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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5:80–1.4 Regulations regarding Housing Projects

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

1. The construction or rehabilitation of:

i. Continuing care retirement communities;

ii. Nonresidential facilities or structures (other than those permitted within a housing project);

iii. Boarding houses;

iv. Residential developments having 25 dwelling units or less; or

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

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

SUBCHAPTER 2. ACTIONS REGARDING HOUSING SPONSORS

5:80–2.1 Rights of housing sponsors

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

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

5:80–2.2 Consultation with housing sponsors

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

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

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

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

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

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

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

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

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

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

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

Amended by R.1991 d.408, effective August 5, 1991.
See: 22 N.J.R. 3669(b), 23 N.J.R. 2306(b).
Added new (a)1; clarified length of comment period and promulgation process throughout section.

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

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

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

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

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

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

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

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

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

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

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

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

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

6. Three months arrears of debt service;

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

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

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

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

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

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

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

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

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

4. During the time allowed for submission of the statement, the Agency staff shall be available to meet with the sponsor in order to assist him in the development of a program of corrective actions. If no proposal is submitted by the sponsor then the Director of Management shall propose a corrective plan to the sponsor.

5. Upon receipt of the proposal from the sponsor, the Director of Management may either accept the plan or suggest alternatives or modifications to the plan in writing to the sponsor.

6. If the sponsor is unwilling to accept the modifications or plan suggested by the Director of Management, then the sponsor may request in writing within 10 days that the matter be referred to the Executive Director of the Agency or his or her designee, for decision on the plan.

7. Once the commitments by the sponsor are accepted by the Agency, or an agreement is reached between the Agency and the sponsor, or a decision is made by the Executive Director, the sponsor shall immediately implement the corrective actions within the time period specified in the plan.

(f) Any violations of or failure to implement the corrective plan shall be subject to the following:

1. The Executive Director shall bring the matter of such failures and a recommendation of remedy to the Members of the Agency Board at the next public meeting scheduled to allow sufficient time for seven days written notice to the sponsor that the failure to implement or abide by the recommended corrective actions is being brought to the attention of the Members of the Agency Board and that suspension of the sponsor may be requested.

2. The Members shall hear the information provided by the Executive Director along with any information presented by the housing sponsor at a public meeting prior to taking any action pursuant to N.J.S.A. 55:14K–7b(6). The Members may, however, wish to discuss the matter among themselves at a session closed to the public if permitted by N.J.S.A. 10:4–1 et seq.

3. The decision by the Members of the Agency shall be final subject only to review by a court of competent jurisdiction.

(g) Pursuant to the Act, persons appointed to administer the affairs of the project after suspension of the housing sponsor shall only serve for a period co-existent with the duration of the original violation giving rise to the need for the corrections or until the Agency is assured in a satisfactory manner that the violation or violations of a similar nature will not recur. Upon correction of the violation in a reasonable and satisfactory manner, the housing sponsor may submit a request to the Agency for restoration of control back to sponsors. The Agency will respond to such request within 30 days. During that period in which the Agency is considering the housing sponsor's request, the term of the persons appointed to administer the affairs of the project will continue.

(h) The regulations in this subchapter are intended to be in addition to other powers and remedies which the Agency may have at law or by agreement and shall not be deemed to abridge any other rights or remedies of the Agency or the sponsor.

(i) Upon a vote by the members of the Agency Board that there is an immediate need to take action and a finding that failure to take immediate action could jeopardize the health and safety of tenants at the housing project or cause substantial harm to the financial viability or physical structure of the project, the Agency may waive the regulations set forth above and immediately implement appropriate action.

SUBCHAPTER 3. RETURN ON EQUITY

5:80–3.1 Authority

This subchapter is promulgated pursuant to authority of N.J.S.A. 55:14K–5g and N.J.S.A. 55:14K–7a(6).

5:80–3.2 Housing projects prior to January 17, 1984

(a) For all eligible loans for Housing Projects made by the Agency prior to January 17, 1984, the rate of return on its investment in the housing project, as determined by the Agency ("stated equity"), which can be paid or earned by the Housing Sponsor of the property and improvements or its principals or stockholders shall not exceed eight percent per year on a cumulative but not compounded basis. This restriction shall apply for the full term of the Agency's loan and shall apply to return on investment earned or received upon construction and rehabilitation of the housing or from the operations of the housing or upon the sale, assignment or lease of the housing subject only to the applicable provisions, if any, of the Agency's regulations concerning the sale of projects owned by nonprofit sponsors and transfer of ownership interests.

(b) Housing Sponsors who have agreed to an annual rate of return of less than eight percent may request an increase in the rate to a maximum of eight percent upon meeting the following criteria:

1. The housing project has funds, including Development Cost (DCE) or Community Development (CDE) Escrows operating, savings and investment accounts and all other funds, accounts and escrows of the project, of an amount equal to three months of operating expenses (for senior citizens projects) or six months of operating expenses (for family projects) which includes debt service and reserve payments of the Agency-approved annual budget in effect at the time of the request and after deducting the following:

i. Debt service arrearages;

ii. Current unpaid invoices;

iii. Fully-funded tax, insurance, reserve for repair and replacement and all other escrow accounts except the DCE and CDE;

iv. The amount of anticipated or proposed repairs or capital improvements; and

v. Any other current obligation of the project.

2. The housing project has been current in all escrow and debt service payments for the three fiscal years prior to the request.

3. The requirements at (b)1 and 2 above need only be met at the time the sponsor seeks approval of the increased rate of return. Once the sponsor qualifies and receives approval of the increased rate of return, future distributions of return on equity shall be governed by the rules at N.J.A.C. 5:80–3.4.

(c) Housing Sponsors who meet the criteria in (b) above, shall be granted an increase in the annual rate of return, up to eight percent, subject to the following conditions:

1. The increased rate of return shall be prospective only which includes the year in which the sponsor applies;

2. Payment of a $3,500 processing fee;

3. Payments of the increased return on equity shall be subject to this subchapter; and

4. Amendments will be made to the appropriate mortgage documents to reflect the conditions in (c)1 and 3 above.

Amended by R.1994 d.398, effective August 1, 1994.
See: 26 N.J.R. 1186(a), 26 N.J.R. 3163(b).

5:80–3.3 Housing projects on or after January 17, 1984

(a) For each eligible loan made by the Agency on or after January 17, 1984 for a Housing Project, the Agency shall determine, at the time of initial mortgage closing, the investment made by the Housing Sponsor.

1. Investment shall include:

i. Actual cash or cash equivalent as determined by the Agency;

ii. Professional fees pledged toward approved project cost;

iii. Any grants and/or loans procured by the Sponsor to the extent they are applied to Agency approved project costs and to the extent they are not repayable from project funds;

iv. Any additional cash contributions made by the Housing Sponsor subsequent to initial closing if such contributions were utilized for project costs approved by the Agency.

2. Increases in project value, as determined by an Agency approved appraisal, may also be recognized as part of this investment.

3. The Housing Sponsor shall be entitled to return on its investment except for funds procured through grants or loans at rates established in accordance with (b) or (c) below. It shall earn a return on any cash portion of its investment from the date it is actually contributed and on the non-cash portion of its investment from the date it is utilized towards approved project costs.

(b) For housing projects which receive a loan from the Agency under the New Jersey Urban Multi-family Production Program, the rate of return on investment may not exceed 12 percent.

(c) For Housing Projects which receive a loan from the Agency on or after January 17, 1984, the Agency shall fix, at the time of the making of the loan, the rate of return which may be earned or received by the Housing Sponsor on its investment on a cumulative but not compounded annual basis from the development, operation, sale, assignment or lease of the Housing Project according to the following schedule:

1. The Base Rate to be used in calculating the return on equity pursuant to 2 through 6 below, shall be equal to the rate being paid on 30–year treasury bonds at the time of the mortgage closing. This Base Rate will be determined by the Agency in its sole discretion using any reasonable source of information;

2. For units occupied by individuals or families who at the time of occupancy have a household income which is less than 50 percent of the median income for the area in which the project is located, the annual rate of return on investment may not exceed the then applicable base rate plus six percent;

3. For units occupied by families or individuals who at the time of occupancy had a total household income of less than 80 percent of the median income for the area, the annual rate of return on investment may not exceed the base rate plus four percent;

4. For all other units financed by the Agency, the annual rate of return on investment may not exceed the base rate plus two percent;

5. For developments which have a mix of units serving populations with an assortment of income ranges, the Agency shall determine the limit on the rate of return which may be earned by the Housing Sponsor by prorating the rate of return based upon the number of units devoted to the various income levels;

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

Amended by R.1989 d.259, effective May 15, 1989.
See: 21 N.J.R. 94(a), 21 N.J.R. 1331(b).
Redesignated old (b) as (c) with no change in text and added new (b) regarding loans made under the New Jersey Urban Multi–Family Production Program.

Case Notes

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

5:80–3.4 Conditions required for distribution

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

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

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

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

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

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

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

1. Submission of Development Cost Certification.

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

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

5:80–3.5 Waiver

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

SUBCHAPTER 4. (RESERVED)

SUBCHAPTER 5. TRANSFER OF OWNERSHIP INTERESTS

5:80–5.1 Definitions

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

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

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

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

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

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

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

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

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

Amended by R.1990 d.504, effective October 15, 1990.
See: 22 N.J.R. 1971(a), 22 N.J.R. 3220(a).
Definition for conversion amended; definitions for development costs, housing project, limited dividend corporation, net proceeds, resyndication and transaction cost deleted.

5:80–5.2 General policy

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

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

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

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

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

Amended by R.1990 d.504, effective October 15, 1990.
See: 22 N.J.R. 1971(a), 22 N.J.R. 3220(a).
Text at (b) amended to include shareholder and transfer of control exception added to (d); provision on general partner's withdrawal Federal subsidy contract deleted at (e) and (g).
Amended by R.1995 d.247, effective May 15, 1995.
See: 27 N.J.R. 265(a), 27 N.J.R. 1977(b).

5:80–5.3 Applicability

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

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

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

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

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

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

Amended by R.1985 d.241, effective May 20, 1985.
See: 17 N.J.R. 505(a), 17 N.J.R. 1258(b).
Old text deleted and new text substituted.
Amended by R.1990 d.504, effective October 15, 1990.
See: 22 N.J.R. 1971(a), 22 N.J.R. 3220(a).
Examples deleted from (a); exception at (a)3 clarified; lower limit of fee in (b) set at $1,000; (c) added.

5:80–5.4 Procedure

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

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

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

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

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

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

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

5:80–5.5 Scope of review

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

1. Transfer of title from the seller to any other party;

2. Any conveyance or attempted conveyance by land contract;

3. Transfer of 90 percent or more of the interest in the partnership/owner within a five year period;

4. A change in general partners or management control of the owner.

(b) In other cases, the Agency in its discretion may conduct a modified review.

5:80–5.6 Required documents

(a) Required documents for a modified review must be satisfactory to the Agency and include at least the following:

1. Administrative questionnaires for buyer;

2. Complete description as to the nature of the transition;

3. Copy of Partnership Certificate with proposed revisions;

4. Any other documents determined by the Agency to be necessary.

(b) The following additional documents may be required for full review.

1. Previous Participation Certificates (form 2530) for buyer;

2. Experience questionnaire for buyer;

3. Buyer's certified financial statements;

4. Legal opinion from seller's attorney and, if requested by the Agency, for buyer's attorney;

5. Appraisal of property;

6. Physical inspection report approved by the Agency;

7. Financial report on project operations approved by the Agency.

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

5:80–5.7 Secondary financing

(a) Secondary financing, representing a portion of the purchase price may be permitted by the Agency. However, the following limitations exist where secondary financing is an element of the transaction:

1. The Agency will review and may restrict all secondary financing particularly where the secondary financing is secured by a lien on the project;

2. Repayment of secondary financing cannot be taken into consideration in determining the rents to be charged tenants;

3. The second mortgage, security agreement, or any other debt instrument must be subordinate to any existing mortgage of the agency;

4. In the event of a declaration of default on any existing mortgage held by the Agency, the secondary financing debt and all rights thereunder to rent or any other project income or assets shall be assigned to the Agency.

5:80–5.8 Return on equity

(a) The buyer shall assume the same rate of return on equity that the seller had. The buyer's equity in the housing project shall be determined in accordance with N.J.A.C. 5:80–3.3(a).

(b) The seller shall be limited to a cumulative, but not compounded, return on its equity, from project operations or sale, at the rate of return as determined by N.J.A.C. 5:80–3 and set forth in the mortgage and other contractual documents between the seller and agency.

1. Upon sale or other disposition of the project or any interest therein, the seller shall be entitled to a return of its equity in the project and any accrued but undistributed return on its equity. Such return shall be conditioned upon the Agency's mortgage and any other supplemental project financing from the Agency or other governmental agency or department being assumed by the buyer, and further conditioned upon the making of any required project repairs or improvements, pursuant to N.J.A.C. 5:80–5.4(d), and the payment of all amounts due the Agency and the funding of reserves pursuant to N.J.A.C. 5:80–5.4(e). The seller shall not be entitled to or paid any return until such conditions have been met. The seller's equity in the project shall be determined in accordance with N.J.A.C. 5:80–3.3(a).

2. Upon sale or other disposition of the project or any interest therein, the seller is not entitled to and may not retain or be paid any more than its equity in the project plus any accrued but undistributed return on its equity. Any amounts realized in excess of the aforementioned amounts less the total of the amounts listed below shall be paid into the Multi-family Rental Investment Program:

i. Any amount of the purchase price which is paid or escrowed in an Agency controlled account for repairs or improvements pursuant to N.J.A.C. 5:80–5.4(d);

ii. Any amounts paid to fund reserves pursuant to N.J.A.C. 5:80–5.4(e); and

iii. Any mortgages or other supplemental financing from the Agency or other governmental agency or department which are paid or assumed upon transfer.

3. Funds paid into the Multi-family Rental Investment Program shall be used as provided therein or in the case of a housing sponsor organized under N.J.S.A. 55:16–1 et seq., such excess shall be distributed pursuant to said Act. The funds deposited into this program shall be used for the purpose of providing loans to rental projects meeting low and moderate income needs.

4. In cases where the sale or other disposition of the project includes a permitted prepayment of the Agency

mortgage, return on equity shall be governed by the provisions of N.J.A.C. 5:80–5.10(b).

Amended by R.1990 d.504, effective October 15, 1990.
See: 22 N.J.R. 1971(a), 22 N.J.R. 3220(a).
References to rate of return on equity amended to conform to applicable statutes, in accordance with New Jersey Supreme Court holding in *Lower Main Street Associates v. New Jersey Housing and Mortgage Financing Agency,* 114 *N.J.* 226 (1989).
Amended by R.1995 d.247, effective May 15, 1995.
See: 27 N.J.R. 265(a), 27 N.J.R. 1977(b).

5:80–5.9 Required payment and repayments

(a) At closing, the following payments and repayments are required:

1. The buyer shall pay to the Portfolio Reserve Account a sum amounting to 3.25 percent of the purchase price.

2. The buyer shall submit with its request for review, a non-refundable fee of $5,000 which will be applied at closing toward any payment or repayments due.

3. The seller shall pay to the Agency, as a processing fee, an amount as determined by the Agency, to reimburse the Agency for its administrative cost in processing the seller's request to transfer ownership of the project or any interest therein.

4. Any outstanding supplemental financing must be paid at closing, unless the Agency determines the financial viability of the project is not jeopardized by the continuation of such supplemental financing and the buyer assumes all supplemental financing.

(b) The Portfolio Reserve Account is a fund established by the Agency to provide support for any project financed by the Agency which is in need of financial assistance. The Portfolio Reserve Account, and any interest or investment income earned thereon, may be used, at the Agency's discretion, to fund debt service arrears and other operating deficits, capital improvements, and repairs of any project which cannot fund these items from normal project income. The Portfolio Reserve Account will enable the Agency to assist projects in maintaining physical and fiscal viability so as to preserve the housing units at rents which are affordable to low- and moderate-income families. Eligibility for assistance from the Portfolio Reserve Account shall be subject to the terms and conditions as determined by the Agency.

Amended by R.1990 d.504, effective October 15, 1990.
See: 22 N.J.R. 1971(a), 22 N.J.R. 3220(a).
References to fees amended to conform to applicable statutes, in accordance with New Jersey Supreme Court holding in *Lower Main Street Associates v. New Jersey Housing and Mortgage Financing Agency,* 114 *N.J.* 226 (1989); contribution to Portfolio Reserve Account required in (b).

Case Notes

Regulation limiting profits on project financed by state Housing and Mortgage Finance Agency was invalid. Lower Main Street Associates v. New Jersey Housing and Mortg. Finance Agency, 114 N.J. 226, 553 A.2d 798 (1989).

Regulation imposing fees on sellers was invalid. Lower Main Street Associates v. New Jersey Housing and Mortg. Finance Agency, 114 N.J. 226, 553 A.2d 798 (1989).

Prepayment regulations do not violate the terms of the N.J. Housing and Mortgage Finance Agency, are statutorily authorized, and do not violate plaintiff's constitutional rights; regulation imposing closing fees is unreasonable and thus invalid. Lower Main Street Assoc. v. N.J. Housing and Mortgage Finance Agency, 219 N.J.Super. 263, 530 A.2d 324 (App.Div.1987) affirmed in part, reversed in part 114 N.J. 226, 553 A.2d 798.

5:80–5.10 Prepayment

(a) Prepayment of the mortgage loan made by the Agency is prohibited, except as permitted in (b) below.

(b) Prepayment of the Agency mortgage loan will be permitted, with the prior written approval of the Agency, provided all of the following conditions are met:

1. Sponsors of projects may prepay the mortgage at any time following the 20–year period following the date of the mortgage closing. However, any such prepayment shall be conditioned upon the Housing Sponsor's agreement that: The Agency policies on tax, insurance and repair and replacement reserves; The provisions of N.J.S.A. 55:14K–7b; and The statutory provisions at N.J.S.A. 55:14K–1 et seq. and the corresponding rules under this chapter regarding tenant income eligibility, tenant selection, rent increases, certification/recertification of income, affirmative fair housing marketing, and transfer of ownership interests shall continue to be applicable in their entirety to the sponsor, project and tenants residing therein until the original expiration date of the original mortgage loan. Such prepayment shall also be conditioned upon the agreement of the Sponsor to pay the servicing fees and charges currently being paid by the Sponsor under the mortgage documents, through the remainder of the original mortgage term, in order to cover the administrative costs of the Agency in monitoring the statutory and regulatory controls that will continue to apply to the project. The Agency may require Housing Sponsors to execute a deed restriction or other appropriate agreement upon prepayment whereby the Sponsor acknowledges the continuing statutory and regulatory control of the Agency and its obligation to pay fees and charges determined by the Agency.

2. Any repairs or improvements pursuant to N.J.A.C. 5:80–5.4(d) must be made prior to prepayment or an amount sufficient to fund such repairs or improvements must be paid into an Agency controlled escrow account upon prepayment.

3. All fees and charges due the Agency must be paid prior to prepayment.

4. All supplemental financing on the project by the Agency or other State agency must be prepaid.

5. After prepayment, in implementing the provisions of N.J.S.A. 55:14K–7b, the Agency will initially require the following:

i. Submission of an annual budget;

ii. Submission of annual audited financial statements;

iii. Annual physical inspections conducted by the Agency.

6. The Agency reserves the right to implement any of the additional provisions of N.J.S.A. 55:14K–7b, if determined by the Agency to be needed to preserve the financial viability of the project or its status as a low and moderate-income project, to maintain the physical condition of the project or to help ensure the safety and well-being of the tenants residing at the project.

7. After prepayment, return on equity rules at N.J.A.C. 5:80–3 shall continue until the expiration of the original mortgage term or until the owner funds an operating reserve account, whichever is sooner. Upon funding of an operating reserve account, return on equity rules shall terminate. The operating reserve shall be equal to three months of operating expenses (for senior citizen projects) or six months of operating expenses (for family projects), which includes debt service and reserve payments. The three/six months of operating expenses shall be calculated based on the Agency-approved annual budget. Once established, interest earned on a fully-funded operating reserve account may be withdrawn by the owner upon written request to and verification by the Agency that the account is fully-funded. If the operating reserve is thereafter used, return on equity rules shall be reinstituted until the operating reserve is again fully-funded. The determination of a fully-funded operating account after its initial establishment shall be based on the Agency-approved budget in effect at the time the project first established the operating reserve account.

(c) Notwithstanding (b) above, prepayment shall not be approved or permitted in cases which would:

1. Cause the Agency to be in default under its obligations to the bondholders of the bonds issued to finance the project;

2. Jeopardize the continuing tax exempt status of the bonds; or

3. Reduce or terminate subsidies to the project such as the United States Department of Housing and Urban Development Section 8 or Section 236.

(d) Upon prepayment of the Agency mortgage as provided in (b) above, the Agency will endorse the mortgage for cancellation so the Sponsor may cancel it of record. In addition, upon prepayment, the statutory and regulatory controls of the Agency at N.J.S.A. 55:14K–1 et seq. and this chapter shall terminate for the Housing Sponsor and project, except for those preserved by (b)1 above. The termination of the Agency's statutory and regulatory controls shall not affect the requirements, restrictions and obligations of Housing Sponsors as mandated by N.J.S.A. 55:16–1 et seq. or any other applicable statute under which the corporate entity of the Housing Sponsor was created.

(e) The provisions of this section regarding prepayment shall not apply to projects financed under the Agency's New Jersey Urban Multi–Family Production Program (JUMPP).

(f) The provisions of this section which impose conditions on prepayment regarding Agency policies on the insurance and repair and replacement reserves, the provisions of N.J.S.A. 55:14K–7b, and the regulations on transfer of ownership interests and return on equity shall not be applicable to projects financed between October 15, 1990 and January 17, 1995.

Amended by R.1990 d.504, effective October 15, 1990.
See: 22 N.J.R. 1971(a), 22 N.J.R. 3220(a).
Exceptions to prepayment prohibition added, in accordance with New Jersey Supreme Court holding in *Lower Main Street Associates v. New Jersey Housing and Mortgage Finance Agency,* 114 *N.J.* 226 (1989).
Amended by R.1995 d.20, effective January 17, 1995.
See: 26 N.J.R. 1187(a), 27 N.J.R. 321(b).
Amended by R.1995 d.247, effective May 15, 1995.
See: 27 N.J.R. 265(a), 27 N.J.R. 1977(b).

Case Notes

Regulation preventing prepayment of mortgage loans without agency approval was invalid. Lower Main Street Associates v. New Jersey Housing and Mortg. Finance Agency, 114 N.J. 226, 553 A.2d 798 (1989).

Prepayment regulations do not violate the terms of the N.J. Housing and Mortgage Finance Agency, are statutorily authorized, and do not violate plaintiff's constitutional rights; regulation imposing closing fees is unreasonable and thus invalid. Lower Main Street Assoc. v. N.J. Housing and Mortgage Finance Agency, 219 N.J.Super. 263 (App.Div. 1987), affirmed in part, reversed in part 114 N.J. 226, 553 A.2d 798.

5:80–5.11 Approval and disclosure requirements

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

(b) All reviews, inspections, reports and other determinations received pursuant to these regulations shall be subject to final review, approval and determination by the Agency.

SUBCHAPTER 6. SALE OF PROJECTS OWNED BY NONPROFIT CORPORATIONS TO LIMITED PARTNERSHIPS

5:80–6.1 Definitions

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

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

"Cash proceeds" means that portion of the purchase price paid by the partnership to the nonprofit in cash at closing or in successive years following the close.

"Closing" means the date on which title to the development or project is transferred from the nonprofit to the partnership.

"Commitment Letter" means the initial proposal or letter of intention submitted by the prospective purchaser which outlines the parameters of the transaction and the offer.

"Community Development Escrow" (CDE) means that fund established pursuant to N.J.A.C. 5:80–6.5(a)2 or 5:80–6.6(b)4 primarily for use in assisting community improvements or services related to the development.

"Conversion" means the overall transaction in which ownership is transferred from the nonprofit to a partnership.

"Development Cost Escrow" (DCE) means that fund established pursuant to N.J.A.C. 5:80–6.5(a)1 intended primarily for use in improving or supporting the project itself.

"Gross syndication proceeds" means the sum of all capital contributions.

"Multi–Family Rental Investment Program" means the program funded through the use of Agency administrative funds and through payments as provided by N.J.A.C. 5:80–6.4 for the purpose of providing loans to rental projects meeting low and moderate income housing needs.

"Net proceeds" means the gross proceeds of the syndication, which are received from investor limited partners, less the costs of the syndication. The net proceeds include all payments made to or on behalf of the nonprofit and may include interest due on deferred payments. The net proceeds may not be used for any purpose other than to pay transaction costs or to fund the DCE or CDE unless otherwise expressly authorized by the Agency. Net proceeds does not include secondary financing granted on the sale from the nonprofit to the partnership.

"Nonprofit" means the nonprofit owner of the project that is conveying its interest in the profit and assigning its Agency mortgage on the premises to the partnership.

"Operating deficits" means all obligations, to the extent such obligations have not or will not be paid in full out of operating income, arising out of the management and operation of the project including without limitation:

1. Reserves, escrows or fees required by the Agency or by law;
2. Taxes or payments in lieu of taxes;
3. Utility bills;
4. Legal, accounting and other professional fees incurred by the partnership which have received prior approval by the Agency;
5. Insurance premiums; and
6. Judgments or settlements approved by the Agency.

"Original Mortgage Amount" means the amount of the loan which was made to the nonprofit or its predecessors by the Agency for development costs and was financed by bonds issued by the Agency.

"Partnership" means the limited partnership, which qualifies as a limited dividend housing association pursuant to N.J.S.A. 55:16–1 et seq., which takes title to the project from the nonprofit.

"Portfolio Reserve Account" (PRA) means that fund established by the Agency for the primary purpose of funding debt service arrearages, and other operating deficits or capital improvements of any project financed by the Agency that cannot fund these items from normal project income. Funds deposited in the PRA and the investment income earned thereon will be available for use by the Agency for the aforesaid purposes.

"Project Subsidy Reserve Fund" (PSR) means that fund established pursuant to N.J.A.C. 5:806.6(b) intended primarily for maintaining the operative viability of the Section 236 developments.

"Purchase price" means the total amount of capital pledged to the nonprofit sponsor including cash proceeds and secondary financing.

"Stated equity" means an amount equal to 10 percent of the revised total development cost determined by the Agency pursuant to N.J.A.C. 5:80–6.3.

"Surplus cash" means funds, including funds in the DCE and CDE accounts, available after payment of equity distributions, project expenses, operating deficits, including the full funding of all required reserve accounts and proposed capital improvements plus:

1. Two to six months of the annual budgeted project expense for senior citizen projects; or
2. Four to 12 months of the annual budgeted project expense for family projects.

"Syndication" means the admission of limited partners to the Partnership through the sale of partnership interests.

"Transaction cost" means those costs related directly to the sale of the project which are paid by or on behalf of the nonprofit. All transaction costs must be approved by the Agency and include with limitation required fees and payments specified in N.J.A.C. 5:80–6.4 as well as professional fees of the nonprofit and title insurance.

Amended by R.1985 d.241, effective May 20, 1985.
See: 17 N.J.R. 505(a), 17 N.J.R. 1258(b).
Added definition "Commitment Letter".
Amended by R.1989 d.524, effective October 2, 1989.
See: 21 N.J.R. 1509(b), 21 N.J.R. 3090(a).
Added new definitions: "Multi–Family Rental Investment Program" and "Surplus cash."
Revised "Portfolio Reserve Account" definition by specifying the purpose of PRA fund. Added new language: "for the primary ... aforesaid purposes."

5:80–6.2 Procedures

(a) The sale of a nonprofit sponsored development to a limited partnership is a complex transaction and involves substantial sums of money. Accordingly, the procedures in this section governing the transaction are intended to insure the integrity of the process and the protection of the nonprofit.

(b) The nonprofit may obtain such legal, financial and other professional services as are necessary to investigate, process and complete the transaction. The scope of all services and compensation for same must be approved by the Agency in advance. The amounts which can be paid for all such professional services may not exceed limits and hourly rates established from time to time by the Agency. If for any reason the conversion is not completed and approved services have been provided to the nonprofit, then the Agency may, if requested by the nonprofit, approve payment for professional services out of other assets of the nonprofit including operating income.

(c) No member of the nonprofit, its employees or professional advisors shall receive any fees in conjunction with the transaction other than those disclosed to and approved by the Agency. The president of the nonprofit, its attorney, the purchaser and the purchaser's attorney shall all provide affidavits at closing stating that to the best of their knowledge, no fees or payments have been made nor will be made to any member of the nonprofit corporation, employees or professional advisors other than those approved by the Agency.

(d) Since the nonprofit may become a partner with the purchaser of the development, the selection of same will be primarily in the hands of the nonprofit. However, the following procedures must be incorporated into the selection process:

1. While public bidding procedures are not required, equal information and opportunity must be provided to all potential purchasers.

2. Initial proposals must be solicited from as many interested parties as possible including all those on a list of interested parties maintained by the Agency.

3. All responses to proposals must be made in writing and should be submitted in a sealed envelope directly to a specific designee of the nonprofit on or prior to a certain date. No proposals shall be opened prior to the specified time and after the time set for submission of proposals, no new proposals should be accepted.

4. Upon opening the proposals, the nonprofit's designee shall immediately forward copies of all proposals to the Agency.

5. The nonprofit shall evaluate the proposals taking into account the initial purchase price offered, the amount of secondary financing involved in the transaction; the residual value to be returned to the nonprofit, if any; management support and control; and a variety of other business considerations. In evaluating all financial considerations, present value calculations should be included.

