

period are received under contractual financing provisions that, when viewed in the context of reasonably anticipated project cash flow and residual value, constitute lawful basis under the Code and applicable law.

17. Non-preservation projects located in census tracts wherein 30 percent or more of the existing housing units are low income housing tax credit units shall not be eligible for funding unless the following criteria are met:

- i. The project must be a redevelopment project;
- ii. The project does not add more low-income units to the census tract;
- iii. The project plan includes relocation options to higher opportunity areas and mobility counseling assistance for existing residents; and
- iv. The application includes a municipal resolution that references this paragraph (N.J.A.C. 5:80-33.12(c)17) and supports the allocation of housing tax credits for the development.

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

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

Substantially amended paragraphs under (a); deleted former (b), relating to requirements upon additional award of credits; and recodified former (c) as (b).

Recodified from N.J.A.C. 5:80-33.11 and amended by R.1998 d.279, effective June 1, 1998.

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

Rewrote (a). Former N.J.A.C. 5:80-33.14, Point system for the Urban Cycle, was recodified to N.J.A.C. 5:80-33.17.

Recodified from N.J.A.C. 5:80-33.14 and amended by R.1999 d.120, effective April 5, 1999.

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

Rewrote (a). Former N.J.A.C. 5:80-33.13, Cycle deadlines, recodified to N.J.A.C. 5:80-33.12.

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

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

Rewrote the section.

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

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

Rewrote section.

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

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

Rewrote the section.

Recodified from N.J.A.C. 5:80-33.13 and amended by R.2003 d.300, effective July 21, 2003.

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

Rewrote the section. Former N.J.A.C. 5:80-33.12, Cycle deadlines, recodified to N.J.A.C. 5:80-33.11.

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

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

Rewrote (c).

Amended by R.2007 d.168, effective May 21, 2007.

See: 39 N.J.R. 281(a), 39 N.J.R. 2011(a).

Rewrote (c)6ii, and the introductory paragraph of (c)8; added (c)8i through (c)8iii; in (c)9, inserted "the 'as-is'"; and in (c)11, substituted "United States Department of Agriculture (USDA) Rural Development" for "U.S. Department of Rural Economic and Community Development (RE & CD)" and "USDA Rural Development" for "RE & CD".

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

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

In (c)2ii, inserted "(or equivalent)"; in (c)6iv, deleted "RCA," preceding "HOME" and substituted "and recognizes that" for ". Therefore,"; added (c)6ix; in (c)7ii(3), substituted "13" for "12," "supportive housing" for "Supportive Housing" and "non-supportive housing" for "non-Supportive Housing"; rewrote (c)8; added new (c)9; recodified former (c)9 through (c)15 as (c)10 through (c)16; in the introductory

paragraph of (c)14, substituted "housing" for "Housing"; rewrote (c)14i through (c)14iv; added (c)14v; in the introductory paragraph of (c)16, (c)16i, (c)16iii and (c)16iv, inserted "Replacement Housing".

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

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

Rewrote (a); in the introductory paragraph of (c)1, substituted "(c)1i" for "(c)1"; in (c)1ii(1), substituted a comma for "and" following "rate" and inserted "and the discount from comparable market rate units"; in (c)1ii(3), inserted the last four sentences; in (c)1ii(5), inserted the sixth, ninth and tenth sentences; in the introductory paragraph of (c)6, inserted the second and fifth sentences; in (c)6i, deleted "and shall be countersigned/accepted by the applicant" following "itself"; in (c)6iii, deleted the former first sentence; rewrote (c)6vi and (c)6viii; in (c)6vii, inserted "base of the" preceding "NJHMFA" and substituted "range" for "factor"; in (c)6ix, inserted "or the project plan amendment that includes the project and is approved by the receiving municipality"; added (c)6x; in (c)7i, deleted "at or" following "that is", inserted "2.5 percent" and substituted "47.5" for "50"; in (c)7ii, substituted "assumptions" for "assumption"; in (c)7ii(4), substituted "\$2,200" for "\$1,800" three times and "\$3,800" for "\$3,400" three times; in (c)7iii, inserted "or an NJHMFA Form 10 signed by the NJHMFA Property Management Division"; rewrote (c)9 and (c)14; in (c)10, inserted the last two sentences; in (c)13, deleted "Section 8" preceding and inserted "Section 8 Rental" following "Project Based", substituted "project based rental assistance" for "Project Based Section 8 Rental Assistance" and inserted the last four sentences; and in (c)16iii, substituted "an independent auditor" for "the applicant's accountant".

Amended by R.2011 d.239, effective September 6, 2011.

See: 43 N.J.R. 917(a), 43 N.J.R. 2293(a).

Deleted (c)6ii(1) and (c)6ii(2); in (c)6v, deleted "the project is a COAH/Court-ordered project referenced in (c)6ii above or if" following "only if"; in (c)6x, substituted "DCA" for "COAH"; in (c)7ii(4), substituted "\$3,000" for "\$2,200" and "\$4,000" for "\$3,800" throughout; in (c)10, inserted "a capital needs assessment for any project seeking acquisition credits and/or"; in the introductory paragraph of (c)14, inserted "or projects" and "that contain supportive housing units"; and in the introductory paragraph of (c)16, substituted "Projects with" for "Applicants applying in the" and "funding" for "set-asides".

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

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

Rewrote the section.

Case Notes

A developer's receipt of any form of zoning relief or other accommodation from a municipality does not bar low income housing tax credits against federal income taxes under the regulation that prohibits such credits if the developer has received a density bonus subsidy to assist the low or moderate income units in a project; the definition of "density bonus subsidy" as a zoning change that increases permitted density refers to the permitted density of housing units. In re Tax Credit of Pennrose, 346 N.J.Super. 479, 788 A.2d 787.

