

## **SUBCHAPTER 33.      LOW INCOME HOUSING TAX CREDIT QUALIFIED                           ALLOCATION PLAN**

### **5:80-33.1 Introduction**

(a) Section 42 of the Internal Revenue Code of 1986 (Code), 26 U.S.C. § 42, establishes a low income housing tax credit that may be applied against the Federal income tax of persons or associations who or which have invested in certain buildings providing housing for families of low-income. As the housing credit agency for the State of New Jersey, the New Jersey Housing and Mortgage Finance Agency (NJHMFA) allocates these credits to qualified taxpayers and thereafter monitors their compliance with Section 42 of the Code. The rules in this subchapter set forth the standards and procedures used by NJHMFA to perform its allocation and monitoring responsibilities and this subchapter represents the qualified allocation plan for New Jersey required by Section 42 of the Code.

(b) In each calendar year, the total dollar value of the credits that can be allocated under these rules, except for the credits issued in connection with buildings financed with the proceeds of certain tax-exempt bonds, is limited by the State housing credit ceiling provided in Section 42 of the Code. NJHMFA, therefore, has determined to award these limited credits on a competitive basis. Applicants seeking an allocation of these credits must apply under one of the cycles set forth in N.J.A.C. 5:80-33.4, 33.5, 33.6 or 33.7. NJHMFA ranks the applications received in each cycle according to the respective point scales provided in N.J.A.C. 5:80-33.16, 33.17 and 33.18. The credits assigned to each cycle are then reserved for the highest ranking applications that meet the eligibility requirements set forth in N.J.A.C. 5:80-33.12.

(c) Credits issued in connection with buildings financed with the proceeds of tax exempt bonds subject to the volume cap restrictions provided in Section 42(h)(4) of the Code are not limited by the State housing credit ceiling and, therefore, are not allocated on a competitive basis. Applicants seeking such "volume cap tax credits" are directed to the provisions of N.J.A.C. 5:80-33.9.

(d) It is the burden of every applicant to comply literally with the requirements of these rules and to ensure that any application presented to NJHMFA is clear, unambiguous and complete in all respects at the time of submission.

(e) These rules shall be construed and administered in a manner consistent and in accordance with the Code and regulations promulgated thereunder.

(f) Compliance with the requirements of the Code is the sole responsibility of the owner of the building for which the credit is allowable. NJHMFA makes no representations to the owner or anyone else as to compliance with the Code, Federal regulations issued under the Code, or any other laws or regulations governing Low Income Housing Tax Credits, or as to the financial viability of any project. All applicants should consult their accountant, tax attorney or advisor as to the specific requirements of Section 42 of the Code governing the Low Income Housing Tax Credit Program.

(g) These rules have been promulgated in a manner consistent with the smart growth initiatives required under Executive Order No. 4 (2002).

## **5:80-33.2 Definitions**

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

“Brownfields site” means, pursuant to the Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-1 et seq., “any former or current commercial or industrial site that is currently vacant or underutilized and on which there has been, or there is suspected to have been, a discharge of contamination.” For the purposes of this subchapter, the proposed redevelopment for the site under consideration must also have an approved New Jersey Department of Environmental Protection Remedial Action Work Plan.

"COAH" means the New Jersey State Council on Affordable Housing.

"COAH obligation" means a low or moderate-income rental project in a plan that is either COAH-certified or under COAH's jurisdiction as the result of a petition to receive substantive certification or to amend a plan that has previously received substantive certification.

"Code" means the Internal Revenue Code, 26 U.S.C. §§1 et seq.

“Community Revitalization Plan” means a plan endorsed by the municipality to designate areas in need of redevelopment. This plan is intended to incorporate a vision for future growth that will lead to comprehensive neighborhood revitalization in the target area. For purposes of this subchapter, a Community Revitalization Plan shall include the following criteria:

1. A tax map that delineates revitalization area boundaries;
2. A description of community revitalization planning process;
3. A list of stakeholders that developed the community revitalization plan;
4. A land use survey that includes: vacant building and lots, and use of each parcel;
5. Demographic, social, and economic profiles of the revitalization area;
6. A narrative describing the impact of the community revitalization plan towards achieving long-term viability in the target area; and
7. An implementation strategy that contains:
  - i. A list of organizations participating in the implementation phase of the community revitalization plan
  - ii. A strategy for meeting objectives described in the community revitalization plan
  - iii. A list of projects in the revitalization area.

