

CHAPTER 43

NEIGHBORHOOD PRESERVATION BALANCED HOUSING PROGRAM

Authority

N.J.S.A. 52:27D-320.

Source and Effective Date

R.2006 d.11, effective November 30, 2005.
See: 37 N.J.R. 2757(a), 38 N.J.R. 126(a).

Chapter Expiration Date

Chapter 43, Neighborhood Preservation Balanced Housing Program, expires on November 30, 2010.

Chapter Historical Note

Chapter 43, Neighborhood Preservation Balanced Housing Program, was originally codified in Title 5 as Chapter 14, Neighborhood Preservation Balanced Housing Program. Chapter 14 was adopted as R.1985 d.688, effective January 21, 1986. See: 17 N.J.R. 2489(a), 18 N.J.R. 162(a). Subchapter 4, Affordability Controls, was adopted by R.1989 d.588, effective December 4, 1989. See: 21 N.J.R. 2153(a), 21 N.J.R. 3740(b).

Pursuant to Executive Order No. 66(1978), Chapter 14, Neighborhood Preservation Balanced Housing Program, was readopted as R.1990 d.604, effective November 9, 1990. See: 22 N.J.R. 1700(b), 22 N.J.R. 3734(a).

Pursuant to Executive Order No. 66(1978), Chapter 14, Neighborhood Preservation Balanced Housing Program, was readopted as R.1995 d.594, effective October 26, 1995. See: 27 N.J.R. 3256(a), 27 N.J.R. 4698(a).

Pursuant to Reorganization Plan No. 002-1998, Chapter 14, Neighborhood Preservation Balanced Housing Program, was recodified as N.J.A.C. 5:43, effective July 1, 1998. See: 30 N.J.R. 1347(a), 30 N.J.R. 2644(a).

Pursuant to Executive Order No. 66(1978), Chapter 43, Neighborhood Preservation Balanced Housing Program, was readopted as R.2000 d.464, effective October 25, 2000. See: 32 N.J.R. 1457(a), 32 N.J.R. 4103(a).

Subchapter 5, Multifamily Housing Preservation and Receivership, and Appendix K were adopted as new rules R.2005 d.268, effective September 6, 2005. See: 36 N.J.R. 4575(a), 37 N.J.R. 3288(a).

Chapter 43, Neighborhood Preservation Balanced Housing Program, was readopted by R.2006 d.11, effective November 30, 2005. See: Source and Effective Date.

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. GENERAL PROVISIONS

- 5:43-1.1 Purpose
- 5:43-1.2 Severability
- 5:43-1.3 Eligible applicants
- 5:43-1.4 Eligible activities
- 5:43-1.5 Definitions
- 5:43-1.6 Waiver
- 5:43-1.7 Maximum allowable project fees

SUBCHAPTER 2. FUNDING

- 5:43-2.1 Funding cycles and application procedures
- 5:43-2.2 Allocation of funds
- 5:43-2.3 Cost criteria
- 5:43-2.4 Review criteria
- 5:43-2.5 (Reserved)

SUBCHAPTER 3. FUNDING CRITERIA

- 5:43-3.1 General provisions
- 5:43-3.2 Types of projects
- 5:43-3.3 Permanent housing for persons with handicaps projects
- 5:43-3.4 Rental projects
- 5:43-3.5 Two-family projects
- 5:43-3.6 Homeownership projects
- 5:43-3.7 Acquisition/rehabilitation projects
- 5:43-3.8 Section 202, Section 811 and non-HOPE VI public housing new construction projects
- 5:43-3.9 Neighborhood rehabilitation projects
- 5:43-3.10 Landlord projects
- 5:43-3.11 Matching funds projects
- 5:43-3.12 HOPE VI projects
- 5:43-3.13 Neighborhood stabilization/revitalization projects
- 5:43-3.14 Other projects

SUBCHAPTER 4. AFFORDABILITY CONTROLS

- 5:43-4.1 Affordability control provisions
- 5:43-4.2 Affordable Housing Agreement
- 5:43-4.3 Sales units
- 5:43-4.4 Owner-occupied Neighborhood Rehabilitation Projects
- 5:43-4.5 Rental units
- 5:43-4.6 Procedures for establishing eligibility for occupancy
- 5:43-4.7 Foreclosure
- 5:43-4.8 Violations, defaults and remedies
- 5:43-4.9 Effective dates for affordability controls
- 5:43-4.10 Applicability

SUBCHAPTER 5. MULTIFAMILY HOUSING PRESERVATION AND RECEIVERSHIP

- 5:43-5.1 Scope
- 5:43-5.2 Insurance
- 5:43-5.3 Surety bonds
- 5:43-5.4 Qualification for registration of qualified entities

APPENDIX A. (RESERVED)

APPENDIX B. DISTRESSED URBAN MUNICIPALITIES—MAXIMUM SUBSIDY RENTAL UNITS

APPENDIX C. NON DISTRESSED URBAN MUNICIPALITIES—MAXIMUM SUBSIDY RENTAL UNITS

APPENDIX D. DISTRESSED URBAN MUNICIPALITIES—MAXIMUM SUBSIDY HOMEOWNERSHIP UNITS

APPENDIX E. NON DISTRESSED URBAN MUNICIPALITIES—MAXIMUM SUBSIDY HOMEOWNERSHIP UNITS

APPENDIX F. CONTRACTOR'S FEE SCHEDULE

APPENDIX G. ENERGY EFFICIENT UNIT/ENERGY STAR

APPENDIX H. (RESERVED)

APPENDIX I. DESIGN GUIDELINES

APPENDIX J. DISTRESSED URBAN MUNICIPALITIES

APPENDIX K. INSURANCE SPECIFICATIONS MINIMUM REQUIREMENTS PROPERTY AND LIABILITY

SUBCHAPTER 1. GENERAL PROVISIONS

5:43-1.1 Purpose

The purpose of the Neighborhood Preservation Balanced Housing Program shall be to assist in the delivery of housing affordable to low and moderate income households in viable neighborhoods, in conformance with the State Development and Redevelopment Plan and in fulfillment of Section 20 of the Fair Housing Act of 1985, as amended.

Amended by R.1992 d.144, effective April 6, 1992.

See: 23 N.J.R. 1075(a), 24 N.J.R. 1385(a).

NPBHP assists in delivery of services.

Amended by R.1998 d.438, effective September 8, 1998.

See: 30 N.J.R. 1880(a), 30 N.J.R. 3239(b).

Inserted “; in conformance with the State Development and Redevelopment Plan and” in the first sentence.

Amended by R.2002 d.325, effective October 7, 2002.

See: 33 N.J.R. 3261(a), 34 N.J.R. 3500(a).

Inserted “, as amended” following “1985” in the former first sentence; deleted the former second sentence.

5:43-1.2 Severability

If any part of this chapter shall be held invalid, the holding shall not affect the validity of the remaining part of these rules. If a part of these rules is held invalid in one or more of its applications, the rules shall remain in effect in all valid applications that are severable from the invalid application.

New Rule, R.1996 d.226, effective May 20, 1996.

See: 28 N.J.R. 6(a), 28 N.J.R. 2573(a).

Former section, “Eligible applicants”, recodified to 5:14-1.3.

5:43-1.3 Eligible applicants

(a) Municipal governments shall be the only eligible applicants to the Neighborhood Preservation Balanced Housing Program.

(b) Applications shall only be accepted from municipalities meeting at least one of the following criteria:

1. The municipality has petitioned the Council on Affordable Housing for substantive certification;
2. The municipality has received substantive certification from the Council on Affordable Housing;
3. The municipality has entered into a judicially-approved compliance agreement to settle its fair share housing obligation;
4. The municipality is subject to a court-ordered builder’s remedy;
5. The municipality has been designated as a receiving municipality under a regional contribution agreement and project plan approved by the Council on Affordable Housing; or
6. The municipality has, at any time since Fiscal Year 1988, been eligible to receive State aid pursuant to P.L. 1978, c.14 (N.J.S.A. 52:27D-178 et seq.).

(c) Applicants that are eligible in accordance with (b)1 above only shall not be eligible to receive program funding

until the municipality’s Fair Share Plan has received substantive certification from the Council on Affordable Housing.

(d) Applicants that are eligible in accordance with (b)4 above, shall not be eligible to receive a funding commitment or program funding until the municipality’s Fair Share Plan has been judicially approved by the issuance of a judgment of repose.

Amended by R.1989 d.143, effective March 20, 1989.

See: 21 N.J.R. 3(a), 21 N.J.R. 750(a).

(b) and (c) added; established application and funding criteria for on or after July 1, 1989.

Amended by R.1992 d.144, effective April 6, 1992.

See: 23 N.J.R. 1075(a), 24 N.J.R. 1385(a).

References to July 1, 1989 deleted.

Recodified from 5:14-1.2 and amended by R.1996 d.226, effective May 20, 1996.

See: 28 N.J.R. 6(a), 28 N.J.R. 2573(a).

Former section, “Eligible activities”, recodified to 5:14-1.3.

Amended by R.1998 d.438, effective September 8, 1998.

See: 30 N.J.R. 1880(a), 30 N.J.R. 3239(b).

Added (c) and (d).

Amended by R.2002 d.325, effective October 7, 2002.

See: 33 N.J.R. 3261(a), 34 N.J.R. 3500(a).

In (d), inserted “a funding commitment” preceding “or program”.

5:43-1.4 Eligible activities

(a) Eligible activities shall include those activities listed below:

1. Rehabilitation of substandard housing units occupied or to be occupied by low and moderate income households;
2. Creation of accessory apartments to be occupied by low and moderate income households;
3. Conversion of nonresidential space to residential purposes provided more than 20 percent of the resulting housing units are to be occupied by low and moderate income households;
4. Acquisition of real property; demolition and removal of buildings; or construction of new housing that will be occupied by low and moderate income households, or any combination thereof;
5. Grants of assistance to eligible municipalities for costs of necessary studies, surveys, plans and permits, engineering, architectural and other technical services, cost of land acquisition and any buildings thereon, and cost of site preparation, demolition and infrastructure development for projects undertaken pursuant to an approved Regional Contribution Agreement;
6. Assistance to a local housing authority, nonprofit or limited dividend housing corporation or association, or a qualified entity acting as a receiver under P.L. 2003, c. 295 (N.J.S.A. 2A:42-114 et al.), for rehabilitation or restoration of housing units which it administers which:
 - i. Are unusable or in a serious state of disrepair;
 - ii. Can be restored in an economically feasible and sound manner; and

iii. Can be retained in a safe, decent and sanitary manner, upon completion of rehabilitation or restoration; and

7. Other housing programs for low and moderate income housing including infrastructure projects directly facilitating the construction of low and moderate income housing not to exceed a reasonable percentage of the construction costs of the low and moderate income housing to be provided.

(b) A proposed activity shall only be considered eligible if the units produced meet the criteria necessary at N.J.A.C. 5:93 to qualify for credit from the Council on Affordable Housing.

(c) The required affordable portion of any mixed income/use development which is located in a non-urban aid municipality shall not be eligible for Balanced Housing funding.

1. A project will be considered eligible for funding if 100 percent of the units are affordable and if the project is not identified, by sale or transfer or any other means, with an inclusionary development.

(d) Balanced Housing funds shall not be used for the sole purpose of converting public housing to homeownership.

(e) Balanced Housing funds shall not be used for the payment of court ordered judgments or governmentally imposed fines levied against subject properties.

Amended by R.1992 d.144, effective April 6, 1992.

See: 23 N.J.R. 1075(a), 24 N.J.R. 1385(a).

References to "substantial percentage" deleted.

Recodified from 5:14-1.3 and amended by R.1996 d.226, effective May 20, 1996.

See: 28 N.J.R. 6(a), 28 N.J.R. 2573(a).

Former section, "Definitions", recodified to 5:14-1.5.

Amended by R.2002 d.325, effective October 7, 2002.

See: 33 N.J.R. 3261(a), 34 N.J.R. 3500(a).

In (c), rewrote the introductory paragraph; added (e).

Amended by R.2005 d.277, effective September 6, 2005.

See: 36 N.J.R. 4575(a), 37 N.J.R. 3288(a).

In (a), added ", or a qualified entity acting as a receiver under P.L. 2003, c.295 (N.J.S.A. 2A:42-114 et al.)" following "association" in 6.

5:43-1.5 Definitions

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

"Adjusted rent" means the base rent for a rental unit adjusted by the Index.

"Affordable" means capable of being afforded without undue burden by an eligible household. A rental unit shall be considered "affordable" if the monthly rent, including the estimated cost of utilities paid by the tenant, does not exceed 30 percent of an eligible household's income. Homeowner units shall be considered "affordable" if the monthly carrying

costs, including principal and interest (based on a mortgage equal to 95 percent of the purchase price and a market rate of interest), taxes, homeowner and private mortgage insurance and condominium fees, do not exceed 28 percent of an eligible household's income. Except as modified in accordance with N.J.A.C. 5:43-3.1(h)4, in calculating the affordability of both homeowner and rental units the following occupancy is assumed: a studio is occupied by a one person household; a one bedroom unit is occupied by a one and one-half household; a two bedroom unit is occupied by a three person household; a three bedroom unit is occupied by a four and one-half person household; and a four bedroom unit is occupied by a six person household.

"Affordable housing agreement" means the written agreement between an owner of an affordable housing unit and the Department that imposes restrictions on units developed with funding from the Neighborhood Preservation Balanced Housing Program to ensure that those housing units remain affordable to households of low and moderate income for a specified period of time.

"Alteration" means the rearrangement of any space by the construction of walls or partitions, the addition or elimination of any door or window, the extension or rearrangement of any system, the installation of any additional equipment or fixtures and any work which affects a primary structural component.

"Applicant household" means a household that has submitted a Preliminary Application for an eligibility review.

"Assessments" means all taxes, levies, or charges, both public and private, including those charges by any condominium, cooperative or homeowner's association as the applicable case may be, imposed upon the affordable housing unit.

"Balanced Housing units" means those units within a project receiving Balanced Housing funds which are subject to affordability controls in accordance with N.J.A.C. 5:43-4 or a mortgage in accordance with N.J.A.C. 5:43-4, regardless of whether such controls or mortgages are waived or modified.

"Base price" means the initial sales price of a unit designated as owner-occupied affordable housing and restricted by affordability controls.

"Base rent" means the monthly charge established for a rental unit at the time the unit is first restricted by affordability controls.

"Cash flow" means the remainder of project revenue minus expenses.

"Certified household" means any eligible household whose total gross annual income has been verified, whose financial resources have been approved and who has received

certification as a low or moderate income-eligible household for referral to an affordable housing unit.

“Closing costs” means those costs of a real estate sale that are incurred by the buyer and seller at the time of sale including, but not limited to attorney’s fees, mortgage points, real estate transfer fee, and applicable real estate broker fees.

“Department” means the Department of Community Affairs.

“Design considerations” mean projects that have been designed to harmonize architecturally with the surrounding buildings and neighborhood. (See chapter Appendix I, incorporated herein by reference, for further details.)

“Distressed urban municipality” means a municipality which is eligible for State aid pursuant to P.L. 1978, c.14 (N.J.S.A. 52:27D-178 et seq.) and is within the first 50 most distressed municipalities in accordance with the Municipal Distress Index as maintained and published by the Office of State Planning. A list of these municipalities is included in chapter Appendix J, incorporated herein by reference.

“Division” means the Division of Housing and Community Resources in the Department of Community Affairs.

“Eligible household” means a household whose preliminary application has been reviewed, whose unverified estimated total gross annual income is judged to be low or moderate income pursuant to applicable guidelines, and whose name has been placed on a referral list for affordable housing.

“Eligible neighborhood” means a neighborhood that is viable, as defined by N.J.S.A. 52:27D-143 et seq. (P.L. 1975, c.248), the Maintenance of Viable Neighborhoods Act, a target area or a currently non-viable neighborhood provided that there is in place a strategy that is realistic and financially feasible which will ensure that the neighborhood will be viable within a reasonable time of project completion. Included in any such strategy shall be a plan for ameliorating crime, blight, high vacancy rates and any other factors that might have a negative impact on the long term viability of the neighborhood and a proposed project.

“Energy efficient housing unit” means a housing unit that achieves 86 points or more on the Home Energy Rating Scale (HERS) or is certified as an “Energy Star Home” by an accredited home energy rater. See chapter Appendix G, incorporated herein by reference.

“Expenses” means the sum of all cash expenditures incurred in the operation of a project including:

1. Debt service on superior mortgages;
2. Expenses unpaid but properly accrued; and
3. Payments to the projects reserve accounts.

“First money mortgagee” means the holder and/or assigns of the first money mortgage which must also be an institutional lender or investor, licensed or regulated by a State or Federal government or an agency thereof.

“Foreclosure” means the termination through legal processes of all rights of the mortgagor or the mortgagor’s heirs, successors, assigns or grantees in a restricted Affordable Housing unit covered by a recorded mortgage.

“Gross annual income” means the total calculated amount of a household’s income from all sources including, but not limited to, salary, wages, regular overtime, interest, dividends, alimony, child support, pensions, social security, unemployment, disability, business income and capital gains, tips and welfare benefits. Income is calculated based on a weekly, bi-weekly, semi-monthly, or monthly figure that is effective at the time of the certification interview and estimated for a 12-month period.

“Gross rent” means the total cost of a rental unit to a certified household when a tenant-paid utility allowance is added to the base rent.

“Household” means the person or persons occupying a housing unit.

“Index” means the measured percentage of change in the median income established for a household of four by geographic region using the applicable median income guide published periodically by the U.S. Department of Housing and Urban Development as blended by COAH region and approved for use by the N.J. Council on Affordable Housing. For rental units, “Index” means the Consumer Price Index for Housing as published monthly by the U.S. Department of Labor Statistics and approved for use by the Council on Affordable Housing. For rental units receiving Low Income Housing Tax Credits, “Index” means the measured percentage of change in the capped Section 8 Income Limits published periodically by the U.S. Department of Housing and Urban Development.