6. Upon the determination by the nonprofit as to choice of purchaser, it should submit a recommendation to the Agency along with a full report on the reasons behind the decision and an affidavit as to compliance with the procedures described in this section. As mortgagee, final approval of the transaction shall rest with the Agency.

(e) Within 21 days of the Agency's approval of the proposed sale of the project, the prospective purchaser shall deliver to the Agency security, in the form of cash, bond or letter of credit, in an amount equal to five percent of the cash proceeds. This security will be held by the Agency until the purchaser has fulfilled its obligations under the Commitment Letter, subject to terms and conditions approved by the Agency. If the purchaser does not fulfill its obligations in accordance with the Commitment Letter as approved by the Agency within six months of the approval, then the security funds shall be deposited by the Agency into a Project Subsidy Reserve or Development Cost Escrow established in the name of the nonprofit. If the proposed purchaser demonstrates its willingness and ability to perform its obligations in accordance with the Commitment Letter, and the transaction is not completed within six months of the Agency's approval, the security shall be returned to the proposed purchaser except for an amount not to exceed $15,000 to reimburse the nonprofit for its actual costs incurred in the attempted conversion.

(f) At closing, the purchaser must provide cash or letter of credit in an amount equal to 30 percent of the cash proceeds. The difference between the amount provided at

closing and the stated equity amount must be funded at closing with cash or equivalents acceptable to the Agency.

(g) At closing, the purchaser shall deposit with the Agency a deed transferring title in the property back to the nonprofit. This deed will be held in escrow by the Agency subject to an agreement which authorizes the Agency to record the deed if the purchaser fails to pay any installment of the cash proceeds within 120 days of the date due.

Amended by R.1985 d.241, effective May 20, 1985.
See: 17 N.J.R. 505(a), 17 N.J.R. 1258(b).
Deleted "purchase agreement" and substituted "Commitment Letter".

5:80–6.3 Determination of total development cost

Prior to granting its approval of the sale of the project, the Agency will make a determination as to the total development cost of the project. The total development cost shall include the original mortgage loan amount and may include any supplemental financing provided by the Agency or the State of New Jersey and any additional funds to be paid out of the net proceeds which the Agency has determined to be reasonable and necessary for the development or financial viability of the housing project.

5:80–6.4 Required fees and repayments

(a) The following fees and repayments shall generally apply to all sales. However, where the nonprofit can demonstrate that the payment of such fees would be detrimental to the viability of the project these provisions may be waived, adjusted or deferred.

1. At closing, the nonprofit shall pay to the Agency a processing fee of one-half of one percent of the cash proceeds including cash, existing indebtedness assumed and secondary financing.

2. At closing, the nonprofit will pay to the Agency for return to the Revolving Housing Demonstration Fund interest on any seed money originally loaned to the nonprofit. Such interest shall be calculated at a rate of one percent above the prime interest rate as reasonably determined by the Agency for each given year on the amount of outstanding principal from the date on which any disbursement is made until the time of repayment.

3. At closing, for projects subsidized under Section 236 the nonprofit shall pay 10 percent of the cash proceeds received and for projects subsidized under Section 8 the nonprofit shall pay 15 percent of the cash proceeds received into the Portfolio Reserve Account established by the Agency. Funds deposited in the Portfolio Reserve Account and the investment income earned on those funds will be used by the Agency to fund debt service arrearages, operating deficits or essential capital improvements of any project financed by the Agency that cannot fund these items from normal project income.

4. Any supplemental mortgages or advances made by the Agency to the nonprofit shall be repaid at closing.

5. There shall be paid from the interest income on the escrow accounts a yearly Agency administrative fee of $3,500 per project which shall be assessed proportionately against the respective accounts for the project to the extent available.

6. In determining whether required fees and payments pursuant to this section are to be waived, adjusted or deferred or in determining the amount of funds which may be allocated to a CDE on Section 236 projects, the Agency will consider the factors set forth in (a)6i-iv below. Accordingly, the nonprofit shall submit detailed information on the following matters:

i. Operating revenue and expense projections for five years.

ii. The rents expected to be charged at the development assuming reasonable annual increases for five years.

iii. The rents charged and expected to be charged at comparable developments.

iv. The effect on the requested action on (a)6i and ii above.

5:80–6.5 Use of funds with regard to projects subsidized under Section 8

(a) While the primary reason for permitting the sale and syndication of Section 8 projects is to insure financial viability of the project, a large portion of the proceeds will be available to the nonprofit to finance community activities. Accordingly, after payment of the amounts required under N.J.A.C. 5:80–6.4, the proceeds of the transaction shall be disbursed in the following manner:

1. There shall be deposited into a Development Cost Escrow (DCE) for the project those funds remaining after transaction costs are deducted from 60 percent of the cash proceeds or the stated equity amount, whichever is greater. With the approval of the Agency, the DCE shall be used to fund debt service arrearages and other operating deficits at the project including appropriate funding of required reserve accounts, as determined by the Agency, and for such other purposes as may be approved by the Agency as will improve the financial viability or physical structure of the project, or increase tenant safety and comfort.

2. The balance of the cash proceeds shall be deposited into a Community Development Escrow (CDE) in the name of the nonprofit. With the approval of the Agency these funds may be utilized by the nonprofit for any use permitted under (a)1 above or to increase amenities of the project; reduce maintenance and replacement costs of the project; provide or assist desirable social services benefiting the residents of the project or the community in which it is located; and finance various community development activities.

Amended by R.1989 d.524, effective October 2, 1989.
See: 21 N.J.R. 1509(b), 21 N.J.R. 3090(a).
Changed text to "project" from "development" throughout.
In (a)1: added "including ... determined by the Agency."

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

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

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

1. First to pay any existing operating deficits, including debt service arrearages of the development;

2. To fund any capital improvements or repairs which are required for the viable operation of the project and cannot be funded out of other reserves at the development;

3. To provide an additional source of operating revenue to assist in financing the normal operations of the project including debt service so that future rent increases can be moderated or so that rents may be maintained, to the extent feasible, at a level which is appropriate to the tenant population for which the development is intended;

4. After the nonprofit has demonstrated, based on information required under N.J.A.C. 5:80–6.4(a)6, that the funds in the PSR are not required for any of the purposes listed in (b)1–3 above and will not be required for the foreseeable future, it may request that a portion of these funds or the investment income on these funds be deposited into a CDE as described in N.J.A.C. 5:80–6.5.

Amended by R.1989 d.524, effective October 2, 1989.
See: 21 N.J.R. 1509(b), 21 N.J.R. 3090(a).
In (b): deleted "of the fees" in regard to payments.

5:80–6.7 Investment income earned on the PSR, DCE and CDE

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

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

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

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

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

5:80–6.8 Use of DCE and CDE for development of housing

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

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

New Rule, R.1989 d.524, effective October 2, 1989.
See: 21 N.J.R. 1509(b), 21 N.J.R. 3090(a).
Renumbered 5:80–6.8, "Additional terms of purchase," to 6.9.

5:80–6.9 Additional terms of purchase

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

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

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

resolutions and shall incorporate at least the following provisions:

i. That the second mortgage, security agreement, or any other debt instrument must be subordinate to any existing mortgage of the Agency;

ii. That in the event of declaration of a default on any existing mortgage of the Agency, the debt and all rights thereunder to rent or any other project income or assets shall be assigned to the Agency;

3. Upon sale or refinancing of the development, or upon termination of the mortgage other than by default, any remaining assets of the development may be shared among the nonprofit, other partners, the Agency and municipality to the extent allowed by law.

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

5:80–6.10 Tax obligations

(a) The partnership shall be responsible for all tax consequences arising out of the sale of the profit.

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

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

5:80–6.11 Approval and disclosure requirements

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

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

5:80–6.12 Request for use of escrow funds

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

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

5:80–6.13 (Reserved)

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

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

SUBCHAPTER 7. TENANT SELECTION STANDARDS

5:80–7.1 Definitions

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

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

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

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

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

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

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

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

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

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

"Minority" is a household of which one or more of whose members are either Black, Hispanic, American Indian or Oriental. A white person would be considered a minority if he were living in a predominantly black neighborhood.

5:80–7.2 General policy

(a) The process of screening applicants and selecting future residents is a crucial one. On one hand, a housing owner must keep units occupied to minimize vacancy loss and maintain cash flow. On the other hand, the owner must also take the time to screen applicants and to select only those applicants who will be responsible residents and meet HUD eligibility requirements.

(b) Careless selections can result in vandalism, high repair costs, costly evictions and increases in vacancies. To avoid such problems as much as possible, each owner should develop reasonable tenant selection procedures.

(c) The procedures should be designed to select applicants who will not only meet the tenant eligibility requirements for HUD's subsidy programs but will also be responsible tenants. The procedures should instruct project staff on at least:

1. How to screen tenants;
2. Fair Housing and Equal Opportunity laws;
3. Required preferences and economic mixes;
4. Limitations on admission of single persons and over-income applicants; and
5. How to select tenants from among eligible applicants.

5:80–7.3 Screening criteria

(a) The Agency supports the owner's desire to select responsible tenants.

(b) Owners are expected to exercise sound judgment in the tenant selection process. The fact that an applicant qualifies for program benefits does not mean that he or she is a suitable tenant.

(c) Owners may consider the following factors when screening applicants. These factors are not all inclusive and the absence of any of these factors is not sufficient reason to reject an applicant. Costs of credit checks and home visits may be charged as a project expense.

1. Demonstrated ability to pay rent and make timely payment.
2. Comments from prior landlords: Tenants with histories of damaging units are obviously high risks. The endorsement of at least two prior landlords is preferable over the judgment of a present landlord. A responsible tenant may receive a bad recommendation just as a bad tenant might receive a good recommendation from the present landlord. The other landlord's interests are not always the same as the owner's interests.
3. Good credit references: Although the benefits of a credit check are debatable, credit checks may be useful when no rent-paying history is available. However, the lack of a credit history may not automatically disqualify an applicant.
4. Housekeeping habits: So-called "home visits" can be particularly valuable to make certain that the applicant maintains his or her housing unit in an acceptable manner.

5:80–7.4 Non-discrimination

(a) Owners must comply with all Federal, State or local fair housing and civil rights laws and regulations and with all equal opportunity requirements set forth in N.J.S.A. 55:14K–1 et seq., Agency regulations, and HUD's administrative procedures. Federal and State laws provide that owners may not discriminate based upon race, color, creed, religion, sex, national origin, age or handicap. Any complaints alleging violations of civil rights laws will be referred to the Agency or to HUD's Regional Offices of Fair Housing and Equal Opportunity for possible compliance actions.

(b) Owners must also comply with requirements imposed in Agency and HUD program statutes, regulations and administrative procedures. These administrative requirements prohibit restrictions on certain classes of persons. Examples of prohibited practices are shown in Exhibit A. This figure is not intended to be all inclusive.

(c) Owners are subject to all civil rights laws and Agency and HUD administrative requirements on non-discrimination. These civil rights laws and administrative requirements apply to the process of accepting applications and selecting tenants from among eligible applicants as well as to the process of assigning units. Under civil rights laws, an owner may not place minority tenants in one part of the project and non-minority tenants in another part.

(d) In partially assisted Section 8 projects (that is, those with less than 100 percent of the units under a Section 8 contract), HUD administratively requires that assisted tenants must be dispersed throughout the project. Note: In projects designed for both elderly and non-elderly families, owners may place elderly and non-elderly families in separate areas of the project.

5:80–7.5 Priorities and preferences

(a) Owners may give priority or preference for admission to otherwise eligible applicants in (b) and (c) below so long as such priorities and preferences are consistent with the fair housing laws and the owner's Affirmative Fair Housing Marketing Plan.

(b) Handicapped, disabled, displaced and substandard housing applicants shall be treated as follows:

1. For all units, owners must give preference to applicants who are either living in substandard housing or are displaced by government action or activity.

2. For all units designed specifically for the elderly, owners must give priority to elderly, handicapped and disabled applicants on an equal basis.

3. For all barrier free or partially barrier free units designed specifically for handicapped or disabled persons, owners must give first priority to handicapped or disabled persons who need the modified design to permit them to operate independently with comparative ease under normal circumstances. All other handicapped or disabled persons will be given second priority. The elderly will be given third priority.

(c) Residency preference shall be as follows:

1. While owners may not require local residency as a pre-requisite for admission, with Agency and HUD approval, owners may give priority to residents of the municipality (here defined as the smallest unit of government, that is, town, city, county) in which the project is located.

2. The Agency will approve the use of local residency preferences only if such preferences will not be inconsistent with equal opportunity requirements or frustrate achievement of the goals of the Affirmative Fair Housing Marketing Plan. For example, if the Agency determines that affirmative marketing goals and objectives cannot reasonably be achieved with a residency preference for all units, the Agency may deny a request for use of residency preferences or approve it for only a portion of the units. For example, where the affirmative marketing goal is five or 10 percent of the units in a project, the agency may approve a residency preference for only 95 or 90 percent of the units. Residency preferences may be used during initial rent-up and to fill vacancies occurring subsequent to the rent-up period.

i. When applying residency preferences, persons expected to reside in the municipality as a result of current or planned employment must be counted as residents. "Planned employment" means that an individual has a bona fide offer to work in the municipality.

ii. If there are applicants on the chronological waiting list, the owner may select a resident over a non-resident even if the non-resident is higher on the waiting list or exhibits greater need. However, if there are no eligible residents on the waiting list, an owner cannot hold a unit open until an eligible resident is found.

iii. If certain categories of applicants are targeted on the Affirmative Fair Housing Marketing Plan and if there are insufficient numbers of such applicants who are residents of the municipality, then the owner must solicit those applicants from outside the municipality.

5:80–7.6 Limitations on admission of over-income tenants

(a) When applicants who are income-eligible and otherwise qualified are available, the owner may not lease any unit to an applicant whose income exceeds the applicable income limit.

(b) The owner may lease such units to over-income applicants only after he or she has exerted good faith effort to attract income-eligible applicants and such applicants are not available.

(c) Under no circumstances may an owner lease more than 10 percent of the units to over-income applicants without the prior written approval of the Agency.

(d) At BMIR, rent supplement or 236 projects, an owner also must obtain the prior written approval of the HUD or the Contract Administrator.

(e) At Section 8 projects, an owner also must obtain prior written HUD approval, except in older projects where the Section 8 Contract allows up to 20 percent.

(f) Before admitting any over-income applicant in accordance with these regulations, the owner must certify in writing that:

1. He or she has made all assisted units committed under the contract available for occupancy by eligible families;

2. He or she had taken all reasonable steps to attract income-eligible applicants;

3. No income-eligible applicants were available when the over-income applicant was selected for admission.

(g) The owner must retain this certification in the over-income tenant's file.

(h) If an owner fails to comply with the provision of this section, the Agency may invoke any remedies available under N.J.S.A. 55:14K–1 et seq. or Agency regulations. In addition, the HAP contract and/or Section 8 regulations provide that HUD may reduce the number of units under the HAP contract, invoke other remedies available under the contract or consider such failure as grounds for suspension or debarment from HUD programs.

5:80–7.7 Non-immigrant student aliens

(a) The Housing and Community Development Act of 1980 prohibits HUD from making housing assistance available to non-immigrant student aliens.

(b) A non-immigrant student alien is a person who:

1. Has a foreign residence which he or she has no intention of abandoning;

2. Is a bona fide student qualified to pursue a full course of study; and

3. Was admitted to the United States temporarily and solely for the purpose of pursuing a full course of study at an established institution of learning or other recognized place of study in the United States, particularly designed by him or her and approved by the Attorney General after consultation with the Department of Education of the United States.

(c) Non-immigrant student alien also means the alien spouse and alien minor children of such student as long as the spouse's and children's right to be in the United States depends on the alien's right.

(d) If an applicant identifies himself or herself or his or her spouse as a student the owner must request proof of United States citizenship, and ask the applicant to sign a statement certifying that he or she is not a non-immigrant student alien. An example certification form may be found as Exhibit B.

5:80–7.8 Prohibited conditions for admission

(a) In screening applicants for admission, owners may not impose irrelevant admissions criteria that are used to screen out otherwise eligible applicants.

(b) Physical examination: Owners may not routinely require that all elderly applicants undergo physical examinations as a condition of admission. However, if the owner has reason to believe that the applicant's physical condition is such that his or her admission might have an adverse impact on the rights of other tenants to enjoy their units, or that he or she might not be able to care for the unit and carry out his or her obligations under the lease, the owner may require the applicant to furnish evidence of his or her ability to live independently (with or without attendant care).

(c) Donations or contributions: Owners of rental projects may not require a donation, contribution or membership fee as a condition of admission. Of course, owners of cooperative housing projects may charge membership fees.

HOUSING AND MORTGAGE FINANCE AGENCY
EXHIBIT A
EXAMPLE OF PROHIBITED DISCRIMINATION PRACTICES

Class	Civil Rights Laws and Regulations	HUD Statutes, Regulations and Administrative Requirements
Religion, Race, Color, Creed, National Origin	No priorities or application criteria, (e.g. variations in charges or deposits) based upon race, creed, color, religion, or national origin	
Sex	No renting units to single persons of one sex and not the other	In elderly housing, no discrimination against females/males because disproportionate mixture of sexes
Age	No minimum or maximum ages unless necessary to normal operation (e.g. elderly project), or required by State or local law	No maximum age for elderly. In housing for disabled and handicapped minimum age is 18; no minimum may be set above age 18
Children		In family housing no discrimination against families with children
Class Membership		No discrimination against socio-economic classes (e.g. welfare recipients, single parent households, etc.)
Membership in Sponsoring Organization		No priority to members of sponsoring organizations. No discrimination against nonmembers
Handicapped	No discrimination solely because of handicap	

Agency Statutes, Regulations and Administrative Requirements

No person shall be discriminated against because of race, religious principles, color, national origin or ancestry by the agency, any housing sponsor, any institutional lender, or any loan originator or agent or employee thereof in connection with any housing project or eligible loan. No persons shall be discriminated against because of age in admission to, or continuance of occupancy in any housing project receiving assistance under this act except for any housing project constructed under a governmental program restricting occupancy of at least 90 percent of the dwelling units to persons 62 years of age or older and any members of their immediate households or their occupant surviving spouses, or constructed as a retirement subdivision or retirement community as defined in the "Retirement Community Full Disclosure Act", P.L. 1968, c.215 (C.45:22A–1 et seq.). Any person who violates the provisions of this section is a disorderly person.

EXHIBIT B
FORMAT OF ADDENDUM TO APPLICATION FOR HOUSING ASSISTANCE

By law, housing assistance cannot be provided to any nonimmigrant student-alien or the alien spouse and minor children of such alien (Section 1436a of Title 42, U.S.C.).

Definition of Nonimmigrant Student–Alien: (1) an alien having a residence in a foreign country which he or she has no intention of abandoning, who is a bona fide student qualified to pursue a full course of study and who is admitted to the United States temporarily and solely for the purpose of study at an established institution of learning or other recognized place of study in the United States, particularly designated by him or her and approved by the Attorney General after consultation with the Department of Education of the United States, which institution or place of study shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant student and if any such institution of learning or place of study fails to make reports promptly the approval shall be withdrawn, and (2) the alien spouse and minor children of any such alien if accompanying him or her or following to join him or her.

I certify that I have read the information above and that I am not a nonimmigrant student-alien, and that no others in my household are nonimmigrant student-aliens.

_____ _____
Applicant Date

WARNING: Section 1001 of Title 18 U.S.C. provides: "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies ... a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both."

SUBCHAPTER 8. OCCUPANCY REQUIREMENTS REGARDING INCOME

5:80–8.1 General applicability

(a) The rules within this subchapter shall apply to all Agency financed housing projects except as provided in (b) below.

(b) For housing projects assisted by subsidies from the United States Department of Housing and Urban Development, or financed with the proceeds of tax exempt bonds pursuant to the Internal Revenue Code or financed by a loan which is insured or guaranteed by the United States or any agency thereof or financed or assisted, in whole or in part under any program of the United States (collectively "Federal Programs"), the rules, regulations and/or requirements under the Federal Programs for occupancy requirements regarding income shall be used in addition to or in place of, as appropriate, the rules within this subchapter. Reference to any statutes, State or Federal, shall include any amendments or reenactments which have been or may be made as to such statutes.

(c) For purposes of this subchapter, "Family" shall be defined as follows:

1. For projects receiving subsidies under Section 236 or Section 8 Programs, family shall be as defined under the applicable Section 236 or Section 8 rules, regulations or requirements.

2. For all other projects, two or more persons who live or expect to live together as a single household in the same dwelling unit or an individual at least 18 years of age who is not a full-time student.

R.1977 d.71, effective March 4, 1977.
See: 9 N.J.R. 62(c), 9 N.J.R. 164(c).
Amended by R.1983 d.470, effective November 7, 1983.
See: 15 N.J.R. 1212(a), 15 N.J.R. 1860(a).
Increased maximum gross aggregate family income from $26,850 to $45,000. Also added new (b).
Amended by R.1985 d.241, effective May 20, 1985.
See: 17 N.J.R. 505(a), 17 N.J.R. 1258(b).
Subsections (c) through (f) added.
New Rule, R.1986 d.258, effective July 7, 1986.
See: 17 N.J.R. 1620(a), 18 N.J.R. 1373(b).
Amended by R.1994 d.300, effective June 20, 1994.
See: 26 N.J.R. 8(a), 26 N.J.R. 2569(a).

5:80–8.2 Maximum gross aggregate family income

(a) Admission to housing projects shall be limited to families whose gross aggregate family income at the time of admission does not exceed six times the annual rental or carrying charges approved by the Agency except for families with three or more dependents whose incomes may be up to seven times the annual rental or carrying charges. Annual rental or carrying charges shall include the value or cost of heat, light, water, sewerage, parking facilities and cooking fuel which are provided to or incurred by the family in connection with its occupancy of a dwelling. In addition, carrying charges include rent normally associated with rental projects as well as other costs associated with cooperative apartments. There may also be included an amount equal to six percent of the original cash investment of the family in a mutual or cooperative housing project and the value or cost of repainting and replacing any fixtures or appliances.

(b) Notwithstanding (a) above, the Agency, in conjunction with any financing, may impose income limits at levels lower than those set forth above.

New Rule, R.1985 d.241, effective May 20, 1985.
See: 17 N.J.R. 505(a), 17 N.J.R. 1258(b).
Amended by R.1986 d.258, effective July 7, 1986.
See: 17 N.J.R. 1620(a), 18 N.J.R. 1454(b).
Recodified from section 1 and substantially amended.
Amended by R.1994 d.300, effective June 20, 1994.
See: 26 N.J.R. 8(a), 26 N.J.R. 2569(a).

5:80–8.3 Occupancy requirements for housing projects financed pursuant to Section 103(b)(4) of the Internal Revenue Code

For housing projects financed by the Agency with the proceeds of bonds where the interest is exempt from Federal taxation, and where the Project must contain a certain number of units to be occupied by individuals of low and moderate income pursuant to Section 103(b)(4) of the Internal Revenue Code, at all times during the qualified project period, as defined in Section 103(b)(12)(b), at least 23 percent of the units shall be occupied by individuals of low and moderate income as defined in Section 103(b)(12)(c), except in the case of target area projects where at least 18 percent of the units shall be occupied by individuals of low and moderate income. In allocating the units in a project which shall be occupied by individuals of low and moderate income, the Agency may require the distribution of low and moderate income units among the different sized units to reflect the same percentage distribution as the number of different sized units bears 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. If there are changes in Federal law or in the internal revenue code or regulations with regard to the above-referenced matter, the Agency may adjust the above requirements accordingly.

New Rule, R.1985 d.241, effective May 20, 1985.
See: 17 N.J.R. 505(a), 17 N.J.R. 1258(b).
Amended by R.1986 d.258, effective July 7, 1986.
See: 17 N.J.R. 1620(a), 18 N.J.R. 1373(b).
Recodified from section 2 and substantially amended.

5:80–8.4 Special Multiple Family Unit within Housing Projects located in municipalities affected by casino gaming

(a) Special Multiple Family Units may be approved and designated by the Agency in accordance with this Section on application by the Housing Sponsor where the Agency determines the municipality wherein the project is located is experiencing housing shortages as a result of the authorization of casino gaming.

(b) A Special Multiple Family Unit is a dwelling unit specifically designed to accommodate two or more families as defined in N.J.A.C. 5:80–8.1(c), and which has been so certified by the Agency after adequately meeting the following minimum criteria:

1. The dwelling unit has separate sleeping areas, each with adequate privacy, for each family; and

2. The dwelling unit has separate full bathrooms, each with adequate privacy, for each family; and

3. The rental of the dwelling unit complies with all relevant State and local occupancy laws.

(c) For purposes of determining income eligibility for admission into a Special Multiple Family Unit, the gross aggregate family income of each family is to be considered separate and apart from the gross aggregate family income of the other family or families occupying the unit. The full rental and carrying charges of the unit are to be used in determining each family's eligibility for admission, notwithstanding each family's planned or actual percentage contribution toward those charges, provided there is a written consent in the lease holding each family jointly and severably liable for these charges.

(d) A single family is deemed to exist among two or more individuals if those individuals have a joint personal economic relationship, other than their mutual interest in renting the same dwelling unit. Joint ownership of personal assets, commingling of personal accounts, economic dependency among the individuals, and/or the joint filing of income tax returns shall be evidence of a joint personal economic relationship.

(e) The rental of units to families must be consistent with Federal housing and tax laws and/or regulations, where such laws or regulations apply to government-financed developments or Agency tax-exempt bond financing of such developments.

(f) The rental of Special Multiple Family Units, irrespective of the income levels of tenants therein, shall not be considered the rental of units to low and moderate income families for purposes of meeting Federal and State requirements to provide a certain percentage of units for those of low and moderate income, pursuant to N.J.A.C. 5:80–8.3.

New Rule, R.1986 d.258, effective July 7, 1986.
See: 17 N.J.R. 1620(a), 18 N.J.R. 1373(b).
Amended by R.1994 d.300, effective June 20, 1994.
See: 26 N.J.R. 8(a), 26 N.J.R. 2569(a).

5:80–8.5 Recertification of income

The procedure for calculation and certification of gross aggregate family income in determining a family's eligibility for admission to a housing project as required under this subchapter shall be conducted as set forth in N.J.A.C. 5:80–20.

Amended by R.1986 d.258, effective July 7, 1986.
See: 17 N.J.R. 1620(a), 18 N.J.R. 1373(b).
Recodified from section 3 and substantially amended.
Amended by R.1994 d.300, effective June 20, 1994.
See: 26 N.J.R. 8(a), 26 N.J.R. 2569(a).

SUBCHAPTER 9. RENTS

5:80–9.1 Purpose

It is the express purpose of the following regulations to promote the statutory functions and obligations of the Agency by ensuring that the rents and/or carrying charges applied in housing projects are sufficient to pay normal operating, maintenance and utility costs; provide an adequate rate of return to individuals or corporations that provide capital to assist in the development of housing projects; provide debt service payments adequate to protect the financial interest of the Agency and its bondholders; provide reserves for repair and replacement; and ensure adequate, safe and sanitary housing for the low and moderate income families that the Agency was created to serve.

Amended by R.1991 d.334, effective July 1, 1991.
See: 22 N.J.R. 2389(b), 23 N.J.R. 2055(a).
Specification added.

5:80–9.2 Applicability

The rules within this subchapter shall apply to all housing projects. In the event the housing project is assisted, directly or indirectly, by the Department of Housing and Urban Development (HUD) or is financed by a loan from the Agency which is insured or guaranteed by the United States, or any agency thereof, the Agency may utilize the rent regulations, requirements or criteria for such project which is prescribed, utilized or required by HUD or such guarantor or insurer. In the event there are any inconsistencies between these rules and the regulations, requirements or criteria of HUD or other United States agency insuring or guaranteeing the Agency loan, the latter shall prevail.

New Rule, R.1991 d.334, effective July 1, 1991.
See: 22 N.J.R. 2389(b), 23 N.J.R. 2055(a).
Old section 9.2, "Rent determination" was recodified to 9.3.

5:80–9.3 Rent determination

(a) At least once each year, each housing sponsor shall make a determination of the rents and/or carrying charges to be applied in the housing project. Hereinafter, the term "rent" shall be construed to include carrying charges and the term "housing sponsor" shall be construed to include a properly authorized representative of the housing sponsor. An annual rent determination shall be made regardless of whether or not a rent increase is being requested.

(b) The rent determination shall be in the form of a resolution or letter from the sponsor.

Amended by R.1991 d.334, effective July 1, 1991.
See: 22 N.J.R. 2389(b), 23 N.J.R. 2055(a).
Text on supporting documentation recodified to 9.4; text on rent determination recodified from 9.2; determination to occur once, at any time, during each year.

Case Notes

Proposal for rent increase procedures cited (11 N.J.R. 304); rent varying power under former N.J.A.C. 5:18–1.2; rent control ordinance cannot restrict rent increase approved by State agency for a State financed, supervised and regulated housing project. Overlook Terrace Management Corp. v. Rent Control Board of West New York, 71 N.J. 451, 366 A.2d 321 (1976).

5:80–9.4 Rent increase application

(a) Housing sponsors desiring to implement a rent increase shall submit a rent increase application to the Agency's Director of Management. The application shall consist of the rent determination and the following supporting documents:

1. Name of sponsor, location of housing project, number of apartments of each type;

2. Date of initial occupancy;

3. For Section 236 developments, a status report on the housing project's implementation of its current energy conservation plan;

4. A narrative statement of the reasons for the rent increase;

5. Most recent certified audit report prepared in accordance with Agency regulations;

6. Summary of income and expenses for the preceding 12 month period prepared on an accrual basis for non-federally subsidized housing projects. For all projects with Federal subsidy, monthly operating reports will be required for the preceding three months;

7. Annual budget on which the requested rent increase is based;

8. Copy of notice to tenants in accordance with 5:80–9.6;

(b) In housing projects where there is a valid Housing Assistance Payments contract, in accordance with which rents are or may be adjusted, the sponsor is not required to submit a rent increase application. Rents will be adjusted in accordance with the contract without resort to the rules within this subchapter, except that the sponsor shall still be obligated to make the rent determination as required by N.J.A.C. 5:80–9.3.