“Community Service Facility” means, as established at Section 42(d)(4)(C)(iii) of the Code, “any facility designed to serve primarily individuals whose income is 60 percent or less of area median income within the meaning of 26 U.S.C. § 42(g)(1)(B).” For example, a community room, club house or recreation center may be a community service facility. Lobbies and laundry facilities are not within the scope of this definition.

“Complete application” means an application submitted to NJHMFA, including the application fee, completed application forms and certifications, and all eligibility requirements.

“Core operating expenses” means expenses for administration, salaries, maintenance and repairs, maintenance contracts and insurance.

"Court-ordered obligation" means a low or moderate-income rental project that is part of a judgment of repose, as defined by COAH at N.J.A.C. 5:93-1.3, or a court settlement resulting from an exclusionary zoning lawsuit. For the purpose of this definition, a project shall be deemed to be part of a judgment of repose or a court settlement if the applicant provides a letter from the Superior Court judge or special master with jurisdiction over the suit stating that the project will be included in a final judgment of repose or court settlement.

"Density bonus subsidy" means an economic benefit for low and moderate-income housing resulting from a zoning change that increases permitted density.

"Developer fee" or "development fee" means the fee that covers the overhead and profit of the developer. Certain fees are subsumed within the developer fee—such as acquisition fees, compensation to the general partner, financial consultants, employees of the developer, construction managers/monitors, clerk of the works and syndicator-required consultants. Professional fees not paid out of the developer fee are the fees for the architect, engineer, lawyer, accountant, surveyor, appraiser, soil investigator, professional planner, historical consultant and environmental consultant. (If there are costs listed under the professional planner, the executed contract shall be submitted. Only those costs determined by NJHMFA to be for planning purposes shall be shown as a separate line item.) All other consultant and professional fees shall be included in the developer fee and are not allowed to be shown as separate line items on the tax credit application; otherwise, those fees shown separately will be added to the developer fee line item and may result in a lower point score for the project.

The developer fee contained in the application shall be the maximum fee (dollar amount) recognized by NJHMFA at the time of cost certification so long as the project scope remains the same. NJHMFA may recalculate the fee at the time of cost certification using the developer fee percentage in the project's application, possibly resulting in a higher or lower dollar amount, if NJHMFA determines that there are significant increases or decreases in the project scope (substantial new additions to or deletions in the number of units, amenities, etc.).

Any fee paid to the developer in excess of the developer fee, such as an acquisition fee, incentive developer fee, or other pseudonym, shall be treated as a funding source and may not be recognized as a use of funds.

One of the scoring criteria is a lower developer fee. For scoring purposes, no additional points will be awarded for developer fees that drop below a "floor" of eight percent.

The amount of developer fee allowed is limited to 15 percent of total development cost excluding land, working capital, marketing expenses, escrows, operating deficit reserves, step-in-the-shoes costs and costs associated with syndication. However, a developer fee of up to 20 percent (of total development cost excluding land, working capital, marketing expenses, escrows, operating deficit reserves, step-in-the-shoes costs and costs associated with syndication) is allowed for the following types of housing:

- i. Scattered site single-family detached or duplex housing;
- ii. Projects of 25 units or less; or
- iii. Housing for special needs populations.

The cost of acquiring a building shall not be allowed in the calculation of the developer fee if the acquisition is between related parties.

"Developmentally disabled" means a severe, chronic disability of a person which:

1. Is attributable to a mental or physical impairment or combination of mental or physical impairments;
2. Is manifested before the person attains age 22;
3. Is likely to continue indefinitely;
4. Results in substantial functional limitations in three or more of the following areas of major life activity:
  - i. Self-care;
  - ii. Receptive and expressive languages;
  - iii. Learning;
  - iv. Mobility;
  - v. Self-direction;
  - vi. Capacity for independent living; and

vii. Economic sufficiency; and

5. Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment or other services that are of lifelong or extended duration and are individually planned and coordinated.