“Low income household” means a household whose gross annual income is equal to 50 percent or less of the median gross income established by geographic region and household size using income figures and family size adjustment methodology published periodically in the Federal Register by the U.S. Department of Housing and Urban Development and approved for use by the Council on Affordable Housing.

“Low Income Housing Tax Credit (LIHTC)” means the credit, established by Section 42 of the Internal Revenue Code of 1986, 26 U.S.C. § 42, that may be applied against the Federal income tax of persons or associations who or which have invested in certain buildings providing housing for families of low-income. As the housing credit agency for the State of New Jersey, the New Jersey Housing and Mortgage Finance Agency (NJHMFA) allocates these credits to qualified taxpayers and thereafter monitors their compliance with Section 42 of the Code. The rules used by NJHMFA to perform its allocation and monitoring responsibilities are set forth in the Qualified Allocation Plan (QAP). Each year, the Qualified Allocation Plan is published at N.J.A.C. 5:80-33. Two types of tax credits are described in the QAP. Credits issued in connection with buildings financed with the proceeds from tax exempt bonds subject to the volume cap restrictions provided in Section 42(h)(4) of the IRS code are not allocated on a competitive basis and are referred to as “volume cap tax credits.” Those credits which are issued in accordance with the State housing credit ceiling, are awarded through competitive cycles described in the QAP, and referred to in the chapter as the “competitive tax credits.”

“Mixed income/use development” means a development which contains both affordable and either market housing units and/or commercial development and, wherein, the permits and approvals for the non-affordable portion of the development are bound by the requirement that the affordable portion also be built.

“Moderate income household” means a household whose gross annual income is equal to more than 50 percent but less than 80 percent of the median gross income established by geographic region and household size using income figures and family size adjustment methodology published periodically in the Federal Register by the U.S. Department of Housing and Urban Development and approved for use by the Council on Affordable Housing.

“Moderate rehabilitation” means the repair, renovation and/or alteration of a unit.

“Neighborhood” means an area which is recognized as a distinct entity by virtue of certain factors, such as: definite boundaries, natural or man-made; history; architecture; facilities which attract people within a certain radius; or a shared sense of identity or social cohesion. This definition is equally applicable to neighborhoods in urban, suburban, and rural communities.

“New unit” means any unit that has been constructed, reconstructed or created through the conversion of a non-residential building within the three years preceding submission of an application, meets all applicable code requirements and has not been occupied since the time of its construction or reconstruction.

“Owner” means the title holder of record as reflected in the most recently dated and recorded deed for the particular affordable housing unit.

“Pilot program” means a trial program of limited duration established by the Commissioner which will further the purpose of the Fair Housing Act and which may require waiver of specific provisions of these rules.

“Price differential” means the total amount of the unrestricted sales price that exceeds the maximum restricted resale price as calculated by the Index. The unrestricted sales price shall be no less than a comparable fair market price as determined by the Division at the time a Notice of Intent to Sell has been received from the owner.

“Primary residence” means the unit wherein a certified household maintains continuing residence for no less than nine months each calendar year.

“Purchaser” means a certified household who has signed an agreement to purchase an affordable housing unit subject to a mortgage commitment and closing.

“Range of affordability” means the household income, expressed as a percentage of the median income, at which a given unit is affordable.

“Reconstruction” means any project where the extent and nature of the work is such that the work area cannot be occupied while the work is in progress and where a new certificate of occupancy is required before the work area can be reoccupied. Reconstruction may include repair, renovation, alteration or any combination thereof. Reconstruction shall not include projects comprised only of floor finish replacement, painting or wallpapering, or the replacement of equipment or furnishings. Asbestos hazard abatement and lead hazard abatement projects shall not be classified as reconstruction solely because occupancy of the work area is not permitted.

“Rehabilitation” means the repair, renovation, alteration or reconstruction of any building or structure as defined herein and as defined in N.J.A.C. 5:23-6.3.

“Renovation” means the removal and replacement or covering of existing interior or exterior finish, trim, doors, windows or other materials with new materials that serve the same purpose and do not change the configuration of space. Renovation shall include the replacement of equipment or fixtures.

“Renter” means a household who has been certified for an affordable housing unit for rent subject to the signing of a lease and the payment of any required security deposit.

“Repair” means the restoration to a good or sound condition of materials, systems and/or components that are worn, deteriorated or broken using materials or components identical to or closely similar to the existing.

"Repayment lien" means the second mortgage and note signed by the owner that is given to the Division as security for the payment of 95 percent of the price differential generated by the first non-exempt sale of an affordable housing sales unit at the time of closing and transfer of title of the property after the ending date established in the Affordable Housing Agreement.

"Resale price" means the base price as adjusted by the Index. The resale price may also be adjusted to accommodate an approved home improvement. In the case of central air conditioning installed after the initial sale, the adjustment shall be the cost of the unit installed minus $\frac{1}{120}$ of that cost for each month of use up to the end of the tenth year.

"Revenue" means the sum of all cash received from project operations, including, but not limited to:

1. Tenant paid rents;
2. Commercial income and/or lease payments;
3. The net proceeds of any insurance payments which are not reinvested in the property; and
4. Any other funds, including reserve accounts which are deemed available for distribution by the owner.

"Senior citizen" means any person age 62 years or older.

"Single room occupancy unit (SRO)" means a unit within a structure in which households maintain private rooms yet share kitchen and plumbing facilities, central heat and common areas.

"Standard" means a building which has been repaired in whole or in part with Balanced Housing funds and certified by the local construction official or other public official having jurisdiction to be free of code violation in accordance with the standards adopted under the Uniform Construction Code, N.J.A.C. 5:23, and the Section 8 Existing Housing Quality Standards.

"Substandard" means a building which has been certified as substandard by a municipality. The certification must state that health and safety code violations exist and that, in order to abate those code violations, one or more of the following major systems must be replaced or extensively repaired: roof, electrical, plumbing, sanitary plumbing, heating or load bearing structural systems.

"Sustainable development strategies" means those strategies which minimize the impact of housing developments on the environment, provide building designs which enhance the health, safety and well-being of the residents, providing durable, low-maintenance housing and make optimum use of exiting infrastructure. (See chapter Appendix H, incorporated herein by reference, for further details.)

"System" means the primary structural, mechanical, plumbing, electrical, fire protection, or occupant service components of a building including any equipment, fixtures, connections, conduits, wires, pipes, ducts, as well as any associated sensors, controls, distribution or safety elements.

"Target areas" means those geographic areas or neighborhoods that have been designated by the Governor, Commissioner and/or the State Planning Commission as locations appropriate for intensive redevelopment. For example, designated Empowerment Zones and Enterprise Communities; areas formally designated by the State Planning Commission as State Plan centers and those communities that have an endorsed Strategic Revitalization Plan; designated neighborhoods within municipalities participating in the Department's Strategic Neighborhood Assistance Programs; designated areas within municipalities selected by the Governor's Urban Coordinating Council to enter into a partnership with the State to organize and implement strategic revitalization plans; and municipalities that have adopted a neighborhood-based strategic community revitalization plan that addresses the specific needs of a neighborhood.

"Urban Aid Municipality" means any municipality eligible for Balanced Housing funding in accordance with N.J.A.C. 5:43-1.2(b)6.

Amended by R.1992 d.144, effective April 6, 1992.
See: 23 N.J.R. 1075(a), 24 N.J.R. 1385(a).

Definitions for affordable, balanced housing units, Division, eligible household, eligible neighborhood, equity, moderate rehabilitation, neighborhood, new unit, physical value, range of affordability, senior citizen, single room occupancy (SRO), substandard, and substantial rehabilitation added; housing region deleted; low and moderate income households amended.

Amended by R.1995 d.339, effective June 19, 1995.
See: 27 N.J.R. 1508(a), 27 N.J.R. 2385(a).

Added the definition of "Urban Aid Municipality".
Amended by R.1995 d.594, effective November 20, 1995.
See: 27 N.J.R. 3256(a), 27 N.J.R. 4698(a).

Recodified from 5:14-1.4 and amended by R.1996 d.226, effective May 20, 1996.

See: 28 N.J.R. 6(a), 28 N.J.R. 2573(a).

Former section, "Waiver", recodified to 5:14-1.6.
Amended by R.1998 d.438, effective September 8, 1998.
See: 30 N.J.R. 1880(a), 30 N.J.R. 3239(b).

Inserted "Alteration", "Reconstruction", "Rehabilitation", "Renovation", "Repair" and "System"; rewrote "Eligible neighborhood" and "Moderate rehabilitation"; in "New unit", substituted references to reconstruction for references to substantial rehabilitation; and deleted "Physical value" and "Substantial rehabilitation".

Amended by R.2002 d.325, effective October 7, 2002.
See: 33 N.J.R. 3261(a), 34 N.J.R. 3500(a).

In "Affordable", inserted "and a market rate of interest" following "purchase price" and amended the N.J.A.C. reference; added "Cash flow", "Design considerations", "Distressed urban municipality", "Energy efficient housing unit", "Expenses", "Low Income Housing Tax Credit (LIHTC)", "Mixed income/use development", "Revenue", "Standard" and "Sustainable development strategies"; rewrote "Substandard".

5:43-1.6 Waiver

Any applicant desiring a waiver or release from the express requirements of any provision of this chapter may make such request, in writing, to the Department. A waiver shall be granted only by the Commissioner under extraordinary circumstances and provided that the applicant conclusively demonstrates that the waiver shall further the purposes of these rules and the Fair Housing Act and that the waiver shall provide a significant benefit to the residents of the State.

New Rule R.1992 d.144, effective April 6, 1992.

See: 23 N.J.R. 1075(a), 24 N.J.R. 1385(a).
 Recodified from 5:14-1.5 and amended by R.1996 d.226, effective May 20, 1996.
 See: 28 N.J.R. 6(a), 28 N.J.R. 2573(a).
 Rewrote section.
 Administrative correction.
 See: 37 N.J.R. 1783(a).

Amended by R.1992 d.144, effective April 6, 1992.
 See: 23 N.J.R. 1075(a), 24 N.J.R. 1385(a).
 Original text deleted; new text added, establishing competitive cycle for Neighborhood Rehab only.
 Amended by R.1996 d.226, effective May 20, 1996.
 See: 28 N.J.R. 6(a), 28 N.J.R. 2573(a).
 Rewrote section.

5:43-1.7 Maximum allowable project fees

- (a) The maximum contractor fee shall be determined in accordance with Appendix F, incorporated herein by reference.
- (b) The maximum per unit amount which may be taken out of the project as developer fee shall be calculated as follows:

Maximum Per Unit Developer Fee
 (in thousands of dollars)

Unit Size	A	B	C	D
Studio		5	7	
One bedroom	5	7	9	10
2 bedroom	6	8	10	11
3 bedroom	7	9	11	12
4 or more bedrooms	8	10	12	13

- 1. Column A shall apply to new homeownership units which are not located in distressed urban municipalities.
- 2. Column B shall apply to new rental units which are not located in distressed urban municipalities.
- 3. Column C shall apply to new rental units located in distressed urban municipalities.
- 4. Column D shall apply to new homeownership units located in distressed urban municipalities.

(c) The Department shall waive these limits in cases where an applicant can demonstrate that a higher fee is needed in order to achieve project feasibility. If all or a portion of the developer fee is deferred until more than one year after project completion, the Commissioner may allow a higher fee than calculated in subsection (b) above as long as the discounted value of the deferred fee does not exceed that which otherwise would have been allowed.

(d) No developer fee, regardless of the source of that fee, shall be allowed for moderate rehabilitation units.

New Rule, R.1996 d.226, effective May 20, 1996.
 See: 28 N.J.R. 6(a), 28 N.J.R. 2573(a).
 Amended by R.2002 d.325, effective October 7, 2002.
 See: 33 N.J.R. 3261(a), 34 N.J.R. 3500(a).

In (b), substituted references to distressed urban municipalities for references to urban aid municipalities or target areas throughout; added (d).

SUBCHAPTER 2. FUNDING

5:43-2.1 Funding cycles and application procedures

With the exception of applications for Neighborhood Rehabilitation projects (see N.J.A.C. 5:43-3.9), the Department shall accept applications on a continuous basis.

5:43-2.2 Allocation of funds

(a) In each fiscal year, the Commissioner may set aside all or a portion of the fund for any given time period for specific activities including, but not limited to, pilot programs, projects in specific target areas or specific project types or directed to specific target populations.

(b) For funds which are not set aside by the Commissioner, the Department shall conduct four competitive funding cycles as follows:

- 1. Tax credit cycle. Only projects which are also applying for Low Income Housing Tax Credits in the spring allocation cycle shall be considered during this round. The application deadline and funding announcement dates shall coincide with the tax credit allocation dates. If there is an additional application cycle for Low Income Housing Tax Credits, the same timing shall apply.
- 2. Summer cycle. Applications received by August 15 shall be considered for funding on or about October 31.
- 3. Fall cycle. Applications received by November 15 shall be considered for funding on or about January 31.
- 4. Final cycle. Applications received by March 15 shall be considered for funding on or about May 31.
- 5. In cases where delaying funding until the next cycle would prevent the project from going forward, the Commissioner shall have the discretion to fund projects at any time.

6. During each funding cycle, applications which are not funded shall be carried forward if they meet the criteria necessary to be funded or rejected if they do not. If carried forward, applicants shall be notified that their application shall be considered during the next funding cycle.

(c) The distribution of funds to each cycle shall be at the discretion of the Commissioner.

(d) All Balanced Housing funds shall be allocated to municipalities on behalf of specific projects. In the event that the project does not proceed within the time specified in the Grant Agreement, the funds shall be reallocated by the Department. The prior allocation shall have no effect on the reallocation of captured funds.

(e) In order to promote an equitable Statewide distribution of funds, the Commissioner may limit the funding amount to any one municipality in a given fiscal year.

(f) Neighborhood rehabilitation projects shall be funded only within designated neighborhoods specified in this section or in municipalities in which Balanced Housing funds would be used to support activities funded by other Division programs.

(g) Any Balanced Housing application for a project which is being submitted concurrently to the New Jersey Housing and Mortgage Finance Agency (NJHMFA) for low income housing tax credits must contain project information which is consistent with the application which is being submitted to NJHMFA for the tax credits. Any material difference between the applications shall result in the Balanced Housing application being denied.

New Rule R.1992 d.144, effective April 6, 1992.
 See: 23 N.J.R. 1075(a), 24 N.J.R. 1385(a).
 Repeal and New Rule, R.1996 d.226, effective May 20, 1996.
 See: 28 N.J.R. 6(a), 28 N.J.R. 2573(a).
 Section was "Priorities".
 Amended by R.1998 d.438, effective September 8, 1998.
 See: 30 N.J.R. 1880(a), 30 N.J.R. 3239(b).
 Inserted new (b) through (e); and recodified former (b) as (f).
 Amended by R.2002 d.325, effective October 7, 2002.
 See: 33 N.J.R. 3261(a), 34 N.J.R. 3500(a).
 Added (g).

5:43-2.3 Cost criteria

(a) Except as noted in (g) below, the Department sets the following as the maximum acceptable per-unit costs for projects to be funded:

<u>S.R.O./Studio</u>	<u>1 BR</u>	<u>2 BR</u>	<u>3 BR</u>	<u>4 BR</u>
\$105,000	\$125,000	\$135,000	\$150,000	\$160,000

(b) For projects required to provide a parking garage, the acceptable cost may be increased by \$10,000 for each parking space, not to exceed one space per unit, provided exclusively for, and without charge to, the low and moderate income tenants.

(c) The costs listed in (a) and (b) above shall be adjusted annually by the percentage approved by COAH in accordance with N.J.A.C. 5:93-9.15(b). The Department will publish a notice of the adjusted costs in the New Jersey Register.

(d) The following costs may be deducted from the total cost calculation:

1. Upon verification and approval by the Division, the marginal costs attendant to the use of sustainable development strategies;
2. Housing Affordability Service (HAS) fees;
3. Low Income Housing Tax Credit (LIHTC) allocation fees;
4. The cost attendant to fire suppressions systems per N.J.A.C. 5:43-3.1(t); and

5. The cost attendant to construction supervision per N.J.A.C. 5:43-3.1(u).

(e) Although the Department may consider applications for projects which exceed the maximum acceptable costs, the maximum subsidy for such projects shall be reduced on a dollar for dollar basis by the amount the acceptable cost is exceeded.

(f) Each applicant shall be required to explain and justify costs.

(g) The following shall be exempt from (a) and (e) above:

1. Projects located in neighborhoods designated by the Governor's Urban Coordinating Council provided that the redevelopment of the subject property as affordable housing is logical and consistent with the Urban Coordinating Council plan and is vital to the redevelopment of the neighborhood and provided that the excess costs are inextricably linked to redevelopment of the particular site;
2. Projects providing permanent housing for persons with handicaps, applying in accordance with N.J.A.C. 5:43-3.3; and
3. Hope VI projects applying in accordance with N.J.A.C. 5:43-3.12.

New Rule R.1992 d.144, effective April 6, 1992.
 See: 23 N.J.R. 1075(a), 24 N.J.R. 1385(a).
 Amended by R.1996 d.226, effective May 20, 1996.
 See: 28 N.J.R. 6(a), 28 N.J.R. 2573(a).
 Rewrote section.
 Repeal and New Rule, R.1998 d.438, effective September 8, 1998.
 See: 30 N.J.R. 1880(a), 30 N.J.R. 3239(b).
 Section was "Distribution of funds".
 Amended by R.2002 d.325, effective October 7, 2002.
 See: 33 N.J.R. 3261(a), 34 N.J.R. 3500(a).
 Rewrote the section.

