

abatement (if applicable) and the negative point categories; and a sponsor certification and breakdown of costs and basis. A copy of the appraisal/market study required by the applicant's lender and/or syndicator may be submitted in lieu of the market study required at N.J.A.C. 5:80-33.12(c)1ii.

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

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

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

4. Projects that would have received negative points under N.J.A.C. 5:80-33.15(a)16, 18 or 19 shall not be issued tax credits until such items are corrected.

5. Projects that receive volume cap credits shall pay an allocation/issuance fee as described at N.J.A.C. 5:80-33.25.

(b) If a municipality has granted a density bonus to assist the low- or moderate-income units in a project, the project may not receive volume cap credits unless the applicant can conclusively demonstrate that the market rate residential or commercial units are unable to internally subsidize the affordable units despite the density bonus and the affordable units are developed contemporaneously with the commercial or market rate residential units. In evaluating these criteria, NJHMFA shall adopt the standards as promulgated by the DCA for similar types of projects seeking Balanced Housing funds. This subsection shall not be evaded by failing to apply all or any portion of the subsidy to the low- or moderate-income units, by diverting all or any portion of the subsidy to other uses or by using any other device in which all or any portion of the subsidy is not used to benefit low- or moderate-income housing.

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

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

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

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

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

In (a), changed N.J.A.C. references throughout, added the last sentence in the introductory paragraph, and added the last sentence in 1. Former N.J.A.C. 5:80-33.10, Reserve, recodified to N.J.A.C. 5:80-33.9. Amended by R.2000 d.132, effective March 20, 2000.

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

Added paragraph (b).

In (a), rewrote the fourth sentence in the introductory paragraph, and changed N.J.A.C. reference in 4; and added (b).

Amended by R.2001 d.170, effective May 21, 2001.

See: 32 N.J.R. 932(a), 33 N.J.R. 1573(b).

In (a), inserted "except the eligibility requirement at N.J.A.C. 5:80-33.13(c)8 concerning strategic neighborhood plan;" following NJAC reference; added (a)5.

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

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

In (a), inserted ", ENERGY STAR Homes participation (new construction projects only)" following "(if applicable)" and amended N.J.A.C. reference in the introductory paragraph and amended N.J.A.C. reference in 4.

Recodified from N.J.A.C. 5:80-33.10 and amended by R.2003 d.300, effective July 21, 2003.

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

In (a), introductory paragraph inserted "of the Code" following "Section 42(m)(1)(D)", substituted "33.12" for "33.13 except the eligibility requirement at N.J.A.C. 5:80-33.13(c) concerning strategic neighborhood plan", amended N.J.A.C. references throughout. Former N.J.A.C. 5:80-33.9, Reserve, recodified to N.J.A.C. 5:80-33.8.

Amended by R.2008 d.133, effective May 19, 2008.

See: 40 N.J.R. 839(a), 40 N.J.R. 2429(b).

In the introductory paragraph of (a), substituted the first occurrence of "shall" for "should" and inserted "at least one month"; and in (a)4, updated the N.J.A.C. reference.

Amended by R.2009 d.154, effective May 4, 2009.

See: 41 N.J.R. 917(a), 41 N.J.R. 1994(a).

Rewrote (b).

Amended by R.2013 d.086, effective June 17, 2013.

See: 45 N.J.R. 530(a), 45 N.J.R. 1511(a).

In (b), substituted "granted" for "created" and "DCA" for "Department of Community Affairs", and deleted "subsidy" following the first occurrence of "density bonus".

5:80-33.10 Application fee schedule

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

1. An application fee of \$2,500 shall be paid by applicants for projects applying to the Family, Senior or Supportive Housing Cycle, and any first-time applications to the Final Cycle, as well as for projects applying for volume cap tax credits.

2. A reapplication fee of \$100.00 for projects requesting credits from the Reserve and for projects that applied to the Family, Senior or Supportive Housing Cycle, which did not receive a reservation of credits and wish to reapply in the Final Cycle of the same allocation year. Projects that are in essence new projects (for example, changes in the project composition, sites, or owner or developer entities) shall submit a new application fee.

(b) Application fees and reapplication fees are non-refundable.

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

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

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

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

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

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

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

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

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

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

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

In (a)2, substituted "owner" for "sponsor" following "sites, or".

Recodified from N.J.A.C. 5:80-33.11. and amended by R.2003 d.300, effective July 21, 2003.

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

In (a)1, substituted "\$2,500" for "\$1,000" "Family, Senior" for "Urban, Suburban/Rural, HOPE VI" throughout. Former N.J.A.C. 5:80-33.10, Volume cap credits, recodified to N.J.A.C. 5:80-33.9.

Amended by R.2006 d.112, effective March 20, 2006.

See: 37 N.J.R. 3879(a), 38 N.J.R. 1432(a).

In (a)1 and 2, substituted "Supportive Housing" for "Special Needs".

Amended by R.2009 d.154, effective May 4, 2009.

See: 41 N.J.R. 917(a), 41 N.J.R. 1994(a).

In (a)2, deleted "is due" preceding and "hardship" following "for projects requesting" and deleted a comma following "reservation of credits".

5:80-33.11 Cycle deadlines

(a) Application cycles shall be announced by NJHMFA via notices sent to the mailing list maintained by the Tax Credit Division no later than 45 days prior to the deadline. Applications shall be accepted beginning one month prior to the deadline date. Applications shall be submitted to NJHMFA by 12 noon of the application deadline date in order to be considered for review. Late and substantially incomplete applications shall not be admitted into a cycle. Late applications shall be returned to the applicant.

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

(c) Applicants shall be given 48 hours to cure defects as follows, except for applications that NJHMFA deems to be substantially incomplete:

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

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

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

(d) Except for applications that NJHMFA deems to be substantially incomplete, NJHMFA shall notify the applicant of any curable defects it discovers by telephone and, simultaneously, in writing by electronic mail (e-mail). The applicant's corrective submission shall not be considered unless it is received by NJHMFA no later than 48 hours (excluding weekends and legal holidays) from the applicant's receipt of the e-mail. No application will receive more than one notice for a curable defect. A project that has previously applied for competitive credits (a reapplication) may receive notification of a curable defect regardless of whether such project has received notification in the past.

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

(f) If an applicant fails to respond to NJHMFA's notification of curable defects within the 48-hour cure period, or if an applicant's response is non-responsive to the question asked, a negative inference shall be drawn. Failure to respond to an item in a cure letter will result in the denial of points if the question is with respect to a point category; negative points if with respect to the point categories at N.J.A.C. 5:80-33.15(a)15 to 19; or ineligibility if with respect to an eligibility requirement.

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

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

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

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

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

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

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

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

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

In (f), changed N.J.A.C. reference.

Amended by R.2001 d.170, effective May 21, 2001.

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

In (a), inserted "Applications shall be submitted to NJHMFA by 12 noon of the application deadline date in order to be considered for law review" and "(see definition)"; in (c), inserted "(see definition)" following "incomplete"; in (e), inserted "for each defect cured" following "point".

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

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

In (f), amended N.J.A.C. reference.

Recodified from N.J.A.C. 5:80-33.12 and amended by R.2003 d.300, effective July 21, 2003.

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

In (a), inserted "date" preceding the third sentence, deleted "(see definition)" following "incomplete"; in (f) substituted "Failure" for "For