"Eligible basis limits" are limitations on total eligible basis (except for projects in the Special Needs Cycle or those projects that receive credits from volume cap) based on whether or not the application is receiving HOPE VI assistance from the U.S. Department of Housing and Urban Development (HUD). The limits are a specified percentage above the Section 221(d)(3) limits published in 24 C.F.R. Part 200 by HUD as of the first of the year. A project whose total eligible basis exceeds its applicable eligible basis limit may participate in the tax credit program; however, the maximum amount of credits allowed to the project will be limited to the amount of the eligible basis limit applicable to the project. The eligible basis limit is not a per se limit on eligible basis as defined in the Code but is a mechanism that facilitates NJHMFA's exercise of its authority to limit tax credits to what is necessary to finance projects. See Code Section 42(m). For all projects receiving credits from the State housing credit ceiling, NJHMFA shall also limit the eligible basis used for calculating the tax credit in the following manner:

1. A maximum of three percent per annum construction loan interest on unamortized, soft financing (for example, Balanced Housing, FHLB) or up to the Applicable Federal Rate as published by the U.S. Department of the Treasury for unamortized Federal loans shall be recognized in eligible basis; and

2. Duplicative professional costs shall not be recognized in eligible basis. For example, for HOPE VI applications in which both the public housing authority and the developer retain their own construction managers, architects, engineers, etc., only the fees for services retained by the developer shall be recognized in eligible basis.

"Equity factor" means the pricing of the tax credit in terms of cents per tax credit dollar. The equity factor is listed in the application and may change as market conditions dictate.

"Frail elderly" means a person at least 62 years of age who requires assistance in performing at least two activities of daily living or instrumental activities of daily living (that is, eating, dressing, grooming and household management activities). Only special needs projects which also qualify as "housing for older persons" under the Fair Housing Act may reserve units for rental exclusively to the frail elderly.

"High rise" means a building having eight or more residential floors or stories.

"Historic building(s)" means any building or buildings that meet one or more of the following criteria:

- i. Building(s) listed on the New Jersey or National Registers of Historic Places either individually or as a contributing building to a historic district;
- ii. Building(s) that have been issued a Determination of Eligibility by the Keeper of the National Register of Historic Places;
- iii. Building(s) identified as a contributing building to Local Historic Districts which have been Certified by the Keeper of the National Register as substantially meeting the National Register Criteria; or
- iv. Building(s) with a State Historic Preservation Officer Opinion or Certification that the property is eligible to be listed on the National Register of Historic Places either individually or as a contributing building to a historic district."

"HUD" means the United States Department of Housing and Urban Development.

"Large family unit" means a unit within a non-age-restricted project with three or more bedrooms. For every three bedrooms, there must be at least 1.5 bathrooms. A three-bedroom unit must measure no less than 950 square feet. A four-bedroom unit should measure no less than 1,150 square feet. (Excluded from the calculation are common halls, stairways, unfinished basements and attics, garages, balconies and porches.) Developments must be structured in conjunction with realistic market demands (that is, if a developer's market analysis does not show a need or demand for all three-bedroom units, the developer should not be developing all three-bedroom units).

"LIHTC project" means a project participating in NJHMFA's Low Income Housing Tax Credit Program.

"Low rise" means a building having one to four residential floors or stories.

"Mid-rise" means a building having five to seven residential floors or stories.

"Minimum rehab project" means any project undertaking only a minimum amount of rehabilitation. Minimum rehab is defined as construction costs totaling less than 50 percent of the acquisition cost where construction cost equals the total of the lines listed under Construction (less any costs associated with step-in-the-shoes basis) on the breakdown of costs and basis form and acquisition cost equals the total of the lines listed under "Acquisition" plus the land cost. Minimum rehab projects are eligible to apply only in the Special Needs Cycle and Final Cycle. In the Final Cycle, they shall be funded only if there are no other projects left to fund. NJHMFA shall utilize an amount not less than 33.33 percent of developer fee based on building acquisition costs as a funding source in its evaluation required under 26 U.S.C. § 42(m)(2).

"Mixed income project" qualifying for the affordability set-aside in the Family and Senior Cycles means a project with an applicable fraction between 50 percent and 80 percent.

“Preservation Project” means an existing, currently occupied affordable housing project at risk of losing its affordability controls. In order to qualify for the preservation set-aside in the Final Cycle, the application shall include the following:

1. A copy of all deed restrictions on the property to evidence proof of imminent expiration (within two years) of affordability controls;
2. An agreement precluding the involuntary displacement of non-tax credit qualifying tenants;
3. A maximum applicable fraction of 80 percent in recognition that some tenants will not qualify under the low income housing tax credit program;
4. A 10 percent vacancy rate on non-tax credit units to account for “Next Available Unit” Rule;
5. An election of 20 percent at 50 percent Federal set-aside;
6. A capital needs assessment which illustrates that the proposed rehabilitation exceeds the criteria of a minimum rehab project; and
7. Letters from tax attorney and investor identifying all project funding sources that are considered Federal subsidies (if any).