Amended by R.1991 d.334, effective July 1, 1991.
See: 22 N.J.R. 2389(b), 23 N.J.R. 2055(a).
Text on notice to tenants and cooperators recodified to 9.6; text on supporting documentation recodified from 9.3 and renamed rent increase application; text from old 9.8, on automatic annual adjustments added at (b).

5:80–9.5 Additional rent increases in given fiscal year

The submission of a rent increase application for any given fiscal year shall not preclude any sponsor from making additional or revised rent increase applications in the same fiscal year, provided that they are submitted in accordance with all the procedures set forth in this subchapter.

Repeal and New Rule, R.1991 d.334, effective July 1, 1991.
See: 22 N.J.R. 2389(b), 23 N.J.R. 2055(a).

5:80–9.6 Notice to tenants and cooperators

(a) Prior to or simultaneous with the submission of the rent increase application to the Agency, each housing sponsor shall provide, in writing, to each tenant and cooperator and conspicuously post at the housing project, a notice, in a form prescribed by the Agency, setting forth the following:

1. The rent determination;

2. A statement that the rent determination is subject to the review and approval of the Agency and, if applicable, subject to the review and approval of HUD;

3. Reasons for the increase;

4. A statement that tenants and cooperators will have 30 days to inspect the rent increase application submitted by the housing sponsor pursuant to N.J.A.C. 5:80–9.4(a); and

5. A statement that written comments on the proposed rents may be submitted to the housing sponsor, managing agent or the Agency's Director of Management, at their current address within 30 days of the rent increase application being available for review.

(b) Upon expiration of the comment period, the housing sponsor shall submit a certification to the Agency, in the form prescribed by the Agency, that it has complied with the requirements of N.J.A.C. 5:80–9.6(a).

(c) If the housing sponsor fails to substantially comply with the notice requirement of (a) above, the Agency shall withhold processing of the rent increase application until there is substantial compliance with such requirements.

Amended by R.1991 d.334, effective July 1, 1991.
See: 22 N.J.R. 2389(b), 23 N.J.R. 2055(a).
Text on rent schedules approvable by the Department of Housing and Urban Development repealed; text on notice to tenants and cooperators recodified from 9.4; submission attachments specified; (c) added.

5:80–9.7 Agency review

(a) The Agency will review the rent increase application to verify the need for the rent increase requested. If the application contains errors or omissions of a material nature, the Director of Management shall require the housing sponsor to submit the corrected or omitted material and provide tenants and cooperators with notice that they will have 15 days to inspect and comment upon the corrected or omitted material.

(b) Within 10 business days after receipt of the complete rent increase application and any comments thereto, the Agency shall:

1. For housing projects receiving subsidies under HUD, submit the rent increase application to HUD for approval pursuant to N.J.A.C. 5:80–9.8;

2. For all other projects, process the application in accordance with N.J.A.C. 5:80–9.9 and, if applicable, 5:80–9.10. The 10 business day requirement in (b) above shall not apply to rent increases subject to a hearing as provided by N.J.A.C. 5:80–9.10.

(c) Prior to submission of any rent increase application to HUD, the Agency may attach its comments and recommend a rent increase different from that requested by the housing sponsor. If the Agency reduces or eliminates that portion of the requested increase that would provide return on owner's equity, written notice of such reduction or elimination will be provided to the housing sponsor by the Executive Director of the Agency.

Amended by R.1991 d.334, effective July 1, 1991.
See: 22 N.J.R. 2389(b), 23 N.J.R. 2055(a).
Application procedure specified further; tenants given 15 days to inspect documents.

5:80–9.8 Rent increases approvable by the Department of Housing and Urban Development

(a) In all housing projects receiving subsidies under the Section 236 Interest Reduction Payments Program or Section 8 Housing Assistance Payments Program, rent increase applications shall be submitted to and are subject to approval by HUD, unless the rent increase is automatically authorized pursuant to N.J.A.C. 5:80–9.4(b).

(b) Upon verification of the completeness, accuracy and validity of the rent increase application pursuant to its review under N.J.A.C. 5:80–9.7, the Agency will forward the rent increase application to HUD for final action. The Agency will notify the housing sponsor of HUD's final decision.

Repeal and New Rule, R.1991 d.334, effective July 1, 1991.
See: 22 N.J.R. 2389(b), 23 N.J.R. 2055(a).

5:80–9.9 Increases approved by Agency

(a) If the rents are not subject to review and approval by HUD nor subject to automatic annual adjustments pursuant to a valid Housing Assistance Payments contract, then the Executive Director may make or approve a rent increase without a hearing as long as the resulting rents do not exceed the rents in effect for the same units in the housing project at any time in the previous 12 months by more than the combined percentage of paragraphs 1 and 2 below:

1. The percentage increase in the Consumer Price Index for rent and utilities for the most recently preceding 12 month period for which information has been published by the United States Department of Labor; plus

2. Either of:

i. The percentage, up to a maximum of 12 percent annually, needed to fund operating deficits, debt service arrears or reserves for repair and replacement incurred at the housing project during the preceding 12 months, provided that no part of the rent increase includes an amount allocated toward providing a return on equity to the sponsor; or

ii. The percentage, up to a maximum of six percent annually, needed to offset an inability to provide a return on equity and to offset operating deficits, debt service arrears or reserves for repair and replacement delinquencies incurred during the preceding 12 months, if all or a portion of the requested increase is intended to pay return on equity.

(b) For housing projects receiving subsidies under the New Jersey Urban Multi–Family Production Program (JUMPP), the Agency shall consider the amount by which the JUMPP subsidy decreases annually, as well as any operating deficits existing after distribution of the annual JUMPP subsidy, in determining the amount of rent increase needed pursuant to (a) above.

(c) The Agency shall provide the housing sponsor with a copy of its calculations done pursuant to (a) above.

Amended by R.1991 d.334, effective July 1, 1991.
See: 22 N.J.R. 2389(b), 23 N.J.R. 2055(a).
Stylistic changes.
Amended by R.1991 d.335, effective July 1, 1991.
See: 23 N.J.R. 646(a), 23 N.J.R. 2058(a).
Clarification of application of requirements to JUMPP added at (b).

Case Notes

Citation to former N.J.A.C. 5:80–1.9; defense of rent increase unconscionability not available to tenant in summary dispossess action; agency approval of rent increase can only be reviewed by Appellate Division. Marine View Housing Co. No. 1 v. Benoit, 188 N.J.Super. 539, 457 A.2d 1241 (Law Div.1982).

5:80–9.10 Increase subject to hearing

(a) In projects not subject to HUD approval nor subject to automatic annual adjustments, if the Executive Director of the Agency approves a rent increase which exceeds the amounts specified in N.J.A.C. 5:80–9.9(a), in order to cover any purpose including but not limited to operating deficits, debt service arrears, reserves for repair and replacement delinquencies incurred during the preceding 12 months, inability to pay return on equity, increases in permitted return on equity and accelerated amortization of any supplemental financing, then any person, association or corporation aggrieved by such determination may file for a hearing by submitting a written request to the Executive Director. Housing sponsors shall give written notice to all tenants and cooperators affected by such rent increase approved by the Executive Director and of their opportunity to request a hearing. Persons, associations or corporations aggrieved by the increase must file their request for a hearing within 21 days of said notice.

(b) Upon receipt of a request for a hearing or upon his or her own initiative, the Executive Director shall request that the Office of Administrative Law conduct same. All hearings shall be conducted according to the procedures established by the Office of Administrative Law pursuant to N.J.S.A. 52:14B–10. When the date of the hearing has been established, housing sponsors shall provide notices, in a manner approved by the Agency, of the date, time, place and nature of said hearing to all tenants, cooperators and other persons requesting notice of said hearing. The scope of the hearing shall be limited to consideration of the amount in excess of the increases approvable by the Executive Director under N.J.A.C. 5:80–9.9(a). Upon review of the record submitted by the administrative law judge, the Agency members shall adopt, reject or modify the recommended decision and issue a final written order.

(c) The request for a hearing, or the hearing itself, shall in no way affect or delay the authority of the Executive Director to approve increases up to the amounts specified pursuant to N.J.A.C. 5:80–9.9(a). If the Executive Director approves an amount equal to or less than the amount calculated in accordance with N.J.A.C. 5:80–9.9(a), then no hearing is required.

Amended by R.1991 d.334, effective July 1, 1991.
See: 22 N.J.R. 2389(b), 23 N.J.R. 2055(a).
Hearing circumstances specified further; tenant notice requirement added.

Case Notes

Defense of rent increase unconscionability not available to tenant in summary dispossess action; objection of unconscionable rent increase proper at hearing under former N.J.A.C. 5:80–1.10; agency approval of rent increase can only be reviewed in Appellate Division. Marine View Housing Co. No. 1 v. Benoit, 188 N.J.Super. 539, 457 A.2d 1241 (Law Div.1982).

5:80–9.11 Notice of final approval

(a) Upon final action by HUD or the Agency, the Agency will provide written notice to the housing sponsor of the finally approved rent increase. Such notice will set forth in writing the reasons for the Agency's decision with regard to the finally approved rent increase.

(b) The housing sponsor shall provide written notice of the finally determined rent increase and the reasons for the Agency's decision with regard thereto and, if applicable, the Agency's calculations pursuant to N.J.A.C. 5:80–9.9(a) to all tenants and cooperators, as well as all other interested parties. Written notice shall be provided to each tenant by mail or by hand delivery to the tenant/cooperator's apartment or by personal service and shall be posted in conspicuous places throughout the housing project. Other interested parties may receive a copy of the final notice if they provide a written request for same to the sponsor.

Amended by R.1991 d.334, effective July 1, 1991.
See: 22 N.J.R. 2389(b), 23 N.J.R. 2055(a).
Text on notice of hearing repealed; text on notice of final approval recodified from 9.12 and reference to 9.9 added.

5:80–9.12 Effective date of increase

The new rents shall be effective on the first day of the month following one calendar month's written notice to the tenants, cooperators and other interested parties which submitted a written request for the notice.

Amended by R.1989 d.591, effective December 4, 1989.
See: 21 N.J.R. 2160(a), 21 N.J.R. 3748(a).
Changed text from "following the mailing of ..." to "following written" notice.
Amended by R.1991 d.334, effective July 1, 1991.
See: 22 N.J.R. 2389(b), 23 N.J.R. 2055(a).
Text on notice of final approval recodified to 9.11; text on effective date of increase recodified from 9.13.

5:80–9.13 Rent increases for low and/or moderate income projects without Federal project-based rent subsidies

(a) Sponsors of housing projects without project-based Federal rent subsidies may elect to implement rent increases in accordance with the rules in this section rather than those in N.J.A.C. 5:80–9.1 through 9.12. The rules within this section may be used only after the owner demonstrates that at least 10 percent of the units are rented to low income families and the balance rented to moderate income families. HUD's definition of low and moderate income families shall be used for the purposes of the following:

1. Sponsors shall submit a written request to the Agency, accompanied by the most recent HUD median income figures and the maximum rents corresponding to the median income figures. The Agency will review and verify the information contained therein and, if accurate, approve the rent increase, up to a maximum of 10 percent for low income units and 20 percent for moderate income units. The Agency will provide written notice of the approval to the Sponsor.

2. Upon approval from the Agency, the Sponsor shall notify tenants in writing. Notice shall be by mail or hand delivery to each tenant's unit or by personal service. The notice shall include the calculation of how the increase was determined pursuant to HUD's increase in median income.

3. The new rents shall be effective on the first day of the month following one calendar month's written notice to the tenants.

(b) Sponsors of projects without project-based Federal rent subsidies, which do not meet the low and moderate income unit distribution set forth in (a) above, may elect to convert their project to that unit distribution and thereby be subject to (a)1 through 3 above.

1. Sponsors who elect to convert shall get credit toward the 10 percent low income, 90 percent moderate income unit distribution for any existing tenants meeting such standard. As vacancies occur, the units shall first be rented to fulfill the 10 percent low income requirement and then 90 percent to moderate income families.

2. In the event that any of the 90 percent moderate income units have current rents at less than the maximum moderate income rent, rent increases for the first five years following conversion shall be permitted up to 20 percent per year (without regard to HUD increases in median income) until HUD's maximum moderate income rent is reached. Thereafter, rents shall be implemented pursuant to (a)1 through 3 above.

(c) Low income units shall revert to moderate income units 15 years after the conversion. At such time, rent increases for the next five years shall be permitted up to 10 percent per year (without regard to HUD increases in median income) until HUD's maximum moderate income rent is reached. Thereafter, rents shall be implemented pursuant to (a)1 through 3 above.

(d) When calculating the maximum rent for low and moderate income units, sponsors shall use the following formula for determining family size:

1. For efficiency units, family size shall be based on a one person household.

2. For all other units, family size shall be based on one and one-half persons per number of bedrooms in the unit.

(e) Sponsors who wish to implement rent increases in excess of those permitted in (a) and (b) above may request such increase in writing. The excess rent increase amount shall be subject to the procedures at N.J.A.C. 5:80–9.4 through 9.12. The entire rent increase amount shall be considered for determining whether or not a hearing is required pursuant to N.J.A.C. 5:80–9.10. No increase may be approved which would increase rents in excess of those permitted by other applicable rent restrictions, for example, low income tax credit restrictions, tax-exempt bond financing restrictions.

New Rule, R.1994 d.301, effective June 20, 1994.
See: 26 N.J.R. 1188(a), 26 N.J.R. 2570(a).

SUBCHAPTER 10. LOANS TO LENDERS FOR SINGLE FAMILY MORTGAGE LOANS

5:80–10.1 Authority

This subchapter is promulgated pursuant to the authority of N.J.S.A. 55:14K–11(b), whereby the Agency may make loans to institutional lenders in order to furnish funds to make eligible loans, provided such loans are authorized by Federal Taxation Laws.

5:80–10.2 Requests for loans

(a) The Agency shall provide a loan application to each mortgage lender located within any particular area of the State for which the Agency has determined that there is an inadequate supply of single family mortgage loans. Alternatively, the Agency may notify mortgage lenders of a proposed loan program and provide a loan application only to those mortgage lenders requesting the same. Such application shall be sent to mortgage lenders at least 14 days in advance of the date all such applications must be submitted to the Agency. The loan application shall be in the form prescribed by the Agency and shall contain, among other things:

1. Provision for the mortgage lender to state the maximum amount of loan requested;

2. The date by which the loan application must be submitted so as to be considered for an allocation of loan funds and the date upon which loans will be awarded by the Agency;

3. Provision for the mortgage lender to furnish information regarding the mortgage lender's deposit and mortgage activity during a time period prescribed by the Agency;

4. The terms and conditions of the loan including, among others, the maximum interest rate, the term, the percentage of the principal to be paid each year or the manner of determining principal payments, and the prepayment terms;

5. The terms and conditions of the reinvestment of the loan proceeds, including:

i. The type of single family mortgage loan;

ii. Maximum sales price or loan amounts;

iii. Minimum or maximum mortgage terms;

iv. Maximum income levels for owners or occupants;

v. Location;

vi. Loan to ratio value; and

vii. Number of units;

6. The schedule of any fees and charges of the Agency with respect to loans; and

7. An undertaking by the mortgage lender to take any loan granted by the Agency up to the amounts specified in the application and providing for liquidated damages or other remedies in the event that the mortgage lender does not take such loan.

5:80–10.3 Allocation of loans

In allocating funds available for loans, the Agency shall consider, among other things, the credit worthiness of the mortgage lender submitting loan applications, the adequacy of supply of single family mortgage loans in the areas in which the mortgage lender operates, and the mortgage and deposit activity reported in the loan application. Allocations of loan funds by the Agency shall be conclusive.

5:80–10.4 Award of loans

The amount of loan awarded to each mortgage lender shall be promptly confirmed by the Agency to such Mortgage Lender. Thereupon each such mortgage lender shall be obligated to take such loan in accordance with the terms thereof. The obligations of the Agency to make any loan or loans shall be, in each case, subject to the sale and issuance of bonds of the Agency within the period prescribed by the loan application in an amount sufficient to make the loans which shall be awarded.

5:80–10.5 Interest and other terms of loan

Loans shall bear interest at a rate which shall not exceed the maximum rate of interest specified in, or determined in accordance with the provisions of the loan application. Other terms of the loans shall comply with the loan application, the Act and the provisions of any contract with holders of outstanding bonds of the Agency. Each loan shall be evidenced by a note in the forms prescribed by the Agency.

5:80–10.6 Collateral for loans

(a) As security for the payment of the principal of an interest on each loan to a mortgage lender, collateral in an amount at least equal to the collateral requirement shall be assigned in trust to the Agency and maintained by such mortgage lender, all in accordance with an assignment of collateral and trust agreement in the form prescribed by the Agency which shall be entered into by the mortgage lender with the Agency at such time as the Agency shall require.

(b) The collateral for each loan to a mortgage lender may be held by such mortgage lender in accordance with and subject to the terms of the Act and said assignment of collateral and trust agreement.

(c) Each mortgage lender shall service or cause to be serviced and preserve the collateral securing its loan or loans from the Agency at its own expense in accordance with said assignment of collateral and trust agreement.

(d) The collateral shall be valued periodically by the Agency or a person or institution designated by the Agency in accordance with the provision of the assignment of collateral and trust agreement relating to such collateral.

5:80–10.7 Application of loan proceeds; restriction as to single family mortgage loans

(a) The terms of each loan shall require that the proceeds thereof paid to the mortgage lender be segregated from its other funds, and that such mortgage lender shall, within the time period specified in the loan agreement relating to such loan, make and disburse from such loan proceeds, single family mortgage loans to individuals only. The Agency may require that such new single family mortgage loans be restricted in certain areas of the State if the Agency determines that such areas are in particular need of loan funds.

(b) Each such single family mortgage loan shall comply with such terms and conditions as shall be prescribed by the Agency in connection with the loan application therefor.

(c) The aggregate principal amount of such single family mortgage loans made by a mortgage lender from such loan proceeds shall at least equal the amount of such loan proceeds. All such single family mortgage loans shall be made pursuant to written commitments issued subsequent to the date of the submission by the mortgage lender of its loan application. Such written commitments shall specify the maximum interest rate which will be borne by the single family mortgage loan and must state that such loan covered by the commitment is to be funded out of the proceeds of a loan from the Agency. Reports by mortgage lenders as to the application of loan proceeds shall be made at such time and in such manner as shall be provided by the terms of the loan.

(d) Such single family mortgage loans may be made by the mortgage lender either directly or through one or more agents. All loans made by a mortgage lender through an agent shall be made pursuant to a written agreement between such mortgage lender and such agent which agreement shall have been approved in writing by the Agency. The Agency may decline to approve any such agreement for any reason which it, in its sole discretion, deems sufficient. The Agency may require any such agreement to provide, among other things, the following:

1. Such agreement shall not take effect until the approval of the Agency is endorsed on an executed copy thereof;

2. All single family mortgage loans made thereunder shall be made in the name of the mortgage lender pursuant to written commitments issued in the name of the mortgage lender subsequent to the date of the Agency's approval of such agreement;

3. The Agency shall have the right to inspect the books and records of the agent appointed pursuant to such agreement at any and all reasonable times;

4. No compensation or fees of any kind shall be paid to or charged by the agent in connection with any single family mortgage loan made pursuant thereto except as therein specifically set forth;

5. All commitments issued by an agent shall be subject to the same requirements as hereinabove set forth for mortgage lenders.

5:80–10.8 Restrictions on return realized by mortgage lenders

The Agency may in the case of loans to be made from any issue of bonds of the Agency establish maximum rates of return which may be realized by any mortgage lender or any agent of any mortgage lender from the single family mortgage loan made from the proceeds of loans and may regulate, limit, restrict, or prohibit the charge or collection of any commitment fee, premium, bonus, points or other fees in connection with the making of any single family mortgage loan.

5:80–10.9 Fees and charges of the Agency; loan account

(a) An initial fee may be established by the Agency in connection with loans to be made from the proceeds of any issue of Agency bonds, and collected by the Agency as and for a discount below par with respect to each such loan. The initial fee shall be for the purpose of reimbursing the Agency for all or part of its reasonably expected administrative costs of issuing such Agency bonds and making the loans.

(b) The Agency may establish such other premiums, penalties, fees and charges, as it in its sole discretion shall determine to be necessary in connection with the prepayment of, or any default on, or any default under any agreements relating to, any loan or loans.

5:80–10.10 Purchase of Agency bonds

No mortgage lender (including any related person thereof, as defined in Section 103(b)(6)(C) of the Internal Revenue Code) shall, pursuant to any arrangement, formal or informal, purchase the bonds of the Agency in an amount related to the amount of the Agency loans to be made to such mortgage lender (or related person, as aforesaid) by the Agency.

SUBCHAPTERS 11 THROUGH 12. (RESERVED)

SUBCHAPTER 13. MAKING OR PURCHASING ELIGIBLE LOANS FOR SINGLE FAMILY MORTGAGES

5:80–13.1 Authority

This subchapter is promulgated pursuant to the authority of N.J.S.A. 55:14K–12c, whereby the Agency may make, purchase or participate in the purchase of eligible loans in order to encourage the development, operation, construction, improvement and rehabilitation of affordable housing.

5:80–13.2 Commitment applications

(a) The Agency shall make available to all mortgage sellers who request a form of commitment application for each proposed program to purchase single family mortgage loans at least 14 days in advance of the date all such applications must be submitted to the Agency. The commitment application shall be in the form prescribed by the Agency and shall contain, among other things:

1. Provision for the mortgage seller to state the maximum principal amount of single family mortgage loans which the mortgage seller offers to the Agency;

2. The date by which the commitment application must be submitted to the Agency in order to be considered for an allocation of funds and the date by which commitments will be accepted by the Agency;

3. Form of the proposed mortgage purchase agreement and mortgage servicing agreement;

4. Provision for the mortgage seller to furnish information regarding its mortgage loan origination and serving activities during a time period to be prescribed by the Agency;

5. Provision for liquidated damages to be paid or other penalties to be incurred by the mortgage seller in the event that it fails to execute or perform under the mortgage purchase agreement for the commitment accepted by the Agency; and

6. Provision for payment by the mortgage seller of a commitment fee in an amount prescribed by the Agency as consideration for the Agency's acceptance of the commitment application and agreement to purchase mortgage loans from the mortgage seller.

5:80–13.3 Allocation of commitments

In allocating funds available to meet the commitments requested by mortgage seller, the Agency shall consider, among other things, the amounts of the commitments requested by the various mortgage sellers, the adequacy of supply of single family mortgage loans in the areas in which the mortgage sellers propose to originate mortgage loans, the financial strength and stability of the mortgage seller, the mortgage loan originating and servicing activity reported in the commitment application and the ability of the mortgage sellers to originate and/or service single family mortgage loans under the terms and conditions of the mortgage purchase agreement and the mortgage servicing agreement.

5:80–13.4 Execution of mortgage purchase agreement, mortgage servicing agreement; Term Sheet; Notice of Acceptance

The Agency and each mortgage seller will enter in a Mortgage Purchase Agreement and Mortgage Servicing Agreement stating the conditions under which sellers will originate and the Agency will purchase mortgage loans financed under this Section. The Agency will provide a Term Sheet for each mortgage program which shall set forth the terms of all loans, mortgage delivery period and other requirements. All loans originated under a commitment allocation must conform to the requirements of the Term Sheet which shall be incorporated into the Mortgage Purchase Agreement by reference. The amount of the allocation provided to each mortgage seller for each program shall be set forth in a Notice of Acceptance.

5:80–13.5 Eligible neighborhoods

The Agency may designate special areas of the State in which the purchase of mortgage loans by the Agency will best effectuate the general purposes of the Act and the objectives of expansion of supply of funds in the State available for single family mortgage loans, provision of additional housing needs to remedy the shortage of adequate housing in the State and elimination of substandard dwellings. If the Agency makes such a designation, special allocations and conditions may be imposed or waived for single family mortgage loans in these areas.

5:80–13.6 Limitations on loans

The Agency may set limitations on the principal amounts of a mortgage loan or upon the incomes of homebuyers in any area to effectuate the purposes of the Act.

5:80–13.7 Regulation of points charged by mortgage sellers

The Agency may regulate, limit, restrict or prohibit the charge or collection of any commitment fee, premium, bonus, points or other fees in connection with the origination of mortgage loans by mortgage sellers to be purchased by the Agency.

5:80–13.8 Refinancing of pre-existing single family mortgage loans

(a) The Agency shall not acquire any single family mortgage loans made for the purpose of refinancing pre-existing single family mortgage loans. However, a mortgage loan made by a mortgage seller to finance the substantial rehabilitation of property upon which there is a pre-existing mortgage loan may include the refinancing of the pre-existing mortgage loan and still qualify as a single family mortgage loan under the following conditions:

1. At least 50 percent of the proceeds of the single family mortgage loans made by the mortgage seller shall be used to pay for labor and materials used to rehabilitate the property;

2. The single family mortgage loan shall be made only to a person determined in advance by the Agency to be a person of low or moderate income;

3. The economic facts and circumstances of the mortgagor and the property are such that the rehabilitation could not have been financed by other means;

4. The mortgage seller delivers to the Agency a certificate executed by the mortgage seller certifying that it reasonably believes, based upon prior investigation, that the conditions above have been met and that the refinancing of the pre-existing mortgage loan is incidental and necessary to the purpose of accomplishing the rehabilitation of the property and stating the facts and circumstances upon which the determination in (a)3 above was made; and

5. The executive director of the Agency determines and certifies that the facts and circumstances in the mortgage seller's certificate support the conclusion that the refinancing of the pre-existing mortgage loan is incidental and necessary to the purpose of accomplishing the rehabilitation of the property.

5:80–13.9 Purchase of Agency bonds

No mortgage seller (including any related person thereof, as defined in Section 103(b)(6)(C) of the Internal Revenue Code) shall, pursuant to any arrangement, formal or informal, purchase the bonds of the Agency in an amount related to the amount of the mortgage loans to be purchased from such mortgage seller (or related person, as aforesaid) by the Agency.

5:80–13.10 Return on equity for eligible loans

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

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

5:80–14.1 Commitment applications

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

1. Provision for the mortgage seller to state the maximum principal amount of single home improvement loans which the mortgage seller offers to the Agency;

2. The date by which the commitment application must be submitted to the Agency in order to be considered for an allocation of funds and the date by which program commitments will be accepted by the Agency;

3. A form of the proposed note purchase agreement to be executed by the mortgage seller; and

4. Provision for the mortgage seller to furnish information regarding its residential loan origination activities during a time period to be prescribed by the Agency.

5:80–14.2 Allocation of commitments

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

1. The amounts of the program commitments requested by the various mortgage sellers;

2. The adequacy of supply of affordable single family home improvement loans in the areas in which the mortgage seller proposes to originate single family home improvement loans;

3. The financial strength and stability of the mortgage seller;

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

5:80–14.3 Execution of note purchase agreement

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

5:80–14.4 Unsecured single family home improvement loans

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

5:80–14.5 Eligibility requirements

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

5:80–14.6 Regulations of points charged by mortgage sellers

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

5:80–14.7 Refinancing of pre-existing debt

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

5:80–14.8 Purchase of Agency bonds

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

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

SUBCHAPTERS 15 THROUGH 16. (RESERVED)

SUBCHAPTER 17. PREVAILING WAGES

5:80–17.1 Authority

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

5:80–17.2 Applicability of prevailing wages

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

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

SUBCHAPTER 18. DEBARMENT AND SUSPENSION FROM AGENCY CONTRACTING

5:80–18.1 Definitions

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

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

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

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

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

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

Amended by R.1990 d.247, effective May 21, 1990.
See: 21 N.J.R. 3350(a), 22 N.J.R. 1556(b).
Definitions of agency contracting and person added.

Case Notes

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Amended by R.1985 d.559, effective November 4, 1985.
See: 17 N.J.R. 1174(b), 17 N.J.R. 2607(a).
(a)12 deleted text "including such conduct as may be proscribed by the laws or contracts enumerated in this section".
(a)14 added.
Amended by R.1990 d.247, effective May 21, 1990.
See: 21 N.J.R. 3350(a), 22 N.J.R. 1556(b).
Text at 15 added.

Case Notes

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

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

(a) The following conditions shall apply concerning debarment:

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

2. The existence of any of the causes set forth in N.J.A.C. 5:80–18.2 shall not necessarily require that a person be debarred. In each instance, the decision to debar shall be made within the discretion of the members of the Agency, upon their own action or upon recommendation by the Executive Director of the Agency, unless otherwise required by law, and shall be rendered in the best interests of the State.

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

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

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

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

Amended by R.1990 d.247, effective May 21, 1990.
See: 21 N.J.R. 3350(a), 22 N.J.R. 1556(b).
References to 5:80–18.2(a)14 and 15 added at (a)6 and (a)5.

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

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

1. Stating that debarment is being considered;

2. Setting forth the reasons for the proposed debarment; and

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

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

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

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

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

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

Case Notes

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

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

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

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

Case Notes

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Amended by R.1985 d.559, effective November 4, 1985.
See: 17 N.J.R. 1174(b), 17 N.J.R. 2607(a).
(a)3 substantially amended; (a)4 added.