5:43-2.4 Review criteria

(a) During each funding cycle, the Department shall evaluate eligible projects based on the criteria listed below. The Department shall favor the following:

1. Projects that are located in a target area.
2. In urban aid municipalities, projects that provide mixed income housing opportunities including low, moderate and market units;
3. Projects that seek to encourage minorities and neighborhood residents that are employed by the sponsor/developer to undertake construction, rehabilitation or other related development activities for a specific purpose;
4. Projects that have committed funds for the provision of support services and programs that are appropriate for and accessible to residents.
5. Projects in which the affordability controls shall be in place for a longer period than required in accordance with N.J.A.C. 5:43-3.1(f);

6. Projects that provide amenities such as additional bathrooms, storage space, porches, balconies, private yard and where appropriate, shared facilities such as senior citizen activity rooms or lounges;

7. Projects that serve a population generally not served by the private market, for example, projects that provide housing opportunities for households with incomes below 40 percent range of affordability, persons with special needs or homeless persons;

8. Projects that provide family housing in developing communities;

9. Projects that may be expected to have a positive impact on the neighborhood and/or would further the objectives of a strategic neighborhood plan;

10. Projects that employ sustainable development strategies. (See Appendix H for details.)

11. Projects with rents and prices that are staggered so that the units are affordable to a wide range of eligible households;

12. Projects in which the municipality provides tangible, quantifiable support, for example, cash, land, fee reduction, and/or loan guarantee, particularly in suburban communities; and

13. Projects that are designed to harmonize architecturally with the scale and character of the surrounding buildings and, in general, reinforce or enhance the character of the neighborhood in which they are located. (See Appendix I, Design Guidelines, for details.)

New Rule, R.1996 d.226, effective May 20, 1996.

See: 28 N.J.R. 6(a), 28 N.J.R. 2573(a).

Amended by R.1998 d.438, effective September 8, 1998.

See: 30 N.J.R. 1880(a), 30 N.J.R. 3239(b).

Rewrote the section.

Amended by R.2002 d.325, effective October 7, 2002.

See: 33 N.J.R. 3261(a), 34 N.J.R. 3500(a).

In (a), deleted "shall" preceding "provide amenities" in 6, rewrote 10 and added 13.

5:43-2.5 (Reserved)

New Rule, R.1996 d.226, effective May 20, 1996.

See: 28 N.J.R. 6(a), 28 N.J.R. 2573(a).

Repealed by R.1998 d.438, effective September 8, 1998.

See: 30 N.J.R. 1880(a), 30 N.J.R. 3239(b).

Section was "Cost review criteria".

SUBCHAPTER 3. FUNDING CRITERIA

5:43-3.1 General provisions

(a) Successful applicants to the Neighborhood Preservation Balanced Housing Program shall be invited to enter into a grant agreement with the Department.

1. Upon the request of an applicant, the Department may, at its sole discretion, contract directly with a sponsor/developer of a proposed project. The decision of the Department to contract directly with the sponsor/developer shall be based on evidence that doing so shall enhance project feasibility and a determination that the sponsor/developer has sufficient capacity to carry out all administrative, financial and other requirements of the grant agreement.

2. The terms and conditions of any grant agreement shall be at the sole discretion of the Department.

3. Balanced Housing grant agreements shall include provision(s) prohibiting the municipality from selling tax liens on the subject property prior to the closeout of the agreement.

(b) All projects proposed for funding must be in an eligible neighborhood. Applicants shall be required to demonstrate that the neighborhood is appropriate for the population to be served.

(c) Applicants to the Balanced Housing Program will be required to demonstrate their ability, both administrative and financial, to develop and manage the proposed project.

1. The qualifications and experience with respect to the development, marketing and, where relevant, the long term management of affordable housing of key participants, including, but not limited to, the sponsor/developer, management entity, consultant, administering agent and the municipality, will be examined.

i. Failure by any of the participants to comply with the program requirements in projects previously funded by the Department, including, but not limited to, failure to pay the Housing Affordability Service or failure to make required loan payments to the Department, shall be grounds for disqualifying an application and/or a participant.

ii. The association of any of the key participants with other projects which are experiencing either operating difficulties or delays in development shall be grounds to deny the application or to carry it forward until such time that the problems are corrected.

2. Participants lacking the qualifications necessary to carry out the project will be encouraged to joint venture with individuals/groups that can provide these qualifications.

(d) At least 50 percent of the low and moderate income units to be funded shall be affordable to low income households. The following are exempt from that requirement:

1. Homeownership projects which are located in distressed urban municipalities and are not part of a Regional Contribution Agreement;

2. Neighborhood rehabilitation projects;

3. Two-family projects;
4. Rental rehabilitation projects; and
5. Neighborhood stabilization/revitalization projects.

(e) Except as noted in N.J.A.C. 5:43-4.2(a) and (b), Balanced Housing funding recipients shall contract with the Housing Affordability Service (HAS) or a private entity approved in accordance with N.J.A.C. 5:43-4(b)4 and 5 in order to monitor affordability controls. If a recipient elects not to use HAS, any fees charged in excess of those which would have been charged by HAS shall be borne by the developer.

(f) Any new units funded through the Balanced Housing Program must remain affordable for the time period which is required by N.J.A.C. 5:93-9.2.

(g) If a sponsor/developer is undertaking a reconstruction and one or more of the units is currently occupied, the occupied unit(s) shall be eligible only if the household occupying the unit is certified to be income eligible. If any current occupants will be relocated, this action must be completed in accordance with an approved Workable Relocation Assistance Plan (WRAP), pursuant to N.J.S.A. 20:4-1 et seq. and 52:31B-1 et seq.

(h) The methodology for determining the maximum Balanced Housing subsidy is explained in N.J.A.C. 5:43-3.3 through 3.14 for each type of project.

1. The Commissioner may, at his or her discretion, award less than the maximum subsidy, structure the assistance as a secured loan, with or without interest, or provide additional assistance for short term financing, including construction and/or bridge loans, if needed, to ensure project feasibility.

2. In addition to the maximum subsidies described in N.J.A.C. 5:43-3.3 through 3.14, the Department may provide up to \$7,500 per unit for approved sustainable development strategies, up to \$500.00 per unit to cover the cost of HAS services and up to the amount required to provide automatic fire suppression, provided that the cost is verified by the Department and does not exceed \$2.00 per square foot.

3. The Department reserves the right, based on the size and design of the units, to restrict the size of a household that will occupy the unit and to provide funding in accordance with the reduced household size.

4. Units which are set aside for occupancy exclusively by senior citizens shall be funded as one bedroom or, where applicable, as studio/SRO units, regardless of the actual number of bedrooms.

5. The Department may, at its discretion, reduce the maximum subsidy if an analysis of the construction design and specifications determines that essential function can be preserved at a lower cost.

6. Notwithstanding the sum of the maximum subsidies as determined in this chapter, the Department will not provide funding in excess of \$4 million per project or in excess of \$75,000 average per unit subsidy.

(i) The amount of Balanced Housing funds reserved for a project shall be based on the information provided in the application and shall fund only the gap between project cost and other revenue.

1. The Department shall also take into account the following factors in determining the amount of subsidy:

i. Whether there is any other source of funds which can be used to undertake this activity. The Department expects the applicant to use all possible private resources and non-Balanced Housing subsidies; and

ii. Whether the project can be achieved without Balanced Housing subsidy.

iii. Notwithstanding (i)1i and ii above, the Department shall not penalize any application in which the municipality has pledged funds in accordance with N.J.A.C. 5:93-5.5(a)3ii.

(j) Balanced Housing funding shall not be used as a substitute for private financing where the latter is feasible and attainable.

(k) The developer must submit a detailed estimate of project funding and project costs and, upon project completion and prior to project close out, a certification by a certified public accountant of actual project funding and project costs. The Department reserves the right to conduct an independent audit of final project costs.

(l) In all instances, Balanced Housing funds will be awarded to the municipality as a grant. The municipality shall provide the Balanced Housing funds for a rental unit to the developer as a loan. All such loans shall be secured by a mortgage and a note which shall be repayable to the Department. All terms and conditions of the loan documents shall be subject to the approval of the Department. With the exception of neighborhood rehabilitation, rental rehabilitation and two-family projects, the following shall apply:

1. The length of the loan shall not exceed the affordability period;

2. The interest rate shall be one percent compounded annually;

3. Payment shall equal 50 percent of cash flow, paid annually, with any balance due upon expiration of affordability controls; and

4. The Department, at its discretion, may independently audit the project records to verify income and expenses.

(m) Balanced Housing funds may be provided to a project during the development phase as a construction loan where project feasibility requires supplementing private sources of construction financing. The terms and conditions of the construction loan provided by the Balanced Housing Program shall be at the discretion of the Department. The Department shall subordinate its construction loan to the lien of another construction lender provided that the sponsor/developer provides evidence that the subordination is necessary to achieve project feasibility.

(n) In cases where Balanced Housing funds are made available during construction, the Department shall subordinate the Balanced Housing construction loan to the lien of a permanent lender(s) upon completion of the construction of the project and on terms and conditions determined at the discretion of the Department. After a project's permanent financing is in place and after the project has been placed in service, the Department shall consider honoring a request to subordinate its mortgage to the lien of another lender, provided that the sponsor/developer provides evidence to the satisfaction of the Department that the project income can service an increased level of private debt and that some public benefit will result from honoring the request to subordinate the Department's mortgage. An initial funding commitment to the project by the Department shall not constitute a commitment to subordinate the Balanced Housing loan after the initial permanent financing has been accomplished and after the project has been placed in service.

1. The sponsor/developer shall submit a request for subordination to the Division Director. The decision of the Division Director shall be presented in writing and shall be final. The request for subordination shall include:

- i. An up-to-date income and expense statement;
- ii. A mortgage commitment regarding the proposed refinancing;
- iii. Verification that reserves are at required levels;
- iv. A statement regarding project vacancies, turnover and anticipated major expenditures;
- v. An explanation of the public benefit that will occur. It shall be considered to be of public benefit if refinancing the project results in cash that will be utilized to:

(1) Perform necessary repairs in the project that cannot be funded by the accumulated reserves;

(2) Provide a source of development funding to create additional units that will be affordable to low and moderate income occupants; or

(3) Allow the sponsor/developer to increase the time period during which units will be affordable to low and moderate income households; and

vi. Any additional information that the Department may deem necessary in order to make a determination.

(o) A household receiving assistance under Section 8 of the Federal Housing Act of 1937, as amended by the Housing and Community Development Act of 1974, shall be eligible for housing under the Balanced Housing Program, provided, however:

1. The household meets all requirements for the Balanced Housing Program; and

2. The combined household rental payment and housing assistance payment shall not exceed that provided for in the Balanced Housing grant agreement.

(p) The average range of affordability for units funded shall not exceed 57.5 percent for any project located in a distressed urban municipality, 55 percent for all other homeownership projects, or 52 percent for all other rental projects.

(q) With the exception of neighborhood rehabilitation projects, neighborhood stabilization/revitalization projects and acquisition/ rehabilitation projects, all applicants shall demonstrate control of the project site by holding title, by a sales contract, by an option to purchase, by designation from the municipality as designated developer or by any other means which the Division Director may approve.

(r) For all purposes related to funding and occupancy of units, with the exception of SRO units, each unit funded shall contain at least one bedroom with no less than 150 square feet.

1. Each additional bedroom shall be no less than 100 square feet.

2. Each SRO unit shall be no less than 100 square feet.

(s) Every new unit that receives Balanced Housing subsidy shall qualify as an Energy Efficient Housing Unit.

(t) Every building containing new Balanced Housing units shall be provided with an automatic fire suppression system. Such systems shall include the entire building and shall be installed in accordance with the Uniform Construction Code.

(u) The Department reserves the right, at its sole discretion, to require on site construction supervision.

(v) The Department reserves the right, at its sole discretion, to reject any project the design for which it deems inappropriate to the site or the immediate neighborhood within which it is to be built or rehabilitated.

Amended by R.1992 d.144, effective April 6, 1992.
See: 23 N.J.R. 1075(a), 24 N.J.R. 1385(a).

Text on threshold criteria deleted; text on general provisions added.
Amended by R.1996 d.226, effective May 20, 1996.

See: 28 N.J.R. 6(a), 28 N.J.R. 2573(a).

Rewrote section.

Amended by R.1998 d.438, effective September 8, 1998.

See: 30 N.J.R. 1880(a), 30 N.J.R. 3239(b).

In (b), added a second sentence; in (g), substituted a reference to reconstruction for a reference to substantial rehabilitation in the first sentence; in (i)1, substituted "can" for "shall" and "subsidy" for "funds" in ii and added iii; and rewrote (p).

Amended by R.2002 d.325, effective October 7, 2002.

See: 33 N.J.R. 3261(a), 34 N.J.R. 3500(a).

Rewrote the section.

5:43-3.2 Types of projects

(a) The Department shall only fund projects falling into at least one of the following categories:

1. Permanent housing for persons with handicaps projects, described in N.J.A.C. 5:43-3.3;
2. Rental projects, described in N.J.A.C. 5:43-3.4;
3. Two-family projects, described in N.J.A.C. 5:43-3.5;
4. Homeownership projects, described in N.J.A.C. 5:43-3.6;
5. Acquisition/rehabilitation projects, described in N.J.A.C. 5:43-3.7;
6. Section 202, Section 811 and non-HOPE VI public housing new construction projects, described in N.J.A.C. 5:43-3.8;
7. Neighborhood rehabilitation projects, described in N.J.A.C. 5:43-3.9;
8. Landlord projects, described in N.J.A.C. 5:43-3.10;
9. Matching funds projects, described in N.J.A.C. 5:43-3.11;
10. HOPE VI projects, described in N.J.A.C. 5:43-3.12;
11. Neighborhood stabilization/revitalization projects, described in N.J.A.C. 5:43-3.13; and
12. Other projects, described in N.J.A.C. 5:43-3.14.

Amended by R.1992 d.144, effective April 6, 1992.

See: 23 N.J.R. 1075(a), 24 N.J.R. 1385(a).

Text on competitive criteria deleted; text on types of projects added.

Amended by R.1996 d.226, effective May 20, 1996.

See: 28 N.J.R. 6(a), 28 N.J.R. 2573(a).

Rewrote section.

Amended by R.2002 d.325, effective October 7, 2002.

See: 33 N.J.R. 3261(a), 34 N.J.R. 3500(a).

Rewrote the section.

Administrative correction.

See: 37 N.J.R. 1783(a).

5:43-3.3 Permanent housing for persons with handicaps projects

(a) The Balanced Housing Program may provide funding for the construction, reconstruction, or conversion of units that will provide permanent housing for income eligible households which contain one or more persons with a handicap.

1. Eligible projects may include, but are not limited to, residential health care facilities as regulated by the New Jersey Department of Health; group homes for the physically and/or developmentally disabled and mentally ill as licensed and/or regulated by the New Jersey Department of Human Services; and congregate living arrangements.

(b) In such projects, the form and amount of Balanced Housing assistance shall be at the discretion of the Department, but shall not exceed the lesser of \$50,000 per bedroom or 50 percent of total project cost.

New Rule R.1992 d.144, effective April 6, 1992.

See: 23 N.J.R. 1075(a), 24 N.J.R. 1385(a).

Amended by R.1996 d.226, effective May 20, 1996.

See: 28 N.J.R. 6(a), 28 N.J.R. 2573(a).

In (a) deleted qualifying requirement and added homes for physically disabled.

Amended by R.1998 d.438, effective September 8, 1998.

See: 30 N.J.R. 1880(a), 30 N.J.R. 3239(b).

In (a), substituted a reference to reconstruction for a reference to substantial rehabilitation in the introductory paragraph.

Amended by R.2002 d.325, effective October 7, 2002.

See: 33 N.J.R. 3261(a), 34 N.J.R. 3500(a).

In (b), substituted "the lesser of \$50,000 per bedroom or" for "that amount which is provided by other public and private funding sources (that is,".

5:43-3.4 Rental projects

(a) The Balanced Housing Program may provide assistance to eligible applicants for use by for-profit or not-for-profit housing sponsors who provide new rental housing units for occupancy by low and moderate income households. Eligible activities shall include new construction, reconstruction, and the conversion of non-residential structures.

1. The buy-down of new units which are not deed restricted in order to make them affordable is also eligible.

(b) The maximum allowable subsidy for a rental unit shall be determined in accordance with Appendix B to this chapter if the project is located in a distressed urban municipality or in accordance with Appendix C of this chapter for all other projects.

(c) Applicants may combine a rental project with a homeownership project.

New Rule R.1992 d.144, effective April 6, 1992.

See: 23 N.J.R. 1075(a), 24 N.J.R. 1385(a).

Amended by R.1995 d.339, effective June 19, 1995.

See: 27 N.J.R. 1508(a), 27 N.J.R. 2385(a).

Rewrote (c), which previously had limited the maximum allowable subsidy to that determined in Appendix C.

Amended by R.1996 d.226, effective May 20, 1996.

See: 28 N.J.R. 6(a), 28 N.J.R. 2573(a).

Rewrote section.

Amended by R.1998 d.438, effective September 8, 1998.

See: 30 N.J.R. 1880(a), 30 N.J.R. 3239(b).

In (a), substituted a reference to reconstruction for a reference to substantial rehabilitation in the last sentence.

Amended by R.2002 d.325, effective October 7, 2002.

See: 33 N.J.R. 3261(a), 34 N.J.R. 3500(a).
 Rewrote (b).

5:43-3.5 Two-family projects

(a) The Balanced Housing Program may provide assistance in distressed urban municipalities to eligible applicants for use by for-profit and not-for-profit housing sponsors/developers who provide home ownership and rental opportunities for low and moderate income households via the production of two-family homes wherein one of the two units is owner-occupied. Eligible activities shall include new construction and reconstruction.

