

CHAPTER 14

NEIGHBORHOOD PRESERVATION BALANCED HOUSING PROGRAM

Authority

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

Source and Effective Date

R.1995 d.594, effective October 26, 1995.
See: 27 N.J.R. 3256(a), 27 N.J.R. 4698(a).

Executive Order No. 66(1978) Expiration Date

Chapter 14, Neighborhood Preservation Balanced Housing Program, expires on October 26, 2000.

Chapter Historical Note

Chapter 14, formerly titled Demonstration Rent Supplement Program, was filed as R.1970 d.26, effective April 1, 1970. See: 2 N.J.R. 1(a), 2 N.J.R. 30(c). Chapter 14 was repealed by R.1978 d.360, effective October 6, 1978. See: 10 N.J.R. 377(a), 10 N.J.R. 470(a). Chapter 14, Neighborhood Preservation Balanced Housing Program, was adopted by R.1985 d.688. 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 was readopted as R.1990 d.604, effective November 9, 1990. See: 22 N.J.R. 1700(b). Pursuant to Executive Order No. 66(1978), Chapter 14 was readopted as R.1995 d.594, effective October 26, 1995. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. GENERAL PROVISIONS

5:14-1.1 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 fulfillment of Section 20 of the Fair Housing Act of 1985. Consistent with the Act, a substantial percentage of Program awards shall be made to projects and programs in those municipalities receiving State aid pursuant to P.L. 1978, c.14 (N.J.S.A. 52:27D-178 et seq.).

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.

5:14-1.2 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.

5:14-1.3 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.).

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.

5:14-1.4 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 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) Except as noted in (c)1 below, any project which is located in a non-urban aid municipality and which is being developed in accordance with a COAH-certified plan or a court settlement and judgment of repose and for which the developer, or its assignee, has received a density bonus 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.

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.

5:14-1.5 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), 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. 5:14-2.4(a)7ii, 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 person 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.

“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. 5:14-4 or a mortgage in accordance with N.J.A.C. 5:14-4, 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.

“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.

“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 household” means a low or moderate income household.

“Eligible neighborhood” means a neighborhood that will be viable, as defined by N.J.S.A. 52:27D-143 et seq. (P.L. 1975, c.248), the maintenance of Viable Neighborhoods Act, after the implementation of the proposed project.

“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 Hous-

ing. 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.

"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 any rehabilitation costing less than 50 percent of the physical value of the 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, substantially rehabilitated 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 rehabilitation.

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

"Physical value" means the current replacement cost of a structure as calculated using the latest edition of the "Building Valuation Data Report", incorporated herein by reference, as amended and supplemented, published by BOCA International, Inc., 4051 West Flossmoor Road, Country Club Hills, Illinois 60477-5795.

"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.

"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.

"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 1/120 of that cost for each month of use up to the end of the tenth year.

"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.

"Substandard" means, when used to characterize a structure or dwelling unit, that the local construction official has certified that health and safety code violations exist and that, in order to abate those 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.

“Substantial rehabilitation” means any rehabilitation of a housing unit which will both cost more than 50 percent of the physical value of the unit and result in the entire structure in which that unit is located being brought into compliance with the provisions of the State Uniform Construction Code (N.J.S.A. 52:27D-119 et seq., N.J.A.C. 5:23 and the adopted subcodes) applicable to newly-constructed units.

“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. 5:14-1.2(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.

5:14-1.6 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 Division. A waiver shall be granted only by the Division Director in writing and then only when such waiver does not contravene the provisions of the Fair Housing Act. The decision of the Division Director shall be final.

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.

5:14-1.7 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 urban aid municipalities or target areas.
2. Column B shall apply to new rental units which are not located in urban aid municipalities or target areas.
3. Column C shall apply to new rental units located in urban aid municipalities or target areas.
4. Column D shall apply to new homeownership units located in urban aid municipalities or target areas.

(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.

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

SUBCHAPTER 2. FUNDING

5:14-2.1 Funding cycles and application procedures

With the exception of applications for Neighborhood Rehabilitation projects (see N.J.A.C. 5:14-3.9), the Department shall accept applications on a continuous basis.

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.

5:14-2.2 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) Neighborhood rehabilitation projects will be funded only within designated neighborhoods specified in this section or in municipalities in which Balanced Housing funds will be used to support activities funded by other Division programs.

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".

5:14-2.3 Distribution of funds

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

(b) In order to enhance the distribution of funds, the Commissioner may limit the funding amount to any one municipality in a given fiscal year.