5:80–18.8 Prohibited activities of persons; reporting requirement

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

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

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

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

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

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

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

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

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

Case Notes

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

5:80–18.9 Extent of debarment and suspension

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

5:80–18.10 Prior notice by the Agency

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

5:80–18.11 List of debarred and suspended

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

5:80–18.12 Discretion

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

5:80–18.13 Lists of other agencies

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

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

SUBCHAPTER 19. WAIVERS

5:80–19.1 Waivers

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

SUBCHAPTER 20. CERTIFICATION AND RECERTIFICATION OF INCOME

5:80–20.1 Authority

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

5:80–20.2 General applicability

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

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

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

5:80–20.3 Documentation

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

1. A copy of the first page of their most recent Federal income tax return, or a signed certification stating that no tax return was filed;

2. Permission for the Agency and Housing Sponsor to contact the Internal Revenue Service for additional information which is necessary to verify gross aggregate family income and/or copies of the first page of a family's income tax returns;

3. Verification of employment;

4. Check stubs from employers, pensions, annuities, social security, unemployment, public assistance and workers' compensation;

5. A copy of court order for alimony and child support;

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

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

5:80–20.4 Calculation of income

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

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

1. Income from a dependent minor under 18 years of age, who is not the head of household or spouse of the head of household;

2. Lump-sum additions to family assets such as inheritances, capital gains, insurance payments included under health, accident, hazard or worker's compensation policies, and settlements for personal or property losses;

3. For income from dependents who are secondary wage earners but who are not included within (b)1 above, such wages up to a maximum of $3,000.

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

5:80–20.5 Recertification periods and procedures

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

1. Families occupying a unit which is assisted by HUD subsidies, such as Section 8 and 236.

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

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

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

1. A statement that families must recertify within 30 days of the notice;

2. A list of the documentation required for recertification;

3. A statement that families who fail to recertify income are subject to provisions set forth in N.J.A.C. 5:80–20.6, such statement including a description of such provisions;

4. A statement that after recertification, families whose income is in excess of the Federal or Agency maximum income limit may be subject to provisions set forth in N.J.A.C. 5:80–20.7, such statement including a description of such provisions.

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

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

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

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

5:80–20.6 Failure to recertify

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

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

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

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

5:80–20.7 Adjustments in tenancy

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

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

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

5:80–20.8 Surcharges

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

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

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

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

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

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

5:80–20.9 Eviction

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

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

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

5:80–20.10 Confidentiality

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

SUBCHAPTER 21. TRANSFER OF SERVICING OF SINGLE FAMILY MORTGAGE LOANS

5:80–21.1 General applicability

(a) The rules within this subchapter shall apply to all servicers of Agency single family mortgage loans who are either:

1. Transferring the ownership interest of the servicing company or entity; or

2. Transferring the ownership of their holding company; or

3. Transferring by sale their portfolio of Agency loans to another servicer.

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

1. Name change of servicer;

2. Change of location of servicer;

3. Staff changes by servicer;

4. Other significant organization changes by servicer.

(c) The rules within this subchapter shall not apply to loan originators who are not servicers.

5:80–21.2 Agency review and approval

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

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

1. Ability to assume a servicing portfolio of at least 100 Agency loans.

2. Have a net worth of $250,000 plus 0.2 percent of the outstanding principal balances of its total portfolio of loans serviced.

3. Have a servicing portfolio of at least 200 loans for other investors totaling at least $10 million dollars in outstanding principal balances.

4. Be an approved servicer for the Federal National Mortgage Association (FNMA) or Federal Home Loan Mortgage Corporation (FHLMC). If the servicer is not FNMA/FHLMC approved, the Agency reserves the right to make its own determination.

5. Have current certified financial statements and servicing and delinquency statistics which are satisfactory to the Agency.

6. Completion of the participation application to the satisfaction of the Agency.

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

8. Evidence of fidelity insurance, errors and omission insurance and other insurance the Agency deems necessary.

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

5:80–21.3 Transfer fees

(a) A transfer fee shall be paid to the Agency on all transfers specified in N.J.A.C. 5:80–21.1(a) and (b). The fee shall be assessed according to the terms of the mortgage servicing agreements with each servicer.

(b) A transfer fee shall not be imposed on loans in foreclosure or loans in default over 60 days. If the servicer receives payment from the mortgagee within a reasonable time of the transfer which brings such loans out of foreclosure or reduces the period of default to less than 60 days,

then a fee will be required to be paid by the servicer at such time.

5:80–21.4 Subsequent transfers

(a) The rules within this subchapter shall apply in their entirety to any subsequent transfers by servicers who became successor servicers under the provisions of these rules.

(b) Successor servicers shall assume and abide by all the terms, including payment of transfer fees, of the original mortgage servicing agreements on the loans being serviced unless different terms are agreed to in writing by the successor servicer and the Agency.

SUBCHAPTER 22. AFFIRMATIVE FAIR HOUSING MARKETING

5:80–22.1 Definitions

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

"Applicant" means one or more individuals, corporations, partnerships, associations, labor organizations, or public entities applying for financing or funding assistance from the New Jersey Housing and Mortgage Finance Agency.

"Disabled person" means a person who is unable, due to a physical or mental impairment, to engage in any gainful activity under a disability as defined in section 223 of the Social Security Act or a person who has a "developmental disability" which is mental in nature as defined by the Developmental Disabilities Amendments of 1970 (42 U.S.C. 60001).

"Displaced person" means a family or individual who has been displaced by government action or other formally recognized action pursuant to Federal disaster or otherwise has been involuntarily displaced.

"Eligible household" means a household whose eligibility requirements are determined in accordance with the program regulations under which the project is financed.

"Housing market area" means that geographic region from which it is likely that renters/purchasers would be drawn for a given multifamily rental housing project or single family sales unit. For projects financed under the Affordable Housing Program the housing market area may be considered a housing region as determined by the Council on Affordable Housing. In most instances the housing marketing area consists of the county in which the project or homes will be located.

"Initial rent-up" means that period beginning with the date on which the applicant is granted permission by the local government and the Agency to begin occupancy or rent-up and ending on the date sustaining occupancy (usually 95 percent) is attained.

"Low income housing" means housing affordable according to the Federal Department of Housing and Urban Development or other recognized standards for home ownership and/or rental. Certain housing programs require a portion of the units to be occupied or reserved for occupancy by households with a gross household income equal to 50 percent or less of the median gross household income for households of the same size within the applicable housing market area. Other housing programs require units to be affordable to the aforementioned population.

"Moderate income housing" means housing affordable according to the Federal Department of Housing and Urban Development or other recognized standards for home ownership and/or rental. Certain housing programs require that a portion of the units be occupied or reserved for occupancy by households with a gross household income equal to more than 50 percent but less than 80 percent of the median gross household income for households of the same size within the applicable housing market area. Other housing programs require units to be affordable to the aforementioned population.

"Minority" means an individual who is a member of one of the following racial or ethnic groups:

1. Black: An individual having origins in any of the Black Racial groups of Africa but not of Hispanic origin;

2. American Indian or Alaskan Native: An individual having origins in any of the original people of North America, and who maintains cultural identification through tribal affiliation or community recognition;

3. Hispanic: An individual of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin regardless of race; or

4. Asian or Pacific Islander: An individual having origin in any of the original peoples of the Far East, Southeast Asia, and the Indian subcontinent, or the Pacific Islands. This area includes, for example, China, India, Japan, Korea, the Philippine Islands, and Samoa.

"Target group" means identifiable segments of the eligible population identified by the applicant as least likely to apply for occupancy. An applicant undertakes special outreach to attract members of these groups to the housing being offered. Examples include specific racial/ethnic groups.

5:80–22.2 Purpose of the Affirmative Fair Housing Marketing Plan

(a) The Affirmative Fair Housing Marketing Plan (the Plan) is a marketing strategy designed to attract buyers and/or renters of all majority and minority groups regardless of sex, to rental projects and sales dwellings, which are being marketed by an applicant. The Plan describes initial advertising and other marketing activities which inform potential buyers and renters of the existence of the units.

(b) More than one Plan may be required in housing developments where there is a combination of market and low and moderate income units or where there is a combination of sales and rental housing.

(c) The Plan remains in force throughout the life of a multifamily project. For single-family dwellings located in subdivisions of five or more units, the Plan remains in effect until all of the dwellings are sold.

(d) No application for Agency assistance may be funded without an approved Plan.

(e) Upon approval, the applicant is required to make good faith efforts to carry out the provisions of the Plan.

(f) In formulating the Plan the applicant shall do the following:

1. Refer to the demographic statistics for the applicable housing market area and identify the segments of the eligible population which are least likely to apply for housing without special outreach because of such factors as neighborhood customs, price, institutionalized discrimination in the housing market and other factors which have the effect of denying housing choice.

2. Design an outreach program which will have the best chance of producing a prospective occupant pool reflective of the racial/ethnic composition of the population of the housing market area and which includes special measures designed to attract those groups identified as least likely to apply and other efforts designed to attract persons from the total eligible population.

3. Establish as one indicator of marketing effectiveness the racial/ethnic composition of the low and moderate income population of the housing market area, and identify any other indicators to be used to measure the effectiveness of the marketing program.

4. Demonstrate capacity to provide training and information to sales and/or rental staff on fair housing laws and objectives.

5:80–22.3 Who submits a plan

(a) The following applicants are required to submit an Affirmative Fair Housing Marketing Plan:

1. Any applicant applying for funding under the Affordable Housing Program;

2. Any applicant applying for funding under the Continuing Care Retirement Community Program;

3. Any applicant applying for funding under the Repair Loan Program;

4. Any applicant applying for funding under the Agency's Policies and Procedures for Housing Projects; and

5. Any applicant applying for funding allocations for special projects consisting of 25 or more units.

(b) Projects receiving assistance from the Federal government are subject to the Affirmative Fair Housing Marketing Guidelines established and enforced by the U.S. Department of Housing and Urban Development. However, copies of the HUD approved Affirmative Fair Housing Marketing Plan must be on file with the Agency prior to the issuance of a "firm commitment."

5:80–22.4 Plan submission deadlines

(a) The Plan must be submitted as part of the application for Agency financing for those projects financed under the Agency's Policies and Procedures for Housing Projects, Repair Loan Program and Continuing Care Retirement Community Program.

(b) For assistance under the Affordable Housing Program, the applicant must submit an approval Plan prior to fund reservation. The Agency will, however, defer to those procedures which are different from those procedures stated herein for projects subject to a court ordered settlement and/or consent order.

5:80–22.5 Format of the Affirmative Fair Housing Marketing Plan

(a) The applicant shall provide the following information:

1. Name and address of both the applicant and the proposed project;

2. Number of units and the application number;

3. Price and/or rent of units and range of affordability by household size of prospective purchasers and/or renters;

4. Census tract or affordable housing region in which the project will be located;

5. The household types to be served by the project, for example, the elderly, non-elderly;

6. The approximate starting date for advertising to target groups and for initial occupancy; and

7. Name of managing/sales agent.

5:80–22.6 Direction of marketing activity

(a) The applicant is responsible for the development and the implementation of the Affirmative Fair Housing Marketing Plan. For projects financed under the Affordable Housing Program, the municipality may work with the applicant to help identify those persons who are least likely to apply. However, the applicant has ultimate responsibility for the units' marketing and sales/rental transactions. Employment of a sales or management agent does not relieve the applicant of these responsibilities and the applicant must assure that such agents will carry out affirmative marketing and non-discrimination requirements.

(b) The applicant shall identify the groups that are least likely to apply for housing. For these groups, special outreach is required to inform them of the upcoming housing opportunities.

(c) The applicant shall describe efforts to reach target groups that are not covered elsewhere in the Plan. Such groups may include female-headed households and the working poor.

(d) If the applicant believes that no single group will need special outreach, the applicant so indicates in the Plan and explains the reasons for such determination.

(e) In determining which groups may require special outreach, the applicant should consider, as appropriate, the following factors:

1. The possible existence of practices or policies of discrimination on the basis of race, color, creed, religion, sex, or national origin, which have historically affected the ability of members of particular groups to obtain the housing of their choice. These practices or policies can include exclusionary zoning practices which may have limited the construction of housing for lower income families; lending and/or appraisal practices and other practices which may have resulted in discrimination on the basis of race, color, creed, sex, or national origin. Information on these practices may be found in court decisions, compliance findings, newspaper articles or other sources which illustrate patterns relating to these practices.

2. Any known fact about the effects of the language barrier upon potential homeseekers and/or renters whose native language is not English. Examples of such homeseekers include Hispanic and Vietnamese.

3. The racial/ethnic composition of defined geographic areas and comparable projects of comparable size within the housing market. Information regarding these factors may be found in the Housing Assistance Plan (HAP), US Census Reports or Regional Housing Needs Reports approved by the Affordable Housing Council. Furthermore, the applicant should consider the income of the eligible population of the housing market area including, where applicable, those persons expected to reside in the community because of planned employment and current employment.

4. Income eligibility requirements affect the selection of tenants/purchasers from the segments of the eligible population that might be targeted for special outreach and effect the marketing technique to be used in attracting such persons to the housing.

5. The racial/ethnic composition of the group of persons who are not residents, but who may reasonably be expected to reside in the community in the future because of present or planned employment.

5:80–22.7 Marketing program

(a) The marketing program shall include the following:

1. The applicant shall describe the marketing program and outline the methods to be used in reaching all segments of the eligible population; and

2. The marketing program must include special outreach steps which will be taken to attract the groups identified in the Plan as persons least likely to apply for housing.

(b) The applicant shall indicate the commercial media to be used, if any, to advertise the availability of housing. The use of commercial media is not required; however, the applicant should publicize the availability of housing through the type of media customarily used by the applicant, including minority publications or other minority outlets which are available in the housing market area.

(c) If the applicant does not intend to use any commercial media, the Plan should explicitly indicate that no commercial media will be used and the reasons for this decision should be attached to the Plan.

(d) The applicant shall indicate the type of media to be used, including:

1. Newspapers for general circulation;

2. Radio stations;

3. Television stations; or

4. Other types of media, including publications of limited circulation such as neighborhood-oriented weekly newspapers, religious publications, and the publications of local real estate industry groups.

(e) For each of the media selected, the applicant shall indicate:

1. The name of the media;

2. The type (for example, classified, display) and size of the newspaper advertisement and the initial date of its appearance. If copies of such advertising are available, the applicant should submit them to the Agency. If no copies are available at the time the Plan is being prepared, the applicant shall submit them as soon as possible after the Plan has been approved;

3. The frequency and length of any radio and/or telephone advertising; and

4. The identity of the racial/ethnic group within the audience or readership of the commercial media to be used.

(f) Applicants are encouraged to use minority-owned and/or operated media as part of their overall marketing program to publicize the housing to both majority and minority persons. Where Blacks, Hispanics, and other racial/ethnic minority groups have been identified as special outreach groups, minority-owned media may be a particularly effective outreach mechanism. Even when such groups are not being specifically targeted for special outreach efforts, the use of minority owned media is recommended as part of the outreach to the general population. In such cases, the applicant may consider factors such as data on the racial/ethnic composition of the majority-owned medias' readership or audience and applicant's past experience in utilizing such media.

(g) The applicant should consider using brochures as part of the total marketing program. Brochures can be tailored to meet specific housing information needs of those persons who are members of groups identified as least likely to apply for the housing. The brochure can also contain a greater quantity of information about the project or subdivision than that contained in mass media advertising.

1. A brochure may include a range of information which influences decisions regarding housing choice, for example, price/rent; proximity to schools; transportation; shopping, and employment centers; the availability of medical facilities for disabled persons.

2. The brochure should communicate the applicant's equal housing opportunity policy.

(h) Signs are another means of advertising. The applicant must indicate the size of any existing or proposed permanent project site sign. This sign must include the equal opportunity housing logo. The applicant must indicate the size of the logo. A photograph of the project sign must be submitted with the Plan or be submitted as soon as possible after erection of the sign.

5:80–22.8 Community contact

(a) Community contacts can supplement formal communications media for the purpose of soliciting tenants/buyers. The applicant shall include only those individuals or organizations that have direct and frequent contact with those groups identified earlier in the Plan as least likely to apply. The applicant shall choose community contacts on the basis of their position of influence within the general community and the particular target groups.

(b) Examples of suitable community contacts include:

1. Fair housing organizations and local non-profit housing associations, housing counseling agencies, regional tenant referral services;

2. Minority organizations (NAACP, Urban League), women's organizations, religious institutions, civil rights groups, editors of majority-owned and minority-owned newspapers;

3. Local government agencies which are in a position to make referrals of potential homeseekers and/or renters to the project or subdivision;

4. Real estate industry related groups such as local real estate boards, Community Housing Resource Boards, organized pursuant to HUD voluntary agreements with the National Association of Realtors and the National Association of Real Estate Brokers; and

5. Local employment centers, including large industrial and commercial employers, labor unions, hospitals, and educational institutions.

(c) The applicant shall give the following information regarding the community contacts:

1. Name of the organization or individual;

2. The racial/ethnic identification of the group or individual;

3. The approximate date the group or individual is to be contacted. This date should be consistent with the requirements for advance marketing to those persons least likely to apply where applicable;

4. The address and telephone number of the person to be contacted;

5. The methods of contact, for example, community meetings, briefing sessions by the applicant and community organizations brochures, walking or bus tours of the proposed housing, radio talk shows; and

6. The specific functions the group will perform.

5:80–22.9 Future marketing activities for rental units only

(a) The applicant shall describe the types of activities to be undertaken after the completion of initial occupancy of rental units in order to fill vacancies resulting from normal turnover.

(b) The applicant may undertake the same marketing activities which were performed during the initial occupancy. A modified Plan may reflect a reduced level of marketing activity as units are available only through turnover and may reflect changes in the media, community contacts or procedures in order to continue a marketing approach that is consistent with the Affirmative Fair Housing Marketing objectives.

(c) Examples of such marketing activities which may be performed following the initial rent-up can include the use of advertising media which may be targeted to the same groups previously identified as least likely to apply for the housing without special outreach, or to different groups chosen on the basis of need to encourage their greater representation in the prospective occupant pool. The media advertising can be similar in content and format to that used during the initial rent-up or can be changed by adjusting the scale of the advertising program.

(d) The applicant may use brochures and/or site signs to publicize the project after initial rent-up has been completed. The applicant may elect to eliminate community contacts altogether or may use contacts such as churches, local businesses, civic groups, the local government or individual community leaders as distributors of brochures or as information sources about the project. Participation in the regional tenant referral clearing house operated by local real estate industry, Public Housing Authorities (PHAs), fair housing groups or public agencies is also encouraged. Such services match prospective homeseekers and/or renters with vacant units of suitable size or price.

5:80–22.10 Assessment of marketing efforts

(a) The applicant shall describe the indicators to be used in measuring the effectiveness of the marketing efforts. Measuring effectiveness is an integral part of the applicant's Affirmative Fair Housing Marketing strategy, and the indicators selected should be consistent with other actions the applicant plans to undertake.

(b) The applicant may estimate the possible racial/ethnic composition of the prospective occupant pool which may be anticipated as a result of the marketing efforts including special outreach activities undertaken in accordance with the Plan. The prospective occupant pool should reflect the racial/ethnic composition of the housing market area.

(c) The applicant may estimate the distribution by race/ethnicity of the projected tenant population or owner population resulting from both the implementation of marketing activities and the tenant or homeowner selection process. Under no circumstances is this statement of anticipated occupancy results to be used as a quota in the tenant/owner selection process.

5:80–22.11 Composition of the prospective occupant pool

(a) In determining the anticipated racial/ethnic composition of the prospective occupant pool or tenant/homeowner population the applicant must consider any of the following factors as appropriate:

1. Physical characteristics of the proposed project or subdivision including:

i. Project size, that is, number of units;

ii. Distribution of units by bedroom size;

iii. Household type to be served by the housing, that is, nonelderly families or elderly persons;

iv. Income eligibility requirements;

v. The demographic characteristics of the housing market area in which the project or subdivision is to be located including the racial/ethnic composition.

2. Demographic changes (social and economic) in the housing market area in which the project is to be located may result from publicly or privately financed revitalization activities which may displace lower income persons and encourage the immigration of higher income persons. Demographic changes may also result from housing practices which are illegal such as racial "redlining" by financial institutions, residential appraisals based on the racial composition of the neighborhood or the offering of financial incentives to sell homes because of racial or ethnic groups moving into the neighborhood (blockbusting).

5:80–22.12 Demographic characteristics of income eligible population in need

Applicants shall include data on any newly assisted project that may also be available at the time of occupancy of the proposed project. Such data should include project size and location, stage of construction, and anticipated dates of initial marketing activity and initial occupancy.

5:80–22.13 Residency preferences

(a) Residency preferences are generally prohibited in housing financially assisted by the Agency. The use of residency preferences as part of a project tenant selection and assignment procedure may be permitted under certain circumstances such as a court ordered settlement and/or consent order with prior approval of the Agency. In these instances, prior approval of the Agency is required, and the residency preferences may be used in such a manner that housing opportunity will not be denied to any particular group.

(b) In connection with housing assisted under the Fair Housing Act, residency preferences shall be limited to the indigenous need portion of the community's housing obligation, but not more than 50 percent in any one project.

(c) In formulating the request for a residency preference, the applicant should calculate the size of the potential population of households eligible for the proposed housing and should also indicate the potential population of eligible households or families identified as expected to reside in the housing area because of present or planned employment. Using the results of this calculation, the applicant should then determine whether an eligible population of residents exists which contains sufficient numbers of households from both majority and minority groups to yield a prospective occupant or tenant/homeowner pool. If such a population does exist, the owner may confine the marketing to that jurisdiction and all the units in the project can be subject to the preference. If, however, an insufficient number of one or more categories of eligible households exists within the jurisdiction the applicant should open marketing to the entire market area.

(d) In formulating the request for residency preference the applicant may use data on the housing assistance needs of particular segments of the eligible population contained in the local Housing Assistance Plan, the Census Bureau's census of population and housing reports which gives statistics on income for each SMSA by race, and other locally compiled data sources such as regional planning agency reports and locally performed census counts.

5:80–22.14 Staff experience and instructions for fair housing training

(a) The applicant shall indicate whether it has had any experience in marketing housing to the group(s) identified as least likely to apply.

(b) The applicant is responsible for instructing all employees and agents in writing and verbally concerning nondiscrimination in housing. Instructions regarding fair housing requirements and objectives should also be a continuing part of the agenda of staff meetings or other regular orientation activities carried on for sales and rental staff.

(c) The applicant shall submit a copy of the instructions given to submanagement staff on fair housing concerns such as Federal, State, or local housing laws, and the applicant's Affirmative Fair Housing Marketing Plan. These materials should indicate the date established for conducting such training and the name and title of the person responsible for developing the fair housing training program.

5:80–22.15 Other indicators of successful implementation

The applicant may describe indicators other than the projected racial/ethnic composition of the prospective occupant pool or the tenant population. These indicators can measure the effectiveness of various components of the Plan such as the advertising methods, the outreach activities targeted toward the group identified as least likely to apply or the use of community contacts.

5:80–22.16 Approval of the Affirmative Fair Housing Marketing Plan

(a) In the event that the Plan is deficient, the Agency will notify the applicant of the nature of the deficiencies and request any additional information. Copies of approved plans will be distributed as follows:

1. Original to the applicant;

2. A copy to be maintained by the Agency's Minority Affairs Coordinator;

3. A copy to be maintained in the Management Division; and

4. For projects financed under the Affordable Housing Program, a copy to the respective community and the designated developer.

(b) The letter of approval to the applicant will include the following information:

1. The procedure to follow in notifying the Agency of intent to market;

2. Submission to the Agency of copies of the advertisements, project signs, brochures and letters used during the marketing period and developed as part of the marketing program; and

3. Submission of required occupancy reports, monthly sales reports, and monthly rental reports.

5:80–22.17 The Management Plan

(a) The applicant shall submit a Management Plan setting forth roles, responsibilities, policies and procedures regarding all aspects of management, including but not limited to parking and tenant selection. The Management Plan shall contain the applicant's plan for implementing the Affirmative Fair Housing Marketing Plan and for equal employment opportunities. The agency will review the Management Plan to determine consistency with the approved Affirmative Fair Housing Marketing Plan. Particular attention will be paid to the following in determining consistency with the Plan:

1. Advertising of units; and

2. Tenant selection and assignment methods. Although the Affirmative Fair Housing Marketing requirements apply to advertising the availability of the housing, the selection procedures adapted by the applicant affect the opportunity of eligible persons to exercise their housing choice. These selection procedures and methods of administration should not directly or indirectly discriminate against any person on the basis of race, color, religion, creed, sex, or national origin or have the effect of hindering the achievement of the purposes of the plan objectives. Applicants are encouraged to adopt the Agency's Tenant/Owner Selection Guidelines as their own.

5:80–22.18 Notification of intent to begin marketing

The applicant shall notify the agency no later than 90 days prior to the commencement of any sales or rental marketing activities of the applicant's intent to begin sales or rental activities.

5:80–22.19 Preoccupancy conference

Upon receipt of the notification of intent to begin marketing, the Agency may schedule a preoccupancy conference with the applicant's advertising firm, rental and/or sales agent.

5:80–22.20 Marketing for initial sales or rent-up

(a) In carrying out the provisions of the approved Affirmative Fair Housing Marketing Plan, the applicant shall implement the following procedures which apply to advance marketing activities as well as marketing activities targeted to the general eligible population:

1. Prior to initiating general marketing, contact the commercial media, fair housing groups, employment centers and civil rights organizations which have been identified as resources for attracting persons who are "least likely to apply" for the housing.

2. Establish a system for documenting outreach activities and for maintaining records of prospective occupants and approved eligible families which provide racial, ethnic and gender data.

3. Prior to the commencement of application taking or sales, provide training to all management or sales staff in Federal, State and local fair housing laws and with respect to the plan objectives.

4. Submit materials to the agency which document activities taken to implement the approved Plan; that is, copies of advertisements, brochures, leaflets, and letters to community organizations, fair housing groups, major employment centers, referral services, and other contacts utilized as part of the marketing program; photographs of project signs; a copy of the instructions used to train sales/rental staff in fair housing laws; anticipated dates of advertising and occupancy.

5. Prior to initiation of marketing, the applicant may compile a list of those persons who indicated an interest in applying for the housing. Such persons shall not be considered prospective occupants and placed in the prospective occupant pool until they have filed a formal application during the regular, publicized application-taking period. Application forms should not be provided to such persons in advance of other persons to whom the marketing program is directed.

5:80–22.21 Assessment of the Plan's implementation

(a) The applicant shall monitor and carefully evaluate the results of the special outreach and general marketing activities undertaken during the initial sales or rent-up period. Through such evaluation, the applicant can determine whether the provisions of the Plan have been successfully implemented and how effectively the Affirmative Marketing Program has helped attract buyers or tenants of majority and minority groups. Examples of factors to be examined in the population of the relevant housing market area include:

1. The actual racial/ethnic composition of either the tenant/owner population or the prospective occupant pool. The applicant should compare this data with the anticipated composition of prospective occupants or tenants/owners the applicant has projected in the Plan. If the anticipated and actual compositions are similar, then the advertising program can be considered successful. If the actual occupant or prospective occupant pool composition does not reflect the projected pattern, the marketing program should be carefully reviewed to determine, for example:

i. Whether outreach efforts are yielding fewer or more applicants from the target groups;

ii. Whether the prospective occupant pool composition itself appears to be realistic in light of marketing experience related to the project in question;

iii. Whether adjustments in the advertising strategy or other outreach efforts are warranted;

iv. Whether tenant/owners selection criteria appear to be a factor in producing a racial/ethnic composition of occupants which is different from that of the prospective occupant pool.

2. Measures relating directly to special outreach and other advertising techniques used in the marketing program. For example, the applicant may keep a running tabulation of responses to questions relating to the manner in which the prospective buyer or renter had heard about housing. Through such techniques, the applicant can determine whether, for example, foreign language or minority media are effective marketing mechanisms; whether the equal housing opportunity logo effectively conveys to such buyers or renters the message that they are welcome to apply and will not encounter discrimination; whether community contacts used by the applicant are advertising the housing effectively; whether members of groups targeted for special outreach activities are learning about the housing through informal means rather than commercial media.

5:80–22.22 Modification of the approved Affirmative Fair Housing Marketing Plan

(a) Modification to the approved Plan may be appropriate under certain circumstances prior to initial marketing, after commencement of initial marketing, or after rent-up is completed. Circumstances which may generate modifications in the Plan include:

1. Significant changes in the parties implementing the Plan, for example, sales company, management company or applicant. If such changes occur, the applicant should identify the new parties and inform the Agency of such changes.

2. Significant changes in the demographic or economic characteristic of the housing marketing area in which the project is located, for example, racial/ethnic composition. Such changes can affect the direction of the outreach activities, that is, the group or groups within the eligible population which have been identified as least likely to apply. If the demographic or economic characteristics of the area in which the proposed housing is to be located have changed very significantly, the applicant should consider changing the group(s) to be targeted for special outreach activities as well as the specific aspects of the advertising program, for example, commercial media, brochures and signs, which relate to the choice of target groups. Similarly if new information with respect to community contacts which may be helpful in reaching the target groups, for example, establishment of a Community Resources Housing Board or the dissolution of a housing referral service previously listed in the approved plan comes to light then changes might be warranted.

(b) If the applicant concludes that changes would be appropriate, the applicant should, as early in the marketing process as possible, discuss possible changes with the Agency and submit any proposed changes for Agency review and approval.

5:80–22.23 Record keeping and recording requirements

(a) The applicant shall collect and maintain information relating to sales and rental activities, including documentation connected with the outreach program, race and gender for both occupants and prospective occupants. The applicant shall maintain this data for the most recent three year period of operation or portion thereof, if the project has not been in operation for more than three years. The applicant shall submit monthly reports on occupancy to the Agency, as follows:

1. The monthly sales report is to be submitted for all single-family subdivisions and multifamily cooperative projects on or before the fifth day of the month following initial sales of any housing units and monthly thereafter until 95 percent of the units are sold. For housing units built in scattered sites, separate sales reports must be submitted for each type of area in which the units are built, that is, minority area, racially-mixed area, or non-minority area.