(b) The maximum allowable subsidy for a two-family project shall be \$35,000 per unit.

(c) *Balanced Housing* shall fund only those projects wherein the homeowner unit is a *Balanced Housing* unit.

(d) During the affordability control period, all rental units included in a two-family project shall be leased by the sponsor/developer from the homeowner. The lease shall be subject to the review and approval of the Department and shall include the following:

1. The maximum base rent charged to the sponsor/developer shall not exceed that which is affordable to a household earning 50 percent of median;
2. Provision(s) allowing the sponsor/developer to sublease the unit to a qualified household; and
3. Provisions that allow the homeowner to participate in the tenant selection process and reject, for good cause, tenants suggested by the sponsor/developer.

(e) The sponsor/developer shall sublease the rental unit to qualified households for a rent which does not exceed the lease rate plus an administrative fee, not to exceed \$25.00 per month.

(f) The sponsor/developer shall be responsible for ensuring compliance with affordability controls, including, but not limited to, ensuring that all tenants have been certified by the Housing Affordability Service.

(g) Subject to the approval of the Department, the sponsor/developer may assign its responsibilities under this section with respect to rental units to an administrative agent, including, but not limited to, a neighborhood based non-profit, approved administrative agent or a property management company.

New Rule R.1992 d.144, effective April 6, 1992.
 See: 23 N.J.R. 1075(a), 24 N.J.R. 1385(a).
 Amended by R.1995 d.339, effective June 19, 1995.
 See: 27 N.J.R. 1508(a), 27 N.J.R. 2385(a).

Rewrote (c), which previously had limited the maximum allowable subsidy to that determined in Appendix C.
 Repeal and New Rule. R.1996 d.226, effective May 20, 1996.
 See: 28 N.J.R. 6(a), 28 N.J.R. 2573(a).
 Section was "Purchase/rental projects".
 Amended by R.1998 d.438, effective September 8, 1998.

See: 30 N.J.R. 1880(a), 30 N.J.R. 3239(b).

In (a), substituted a reference to reconstruction for a reference to substantial rehabilitation at the end of the last sentence.
 Amended by R.2002 d.325, effective October 7, 2002.
 See: 33 N.J.R. 3261(a), 34 N.J.R. 3500(a).

In (a), inserted "distressed urban municipalities" preceding "to eligible applicants" and substituted "sponsors/developers" for "sponsors"; rewrote (b) through (d); added (e) through (g).

5:43-3.6 Homeownership projects

(a) The Balanced Housing Program may provide assistance to eligible applicants for use by for-profit and not-for-profit housing sponsors who provide homeownership opportunities to low and moderate income households through new construction, reconstruction or the conversion of non-residential structures.

1. The buy-down of new units off the open market in order to make them affordable is also eligible.

(b) Qualifying units must be new and must be sold at affordable prices.

(c) Condominium and cooperative as well as fee simple ownership forms are eligible.

(d) The maximum subsidy for homeownership projects shall be determined in accordance with Appendix D to this chapter, incorporated herein by reference, if the project is located in a distressed urban municipality or in accordance with Appendix E, incorporated herein by reference, for all other projects.

(e) Applicants may combine a homeownership project with a rental project.

(f) Applicants for homeownership projects shall make provisions for the on-going viability of the project including, but not limited to, homeowner training.

New Rule R.1992 d.144, effective April 6, 1992.

See: 23 N.J.R. 1075(a), 24 N.J.R. 1385(a).
 Amended by R.1995 d.339, effective June 19, 1995.
 See: 27 N.J.R. 1508(a), 27 N.J.R. 2385(a).

Rewrote (e) and added the provisions in Appendices B and C concerning studios.

Recodified from 5:14-3.7 and amended by R.1996 d.226, effective May 20, 1996.

See: 28 N.J.R. 6(a), 28 N.J.R. 2573(a).

Section was "Single room occupancy projects".
 Amended by R.1998 d.438, effective September 8, 1998.
 See: 30 N.J.R. 1880(a), 30 N.J.R. 3239(b).

In (a), substituted a reference to reconstruction for a reference to substantial rehabilitation in the introductory paragraph.
 Amended by R.2002 d.325, effective October 7, 2002.
 See: 33 N.J.R. 3261(a), 34 N.J.R. 3500(a).

Rewrote (d).

5:43-3.7 Acquisition/rehabilitation projects

(a) The Balanced Housing Program may provide assistance to eligible applicants wishing to acquire or acquire and moderately rehabilitate existing, vacant housing for occupancy by low and moderate income households. Occupancy may be either rental or homeownership. Units acquired up

to two years prior to the application which are substandard at the time of application are eligible.

(b) The maximum Balanced Housing subsidy for an acquisition/rehabilitation project shall be \$25,000 per unit.

(c) All units assisted must be vacant at the time of acquisition. The Division may waive this requirement if the households to be served are senior citizens, persons with a handicap or single parents or if the applicant can demonstrate that this project will prevent the imminent loss of affordable units and the displacement of low and moderate income households. Condominium conversion is not, in and of itself, considered evidence of imminent loss.

(d) The sponsor need not identify specific buildings when applying for funds but should identify a neighborhood or group of buildings.

(e) Except as noted in (c) above, the acquisition or acquisition and rehabilitation of units that are already in standard condition and affordable but not deed restricted to low and moderate income households shall only be permitted insofar as the proposed activity will lower the range of affordability.

(f) Sponsors of acquisition/rehabilitation projects shall be required to demonstrate ongoing management capacity and financial feasibility of the project for the length of the control period including, but not limited to, the provision of sufficient reserves to ensure the timely repair and replacement of any systems not addressed during the initial rehabilitation.

(g) Any structure repaired in whole or in part with Balanced Housing funds must, upon completion, be certified as standard.

New Rule R.1992 d.144, effective April 6, 1992.
See: 23 N.J.R. 1075(a), 24 N.J.R. 1385(a).
Recodified from 5:14-3.8 and amended by R.1996 d.226, effective May 20, 1996.
See: 28 N.J.R. 6(a), 28 N.J.R. 2573(a).
Former section, "Homeownership projects", recodified to 5:14-3.6.
Amended by R.2002 d.325, effective October 7, 2002.
See: 33 N.J.R. 3261(a), 34 N.J.R. 3500(a).
Rewrote (b) and (d); added (g).

5:43-3.8 Section 202, Section 811 and non-HOPE VI public housing new construction projects

(a) The Balanced Housing Program may provide assistance to eligible applicants applying on behalf of public housing authorities and not-for-profit sponsors to construct projects in accordance with Section 202 of the Housing Act of 1959 (12 U.S.C. § 1709), Section 811 for the National Affordable Housing Act (PL 101-625) or, with the exception of HOPE VI projects (Section 24), the U.S. Housing Act of 1937 (92 U.S.C. §§ 1437 et seq.).

(b) The total Balanced Housing subsidy shall not exceed the lesser of \$15,000 per unit or 15 percent of total project cost.

(c) Applications for a Section 202, Section 811 or Public Housing New Construction Project must include a conditional or final commitment from HUD.

New Rule R.1992 d.144, effective April 6, 1992.
See: 23 N.J.R. 1075(a), 24 N.J.R. 1385(a).
Recodified from 5:14-3.9 and amended by R.1996 d.226, effective May 20, 1996.
See: 28 N.J.R. 6(a), 28 N.J.R. 2573(a).
Former section, "Acquisition/rehabilitation projects", recodified to 5:14-3.7.
Amended by R.2002 d.325, effective October 7, 2002.
See: 33 N.J.R. 3261(a), 34 N.J.R. 3500(a).
Rewrote (a) and (b).

5:43-3.9 Neighborhood rehabilitation projects

(a) The Balanced Housing Program may provide assistance to distressed urban municipalities to identify and moderately rehabilitate substandard units in one-to-four-family owner occupied structures within a target neighborhood.

(b) The maximum Balanced Housing grant to a municipality under a Neighborhood Rehabilitation Agreement shall be \$300,000.

(c) Rehabilitation activity shall average at least \$8,000 per unit over the contract period. The municipality may use the lesser of 16 percent of the grant or \$2,000 per unit to administer the program.

(d) Applicants shall demonstrate to the satisfaction of the Division the existence of an active, systematic code enforcement program or a commitment to establish one within 90 days of the start date of a Balanced Housing contract.

(e) The following shall apply to municipalities administering a Neighborhood Rehabilitation Project:

1. Neighborhood Rehabilitation assistance is limited to one-to-four unit, owner-occupied structures; and
2. No Balanced Housing assistance shall be provided to occupied housing units unless the occupants have been certified as low or moderate income.

(f) In cases where a two-to-four unit structure is rehabilitated with Balanced Housing funds and one or more of the units are not assisted with Balanced Housing or required matching funds, a percentage of the cost of common area and system wide improvements equal to the percentage of unassisted units shall be paid by the owner. If the structure is owner-occupied and the owner can demonstrate extreme financial hardship, the Division may modify or waive this requirement.

(g) The maximum Balanced Housing Program assistance to any one unit may not exceed the following:

1. For owner-occupied units, \$25,000; or

2. For renter-occupied units, the lesser of \$10,000 or 75 percent of the rehabilitation cost; except that, if an owner can demonstrate extreme financial hardship, the Division may waive or modify the requirement to match funds for rental units.

(h) Eligible units shall be certified as substandard prior to the expenditure of funds.

(i) Any structure repaired in whole or in part with Balanced Housing funds must, upon completion to be certified as standard.

(j) Balanced Housing funds may be used only for work and repairs required to make a unit standard and any other work or repairs (including finishing and painting) that is directly related to the required activities. Improvements which are exclusively cosmetic and the purchase of free-standing appliances (not including refrigerators or stoves) are prohibited.

New Rule R.1992 d.144, effective April 6, 1992.

See: 23 N.J.R. 1075(a), 24 N.J.R. 1385(a).

Recodified from 5:14-3.10 and amended by R.1996 d.226, effective May 20, 1996.

See: 28 N.J.R. 6(a), 28 N.J.R. 2573(a).

Former section, "Section 202 and public housing new construction projects", recodified to 5:14-3.8.

Amended by R.2002 d.325, effective October 7, 2002.

See: 33 N.J.R. 3261(a), 34 N.J.R. 3500(a).

In (a), substituted "distressed urban municipalities" for "eligible applicants" following "provide assistance to" and "target" for "specified eligible" preceding "neighborhood"; rewrote (h) and (i).

5:43-3.10 Landlord projects

(a) The Balanced Housing Program may provide assistance to eligible applicants for use by one or more landlords in the moderate rehabilitation of their units affordable to low and moderate income households.

(b) The maximum Balanced Housing grant to a municipality for a Landlord Project provided on behalf of a for-profit landlord shall be \$7,500 multiplied by the number of units to be rehabilitated, not to exceed a total of \$250,000, except as specified in (e) below. The for-profit landlord shall match Balanced Housing dollars on a one to one basis.

(c) The maximum Balanced Housing grant to a municipality for a landlord project provided on behalf of a not-for-profit landlord shall be \$10,000 multiplied by the number of units to be rehabilitated not to exceed a total of \$330,000, except as specified in (e) below.

(d) Housing Authorities may qualify as not-for-profit owners, but must demonstrate that they are in good standing with HUD and that insufficient Comprehensive Improvement Assistance Program (C.I.A.P.) funding is available to complete this project.

(e) In cases where a landlord is rehabilitating a single building and rehabilitation on a smaller scale is not practical, the maximum grant may equal the sum of the per unit subsidies.

(f) All units to be rehabilitated must be identified prior to a funding commitment from the Department.

(g) The following shall apply to all Balanced Housing landlord project grant agreements:

1. The owner must agree to maintain the units in standard condition for the life of the affordability controls. During the period of the affordability controls, units with subsequent violations must be repaired at the owner's expense; and

2. The municipality must agree to recertify the units as standard at regular intervals of two years or less.

(h) In cases where a structure is rehabilitated with Balanced Housing funds and one or more of the units are not affordable, the cost of common area and system-wide improvements to be paid by the owner shall be proportionate to the number of units that are not Balanced Housing units divided by the total number of units.

(i) The local construction official or licensed housing inspector must certify that each unit to be rehabilitated with Balanced Housing funds is substandard, that is, health and safety code violations exist, and that abating those code violations requires that one or more of the following major systems must be replaced or extensively repaired: roof, electrical, plumbing, sanitary plumbing, heating or load bearing structural systems.

(j) Any structure rehabilitated in whole or in part with Balanced Housing funds must, upon completion, be certified by the local construction official or other public official having jurisdiction to be free of code violations in accordance with the HUD Section 8 Housing Quality Standards or any applicable State or local housing code that is more stringent.

(k) Balanced Housing funds may be used only for work required to make a unit standard and any other work (including finishing and painting) that is directly related to the required activities. Luxury improvements, improvements that are strictly cosmetic, and the purchase of free-standing appliances other than refrigerators and stoves are prohibited.

New Rule R.1992 d.144, effective April 6, 1992.

See: 23 N.J.R. 1075(a), 24 N.J.R. 1385(a).

Recodified from 5:14-3.11 and amended by R.1996 d.226, effective May 20, 1996.

See: 28 N.J.R. 6(a), 28 N.J.R. 2573(a).

Former section, "Neighborhood rehabilitation projects", recodified to 5:14-3.9.

Amended by R.1998 d.438, effective September 8, 1998.

See: 30 N.J.R. 1880(a), 30 N.J.R. 3239(b).

In (j), substituted a reference to rehabilitated structures for a reference to repaired structures; and in (k), deleted references to repairs.

5:43-3.11 Matching funds projects

(a) The Balanced Housing Program may provide assistance to eligible applicants applying on behalf of projects which require matching funds in order to secure other financing which, without the match, would be lost to the State of New Jersey.

(b) The maximum award for such projects shall be equal to the minimum amount which is required to obtain the financing.

New Rule R.1996 d.226, effective May 20, 1996.
See: 28 N.J.R. 6(a), 28 N.J.R. 2573(a).

Former section, "Landlord projects", recodified to 5:14-3.10.

5:43-3.12 HOPE VI projects

(a) The Balanced Housing Program may provide assistance to eligible applicants applying on behalf of sponsors developing HOPE VI projects in accordance with Section 24 of the U.S. Housing Act of 1937 (42 U.S.C. § 1437v).

(b) The maximum Balanced Housing subsidy for a HOPE VI project shall be \$10,000 per unit.

New Rule. R.2002 d.325, effective October 7, 2002.
See: 33 N.J.R. 3261(a), 34 N.J.R. 3500(a).

Former N.J.A.C. 5:43-3.12, Other projects, recodified to N.J.A.C. 5:43-3.14.

5:43-3.13 Neighborhood stabilization/revitalization projects

(a) The Balanced Housing Program may provide assistance to distressed urban municipalities applying on behalf of a sponsor who will promote neighborhood stabilization and revitalization through the acquisition and reconstruction and resale of existing units within a target neighborhood.

(b) The amount of Balanced Housing assistance and the requirements of such assistance shall be in accordance with N.J.A.C. 5:43-3.5 for two-family structures and/or N.J.A.C. 5:43-3.6 for single family homeowner units.

(c) The maximum Balanced Housing subsidy for a neighborhood stabilization/revitalization project shall be \$750,000.

New Rule. R.2002 d.325, effective October 7, 2002.
See: 33 N.J.R. 3261(a), 34 N.J.R. 3500(a).

5:43-3.14 Other projects

(a) In addition to previously listed types of Balanced Housing projects, the Department reserves the right to fund projects that do not fit into any of these formats. Such projects may include, but shall not be limited to, pilot programs, those that are unique in terms of development, ownership, occupancy characteristics, and transitional facilities for the homeless.

(b) In such projects, the form and amount of Balanced Housing assistance shall be at the discretion of the Commissioner.

New Rule R.1992 d.144, effective April 6, 1992.

See: 23 N.J.R. 1075(a), 24 N.J.R. 1385(a).

Amended by R.1996 d.226, effective May 20, 1996.

See: 28 N.J.R. 6(a), 28 N.J.R. 2573(a).

Renamed section and rewrote (a).

Recodified from N.J.A.C. 5:43-3.12 by R.2002 d.325, effective October 7, 2002.

See: 33 N.J.R. 3261(a), 34 N.J.R. 3500(a).

SUBCHAPTER 4. AFFORDABILITY CONTROLS

5:43-4.1 Affordability control provisions

(a) The purpose of the affordability control procedures is to provide the means for ensuring that housing units provided for low and moderate income households through a grant or loan agreement funded by the Neighborhood Preservation Balanced Housing Program, pursuant to N.J.S.A. 52:27D-320, remain affordable to and occupied by income eligible households for at least 30 years from the date initial restrictions encumber the unit unless a lesser period of time has been approved by the Division of Housing and Community Resources, Department of Community Affairs.

(b) In order to enter into a grant or loan agreement, the Neighborhood Preservation Balanced Housing Program must have contractual guarantees and provisions that ensure that any unit of housing receiving funding through this program shall remain affordable to and occupied by low and moderate income-eligible households for the prescribed time period.

1. The Affordable Housing Management Service is established within the Division to administer affordability controls for the Neighborhood Preservation Balanced Housing Program. Balanced Housing funding recipients may utilize these services for a fee, as described at (c) below, by signing a contract addendum for inclusion in the funding contract.

2. The current Affordable Housing Management Service fee schedule is set forth in (c) below. The fee schedule shall be reassessed periodically and revised if necessary in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

3. In projects also receiving Federal funding including but not limited to Section 202 of the U.S. Housing Act of 1959 (P.L. 86-372), Section 811 of the National Affordable Housing Act (P.L. 101-625) or Section 23, U.S. Housing Act of 1937 (P.L. 89-117) which are subject to more restrictive regulations by separate contract and are in effect for the specified Balanced Housing affordability control period, the more restrictive regulations shall prevail. On receipt of verification of such a separate contract, monitoring approval shall be granted to the project sponsor.

