

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

**Authority**

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

**Source and Effective Date**

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

**Executive Order No. 66(1978) Expiration Date**

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

**Chapter Historical Note**

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

See subchapter and section levels for further amendments.

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#### SUBCHAPTER 1. GENERAL PROVISIONS

##### 5:80-1.1 Authority

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

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

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

1. Assuring the availability of rental and owner occupied housing;
2. Stimulating the construction, rehabilitation and improvement of adequate and affordable housing in the State so as to increase the number of housing 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, as used in this chapter, 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 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.

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, 33.8 or 33.9. NJHMFA ranks the applications received in each cycle according to the respective point scales provided in N.J.A.C. 5:80-33.17, 33.18, 33.19, 33.20, 33.21 and 33.22. 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. 5:80-33.14.

(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. 5:80-33.11.

(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 tax accountant, 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).

#### 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, to encourage family rental units in non-urban municipalities, a density bonus project may be eligible for tax credits from the State's volume cap if the density bonus is insufficient to yield family 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. Under no circumstances shall a senior project receive credits from volume cap if it is being constructed pursuant to a density bonus.

“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, to encourage family rental units in non-urban municipalities, a density bonus project may be eligible for tax credits from the State’s volume cap if the density bonus is insufficient to yield family 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 an application for tax credits is filed. Under no circumstances shall a senior project receive credits from volume cap if it is being constructed pursuant to a density bonus.

“De minimis award” means an award of credits from the Reserve in order to fund the last highest ranking project in a cycle if such project cannot receive a full reservation. De minimis awards are generally capped at \$100,000. Applicants do not apply for de minimis awards. Example: There are 10 projects in the Suburban/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.

“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 acqui-

sition fees, financial consultants, employees of the developer, related party 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. All other consultant fees shall be included in the developer fee and are not allowed to be shown as separate line items on the tax credit application. If there are costs listed under professional planner, the executed contract shall be submitted for NJHMFA determination of whether such fees are for planning or for financial consulting.

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

“Related party” means a relationship between parties when there is a 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 nonsyndicated tax credit projects, or projects where the general partner (and/or related entity) will retain more than a four percent ownership interest. For projects where the general partner’s ownership interest is five to 49 percent, \$0.10 shall be added to the equity factor. If the general partner’s ownership interest is 50 percent or more, \$0.20 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 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 projects” means a project which shall rent a minimum of 25 percent of the total units in the project for occupancy by one (or more) of the targeted special needs populations referred to below, and must make available a minimum of three daily services addressing the needs of the identified group; one of which must be a social services coordinator. If a social service coordinator is being provided through a third party, then a signed agreement between the two parties is required, and the coordinator must be dedicated to the tax credit project for at least 20 hours a week. Project sponsors may rent more than 25 percent of their affordable units for occupancy by one or more of these

targeted populations. However, sponsors should also be aware that for certain types of special needs projects, when more than 30 percent of the units are set aside for persons with special needs, "saturation" may occur resulting in an institution-type atmosphere. Special needs populations include individuals and families who are in need of certain types of home and/or community-based supportive services, usually on an ongoing basis, in order to remain capable of independent living in communities. Supportive services range across a wide continuum of care (such as meals preparation, assistance with 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, psychosocial, 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.

"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 a violation of State and local building codes or health ordinances or failure of one or more major systems (for example, roof, HVAC, elevators, etc.) which was reported to the owner by the NJHMFA via formal notice of noncompliance and remains uncorrected as of the date of the tax credit application deadline.

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 minimus 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.

**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 within targeted neighborhoods (within targeted cities) and for projects in designated SNAP neighborhoods. Targeted neighborhood and SNAP projects are eligible for Urban Cycle credits beyond the set-aside. If, because of lack of demand, this set-aside is not fully utilized, remaining credits in this set-aside shall be released into the Urban Cycle for use by other projects.
2. Senior Set-Aside: 15 percent of the credits available in the Urban Cycle shall be set aside for senior citizen projects. Senior citizen projects are eligible for Urban Cycle credits beyond the set-aside. If, because of lack of demand, the senior set-aside is not fully utilized, remaining credits in the senior set-aside shall be released into the Urban cycle for use by other projects.
3. Nonprofit Set-Aside: In order to encourage the participation of local and/or State tax-exempt organizations in the tax credit program, 15 percent of the credits available in the Urban Cycle shall be set aside for qualified nonprofit organizations. Nonprofits are eligible for Urban Cycle credits beyond the set-aside. If, however, there is not enough nonprofit demand, credits remaining

in the nonprofit set-aside shall be made available to other projects in the Urban cycle so long as no more than 90 percent of the total state housing credit ceiling, as per Section 42(h)(5)(A) of the Code, is allocated to for-profit sponsored projects. In order to qualify for credits from the nonprofit set-aside and for the nonprofit reservation fee, applicants must certify that they are a qualified nonprofit organization under the meaning of the Code and these rules.