For projects that compete in the preservation set-aside, calculation of the developer fee for building acquisition costs shall be limited to five percent.

“Qualified Census Tract,” as defined in Section 42(d)(5)(C) of the Code, means a census tract designated by the Secretary of Housing and Urban Development in which 50 percent or more of households have an income less than 60 percent of the area median gross income or in which there exists a poverty rate of 25 percent or greater.

"Qualified nonprofit organization" means, pursuant to Section 42(h)(5)(B) of the Code, an entity that owns an interest in the project (directly or through a partnership) and materially participates (within the meaning of Section 469(h) of the Code) in the development and operation of the project throughout the compliance period and is not affiliated with or controlled by a for-profit organization.

1. Section 42(h)(5)(C) defines a qualified nonprofit organization as follows:

"(i) Such organization is described in paragraph (3) or (4) of Section 501(c) and is exempt from tax under Section 501(a);

(ii) Such organization is determined by the State housing credit agency not to be affiliated with or controlled by a for-profit organization; and

(iii) 1 of the exempt purposes of such organization includes the fostering of low-income housing."

2. Section 42(h)(5)(D) describes how certain subsidiaries meet the definition of a qualified nonprofit organization as follows:

"(i) In general. For purposes of this paragraph, a qualified nonprofit organization shall be treated as satisfying the ownership and material participation test of subparagraph (B) if any qualified corporation in which such organization holds stock satisfies such test.

(ii) Qualified corporation. For purposes of clause (i), the term 'qualified corporation' means any corporation if 100 percent of the stock of such corporation is held by 1 or more qualified nonprofit organizations at all times during the period such corporation is in existence."

The nonprofit set-aside and non-profit points in the Special Needs Cycle are available exclusively to Section 501(c)(3) or (4) housing sponsors who comprise 100 percent of the general partner interest in the final ownership entity (the limited partnership). Limited liability companies and limited liability partnerships are not eligible for the nonprofit set-aside or the non-profit points in the Special Needs Cycle.

In order to qualify for the nonprofit set-aside or the non-profit points in the Special Needs Cycle, the application shall include:

1. A fully executed Nonprofit Certification;
2. The IRS determination letter granting tax-exempt status under Code section 501(c)(3) or 501(c)(4);
3. The by-laws or articles of incorporation of each general partner, which clearly state that one of the exempt purposes of said organization includes the fostering of low-income housing; and
4. If applicable, the contract establishing a turnkey relationship.

At the point the project places in service, the owner shall be required to submit an attorney opinion letter which states that neither the for-profit developer with a financial interest in the project nor any member of the investor limited partner is or has been a member of the qualified nonprofit organization's board of directors.

"Related party" means a relationship between parties when there is a spousal or family relationship, parent-subsidiary relationship or where owners, officers, directors, partners, stockholders, or members of one business entity hold a 10 percent or more interest in the other business entity.

"Retention factor" means an increase to the equity factor used to calculate the value of the tax credits. NJHMFA will add a retention factor to non-syndicated tax credit projects, or projects where

the general partner (and/or related entity) will retain at least two percent ownership interest. For projects where the general partner's ownership interest is between two and five percent, \$.05 shall be added to the equity factor. If the general partner's ownership interest is five to 49 percent, \$.10 shall be added to the equity factor. If the general partner's ownership interest is at least 50 percent, \$.20 shall be added to the equity factor.

"Scattered site project" means a project that consists of buildings which are not all proximate to one another within the same municipality or contiguous municipalities, is financed pursuant to a common financing plan and 100 percent of the residential rental units are occupied by qualified low-income households.

"School renaissance zone" means an area that surrounds an Abbott school and contains new or restored housing, recreation or community centers, and promotes commercial development. The New Jersey Department of Education is responsible for designating neighborhoods that qualify for the school renaissance zone program.