2. The applicant must submit monthly rental reports for rental housing programs on or before the fifth day of the month following the rental of the first unit. This report is submitted monthly until 95 percent of the units are occupied.

5:80–22.24 Future marketing activities for rental projects

(a) Upon completion of the initial rent-up, the applicant initiates appropriate marketing activities for filling vacancies resulting from normal turnover. The applicant may utilize the list of remaining prospective occupants as the waiting list for the project. The applicant is encouraged to contact the Agency for assistance in adapting the Plan to the post-initial occupancy period. The nature of this adaptation would normally depend on such factors as:

1. The size and racial/ethnic composition of the waiting list, if one is maintained;

2. The assessment by the Agency and the applicant of the effectiveness of the initial marketing Plan, especially with respect to participation by members of those groups identified as least likely to apply;

3. Any changes in the demographic and socio-economic composition of the housing market area.

5:80–22.25 Monitoring

(a) Monitoring will be conducted to assess the degree to which the activities undertaken pursuant to an approved Affirmative Fair Housing Marketing Plan conform with the applicable Fair Housing Laws and Regulations. In conducting monitoring, the agency will determine:

1. Whether the applicant has made a good-faith effort to carry out the provision of the approved Plan and related Affirmative Fair Housing Marketing requirements; and

2. Whether progress has been made toward the achievement of the objectives of the Plan.

(b) Agency staff will conduct on-site monitoring which will entail an examination of records, visual inspection of the project and interviews with applicants, rental/sales agent and staff, occupants and community organizations identified in the Plan. Records which may be examined include applications (for both accepted and rejected prospective occupants), and documentation relating to advertising.

(c) Failure to make a "good faith effort" to comply with the Plan could result in the loss of Agency financial assistance. All complaints regarding discrimination will be forwarded to the New Jersey Division on Civil Rights for formal criminal investigation.

SUBCHAPTER 23. HOUSING INCENTIVE NOTE PURCHASE PROGRAM

5:80–23.1 Authority

The rules in this subchapter are promulgated under and pursuant to the authority of the New Jersey Housing and Mortgage Finance Agency Law of 1983 constituting P.L. 1983, c.530, N.J.S.A. 55:14K–1 et seq.; specifically N.J.S.A. 55:14K–12a and 14K–5(s).

5:80–23.2 Purpose

This subchapter is established to assist the Agency in helping to create incentives for lenders and developers to make available and continue to provide a base of affordable housing stock of owner occupied residential units in the State of New Jersey, as contemplated by N.J.S.A. 55:14K–12a and 14K–5(s).

5:80–23.3 Definitions

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

"Available note purchase commitment" means at the time of entering into any housing incentive note purchase agreement an amount equal to the product of x times y, where x = 3 and y = the amount then on deposit to the credit of the Fund less all amounts then required as determined as of the end of the most recent calendar quarter by the Agency to be paid out of the Fund pursuant to properly made demands for purchase of undivided interests under existing Housing Incentive Note Purchase Agreements and less (but without duplication) the amount of any undivided interest already subject to purchase with respect to any residential project loan as to which there is an existing default for the payment of principal or interest which is over 90 days past

due (whether or not a demand for purchase has been made).

"Eligible project" means any residential project which:

1. Is located entirely within the geographic boundaries of the State of New Jersey; and

2. Otherwise meets the requirements of the Agency which shall include the qualifications of the developer applying for a housing incentive note purchase agreement and the environmental and other characteristics of the real property comprising the residential project.

"Fund" means the Housing Incentive Note Purchase Fund established pursuant to N.J.A.C. 5:80–23.4.

"Housing incentive note purchase agreement" or "HINPA" means any note purchase agreement entered into by the Agency pursuant to this subchapter in which the Agency agrees, subject to the terms and conditions set forth therein, to purchase an undivided interest.

"Person" means any individual, corporation, general or limited partnership, joint venture or other entity.

"Purchase price" means the dollar amount, payable by the Agency to a qualified lender to acquire an undivided interest pursuant to and as adjusted by the terms of the relevant HINPA, as determined on the date of purchase. The purchase price shall be an amount equal to the lesser of:

1. A stated dollar amount; or

2. The product of x times y, where x = the undivided interest and y = the outstanding principal amount of the relevant loan on the date of purchase.

"Qualified lender" means any person resident in, established under the laws of, or qualified to do business as a foreign corporation or other entity in, the State of New Jersey and which person is in the business of making real estate loans, has the corporate or other power to, and is authorized to conduct such business in, the State of New Jersey, and has a credit status satisfactory to the Agency.

"Residential project" means any development, the purpose of which is to create one or more residential structures for owner occupancy whether in the form of detached units or attached units for separate occupancy together with any land, infrastructure, roads, sewer, structures, facilities or other improvements, appurtenant or ancillary thereto. "Residential project" includes any partially or wholly completed development which would have constituted a "residential project" at inception and which has been abandoned or foreclosed or is subject to a foreclosure, bankruptcy, insolvency or like proceeding.

"Undivided interest" means the Agency's undivided share of any eligible project and the right, title and interest of the qualified lender in, to and under the related loan documents and collateral.

5:80–23.4 Housing Incentive Note Purchase Fund

(a) There is hereby established within the funds maintained by the Agency a fund to be known as the "Housing Incentive Note Purchase Fund."

(b) There shall, on July 19, 1993, be deposited in the Fund the amount of $10,000,000 from funds available to the Agency and previously designated for this purpose.

(c) There shall also be deposited in the Fund:

1. All income earned on the monies deposited therein;

2. All HINPA fees received pursuant to N.J.A.C. 5:80–23.9(a);

3. All monies received by the Agency in respect of the undivided interests whether denominated as principal, interest or otherwise but excluding the fees received pursuant to N.J.A.C. 5:80–23.9(b) and (c), and

4. All other monies designated from time to time by the agency for deposit in the Fund.

(d) Monies on deposit in the Fund may be invested and reinvested by the Agency in the same manner in which other funds of the Agency may be invested.

(e) Monies on deposit in the Fund may be withdrawn:

1. To fund the payment of the purchase price of undivided interests pursuant to housing incentive note purchase agreements;

2. To cure, at the option of the Agency, payment defaults by developers as, and if, contemplated by the respective housing incentive note purchase agreements; and

3. To liquidate the Fund upon payment in full or the provision of payment in full of all existing and contingent obligations of the Agency under housing incentive note purchase agreements existing at the time of liquidation of the Fund.

5:80–23.5 Authority to enter into housing incentive note purchase agreements

(a) Each housing incentive note purchase agreement entered into pursuant to this subchapter shall be a limited recourse purchase obligation of the Agency payable solely from monies available in the Fund and from no other fund or source of monies and shall not be a general obligation of the Agency. In the event there are insufficient monies in the Fund to pay the aggregate purchase price of all undivided interests under outstanding housing incentive note purchase agreements, such purchases shall be made pro rata based upon the ratio which the purchase price under each HINPA bears to the aggregate purchase price of all undivided interests with respect to which a demand for purchase has been received by the Agency.

(b) The Agency may enter into a housing incentive note purchase agreement for any eligible project pursuant to which the Agency agrees to purchase an undivided interest for a purchase price not exceeding $2,000,000 provided that the dollar amount of the purchase price to be paid by the Agency pursuant to such housing incentive note purchase agreement with respect to an eligible project, when added to the aggregate purchase price payable by the Agency pursuant to existing housing incentive note purchase agreements (whether or not a demand for purchase has been made), does not exceed the then available note purchase commitment and provided further that the provisions at N.J.A.C. 5:80–23.6(b) are met. In determining whether the foregoing limits for a housing incentive note purchase agreement proposed to be entered into with respect to any eligible project are met, the Agency need not consider as an aggregate, separate eligible projects undertaken by the same person or such person's affiliates as one project, unless they are, in the judgment of the Agency, subdivisions of the same residential project, physically contiguous or located within the same municipality.

(c) In the event that the available note purchase commitment at any time is insufficient to meet the applications for financial support of the Agency in the form of requested housing incentive note purchase agreements, the Agency may prioritize requests for housing incentive note purchase agreements in its sole discretion, taking into consideration the goals of this program, together with the creditworthiness of the respective residential project, the location of existing eligible projects and the location of the proposed residential project, the readiness of the developer to proceed, the experience of the developer, and the marketability of the residential project.

5:80–23.6 Applications

(a) An application for a housing incentive note purchase agreement for a residential project shall be made by the proposed developer in writing to the Agency.

(b) Such application shall set forth the following:

1. The amount of the requested commitment to purchase an undivided interest pursuant to a housing incentive note purchase agreement, the amount of the loan, and the name of the lender;

2. A description of the residential project (including the status thereof, for example, whether fully or partially completed, in foreclosure, ground not yet broken) together with an appraisal, not more than six months old, of the residential project by a New Jersey certified general real estate appraiser, a title report not more than six months old, a site plan, a survey by a licensed surveyor, a copy of applicable zoning ordinances, and the status of utilities, roads and existing financing, if any, relating to the residential project;

3. A description of the developer, including a description of all real estate projects undertaken by the developer for the five years prior to the application, outstanding judgments against the developer and pending litigation involving the developer, if any, the type of person (for example, whether a corporation, limited or general partnership, or joint venture), list of all existing and proposed owners of equity in the developer and the residential project, and the most recent financial statements of the developer;

4. A description of the proposed financing for the residential project, including the name of the lender, any term sheets or commitment letters which have been provided to the developer and any draft documentation relating thereto;

5. If the lender is not a bank or other financial institution having one of the three highest investment grade ratings issued by Standard and Poor's Corporation or Moody's Investors Service, Inc., the application shall be accompanied by the most recent annual report of such lender;

6. An analysis of the cost to complete the residential project, together with a tabulation of the source and use of funds necessary to meet such costs; and

7. Any other documents or information (such as, but without limitation, environmental audits) the Agency deems necessary or appropriate to determine whether the residential project is an eligible project.

5:80–23.7 Housing incentive note purchase commitment and requirements

(a) The Agency may issue to the developer of a residential project which is determined by the Agency to be an eligible project, a commitment to enter into a housing incentive note purchase agreement, only upon the approval of the members of the Agency after a review of the application delivered by the developer and such other information as the Agency may request from the developer and any qualified lender. Such commitment to enter into a housing incentive note purchase agreement shall contain such conditions precedent and other terms as the Agency shall deem appropriate. The members of the Agency may delegate to any officer of the Agency the authority to execute and deliver a housing incentive note purchase agreement pursuant to a commitment upon a determination by such officer that all conditions precedent and other terms of such commitment have been satisfied.

(b) Each commitment to issue a housing incentive note purchase agreement shall require that:

1. All documents relating to an eligible project shall be in form and substance satisfactory to the Agency;

2. All mortgages of an eligible project securing repayment of the financing thereof shall identify and set release prices for the individual parcels comprising the eligible project and require the mortgagee to release each parcel upon its sale provided the release price has been paid;

3. The developer provide mortgagee's title insurance, casualty and liability insurance and builders risk insurance, all by insurers and in such amounts as the Agency may require;

4. The mortgage in favor of the qualified lender financing the eligible project be the only first lien encumbrance on the eligible project securing indebtedness for borrowed money. Subordinated financing may be permitted with the approval of the Agency provided the subordinated financing, collectively with the first lien financing provided by qualified lenders, meet standard underwriting criteria used in the lending industry; and

5. Loan documents and all security therefor expressly reflect the rights and benefits of the Agency arising from the undivided interest and providing for the recognition of the rights of the Agency as a lender pursuant to its acquisition of the undivided interest.

Amended by R.1994 d.302, effective June 20, 1994.
See: 26 N.J.R. 9(a), 26 N.J.R. 2571(a).

5:80–23.8 Housing incentive note purchase agreement requirements

(a) Each housing incentive note purchase agreement entered into by the Agency shall state that it expires at a date not later than the second anniversary of the date of entering into such housing incentive note purchase agreement.

(b) The amount of the undivided interest agreed to be purchased pursuant to each housing incentive note purchase agreement may not exceed 30 percent of the monies being loaned by a qualified lender with respect to such eligible project. The foregoing restriction is in addition to, and not in derogation of, any other limits contained within this subchapter.

(c) Each housing incentive note purchase agreement shall require that the developer pay all costs incurred by the Agency in connection with the preparation, execution and delivery of such housing incentive note purchase agreement, and in connection with any litigation arising out of such housing incentive note purchase agreement or any rights the Agency may have with respect thereto, including, in each case, and without limitation, all reasonable fees and disbursements of counsel to the Agency.

(d) Any request for an extension of the termination date of a housing incentive note purchase agreement shall be treated as an application for a new housing incentive note purchase agreement, and all of the provisions of this subchapter shall apply to such request as if it were an application for a new housing incentive note purchase agreement.

5:80–23.9 Fees

(a) No application for a housing incentive note purchase agreement shall be accepted unless it is accompanied by a nonrefundable application fee of $3,500.

(b) No commitment to enter into a housing incentive note purchase agreement shall be issued by the Agency pursuant to N.J.A.C. 5:80–23.5 unless on or before the date of issuance of such commitment there has been paid to the Agency a nonrefundable commitment fee as follows:

1. No commitment fee shall be due for projects of 12 units or less;

2. $300.00 for every unit over 12 for projects of 13 to 41 units;

3. $9,000 for projects of 42 units or more.

(c) No housing incentive note purchase agreement shall be entered into by the Agency unless on or before the date of entering into such agreement, there has been paid to the Agency a nonrefundable purchase fee (the "HINPA Fee") in an amount equal to one percent of the principal amount of the respective loan in which an undivided interest is being purchased, but not to exceed $67,000.

(d) The Agency may establish, from time to time, additional fees as it deems necessary to defray its reasonably estimated costs of administering the program contemplated hereby.

Amended by R.1994 d.302, effective June 20, 1994.
See: 26 N.J.R. 9(a), 26 N.J.R. 2571(a).

5:80–23.10 No discrimination

(a) Developers must comply with all applicable Federal, State or local fair housing and civil rights laws and regulations. Federal and State laws provide that developers may not discriminate based upon race, color, creed, religion, sex, national origin, age or handicap.

(b) Developers must also comply with requirements imposed in Agency statutes and rules.

SUBCHAPTER 24. LEASE–PURCHASE PROGRAM

5:80–24.1 Authority

The rules in this subchapter 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., including N.J.S.A. 55:14K–5e and 55:14K–5aa.

5:80–24.2 Purpose

These rules are established to assist the Agency to make available a base of housing stock of residential units in the State of New Jersey as contemplated by N.J.S.A. 55:14K–5e and 55:14K–5aa for families under the lease-purchase arrangement. It is intended that the residential units would become owner occupied after a maximum 36–month rental period during which a portion of the monthly fair market lease payments received by the Agency would be set aside by the Agency to enable it to make a grant towards the downpayment and/or closing costs of an eligible buyer who exercises the purchase option.

5:80–24.3 Definitions

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

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

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

"Developer" means any individual, corporation, general or limited partnership, joint venture or other entity.

"Eligible buyer" means one or more natural persons intending upon execution of a lease-purchase agreement to live together (together with any dependents), who execute a lease-purchase agreement, and who intend to exercise the option on the housing unit subject to such lease-purchase agreement and to purchase that unit in the name of the eligible buyer.

1. To be an eligible buyer, the one or more natural persons must together have an annual income:

i. Sufficient to pay the fair market rental required by the lease-purchase agreement and, in the reasonable estimation of the Agency, sufficient to qualify for any financing required to enable such person to exercise the option to purchase from the Agency the unit subject to the proposed lease-purchase agreement (taking into account the proposed grant). Income sufficient to pay the rent shall be determined in accordance with industry standards for market rate rental housing. Income sufficient to qualify for financing shall be determined in accordance with standard underwriting criteria used in the mortgage lending industry; and

ii. Not exceeding 200 percent of the median income, adjusted for family size, in the county where the eligible development is located, as such percentage may be further adjusted by the Agency by amendment of this definition in its reasonable discretion from time to time, and from eligible development to eligible development, to reflect the cost of living and affordable housing prices in the county where the eligible development is located.

2. Notwithstanding 1ii above, admission to eligible developments shall be limited to families whose gross aggregate family income at the time of admission does not exceed six times the annual rental or carrying charges approved by the Agency except for families with three or more dependents whose incomes may be up to seven times the annual rental or carrying charge.

"Eligible development" means that portion of any partially or wholly completed development which is offered for sale to the Agency:

1. The purpose of which is to create one or more residential structures for owner occupancy whether in the form of detached units or attached units for separate occupancy (including, with limitation, condominiums, but excluding cooperative apartments) together with any land, utilities, sewers, structures, facilities or other improvements, appurtenant or ancillary thereto; and

2. Which is located entirely within the geographic boundaries of the State of New Jersey.

"Grant" means the amount designated in the lease-purchase agreement with respect to a unit which the Agency agrees to contribute at the closing on that unit to an eligible buyer who exercises an option to buy that unit, to enable that eligible buyer to meet downpayment and/or closing costs, subject to such recapture provisions on the occurrence of a resale of that unit as set forth in the lease-purchase agreement.

"Lease-purchase agreement" means a contract between the Agency, as lessor/seller, and an eligible buyer, as lessee/option holder, pursuant to which the eligible buyer agrees to rent a unit within an eligible development with an option to buy.

"Purchase agreement" means any purchase agreement entered into by the Agency pursuant to these rules in which the Agency agrees, subject to the terms and conditions set forth in such agreement, to purchase some or all of the housing units, land and other appurtenances related thereto constituting an eligible development.

"Purchase price" means the dollar amount, payable by the Agency to acquire an eligible development pursuant to and as adjusted by the terms of the relevant purchase agreement, as determined on the date of purchase.

"Sales price" means that fair market price set forth in the purchase option that the eligible buyer will pay upon exercise of that option to purchase a housing unit within an eligible development.

5:80–24.4 Authority to enter into purchase agreements

(a) The Agency may enter into a purchase agreement for any eligible development, provided that the maximum purchase price for a unit within the eligible development may not exceed the higher of 250 percent of the annual maximum income of an eligible buyer of that unit or the median sales price of existing single-family homes in the area where the eligible development is located. The median sales price shall be determined from the State of New Jersey, Department of Treasury figures for the then most recent fiscal year.

(b) The Agency may prioritize requests for purchase agreements, taking into consideration the goals of this program, market conditions for the Agency's securities, together with the feasibility of the respective eligible development, the location of existing eligible developments and the location of the proposed eligible development, the readiness of the developer to proceed, the experience of the developer, and the marketability of the units in the eligible development.

5:80–24.5 Purchase agreement requirements

(a) Each purchase agreement shall contain the following conditions precedent to the Agency's obligation to purchase an eligible development:

1. At least 50 percent of all housing units in the partially or wholly completed development of which the eligible development is a portion, shall have been previously sold to buyers not participating in this lease-purchase program. This requirement shall not apply to eligible developments of 25 or fewer units;

2. At least 50 percent of all housing units comprising the eligible development shall be complete and in move-in condition, with certificates of occupancy issued and in effect for them, and with signed lease-purchase agreements with eligible buyers. The remaining housing units of the eligible development to be purchased by the Agency must be completed, with certificates of occupancy in effect, and with signed lease-purchase agreements with eligible buyers, within one year of the signing of the purchase agreement. The Agency must be the first user of each unit except that the Agency may agree to purchase a substantially rehabilitated unit. A unit shall be treated as substantially rehabilitated when rehabilitation expenditures equal or exceed 25 percent of the purchase price of the unit to the Agency;

3. A builder's warranty must be provided in a form and substance equivalent to the new homeowner's warranty required by N.J.S.A. 46:3B–1 et seq.; and

4. The Agency must have, prior to or simultaneously with such purchase, received proceeds from the sale of the Agency's securities in an amount equal to as much as 110 percent of the purchase price (the purpose of such excess being to provide a cash reserve of up to 10 percent for the payment of such securities, if required in order to market such securities and if such reserve is not established from other funds, allocated or credited to the lease-purchase program).

(b) Each purchase agreement shall contain the following requirements:

1. All documents relating to an eligible development shall be in form and substance satisfactory to the Agency;

2. The developer shall provide title insurance, casualty and liability insurance and builder's risk insurance, all by insurers and in such amounts sufficient to protect against the risk of loss associated with the development, purchase and financing of the eligible developments;

3. Real estate taxes, assessments or like payments relating to the eligible development accruing for the period ending on the last day of the calendar year during which the transactions contemplated by the purchase agreement are consummated shall be paid by the seller of the eligible development; and

4. At closing, the eligible development shall be subject to no encumbrances other than encumbrances acceptable to the Agency.

5:80–24.6 Application

(a) An application for a purchase agreement for an eligible development shall be made by the proposed developer in writing to the Agency, and shall contain the following information:

1. The amount of the requested purchase price, in total and by unit;

2. A description of the eligible development together with a recent appraisal of the eligible development by a New Jersey certified general real estate appraiser, a recent title report, a site plan, a survey by a licensed surveyor, the applicable zoning ordinances, a report on the status of utilities, roads, and the existing financing, if any, relating to the eligible development;

3. A description of the developer (for example, whether a corporation, limited or general partnership, joint venture or otherwise), including a list of all existing and proposed owners of equity in the developer; and

4. At the Agency's discretion, an environmental audit, which will be required if any of the information received in connection with the application indicates that there may be environmental concerns associated with the proposed eligible development.

(b) Prior to the signing of each lease-purchase agreement with an eligible buyer, the developer shall obtain the Agency's approval of that eligible buyer. To enable the Agency to determine whether to approve a proposed eligible buyer, the developer shall submit to the Agency the following information:

1. The name, annual income, and employment history of the proposed eligible buyer, together with the Federal and state income tax returns most recently filed by the individual or individuals constituting the eligible buyer; and

2. Such other information as shall be required by the Agency from time to time pertaining to a specific proposed eligible buyer.

5:80–24.7 Authority to enter into lease-purchase agreements

(a) The Agency may enter into a lease-purchase agreement with an eligible buyer, provided that such lease-purchase agreement contains as a condition precedent to the Agency's obligations thereunder that lease-purchase agreements for at least 50 percent of the housing units in the subject eligible development be or have been fully executed and delivered by all parties thereto prior to, or simultaneously with, the Agency's consummation of the transactions contemplated by the related purchase agreement.

(b) Each lease-purchase agreement with an eligible buyer shall contain the following terms and conditions, in addition to such other terms and conditions that the Agency may from time to time deem appropriate for a particular agreement:

1. The eligible buyer shall agree to rent at a fair market rental a housing unit in an eligible development for a fixed period as determined by the Agency, not to exceed 36 calendar months, and to pay the monthly rental promptly and fully. Failure to make such rental payments promptly and fully, or physical abuse of the unit, shall result in prompt eviction and the termination of the option described in (b)3 below;

2. The eligible buyer shall agree that such housing unit be used solely as a principal residence, and shall further agree that the unit shall not be used for seasonal use, as an investment property, or for business purposes;

3. The eligible buyer shall pay upon the execution of the lease-purchase agreement, a nonrefundable option fee of $1,000 for an option to purchase for cash the housing unit which is the subject of the lease-purchase agreement, on the expiration date of the lease period set forth therein. If the eligible buyer does not exercise the option, the lease will terminate at the expiration of the lease period, the eligible buyer will immediately vacate the unit, and the Agency will retain the option fee;

4. In return for the option fee, the Agency shall grant the eligible buyer an option to purchase the subject housing unit at a fixed price; each price being the unit's estimated fair market value at the end of the lease period, such estimate being set pursuant to an appraisal prior to the execution of the lease-purchase agreement;

5. The Agency shall accumulate in a segregated fund a percentage (calculated at the time of execution of the lease-purchase agreement) of the fair market monthly rent it will receive during the lease period set forth in the lease-purchase agreement at a rate calculated by the Agency to be sufficient, together with the option fee, and its projected profit on the sale of the unit, if the option is exercised, to enable it to make the grant. The grant will be applied towards closing costs and the downpayment on the sales price for such housing unit for which the eligible buyer has otherwise obtained or is expected to obtain his or her own financing. The amount of the grant to be made will be calculated by the Agency (at the time the lease-purchase agreement is executed) as the amount, given anticipated market conditions, to be necessary, taking into account the assets of the eligible buyer, to induce a mortgage lender to finance the balance of the sales price for the housing unit. Such calculation by the Agency shall not constitute a representation or warranty to the eligible buyer of the availability of mortgage financing and the eligible buyer shall have no recourse against the Agency in the event such eligible buyer fails to obtain mortgage financing or is otherwise unable to exercise the option to purchase the housing unit which is subject to the lease-purchase agreement. If, for any reason, the eligible buyer is unable to or chooses not to exercise the option to purchase, all monies so set aside shall be retained by the Agency.

i. Notwithstanding anything to the contrary contained in these rules, the percentage rent to be set aside by the Agency to fund a portion of the grant shall not reduce the unrestricted portion of the rent to an amount less than the amount sufficient to maintain and operate the rental housing and to meet debt service on the portion of the securities issued by the Agency to finance the purchase of such housing, and all monies set aside with respect to such downpayment and/or closing costs shall be subject to application to pay required debt service on such securities; and

6. The eligible buyer shall acknowledge that the Agency may give a mortgage and/or other security interests in the housing unit to secure repayment of the financing undertaken by the Agency to finance the purchase price for the eligible development.

SUBCHAPTER 25. (RESERVED)

SUBCHAPTER 26. HOUSING AFFORDABILITY CONTROLS

5:80–26.1 Purpose and applicability

(a) The rules within this subchapter are promulgated to establish requirements and controls to ensure that housing assisted under the Fair Housing Act (N.J.S.A. 52:27D–301 et seq.) remains affordable to low and moderate income households for time periods established herein by the Agency, in consultation with the Council on Affordable Housing. The rules also establish procedures for the administration of affordability controls by the Agency for housing which has not been assisted under the Act.

(b) The rules in this subchapter shall not apply to housing which is located in urban target areas.

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

5:80–26.2 Definitions

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

"Act" shall mean the Fair Housing Act, P.L. 1985, c.222 (N.J.S.A. 52:27D–301 et seq.).

"Adjusted rent" shall mean the base rent for a rental unit adjusted by the index.

"Agency" shall mean the New Jersey Housing and Mortgage Finance Agency (NJHMFA) or its designee.

"Applicant household" shall mean a household whose preliminary application has been reviewed, whose unverified estimated total gross annual income is judged to be low or moderate pursuant to applicable guidelines and whose name has been placed on a waiting list for affordable housing.

"Base price" shall mean the initial sales price of a unit designated as owner-occupied affordable housing and restricted by affordability controls.

"Base rent" shall mean the charge for a rental unit at the time the unit is first restricted by affordability controls.

"Department" shall mean the Department of Community Affairs.

"Eligible household" shall mean any household that has submitted a preliminary application for an affordable housing unit, whose total gross annual income has been verified, whose financial references have been approved and which has received a determination by the Agency as a low or moderate income eligible household.

"First purchase money mortgagee" shall mean the holder and/or assigns of the first purchase money mortgage, which holder must be an institutional lender or investor, licensed or regulated by the State or the Federal government or an agency of the State or Federal government.

"Foreclosure" shall mean the termination through legal process of all rights of the mortgagor or the mortgagor's heirs, successors, assigns or grantees in a unit covered by a recorded mortgage.

"Gross annual income" shall mean the total amount of all sources of a household's income including but not limited to salary, wages, interest, dividends, alimony, pensions, social security, business and capital gains, tips and welfare benefits. Generally, gross annual income will be based on income reported to the Internal Revenue Service (IRS).

"Household" shall mean the person or persons occupying a housing unit.

"Low income housing" shall mean housing which is affordable to, according to U.S. Department of Housing and Urban Development or other standards recognized by the Agency for home ownership and rental costs, and occupied or reserved for occupancy by, households with a gross household income equal to 50 percent or less of the median gross household income for households of the same size within the housing region in which the housing is located.

"Median income index" or "index" shall mean the percentage by which the median income figures, established by the U.S. Department of Housing and Urban Development, changes each year for every area in the State.

"Moderate income housing" shall mean housing which is affordable to, according to U.S. Department of Housing and Urban Development or other standards recognized by the Agency for home ownership and rental costs, and occupied or reserved for occupancy by, households with a gross household income equal to more than 50 percent, but less than 80 percent of the median gross household income for households of the same size within the housing region in which the housing is located.

"Owner" shall mean the title holder of record as same is reflected in the most recently dated and recorded deed for the particular affordable housing unit.

"Owner–Occupied Unit" means a building containing one, two, three or four family housing units in which one of the units is occupied by the owner of the building.

"Program" shall mean any of the Affordable Housing Programs as permitted under the Act which may include but not be limited to programs which receive assistance as a result of an Agency sale of bonds ("bond financed rental housing").

"Resale price" shall mean the base price of a unit designated as owner-occupied affordable housing as adjusted by the median income index. The resale price may also be adjusted to accommodate an approved home improvement.

"State" shall mean the State of New Jersey.

"Urban target area" means those geographical areas of the State which are designated by the Agency as an area of chronic economic distress in accordance with Section 143(j) of the Internal Revenue Code of 1986, as amended, and any regulations adopted thereunder.

Amended by R.1988 d.331, effective July 18, 1988.
See: 20 N.J.R. 862(a), 20 N.J.R. 1688(b).
"Owner–Occupied Unit" and "Urban target area" defined.