4. It is the intent of these rules to assure long-term compliance with affordability control measures for all units receiving Balanced Housing funding. The Division prefers that affordability controls required by the Balanced Housing contracts be administered by the Affordable Housing Management Service. The Division, however, acknowledges that a private entity may be interested in providing these administrative services. Private entities must be able to demonstrate the ability to provide a continuing administrative responsibility for the length of the period of controls. Project developers may contract with a private entity which has submitted a proposal for review to the Affordable Housing Management Service and has received approval to act as an administrative agent. All proposals shall include verification of capacity and potential for longevity on behalf of any Balanced Housing project and shall provide evidence of the following:

- i. Documentation which demonstrates that a purpose of the organization is to provide housing services and housing counseling and to promote federal Fair Housing principals and a knowledge of the New Jersey Fair Housing Act and its implementing regulations;
- ii. A history of experience with the management of restricted affordable housing projects particularly those produced as a result of the Fair Housing Act, P.L. 1985, c.222 (N.J.S.A. 52:27D-320) or through a Mount Laurel court settlement;
- iii. Assurance that no conflict of interest or appearance of conflict of interest exists with the builder, developer, or municipal government involved in the project to be monitored;
- iv. A statement of intent to administer long-term affordability controls and to comply with all monitoring requirements as contained in these rules signed by the municipality and the developer;
- v. A current audit report and permission to access records;
- vi. A statement of intent to attend continuing education opportunities on affordability controls and compliance monitoring when available;
- vii. Such other relevant documents from a specific applicant as required by the Affordable Housing Management Service to justify approval.

5. Proposals shall be submitted to the New Jersey Department of Community Affairs, Division of Housing and Community Resources, Affordable Housing Management Service, PO Box 806, Trenton, New Jersey 08625-0806. An application fee of \$750.00 shall be required to cover the review and approval of an initial proposal. A subsequent review fee of \$500.00 shall be required to cover the review and approval of each additional project for the same entity. Each approved applicant shall be required to make a \$25.00 per unit deposit

into an insurance contingency fund for purposes of reestablishing compliance if and when it becomes necessary. As an alternative, applicants may provide proof of an "errors and omissions" insurance policy that would cover the cost to the Division of recovering the project and bringing it into compliance. Proposals shall be approved on a project-by-project basis.

(c) The Affordable Housing Management Service fee schedule is as follows:

Initial contract fee (sales and rental) per unoccupied unit;	
To be charged to developer or municipality	\$500.00
Resale occupancy per unit:	
To be charged to seller at closing	\$500.00
Initial contract (sales and rental) for an occupied unit:	
To be charged to municipality at initial contract	\$250.00
Rental occupancy per unit:	
To be charged to property owner/landlord at leasing	\$200.00

1. The fee schedule shall be reassessed annually and revised as needed pursuant to N.J.S.A. 52:27-D and approved by the State Treasurer. The resale fee in effect at the time of each resale contractual agreement shall prevail. The rental fee in effect at the time of releasing shall prevail.

2. Initial contract fees for sales and rentals shall be billed and collected on signing a Balanced Housing contract with a municipality or a developer. Municipalities and developers shall have an option of paying for their entire unit inventory at the prevailing fee at the time of initial contract or negotiating an installment plan. If payment is delayed, municipalities or developers shall be charged the initial contract fee in effect at the time of the delayed payment.

3. Subsequent reoccupancy fees will be billed and collected at time of sales closing or lease agreement (rentals).

4. This fee schedule (effective _____) has been approved by the State Treasurer, effective November 22, 1993.

Amended by R.1990 d.100, effective February 5, 1990.
 See: 21 N.J.R. 3695(a), 22 N.J.R. 337(a).
 Established Affordable Housing Management Service to administer affordability controls and established \$300.00 per unit fee.
 Amended by R.1995 d.594, effective November 20, 1995.
 See: 27 N.J.R. 3256(a), 27 N.J.R. 4698(a).
 Amended by R.1996 d.226, effective May 20, 1996.
 See: 28 N.J.R. 6(a), 28 N.J.R. 2573(a).
 Rewrote section.

5:43-4.2 Affordable Housing Agreement

(a) An Affordable Housing Agreement (hereinafter "the Agreement") shall be signed and recorded with the recording office of the county in which the Balanced Housing unit/units (with the exception of Neighborhood Rehabilita-

tion owner-occupied single family units) is/are located. The provisions of the Agreement shall constitute restrictive covenants running with the land with respect to the Balanced Housing units described and identified in the Agreement.

1. The Agreement shall set forth the terms, conditions, restrictions, and provisions applicable to the Balanced Housing units. The terms, conditions, restrictions and provisions of the instrument shall bind all purchasers and owners of the Balanced Housing units, their heirs, assigns and all persons claiming by, through or under heirs, assigns and administrators.

2. When a single Agreement is used to govern more than one Balanced Housing unit, the Agreement must contain a description of each unit governed by the Agreement and the expiration date to be imposed on the unit.

3. This Agreement shall be executed by the Division and the owner or the then current title holder of record of the property upon which the Balanced Housing units are to be situated prior to its recording unless the municipality has an alternative affordability plan approved by the Department in which case the Agreement shall be executed by the grantee municipality and the owner.

(b) All deeds of conveyance and leases from all owners to certified purchasers or renters of Balanced Housing units shall include the following clause in a conspicuous place:

“The Owner’s right, title and interest in this unit and the use, sale, resale and rental of this property are subject to the terms, conditions, restrictions, limitations and provisions as set forth in the AFFORDABLE HOUSING AGREEMENT which has been filed concurrently with the property deed or a deed of easement in the office of the Clerk of _____ County and is also on file with the N.J. Department of Community Affairs.”

1. Any master deed that includes a Balanced Housing unit shall also reference the affordable unit and the Affordable Housing Agreement and any variation in services, fees, or other terms of the master deed that differentiates the affordable unit from all other units covered in the master deed.

(c) The Affordable Housing Agreement shall list the following restrictions:

1. The owner of an Affordable Housing sales unit shall not sell the unit at a resale price greater than an established base price plus the allowable percentage of increase as determined by the approved Index applicable to the household size and the municipality in which the unit is located. The owner of an Affordable Housing rental unit shall not rent the unit at an adjusted rent that is greater than an established base rent plus the allowable percentage of increase as determined by the approved Index applicable to the household size and the municipality in which the unit is located.

2. The owner of an Affordable Housing unit shall not sell or rent the Affordable Housing unit to anyone other than a purchaser or renter who has been certified utilizing the income verification procedures, occupancy standards, and unit referral criteria found at N.J.A.C. 5:43-4.6(a) through (h) established by the Division to determine qualified low and moderate income-eligible households.

3. The owner of an Affordable Housing sales unit shall be obligated to pay 95 percent of the price differential generated at the first non-exempt sale of the Affordable Housing unit to the Department at the time of closing and transfer of title after the termination of affordability controls in accordance with the terms of the repayment lien. For the purposes of this Agreement, price differential shall be the total amount of the unrestricted sales price (which shall be no less than a comparable fair market price established by the Department at the time a Notice of Intent to Sell has been received from the owner) that exceeds the maximum restricted resale price as calculated by the Index.

4. The Affordable Housing unit shall be sold in accordance with all rules, regulations, and restrictions duly promulgated by the Department (N.J.A.C. 5:43) the intent of which is to ensure that the Affordable Housing unit remains affordable to and occupied by low and moderate income-eligible households throughout the duration of the Agreement.

(d) The Affordable Housing Agreement shall include the following owner responsibilities:

1. Affordable Housing units which have not been previously approved as rental Affordable Housing units shall at all times remain the primary residence of the owner. The owner shall not rent such Affordable Housing unit to any party whether or not that party qualifies as a low or moderate income household without prior written approval from the Division.

2. Affordable Housing units designated as rental units shall at all times remain the primary residence of the renter and shall not be sublet to any party whether or not that party is qualified as a low or moderate income-eligible household without prior written approval from the Division.

3. All home improvements made to an Affordable Housing unit shall be at the owner's expense except that expenditures for any alteration that allows a unit to be

resold or rented to a larger household size because of an increased capacity for occupancy shall be considered for a recalculation of base price or base rent. Owners must obtain prior approval from the Division for such alteration to qualify for this recalculation.

4. The owner of an Affordable Housing unit shall keep the Affordable Housing unit in good repair.

5. Owners of Affordable Housing units shall pay all taxes, charges, assessments or levies, whether public and private, assessed against such unit, or any part thereof, as and when the same become due.

6. Owners of Affordable Housing units shall notify the Division in writing 60 days prior to a proposed rental vacancy and submit a signed Notification of Intent to Sell form 90 days prior to a proposed sale date. The forms are available from the Affordable Housing Management Service, Department of Community Affairs, PO Box 806, Trenton, NJ 08625-0806. Owners shall not convey title or lease or otherwise deliver possession of the Affordable Housing unit without the prior written approval of the Division.

7. When owners are ready to rent or sell, they shall request referrals of certified households from the pre-screened established referral list maintained by the Division.

8. If no referrals are available, the owner may sell, transfer, convey or rent the property to an eligible household not referred by the Division. The proposed purchaser/renter must complete all required Household Eligibility forms and submit gross annual income information for verification to the Division for certification as an eligible sales/rental transaction.

9. At resale of an Affordable Housing sales unit, the owner must personally certify that all items of personal property which are not permanently affixed to the unit and were not included when the unit was originally purchased (for example, refrigerator, freezer, washer, dryer, dishwasher, carpet, drapes) have either been included in the maximum allowable resale price or sold to the purchaser at a reasonable price that has been approved by the Division at the time of signing the agreement to purchase. Such transfer of funds shall also be certified by the purchaser at the time of closing. In no event shall the purchase of personal property be made a condition of the unit resale.

10. The owner shall not permit any lien, other than the first money mortgage, Division approved second mortgages and liens of the Division to attach and remain on the property for more than 60 days.

11. If an Affordable Housing unit is part of a condominium, homeowner's or cooperative association, the owner, in addition to paying any assessments required by the master deed of the condominium or by-laws of an association, shall further fully comply with all of the terms, covenants or conditions of said master deed or by-laws, as well as fully comply with all conditions and restrictions of this Affordable Housing Agreement.

12. The owner shall have responsibility for fulfilling all requirements in accordance with and subject to any rules and requirements duly promulgated by the Division (N.J.A.C. 5:43-4.3(e) and (h)), for determining that a resale transaction is qualified for a certification of exemption or a hardship waiver.

13. The owner shall have responsibility for forwarding copies of all documents filed with the applicable county recording office to the Division after they have been signed, dated and recorded.

14. The owner shall be obligated to pay a service fee at the time of resale or at each new rental occupancy. The fee schedule is at N.J.A.C. 5:43-4.1(c). The fee schedule shall be reassessed annually and, when necessary, revised in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

Recodified from 5:14-4.3 and amended by R.1996 d.226, effective May 20, 1996.

See: 28 N.J.R. 6(a), 28 N.J.R. 2573(a).
Section was "Definitions".

5:43-4.3 Sales units

(a) At initial sale, base prices for sales units shall be determined in accordance with contractual agreements approved by the Division at levels that indicate affordability to households whose gross annual incomes are within low and moderate income ranges as determined by the approved median income guide for the municipality. At initial sale, an Affordable Housing Agreement and a repayment lien shall be signed and recorded with the property deed. The purchaser shall forward a copy of all recorded documents to the Division.

(b) The base price will be indexed according to measured changes in the approved median income guide applicable to the municipality in which the unit is located. An owner who wishes to sell an affordable housing unit shall give written notice to the Division. A resale price shall be calculated using the approved Index and an estimated monthly housing cost shall be determined. The maximum allowable resale price shall never be lower than the last recorded purchase price.

(c) A household's estimated monthly housing cost including principal, interest, taxes, homeowner and private mortgage insurance, and condominium or association fees when applicable, shall be calculated using a standard of 28 percent of gross monthly income. Mortgage approval is the responsibility of the household. Certified households whose gross monthly income times 28 percent is not less than the estimated monthly housing cost and whose household size meets occupancy criteria will be referred to the owner for contract negotiations within 60 days of receipt of the initial notice. The Division reserves the right to waive this requirement if circumstances necessitate a higher percentage and the household concurs.

(d) A home improvement that increases the unit's size, making it suitable for occupancy by a larger household, may be approved by the Division for a resale price adjustment. The adjusted resale price shall not exceed the equivalent affordability range as determined for the larger household using the applicable median income guide. Additional allowances, unrelated to the maximum allowable resale price, for home improvements deemed necessary for maintaining the standard condition of an affordable housing unit may be approved by the Division.

(e) If no certified household has executed an agreement to purchase within 90 days of the Division'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 Division and a copy to the municipality wherein the unit is located. If a hardship waiver is granted, low income units may be marketed to moderate income households and moderate income units may be marketed to households who exceed the moderate income eligibility guidelines.

(f) For approval of a hardship waiver, an owner must provide documentation to the Division that there has been a good faith effort to sell the unit to a certified household for 90 days and no certified household has signed an agreement to purchase the unit or that economic factors not related to household income, including but not limited to, interest rates, taxes, or insurance, inhibit the ability of an income-eligible household to obtain a mortgage commitment for the unit.

1. Upon receipt of a request for a hardship waiver, the municipality in which the unit is located shall have first option to purchase the unit at the approved resale price and to hold and rent or convey it to a certified household. The municipality shall have 30 days in which to exercise this option.

(g) The Division shall approve or deny a hardship waiver in writing within 30 days of receipt of the request. A hardship waiver in recordable form shall be provided to the purchaser at the time of closing and filed with the deed and the Affordable Housing Agreement. The hardship waiver only applies to income eligibility restrictions for occupancy and is only valid for the designated resale transaction. It does not affect the resale price restriction. Future resales are subject to all deed restrictions concerning income eligibility and the indexed resale price.

1. If the Division denies a hardship waiver, an owner may file a written appeal within 15 days of receipt of the denial to the Hearing Coordinator, Department of Community Affairs, PO Box 802, Trenton, NJ 08625-0802. If a written appeal has not been received within 15 days after the owner's receipt of the denial, the order of denial shall be final.

(h) The following title transactions shall be deemed exempt and the Department 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 by will or intestate succession;
4. Transfer of ownership through an Executor's deed to a Class A beneficiary in accordance with N.J.S.A. 54:33-1 et seq.;
5. Transfer of ownership by court order.

(i) 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 income index in compliance with the terms of the Affordable Housing Agreement.

1. The exempt transaction shall not be considered as a recorded transaction in calculating subsequent resale prices.

(j) The owner shall notify the Division in writing of any proposed transaction that he or she wishes to have qualify as an exempt transaction. The owner shall supply the Division with all necessary documentation to demonstrate that the transaction qualifies as exempt. The Division may request additional documentation as it deems necessary. The Division shall approve or deny in writing a request for a certificate of exemption within 15 days of the receipt of the request.

1. If the Division denies the exemption, the owner may submit a written appeal within 15 days to the Hearing Officer, Division of Housing and Community Resources, Department of Community Affairs, PO Box 802, Trenton, NJ 08625-0802. 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.

2. A certificate of exemption shall be filed with the deed and the Affordable Housing Agreement at the time of title transfer.

Amended by R.1995 d.594, effective November 20, 1995.

See: 27 N.J.R. 3256(a), 27 N.J.R. 4698(a).

Recodified from 5:14-4.4 and amended by R.1996 d.226, effective May 20, 1996.

See: 28 N.J.R. 6(a), 28 N.J.R. 2573(a).

Former section, "Affordable Housing Agreement", recodified to 5:14-4.2.

5:43-4.4 Owner-occupied Neighborhood Rehabilitation Projects

(a) Owner-occupied units in Neighborhood Rehabilitation Projects shall be restricted by a deferred loan agreement that is secured by a note and mortgage from the property owner to the Department of Community Affairs. The mortgage shall be subordinate to a senior mortgage and additional liens as identified at the time of the signing of the mortgage. An income-eligible owner-occupant who is the recipient of a deferred payment loan for rehabilitation of a substandard unit shall be subject to the following restrictions:

1. If the owner-occupant (hereinafter known as the borrower) transfers title to the property, vacates the unit, or prepays the loan within six years from the date the unit has been declared in standard condition, the borrower shall pay the Division the original full amount of the loan without interest. After the sixth year, the amount due shall be reduced by 25 percent per year beginning on the seventh anniversary of the certification of standard and continuing until the tenth anniversary at which time the full amount of the loan will be forgiven.

2. In the event of the death of the owner-occupant prior to the end of the 10 year restricted period, the loan shall be due and payable at the principal amount as calculated in N.J.A.C. 5:43-4.4(a)1, at the time of death unless the persons inheriting the property are income eligible and personally occupy the rehabilitated property. In this event the loan shall be due and payable under the same terms as above if the persons inheriting the property vacate, transfer title to the property, or pre-pay the loan any time thereafter until the end of the same ten year period.

3. If the property is sold for fair market value and the excess of the sales price over the costs associated with the sale, including the satisfaction of superior liens, is less than the amount owed to the Division, the Division shall waive repayment of all or a portion of the Balanced Housing loan. In this event, the Division shall review the proposed sales contract and may require an appraisal to confirm the sales price as fair market value.

4. After 10 years, the Division shall forgive the loan and cancel the note and mortgage without repayment.

(b) Rental units included in a Neighborhood Rehabilitation Project shall be subject to a 10 year Affordable Housing Agreement that shall limit the occupancy of the rental unit to an eligible low or moderate income household, limit rents to annual increases measured by the Index, and be filed in the office of the county recording officer.

(c) The deferred loan payment term and the 10 year Affordable Housing Agreement shall begin on the date the unit is determined to be in standard condition as verified by a municipal code enforcement officer.