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.

5:14-2.4 Other considerations

(a) The Department encourages 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 provisions of support services and programs for 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. 5:14-3.1(f); and
6. Projects that shall 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.

i. Incorporation of such design features shall be considered as a basis for waiving all or a portion of the unit size adjustments in Appendices B, C, D and E.

ii. 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.

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

5:14-2.5 Cost review criteria

(a) To assure that public subsidy shall be allocated in a cost effective manner so as to assist in the production of the maximum possible number of affordable housing units, the Department shall review all project costs to assure reasonableness.

1. With regard to affordable housing units eligible for assistance by the Balanced Housing Program, reasonable total per-unit development cost shall be:

	S.R.O./ Studio	1 BR	2 BR	3 BR	4 BR
Urban Aid Municipality	67,500	80,100	86,000	92,000	98,000
Non-Urban Aid Municipality	65,000	75,000	80,000	85,000	90,000

2. In determining per unit costs, applicants may deduct:

- i. Costs directly associated with obtaining and syndicating Low Income Housing Tax Credits;
- ii. Capital reserves set aside to maintain affordability;
- iii. Other capitalized operating or replacement reserves;
- iv. For projects providing permanent housing for persons with handicaps, the marginal costs of construction necessitated by the particular needs of the clients served; or
- v. The cost of acquisition if the property had been acquired prior to the application and the cost is not reimbursed in the development budget.

3. Applicants shall be required to justify per-unit costs greater than the above listed standards.

i. The Department may, upon satisfactory justification by the applicant, waive the per-unit limit in a project costing within 15 percent of the above standards. Satisfactory justification may include any of the following: actual documented project costs plus published data sources such as the Building Valuation Data Report or other such public sources which the applicant may provide.

ii. For projects in which the total per-unit development cost is 15 percent to 40 percent greater than the above listed standards, the Department may waive the per-unit limit based on justification by the applicant of actual documented costs, evidence of extraordinary need and infeasibility of producing affordable housing units in the applicant municipality at lower cost.

iii. The Department shall not fund projects in which the total per-unit cost is greater than 40 percent above the standards in (a)3i and ii above.

4. The Department shall not fund any project wherein the cost of acquisition cannot be supported by a qualified independent appraisal.

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

SUBCHAPTER 3. FUNDING CRITERIA

5:14-3.1 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.

(b) All projects proposed for funding must be in an eligible neighborhood.

(c) Applicants to the Balanced Housing Program shall be required to demonstrate their ability, both administrative and financial, to carry out the proposed project.

1. The qualifications of key participants, including the sponsor/developer, consultant, administering agent and the municipality, will be examined. Failure to perform by any of those participants in past contracts with the Department or failure to pay the Affordable Housing Management Service or to repay loans from the Department shall be grounds for disqualifying an application.

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 this requirement:

1. Homeownership projects which are located in target areas or urban aid municipalities and are not part of a Regional Contribution Agreement; and

2. Neighborhood rehabilitation projects funded in municipalities with an indigenous need of 30 or less or which are located in target areas or urban aid municipalities and are not part of a Regional Contribution Agreement.

(e) Balanced Housing funding recipients shall contract with either the Affordable Housing Management Service (AHMS) or with a private entity approved in accordance with N.J.A.C. 5:14-4.1(b)4 and 5 in order to monitor affordability controls. If a recipient elects not to use AHMS, any fees charged in excess of those allowed in accordance with Appendix A shall be borne by the developer.

(f) With the exception of owner-occupied units funded through Neighborhood Rehabilitation Projects, 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 substantial rehabilitation 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 N.J.S.A. 52:31B-1 et seq.

(h) The methodology for determining the maximum Balanced Housing subsidy is explained in N.J.A.C. 5:14-3.3 through 3.12 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.

(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 shall be achieved without Balanced Housing funds.

(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 cost break out and, upon completion of construction and prior to project close out, cost certification by a certified public accountant.

(l) In all instances, Balanced Housing funds shall be awarded to the municipality as a grant. With the exception of Neighborhood Rehabilitation and Landlord Projects, 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 approval by the Department.

(m) The maximum interest rate charged for a Balanced Housing loan shall be equal to the yield rate on a 30 year Treasury bond at the time of commitment unless a higher rate is requested by the developer.

(n) 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.

(o) 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.

(p) Any developer/sponsor of a project which is eligible to receive Federal low income housing tax credits shall be required to apply for the Credits and shall be required to use the proceeds of any sale of those Credits as a source of development funding for the project.