5:80–26.3 Length of controls on affordability

(a) All housing to be assisted financially, administratively or otherwise, under the Act by the Agency will be required to remain affordable to, and occupied by, low and moderate income households for the following minimum periods:

1. Rehabilitated owner-occupied single family housing units that are improved to code standard shall be subject to affordability controls for six years.

2. Rehabilitated renter occupied housing units that are improved to code standard shall be subject to affordability controls for 10 years.

3. Housing units created through conversion of a non-residential structure, or through new construction in municipalities receiving State aid pursuant to N.J.S.A. 52:27–178 et seq. which exhibit one of the characteristics delineated in N.J.A.C. 5:92–5.3(b) at the time of substantive certification, shall be subject to affordability controls for 10 years.

4. All other housing units shall be subject to affordability controls for 20 years.

(b) The Agency may adjust the affordability control periods established in (a) above in particular instances, upon a determination that the economic feasibility of the Program, is jeopardized by the requirement and the public purpose served by the Program outweighs the shorter period.

(c) The affordability control periods established in (a) above shall begin as follows:

1. For owner-occupied units, on the date a Certificate of Occupancy is issued.

2. For rental housing containing two or more units, on the date of 50 percent occupancy, as determined by the Agency or municipality administering controls.

3. For single-family housing which is rented, on the date the unit is first occupied.

(d) For all owner-occupied units and vacant rental units, the resale and rent restrictions shall expire at the end of the sixth, tenth, or twentieth year from the date the initial restrictions encumbered the unit, as set forth in (a)1, 2, 3 and 4 above, unless a lesser or greater period of time has been approved by the Agency as set forth herein. For rental units which are occupied by households with a gross household income less than 80 percent of median income, as defined herein, at the end of the sixth, tenth or twentieth year from the date the initial restrictions encumbered the unit, the controls shall continue to remain in effect and shall only expire at the time the then current tenant vacates the unit.

(e) Whenever the Agency finds through administrative determination that the rent increases permitted under N.J.A.C. 5:80–26.16 are insufficient to maintain the financial needs of housing financed under the Agency's bond financed rental housing program and such insufficiency would jeopardize the economic feasibility of the Program, the Agency may terminate the control periods established in (a) above until such financial jeopardy is resolved.

(f) Whenever the Agency is not providing financial assistance, it may administer affordability controls other than those provided in these rules, provided the controls are adopted pursuant to court order or approved settlement or consistent with the rules of the Council on Affordable Housing, N.J.A.C. 5:92.

Amended by R.1988 d.331, effective July 18, 1988.

See: 20 N.J.R. 862(a), 20 N.J.R. 1688(b).

New (c) added; existing (c) made (d), with "less than 80 percent of median income" provision added; existing (d) and (e) made (e) and (f).

5:80–26.4 Agreements regarding affordability controls

All owners of affordable housing units shall enter into agreements with the Agency which subject the owner to the affordability controls required by these rules in order to ensure that housing units remain affordable to households of low and moderate income. The agreement shall take the form of a deed restriction or other contractual agreement established by the Agency. Whenever the agreement is not in the form of a deed restriction, the agreement shall be recorded along with the deed.

5:80–26.5 Calculation of initial/purchase price: owner-occupied units

At initial sale, base prices for owner-occupied units shall be determined in accordance with contractual agreements approved by the Agency at levels that indicate affordability to households who qualify for low and moderate income housing. At initial sale, affordability controls shall be incorporated into the deed or a separate agreement established by the Agency. The purchaser shall forward a copy of the recorded deed or, when applicable, the recorded agreement to the Agency.

5:80–26.6 Calculation of resale price: owner-occupied units

(a) When an owner wishes to sell an affordable housing unit, he or she shall forward written notice to the Agency. The Agency will calculate the resale price using the Index and will determine an estimated monthly mortgage payment. The approved resale price shall not be established at a level lower than the last recorded purchase price.

(b) A home improvement that renders the unit suitable for a larger household may be approved by the Agency for a resale price adjustment. In no case, however, shall the adjusted resale price exceed the limits of affordability for the larger household as determined pursuant to N.J.A.C. 5:92–12.

5:80–26.7 Referral of household to units: owner-occupied units

Generally, a household's monthly mortgage payment, including principal, interest, taxes, insurance, and condominium or association fees, where applicable, will not be expected to exceed 28 percent of gross monthly income. A minimum downpayment of at least five percent of the selling price will be required. Mortgage application is the responsibility of the household. Eligible households whose gross annual income is compatible with the estimated monthly mortgage payment and whose family size meets occupancy criteria will be referred to the owner for contract negotiations within 60 days of receipt of the initial notice.

5:80–26.8 Hardship waiver: owner-occupied units

(a) If no eligible household has executed a contract to purchase within 90 days of the Agency's notification to the owner of an approved resale price and referral of potential purchasers, the owner may request that the unit be sold to a household that exceeds the income eligibility criteria established for that unit by submitting a written request for a hardship waiver to the Agency, and a copy to the municipal entity.

(b) The owner must demonstrate that his request is consistent with one or more of the following reasons for a hardship waiver.

1. The cost of economic factors not related to household income, including but not limited to interest rates, taxes, or insurance, inhibits the ability of an income-eligible household to obtain a mortgage commitment for the unit.

2. The owner has made a good faith effort to sell the unit to a eligible household for 90 days and no eligible household has signed a contract to purchase the unit.

3. The Agency has not referred an eligible household who qualifies for a mortgage commitment as required by the unit.

(c) Upon receipt of a request for a hardship waiver, the municipal entity shall have the first option to purchase the unit at the approved resale price and to hold, rent or convey it to an eligible household. The municipal entity shall have 30 days in which to exercise this option.

(d) The Agency shall approve or deny a hardship waiver in writing within 30 days of receipt of the request. A copy of the waiver shall be provided to the purchaser at the time of closing and filed with the deed. The waiver of income eligibility requirements is only valid for the designated resale transaction. Even if such a waiver is granted, the sale shall be in accordance with the approved index resale price and all future resales will be in accordance with the deed restrictions and sold to income-eligible households at the indexed resale price.

(e) If the Agency denies a hardship waiver, an owner may submit a written request to appeal, within 15 days of receipt of the denial, to the Executive Director of the Agency. Upon receipt of the request to appeal, the Agency shall hold a hearing or request the Office of Administrative Law to hold a hearing on the appeal. All hearings shall be conducted according to the rules established by the Office of Administrative Law pursuant to N.J.S.A. 52:14B–10. If a written request for an appeal has not been received within 15 days after the owner's receipt of the denial, the order of denial shall be final.

5:80–26.9 Exempt transactions: owner-occupied units

(a) The following title transactions shall be deemed "non-sales" and the Agency shall provide the owner receiving title with written confirmation of the exemption to those restrictions that determine occupancy of the unit.

1. Transfer of ownership between husband and wife;

2. Transfer of ownership between former spouses ordered as a result of a judicial decree of divorce or judicial decree of separation (but not including sales to third parties);

3. Transfer of ownership between family members as a result of inheritance;

4. Transfer of ownership through an executor's deed to any person.

(b) An exempt transfer of ownership does not terminate the resale restrictions or existing liens on the property. All liens must be satisfied in full prior to subsequent resale and all subsequent resale prices must be calculated using the resale price index in compliance with the terms of the deed restriction or other agreement with the Agency. The exempt transaction shall not be considered as a recorded transaction in calculating subsequent resale prices.

(c) The owner shall notify the Agency in writing of any proposed transaction that he or she wishes to qualify as an exempt transaction. The owner shall supply the Agency with all necessary documentation to demonstrate that the transaction qualifies as an exemption as delineated. The Agency may request additional documentation as it deems necessary. The Agency shall approve or deny in writing a request for a certificate of exemption within 15 days of the receipt of the request.

(d) If the Agency denies the exemption, the owner may submit a written request to appeal, within 15 days of receipt of the denial, to the Executive Director of the Agency. Upon receipt of the request to appeal, the Agency shall hold a hearing or request the Office of Administrative Law to hold a hearing on the appeal. All hearings shall be conducted according to the rules established by the Office of Administrative Law pursuant to N.J.S.A. 52:14B–10. If a written request for an appeal has not been received within 15 days after the owner's receipt of the denial, the denial of the certificate of exemption shall be final.

(e) A copy of the certificate of exemption shall be filed with the deed at the time of closing.

5:80–26.10 Owner-occupied rehabilitated units

(a) Income-eligible owner-occupants who are the beneficiaries of a grant or loan agreement for rehabilitation of a substandard unit shall have the following options at resale.

1. The unit can be sold to an eligible household at an affordable price and in standard condition, in which case, the deed restriction or applicable agreement shall be assumed by the purchaser as a condition of sale.

(b) Owners or subsequent owners who personally continue to occupy their rehabilitated units for a total period of six years will no longer be subject to resale restrictions or required to repay the loan.

5:80–26.11 Lease or rental of owner-occupied units

(a) The owner of an owner-occupied two, three or four family housing unit may lease or rent the non-owner-occupied units subject to the lease/rental provisions of N.J.A.C. 5:80–26.12 through 20.

(b) The owner of a single family housing unit may lease or rent the unit, unless the owner finances the unit with a mortgage loan from the Agency or lease/rental of the unit is prohibited by the terms of any contractual documents entered into by the owner or prohibited by other applicable controls. The owner of a two, three or four family housing unit may lease or rent the unit in which he or she resides unless any of the aforesaid lease/rental prohibitions apply. Such units may be leased or rented by the owner subject to the lease/rental provisions of N.J.A.C. 5:80–26.12 through 20.

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

5:80–26.12 Initial rents: rental units

(a) Initial rents shall be determined in accordance with contractual agreements approved by the Agency at levels that indicate affordability to households who qualify for low and moderate income housing. Generally, a household's monthly rental charge including utilities will not be expected to exceed 30 percent of their gross monthly income.

(b) Notwithstanding (a) above, whenever the Agency is not providing financial assistance, the Agency will administer controls for projects or programs when requested, which contain initial rents determined in a manner different from that outlined in (a) above, provided such determination is pursuant to a court order or approved settlement or is consistent with the rules of the Council on Affordable Housing, N.J.A.C. 5:92.

(c) At the time restrictions are initially placed on a rental unit, the affordability controls shall be incorporated into a deed restriction or other agreement established by the Agency. The owner shall record the deed or, if applicable, the agreement and forward a copy of the recorded deed or the agreement to the Agency for its files.

5:80–26.13 Vacancies: rental units

The landlord shall notify the Agency of any impending vacancy in any restricted rental unit not more than 60 days or less than 30 days in advance of the unit's availability.

5:80–26.14 Tenant selection: rental units

The Agency will refer a list of eligible households to the landlord for final selection within 30 days of receipt of this notification. The Agency will refer eligible households who meet income criteria for a vacant unit to landlords for lease negotiations. Landlords must select an eligible household for occupancy of an affordable rental unit. Final tenant selection shall be the responsibility of the landlord. However, no referred household will be denied a lease for any reason that violates any applicable law or any provision thereof.

5:80–26.15 Leases: rental units

A written lease shall be required in all restricted rental units. Final lease agreements will be the responsibility of the landlord and the prospective tenant. Tenants are responsible for security deposits and the full amount of the rent as stated on the lease. All lease provisions must comply with New Jersey Truth in Renting Act, N.J.S.A. 46:8–43 et seq., provisions.

5:80–26.16 Rent adjustments

(a) Rental charges may be adjusted at the annual anniversary date of the lease. Rent adjustments shall be determined by adjusting the base rent by the applicable index. The landlord will submit a written request for rent adjustment approval to the Agency or municipal entity administering the affordability controls prior to any rent adjustment being made. The Agency or municipal entity shall approve all proposed rent adjustments provided they do not exceed the amount permitted when adjusting the base rent by the applicable index.

(b) Upon a demonstration of financial need, the landlord may apply for a rent increase in excess of the amount permitted in (a) above, provided that in no event may the increase exceed an amount by which the unit would no longer qualify as low or moderate income housing, whichever is applicable. All such increases are subject to the review and approval of the Agency in a manner consistent with the rent increase rules of N.J.A.C. 5:80–9 for market rate projects, after consultation with the Council on Affordable Housing.

(c) The rent controls established in (a) and (b) above shall begin on the date the first rental unit is occupied.

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

5:80–26.17 Transfer of ownership: rental units

An owner of a restricted rental unit shall notify the Agency in writing of an intent to transfer ownership of the property. A copy of the recorded deed shall be forwarded to the Agency. The property shall be retained as affordable housing at resale subject to the terms of the deed restriction or other agreement with the Agency.

5:80–26.18 Determination of applicant households

(a) In order to be considered for an affordable housing unit, households must submit a preliminary application to the Agency. As a completed preliminary application is received, the Agency will review it to determine, without verification, if the declared household income is low or moderate within this subchapter. All applications for affordable housing will be accepted in accordance with any applicable law or any provision thereof.

(b) When the review of the preliminary application indicates that a household may be eligible, the household will be deemed an applicant household and the name of the head of the household shall be placed on a waiting list. The Agency will send a confirmation letter to the applicant household.

(c) When the review of the preliminary application indicates that a household's income is not low or moderate, the household will be so advised in writing and the preliminary application will be denied. If a household receives such a determination, the household may submit a written request for a redetermination to the Agency within 15 days of receipt of the denial. The request must set forth the basis for the claim of eligibility. The household will be required to produce documentation to support the claim at the time of redetermination. If the household's application is again denied, in writing, a written request to appeal may be filed with the Executive Director of the Agency. Upon receipt of the request to appeal, the Agency shall hold a hearing or request the Office of Administrative Law to hold a hearing on the appeal. All hearings shall be conducted according to the rules established by the Office of Administrative Law pursuant to N.J.S.A. 52:14B–10. If a written request for an appeal has not been received within 15 days after the household's receipt of this notice, the determination will be final and the application considered denied.

(d) Applicant households must still be determined to be eligible in accordance with N.J.A.C. 5:80–26.19.

5:80–26.19 Determination and referral of eligible households

(a) As units become available, the Agency will notify applicant households who satisfy the income criteria for an available unit who will then be scheduled for an interview to determine if they qualify as an eligible household. At the interview, the household will be requested to document all income. This determination process shall also include a credit background report. Every household member 18 years of age or older who will live in the affordable unit and who receives income shall be required to provide the required information, where applicable, identified at (a)1 below. All applicant households meeting the criteria shall be deemed an eligible household.

1. Each applicant household member as set forth in (a) above shall provide the following required information:

i. A copy of IRS Form 1040 (Tax Computation form) for each of the three years prior to the date of the interview;

ii. A letter from their employer(s) stating present annual income figure or four consecutive pay stubs dated within 120 days of interview date;

iii. A letter or appropriate reporting form verifying benefits, including but not limited to, social security or pension;

iv. A letter or appropriate reporting form verifying any other sources of income claimed by the applicant household;

v. Reports that verify income from assets to be submitted by banks or other financial institutions managing trust funds, money market accounts, stocks or bonds; and

vi. Reports that verify assets that do not earn regular income such as real estate and savings with delayed earnings provisions.

2. The Agency may also request the social security number of each applicant household member as set forth in (a) above. The request shall indicate that the submission of the social security number is voluntary and that it would be used to do credit checks on applicants. The request shall also include the privacy notice requirements of applicable federal and/or state law.

(b) Applicant households who are not determined to be eligible households shall be so notified in writing of the denial. This notice shall state the specific reason for the denial. If the applicant household disagrees with this finding, a written request for redetermination may be submitted to the Agency within 15 days of receipt of the notice. Applicant households shall be required to produce further documentation to support their claim request for a redetermination.

(c) Applicant households who are again denied status as an eligible household may submit a written request to appeal with the Executive Director of the Agency. Upon receipt of the request to appeal, the Agency shall hold a hearing or request the Office of Administrative Law to hold a hearing on the appeal. All hearings shall be conducted according to the rules established by the Office of Administrative Law pursuant to N.J.S.A. 52:14B–10. If a written request for an appeal has not been received within 15 days of the applicant household's receipt of this notice, the determination will be final and the application considered denied.

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

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

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

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

5:80–26.20 Assignment or sublease of rental units

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

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

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

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

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

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

(a) Amended so that controls will terminate upon foreclosure of owner-occupied units only and only upon foreclosure by a first money mortgagee.
(b) Amended to conform to the language of a similar provision in the Council of Affordable Housing's rules.

5:80–26.22 Agency grants or loans

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

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

5:80–26.23 Contractual agreements with municipalities or developers

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

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

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

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

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

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

SUBCHAPTER 27. (RESERVED)

SUBCHAPTER 28. NONPUBLIC RECORDS

5:80–28.1 Nonpublic records

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

1. All confidential reports, executive memoranda and evaluations submitted to the Executive Director of the Agency, the members of the Agency or to any other State Agency;

2. All personnel records;

3. All records concerning applications for employment with the Agency;

4. All records concerning personal or financial information submitted by applicants for or tenants of rental housing units financed by the Agency;

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

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

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

SUBCHAPTER 29. INVESTMENT OF HOUSING PROJECT FUNDS

5:80–29.1 Permitted investments

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

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

1. State of New Jersey general obligation bonds;

2. New Jersey Housing and Mortgage Finance Agency bonds, which shall be rated A or higher;

3. Bonds of municipalities, instrumentalities or agencies of the State of New Jersey, which shall be rated A or higher and whose rating of A or higher has been confirmed within the past 12 months;

4. New Jersey bond funds (consisting of bonds of any of the entities in (b)1 through 3 above) of which at least 90 percent of the bonds within the fund are rated A or higher and whose ratings have been confirmed within the past 12 months;

5. Taxable or tax-free, interest-bearing instruments which are Triple A rated. The Triple A rated instruments are limited to U.S. Treasury Notes, U.S. Treasury Bills, U.S. Treasury Bonds, Federal National Mortgage Association obligations, and Government National Mortgage Association obligations;

6. Certificates of deposit, money market accounts and other bank accounts, provided such accounts are insured in full by the Federal Deposit Insurance Corporation; and

7. Any other investment as permitted under (a) above.

(c) The rating designation in (b) above shall be from either Standard and Poor's or Moody's Investor Services.

(d) Agency staff, at the sponsors' written request, shall respond within 30 days after the complete request is received. The sponsors shall submit a certification that the investments requested are within the permissible investments listed in these rules.

(e) Investment of escrow funds shall be made by an Agency designated investment services firm.

Recodified from 5:80–29.2 and amended by R.1994 d.303, effective June 20, 1994.
See: 25 N.J.R. 4830(a), 26 N.J.R. 2572(a).
Prior text at 5:80–29.1, Definition of surplus funds, repealed.

5:80–29.2 (Reserved)

5:80–29.3 General applicability

The rules within this subchapter shall apply to all Agency financed housing projects. In the event the housing project receives HUD Section 8 or Section 236 subsidies or whose mortgage is insured, directly or indirectly, by HUD, any appropriate HUD rules, regulations or requirements (hereafter HUD directives) shall also apply. In the event that there are any inconsistencies between the rules in this subchapter and applicable HUD directives, the HUD directives shall prevail.

SUBCHAPTER 30. RESIDUAL RECEIPTS

5:80–30.1 Definitions

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

"Qualifying development" means an Agency-financed housing project owned by a nonprofit sponsor, except for projects receiving Section 8 subsidies pursuant to an Annual Contributions Contract executed after the adoption of regulations by the U.S. Department of Housing and Urban Development on February 29, 1980, at 24 CFR 883, which has:

1. Produced a positive cash flow from operations in each of the past three fiscal years; and

2. Been current in all escrow and debt service payments for the past three fiscal years.

"Residual receipts" means the balance of funds remaining after the deduction of the following items from the cash and the investment accounts of a qualifying development:

1. Debt service arrearages;

2. Current unpaid invoices;

3. Three months of operating expenses (for senior citizen projects) or six months of operating expenses (for family projects), which includes debt service and reserve payments, of the latest Agency approved annual budget;

4. Full funding of all required reserve accounts;

5. Anticipated or proposed capital improvements; and

6. Any other current obligations of the qualifying development.

5:80–30.2 Uses of residual receipts

(a) For qualifying developments, residual receipts may be used:

1. To provide funding to expand the supply of "affordable rental housing" or to render financial assistance to other Agency financed or "affordable housing projects" (the terms "affordable rental housing" and "affordable housing project" shall mean housing with income unit distribution consistent with the requirements of tax-exempt financing pursuant to the then-current Internal Revenue Code);

2. For funding of supplementary services to the qualifying development, such as free senior citizens transportation, medical assistance and other social services programs and activities; and

3. For other uses as may from time to time, be requested, which will enhance the feasibility of a new project or the financial and social condition of an existing project.

(b) Residual receipt funding may include any one or more of the following:

1. First and supplemental mortgages, including construction mortgages;

2. Operating deficit subsidies;

3. Seed money loans; and

4. Grants.

(c) Disbursements of residual receipts shall be in the form of a loan, grant or equity contribution, as approved by the Agency, from the nonprofit sponsor to the entity receiv-

ing the funds. However, for all sponsors formed under N.J.S.A. 55:16–1 et seq., approval by the Public Housing Development Authority is required with respect to the form of the disbursement.

5:80–30.3 Request for use of residual receipts

(a) All requests to use residual receipts funds must be approved by the Agency in advance. Requests shall be made in writing by the sponsor of a qualifying development and submitted to the Agency's Director of Management.

(b) The request shall specify the purpose, amount and payee. The request shall be accompanied by a resolution of the nonprofit sponsor's board of directors. If the request is for social services or professional services, the request shall also be accompanied by a proposal outlining the services and the cost. If the request involves payment to a third party, an Administrative Questionnaire, completed by the third party, shall also accompany the request.

(c) The officers, directors and principals of the qualifying development shall submit certifications that they will not receive any fee or compensation, other than reimbursement for out-of-pocket expenses, for services performed in connection with the use of residual receipts. Such certification may also be required for the officers, directors and principals of the entity receiving the funds, as determined by the Agency.

5:80–30.4 Agency review and approval

(a) Upon receipt of a complete request package as delineated in N.J.A.C. 5:80–30.3, the Agency will review the request to determine whether the requested use of funds falls within the permissible uses set forth in N.J.A.C. 5:80–30.2(a) and whether there are sufficient residual receipts to fund the undertaking requested. The Agency will also evaluate the requested undertaking for feasibility.

(b) If the use of the receipts is for total funds of $25,000 or less, it may be approved by the Executive Director of the Agency. If the request is for funds in excess of $25,000, the recommendation and request package shall be submitted to the Agency Board of Directors for approval.

(c) Agency approval will be subject to receipt of:

1. An opinion from Agency bond counsel that the proposed use of residual receipts is permitted under the terms of the Bond Resolution and other Bond documents in connection with the Bonds issued to finance the qualifying development; and

2. An opinion by counsel for the qualifying development that the sponsor's formation documents and the laws under which the sponsor was formed permit the proposed use of residual receipts.

(d) Agency review will be subject to the payment of a $3,500 fee to the Agency to cover administrative costs in reviewing and processing the use of residual receipts and to maintain the account established pursuant to N.J.A.C. 5:80–30.5. In addition, Agency review is subject to the payment of Agency bond counsel costs. Payment may be made by the entity receiving the residual receipts or the qualifying development's sponsor.

5:80–30.5 Disbursement of residual receipts

(a) Upon approval of a request for the use of residual receipts, the sponsor of the qualifying development shall transfer the residual receipts to the Agency. The Agency shall maintain the residual receipts in a separate account and shall make all disbursements from the account to pay for the cost of the approved undertaking. The Agency shall maintain accounting records reflecting the disbursement.

(b) Prior to the disbursement of any residual receipts, the Agency will require acceptable documentation of expenses associated with the undertaking being financed with residual receipts.

SUBCHAPTER 31. ATTORNEY SERVICES

5:80–31.1 Applicability

The rules within this subchapter apply to the engagement of the services of an attorney by housing sponsors during the operation of their housing project and which services will be paid out of project funds. These rules shall not apply to attorney services paid for out of return on equity funds approved by the Agency for distribution or out of non-project funds.

5:80–31.2 Scope of services

(a) Sponsors may engage the services of an attorney to perform necessary general legal services in connection with and respecting the operation of their project. Such general legal services include, but are not limited to:

1. Advising the sponsor with regard to the rules of the project, the Agency and, if applicable, the Department of Housing and Urban Development;

2. Advising the officers and directors on elections as provided by the by-laws or partnership agreement of the sponsors and supervision of elections of all officers and directors;

3. Preparation and filing of any necessary reports, forms and other documents required by law;

4. Advising the sponsor with regard to legal matters related to project bank accounts, resolutions, duties of officers, directors and employed personnel;

5. Preparation and review of contracts and purchase orders concerning the housing project;

6. Advising the sponsor and managing agent with regard to tenant and lease matters, but not including summary dispossess actions; and

7. Such other services as the sponsor may direct to be performed in connection with and respecting the operations of the project.

(b) Sponsors may engage the services of an attorney to perform tenancy related court actions including the enforcement of leases, collection of rent and dispossession of tenants. For cooperative or condominium projects, sponsors may engage the services of an attorney to perform court actions related to the collection of association dues or carrying charges and the enforcement of subscription agreements, stock certificates or other forms of agreements related to the cooperative or condominium project.

(c) Sponsors may engage the services of an attorney to perform services outside the scope of services in (a) and (b) above, as the need arises for the project. Such services include, but are not limited to, litigation, mortgage loan close-outs, conversion closings and issues requiring special expertise.

5:80–31.3 Maximum fees

(a) The maximum fees which can be paid from project funds for Agency approved attorney services are as follows:

1. General legal matters . . . up to $125.00/hour.

2. Tenancy actions, as follows:

i. For each of the first two cases (requiring court appearance) on the same day . . . up to $100.00;

ii. For each additional case presented on the same day . . . up to $75.00;

iii. For each case prepared for trial but resolved prior to actual court appearance . . . up to $50.00;

3. General litigation, as follows:

i. Non-trial hours . . . up to $175.00/hour;

ii. Trial hours . . . up to $200.00/hour.

(b) For conversion closing, mortgage close-outs, special expertise and all other matters not covered by (a) above, housing sponsors shall submit a fee structure to the Agency for approval.

(c) Paralegal and secretarial services in connection with (a) and (b) above shall be included within the fees outlined above. No additional fees will be paid for paralegal or secretarial services.

(d) Additional compensation may be paid for reasonable out-of-pocket expenses, approved by the Agency, including copying, travel, postage, filing fees, transcripts, and expert witnesses, etc.

(e) The above fees may not exceed fees charged to other clients for comparable work.

5:80–31.4 Agency approval

(a) Housing sponsors desiring to engage the services of an attorney pursuant to the rules within this subchapter shall obtain the written approval of the Agency. Sponsors shall submit a proposal outlining the scope of services to be performed by the attorney.

(b) The Agency shall approve the engagement of attorney services provided the services and fees to be charged fall within those permitted by N.J.A.C. 5:80–31.2(a) or (b) and 31.3, respectively. For services outlined in N.J.A.C. 5:80–31.2(c), the Agency shall approve the engagement of an attorney provided the services are necessary or beneficial to the project, as determined by the Agency, and there are sufficient project funds to pay for such services. The Agency does not guarantee the availability of funds.

(c) All sponsors shall enter into a written attorney engagement agreement using forms approved by the Agency.

SUBCHAPTER 32. HOUSING INVESTMENT SALES

5:80–32.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings:

"Available cash" means all the cash available to an eligible LD sponsor upon the closing of a housing investment sale (after payment of all transaction costs), including, but not limited to:

1. The cash portion of the purchase price paid by the buyer; and

2. Any accumulated residual receipts, as defined in N.J.A.C. 5:80–30.1, that are not subject to recapture by the United States Department of Housing and Urban Development.

"Eligible LD sponsor" means a for-profit corporation or partnership organized under, and remaining subject to, the Limited Dividend Law, L. 1949, c.184, § 1 et seq., as amended (N.J.S.A. 55:16–1 et seq.), that owns and operates an Agency-financed, multifamily, rental housing project that, in each of the three fiscal years preceding the housing investment sale, has:

1. Produced a positive cash flow from operations; and

2. Been current in all debt service and escrow payments required by the Agency.

"Housing investment sale" means a transaction that promotes the provision or maintenance of low and moderate income housing, as defined pursuant to the Fair Housing Act, through the sale by an eligible LD sponsor of an Agency-financed, multifamily, rental housing project to a qualified housing sponsor upon the following terms:

1. The buyer executes a deed restriction (and such other instruments reasonably required by the Agency) to ensure that the project will remain subject to Agency restrictions regarding tenant income eligibility, tenant selection, project reserves, return on equity and rent increases for 35 years after the expiration of the term of the project mortgage at the closing of the housing investment sale. The foregoing documents shall also provide for the payment of a servicing fee to the Agency for monitoring the restrictions that apply to the project. Such fee shall not be less than the servicing fee being paid by the eligible LD sponsor seller at the time of the housing investment sale; and

2. The eligible LD sponsor invests an amount equal to 50 percent of the maximum additional return in the MAR Revolving Account.

"MAR Revolving Account" means an account established under the Agency's administrative fund. Moneys on deposit in the account may be used, at the Agency's sole discretion, to provide loans or grants that will promote the provision or maintenance of low and moderate income housing as defined pursuant to the Fair Housing Act.

"Maximum additional return" means the additional return payable to the owners of an eligible LD sponsor under the Limited Dividend Law but not under the Housing and Mortgage Finance Agency (HMFA) Law, N.J.S.A. 55:14K–1 et seq., consisting of:

1. Cash invested by the owners in the eligible LD sponsor that has not previously been recognized by the Agency as investment in a housing project;

2. A cumulative annual return of eight percent on the investment described in 1 above;

3. If project revenues representing the return described in 2 above have been invested in the project's residual receipts account or otherwise, any income earned on said annual return;

4. Moneys realized through reduction or amortization of the principal owing on the eligible LD sponsor's mortgage loan from the Agency; and

5. Moneys representing an increase in the market value of the eligible LD sponsor's realty and tangible personalty during the period such assets were owned by the eligible LD sponsor, such increase to be determined by subtracting from the purchase price for those assets:

i. The eligible LD sponsor's investment in the project as determined by the Agency under the HMFA Law; and

ii. The original principal amount of the eligible LD sponsor's mortgage indebtedness to the Agency.