"Senior project" means "housing for older persons" as defined in Section 807(b)(2) of the Fair Housing Act, 42 U.S.C. § 3607, as it may be amended. In order to be eligible for the Senior Cycle, the project must meet one of the three categories of exempt "housing for older persons" as defined by the Fair Housing Act:

1. At least 80 percent of the occupied units in the building are each occupied by at least one person 55 years or older and the property must be clearly intended for older persons as evidenced by policies and procedures that demonstrate the intent that the property be housing for older persons (55+);
2. All the residents are 62 or older; or
3. Housing that the Secretary of HUD has designated as housing for older persons.

The familial status provisions of the Fair Housing Act prohibit discrimination against households with children under 18. This protection extends to pregnant women, foster families, legal guardians, and those in the process of obtaining guardianship or of adopting minor children. The only exception to this prohibition against discrimination based on familial status is for property that qualifies under a Fair Housing Act exemption as "housing for older persons."

Refusing to rent to households with children is allowed under the exemption for housing for older persons as long as the age restrictions are met. Accordingly, in these properties, managers must verify the age of residents. Age verification documentation must be available on site; failure may lead to a loss of the exemption. For questions about whether a property qualifies for the exemption as housing for older persons, a fair housing attorney or other fair housing professional should be consulted.

"Smart growth areas" means locations that will provide for much of the state's future development and redevelopment. Smart growth areas promote growth in compact forms and protect

the character of existing stable communities. The areas defined as smart growth areas are Planning Area 1, Planning Area 2 (sewered), Designated Centers, Proposed Centers (sewered) and Identified Centers (sewered). Planning Areas are large masses of land that share a common set of conditions, such as population density, infrastructure systems, level of development or natural systems. Centers are compact forms of development that, compared to sprawl development, consume less land, deplete fewer natural resources and are more efficient in the delivery of public services. For more information about the State Plan, contact the New Jersey Office of Smart Growth. The State Plan is not itself a regulation but a statement of State policy that has been adopted by the State Planning Commission pursuant to a statute to guide State, regional, and local agencies in the exercise of their statutory authority.

“Social service coordinator” means a person who is responsible for linking the residents of a tax credit property to appropriate supportive services. The major functions of the social service coordinator include, but are not limited to:

1. Providing information and referrals to residents on programs and resources on local, State and Federal levels;
2. Interviewing and screening residents for eligibility for programs and entitlements and assisting with application procedures;
3. Assessing the needs of residents, including physical, mental, social and financial needs, and developing a plan for service delivery;
4. Monitoring and evaluating service delivery, and reassessing as necessary;
5. Establishing links with agencies and service providers;
6. Serving as residents’ advocate/liaison; and
7. Planning and implementing monthly programs and activities to meet the needs of residents, including establishment of social, educational and recreational programs.

"Social services model" means any project which submits an executed agreement between a housing and social service provider or otherwise demonstrates to the satisfaction of NJHMFA that one or more of the following types of services shall be provided for at least the term of the compliance period to improve the quality of life of the residents of the project. The services must be affordable, appropriate, available and accessible to the project's tenants and the social service provider must have the capacity to perform such services. The services include, but are not limited to:

1. Hiring a full-time social service coordinator. If a social service coordinator is being provided through a third party, then a signed agreement between the two parties is required, and the coordinator must be dedicated to the tax credit project for at least 20 hours a week;

2. Providing child care services either on site or linked to outside child care centers;
3. Providing health care services either on site or linked with a local health care provider;
4. Providing job training programs on site or linked with a local training center;
5. Providing personal care and/or housekeeping services on site;
6. Providing at least one congregate meal on site;
7. Providing adult day-care services; and/or
8. Providing transportation services for the residents.

Social service coordinator, case manager and linkages coordinator/ provider are not counted as separate and distinct services. NJHMFA shall view these services as all being part of the same service.