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

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

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.

**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 are two set-asides in the Suburban/Rural Cycle:

1. Family Set-Aside: 20 percent of the credits available in the Suburban/Rural Cycle shall be set aside for family projects. Family projects are eligible for Suburban/Rural Cycle credits beyond the set-aside. If, because of lack of demand, the family set-aside is not fully utilized, remaining credits in the family set-aside shall be released into the Suburban/Rural Cycle for use by other projects.
2. Nonprofit Set-Aside: In order to encourage the participation of local and/or State tax-exempt organizations in the tax credit program, 15 percent of the credits available in the Suburban/Rural Cycle shall be set aside for qualified nonprofit organizations. 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 and for the nonprofit reservation fee, organizations shall certify that they are a qualified nonprofit organization under the meaning of the Code and this allocation plan.

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

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

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.

#### 5:80-33.6 HOPE VI Cycle

Projects located in municipalities listed on the Urban Cycle list are eligible to apply in the HOPE VI Cycle. Projects utilizing HOPE VI funds from HUD may only apply to the HOPE VI or Final Cycles; they are ineligible to apply to the Urban, Suburban/Rural, Mixed Income 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.

#### 5:80-33.7 Mixed Income Cycle

Mixed income projects may be located anywhere in the State. To qualify for this cycle, at least 50 percent of the total units in the project must be low-income units eligible for credits and at least 20 percent of the total units in the project must be market rate units where, for purposes of this section only, market rate is defined as households earning over 60 percent of median income. 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. 5:80-33.7, Final Cycle, was recodified to N.J.A.C. 5:80-33.9.

#### 5:80-33.8 Special Needs Cycle

(a) Special needs projects may be located anywhere in the State. To qualify for this cycle, at least 25 percent of the total number of units must be 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 utilizing 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 authorizing the project to access the waiting list. 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.

### 5:80-33.9 Final Cycle

(a) The Final Cycle shall take place only in the event there are unused credits from the Reserve or if New Jersey is awarded an allocation from the National Pool. 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.

(b) 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.

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

1. Certifies that there are no changes whatsoever to the previously submitted application; or
2. Documents any and all changes to the previously submitted application.

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.

### 5:80-33.10 Reserve

(a) Projects that need additional credits because of technical errors, de minimis awards, and severe hardship can submit a reapplication for credits from the Reserve. The Reserve may also be used for other 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 one month before the deadline for the Final Cycle. Awards of credits from the Reserve are subject to availability and to NJHMFA's evaluation of the request and shall be announced prior to the deadline for Final Cycle applications. Any remaining credits from the Reserve will be transferred into the Final Cycle. To apply to the Reserve for a hardship of additional credit, applicants must follow the procedures at N.J.A.C. 5:80-33.15.

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.

### 5:80-33.11 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. 5:80-33.14; 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").

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.

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. 5:80-33.17(a)17, 19 and 20 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.

### 5:80-33.12 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, Mixed Income 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, Mixed Income 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 nonrefundable.

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.

### 5:80-33.13 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 two points from the project's score in determining its ranking in the application cycle.

(f) 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.

### 5:80-33.14 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. 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. A market study is required for all projects with market rate units. If a market study has not been conducted, 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. Where site control is being demonstrated through an option, purchase contract, disposition agreement or lease, the applicant must submit a copy of the current owner's recorded deed.

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 submitted, costed in detail and 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 more than a four percent ownership interest will have a retention factor (see definitions) added to the NJHMFA equity factor or the project's net pricing.

vii. All-equity projects: Such projects include those where the applicant is financing the project and is taking the credits itself and those where the project is permanently financed solely on tax credit proceeds (that is, no mortgage, grants, etc.). Applicants of projects in the former category shall comply with (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. Applicants shall submit a 15-year cash flow proforma signed by the first mortgagee which exclusively reflects the following language verbatim: "We acknowledge that this proforma substantially matches the assumptions used in our underwriting of the mortgage." The proforma must precisely reflect the rent structure in the tax credit application, all lenders' assumptions such as principal and interest payments, nonrental 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. The Agency 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. 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. Resumes of the development team shall be submitted. This includes the project owner (general partner and limited partner or syndicator if selected), developer, architect, consultant, general contractor, and management company. The sponsor, developer, and general partner (or voting member(s) if a limited liability company) shall disclose prior or current foreclosures, formal notices of noncompliance and IRS Forms 8823 issued by NJHMFA, and full credit recaptures after the annual voluntary return deadline on their part or on the part of any of their related entities (see definition of "related party"), or, if non, provide a statement that affirms no involvement in such actions. Misrepresentation of any information about the experience, financial capacity or foreclosures of any team member shall be grounds for denial or loss of the credits and may affect the person's future participation in the tax credit program.

