

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

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

(b) The entire IRS Form 8609 request package, including the allocation/issuance fee described at N.J.A.C. 5:80-33.25, the audit report and compilation, in a form acceptable to NJHMFA, must be submitted to NJHMFA at the latter of six months following the issuance of the final certificate of occupancy for the project or two months after the first year of the credit period. On a case-by-case basis, NJHMFA may extend its filing deadline if the owner can show good cause; however, in order to defray the added expense and regulatory burden of processing IRS Form 8609 requests that arrive after the deadline, an extension fee of \$1,000 shall be payable to NJHMFA for each week or part thereof that the owner is late in submitting a complete package. NJHMFA reserves the right to recapture an allocation if a deadline is unmet.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Recodified from N.J.A.C. 5:80-33.28 and amended by R.2003 d. 300, effective July 21, 2003.

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

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

5:80-33.27 Placed in service needs analysis

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

(b) The determination of whether the amount requested is needed for financial feasibility and continued viability of the project shall include an examination as to whether there have been increases or decreases in project costs, other funding sources or rental subsidies which would result in a higher allocation than needed. If NJHMFA has a reasonable basis for concluding the equity factor submitted by the applicant is inconsistent with market conditions, NJHMFA reserves the right to adjust the equity factor in its underwriting. The Code requires that NJHMFA reduce the credit amount based upon need; however, this does not mean that NJHMFA will jeopardize the long-term financial feasibility and viability of the project by arbitrarily taking back credits. For example, if the equity market improved so that projects were able to get better pricing from investors, NJHMFA would not necessarily reduce the credit on those projects that use the "excess" credits to cover cost overruns or provide betterments in the projects such as upgrading the security system, landscaping, provision of appliances such as washers, and the like. NJHMFA shall not allow these additional funds to be used to increase the developer fee over that shown on the application.

(c) For each needs analysis, a Sponsor Certification shall be submitted. Any substantive changes to the project's financing plan or costs shall be explained in detail and may cause the project to be reconsidered by NJHMFA.

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

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

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

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

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

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

Recodified from N.J.A.C. 5:80-33.30 and amended by R.1999 d.120, effective April 5, 1999.

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

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

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

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

Recodified from N.J.A.C. 5:80-33.28 and amended by R.2001 d.170, effective May 21, 2001.

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

In (a), changed N.J.A.C. reference. Former N.J.A.C. 5:80-33.29, Project cost certification, recodified to N.J.A.C. 5:80-33.30.

Recodified from N.J.A.C. 5:80-33.29 and amended by R.2003 d. 300, effective July 21, 2003.

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

In (a), amended N.J.A.C. reference. Former N.J.A.C. 5:80-33.27, Allocation/issuance fee schedule, recodified to N.J.A.C. 5:80-33.25.

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

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

(b) "Contractor fee limits" with regard to contractor profit and overhead shall be set in accordance with the schedule below. Maximum fees include the base profit and overhead and any incentive cost savings fee realized. Costs included on the general conditions line must be broken out on a separate schedule. Unreasonable costs shall be disallowed.

CONTRACTOR FEE SCHEDULE

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

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

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

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

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

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

Recodified from N.J.A.C. 5:80-33.26 and amended by R.1998 d.279, effective June 1, 1998.

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

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

Recodified from N.J.A.C. 5:80-33.31 and amended by R.1999 d.120, effective April 5, 1999.

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

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

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

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

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

Recodified from N.J.A.C. 5:80-33.29 and amended by R.2001 d.170, effective May 21, 2001.

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

In (a), rewrote the first through third sentences. Former N.J.A.C. 5:80-33.30, Extended use agreement, recodified to N.J.A.C. 5:80-33.31. Amended by R.2002 d.233, effective July 15, 2002.

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

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

Recodified from N.J.A.C. 5:80-33.30 and amended by R.2003 d. 300, effective July 21, 2003.

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

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

5:80-33.29 Extended use agreement

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