

Former N.J.A.C. 5:80-33.21, Point system for the Special Needs Cycle, recodified to N.J.A.C. 5:80-33.19.

5:80-33.22 Municipal comment

The Code requires that the chief executive officer of the municipality in which the project is to be located be given the opportunity to comment on the project. NJHMFA staff shall notify the chief executive officer of the municipality and allow him or her a reasonable opportunity to comment on the project.

Recodified from N.J.A.C. 5:80-33.19 by R.1998 d.279, effective June 1, 1998.

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

Former N.J.A.C. 5:80-33.24, Obtaining IRS Form 8609, was recodified to N.J.A.C. 5:80-33.29.

Recodified from N.J.A.C. 5:80-33.24 by R.1999 d.120, effective April 5, 1999.

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

Former N.J.A.C. 5:80-33.22, Point system for the Final Cycle, recodified to N.J.A.C. 5:80-33.20.

5:80-33.23 Application needs analysis

(a) Section 42(m)(2)(a) of the Code provides: "The housing credit dollar amount allocated to a project shall not exceed the amount of housing credit NJHMFA determines is necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the credit period." This determination, known as the "needs analysis," shall be performed by NJHMFA with respect to those applications fulfilling the eligibility requirements at N.J.A.C. 5:80-33.13. In the needs analysis, NJHMFA shall compare the project's total development costs to the funding sources the applicant has identified to meet that cost. If the total funding sources not including tax credit equity are less than the total development costs, then a funding gap exists and the applicant has demonstrated a need for credits, provided however, that the following conditions are satisfied:

1. The project's development and operational costs are reasonable as required under Section 42(m)(2)(B)(iv) of the Code;
2. Funding sources identified by the applicant meet the requirements listed under N.J.A.C. 5:80-33.13(a)6;
3. The project is financially feasible in terms of the existence of sufficient sources to pay for total development costs; and
4. The project shall remain viable throughout the credit period.

(b) Financing arrangements shall be evaluated to ensure that projects are not structured to artificially increase basis. Such arrangements include drawing down entire bridge or secondary loans at construction closing instead of using such financing on an as-needed basis. NJHMFA reserves the right to assume a mortgage higher than the mortgage commitment submitted by the applicant if it is determined that the mortgage amount stated in the commitment is underestimated. If NJHMFA has a reasonable basis for concluding the equity factor submitted by the applicant is inconsistent with market conditions, NJHMFA reserves the right to adjust the equity factor in its underwriting.

(c) NJHMFA shall perform needs analyses at three separate times: application, allocation, and at the time the project is placed in service. (See N.J.A.C. 5:80-33.25 and 33.28) The credit amount reserved is limited to the lesser of:

1. The credit amount based on the needs analysis; or
2. The credit amount generated from the project's qualified basis, as (potentially) capped by the eligible basis limits. Unless a project has an alternate funding source such as a developer fee able to be pledged, a project whose eligible basis is reduced by the eligible basis limits (thereby reducing the credit amount) may be declared infeasible due to a funding gap caused by the resulting shortfall in syndication proceeds.

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

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

In (a), substituted "Section 42(m)(2)(a) of the Code" for "The Code"; in (b), amended N.J.A.C. reference; in (b)2, inserted ", as (potentially) . . . syndication proceeds".

Recodified from N.J.A.C. 5:80-33.20 and amended by R.1998 d.279, effective June 1, 1998.

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

In (a), changed N.J.A.C. references in the introductory paragraph and in 2; in (b), added a new last sentence; and in (c), changed the N.J.A.C. reference in the introductory paragraph. Former N.J.A.C. 5:80-33.25, Placed in service needs analysis, was recodified to N.J.A.C. 5:80-33.30.

Recodified from N.J.A.C. 5:80-33.25 and amended by R.1999 d.120, effective April 5, 1999.

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

In (a) and (c), changed N.J.A.C. references throughout. Former N.J.A.C. 5:80-33.23, Tie-breaker system, recodified to N.J.A.C. 5:80-33.21.

5:80-33.24 Committee review

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

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

(c) The reservation fee schedule is as follows:

1. For-profit reservation fee: one percent of the allocation amount over the 10-year credit period.
2. Qualified nonprofit reservation fee: one-half of one percent of the allocation amount over the 10-year credit period.

Recodified from N.J.A.C. 5:80-33.21 by R.1998 d.279, effective June 1, 1998.

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

Former N.J.A.C. 5:80-33.26, Project cost certification, was recodified to N.J.A.C. 5:80-33.31.

Recodified from N.J.A.C. 5:80-33.26 and amended by R.1999 d.120, effective April 5, 1999.

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

In (c), rewrote 1 and 2. Former N.J.A.C. 5:80-33.24, Municipal comment, recodified to N.J.A.C. 5:80-33.22.