"Special needs project" means a project which shall rent a minimum of 25 percent of the tax credit units in the project to one (or more) of the targeted special needs populations referred to below, and must make available a minimum of three daily services addressing the needs of the identified group, one of which must be a social service coordinator. If a social service coordinator is being provided through a third party, then a signed agreement between the two parties is required, and the coordinator must be dedicated to the tax credit project for at least 20 hours a week. Project owners may rent more than 25 percent of the tax credit units to one or more of these targeted populations. However, owners should also be aware that for certain types of special needs projects, when more than 30 percent of the units are set aside for persons with special needs, "saturation" may occur resulting in an institution-type atmosphere. Special needs populations include individuals and families who are in need of certain types of homes and/or community-based supportive services, usually on an ongoing basis, in order to remain capable of independent living in communities. Supportive services range across a wide continuum of care (such as meals preparation, assistance with housecleaning, etc.) to high level (such as substance abuse and mental health supports) to medically intense (such as skilled nursing) and will vary from person to person depending on their particular physical, psycho-social, and/or mental limitations, and may vary for one person over time. Each special needs tenant does not have to utilize all of the services provided by the project; however, the services must be available. If tenants are not utilizing the services that are available, NJHMFA may call into question whether or not the project is serving a special needs population.

1. Examples of targeted special needs populations are:
  - i. Persons with AIDS/HIV-related illness;
  - ii. Homeless;
  - iii. Mentally ill;

- iv. Frail elderly;
  - v. Alcohol/substance abusers;
  - vi. Persons with physical disabilities;
  - vii. Mentally retarded/developmentally disabled;
  - viii. Pregnant/parenting teens;
  - ix. Participants of the Work First Temporary Assistance to Needy Families Program;
  - x. Participants of the Work First General Assistance Program; and
  - xi. Victims of domestic violence.
2. Examples of support services include, but are not limited to, the following:
- i. Social service coordinator/case manager;
  - ii. Counseling and crisis intervention;
  - iii. Health care advocacy and linkages;
  - iv. Assistance with activities of daily living and/or instrumental activities of daily living;
  - v. Recreational activities;
  - vi. Entitlement counseling and advocacy;
  - vii. Employment counseling and training;
  - viii. Support groups;
  - ix. Home-based personal or medical assistance;
  - x. Skilled nursing;
  - xi. Meals preparation;
  - xii. Housekeeping;
  - xiii. Substance abuse and mental health supports; and

xiv. Child care/adult day care.

"Sponsor certification" means the certification submitted at application, reapplication, carryover request or IRS Form 8609 request which identifies the anticipated or actual date that the project is placed in service. The certification shall also include a signed breakdown of costs and basis and a statement whereby the owner agrees to abide by the low income housing tax credit requirements of the Code and a statement, under penalty of perjury, that the information contained in the certification is true and complete.

"Substantially incomplete" means an application with a total of three or more defects as described at N.J.A.C. 5:80-33.11(c)1 and 3 or an application with a total of six or more defects as described at N.J.A.C. 5:80-33.11(c)1, 2 and 3.

"Supplemental award" means an award of credits from the Reserve in order to fund the final eligible project awarded credits in a cycle if there are insufficient credits in the cycle to provide a full reservation for the project. Applicants do not apply for supplemental awards.

"Transit village" means a community with a bus, train, light rail, or ferry station that has developed a plan to achieve its goals. The transit village program is designed to spur economic development, urban revitalization, and private-sector investment around passenger rail stations. The New Jersey Department of Transportation coordinates a task force of different State agencies to review applications and make recommendations. Transit villages must be designated by the Transit Village Task Force by the tax credit application deadline.

"Uncorrected noncompliance" applies only with respect to the uncorrected noncompliance point category and means any one of the following which was reported to the owner by NJHMFA and remains uncorrected as of the date of the tax credit application deadline or the correction date set forth in the formal notice of non-compliance, whichever occurs later:

1. A violation of State and local building codes or health ordinances;
2. Failure of one or more major systems (for example, roof, HVAC, elevators, plumbing and electric); or
3. Failure to fulfill any Qualified Allocation Plan provisions as represented by an owner in a project's New Jersey LIHTC application.

Owners shall be notified of the noncompliance by either a formal notice of noncompliance or by the non-issuance of the IRS Form 8609.

"Voluntary compliance with the courts" means a project located in a municipality that has voluntarily complied with its second round fair share obligation either by a petition to the Council on Affordable Housing (COAH) or by a request to the court and its second round obligation was not the

subject of an exclusionary zoning lawsuit. Voluntary compliance shall be verified by the entity with jurisdiction over the municipality (either the executive director of COAH or the special master).

