restrictions of the Code 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) whichever Federal minimum set-aside test was applicable to the project; and if applicable to the project, the 40-50 HOME test under Section 42(i)(2)(E)(i) and the 15-40 test under Sections 42(g)(4) and 142(d)(4)(B) for "deep rent skewed" projects;

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

3. That the owner received an annual income certification from each low income tenant, and documentation to support that certification; or in the case of a tenant receiving Section 8 housing assistance payments, the statement from a public housing authority declaring that the tenant's income does not exceed the applicable limit under Section 42(g) of the Code. For an exception to 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. That if a low income unit in the project became vacant during the year, that reasonable attempts were or are being made to rent that unit or the next available unit of comparable or smaller size to tenants having a qualifying income before any units in the project were or will be rented to tenants not having a qualifying income;

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

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

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

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

Recodified from N.J.A.C. 5:80-33.30 and amended by R.1998 d.279, effective June 1, 1998.

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

Added new (b) and (c) and recodified former (b) through (d) as (d) through (f). Former N.J.A.C. 5:80-33.35, Confidentiality of tax credit applications, and information, was recodified to N.J.A.C. 5:80-33.40. Recodified from N.J.A.C. 5:80-33.35 by R.1999 d.120, effective April 5, 1999.

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

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

#### 5:80-33.34 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) NJHMFA shall also, throughout the year, select 20 percent of all tax credit developments and shall perform physical inspections to determine suitability for occupancy, taking into account State and local health, safety and building codes. If NJHMFA determines a violation(s) exist(s) which could render a building unsuitable for occupancy, such violation may be considered an issue of noncompliance which must be reported to the Internal Revenue Service. The owner shall be given a reasonable period of time to correct the violation(s). At the end of the correction period, NJHMFA shall notify the IRS whether the owner has or has not corrected the violation(s). Such violation(s) shall also be reported for appropriate action to the Division of Codes and Standards, Bureau of Housing Inspection in the New Jersey Department of Community Affairs.

(d) 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.

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

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

Recodified from N.J.A.C. 5:80-33.31 and amended by R.1998 d.279, effective June 1, 1998.

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

Added a new (c) and recodified former (c) as (d).

Recodified from N.J.A.C. 5:80-33.36 by R.1999 d.120, effective April 5, 1999.

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

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

#### 5:80-33.35 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.

Recodified from N.J.A.C. 5:80-33.32 by R.1998 d.279, effective June 1, 1998.

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

Recodified from N.J.A.C. 5:80-33.37 by R.1999 d.120, effective April 5, 1999.

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

Former N.J.A.C. 5:80-33.35, Compliance monitoring, recodified to N.J.A.C. 5:80-33.33.

#### 5:80-33.36 Inspection

Prior to the issuance of the IRS Form 8609, NJHMFA staff shall conduct an on-site inspection of the project to confirm that all representations made in the project's tax credit application have been met. (See N.J.A.C. 5:80-33.27.) NJHMFA also 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.

Recodified from N.J.A.C. 5:80-33.33 by R.1998 d.279, effective June 1, 1998.

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

Recodified from N.J.A.C. 5:80-33.38 and amended by R.1999 d.120, effective April 5, 1999.

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

Rewrote the section. Former N.J.A.C. 5:80-33.36, NJHMFA review, recodified to N.J.A.C. 5:80-33.34.

#### 5:80-33.37 Notification of noncompliance

(a) Upon determination by NJHMFA of noncompliance with Section 42 of the Code, N.J.A.C. 5:80-33.33, or any other relevant rules, regulations, or procedures, NJHMFA shall give notice to the owner of the noncompliance. The owner shall then be given sufficient notice to correct the noncompliance.

(b) 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.

Recodified from N.J.A.C. 5:80-33.34 and amended by R.1998 d.279, effective June 1, 1998.

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

In (a), changed the N.J.A.C. reference.

Recodified from N.J.A.C. 5:80-33.39 and amended by R.1999 d.120, effective April 5, 1999.

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

In (a), changed N.J.A.C. reference. Former N.J.A.C. 5:80-33.37, Compliance monitoring fee, recodified to N.J.A.C. 5:80-33.35.

#### 5:80-33.38 Confidentiality of tax credit applications and information

(a) Applications submitted to NJHMFA for tax credit reservations and all supporting documents submitted by the applicant for a reservation shall be confidential, non-public records until Final Cycle awards or cancellation of the Final Cycle are announced by NJHMFA. Applications submitted by applicants requesting volume cap tax credits and all supporting documents shall be confidential non-public records until NJHMFA has issued a determination letter. 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. 5:80-33.13(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. 5:80-33.13(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) Information or documents submitted or prepared with respect to binding forward commitments, carryover allocations, placed in service allocations, and IRS Form 8609 shall be confidential and shall be disclosed only as permitted by Section 6103 of the Code.

(c) Information submitted to NJHMFA by or on behalf of a project owner with respect to compliance monitoring, and reports, compliance notices, and IRS Forms 8823 prepared by NJHMFA with respect to monitoring the compliance of any project shall be confidential and shall be disclosed only as permitted by Section 6103 of the Code.

Recodified from 5:80-33.36 and amended by R.1997 d.284, effective July 7, 1997.

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

Substantially amended (a); in (a)1 and 2, amended N.J.A.C. reference; rewrote (b); and added (c). Former section "Tax exempt financed projects" was recodified to N.J.A.C. 5:80-33.11(a)17.

Recodified from N.J.A.C. 5:80-33.35 and amended by R.1998 d.279, effective June 1, 1998.

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

In (a)1 and 2, changed N.J.A.C. references.

Recodified from N.J.A.C. 5:80-33.40 and amended by R.1999 d.120, effective April 5, 1999.

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

In (a), inserted a reference to cancellation of the Final Cycle in the first sentence, and changed N.J.A.C. references in 1 and 2. Former N.J.A.C. 5:80-33.38, Inspection, recodified to N.J.A.C. 5:80-33.36.

#### **5:80-33.39 (Reserved)**

Recodified to N.J.A.C. 5:80-33.37 by R.1999 d.120, effective April 5, 1999.

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

#### **5:80-33.40 (Reserved)**

Recodified to N.J.A.C. 5:80-33.38 by R.1999 d.120, effective April 5, 1999.

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