5:80-33.25 Allocation needs analysis

In accordance with Section 42(m)(2) of the Code, NJHMFA evaluates the need for the tax credit application, at the time of allocation, and after the building is placed in service. The credit amount allocated is limited to the lesser of the credit amount based on the needs analysis or the credit amount generated from the project's qualified basis (as potentially capped by the eligible basis limits). The determination of whether the credit amount reserved is needed for the financial feasibility and continued viability of the project shall include an examination as to whether there have been increases or decreases in project costs, other funding sources or rental subsidies which would result in a higher allocation than needed. If NJHMFA has a reasonable basis for concluding the equity factor submitted by the applicant is inconsistent with market conditions, NJHMFA reserves the right to adjust the equity factor in its underwriting. Any substantive changes to the project's financing plan or costs shall be explained in detail and may cause the project to be reconsidered by NJHMFA.

Recodified from N.J.A.C. 5:80-33.22 and amended by R.1998 d.279, effective June 1, 1998.

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

Added a new fourth sentence. Former N.J.A.C. 5:80-33.27, Extended use agreement, was recodified to N.J.A.C. 5:80-33.32.

Recodified from N.J.A.C. 5:80-33.27 by R.1999 d.120, effective April 5, 1999.

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

Former N.J.A.C. 5:80-33.25, Application needs analysis, recodified to N.J.A.C. 5:80-33.23.

5:80-33.26 Reservations, allocations and binding commitments

(a) Once the reservation is final as described in N.J.A.C. 5:80-33.24(b), projects must meet allocation criteria established by the Code and these rules in order to qualify for an allocation of tax credits. (The IRS does not recognize the reservation processes of housing credit agencies.) The deadline for meeting the allocation criteria described in (a)1 and 2 below is October 15 (November 15 for Final Cycle reservations), or the next business day if the 15th is a weekend or holiday. On a case-by-case basis, NJHMFA may extend its filing deadline if the sponsor can show good cause; however, in order to defray the added expense and regulatory burden of processing allocation requests that arrive after the deadline, a graduated extension fee shall be payable to NJHMFA for each week or part thereof that the sponsor is late in submitting a complete package (that is, in the Spring Cycle, \$500.00 per week or part thereof in October and \$1,000 per week or part thereof in November and December for each week the package is late; in the Final Cycle, \$500.00 per week or part thereof in November and \$1,000 per week or part thereof in December for each week the package is late). NJHMFA reserves the right to rescind a reservation if a deadline is unmet.

1. Sponsors requesting a carryover allocation shall submit their certification for carryover and a certification from an independent C.P.A. which shows that more than 10 percent of the project's reasonably expected basis has been incurred; that all sources shown on the sponsor's carryover schedule are accurate; and that the costs shown in eligible basis are allowable under the Code. Accrued developer fees in carryover basis shall not exceed the lesser of the fee earned to date or 20 percent of the total developer fee. Title ownership is not required for carryover allocations, but site control must be maintained. Projects receiving carryover allocations have until the end of the second year after the execution of the carryover allocation agreement to place the project in service.

2. Sponsors requesting an allocation for a building in the same year the building places in service may receive a carryover allocation or a placed in service allocation depending upon the building's placed in service date. A building must be issued an allocation no later than December 31 of the year it is placed in service.

i. If the building is placed in service on or prior to August 1, the allocating document shall be the IRS Form 8609 and the sponsor shall submit all requirements listed in N.J.A.C. 5:80-33.27 by the filing deadline established in (a) above.

ii. If the building is placed in service after August 1, and if the timing of the final project cost certification, permanent closing and the like do not allow for the timely issuance of an IRS Form 8609 by December 31, a carryover allocation shall be issued to the project provided that the owner submits to NJHMFA an updated 10 percent letter from the partnership's accountant reflecting the new reasonably expected basis in the building.

(b) NJHMFA may enter into a binding commitment to allocate credits from the next year's tax credit authority to projects described below:

1. The next-highest ranking project in the Final Cycle (or the Reserve if the Final Cycle is canceled) if that project received only a partial allocation as a consequence of NJHMFA exhausting its tax credit authority for the current year, provided such project can meet the 10 percent carryover test. Together, the partial carryover allocation and the binding forward commitment shall not exceed the maximum eligible tax credit amount; or

2. Projects in a competitive cycle affected by a technical error as determined by the Tax Credit Committee. The Tax Credit Committee may fund technical errors wholly from the Reserve (if sufficient credits exist), wholly through a binding commitment or through a combination of Reserve credits and a binding commitment. Projects receiving credits from the Reserve must meet the 10 percent carryover test. In no event shall the project receive credits and/or a binding commitment exceeding the maximum eligible tax credit amount.