

CHAPTER 43**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 43, Neighborhood Preservation Balanced Housing Program, expires on October 26, 2000.

Chapter Historical Note

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

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

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

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

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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.

5:43-1.2 Severability

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

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

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

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

5:43-1.3 Eligible applicants

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

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

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

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.

5:43-1.4 Eligible activities

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

1. Rehabilitation of substandard housing units occupied or to be occupied by low and moderate income households;
2. Creation of accessory apartments to be occupied by low and moderate income households;
3. Conversion of nonresidential space to residential purposes provided more than 20 percent of the resulting housing units are to be occupied by low and moderate income households;
4. Acquisition of real property; demolition and removal of buildings; or construction of new housing that will be occupied by low and moderate income households, or any combination thereof;

5. Grants of assistance to eligible municipalities for costs of necessary studies, surveys, plans and permits, engineering, architectural and other technical services, cost of land acquisition and any buildings thereon, and cost of site preparation, demolition and infrastructure development for projects undertaken pursuant to an approved Regional Contribution Agreement;

6. Assistance to a local housing authority, nonprofit or limited dividend housing corporation or association 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.

5:43-1.5 Definitions

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

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

“Affordable” means capable of being afforded without undue burden by an eligible household. A rental unit shall be considered “affordable” if the monthly rent, including the estimated cost of utilities paid by the tenant, does not exceed 30 percent of an eligible household’s income. Homeowner units shall be considered “affordable” if the monthly carrying costs, including principal and interest (based on a mortgage equal to 95 percent of the purchase price), taxes, homeowner and private mortgage insurance and condominium fees, do not exceed 28 percent of an eligible household’s income. Except as modified in accordance with N.J.A.C. 5:43-2.4(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. 5:43-4 or a mortgage in accordance with N.J.A.C. 5:43-4, regardless of whether such controls or mortgages are waived or modified.

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

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

“Certified household” means any eligible household whose total gross annual income has been verified, whose financial resources have been approved and who has re-

ceived 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 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 $\frac{1}{120}$ 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. 5:43-1.2(b)6.

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

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

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

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

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

See: 28 N.J.R. 6(a), 28 N.J.R. 2573(a).
Former section, “Waiver”, recodified to 5:14-1.6.

5:43-1.6 Waiver

Any applicant desiring a waiver or release from the express requirements of any provision of this chapter may make such request, in writing, to the 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.

5:43-1.7 Maximum allowable project fees

(a) The maximum contractor fee shall be determined in accordance with Appendix F, incorporated herein by reference.

(b) The maximum per unit amount which may be taken out of the project as developer fee shall be calculated as follows:

Unit Size	Maximum Per Unit Developer Fee (in thousands of dollars)			
	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

5:43-2.1 Funding cycles and application procedures

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

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

5:43-2.2 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".

5:43-2.3 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.

5:43-2.4 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. 5:43-3.1(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).

5:43-2.5 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

5:43-3.1 General provisions

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

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

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

(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. 5:43-4.1(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. 5:43-3.3 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.

5:43-3.2 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. 5:43-3.3 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.

5:43-3.3 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 congregational 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.

5:43-3.4 Rental Projects

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

5:43-3.5 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".

5:43-3.6 Homeownership Projects

(a) The Balanced Housing Program may provide assistance to eligible applicants for use by for-profit and not-for-profit housing sponsors who provide homeownership opportunities to low and moderate income households through new construction, 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".

5:43-3.7 Acquisition/rehabilitation projects

(a) The Balanced Housing Program may provide assistance to eligible applicants wishing to acquire or acquire and moderately rehabilitate existing, vacant housing for occupancy by low and moderate income households. Occupancy may be either rental or homeownership. Units acquired up to two years prior to the application which are substandard at the time of application are eligible.

(b) The maximum Balanced Housing subsidy for an Acquisition Rehabilitation Project shall be \$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.

5:43-3.8 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.

5:43-3.9 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.

5:43-3.10 Landlord projects

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

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

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

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

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

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

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

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

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

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

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

(j) Any structure 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.

5:43-3.11 Matching funds projects

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

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

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

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