"Purchase price" means, in a housing investment sale, and must be comprised of cash and assumption of indebtedness equal, in the aggregate, to the fair market value of the realty and tangible personalty transferred to the buyer in the sale.

5:80–32.2 Realization of maximum additional return

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

5:80–32.3 Application procedure

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

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

(c) The housing investment sale shall include an assignment from the seller and an assumption by the buyer of all existing project indebtedness. If the sale includes any supplemental financing, the amount of such financing shall not exceed the debt that the project can reasonably sustain from project income through the remainder of the Housing Assistance Payments (HAP) contract or, if no HAP contract exists, through the remainder of the original mortgage term, without jeopardizing the viability of the project as a low-income project for the remainder of the original mortgage term. The Agency's approval of a sale requiring supplemental financing shall be subject to the receipt of an opinion by nationally recognized bond counsel, in form and substance satisfactory to the Agency and the Attorney General, that such financing does not adversely affect the Federal and State tax treatment of any outstanding bonds, notes or other obligations of the Agency. The cost of such opinion shall be borne by the seller.

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

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

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

5:80–32.4 Required documents

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

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

5:80–32.5 Fee

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

5:80–32.6 Closing

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

1. Legal opinions from the seller's and buyer's attorneys to the effect that the respective entities' participation in the housing investment sale is fully lawful; and

2. Any legal opinion of nationally recognized bond counsel reasonably required by the Agency relating to the proposed housing investment sale or its effect upon any outstanding obligations of the Agency.

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

1. The eligible LD sponsor shall transfer title to the realty and tangible personalty comprising its project, as well as any required project accounts, escrows and reserves, to the buyer;

2. The buyer shall pay to the eligible LD sponsor the purchase price for the project by assuming the project indebtedness of the eligible LD sponsor and paying the balance of the purchase price in cash; and

3. The Agency shall review and approve the following payments to be made from the available cash of the eligible LD sponsor:

i. To the eligible LD sponsor, an amount equal to its investment in the project, as determined under the HMFA Law;

ii. To the eligible LD sponsor, an amount equal to 50 percent of its maximum additional return;

iii. To the MAR revolving account, an amount equal to 50 percent of the maximum additional return of the eligible LD sponsor;

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

APPENDIX

Example of Application of Subchapter Rules

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

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

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

(d) At the closing of the house investment sale, $200,000 of the purchase price is applied to transaction costs. Thus, the available cash 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 cash:

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 MAR Revolving 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 cash (see N.J.A.C. 5:80–32.6(b)3iv).

SUBCHAPTER 33. LOW INCOME HOUSING TAX CREDIT QUALIFIED ALLOCATION PLAN

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).

5:80–33.1 Introduction

(a) The Low Income Tax Credit ("LITC") Program is one of a variety of resources used to stimulate the development of affordable housing. Like most State and Federal resources, the LITC program is a limited resource with a finite dollar amount allocated to it each year. With the State's affordable housing needs continually growing, the question is often asked of how to best allocate these resources to get the greatest results. The State of New Jersey is making a concerted effort to target resources to key areas in the State, in order to increase the positive impact to those areas.

(b) In keeping with this philosophy, the New Jersey Housing and Mortgage Finance Agency (NJHMFA) in its Tax Credit Allocation Plan has prioritized tax credit allocations to projects that are located in targeted areas. The NJHMFA may consider expanding the targeting strategy to include:

1. Designated Empowerment Zones and Enterprise Communities;

2. Municipalities in which the Office of State Planning has approved a Strategic Revitalization Plan;

3. Neighborhood designated by the Commissioner of the Department of Community Affairs as part of a neighborhood-based strategy.

(c) At the conclusion of the allocation year, NJHMFA will evaluate the viability of any expansion under (b) above and make a determination as to whether they will be included in promulgated amendments to this Plan.

(d) In order to provide for the effective coordination of the New Jersey Low Income Tax Credit Program and the Internal Revenue Code (the "Code"), the rules within this subchapter shall be construed and administered in a manner consistent with the Code and regulations promulgated thereunder.

(e) 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, Treasury regulations, 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 Federal Low Income Housing Tax Credit Program.

5:80–33.2 Definitions

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

"Adaptive reuse" means the substantial rehabilitation and conversion of any existing non-residential building, (for example, school or factory) to a residential use.

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

"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 court settlement that is the result of an exclusionary zoning lawsuit.

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

"De minimis award" means an award of credits from the Reserve in order to fully fund the last of the highest ranking projects in a cycle up to a maximum of $100,000. An example of a de minimis award follows:

There are 10 projects in the suburban cycle. They are ranked highest to lowest. There are enough credits to fully fund the first five projects. The sixth project needs $100,000 but there is only $10,000 left in the cycle. NJHMFA may take $90,000 from the Reserve and award it to the project. If the last highest ranking project is not able to be fully funded by using the amount left in the cycle plus a de minimis award, the project may not be able to be funded and may have to reapply.

"Family project" means any non-age-restricted project.

"Geographic distribution" means in order to promote equitable distribution of tax credits across the State, NJHMFA takes into consideration geographic distribution when awarding reservations of tax credits. In a tie-breaker situation, credits will be awarded to the project situated in the area that has not yet received low income housing tax credits.

"Minimum rehab project" means any project undertaking rehabilitation, where the construction costs total less than 50 percent of the acquisition cost where construction cost equals the costs of demolition, off-site improvements, residential and other structures, environmental clearances, surety, sales tax, building permits and other costs of construction and acquisition cost equals the costs of land, building acquisition appraisal, relocation and other acquisition costs. Minimum rehab projects are eligible to apply only in the Final Cycle. They will be funded in the third round 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)) in the development and operation of the project throughout the compliance period and is not affiliated with or controlled by a for-profit organization. Section 42(h)(5)(C) defines a qualified nonprofit organization as follows:

1. Such organization is described in paragraph (3) of (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.

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 non profit organization shall be treated as satisfying the ownership and material participation test of Section 42(h)(5)(B) if any qualified corporation in which such organization holds stock satisfies such test.

2. Qualified corporation: For purposes of paragraph 1 immediately above, the term 'qualified corporation' means any corporation if 100 percent of the stock of such corporation is held by one or more qualified nonprofit organizations at all times during the period such corporation is in existence.

"Senior project" means a project dedicated to households whose head, spouse or sole member is 62 years of age or older.

"Social services model" means any project which submits evidence such as 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 will be provided to improve the quality of life of the residents of the project. The services include, but are not limited to:

1. Hiring a full-time social service coordinator. If a social service coordinator is being provided through a third party, then a signed agreement between the two parties is required, and the coordinator must be dedicated to the tax credit project for at least 20 hours a week;

2. Providing child care services either on site or linked to outside child care centers;

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

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

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

6. Providing at least one congregate meal on site;

7. Providing adult day-care services; or

8. Providing transportation services for the residents.

A project cannot be classified as having both a special needs component and a social services model. In a tie-breaker situation where a special needs project is tied with a project offering a social services model, the tie cannot be broken on the social services model tie-breaker. Instead, both projects go to the next rung of the tie-breaker system which is geographic distribution.

"Special needs project" means a project serving populations including 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 and will vary from person to person depending on their particular physical, psycho-social, and/or mental limitations, and may vary for one person over time. Each special needs tenant does not have to utilize all of the services provided by the project; however, the services must be available. If tenants are not utilizing the services that are available, NJHMFA may call into question whether or not the project is serving a special needs population. In order to be classified as a Special Needs Project, applicants must propose a project which will reserve a minimum of 20 percent of the total affordable units in the project for occupancy by one (or more) of the targeted 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 services coordinator is being provided through a third party, then a signed agreement between the two parties is required, and the coordinator must be dedicated to the tax credit project for at least 20 hours a week. Project sponsors may reserve more than 20 percent of their affordable units for occupancy by one or more of these targeted populations. For certain types of special needs projects, no more than 30 percent of the units should be set aside for persons with special needs in order to avoid saturation or an institution-type atmosphere. In order to be classified as a Special Needs Project, applicants must also demonstrate evidence of appropriate linkages—such as an executed agreement between a housing and social service provider and commitments from applicable State and/or local agencies. In addition, applicants must demonstrate that the market for the targeted population exists in the project's service area and market the units to persons with special needs. In a tie-breaker situation where a special needs project is tied with a project offering a social services model, the tie cannot be broken on the social services model tie-breaker. Instead, both projects go to the the next rung of the tie-breaker system which is geographic distribution. Examples of target populations are:

1. Persons with AIDS/HIV-related illness;
2. Homeless;
3. Mentally ill;
4. Frail elderly;
5. Alcohol/substance abusers;
6. Persons with physical disabilities;
7. Mentally retarded/developmentally disabled;
8. Pregnant/parenting teens; or
9. Victims of domestic violence.

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

1. Case management;
2. Counseling and crisis intervention;
3. Health care advocacy and linkages;
4. Assistance with activities of daily living and/or instrumental activities of daily living;
5. Recreational activities;
6. Entitlement counseling and advocacy;
7. Employment counseling and training;
8. Support groups;
9. Home-based personal or medical assistance;
10. Skilled nursing;
11. Meals preparation;
12. Housekeeping;
13. Substance abuse and mental health supports; or
14. Child care.

Linkages, Service Commitments and Market Analysis—Applicants who propose a special needs project must also demonstrate evidence of appropriate linkages—such as an executed agreement between a housing and social service provider and commitments from applicable state and/or local agencies. In addition, applicants must demonstrate that the market for the targeted population exists in the project's service area and affirmatively market the units to persons with special needs.

"Targeted city" means any city designated by the Governor's Urban Coordinating Council.

"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. If the targeted neighborhoods are not announced at least one month prior to the application deadline, only targeted cities shall apply and the full 20 points awarded.

5:80–33.3 Reservation cycles

(a) Each year there will be up to three cycles and a reserve set-aside. 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 will 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 will be announced as early in the year as possible. Reservations will 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 dates if required by the time of passage of Federal legislation or adoption of IRS rules and regulations or for other compelling circumstances.

(b) For the Urban Cycle, only projects located in municipalities listed on the urban area list (see Appendix Exhibit 1 incorporated here by reference) may apply in this cycle. Fifty-four percent of the State's population credits are available in this cycle. Minimum rehab projects are not eligible to apply in this cycle.

(c) For the Suburban Cycle, all projects not located in municipalities listed on the urban area list may apply in this cycle. Thirty-six percent of the State's population credits are available in this cycle. Minimum rehab projects are not eligible to apply in this cycle.

(d) The Final Cycle will take place only in the event there are unused credits from the Reserve or the Urban and Suburban Cycles or if New Jersey is awarded an allocation from the National Pool. All projects may apply to this cycle. If all credits are not reserved in the Suburban and Urban Cycles, the remaining amount will be made available in this cycle. Any National Pool as well as any remaining credits in the Reserve set-aside will also be made available in this cycle. Minimum rehab projects are eligible to apply in this cycle.

(e) Should NJHMFA receive any returned credits after the Final Cycle awards have been made, NJHMFA will, to the extent possible, try to reallocate them before December 31st. They will be allocated to the next-highest ranking project(s) from the Final Cycle.

(f) Projects that were admitted to a cycle but did not receive a reservation of credits may re-apply in the Final Cycle by simply submitting a Reapplication Certification in which the applicant certifies that there are no changes whatsoever to the previously submitted application or documents any and all changes to the previously submitted application. If there are changes, a reapplication fee is required.

5:80–33.4 Application fees

(a) An application fee of $1,000 is required with each application. The application fee is nonrefundable and will be credited toward the reservation fee. A nonrefundable reapplication fee of $100.00 is required only if there are changes to the application.

(b) Projects that applied but did not receive a reservation of credits can reapply in a later cycle or the following year by submitting a reapplication certification and reapplication fee. Projects that are in essence new projects, for example, changes in the project composition, sites or sponsor or developer entities, must submit a new application and application fee.

5:80–33.5 Set-asides

(a) The NJHMFA shall establish a Reserve Set–Aside by setting aside 10 percent of the State's population credits, any returned credits and any carryforward credits, as a reserve for projects that did not receive a full allocation in the previous year because there were not enough credits to meet the demand and for projects that did receive a full allocation but need additional credits due to technical errors, de minimis awards and for projects that need additional credits due to construction costs overruns, etc. The Reserve Set–Aside is not included within the Urban or Suburban Cycle. The dual purpose of the Reserve Set–Aside is intended to address the following.

1. NJHMFA has been experiencing unprecedented demand for the low-income housing tax credit and as a result was able to only partially fund some projects in the prior allocation year. Those projects that did not receive their full eligible allocation based on NJHMFA's credit evaluation are eligible to compete for up to their full allocation in this portion of the Reserve. The developer fee and eligible basis will be frozen at the level of the last carryover certification. Projects such as these must follow the application requirements listed under N.J.A.C. 5:80–33.9. The deadline date for receipt of these applications is the same as the Urban and Suburban Cycles' deadline. These projects will be ranked in accordance with the criteria set forth in the Final Cycle. Awards will be announced at the same time as awards from the Urban and Suburban Cycles and any credits left will be made available under paragraph 2 below. The amount of credits available in this portion of the Reserve is nine percent of the State's population credits.

2. This portion of the Reserve Set–Aside is for hardship requests for projects that have received a full allocation but need additional credits due to technical errors, de minimis awards and for projects that need additional credits due to construction cost overruns, etc. Applicants cannot apply for additional credits from this portion of the reserve until the year in which the project places in service. Any hardship request must be documented to the satisfaction of NJHMFA. There is no application deadline for this portion of the Reserve; however, credits from the Reserve are subject to availability. This portion of the Reserve is funded by carryforward and returned credits and the remaining one percent of the State's population credits. $100,000 of this portion of the Reserve will be set aside for technical errors, etc. until allocations are ready to be made in the Final Cycle.

(b) The NJHMFA shall establish a Senior Set–Aside by setting aside 20 percent of the credits available in the Urban and Suburban Cycles for senior citizen projects. Senior citizen projects are eligible for credits beyond the set-aside. In each cycle, reservations will first be awarded to the highest scoring senior projects until the senior set-aside has been met. Once the senior set-aside has been fully reserved to senior projects, reservations will be awarded to the highest scoring nonprofit-sponsored projects until the nonprofit set-aside has been fully reserved. Then, reservations will be awarded to the applications with the highest scores. If, because of lack of demand, the senior set-aside is not fully utilized, remaining credits in the senior set-aside will be released into that cycle for use by other projects.

(c) The NJHMFA shall establish a Nonprofit Set–Aside in order to encourage the participation of local and/or State tax-exempt organizations in the tax credit program. Twenty percent of the credits available in the Urban and Suburban Cycles will be set aside for qualified nonprofit organizations. Nonprofits are eligible for 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 so long as no more than 90 percent of the total State housing credit ceiling, as per Internal Revenue Code 42(h)(5)(A), 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 must certify that they are a qualified nonprofit organization under the meaning of the Code.

(d) Nonprofit senior projects will count toward both set-asides. For example, if a senior project sponsored by a qualified nonprofit organization receives an allocation of tax credits, that project is helping to meet the Statewide goal of awarding 20 percent of the population credits to nonprofits; it is also helping to meet the Statewide goal of awarding 20 percent of the population credits to senior projects.

(e) The following is an example of the estimated breakdown of credits in cycles and set-asides:

Population Credits (estimate)	$9,900,000
Less 10 percent Reserve Set–Aside	$990,000
Available for Urban & Suburban Cycles	$8,910,000

Urban Cycle—$5,346,000		Suburban Cycle—$3,564,000	
20 percent Senior Set–Aside	$1,069,200	20 percent Senior Set–Aside	$712,800
20 percent Nonprofit Set–Aside	$1,069,200	20 percent Nonprofit Set–Aside	$712,800
Other	$3,207,600	Other	$2,138,400

5:80–33.6 Application process

(a) Applications will be accepted beginning one month prior to the deadline date. Late and incomplete applications will not be admitted into a cycle. After the application deadline, telephone calls or other verbal communications on behalf of tax credit application from a project's development team, elected representatives, etc., will not be accepted. Written communication altering the application so as to cure a prior incompleteness or ineligibility or increase its competitiveness will not be considered. NJHMFA reserves the right to contact the applicant if the need arises.

(b) Projects must meet all of the following eligibility requirements in order to be admitted into a cycle.

1. The minimum term of the low income occupancy commitment is 30 years: a 15–year compliance period plus the 15–year extended use period required by the Internal Revenue Code. At the time the project is placed in service, the project owner must enter into an "extended low-income housing commitment agreement" as required in Section 42(h)(6) of the Code. To comply with this requirement, NJHMFA will file a Deed of Easement and Restrictive Covenant pursuant to State law.

2. The applicant must select one of the following low-income set asides: 20 percent of the units to be occupied by persons earning 50 percent or less of median income; 40 percent of the units to be occupied by persons earning 50 percent or less of median income; or 40 percent of the units to be occupied by persons earning 50 percent or less of median income (for HOME targeting projects, if applicable).

i. All rents and utility allowances shall be correctly calculated. Applicants choosing to restrict at least 50 percent of the units to households earning 50 percent or less of the area median income in order to score points under the point system established by these rules, shall be bound by such choice for the period of restriction selected as it will be reflected on the Deed of Easement and Restrictive Covenant.

3. The type of housing proposed and all amenities and services shall be described in a narrative format. It must include an explanation of how the services will be paid for as well as the need and demand for the project and its impact upon the neighborhood. Commercial space, if any, must be disclosed.

4. At the time the application is filed, 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:

i. Fee simple title;

ii. Long-term leasehold interest;

iii. Option to purchase or lease, including evidence that options are renewable until at least the start of construction;

iv. Executed land sales contract or other enforceable agreement for acquisition of the property;

v. An executed disposition and development agreement with a public agency. Title ownership is not required for carryover allocations; or

vi. A site being developed pursuant to the NJHMFA's Camden housing initiative, under which the NJHMFA has developed a program to stimulate the construction, rehabilitation and improvement of housing in the city of Camden.

5. All local and environmental approvals shall have been obtained and must be provided. 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. 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 will notify the chief executive officer of the municipality and allow him or her a reasonable opportunity to comment on the project. Final environmental approvals shall not be required by the application date for projects being developed pursuant to the NJHMFA's Camden housing initiative, under which the NJHMFA has developed a program to stimulate the construction, rehabilitation and improvement of housing in the City of Camden.

6. All financing information shall be disclosed in the application package. The total of all funding sources (excluding bridge financing) must equal the total project cost. Commitment letters from lending institutions 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 and all conditions. Projects requesting Balanced Housing or State HOME 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.

i. Commitment letters for grants (that is, Federal Home Loan Bank) should be firm or contain only conditions that are under the control of the sponsor, that is, grant commitments cannot be conditioned on the availability of funds. All grants whether private, Federal, State or local must 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). For local government grants or loans, for example, CDBG, RCA, a copy of the county's or municipality's resolution approving the funds for the project shall be submitted with the application. For projects receiving HOME funds the applicant shall submit a copy of the participating jurisdiction's resolution approving the funds for the project or a copy of HUD form 7015.15, "Request for Release of Funds Certification" along with a copy of the participating jurisdiction's transmittal letter to HUD.

ii. Applicants of projects over 25 units representing that they will be contributing equity beyond that generated by the tax credit shall disclose the amount, the source, for example, developer fee, savings account, pledged assets, and all terms. Applicants coming out-of-pocket to fill the equity gap shall provide a letter from a certified public accountant who certifies that the applicant has the amount of cash that is needed to fill the gap. Applicants are discouraged from representing in their application that they will be using their own financial resources, when in fact, they anticipate applying for other Federal, State or local subsidies.

iii. Applicants do not need to have a syndicator at the time of application. For projects that do not have an investor at the time of application, NJHMFA shall assume a net pricing of $0.50 per tax credit dollar. However, if the applicant wants the project underwritten at a higher price, then the applicant shall include a commitment letter from an investor evidencing the net pricing and total anticipated net proceeds.

iv. For projects relying solely on equity funding from syndicators, that is, no mortgage, grants, etc., applicants shall submit evidence that the syndication equity shown in the application is attainable. Acceptable evidence is a fully executed commitment letter from the syndicator, indicating the actual pricing and the total anticipated net proceeds (which should equal the total equity funding shown in the application). The actual net price shall be used in NJHMFA's initial credit evaluation. This evaluation shall assume a mortgage will be obtained. In determining the maximum mortgage supportable by the rent roll, NJHMFA will assume the operating costs of the 15–year proforma and the general NJHMFA mortgage underwriting guidelines in N.J.A.C. 5:80–33.17.

7. In accordance with the Code, NJHMFA will 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 pro forma. Applicants with less than 15–year fixed rate permanent financing shall show how the project will remain feasible throughout the compliance period when, for example, the rate adjusts or a balloon payment comes due. A project that applied for balanced housing funds should be using the same rent structure in the tax credit application as in the application for balanced housing.

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

9. Projects over 25 units must complete the identity of interest disclosure certification as set forth in Appendix, Exhibit 2, incorporated herein by reference.

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

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

12. For projects over 25 units that are claiming a prior owner's expenditures in basis, a Certified Public Accountant shall certify the amount of the eligible costs incurred by a prior owner pursuant to the Code at 42(d)(7)(B)(i) which permits a subsequent owner to claim a credit on a qualified low income building, provided the credit was allowed to the prior owner. The CPA must certify that the amount of such costs shown in the application has been spent and is accurately reflected in eligible basis.

13. All projects funded by the United States Department of Rural Economic and Community Development (formerly known as Farmer's Home Administration) must provide a letter from the State Director approving the loan and stating that the funds have been obligated.

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

15. Projects occupied by special needs populations are particularly hard to develop because of the risk typically associated with them. This risk emanates largely from their reliance on year-to-year operating subsidies from such sources as state and local departments of human services. Consequently, funding levels may vary depending on the governmental budget. Because this Plan awards points to these types of projects, applicants shall support their claim to serve special needs populations by providing, at a minimum, operating subsidy sources and their contact persons and the social service providers' track records (evidencing fulfillment of governmental contracts, etc.) and references. Firm operating subsidy commitments for the 30–year extended use period are not required. The applicant or general partner does not have to be the social service provider. However, the applicant shall also include with the application a copy of the executed contract or letter of agreement signed by both the owner and the social service provider that specifies the scope and frequency of the support services to be provided, the number of units to be serviced and the length of time (term) of the services contract. A special needs marketing analysis and plan shall be submitted.

16. NJHMFA encourages all owners/developers to affirmatively market their projects. For projects over 25 units, applicants shall submit an Affirmative Fair Housing Marketing Plan, which, in short, documents how the project will be marketed to those people who are least likely to apply. For instance, if the proposed development is located in an area predominantly occupied 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.

5:80–33.7 Review process

(a) After successfully fulfilling the eligibility requirements at N.J.A.C. 5:80–33.6(b), applications will be admitted into the cycle. NJHMFA will undertake an initial credit evaluation (or needs analysis) by reviewing the application and the cost and basis breakdown for compliance with cost benchmarks and underwriting standards (see N.J.A.C. 5:80–33.17). NJHMFA will perform the first of the needs evaluations pursuant to the Code's mandate to housing credit agencies to allocate credits to a project in an amount not to exceed that necessary for its financial feasibility and its viability as a qualified low-income housing project throughout the compliance period. NJHMFA also performs these needs evaluations at the time the allocation is made and at the time the project is placed in service.

(b) Applications will receive points based on the point system for the particular cycle in which they compete. In the event of a tie score, projects will be ranked according to the tie-breaker system for the particular cycle in which they are competing. Set-asides will be filled within each cycle by first making reservations to the highest scoring senior projects until the senior set-aside is met and next making reservations to the highest scoring nonprofit-sponsored projects until the nonprofit set-aside is met. Then, reservations will be awarded to the applications with the highest scores and to the applications that win the tie-breakers.

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

1. Family projects—20 points.

2. Targeted cities and targeted neighborhoods—20 points maximum broken down as follows: targeted city—10 points; or targeted neighborhood—an additional 10 points if project is located in a targeted neighborhood within the targeted city.

i. Targeted cities and targeted neighborhoods are designed to target resources to key areas in the State, in order to increase the positive impact to those areas. If the targeted neighborhoods are not announced at least one month prior to the application deadline, only targeted city shall apply and the full 20 points shall be awarded.

3. Special needs projects—10 points:

i. This category is designed to encourage development and preservation of housing for special needs populations.

4. Increasing the low income set-aside—20 points:

i. This category is designed to encourage projects with set-asides exceeding the minimum required by Code, namely the 40–60 and 20–50 set-asides, by setting aside at least 50 percent of the units at 50 percent of the area median income. The project's set-aside selected in the application will be reflected in the deed restriction.

5. Period of restriction—20 points:

i. This category is designed to encourage projects to remain low income beyond the 30 years required. Projects that extend the extended use period by five years or more will receive the 20 points. The period of restriction stated in the application will be the number of years that the property will be deed restricted.

6. Substantial rehabilitation/adaptive reuse—10 points:

i. This category is designed to encourage projects undertaking substantial rehabilitation and adaptive reuse.

7. Minority and women business enterprises—10 points:

i. This category is designed to encourage the utilization of certified minority business enterprises (MBE) and women business enterprises (WBE) as subcontractors and on the development team. MBEs and WBEs are certified by the New Jersey Department of Commerce and Economic Development. Developers who are committed to using MBEs and WBEs should submit a MBE/WBE Certification. This states that 15 percent of the construction cost will be let to MBEs and WBEs in the development of the project. MBEs and WBEs can be a part of the development team as well as subcontractors. As part of the placed in service certification, the developer and accountant must certify that at least 15 percent of the construction cost was expended on MBEs/WBEs. If the project did not utilize 15 percent MBE/WBE, and a MBE/WBE Certification was submitted, NJHMFA shall recapture the allocation.

8. Existing HUD-held or HUD-insured projects undergoing substantial rehab—10 points:

i. This category is designed to enable substantial rehabilitation of projects that are on HUD's Troubled Project list. Applicants shall show that they have exhausted all other HUD resources.

(d) In the event of a tie score under the point system for the Urban cycle, reservations will be made in the following priority order:

1. Targeted Cities—if still a tie:

i. First, to projects offering a social services model; if still a tie:

ii. Second, on the basis of geographic distribution; if still a tie:

iii. Third, to the project with the most percentage points below the maximum developer fee; and if still a tie:

iv. Fourth, to the project utilizing public housing waiting lists.

2. Family Projects—if still a tie:

i. First, to projects offering a social services model; if still a tie:

ii. Second, on the basis of geographic distribution; if still a tie:

iii. Third, to the project with the most percentage points below the maximum developer fee; and if still a tie:

iv. Fourth to the project utilizing public housing waiting lists.

3. Senior Projects—if still a tie:

i. First, to projects offering a social services model; if still a tie:

ii. Second, on the basis of geographic distribution; if still a tie:

iii. Third, to the project with the most percentage points below the maximum developer fee; and if still a tie:

iv. Fourth, to the project utilizing public housing waiting lists.

(e) The point system for Suburban Cycle shall be as follows:

1. Family projects which:

i. Meet a COAH or Court-ordered fair share obligation—20 points; or

ii. Do not meet a COAH or Court-ordered fair share obligation—10 points.

2. Senior projects that help a municipality meet a COAH or Court-ordered fair share obligation—10 points.

3. Special needs projects—10 points:

i. This category is designed to encourage development and preservation of housing for special needs populations.

4. Increasing the low income set-aside—20 points:

i. This category is designed to encourage projects with set-asides exceeding the minimum required by Code, namely, the 40–60 and 20–50 set-asides, by setting aside at least 50 percent of the units at 50 percent of the area median income. The project's set-aside selected in the application will be reflected in the deed restriction.

5. Period of restriction—20 points:

i. This category is designed to encourage projects to remain low income beyond the 30 years required. Projects that extend the extended use period by five years or more will receive the 20 points. The period of restriction stated in the application will be the number of years that the property will be deed restricted.

6. Substantial rehabilitation/adaptive reuse—10 points:

i. This category is designed to encourage projects undertaking substantial rehabilitation and adaptive reuse.

7. Minority and women business enterprises—10 points:

i. This category is designed to encourage the utilization of certified minority business enterprises (MBE) and women business enterprises (WBE) as subcontractors and on the development team. MBEs and WBEs are certified by the New Jersey Department of Commerce and Economic Development. Developers who are committed to using MBEs and WBEs should submit a MBE/WBE Certification. This states that 15 percent of the construction cost will be let to MBEs and WBEs in the development of the project. MBEs and WBEs can be a part of the development team as well as subcontractors. As part of the placed in service certification, the developer and accountant must certify that at least 15 percent of the construction cost was expended on MBEs/WBEs. If the project did not utilize 15 percent MBE/WBE, and a MBE/WBE Certification was submitted, NJHMFA shall recapture the allocation.

8. Existing HUD-held or HUD-insured projects undergoing substantial rehab—10 points:

i. This category is designed to enable substantial rehabilitation of projects that are on HUD's Troubled Project list. Applicants must show that they have exhausted all other HUD resources.

(f) In the event of a tie score under the point system for the Suburban Cycle, reservations will be made in the following priority order:

1. COAH Obligation—if still a tie:

i. First, to projects offering a social services model; if still a tie:

ii. Second, on the basis of geographic distribution; if still a tie:

iii. Third, to the project with the most percentage points below the maximum developer fee; and if still a tie:

iv. Fourth, to the project utilizing public housing waiting lists.