1. The Department at its discretion may waive this requirement if the sponsor/developer demonstrates good cause not to seek the Credits. Such good cause may include, but shall not be limited to, an inability to sell the credits or a negative or marginal benefit because of the cost of syndication. Evaluation and determination of good cause shall be made by the Department. In the event the Credits are obtained, the Department shall calculate their value to the project as a funding source regardless of whether they are sold or held by the developer.

(q) It is the intent of the Balanced Housing program to make units equally available to any eligible household regardless of whether or not the household has Section 8 tenant based assistance. Balanced Housing projects shall be underwritten without the assumption of Section 8 tenant based assistance and shall not be marketed exclusively or primarily to households receiving such assistance. To the extent that any such assistance creates excess cash flow to the project, the Department may seek to accelerate repayment of the Balanced Housing loan.

(r) The average range of affordability for units funded shall not exceed 57.5 percent.

(s) With the exception of neighborhood rehabilitation 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 by the municipality as designated developer or by any other means which the Division Director may approve.

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.

5:14-3.2 Types of projects

(a) The Department shall only fund projects falling into at least one of the following categories, which are further described in N.J.A.C. 5:14-3.3 through 3.12.

1. Permanent Housing for Persons with Handicaps Projects
2. Rental projects
3. Two-family projects;
4. Homeownership Projects;
5. Acquisition/Rehabilitation Projects;
6. Section 202, Section 811 and Public Housing New Construction Projects;
7. Neighborhood Rehabilitation Projects;
8. Landlord Projects;
9. Matching funds projects; and
10. Other Projects.

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.

5:14-3.3 Permanent Housing for Persons with Handicaps Projects

(a) The Balanced Housing Program may provide funding for the construction, substantial rehabilitation 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 that amount which is provided by

other public and private funding sources (that is, 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.

5:14-3.4 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, substantial rehabilitation 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 target area or in an urban aid municipality or in accordance to Appendix C of this chapter if the project is located in a nonurban aid municipality and is not in a target area.

(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.

5:14-3.5 Two-family 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 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 substantial rehabilitation.

(b) The maximum allowable subsidy for a two-family project shall be the sum of:

1. For rental units, the amount determined in accordance with Appendix B to this chapter if the project is located in a target area or in an urban aid municipality or in accordance with Appendix C of this chapter if the project is located in a nonurban aid municipality and not in a target area; plus

2. The greater of the number of homeowner units multiplied by \$15,000 for projects located in nonurban aid municipalities and not in target areas or \$18,000 for projects located within target areas or urban aid municipalities; or the amount of subsidy the homeowner units are eligible to receive based on Appendix D of this chapter if the project is located in a target area or in an urban aid municipality or Appendix E of this chapter if the project is located in a nonurban aid municipality and is not in a target area. If Appendix D or Appendix E is used, the applicable price shall be the contract sales price of the two-family house.

(c) Balanced Housing shall fund only those projects wherein both the homeowner unit and the rental unit are Balanced Housing units.

(d) Applicants for two-family projects shall make provisions for the on-going viability of the project including, but not limited to, homeowner training and the establishment of adequate reserves.

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".

5:14-3.6 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, substantial rehabilitation or the conversion of nonresidential 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 target area or in an urban aid municipality or in accordance with Appendix E, incorporated herein by reference, if the project is located in a nonurban aid municipality and is not within a target area.

(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".

5:14-3.7 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 \$17,500 for a one-bedroom unit and \$2,500 for each additional bedroom, plus \$5,000 for each unit which is to be provided as a low-income rental plus an additional \$5,000 per unit if the household to be served includes one or more persons with a handicap and the unit is or will be modified in order to accommodate such households.

(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) Upon occupancy, units must meet HUD Section 8 Housing Quality Standards, incorporated herein by reference, as amended and supplemented, available from the Department of Housing and Urban Development, 451 Seventh St. SW, Washington, D.C. 20410, or any applicable State or local housing code that is more stringent. 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.

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.

5:14-3.8 Section 202, Section 811 and 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 of the National Affordable Housing Act (PL 101-625) or the U.S. Housing Act of 1937 (92 U.S.C. 1437 et seq.). These grants are subject to the following limitations:

1. The total Balanced Housing subsidy shall not exceed 15 percent of the total project cost;
2. The improvements are reasonable, functional and shall benefit the residents of the project; and
3. The improvements to be funded by Balanced Housing shall either be prohibited by the HUD cost containment policy or add to the project cost beyond the amount that can be supported by the HUD loan.