Amended by R.1992 d.144, effective April 6, 1992.

See: 23 N.J.R. 1075(a), 24 N.J.R. 1385(a).

Subordination of loan prohibited; waiver provisions added.

Recodified from 5:14-4.5 and amended by R.1996 d.226, effective May 20, 1996.

See: 28 N.J.R. 6(a), 28 N.J.R. 2573(a).

Former section, "Sales units", recodified to 5:14-4.3.

5:43-4.5 Rental units

(a) Initial gross rents shall be determined in accordance with contractual agreements approved by the Division at ranges that indicate affordability to households whose gross annual incomes are within low and moderate income ranges as determined by the approved median income guide for the municipality.

1. The maximum allowable gross rent shall be calculated so as to be affordable (no more than 30 percent of gross monthly income) to a household whose estimated total gross annual income is at 50 percent of the applicable median income for low income units or below 80 percent of the applicable median income for moderate income units. Maximum gross rents shall be calculated to include a utility allowance for tenant paid utilities. In any single project, gross rents shall be calculated to be affordable on average to a household whose estimated total gross annual income is at 57.5 percent of the applicable median income.

2. In an occupied rental unit, the maximum gross rent shall be the greater of the current rent or 30 percent of the gross monthly income of the eligible household occupying the unit. The current rent (defined as the rent charged at the time of the municipality's application) shall not exceed the maximum allowable rent for a household at 50 percent of median for low income units or below 80 percent of median for moderate income units.

3. In an unoccupied rental unit contained within a two-to-four unit owner-occupied rehabilitated structure, the maximum gross rent shall be the greater of the last rent charged or 30 percent of the gross monthly income of the first household to occupy the unit following rehabilitation. If the last rent charged is unknown, the gross rent shall be calculated so as not to exceed the maximum allowable rent for a household at 50 percent of median for low income units or below 80 percent of median for moderate income units.

(b) The Division shall generally refer households to units for which the monthly gross rental charge, which includes an allowance for tenant-paid utilities, is approximately 30 percent of their gross monthly income.

(c) At the time restrictions are initially placed on a rental unit, an Affordable Housing Agreement shall be signed and duly recorded. The owner shall forward copies of the recorded deed and the agreement to the Division for its files.

(d) The landlord shall notify the Division of any impending vacancy in any restricted rental unit no less than 60 days before the unit is to become available.

(e) The Division shall refer certified households who meet income and bedroom size criteria for a vacant unit to a landlord for lease negotiations within 30 days of receipt of this notification. Landlords must select a certified household for occupancy of an affordable rental unit. Final tenant selection shall be the responsibility of the landlord. However, no referred household shall be denied a lease for any reason that violates any applicable law.

(f) 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 shall comply with applicable law.

(g) 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 as determined by the Council on Affordable Housing. The Division shall notify all landlords of changes in the Index. The landlord shall submit a written request for rent adjustment approval to the Division when a rent adjustment is to be made. The Division shall promptly approve or disapprove all rent adjustment requests.

(h) An owner of a restricted rental unit shall notify the Division in writing of an intent to transfer ownership of the property. A copy of the recorded deed shall be forwarded to the Division. The property shall be retained as affordable housing at resale subject to the Affordable Housing Agreement.

Recodified from 5:14-4.6 and amended by R.1996 d.226, effective May 20, 1996.

See: 28 N.J.R. 6(a), 28 N.J.R. 2573(a).

Former section, "Owner-occupied Neighborhood Rehabilitation Projects", recodified to 5:14-4.4.

5:43-4.6 Procedures for establishing eligibility for occupancy

(a) In order to be considered for an Affordable Housing unit, households shall submit a preliminary application to the Division. As completed preliminary applications are received, the Division shall review the applications for income eligibility and family size and in accordance with all applicable laws.

1. When the initial review indicates that an applicant household may be eligible, the name of the head of the household shall be placed on a referral list. The Division will send a confirmation letter to the applicant.

(b) When the initial review indicates that an applicant household is income-ineligible, the applicant household shall be advised in writing. If an applicant household receives a determination of ineligibility, the applicant may submit a written request for a redetermination to the Division within 15 days of receipt of the denial. The request must set forth the basis for the claim of eligibility. The applicant household shall be required to produce documentation to support the claim at the time of redetermination. Written notice of the redetermination shall be given to the applicant by the Division.

1. If the applicant household receives a second notice of ineligibility, a written appeal may be filed with the Hearing Coordinator, Department of Community Affairs, PO Box 802, Trenton, NJ 08625-0802, within 15 days of receipt of the second notice. If a written request has not been received within 15 days after the applicant household's receipt of this notice, the determination shall be final and the application shall be considered ineligible.

(c) As units become available, the Division shall notify eligible households who have submitted information consistent with the income criteria and occupancy standards for an available unit through a computerized random selection process and schedule them for a certification interview. At the certification interview, the household shall be requested to document all income for the purpose of qualifying for the required mortgage or rent payment. The certification process may 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 verification of income. Verification may include, but is not necessarily limited to, any of the following:

1. Four consecutive pay-stubs including overtime bonuses or tips dated within 120 days of the interview date or one pay-stub and a letter from each employer stating an annualized current income figure;

2. A copy of regular IRS Form 1040, 1040A, or 1040EZ, as applicable, and New Jersey State income tax returns for each of the three years prior to the date of interview;

3. A letter of appropriate reporting form verifying, without limitation, social security, unemployment, disability, pension or other benefits;

4. A letter or appropriate reporting form verifying any other sources of income claimed by the applicant such as alimony and child support;

5. Reports that verify income from assets such as savings accounts, money markets, CDs, stocks, bonds, trust funds or other income-producing property to be submitted by banks or other financial institutions managing such assets;

6. Reports that verify assets such as real estate, savings with delayed earnings provisions or business income with

a notarized statement of explanation or in such other form as to be satisfactory to the reviewer; and

7. Such other information or documentation as may be necessary to make a reasonable eligibility decision.

(d) Eligible households who are denied certification shall be notified in writing of the denial. This notice shall state the specific reason for the denial. If the eligible household disagrees with this finding, it may file a written request for redetermination with the Division within 15 days of receipt of the notice. Eligible households shall be required to produce documentation to support their claim.

1. Eligible households who are again denied certification may file a written appeal with the Hearing Coordinator, Department of Community Affairs, PO Box 802, Trenton, NJ 08625-0802 within 15 days of receipt of the denial. If a written request has not been received within 15 days of the household's receipt of this notice, the determination shall be final and the application considered denied.

(e) Only households certified by the Affordable Housing Management Service or an authorized agency approved by the Affordable Housing Management Service described in N.J.A.C. 5:43-4.1(b)3 through 5 shall be eligible to rent or own Balanced Housing Units.

1. Low income housing units shall be reserved for households with a gross household income measured at less than or equal to 50 percent of the median income guideline approved for use by the Council on Affordable Housing.

2. Moderate income housing units shall be reserved for households with a gross household income measured at less than 80 percent of the median income guideline approved for use by the Council on Affordable Housing.

i. A household earning less than 50 percent of median may be placed in any moderate income unit.

3. Households that are certified shall be issued written certification that is valid for 120 days. Certification may be extended by the Division for one additional period of 120 days if a mortgage application has been made and the household has not received approval or denial. Households with a certification which expires shall be returned to the referral list and may be considered for future housing referrals.

(f) To the greatest extent possible, certified households shall be referred to available units using the following accepted standards for occupancy:

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; and

4. Children not in same bedroom with parents.

(g) Households may be considered for units other than as above but, in no case, shall a household be referred to a unit that provides for more than one bedroom in excess of household occupancy requirements as stated above.

(h) The Division shall gather information on each assisted household's income, assets and household characteristics from time to time for purposes of program evaluation.

Amended by R.1995 d.594, effective November 20, 1995.

See: 27 N.J.R. 3256(a), 27 N.J.R. 4698(a).

Recodified from 5:14-4.7 and amended by R.1996 d.226, effective May 20, 1996.

See: 28 N.J.R. 6(a), 28 N.J.R. 2573(a).

Former section, "Rental units", recodified to 5:14-4.5.

5:43-4.7 Foreclosure

(a) A judgment of foreclosure in favor of or a deed in lieu of foreclosure to an institutional first mortgage on any owner-occupied restricted unit shall result in a termination of affordability controls, except for the defaulting mortgagor who shall be forever subject to the restrictions with respect to the unit owned by him or her at the time of default.

1. All resale restrictions shall cease to be effective as of the transfer of title pursuant to foreclosure with regard to the first money mortgagee or a lender in the secondary mortgage market including, but not limited to, the Federal National Mortgage Association, Home Loan Mortgage Corporation, or the Government National Mortgage Association; or an entity acting on their behalf.

2. Affordability controls shall remain in effect in the event of any judgment of foreclosure on a rental unit, other than a rental unit in a one to four family rehabilitated owner-occupied dwelling.

(b) Nothing shall preclude the municipality in which the unit is located from purchasing the unit at a negotiated price not to exceed the maximum permitted resale price and no less than the last recorded sales price and holding, renting or conveying it to a certified household. The municipality shall have 60 days after the unit is listed for sale in which to exercise this option. Failure of the financial institution to provide notice of a foreclosure action to the Division or the municipality shall not impair the financial institution's rights to recoup loan proceeds and shall create no cause of action against the financial institution.

(c) In the event of a foreclosure sale by a first money mortgagee, any surplus funds that remain after the amount required to pay and satisfy the first money mortgage including the costs of foreclosure and any previously approved second mortgages shall be paid to the Division as reimbursement for Neighborhood Preservation Balanced Housing Program Funding invested in the unit. Any remaining funds in excess of outstanding grants or loans and owner's accrued equity shall be returned to the municipality.

Recodified from 5:14-4.8 and amended by R.1996 d.226, effective May 20, 1996.

See: 28 N.J.R. 6(a), 28 N.J.R. 2573(a).

Former section, "Procedures for establishing eligibility for occupancy", recodified to 5:14-4.6.

5:43-4.8 Violations, defaults and remedies

(a) Upon a violation of any of the provisions of the Affordable Housing Agreement by the owner of a Balanced Housing unit, the Division may give written notice to the owner specifying the nature of the violation and requiring a correction within a reasonable period of time as specified in the notice.

1. The owner shall be obligated to notify the Division that the violation has been corrected within the reasonable time period or that additional time is needed for the correction. The Division will grant additional time for good cause and notify the owner that additional time has been granted.

2. If the owner does not forward written notification, as required, or correct the violation within the time specified, the Division may declare a default of the Agreement.

3. The interest of any owner may, at the option of the Division, be subject to forfeiture in the event of substantial breach of any of the terms, restrictions and provisions of the Agreement which remains uncured for the period of 60 days after service of the written notice of violation upon the owner by the Division.

4. The notice of violation shall specify the particular infraction and shall advise the owner that his or her right to continued ownership may be subject to forfeiture if such infraction is not cured within 60 days of receipt of the notice.

(b) If an owner makes any misrepresentation in connection with the purchase, rental, or sale of an affordable housing unit pursuant to the Agreement, the Division may apply to a court of competent jurisdiction for specific performance of the Agreement, for an injunction prohibiting a proposed sale, lease, or transfer in violation of the Agreement, or a declaration that a sale or transfer in violation of the Agreement is void, or for any other relief as may be deemed appropriate.

(c) The provisions of this section may be enforced by the Division by court action seeking a judgment which would result in the termination of the owner's equity or other interest in the unit. Any judgment shall be enforceable as if same were a judgment of default of the first money mortgage and shall constitute a lien against the particular Balanced Housing Unit.

1. A court judgment of default shall obligate the owner to accept the first offer to purchase from any certified household, who has been referred to the owner by the Division, with such offer to purchase being no more than the maximum permitted resale price of the Balanced Housing Unit as permitted by the terms and provisions of the Affordable Housing Agreement.

2. The owner shall remain fully obligated, responsible and liable for complying with the terms and restrictions of the Agreement until such time as title is conveyed to a new owner.

(d) In the event that the Balanced Housing unit is a rental unit, and the owner has leased such unit either for a rental charge in excess of that permitted by the Agreement or to a tenant who has not been certified by the Division, the Division shall have recourse to all legal remedies as stated above, including the recapture of surplus rents paid in excess of the maximum permitted Rental Charge.

Recodified from 5:14-4.9 and amended by R.1996 d.226, effective May 20, 1996.

See: 28 N.J.R. 6(a), 28 N.J.R. 2573(a).

Former section, "Foreclosure", recodified to 5:14-4.7.

5:43-4.9 Effective dates for affordability controls

(a) For units created and rehabilitated with Balanced Housing funds, affordability controls shall be effective as of the date initial restrictions encumber the unit as required by the Balanced Housing Grant Agreement.

(b) For rental units created or rehabilitated with Balanced Housing funds, affordability controls shall remain in effect after the expiration date as required by the Balanced Housing Grant Agreement until the date on which a rental unit shall become vacant provided that the occupant household continues to earn a gross annual income of less than 80 percent of the applicable median income.

(c) The affordability control periods shall be established according to N.J.A.C. 5:43-3.1(f) and shall begin as follows:

1. For sales units, on the date of the initial sales closing transaction by a certified household;

2. For rental housing containing two or more units, on the effective date of an initial lease agreement with a certified household or when permanent certificates of occupancy are issued, whichever is later, or as determined by the Division; and

3. For single-family housing which is rented, on the effective date of an initial lease agreement with a certified household.

Amended by R.1992 d.144, effective April 6, 1992.

See: 23 N.J.R. 1075(a), 24 N.J.R. 1385(a).

Stylistic changes.

Recodified from 5:14-4.10 and amended by R.1996 d.226, effective May 20, 1996.

See: 28 N.J.R. 6(a), 28 N.J.R. 2573(a).

Former section, "Violations, defaults and remedies", recodified to 5:14-4.8.

5:43-4.10 Applicability

This subchapter shall be effective for housing units receiving funding from the Division under the Neighborhood

Preservation Balanced Housing Program on the basis of funding agreements executed before the effective date of the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26, October 1, 2001. For housing units receiving funding based on funding agreements executed on or after that date, this subchapter shall be inapplicable, and the units shall be subject to the Uniform Housing Affordability Controls set forth at N.J.A.C. 5:80-26.

Recodified to 5:14-4.9 by R.1996 d.226, effective May 20, 1996.

See: 28 N.J.R. 6(a), 28 N.J.R. 2573(a).

Section was "Length of restrictions".

New Rule, R.2001 d.371, effective October 1, 2001.

See: 33 N.J.R. 226(b), 33 N.J.R. 3432(a).

SUBCHAPTER 5. MULTIFAMILY HOUSING PRESERVATION AND RECEIVERSHIP

5:43-5.1 Scope

This subchapter shall apply to applicants for funding under the Multifamily Housing Preservation and Receivership Act, P.L. 2003, c. 295 (N.J.S.A. 2A:42-114 et al.).

5:43-5.2 Insurance

(a) Evidence of builder's risk or all risk insurance must be provided prior to the closing of the Department loan or grant and the appropriate level of coverage is required for the duration of the construction. The minimum amount of the insurance shall be the insurable (replacement cost) value established by the appraisal submitted to the court.

(b) Evidence of Commercial General Liability Insurance shall be required for all completed projects and must be carried at acceptable levels for the duration of the Department loan or grant.

(c) Professional liability insurance for the general contractor and architect shall be required as follows:

1. General contractor:

i. General liability;

ii. Workmen's compensation;

iii. Contractor's public liability in the sum of \$1,000,000/\$3,000,000 and property insurance of \$250,000/\$500,000;

2. Architect:

i. Errors and Omission Insurance of 10 percent of the construction costs or \$250,000, whichever is greater.

(d) All insurance must be issued by a firm with an A.M. Best rating of B+ or better and shall conform to the requirements set forth in Appendix K of this chapter, incorporated herein by reference.

(e) A requirement set forth in this section may be waived or adjusted upon a finding that such requirement would prevent an entity that is otherwise fully qualified to act as a receiver from being appointed receiver, so long as that entity can demonstrate a sufficient level of financial responsibility.

5:43-5.3 Surety bonds

(a) For projects in excess of a \$50,000 hard project cost, a receiver shall be required to post a 100 percent Payment & Performance Bond for a term from the date of the closing of the Department construction loan through two years from the date of issuance of the Certificate of Occupancy or an Architect's Certification of Substantial Completion, whichever is later. The bond will be in an amount sufficient to guarantee compliance with the terms and conditions of the receivership.

(b) Payment and performance bonds shall be in a form acceptable to the Department.

(c) A requirement set forth in this section may be waived or adjusted upon a finding that such requirement would prevent an entity that is otherwise fully qualified to act as a receiver from being appointed receiver, so long as that entity can demonstrate a sufficient level of financial responsibility.

Administrative correction.
See: 37 N.J.R. 3812(a).

5:43-5.4 Qualification for registration of qualified entities

(a) In order to be eligible to register as a qualified receiver with the Department of Community Affairs, the applicant must demonstrate that at least one person holding a position of responsibility in the organization possesses the minimum qualifications set forth under either (a)1 or 2 below.

1. **Property Management:** The responsible person must demonstrate any one of the following qualifications; provided, however, that such persons may substitute office or retail property management experience for up to one half of the minimum number of units set forth below on the basis of 1,000 square feet of office or retail space equals one residential unit:

i. Three years as owner/operator of a property management company with responsibility for management of 100 or more rental units;

ii. Three years as property manager of a building or buildings with 50 or more rental units;

iii. Three years as the senior individual responsible for property management at a community development corporation (CDC) or public housing authority (PHA) with 50 or more rental units; or

iv. Six years as manager or senior staff with substantial responsibility for property management of 50

units or more within a property management company, CDC or public housing authority.