2. Family Projects—if still a tie:

i. First, to projects offering a social services model; if still a tie:

ii. Second, on the basis of geographic distribution; if still a tie:

iii. Third, to the project with the most percentage points below the maximum developer fee; and if still a tie:

iv. Fourth, to the project utilizing public housing waiting lists.

3. Senior Projects—if still a tie:

i. First, to projects offering a social services model; if still a tie:

ii. Second, on the basis of geographic distribution; if still a tie:

iii. Third, to the project with the most percentage points below the maximum developer fee; and if still a tie:

iv. Fourth, to the project utilizing public housing waiting lists.

(g) The point system for Final Cycle shall be as follows:

1. Family projects located in urban areas—20 points:

i. This category is designed to encourage family projects that are located in urban areas.

2. Suburban projects meeting a COAH obligation: family projects—20 points; and senior projects—10 points.

i. This category is designed to encourage projects that are helping a suburban municipality meet a COAH or court-ordered fair share obligation.

3. Targeted cities and targeted neighborhoods: This category is designed to target resources to key areas in the State, in order to increase the positive impact to those areas: targeted city—10 points; and targeted neighborhood—an additional 10 points if project is located in a targeted neighborhood within the targeted city.

i. Targeted cities and targeted neighborhoods are designed to target resources to key areas in the State, in order to increase the positive impact to those areas. If the targeted neighborhoods are not announced at least one month prior to the application deadline, only targeted city shall apply and the full 20 points shall be awarded.

4. Special needs projects—10 points:

i. This category is designed to encourage development and preservation of housing for special needs populations.

5. Increasing the low income set-aside—20 points:

i. This category is designed to encourage projects with set-asides exceeding the minimum required by Code, namely, the 40–60 and 20–50 set-asides, by setting aside at least 50 percent of the units at 50 percent of the area median income. The project's set-asides selected in the application will be reflected in the deed restriction.

6. Period of restriction—20 points:

i. This category is designed to encourage projects to remain low income beyond the 30 years required. Projects that extend the extended use period by five years or more will receive the 20 points. The period of restriction stated in the application will be the number of years that the property will be deed restricted.

7. Substantial rehabilitation/adaptive reuse—10 points:

i. This category is designed to encourage projects undertaking substantial rehabilitation and adaptive reuse.

8. Minority and women business enterprises—10 points:

i. This category is designed to encourage the utilization of certified minority business enterprises (MBE) and women business enterprises (WBE) as subcontractors and on the development team. MBEs and WBEs are certified by the New Jersey Department of Commerce and Economic Development. Developers who are committed to using MBEs and WBEs should submit a MBE/WBE Certification. This states that 15 percent of the construction cost will be let to MBEs and WBEs in the development of the project. MBEs and WBEs can be a part of the development team as well as subcontractors. As part of the placed in service certification, the developer and accountant must certify that at least 15 percent of the construction cost was expended on MBEs/WBEs. If the project did not utilize 15 percent MBE/WBE, and a MBE/WBE Certification was submitted, NJHMFA shall recapture the allocation.

9. Existing HUD-held or HUD-insured projects undergoing substantial rehabilitation—10 points:

i. This category is designed to enable substantial rehabilitation of projects that are on HUD's Troubled Project list. Applicants shall show that they have exhausted all other HUD resources.

(h) In the event of a tie score under the point system for the Final cycle, reservations will be made in the following priority order:

1. Targeted cities—if still a tie:

i. First, to projects offering a social services model; if still a tie:

ii. Second, on the basis of geographic distribution; if still a tie:

iii. Third, to the project with the most percentage points below the maximum developer fee, and if still a tie:

iv. Fourth, to the project utilizing public housing waiting lists.

2. COAH obligation—if still a tie:

i. First, to projects offering a social services model; if still a tie:

ii. Second, on the basis of geographic distribution; if still a tie:

iii. Third, to the project with the most percentage points below the maximum developer fee, and if still a tie:

iv. Fourth, to the project utilizing public housing waiting lists.

3. Urban family projects—if still a tie:

i. First, to projects offering a social services model; if still a tie:

ii. Second, on the basis of geographic distribution; if still a tie:

iii. Third, to the project with the most percentage points below the maximum developer fee, and if still a tie:

iv. Fourth, to the project utilizing public housing waiting lists.

4. Suburban family projects—if still a tie:

i. First, to projects offering a social services model; if still a tie:

ii. Second, on the basis of geographic distribution; if still a tie:

iii. Third, to the project with the most percentage points below the maximum developer fee, and if still a tie:

iv. Fourth, to the project utilizing public housing waiting lists.

5. Urban senior projects—if still a tie:

i. First, to projects offering a social services model; if still a tie:

ii. Second, on the basis of geographic distribution; if still a tie:

iii. Third, to the project with the most percentage points below the maximum developer fee, and if still a tie:

iv. Fourth, to the project utilizing public housing waiting lists.

6. Suburban senior projects—if still a tie:

i. First, to projects offering a social services model; if still a tie:

ii. Second, on the basis of geographic distribution; if still a tie:

iii. Third, to the project with the most percentage points below the maximum developer fee; and if still a tie:

iv. Fourth, to the project utilizing public housing waiting lists.

5:80–33.8 Reservation process

(a) On the basis of the point and tiebreaker systems, staff will make reservation award recommendations to the Tax Credit Committee. The Tax Credit Committee will consist of the Commissioner of the Department of Community Affairs, or his or her designee, the Executive Director of NJHMFA and three members of the NJHMFA executive staff. The Committee will review the rankings and tie-breaker decisions as well as requests for reservations from the Reserve Set–Aside. Committee decisions are final. All applicants will be notified in writing whether their projects received a reservation or not and the basis for the decision. A reservation commitment letter will 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. The Reservation Fee Schedule is as follows:

1. For-profit-sponsored Projects: One percent of the allocation amount over the 10–year credit period.

2. Nonprofit-sponsored Projects: One-half of one percent of the allocation amount over the 10–year credit period.

5:80–33.9 Requests for additional credits

(a) Should additional credits be awarded to a project, a reservation fee for the additional credit amount must be provided. All projects seeking additional credits shall have the developer fee that is shown in basis "frozen" at the amount shown on the most recent Sponsor Certification.

(b) Applicants seeking an allocation of additional credits are divided into three categories:

1. Projects from the previous calendar year. These projects shall apply to the Reserve set-aside. These are projects that received allocations in the previous calendar year that, because demand for credits exceeded the supply, were not allocated the full credit amount supportable by the project's eligible basis. Eligible basis cannot exceed that shown on their previous Carryover Certification. Applicants must submit a new application and application fee by the Urban/Suburban Cycle deadline date. Projects will be scored and ranked according to the Final Cycle's point system and tie-breaker system.

2. Hardship Requests of $100,000 or less—Apply to the Reserve Set–Aside. Only hardship requests for additional tax credits of $100,000 or less are eligible to apply for credits from the Reserve Set–Aside. There are no application deadlines to apply to the Reserve. NJHMFA will award additional credits out of the Reserve Set–Aside on a first-come-first-served basis subject to NJHMFA's evaluation of the request and availability of credits. The developer fee shown in eligible basis cannot exceed that shown on the previous Sponsor Certification. Applicants shall submit all of the following before NJHMFA will consider the request:

i. Reapplication fee. The reapplication fee is not required when a project reapplies in the Final Cycle after failing to secure credits in the Urban or Suburban Cycle and only then if there are no changes to the application. In applying for a hardship request for additional credits, it is a given that changes have occurred since the initial application;

ii. Reapplication Certification;

iii. Explanation why additional credits are being sought plus supporting documentation;

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

v. Release of the previously reserved credits effective upon the NJHMFA approval of an increased reservation. This is required only for projects that seek an increase in the reservation amount that they received that same year, for example, received reservation in urban cycle and applied to Reserve later in year for an increase in the reservation.

3. Hardship Requests of over $100,000—Apply during a cycle. Hardship requests for additional credits exceeding $100,000 will be handled in a scheduled cycle. The developer fee shown in eligible basis cannot exceed that shown on the previous Sponsor Certification. Applicants shall complete an application and the following in order to be deemed a complete application:

i. Reapplication fee. The reapplication fee is not required when a project reapplies in the final cycle after failing to secure credits in the urban or suburban cycle and only then if there are no changes to the application. In applying for a hardship request for additional credits, it it is a given that changes have occurred since the initial application;

ii. Reapplication Certification;

iii. Explanation why additional credits are being sought plus supporting documentation;

iv. Sponsor Certification with an audited breakdown of costs and basis. An independent C.P.A. shall have audited the project and certified the Breakdown of Costs and Basis (which includes disclosure of all funding sources and amounts). For projects still incurring eligible costs, for example, security system, landscaping, NJHMFA will consider awarding additional credits based on the audited Breakdown of Costs and Basis incurred to date and the applicant's projection of costs and basis incurred through the end of the first year of the credit period;

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

vi. Release of the previously reserved credits effective upon the NJHMFA approval of an increased reservation. Required only for projects that seek an increase in the reservation amount that they received that same year, for example, received reservation in urban cycle and applied in final cycle for an increase in the reservation.

5:80–33.10 Binding commitments

There are no binding commitments from the tax credit authority of future years allowable under this Qualified Allocation Plan.

5:80–33.11 Returning credits

(a) Projects unable to utilize their allocation should return their allocation to the NJHMFA as soon as possible via letter. NJHMFA will send a letter acknowledging receipt of the return. Returned credits are deposited into the Reserve.

(b) As an incentive to turn in unused credits early, projects that return credits by November 15 will have their previously paid reservation fee credited toward their next reservation fee. Projects returning credits after November 15 that receive a reservation the next year will have to pay a new reservation fee.

5:80–33.12 Credit evaluation (needs analysis)

(a) In accordance with Section 42(m)(2), NJHMFA evaluates the need for the tax credit at the application stage, at carryover, if applicable, and before completing the IRS Form 8609, that is, when the building is placed in service. During each evaluation, 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 tax credit compliance period, the amount of the tax credit will be reduced to the needed amount. The determination of whether the amount requested is needed for financial feasibility and continued viability of the project will 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. For each evaluation, a Sponsor Certification in the format supplied in the application must be submitted. On a case-by-case basis, NJHMFA may extend its filing deadline if the sponsor can show good cause.

(b) At carryover, the Carryover Sponsor Certification form must include an independent C.P.A. certification on the Breakdown of Costs and Basis page that the 10 percent test has been met; that all sources and uses shown are accurate; and that the costs shown in basis are allowable under the Code. The filing deadline is November 15.

(c) As soon as possible after the building has been placed in service, the owner must submit a Placed in Service Sponsor Certification showing all sources (including net syndication proceeds), uses and basis as well as the pricing from the limited partner investor. The developer fee shown in eligible basis cannot exceed that shown on the Reservation or Carryover Certification. The filing deadline is November 15.

(d) In performing the final evaluation of the project's need for the tax credits, NJHMFA will use the actual net pricing achieved with the investor. Any substantive changes to the project's financing plan or costs must be explained in detail and may cause the project to be reconsidered by the NJHMFA.

(e) For projects over 25 units, an independent C.P.A. must audit the project and certify to the costs and basis on Attachment A of the Placed in Service Sponsor Certification set forth in Appendix Exhibit 3, incorporated herein by reference. The C.P.A. must also verify the actual pricing achieved with the investor. The developer fee shown in eligible basis cannot exceed that shown on the Reservation or Carryover Certification set forth in Appendix Exhibit 3. To make sure that the placed in service paperwork is submitted to NJHMFA by the November 15th deadline, sponsors must ensure that the cost certification process begins immediately upon construction completion. In fact, if a project is already placed in service the same year in which it receives a reservation, the cost certification process should begin before construction completion in order to avoid jeopardizing the reservation. For projects still incurring eligible costs, NJHMFA, when performing its placed in service needs analysis, will consider the owner's reasonable projection of costs and basis incurred through the end of the first year of the credit period in addition to the audited Breakdown of Costs and Basis.

(f) The Code requires that NJHMFA reduce the credit amount based upon need; however, this does not mean that NJHMFA will jeopardize the long-term financial feasibility and viability of the project by "arbitrarily" taking back credits. For example, if the equity market improved so that projects were able to get better pricing from investors, NJHMFA will not necessarily reduce the credit on those projects that use the excess credits to cover cost overruns, provide betterments in the project such as upgrading the security system, landscaping, provision of appliances such as washers and the like. NJHMFA will not allow these additional funds to be used to increase the developer fee eligible basis amount over that shown on the previous carryover.

5:80–33.13 Extended use agreement

Section 42(h)(6) of the Internal Revenue 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. It must be recorded in order to claim the tax credits when filing Federal tax returns. Owners shall complete the NJHMFA's Deed of Easement and Restrictive Covenant. Upon receipt of a complete and fully executed agreement, NJHMFA will file the restrictive covenant pursuant to State law.

5:80–33.14 Obtaining the 8609

Upon completion of the final needs evaluation, filing of the extended use agreement and payment of the monitoring fee, the NJHMFA will complete Part I of the IRS Form 8609 and will forward a copy, as filed with the IRS, to the project owner. An 8609 is issued for each building in the project. (Owners should be sure to make copies of the signed IRS Form 8609 as a copy must be filed each year with Federal tax returns.)

5:80–33.15 Additional documentation

NJHMFA reserves the right to ask for any documentation necessary throughout the application, reservation, carryover and placed in service processes. NJHMFA will also require all syndication documents.

5:80–33.16 Compliance monitoring

(a) 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;

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) (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) 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). For an exception to this requirement, see Section 42(g)(8)(B) which provides a special rule for a 100 percent low-income building;

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), 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.

(b) 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. The records for the first year of the credit period, however, must 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 (21 years total). Therefore, records for the first year of the compliance period must be retained for 21 years. Records for each year thereafter must be retained for six years after filing the Federal income tax return for that particular year.

(c) The owner/agent of a low income housing project shall certify, under penalty of perjury, annually to the Agency for each year of the compliance period that for the preceding 12 month period:

1. The project met the requirements of the 20–50 test under Section 42(g)(1)(A) or the 40–60 test under Section 41(g)(1)(B) or the 40–50 test under Section 42(i)(2)(E)(i); whichever minimum set aside test was applicable to the project; and if applicable to the project, the 15–40 test under Sections 42(g)(4) and 142(d)(4)(B) for "deep rent skewed" projects;

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

3. The Owner received an annual income certification on 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). For an exception to this requirement, see Section 42(g)(8)(B) which provides a special rule for a 100 percent low-income building;

4. Each low income unit in the project was rent restricted under Section 42(g)(2);

5. All units in the project were for use by the general public and used on a non-transient basis (except for transitional housing for the homeless provided under Section 42(i)(3)(B)(iii));

6. Each building in the project was suitable for occupancy, taking into account local health, safety and building codes;

7. There was no change in the eligible basis 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. All tenant facilities included in the eligible basis under Section 42(d) of any building in the project such as swimming pools, other recreational facilities, and parking areas, were provided on a comparable basis without charge to all tenants in the building;

9. If a low income unit in the project became vacant during the year, that reasonable attempts were or are being made to rent that unit or the next available unit of comparable or smaller size to tenants having a qualifying income before any units in the project were or will be rented to tenants not having a qualifying income;

10. If the income of a tenant of a low income unit who has previously been verified, increases to above 140 percent of the applicable limit allowed in Section 42(g)(2)(D)(ii), that unit may continue to be counted as a low income unit as long as the next available unit of comparable or smaller size in the project was or will be rented to tenants having a qualifying income; and

11. An extended low income housing commitment as described in Section 42(h)(6) was in effect for buildings subject to Section 7108(c)(1) of the Revenue Reconciliation Act of 1989.

(d) The Agency requires the owners of all low income housing projects to submit annually to the Agency for review the Annual Project Certification and the Occupancy Status Report which requires information on tenant income and rent for each low income unit. In addition, throughout the year, owners of at least 20 percent of all tax credit projects will be required to submit to the Agency for compliance review the following information for a minimum of 20 percent of all low income units (units will be identified by the Agency):

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.

(e) The Agency will select which projects will undergo Agency review and give owners reasonable notice that their project has been chosen as well as identify which documents will 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. NJHMFA charges a fee for these services in the amount of $100.00/unit per year for the 15–year compliance period or a one-time up-front fee of $750.00 per unit.

(f) The Agency 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.

(g) Upon determination by the Agency of noncompliance with Section 42 of the Internal Revenue Code or other relevant rules and regulations, the Agency will give prompt notice to the owner of the violation. The owner will then be given sufficient notice to correct the violation. The Agency is required to notify the IRS, within 45 days after the end of the correction period, of the noncompliance and whether the owner has or has not corrected the violation.

5:80–33.17 Underwriting standards

(a) No project will be allocated more than $2,000,000 in credits in any one calendar year.

(b) The amount of developer fee allowed in eligible basis is limited to 15 percent of total development cost excluding land, working capital, marketing expenses, escrows, operating deficit reserves, costs associated with syndication and step-in-the-shoes costs exceeding the acquisition price.

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

i. Scattered site single-family or duplex housing;

ii. Projects of 25 units or less; and

iii. Housing for special needs projects.

2. Professional fees not included in the developer fee are the fees for the architect, engineer, lawyer, accountant, surveyor, appraiser, 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.

3. The developer fee contained in the application will be the maximum fee recognized by the Agency at the time of cost certification. During the scoring and ranking process, if there is a tie score, one of the tie-breaker criteria is a lower developer fee. However, the developer fee should not go below a "floor" of eight percent.

(c) For projects over 25 units in size, where there is an identity of interest between the developer and contractor, applicants are limited in the amount of developer fees and contractor profit allowed in basis. The combined developer fee/general contractor profit may not exceed 18 percent of total cost minus land, working capital, marketing, escrows, operating deficit reserves, costs associated with syndication and step-in-the-shoes costs exceeding the acquisition price.

1. An identity of interest exists between the owner (or developer) and the general contractor if any of the following conditions exist:

i. When there is any financial interest between the developer and the general contractor;

ii. When one or more of the officers, directors, stockholders or partners of the developer is also an officer, director, stockholder or partner of the general contractor; or

iii. When any officer, director or stockholder of the developer has any interest whatsoever in the general contractor.

(d) The credit amount is determined by multiplying the qualified basis by the applicable percentage rate. It is the intention of this Plan to use nine percent as the applicable percentage rate for new construction and rehabilitation and four percent as the rate for acquisition and federally funded projects. NJHMFA reserves the right, as permitted by the tax credit regulations, to use an applicable rate below the maximum nine percent and four percent and to issue less than the maximum credit allocation otherwise supportable by the project's eligible basis. The applicable Federal rate of the month in which the building is placed in service or applicable Federal rate of the lock-in agreement will still appear on the building's 8609; however, the credit amount cannot exceed the amount NJHMFA allocated to the project. The issuance of tax credits or the determination of any allocation amount in no way represents or purports to warrant the feasibility or viability of the project by the NJHMFA.

(e) Financing arrangements will be evaluated to ensure that projects are not structured to artificially increase basis. Examples:

1. Drawing down entire bridge or secondary loans at construction closing instead of using such financing on an as needed basis.

2. Including accrued construction period interest from soft second loans in basis even though payment of the interest is deferred indefinitely as long as the building remains low income or until sale.

3. Assuming an interest rate far in excess of the market. (Secondary or bridge financing between corporate affiliates should not exceed prime plus two points). The excess interest charges in such cases will not be considered in eligible basis.

(f) While the tax law does not require allocating agencies to place restrictions on the development cost of any project, it does require them to consider the reasonableness of the developmental and operational costs of the project. The NJHMFA will examine building construction and land costs in comparison to the certified cost data on existing tax credit projects and other non-luxury multifamily housing in the same geographic areas. Consideration will be given to "high costs" projects provided that the costs are justifiable and reasonable under the circumstances and can be attributed to unique project characteristics (such as location in difficult-to-develop area, limited commercial space, or tenant services or common areas essential to the character of

the project) which are consistent with the housing needs and priorities of the allocation plan.

(g) The amount of contingency in eligible basis cannot exceed 10 percent of the total depreciable basis.

(h) Intermediary costs include, but are not limited to, developer fees (which include organizational costs and loan consultant fees), legal, planning, accounting, architectural and engineering fees, syndication costs and fees charged by negotiating agents (for example, realtors, etc.). They do not include those costs properly allocated to and payable by the syndicator (such as SEC registration and sales commissions). Pursuant to Internal Revenue Code 42(m)(2)(B)(iii), NJHMFA shall consider the percentage of the housing credit dollar amount used for project cost other than the cost of intermediaries but the intermediary cost standard shall not be applied so as to impede the development of projects in hard-to-develop areas.

Appendix

EXHIBIT 1

LIST OF URBAN AREAS FOR LOW–INCOME HOUSING TAX CREDITS

Asbury Park City

Bayonne City

Belleville Township

Bloomfield Township

Bridgeton City

Camden City

Carteret Borough

East Orange City

Elizabeth City

Garfield City

Glassboro Borough

Gloucester City

Gloucester Township

Hillside Township

Hoboken City

Irvington Township

Jersey City

Keansburg Borough

Kearny Town

Lakewood Township

Lindenwold Borough

Lodi Borough

Long Branch City

Millville City

Monroe Township (Gloucester)

Mount Holly Township

Neptune Township

New Brunswick City

Newark City

North Bergen Township

Old Bridge Township

Orange City Township

Passaic City

Paterson City

Paulsboro Borough

Pemberton Township

Penns Grove Borough

Pennsauken Township

Perth Amboy City

Phillipsburg Town

Plainfield City

Pleasantville City

Rahway City

Roselle Borough

Salem City

Trenton City

Union City

Vineland City

West New York Town

Willingboro Township

Winslow Township

Woodbridge Township

Woodbury City

EXHIBIT 2

IDENTITY OF INTEREST CERTIFICATION

☐ Application

☐ Placed in Service

An identity of interest exists between developer and general contractor, if any of the following conditions exist:

1. When there is any financial interest between the developer and the general contractor;
2. When one or more of the officers, directors, stockholders or partners of the developer is also an officer, director, stockholder or partner of the general contractor;
3. When any officer, director or stockholder of the developer has any interest whatsoever in the general contractor;
4. When the general contractor advances any funds to the developer.

The undersigned, as duly authorized representative of _, the developer and/or applicant for an allocation by the New Jersey Housing and Mortgage Finance Agency ("Agency") of Low Income Housing Tax Credit pursuant to Section 42 of the Internal Revenue Code of 1986, as amended, for the project known as

_____

certifies as follows:

☐ There is no Identity of Interest as described above between developer and the general contractor.

☐ There is an Identity of Interest as described above between developer and the general contractor.

Any applicant or recipient of tax credits which certifies to an identity of interest will be limited to a combined developer fee general contractor profit of 18% of total project cost less expenditures on land, working capital, marketing, escrows, operating deficit reserves, syndication, and costs associated with step-in the shoes basis exceeding acquisition price.

CERTIFICATION

I, _____, hereby represent and state that the foregoing information and any attachments thereto, to the best of my knowledge, are true and complete. I acknowledge that the New Jersey Housing and Mortgage Finance Agency is relying on the information contained herein and thereby acknowledge that the undersigned entity is under a continuing obligation, from the date of this Certification through the completion of the Project, to notify the Agency in writing of any changes to the answers or information contained herein. I acknowledge that I am aware that it is a criminal offense to make a false statement or misrepresentation in this certification, and if I do so, I recognize that I am and/or the undersigned entity is subject to criminal prosecution under the law.

Sworn and subscribed to before
the undersigned Notary Public
on the date appearing below

_____ _____ (L.S.)
Witness

_____
Print Name

_____
Print Title

(INDIVIDUAL OR PARTNERSHIP FORM)

BE IT REMEMBERED, that on _____, 199___,

before me, the subscriber, personally appeared _____, who, I am satisfied, the person named in and who executed the within Instrument, and thereupon he/she acknowledged that he/she signed, sealed and delivered the same as his/her act and deed, for the purposes therein expressed.

_____
Notary Public

(CORPORATE FORM)

BE IT REMEMBERED, that on _____, 199___, before me, the subscriber, personally appeared _____, who, being duly sworn on his/her oath, deposes and makes proof to my satisfaction, that he/she is the Secretary of _____, Corporation named in the within Instrument; that _____ is the President of said Corporation; that the execution, as well as the making of this Instrument, has been duly authorized by a proper resolution of the Board of Directors of the said Corporation; that deponent well knows the corporate seal of said Corporation; and that the seal affixed to said Instrument is the proper corporate seal and was thereto affixed and said Instrument signed and delivered by said President as and for the voluntary act and deed of said Corporation, in the presence of deponent, who thereupon subscribed his/her name thereto as attesting witness.

_____
Notary Public

EXHIBIT 3

SPONSOR'S CERTIFICATION

☐ Application

☐ Re–Application

☐ Carryover

☐ Placed in Service/Allocation

State of _____

SS.

County of _____

The undersigned, as the duly authorized representative of _____, the developer/applicant and/or the recipient of an allocation by the New Jersey Housing and Mortgage Finance Agency ("Agency") of a Low–Income Housing Tax Credit pursuant to Section 42 of the Internal Revenue Code of 1986 ("Code"), as amended, for the project known as _____ acknowledges and certifies as follows:

1. *You must check and complete one of the following:*

☐ It is anticipated that the project will be placed in service on, or prior to, December 31, ___

-OR-

☐ The project was placed in service on _____.

2. The developer/applicant/recipient fully intends to abide by all applicable federal laws and regulations relating to the Low–Income Housing Tax Credit.

3. The developer/applicant/recipient is not relying on any Agency statements or representations as to the value of the allocation of the low-income housing tax credit, including, but not limited to, representations or statements concerning the initial and continuing project eligibility under applicable federal law, calculation of qualified basis and eligible basis, determination of whether federal subsidy is involved, term of the tax credit, term of the compliance, potential impact of future changes in federal law and applicability of recapture requirements and penalties.

4. The developer/applicant/recipient must enter into an extended low-income housing commitment with the Agency pursuant to Section 42(h)(6) of the Code in which the taxpayer and his/her successors agree to meet the elected set aside and the applicable fraction of low-income occupancy for an extended use period of at least fifteen years beyond the fifteen-year compliance period (subject to possible termination of the extended use period under circumstances described in the Code). The agreement incorporates a Deed of Easement and Restrictive Covenant to be executed by the tax credit recipient and recorded by the Agency. The Deed of Easement and Restrictive Covenant must be executed in the form required by the Agency and delivered to the Agency prior to the time of allocation (IRS Form 8609). It is further acknowledged that the terms of the Deed of Easement and Restrictive Covenant will be enforceable by the Agency or by qualified prospective, present or former low-income occupants of the Project in the state courts during the extended use period. The Deed of Easement and Restrictive Covenant may have a negative effect on the future value of the Project.

The undersigned further acknowledges that the developer/applicant/recipient will need the consent of any present mortgage holders on the subject property to record the restrictive covenant since any foreclosing taxpayer may neither evict without cause nor increase the gross rent on low-income units until three years after he/she forecloses on the project and terminates the extended use period.

5. The development costs of the project (as of this time) as detailed in the attached breakdown of costs and basis were prepared by the developer/applicant/recipient or his/her agents and are accurate to best of his/her knowledge. All funding commitments recited in the Agency Low–Income Tax Credit Application are firm commitments.

6. Section 42(m)(2) of the Code dictates that the housing credit agency shall not allocate tax credits exceeding the amount needed for project feasibility. Consequently, the developer/applicant/recipient consents with this certification to a possible reduction of credits subsequent to needs analyses conducted by HMFA at carryover and placed in service dates.

7. If this is a reapplication, *you must check one of the following*:

☐ Project did not receive full credit amount supportable by the project's eligible basis in a prior year

☐ Project did not receive allocation in a previous cycle

☐ Project is seeking additional credits

8. If this is a reapplication, *you must check one of the following:*

☐ NO changes to the previously submitted application have been made.

☐ Changes have been made in this reapplication. Documentation substantiating these changes are included with this reapplication as specified by the Qualified Allocation Plan.

I understand that it is a criminal offense to make a false statement or a purposely misleading statement on this Certification and that if I do, I and the entity which I represent, will be subject to criminal prosecution, possible loss of tax credit allocation, and disqualification from future participation in the Low Income Housing Tax Credit Program in New Jersey.

Sworn and subscribed to
before the undersigned
Notary Public on the date
appearing below:

_____ _____ (L.S.)
Witness (Secretary of Corporation)

_____
(Print Name and Title)

ACKNOWLEDGEMENT

(INDIVIDUAL OR PARTNERSHIP FORM)

BE IT REMEMBERED, that on _____, 199___,

before me, the subscriber, personally appeared, _____

who, I am satisfied, is the person named in and who executed the within Instrument, and thereupon he/she acknowledged that he/she signed, sealed and delivered the same as his/her act and deed, for the uses and purposes therein expressed.

_____

Notary Public

(CORPORATE FORM)

BE IT REMEMBERED, that on _____, 199___,

before me, the subscriber, personally appeared _____,

who, being by me duly sworn on his/her oath, deposes and makes proof to my satisfaction, that he/she is the Secretary of _____

the Corporation named in the within Instrument; that

_____ is the President of said Corporation; that

the execution, as well as the making of this Instrument, has been duly authorized by a proper resolution of the Board of Directors of the said Corporation; that deponent well knows the corporate seal of said Corporation; and that the seal affixed to said Instrument is the proper corporate seal and was thereto affixed and said Instrument signed and delivered by said President as and for the voluntary act and deed of said Corporation, in the presence of deponent, who thereupon subscribed his/her name thereto as attesting witness.

_____

Notary Public