5:80-33.13 Application for additional credits

(a) Applicants may apply for additional credits in one of two ways: through a hardship request from the Reserve or by applying under one of the cycles set forth at N.J.A.C. 5:80-33.4 through 33.7.

1. Hardship requests up to \$100,000 shall apply to the Reserve. See N.J.A.C. 5:80-33.8 for a description of the Reserve. Applicants shall submit all of the following before NJHMFA will consider any hardship request:

- i. The re-application fee;
- ii. A Sponsor Certification for Re-Application (including all updates to original application);

iii. A rent qualification chart, income and expense statements and 15-year cash flow proforma all reflecting current projections. The proforma shall be signed by the first mortgagee (or syndicator/investor if the project has no hard debt) exclusively reflecting the following language verbatim: "We acknowledge that this proforma substantially matches the assumptions used in our underwriting of the mortgage (equity investment)";

iv. An explanation why additional credits are being sought plus supporting documentation. Projects that did not submit a Phase I environmental assessment (conducted in accordance with A.S.T.M. E1527-97, Standard and Poors Enhanced Protocol) with their original application for tax credits are not eligible for additional credits for environmental overruns;

v. Evidence that at least 50 percent of the developer fee is deferred and that the applicant has attempted to increase funding from every other source (except State Balanced Housing from DCA before applying to the Reserve for additional credits. The developer fee cannot exceed that stated in the original application; and

vi. A letter agreement with the syndicator/investor which addresses the pricing to be paid for the original and additional credits. (If the applicant is still incurring costs and is using a projection of costs and basis in his or her application for additional credits, the investor shall verify the projection.) The agreement shall also identify the intended end user/purchaser of the tax credits.

2. Requests for additional credit that do not qualify for application under N.J.A.C. 5:80-33.8(a)2 or 3 shall be made through application to a competitive cycle. Such submission shall consist of the complete application as well as items (a)liv through vi above. The original allocation plus the additional credit shall be used to calculate the tiebreaker at N.J.A.C. 5:80-33.19(a)1.

(b) Should additional credits be awarded to a project, an allocation/issuance fee shall be paid as provided in N.J.A.C. 5:80-33.25.

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), deleted text relating to requirements for additional credit applications and awards, and inserted "See N.J.A.C. 5:80-33.8 for a description of the Reserve B."; and in (a)2, inserted reference to developer fee. Recodified from N.J.A.C. 5:80-33.12 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), added new 3 and 5 and recodified former 3 and 4 as 4 and 6. Former N.J.A.C. 5:80-33.15, Point system for the Suburban/Rural Cycle, was recodified to N.J.A.C. 5:80-33.18.

Recodified from N.J.A.C. 5:80-33.15 and amended by R.1999 d.120, effective April 5, 1999.

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

In (a), changed N.J.A.C. reference in the introductory paragraph, and inserted "(or syndicator/investor if the project has no hard debt)" and "(equity investment)" in 3. Former N.J.A.C. 5:80-33.14, Application to a cycle/eligibility requirements, recodified to N.J.A.C. 5:80-33.13.

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

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

In (a)4, inserted "(conducted in accordance with A.S.T.M. E1527-97, Standard and Poors Enhanced Protocol)" following "environmental assessment".

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

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

Rewrote (b).

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

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

Rewrote the section.

Recodified from N.J.A.C. 5:80-33.14 and amended by R.2003 d.300, effective July 21, 2003.

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

In (a), amended N.J.A.C. reference in the introductory paragraph; in 2, deleted "(see definition)"; in (b), amended N.J.A.C. reference. Former N.J.A.C. 5:80-33.13, Application to a cycle/eligibility requirements, recodified to N.J.A.C. 5:80-33.12.

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

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

Deleted "The developer fee cannot exceed that stated in the original application" from (a)lii and added the language to (a)lv; also in (a)lv, substituted "deferred" for "pledged"; in (a)2, added the last sentence.

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

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

In (a)lvi, deleted "eligibility and" preceding "specific" and inserted "and the pricing to be paid for the additional credits".

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

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

In (a)lvi, substituted "agreement with" for "from", deleted "the specific need for the additional credits and" following "addresses", inserted "original and" and inserted the last sentence; in (a)2, substituted "that do not qualify for application under N.J.A.C. 5:80-33.8(a)2 or 3" for "of more than \$100,000".

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

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

In (a)lv, substituted "DCA" for "the New Jersey Department of Community Affairs".

5:80-33.14 Scoring and ranking

(a) Because of the limited amount of credits and the high volume of applications to NJHMFA, only a fraction of the projects that apply typically receive credits. In addition to meeting the eligibility criteria described at N.J.A.C. 5:80-33.12, applications that fail to satisfy a minimum of 65 percent of the maximum score under the ranking criteria established under N.J.A.C. 5:80-33.15 through 33.18 shall be declared ineligible to obtain a reservation of tax credits. NJHMFA will rank projects according to the score sheet submitted in the project's application. Should an applicant fail to include a completed self-score sheet, the application shall be ranked utilizing a preliminary score as determined by NJHMFA. NJHMFA shall perform a cursory review of the application and shall assume the maximum score for each of the criteria under N.J.A.C. 5:80-33.13 through 33.18 provided the requisite documentation has been submitted. Based on this ranking, NJHMFA will then examine the applications of only those projects that rank sufficiently high to receive credits. Once it is determined that an application meets all eligibility requirements, it is admitted into the cycle and underwritten.

(b) Applications shall receive points based on the point system for the particular cycle in which they compete. In the event of a tie score, projects shall be ranked according to the tie-breaker system. Then, reservations shall be awarded to the applications with the highest scores and to the applications