### **5:80-33.3 Application cycles**

Each year, NJHMFA shall establish funding cycles and the amount of credits available in each cycle. They will be advertised in the Atlantic City Press, The Record, Newark Star Ledger, The Courier News, The Asbury Park Press, The Camden Courier Post, Bridgeton Evening News and The Times. NJHMFA shall set the eligibility cut-off dates in each year for receipt of completed applications. Applications shall be submitted to NJHMFA by 12 noon of the application deadline date in order to be considered for review. The application filing deadlines and the credits available in each cycle shall be announced as early in the year as possible. Reservations shall be announced approximately 90 days (or the next business day if the 90th day is a weekend or holiday) after the deadline for the cycle. NJHMFA may adjust the number of cycles or adjust the award dates if required by the timing of passage of Federal legislation or adoption of IRS rules and regulations or for other compelling circumstances. A project cannot compete in more than one cycle simultaneously.

### **5:80-33.4 Family Cycle**

(a) Non-age restricted developments with large family units which comprise at least 15 percent of the low-income units may apply to this cycle. \$5,000,000 will be available in the Family Cycle, and the maximum annual allocation of credits to developments competing in this cycle is \$1,800,000. Minimum rehab projects are not eligible to apply in this cycle. There are three set-asides in the Family Cycle:

1. Affordability set-aside: The first reservation of credits from the Family Cycle shall be given to the highest-ranking eligible application that has either selected the 20 percent at 50 percent Federal set aside as defined under Section 42(g)(1)(A) of the Code or is a mixed income project as defined under N.J.A.C. 5:80-33.2. If the 20 percent at 50 percent election is selected, all tax credit units shall be restricted to 50 percent of the area median income adjusted for family size. For example, if the project has an applicable fraction of 100 percent, 100 percent of the units shall be restricted to 50 percent of the area median income adjusted for family size. The 20 percent at 50 percent election or lower applicable fraction shall be reflected on each building's IRS Form 8609 and on the deed of easement and restrictive covenant. If, because of lack of demand, the affordability set-aside is not utilized, the credits in this set-aside shall be released into the Family Cycle for use by other applications.

2. HOPE VI set-aside: The second reservation of credits from the Family Cycle shall be given to the highest-ranking eligible application [which utilizes HOPE VI funds from HUD or is included in an approved HOPE VI proposal.](#) If, because of lack of demand, the HOPE VI set-aside is not utilized, the credits in this set-aside shall be released into the Family Cycle for use by other applications.

3. Nonprofit set-aside: The third reservation of credits from the Family Cycle shall be given to the highest-ranking eligible application from a qualified nonprofit organization that is community based within a qualified census tract; that is, an organization that operates and is developing housing within a geographically defined service area within a qualified census tract. If there are no eligible applications from a community based qualified nonprofit organization located within a qualified census tract, then the third reservation of credits from the Family Cycle will be given to the highest-ranking eligible application from a qualified nonprofit organization. If, because of lack of demand, the nonprofit set-aside is not utilized, the credits in this set-aside shall be released into the Family Cycle for use by other applications.

(b) Projects can qualify and apply for multiple set-asides. This potential overlapping of set-asides may expand the amount of credits in the general competition. However, projects which receive negative points under N.J.A.C. 5:80-33.15(a)17, 19 or 20 shall not be eligible to compete in any set-aside.

(c) Reservations shall first be awarded to the highest-ranking projects qualifying for the aforementioned prioritized set-asides. Thereafter, reservations shall be awarded to the highest-ranking eligible projects. To insure equitable distribution if there are both excess demand and multiple ranking eligible applications from a single municipality or developer, NJHMFA shall fund no more than three projects per year and two projects per cycle from the same municipality and/or developer. Funding of projects shall be prioritized in the following manner: the highest ranking eligible project(s) in the Family Cycle, the Senior Cycle, the Special Needs Cycle and lastly, the Final Cycle.

### **5:80-33.5 Senior Cycle**

(a) Senior projects may apply to this cycle. \$2,400,000 will be available in the Senior Cycle, and the maximum annual allocation of credits to developments competing in this cycle is \$1,200,000. Minimum rehab projects are not eligible to apply in this cycle. Unless market area demographics demonstrate otherwise, one-bedroom units should comprise at least 85 percent of the project. There are two set-asides in the Senior Cycle:

1. Affordability set-aside: The first reservation of credits from the Senior Cycle will be given to the highest-ranking eligible application that either has selected the 20 percent at 50 percent Federal set aside as defined under Section 42(g)(1)(A) of the Code or is a mixed income project as defined under N.J.A.C. 5:80-33.2. If the 20 percent at 50 percent election is selected, all tax credit units shall be restricted to 50 percent of the area median income adjusted for family size. For example, if the project has an applicable fraction of 100 percent, 100 percent of the units shall be restricted to 50 percent of the area median income adjusted for family size. The 20 percent at 50 percent election or lower applicable fraction shall be reflected on each building's IRS Form 8609 and on the deed of easement and restrictive covenant. If, because of lack of demand, the affordability set-aside is not utilized, the credits in this set-aside shall be released into the Senior Cycle for use by other applications.