9. 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.

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

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

12. All projects funded by the 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.

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

14. Special needs projects applying to any cycle shall submit the following items in addition to those items at N.J.A.C. 5:80-33.17(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 authorizing the project to access 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).

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

16. 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)16iii 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.

17. Applicants applying to the Mixed-Income Cycle shall submit the following:

i. A Mixed-Income Strategic Plan that discusses:

(1) The public policy objectives served by the mix of income levels in the project;

(2) The suitability of the project for its surrounding community;

(3) The input received from the community in planning the project;

(4) Local endorsement of the project through, for example, ordinances or resolutions of the municipal governing body;

(5) Project compliance with COAH Certification or court orders relating to housing needs in its community;

(6) Project conformity with the State Development and Redevelopment Plan adopted under N.J.S.A. 52:18A-199, as in effect on the date the application is submitted; and

(7) Any special or unique ways in which the project promotes the availability of affordable housing to a particular community or to the State as a whole.

ii. The applicant shall demonstrate that the market rate for rents is above the rent affordable by families earning 60 percent of area median income for comparably sized units. A market study shall be submitted with the application for tax credits. It shall be performed by either an independent appraiser licensed by the State of New Jersey or by a qualified real estate broker who is a nonrelated party to the deal. It shall include age and salary demographics within an approximate one-mile radius of the proposed project and comparable data also within a one-mile radius of the project. Comparable data shall include a listing of comparable rental projects, their location, rents, vacancy rates, whether they have waiting lists, their unit and project amenities, and proximity to public services and support facilities. A comparable grid shall be included in the report to demonstrate the positive and negative adjustments to the subject property.

(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.

**5:80-33.15 Application to the Reserve**

(a) See N.J.A.C. 5:80-33.10 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 exclusively reflecting the following language verbatim: "We acknowledge that this proforma substantially matches the assumptions used in our underwriting of the mortgage";
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.

**5:80-33.16 Scoring and ranking**

(a) Because of the limited amount of credits and the high volume of applications to NJHMFA, only a fraction of the projects that apply typically receive credits. Therefore, all projects shall be initially scored and ranked in accordance with the scoring system of the cycle to which they are applying and with the tie-breaker system. NJHMFA will then examine the eligibility requirements of only those

projects that rank sufficiently high enough to receive credits. Once it is determined that an application meets all eligibility requirements, it is admitted into the cycle and underwritten.

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

(c) 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.

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.

**5:80-33.17 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 land is contributed); monetary contribution to the project (that is, HOME, RCA, CDBG, UDAG) totaling at least five percent of the total project cost; waiver of local building permit fees; or guarantee of the permanent mortgage for a period of at least five years. If land is being contributed, the deed into the county or municipality or PHA 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 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. Substantial rehabilitation of HUD troubled projects shall receive one point.

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

11. 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.

12. One point shall be awarded to projects that are part of an approved strategic neighborhood plan which includes housing and economic development. The applicant shall provide a municipal resolution that approves and adopts the strategic neighborhood plan.

13. Applications which include a commitment letter signed by the syndicator or investor and applicant specifying net pricing and net capital contributions in excess of NJHMFA's equity factor (see definition of "equity factor") shall receive one point. Term sheets do not qualify for this point.

14. 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.

15. 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.

16. Projects which are sponsored by a nonprofit organization that qualifies for the nonprofit set-aside will receive two points.

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

18. Applications which have a general partner, voting member, developer, or related party that owns a managing or controlling interest in a New Jersey LIHTC project with an Uncorrected Non-Compliance shall have 10 points deducted from the application's score.

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

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.

20. Applications which have a general partner, voting member, developer, or related party that owns a managing or controlling interest in a New Jersey LIHTC project that has failed to pay NJHMFA monitoring fees (unless NJHMFA has formally issued a deferral) shall have 10 points deducted from the application's score.

21. Applications which have a general partner, voting member, developer, or related party that owns a manag-

ing 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.