(b) Eligible Balanced Housing costs include the following: outdoor lighting, access roads, land, air conditioning, sprinkler systems, on and off-site improvements, intercoms, and directly related "soft" costs, such as fees for professional and financial services, within standard underwriting limits, landscaping to buffer the building, and improvements required by applicable municipal codes that are more strict than required by the State, provided that a responsible municipal official submits an adequate written justification.

1. Cosmetic and facade improvements, and improvements made solely for the purpose of allaying public opposition or to improve the esthetics of the surrounding neighborhood, are ineligible.

(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.

5:14-3.9 Neighborhood rehabilitation projects

(a) The Balanced Housing Program may provide assistance to eligible applicants to identify and moderately rehabilitate substandard units in one-to-four family owner occupied structures within a specified eligible 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) The local construction official or licensed housing inspector must certify that each unit to be rehabilitated with Balanced Housing funds is substandard, that is, that health and safety code violations exist, and that abating those code violations requires that one or more of the following major systems be replaced or extensively repaired: roof, electrical, plumbing, sanitary plumbing, heating or load bearing structural systems.

(i) Any structure repaired 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.

(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.

5:14-3.10 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 repaired 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 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. 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.

5:14-3.11 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.

5:14-3.12 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).

SUBCHAPTER 4. AFFORDABILITY CONTROLS

5:14-4.1 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, CN 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.

5:14-4.2 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 Rehabilitation 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. 5:14-4.6(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. 5:14) 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, CN 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. 5:14-4.3(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. 5:14-4.1(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".

5:14-4.3 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, CN 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, CN 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.

5:14-4.4 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. 5:14-4.4(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.

5:14-4.5 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.

5:14-4.6 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, CN 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, CN 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. 5:14-4.1(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.

5:14-4.7 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.

5:14-4.8 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.

5:14-4.9 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. 5:14-3.1(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.

5:14-4.10 (Reserved)

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".

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

APPENDIX B

Target Areas and Urban Aid Municipalities—
Maximum Subsidy

Rent *	Rental Units				
	Studio/SRO	1BR	2BR	3BR	4BR
1,500 or more	1,000	1,000	1,000	1,000	1,000
1,025	1,000	1,000	1,000	1,000	3,000
1,000	1,000	1,000	1,000	1,000	5,500
975	1,000	1,000	1,000	2,000	8,000
950	1,000	1,000	1,000	4,500	10,500
925	1,000	1,000	1,000	7,000	13,000
900	1,000	1,000	3,500	9,500	15,500
875	1,000	1,000	6,000	12,000	18,000
850	1,000	2,500	8,500	14,500	20,500
825	1,000	5,000	11,000	17,000	23,000
800	1,000	7,500	13,500	19,500	25,500
775	1,000	10,000	16,000	22,000	28,000
750	1,000	12,500	18,500	24,500	30,500
725	1,000	15,000	21,000	27,000	33,000
700	2,500	17,500	23,500	29,500	35,500
675	5,000	20,000	26,000	32,000	38,000
650	7,500	22,500	28,500	34,500	40,500
625	10,000	25,000	31,900	37,000	43,000
600	12,500	27,500	33,500	39,500	45,500
575	15,000	30,000	36,000	42,000	48,000
550	17,500	32,500	38,500	44,500	50,500
525	20,000	35,000	41,000	47,000	53,000
500 or less	20,000	35,000	41,000	49,500	55,500

* 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. See N.J.A.C. 5:14-2.4(a)7 for waiver provisions.

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.

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).

APPENDIX C

Nonurban Aid Municipalities—Maximum Subsidy

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

* 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. See N.J.A.C. 5:14-2.4(a)7 for waiver provisions.

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.

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).

APPENDIX D

Target Areas and Urban Aid Municipalities—Maximum Subsidy

Homeownership Units

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

* 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. See N.J.A.C. 5:14-2.4(a)7 for waiver provisions.

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).

APPENDIX E

Nonurban Aid Municipalities—Maximum Subsidy Homeownership Units

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

* 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. Ex-

cluded from the calculation are common halls, stairways, unfinished basements and attics, garages, balconies and porches. See N.J.A.C. 5:14-2.4(a)7 for waiver provisions.

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).

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:

Construction Cost	Percentage	Contractor's Fee
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	1,420,000.00
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).