2. **Rehabilitation:** Individuals whose principal qualifications are in rehabilitation of multifamily housing may serve as receivers on behalf of qualified entities if their activities are on behalf of a firm or entity that they either own, or hold a responsible position in, which maintains and operates the housing (as distinct from acting as a general contractor or construction manager for other parties). In order to qualify under this section, the individual must demonstrate that he or she had responsibility for successful completion of rehabilitation on 50 or more *multifamily* rental units within the past 10 or fewer years, acting as owner/developer or as responsible staff of a CDC. In order to meet the standard of an entity that maintains and operates the rehabilitated housing, the firm or entity must continue (or plan to continue) as owner and manager of the rehabilitated units for at least five years after completion of rehabilitation. For purposes of this paragraph:

i. Eligible projects are limited to those in which rehabilitation expenditures were at least \$15,000 per unit; and

ii. The individual seeking to qualify as a receiver need not be the individual in the firm or entity with direct (hands-on) property management responsibilities, but must hold a position of senior responsibility with the firm or entity.

(b) Applicants on behalf of a qualified entity can substitute course work for experience as follows:

1. Completion of property management courses sponsored by the Institute of Real Estate Management (IREM) or other entity acceptable to the Department can be substituted for up to one year of property management experience on the basis of one course equals three months of experience;

2. The Department may designate certain courses or curricula as substituting for more than three months of experience, but in no event will allow applicants to substitute courses for more than one year of experience;

3. The Department may reduce the minimum number of units required under (a)li or ii above on the basis of completion of property management courses. The number of units may be reduced by no more than one half for courses equivalent to one year of experience, as provided above, or no more than one quarter for a smaller number of courses.

(c) In connection with the application for registration, each applicant on behalf of a qualified entity must disclose, with regard to himself or herself or any other person holding a position of responsibility in entity, or with regard to the entity itself or any related entity:

1. Any criminal convictions within the previous 10 years other than motor vehicle offenses;

2. Any complaints with any official board or agency filed against the applicant in connection with his or her activities as a property manager, property owner or contractor, and their disposition; and

3. Copies of code violation notices and records of correction of violations with respect to properties under applicant's direct control for previous three years.

(d) Registration may be denied to any applicant where the Department finds any of the following on the basis of the applicant's disclosure:

1. The nature of the applicant's past criminal convictions materially affects the ability of the applicant to act successfully as a receiver;

2. The nature of the complaints filed against the applicant materially affects the ability of the applicant to act successfully as a receiver; or

3. The magnitude of the code violations on properties under the applicants control, and/or the failure of applicant to correct violations in a timely manner, materially affect the ability of the applicant to act successfully as a receiver.

(e) In order to remain registered, each applicant must submit a registration renewal request annually, which shall

include disclosure of any matters taking place in the previous year requiring disclosure under (c) above.

(f) The organization shall demonstrate that it has experience in obtaining funding from State, Federal, municipal or private sources.

(g) Monitoring: Every two years, qualified entities shall be required to provide the Department with a report and a certification on their standing with the court on any project for which they have been designated a receiver. The report shall include the following information:

1. The location of the project, city and county;
2. The total number of units;
3. The total number of low income units and of moderate income units; and
4. Funding sources.

Administrative correction.
See: 37 N.J.R. 3812(a).

APPENDIX A

(RESERVED)

Amended by R.1992 d.144, effective April 6, 1992.
See: 23 N.J.R. 1075(a), 24 N.J.R. 1385(a).
Phillipsburg added.
Repealed by R1996 d.226, effective May 20, 1996.
See: 28 N.J.R. 6(a), 28 N.J.R. 2573(a).

APPENDIX B

Distressed Urban Municipalities—Maximum Subsidy Rental Units

<u>Rent *</u>	<u>Studio/SRO</u>	<u>1 BR</u>	<u>2 BR</u>	<u>3 BR</u>	<u>4 BR</u>
1,100 or more	1,000	1,000	1,000	1,000	1,000
1,075	1,000	1,000	1,000	1,000	3,000
1,050	1,000	1,000	1,000	1,000	5,500
1,025	1,000	1,000	1,000	2,000	8,000
1,000	1,000	1,000	1,000	4,500	10,500
975	1,000	1,000	1,000	7,000	13,000
950	1,000	1,000	3,500	9,500	15,500
925	1,000	1,000	6,000	12,000	18,000
900	1,000	2,500	8,500	14,500	20,500
875	1,000	5,000	11,000	17,000	23,000
850	1,000	7,500	13,500	19,500	25,500
825	1,000	10,000	16,000	22,000	26,000
800	1,000	12,500	18,500	24,500	30,500
775	1,000	15,000	21,000	27,000	33,000
750	2,500	17,500	23,500	29,500	35,500
725	5,000	20,000	26,000	32,000	38,000
700	7,500	22,500	28,500	34,500	40,500
675	10,000	25,000	31,000	37,000	43,000
650	12,500	27,500	33,500	39,500	45,500
625	15,000	30,000	36,000	42,000	48,000
600	17,500	32,500	38,500	44,500	50,500
575	20,000	35,000	41,000	47,000	53,000

<u>Rent *</u>	<u>Studio/SRO</u>	<u>1 BR</u>	<u>2 BR</u>	<u>3 BR</u>	<u>4 BR</u>
550	22,500	37,500	43,500	49,500	55,500
525	25,000	40,000	46,000	52,000	58,000
500	27,500	42,500	48,500	54,500	60,500
475	30,000	45,000	51,000	57,000	63,000
450 or less	32,500	47,500	53,500	59,500	65,500

* Rent includes tenant paid utilities. For rents in between those listed, interpolate.

ADJUSTMENTS:

1. Unit Size:

The Balanced Housing funding charts are based on certain assumptions regarding unit size. These assumptions are:

Studio	500 Sq. Ft.
1 Bedroom	600 Sq. Ft.
2 Bedrooms	750 Sq. Ft.
3 Bedrooms	950 Sq. Ft.
4 Bedrooms	1,150 Sq. Ft.

For units that are smaller than the sizes listed above, subtract \$50.00 for each square foot below the size indicated:

In determining unit size, the Department will consider the net square foot size, that is the area inside the unit. Excluded from the calculation are common halls, stairways, unfinished basements and attics, garages, balconies and porches. The Department may waive all or part of the unit size deduction based on the inclusion of amenities as noted in N.J.A.C. 5:43-2.4(a)6.

The maximum allowable subsidy for any rental unit receiving a project-based Section 8 certificate from the United States Department of Housing and Urban Development or any equivalent project-based subsidy shall be \$15,000.

2. Small Projects:

For rental projects which are not receiving Low Income Housing Tax Credits:

<u>Unit Size</u>	<u>Rent</u>	<u>Number of units in Project*</u>	<u>Add</u>
SRO	\$550.00 or less	15 or less	\$10,000
SRO	\$550.00 or less	16 to 25	\$ 5,000
1 BR	\$600.00 or less	15 or less	\$12,500
1 BR	\$600.00 or less	16 to 25	\$ 7,500

<u>Unit Size</u>	<u>Rent</u>	<u>Number of units in Project*</u>	<u>Add</u>
2 BR	\$650.00 or less	15 or less	\$15,000
2 BR	\$650.00 or less	16 to 25	\$10,000
3 BR	\$700.00 or less	15 or less	\$17,500
3 BR	\$700.00 or less	16 to 25	\$12,500
4 BR	\$750.00 or less	15 or less	\$20,000
4 BR	\$750.00 or less	16 to 25	\$15,000

* The total number of units in the project, regardless of the number being considered for Balanced Housing funding.

3. Volume Cap Tax Credit Projects:

Subject to the limitations listed below, Balanced Housing rental projects which are also receiving the volume cap tax credit may add the following to the maximum subsidy:

SRO	\$10,000
1 BR	\$12,500
2 BR	\$15,000
3 BR	\$17,500
4 BR	\$20,000

In order to qualify for this added subsidy, applicants must demonstrate that the project would be eligible, in accordance with the QAP, for maximum point totals in the following categories: compliance period; social services; unit amenities; and project amenities. This additional subsidy may not be used in conjunction with a State low income housing tax credit.

New Rule R.1992 d.144, effective April 6, 1992.
 See: 23 N.J.R. 1075(a), 24 N.J.R. 1385(a).
 Amended by R.1995 d.339, effective June 19, 1995.
 See: 27 N.J.R. 1508(a), 27 N.J.R. 2385(a).
 Amended by R.1996 d.226, effective May 20, 1996.
 See: 28 N.J.R. 6(a), 28 N.J.R. 2573(a).
 Amended by R.2002 d.325, effective October 7, 2002.
 See: 33 N.J.R. 3261(a), 34 N.J.R. 3500(a).
 Rewrote the section.

APPENDIX C

Non Distressed Urban Municipalities—Maximum Subsidy Rental Units

<u>Rent *</u>	<u>Studio/SRO</u>	<u>1 BR</u>	<u>2 BR</u>	<u>3 BR</u>	<u>4 BR</u>
\$1,025 or more	1,000	1,000	1,000	1,000	1,000
1,000	1,000	1,000	1,000	2,500	2,500

Rent*	Studio/SRO	1 BR	2 BR	3 BR	4 BR
975	1,000	1,000	1,000	1,000	5,000
950	1,000	1,000	1,000	2,500	7,500
925	1,000	1,000	1,000	5,000	10,000
900	1,000	1,000	2,500	7,500	12,500
875	1,000	1,000	5,000	10,000	15,000
850	1,000	2,500	7,500	12,500	17,500
825	1,000	5,000	10,000	15,000	20,000
800	1,000	7,500	12,500	17,500	22,500
775	1,000	10,000	15,000	20,000	25,000
750	1,000	12,500	17,500	22,500	27,500
725	1,000	15,000	20,000	25,000	30,000
700	2,500	17,500	22,500	27,500	32,500
675	5,000	20,000	25,000	30,000	35,000
650	7,500	22,500	27,500	32,500	37,500
625	10,000	25,000	30,000	35,000	40,000
600	12,500	27,500	32,500	37,500	42,500
575	15,000	30,000	35,000	40,000	45,000
550	17,500	32,500	37,500	42,500	47,500
525	20,000	35,000	40,000	45,000	50,000
500	22,500	37,500	42,500	47,500	52,000
475	25,000	40,000	45,000	50,000	55,000
450 or less	27,500	42,500	47,500	52,500	57,500

* Rent includes tenant paid utilities. For rents in between those listed, interpolate.

ADJUSTMENTS:

1. Unit Size:

The Balanced Housing funding charts are based on certain assumptions regarding unit size. These assumptions are:

Studio	500 Sq. Ft.
1 Bedroom	600 Sq. Ft.
2 Bedrooms	750 Sq. Ft.
3 Bedrooms	950 Sq. Ft.
4 Bedrooms	1,150 Sq. Ft.

For units that are smaller than the sizes listed above, subtract \$50.00 for each square foot below the size indicated:

In determining unit size, the Department will consider the net square foot size, that is the area inside the unit. Excluded from the calculation are common halls, stairways, unfinished basements and attics, garages, balconies and porches. The Department may waive all or part of the unit size deduction based on the inclusion of amenities as noted in N.J.A.C. 5:43-2.4(a)6.

The maximum allowable subsidy for any rental unit receiving a project-based Section 8 certificate from the United States Department of Housing and Urban Development or any equivalent project-based subsidy shall be \$15,000.

2. Small Projects:

For rental projects which are not receiving Low Income Housing Tax Credits:

Unit Size	Rent	Number of units in Project*	Add
SRO	\$550.00 or less	15 or less	\$ 7,500
SRO	\$550.00 or less	16 to 25	\$ 3,750
1 BR	\$600.00 or less	15 or less	\$10,000
1 BR	\$600.00 or less	16 to 25	\$ 5,000
2 BR	\$650.00 or less	15 or less	\$12,500
2 BR	\$650.00 or less	16 to 25	\$ 6,250
3 BR	\$700.00 or less	15 or less	\$15,000
3 BR	\$700.00 or less	16 to 25	\$ 7,500
4 BR	\$750.00 or less	15 or less	\$17,500
4 BR	\$750.00 or less	16 to 25	\$ 8,750

* The total number of units in the project, regardless of the number being considered for Balanced Housing funding.

3. Volume Cap Tax Credit Projects:

Subject to the limitations listed below, Balanced Housing rental projects which are also receiving the volume cap tax credit may add the following to the maximum subsidy:

SRO	\$ 7,500
1 BR	\$10,000
2 BR	\$12,500
3 BR	\$15,000
4 BR	\$17,500

In order to qualify for this added subsidy, applicants must demonstrate that the project would be eligible, in accordance with the QAP, for maximum point totals in the following categories: compliance period; social services; unit amenities; and project amenities. This additional subsidy may not be used in conjunction with a State low income housing tax credit.

New Rule R.1992 d.144, effective April 6, 1992.
See: 23 N.J.R. 1075(a), 24 N.J.R. 1385(a).
Amended by R.1995 d.339, effective June 19, 1995.
See: 27 N.J.R. 1508(a), 27 N.J.R. 2385(a).

Amended by R.1996 d.226, effective May 20, 1996.
See: 28 N.J.R. 6(a), 28 N.J.R. 2573(a).
Amended by R.2002 d.325, effective October 7, 2002.

See: 33 N.J.R. 3261(a), 34 N.J.R. 3500(a).
Rewrote the section.

APPENDIX D

Distressed Urban Municipalities—Maximum Subsidy Homeownership Units

Sales Price*	1 BR	2 BR	3 BR	4 BR
More than 110,000	1,000	1,000	1,000	1,000
110,000	1,000	1,000	2,000	10,000
107,500	1,000	1,000	4,500	12,500
105,000	1,000	1,000	7,000	15,000
102,500	1,000	1,000	9,500	17,500
100,000	1,000	1,000	12,000	20,000
97,500	1,000	3,500	14,500	22,500
95,000	1,000	6,000	17,000	25,000
92,500	1,000	8,500	19,500	27,500
90,000	1,000	11,000	22,000	30,000
87,500	1,000	13,500	24,500	32,500
85,000	1,000	16,000	27,000	35,000
82,500	1,000	18,500	29,500	37,500
80,000	1,000	21,000	32,000	40,000
77,500	2,500	23,500	34,500	42,500
75,000	5,000	26,000	37,000	45,000
72,500	7,500	28,500	39,500	47,500
70,000	10,000	31,000	42,000	50,000
67,500	12,500	33,500	44,500	52,500
65,000	15,000	36,000	47,000	55,000
62,500	17,500	38,500	49,500	57,500
60,000	20,000	41,000	52,000	60,000
57,500	22,500	43,500	54,500	62,500
55,000	25,000	46,000	57,000	65,000
52,500	27,500	48,500	59,500	65,000
50,000 or less	30,000	50,000	62,000	65,000

* For prices in between those listed, interpolate.

ADJUSTMENTS:

The Balanced Housing funding charts are based on certain assumptions regarding unit size. These assumptions are:

Studio	500 Sq. Ft.
1 Bedroom	600 Sq. Ft.
2 Bedrooms	750 Sq. Ft.
3 Bedrooms	950 Sq. Ft.
4 Bedrooms	1,150 Sq. Ft.

For units that are smaller than the sizes listed above, subtract \$50.00 for each square foot below the size indicated.

In determining unit size, the Department will consider the net square foot size, that is the area inside the unit. Excluded from the calculation are common halls, stairways, unfinished basements and attics, garages, balconies and porches. The Department may waive all or part of the unit size deduction based on the inclusion of amenities as noted in N.J.A.C. 5:43-2.4(a)6.

New Rule R.1995 d.339, effective June 19, 1995.
See: 27 N.J.R. 1508(a), 27 N.J.R. 2385(a).
Amended by R.1996 d.226, effective May 20, 1996.
See: 28 N.J.R. 6(a), 28 N.J.R. 2573(a).
Amended by R.2002 d.325, effective October 7, 2002.
See: 33 N.J.R. 3261(a), 34 N.J.R. 350(a).
Rewrote the section.

APPENDIX E

Non Distressed Urban Municipalities—Maximum Subsidy Homeownership Units

Sales Price*	1 BR	2 BR	3 BR	4 BR
\$100,000 or more	1,000	1,000	1,000	1,000
97,500	1,000	1,000	1,000	2,500
95,000	1,000	1,000	1,000	5,000
92,500	1,000	1,000	2,500	7,500

<u>Sales Price*</u>	<u>1 BR</u>	<u>2 BR</u>	<u>3 BR</u>	<u>4 BR</u>
90,000	1,000	1,000	5,000	10,000
87,500	1,000	2,500	7,500	12,500
85,000	1,000	5,000	10,000	15,000
82,500	1,000	7,500	12,500	17,500
80,000	1,000	10,000	15,000	20,000
77,500	1,000	12,500	17,500	22,500
75,000	1,000	15,000	20,000	25,000
72,500	2,500	17,500	22,500	27,500
70,000	5,000	20,000	25,000	30,000
67,500	7,500	22,500	27,500	32,500
65,000	10,000	25,000	30,000	35,000
62,500	12,500	27,500	32,000	37,500
60,000	15,000	30,000	35,000	40,000
57,500	17,500	32,500	37,500	42,500
55,000	20,000	35,000	40,000	45,000
52,500	22,500	37,500	42,500	47,500
50,000 or less	25,000	40,000	45,000	50,000

* For prices in between those listed, interpolate.

ADJUSTMENTS:

1. Unit Size:

The Balanced Housing funding charts are based on certain assumptions regarding unit size. These assumptions are:

Studio	500 Sq. Ft.
1 Bedroom	600 Sq. Ft.
2 Bedrooms	750 Sq. Ft.
3 Bedrooms	950 Sq. Ft.
4 Bedrooms	1,150 Sq. Ft.

For units that are smaller than the sizes listed above, subtract \$50.00 for each square foot below the size indicated.