22. Applicants that utilize the cure period in N.J.A.C. 5:80-33.13(c)1 or 3 shall have two points 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.

#### 5:80-33.18 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. 5:80-33.17(a)10 concerning a project located in a Designated Center is replaced with the following:

1. Projects meeting the definition of a:

i. COAH obligation or court ordered obligation shall be awarded five points; or

ii. 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.

#### 5:80-33.19 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. 5:80-33.17(a)6 concerning municipal, county and public housing authority support and the point category in N.J.A.C. 5:80-33.17(a)9 concerning HUD troubled projects.

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.

#### 5:80-33.20 Mixed Income Cycle

(a) The point system for the Mixed Income Cycle includes all point categories of the Suburban Cycle except for the point category in N.J.A.C. 5:80-33.17(a)2 concerning low-income set-aside, the point category in N.J.A.C. 5:80-33.17(a)12 concerning strategic neighborhood plan and the point category in N.J.A.C. 5:80-33.18(a)1 concerning COAH/court-ordered obligation or designated center. The Mixed Income Cycle also includes the following point categories:

1. Applications shall be awarded up to five points based upon the extent to which their Mixed-Income Strategic Plan fully and persuasively addresses the items set forth in N.J.A.C. 5:80-33.14(a)17; and

2. One of the following:

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

ii. Projects eligible to apply to the Urban Cycle shall be awarded five points; or

iii. Projects meeting the definition of a designated center shall be awarded two points.

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. 5:80-33.20, Application needs analysis, was recodified to N.J.A.C. 5:80-33.25.

### 5:80-33.21 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. 5:80-33.17(a)7 concerning social services and the point category in N.J.A.C. 5:80-33.17(a)12 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/social service provider has successfully developed or managed. The maximum points available for this category is six.

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

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

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.

### 5:80-33.22 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, and increased points in one existing category:

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.

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

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.

### 5:80-33.23 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.

### 5:80-33.24 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.

### 5:80-33.25 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 of housing credit NJHMFA 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. 5:80-33.14. 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. 5:80-33.14(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. 5:80-33.27 and 30) 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.

**5:80-33.26 Committee review**

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

(b) The Committee shall review the rankings, eligibility and tie-breaker decisions as well as requests for reservations from the Reserve. Committee decisions are final. All applicants shall be notified in writing whether their projects received a reservation or not and the basis for the decision. A reservation commitment letter shall be mailed to all reservation recipients. Recipients have 30 days from the date of the reservation letter to pay the reservation fee. A reservation is not complete until the reservation fee is paid.

(c) The reservation fee schedule is as follows:

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

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.

**5:80-33.27 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.

**5:80-33.28 Reservations, allocations and binding commitments**

(a) Once the reservation is final as described in N.J.A.C. 5:80-33.26(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. 5:80-33.29 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 provided such project can meet the 10 percent carryover test:

1. The next-highest ranking project in the Final Cycle if that project received only a partial allocation as a consequence of NJHMFA exhausting its tax credit authority for the current year. 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. 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.

### 5:80-33.29 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. Upon completion of the NJHMFA evaluation, which includes the placed in service needs analysis, the NJHMFA shall complete Part I of the IRS Form 8609 and shall forward a copy, as filed with the IRS, to the project owner. Owners should be sure to make copies of the signed IRS Form 8609 as a copy must be filed each year with Federal tax returns.

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.

### 5:80-33.30 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 evaluation at the time the project places in service. The analysis shall be based on the audit report of an independent C.P.A. and the permanent financing sources and the project cost certification (see N.J.A.C. 5:80-33.31). 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.

**5:80-33.31 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.

1998 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.

**5:80-33.32 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.

**5:80-33.33 Returning credits**

Applicants unable to utilize their allocation should return their allocation to the NJHMFA as soon as possible. As an incentive to turn in unused credits early, 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 returned after the Reserve deadline.

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.

**5:80-33.34 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.

### 5:80-33.35 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.

#### 5:80-33.36 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).

#### 5:80-33.37 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).

#### 5:80-33.38 Inspection

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

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).

#### 5:80-33.39 Notification of noncompliance

(a) Upon determination by NJHMFA of noncompliance with Section 42 of the Code, N.J.A.C. 5:80-33.35, 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.

#### 5:80-33.40 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, nonpublic records until the Final Cycle awards are announced by NJHMFA. Applications submitted by applicants requesting volume cap tax credits and all supporting documents shall be confidential nonpublic 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 nonpublic records:

1. Financing information and syndication documents submitted in compliance with N.J.A.C. 5:80-33.14(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. 5:80-33.14(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.