In determining unit size, the Department will consider the net square foot size, that is the area inside the unit. Excluded from the calculation are common halls, stairways, unfinished basements and attics, garages, balconies and porches. The Department may waive all or part of the unit size deduction based on the inclusion of amenities as noted in N.J.A.C. 5:43-2.4(a)6.

New Rule, R.1995 d.339, effective June 19, 1995.
 See: 27 N.J.R. 1508(a), 27 N.J.R. 2385(a).
 Amended by R.1996 d.226, effective May 29, 1996.
 See: 28 N.J.R. 6(a), 28 N.J.R. 2573(a).
 Amended by R.2002 d.325, effective October 7, 2002.
 See: 33 N.J.R. 3261(a), 34 N.J.R. 3500(a).
 Rewrote the section.

APPENDIX F

**Contractor's Fee Schedule
(Interpolate as Required)**

Fee Schedule: The Contractor's fee shall be based on a percentage of the construction cost in accordance with the following schedule:

<u>Construction Cost</u>	<u>Percentage</u>	<u>Contractor's Fee</u>
Under \$2 Million	10.0	—
\$ 2,000,000.00	10.0	\$ 200,000.00
3,000,000.00	9.5	285,000.00
4,000,000.00	9.0	360,000.00
5,000,000.00	8.5	425,000.00
6,000,000.00	8.2	492,000.00
7,000,000.00	7.9	553,000.00
8,000,000.00	7.6	608,000.00
9,000,000.00	7.3	657,000.00
10,000,000.00	7.0	700,000.00
11,000,000.00	6.7	737,000.00
12,000,000.00	6.6	792,000.00
13,000,000.00	6.5	845,000.00
14,000,000.00	6.4	896,000.00
15,000,000.00	6.3	945,000.00
16,000,000.00	6.2	992,000.00
17,000,000.00	6.1	1,037,000.00
18,000,000.00	6.0	1,080,000.00
19,000,000.00	5.9	1,121,000.00
20,000,000.00	5.8	1,160,000.00
21,000,000.00	5.7	1,197,000.00
22,000,000.00	5.6	1,232,000.00
23,000,000.00	5.5	1,265,000.00
24,000,000.00	5.4	1,296,000.00
25,000,000.00	5.3	1,325,000.00
26,000,000.00	5.2	1,352,000.00
28,000,000.00	5.0	1,400,000.00
30,000,000.00	4.8	1,440,000.00
32,000,000.00	4.6	1,472,000.00
34,000,000.00	4.4	1,496,000.00
36,000,000.00	4.2	1,512,000.00
38,000,000.00	4.0	1,520,000.00
Over \$38 Million	4.0	—

New Rule R.1992 d.144, effective April 6, 1992.
 See: 23 N.J.R. 1075(a), 24 N.J.R. 1385(a).
 Recodified from App. D by R.1995 d.339, effective June 19, 1995.
 See: 27 N.J.R. 1508(a), 27 N.J.R. 2385(a).

APPENDIX G

Energy Efficient Unit/Energy Star

As defined below and throughout the text of the Balanced Housing rules, Energy Efficient and/or an Energy Efficient Unit is equivalent to Energy Star or an Energy Star Unit as defined by the DOE/EPA's Energy Star Program.

The Home Energy Rating System (HERS) is a set of technical guidelines for rating the performance of a home's energy usage as described in the National Association of State Energy Officials (NASEO)/Residential Energy Services (RESNET) "Mortgage Industry National Accreditation Procedures for Home Energy Rating Systems" (located at www.natresnet.org). The purpose is to ensure that accurate and consistent home energy ratings are performed under accredited home energy rating organizations and/or by certified energy raters.

A Home Energy Rating is an indication of a home's energy efficiency based on a consistent set of inspection procedures, operating assumptions, climate data and calculation methods. The home energy rating report includes a numerical HERS score, based on Council of American Building Officials (CABO/MEC) as the standard, a star rating (one to five) indicating the relative energy profile, an estimate of annual energy consumption (therms and/or kWh) and the estimated annual cost of energy. A HERS rating enables a purchaser to assess the relative energy efficiency of a residence. Lenders can use it as a standard to determine whether a home can qualify for an energy-efficient mortgage; and utility companies use it to determine whether a home qualifies a builder to participate in a new construction program and subsequent incentives.

Using a scale of zero to 100 on the HERS scale, the relative energy efficiency of a given dwelling unit is established by comparing it to the HERS Energy-Efficient Reference Home (EERH), an accepted national standard based on the CABO Model Energy Code. The higher the score, the more efficient the home. The HERS EERH scores 80 points. Essentially, one point is awarded or deducted for each five percent change in energy efficiency for the home's thermal envelope, heating, cooling and domestic hot water systems relative to CABO/MEC. A home that uses approximately 30 percent less energy than the EERH scores 86 points and is equivalent to an Energy Star Certified Home. A home with zero purchased energy scores 100.

A certified Home Energy Rater is an individual qualified by education and experience to perform a home energy rating. A certification process has been established by a broad coalition of the home energy rating industry ("RESNET National Rater Training and Certifying Standard"). The process includes rater training, field supervision and testing by experienced trainers and organizations that are accredited as HERS providers.

The Energy Star Program is a partnership between the U.S. Department of Energy, the U.S. Environmental Protection Agency, product manufacturers, local utilities and retailers. Although Energy Star-labeled products tend to have a higher first cost, they conserve energy, save money on utility bills and help protect the environment, and include, but are not limited to, products such as appliances, lighting fixtures, computers, photocopiers and home electronics, as well as Energy Star Homes.

New Jersey builders, developers, and home buyers acting as their own general contractor should contact their local electric or gas investor owned utility to find out more about their residential new construction program and available services and incentives to assist them in building to the Federal Energy Star standards. It is important to note that a utilities program is subject to change or cancellation without notice and requires continued regulatory approval for implementation.

New Rule, R.2002 d.325, effective October 7, 2002.
See: 33 N.J.R. 3261(a), 34 N.J.R. 3500(a).

APPENDIX H

(RESERVED)

New Rule, R.2002 d.325, effective October 7, 2002.
See: 33 N.J.R. 3261(a), 34 N.J.R. 3500(a).

APPENDIX I

Design Guidelines

I—Rehabilitation, Reconstruction or Infill Projects

1. Projects should seek to harmonize and complement, rather than clash with the scale and character of the surrounding block and neighborhood. This may be a selective process, in which the best design features of the block and neighborhood are emulated and echoed, while more generic features are ignored or downplayed.
2. Building design should seek to create visual interest, and draw from the local design vernacular, where appropriate. Façade modulation and articulation are encouraged, where appropriate. Stylistic variety is encouraged, while maintaining a sense of unity through continuity of massing, fenestration, and vertical and horizontal façade elements.
3. Buildings should be designed to be "good neighbors," that is they shall generally reflect the prevailing scale, massing, façade treatments and roof pitches found in the buildings of the surrounding neighborhood. "Foursided" architecture—where façade treatments are extended to side and rear elevations—is encouraged, where appropriate. Blank wall or service area treatment is discouraged for any area visible from the public realm.
4. Rehabilitation and reconstruction projects should generally respect the architectural integrity of the original structure, its materials, roof shape and fenestration.
5. Infill buildings should respect the prevailing front setback from the public right-of-way.
6. Taller buildings are encouraged to acknowledge the height of neighboring structures by echoing important horizontal lines (roof lines, cornice lines, string courses) or by using setbacks, recesses, changes of color or changes in building material to differentiate the taller part of the building.
7. Wider buildings are encouraged to acknowledge the width of neighboring structures through vertical façade subdivisions, or bays.

8. Corner buildings deserve special treatment. Facade design should wrap around to address both sides. Corner entrances are encouraged in larger buildings. Increased building height should be considered at corners.
9. Projects should incorporate or reflect, to the extent reasonable, the materials used in exterior cladding of adjacent or facing buildings. Materials that are durable, require moderate maintenance, and age gracefully—such as brick, wood and stone—are encouraged.
10. Building exteriors should generally follow the tripartite model, with a base, middle and crown (roof). Modulated roofs are preferred, where appropriate. Facade modulation, and horizontal and vertical subdivisions that help relate a building to the human scale are encouraged.
11. Building facades and entrances should face streets or attractive public spaces, and not parking lots. Features such as stoops, porches and balconies—that encourage indoor-outdoor interaction—are encouraged. Primary entrances shall be clearly marked and framed architecturally.
12. Windows with square or vertical proportions, coordinated with the articulation of bays and balconies are encouraged. Openings framed with reveal and not flush with the exterior finish offer greater expression and are encouraged.
13. Safe, attractive and comfortable pedestrian access to the building(s) and from the buildings to the surrounding neighborhood is encouraged.
14. HVAC equipment, exhaust pipes, elevator housing and other rooftop mechanical equipment should be screened from public view.
15. Utility boxes and other mechanical fixtures placed on the ground, including HVAC, should be adequately screened from the public realm. Screening and landscaping should not compromise service access to this equipment. Loading docks should also be screened. Garbage and recycling facilities in multi-family structures should be screened and preferably enclosed.
16. Parking solutions are encouraged in the rear, to the side or under the buildings and should be well screened from the public realm. Individual garage doors facing the street are not encouraged. Alley access is preferred, where possible and appropriate. In buildings with front-loaded attached garages, garage entrances should be recessed and receive other appropriate architectural treatments, to minimize the negative visual impact on the streetscape.
17. Foundation plantings and general landscaping should complement and accent, without obscuring the building or interfering with pedestrian circulation and the functionality of public space.
18. In inclusionary projects—projects containing both a market rate and an affordable component—the exterior treatment of buildings containing affordable housing units shall not be distinguishable from the exterior treatment of buildings containing only market rate units. Similarly, the streetscape and landscape treatment, as well as the storage and parking arrangements shall be identical for both affordable and market rate units.
19. Public or semi-public open space—such as public plazas, courtyards or mews—are encouraged in larger projects. These spaces should be designed and landscaped to provide a high-quality, functional and secure environment for the residents and broader community. These spaces should provide one or more focal points for the project. Pedestrian scale lighting, street furniture, shade trees, water features and public art are encouraged.

20. Architectural style is not controlled by these guidelines.
21. Exceptions or variations to the above guidelines will be considered, on a case-by-case basis, based on the merits of each project’s specific circumstances.
22. These guidelines shall be preempted, in whole or in part, by relevant local design guidelines or standards pursuant to municipal land development ordinances and/or historic preservation districts, where applicable.

II—Other Projects

1. The above guidelines, when relevant, shall also be applied to projects other than rehabilitation, reconstruction or infill projects.

New Rule, R.2002 d.325, effective October 7, 2002.
See: 33 N.J.R. 3261(a), 34 N.J.R. 3500(a).

APPENDIX J

Distressed Urban Municipalities

<u>MUNICIPALITY</u>	<u>COUNTY</u>
Asbury Park City	Monmouth
Bayonne City	Hudson
Bridgeton City	Cumberland
Camden City	Camden
East Orange City	Essex
Elizabeth City	Union
Gloucester City	Camden
Hoboken City	Hudson
Irvington Township	Essex
Jersey City	Hudson
Long Branch City	Monmouth
Millville City	Cumberland
Mount Holly Township	Burlington
New Brunswick City	Middlesex
Newark City	Essex
North Bergen Township	Hudson
Orange City Township	Essex
Passaic City	Passaic
Paterson City	Passaic
Penns Grove Boro	Salem
Perth Amboy City	Middlesex
Phillipsburgh Town	Warren
Plainfield City	Union
Pleasantville City	Salem
Salem City	Salem
Trenton City	Mercer
Union City	Hudson
Vineland City	Cumberland
West New York Town	Hudson

New Rule, R.2002 d.325, effective October 7, 2002.
See: 33 N.J.R. 3261(a), 34 N.J.R. 3500(a).

APPENDIX K

**NEW JERSEY DEPARTMENT OF
COMMUNITY AFFAIRS
INSURANCE SPECIFICATIONS
MINIMUM REQUIREMENTS
PROPERTY AND LIABILITY**

GENERAL INFORMATION**Name Insured**

All policies providing Property/Crime/Liability and Equipment coverage must indicate the dual interest of the Owner and the New Jersey Department of Community Affairs.

Mortgage Clause (Standard Form)

All property insurance policies must name the mortgagee as:

New Jersey Department of Community Affairs
101 S. Broad Street
PO Box 806
Trenton, NJ 08625-0806

Insurance Company

Issuing insurer must be currently eligible to write business in the State of New Jersey and have a current A.M. Best Rating of B+ VII or better with acceptable reinsurance.

Insurance Agent

Must provide a written statement to the development that the policy(ies) being provided meets or exceeds the DCA minimum insurance requirements; a Certificate of Insurance showing the agent's Errors and Omissions coverage is to be included showing unimpaired limits of at least \$5,000,000 and a deductible not exceeding \$25,000.

Cancellation/Non-Renewal

A 60-day notice, except for non-payment of premiums, via Certified Mail is required.

MINIMUM INSURANCE REQUIREMENTS**Property**

Real/Personal/Retail Values (including retaining walls/fences/exterior poles and signs).

Limits

Real and Personal Property: Blanket Replacement Cost—Agreed Value.

Rental Value: An amount equal to 100 percent of anticipated rental income for one year full occupancy—with no Coinsurance Penalty.

Coverage

Comprehensive "All Risk" or "Special" + Flood & Earthquake extended to include Building Ordinance cover with Joint Loss Agreement.

(Flood & Earthquake cover may be sub-limited)

Deductible

Deductible amount is not to exceed \$5,000 combined per loss.

No Deductible applicable to Glass losses.

COMMERCIAL GENERAL LIABILITY-OCCURRENCE COVER:**Limits:**

\$1,000,000 Combined Single Limit for Bodily Injury and Property Damage/Personal and Advertising Injury/Per Occurrence

\$2,000,000 General Aggregate
PER LOCATION

Coverages—To Include:

Automobile Non-Ownership and Hired Car Liability
Employee Benefits Liability (Claims Made w/no deductible)
Directors and Officers Liability (Where Applicable)
Volunteers As Insured
Medical Payments \$5,000
Knowledge and Notice of Occurrence
Unintentional Errors and Omissions

Fidelity

Limits (No deductible to apply)

\$500,000 Employee Dishonesty per loss

\$3,000 Money and Securities—Inside Premises

\$3,000 Money and Securities—Outside Premises

\$100,000 Forgery or Alteration

including part time & temporary employees, Directors and/or Trustees—whether compensated or not, unemployed spouses, and Managing Agents;

Umbrella Liability**Limits**

\$20,000,000 Excess of Primary \$1,000,000/
\$2,000,000

Boiler and Machinery**Limits**

Full Replacement Cost—Direct Damage

Actual Loss Sustained—Combined Business

Interruption/Extra Expenses—100 percent of anticipated Rental

Income for one-year full occupancy

Coverage

Comprehensive—Boilers/Fired and Unfired Pressure Vessels/Air Conditioning/Electrical Apparatus/Etc.

Valuation

Repair or Replace (New or Old)

Deductibles

Maximum of:

\$1,000 Direct Damage
12 Hours Indirect Loss

Workers' Compensation
As Required.

NEW JERSEY DEPARTMENT OF
COMMUNITY AFFAIRS
INSURANCE SPECIFICATIONS
MINIMUM REQUIREMENTS
BUILDERS RISK

Name Insured

Must Include:

Project Owner
New Jersey Department of Community Affairs
General Contractor
All Sub-Contractors

Project Owner alone can be denoted Insurance
Trustee for purpose of claim payments

Mortgage Clause (Standard Form)

New Jersey Department of Community Affairs
101 South Broad Street
PO Box 806
Trenton, NJ 08625-0806

Cancellation/Non-Renewal

A 60-day notice, except for non-payment of premium, via Certified Mail is required.

Insurance Company

Issuing Insurer must be currently eligible to write business in the State of New Jersey and have a current A.M. Best Rating of B+ VII or better with acceptable reinsurance.

Insurance Agent

Must provide a written statement to the development that the policy(ies) being provided meets or exceeds the HFA minimum insurance requirements; a Certificate of Insurance showing the agent's Errors and Omissions coverage is to be included showing unimpaired Limits of at least \$5,000,000 and a deductible not exceeding \$25,000.

Builder's Risk (Property)

Limits

Completed Value-Replacement Cost
Property of Others for which you may be liable
At temporary/Storage locations
Transit
Contractors Tools, Equipment and Machinery
Construction Trailers
Delayed Opening

Coverage

"All-Risk" (Inland Marine and Flood and Earthquake with Collapse and Theft of building materials, extended to include Building Ordinance cover.)

Note

Typical exclusions that must be deleted and/or modified to acceptable standards include:

Boiler & Machinery
Faulty Workmanship or Material
Design Error

Deductible

Not to exceed \$5,000 combined per loss

Occupancy

Permission must be given for partial occupancy provided such occupancy is reported within 30 days and rates/coverage forms are adjusted.

Termination of Coverage

Permitted only by any one of the following:

When the interest of the Insured ceases
When the owner has accepted property
When this policy has been cancelled or non-renewed
Occupancy other than as outlined above

Subrogation

Must include permission to waive rights of subrogation prior to loss

LIABILITY

COMMERCIAL GENERAL LIABILITY-OCCURRENCE COVER

Limits:

\$1,000,000 Combined Single Limit for Bodily Injury and Property Damage/Personal and Advertising Injury/Per Occurrence
\$3,000,000 General Aggregate
PER LOCATION

Coverages-To-Include:

Automobile Non-Ownership and Hired Car Liability
Owners Contractors Protective
Notice of Occurrence
Unintentional Error and Omissions

Umbrella Liability

Limits:

\$20,000,000 excess of primary \$1,000,000/
\$3,000,000

Workers' Compensation

As required.

New Rule, R.2005 d.277, effective September 6, 2005.
See: 36 N.J.R. 4575(a), 37 N.J.R. 3288(a).