2. HOPE VI set-aside: The second reservation of credits from the Senior Cycle shall be given to the highest-ranking eligible application which utilizes HOPE VI funds from HUD or is included in an approved HOPE VI proposal. If, because of lack of demand, the HOPE VI set-aside is not utilized, the credits in this set-aside shall be released into the Senior Cycle for use by other applications.

(b) Projects can qualify and apply for multiple set-asides. This potential overlapping of set-asides may expand the amount of credits in the general competition. However, projects which receive negative points under N.J.A.C. 5:80-33.15(a)17, 19 or 20 shall not be eligible to compete in any set-aside.

(c) Reservations shall first be awarded to the highest-ranking project qualifying for the aforementioned prioritized set-asides. Thereafter, reservations shall be awarded to the highest-ranking eligible projects. To insure equitable distribution if there are both excess demand and multiple ranking eligible applications from a single municipality or developer, NJHMFA shall fund no more than three projects per year and two projects per cycle from the same municipality and/or developer. Funding of projects shall be prioritized in the following manner: the highest ranking eligible project(s) in the Family Cycle, the Senior Cycle, the Special Needs Cycle and lastly, the Final Cycle.

### **5:80-33.6 Special Needs Cycle**

(a) Projects in which at least 25 percent of the tax credit units are rented to a special needs client population and at least three appropriate services are provided may apply to the Special Needs Cycle. There is \$1,200,000 available in the Special Needs Cycle and the maximum annual allocation of credits to projects competing in this cycle is \$600,000. There is one set-aside in the Special Needs Cycle:

1. Developmentally disabled set-aside: The first reservation of credits from the Special Needs Cycle will be given to the highest-ranking eligible project providing housing for the developmentally disabled. Applicants of projects seeking credits from the developmentally disabled set-aside must demonstrate experience both as a social service provider and housing developer. For example, if the project owner is strictly a social service provider, it must joint venture with an experienced developer or hire a housing consultant. Conversely, if the project owner is a developer with no experience in providing social services, it must joint venture with an experienced service provider. The application shall include a letter from the Department of Human Services, Division of Developmental Disabilities (“Division”) which confirms that the Division has reviewed and agreed to the applicant’s service plan and that the cost is within the amount the Division has available for the operating and social service funding for at least 25 percent of the tax credit units in the project. Projects serving the developmentally disabled populations are eligible for Special Needs Cycle credits beyond the set-aside. If, because of lack of demand, the developmentally disabled set-aside is not utilized, the credits in the

developmentally disabled set-aside shall be released into the Special Needs Cycle for use by other eligible applications.

(b) Reservations shall first be awarded to the highest-ranking project qualifying for the aforementioned prioritized set-aside. Then, reservations shall be awarded to the highest-ranking eligible projects. To insure equitable distribution, if there are both excess demand and multiple ranking eligible applications from a single municipality or developer, NJHMFA shall fund no more than three projects per year and two projects per cycle from the same municipality and/or developer. Funding of projects shall be prioritized in the following manner: the highest-ranking eligible project(s) in the Family Cycle, the Senior Cycle, the Special Needs Cycle and lastly, the Final Cycle.

(c) Projects which receive negative points under N.J.A.C. 5:80-33.15(a)17, 19 or 20 shall not be eligible to compete in a set-aside.

### **5:80-33.7 Final Cycle**

(a) All projects, including minimum rehab projects, may apply to this cycle. There is \$1,805,000 available in the Final Cycle and the maximum annual allocation of credits to projects competing in this cycle is \$1,800,000. There are two set-asides in the Final Cycle:

1. HOPE VI set-aside: The first reservation of credits from the Final Cycle shall be given to the highest-ranking eligible application which utilizes HOPE VI funds from HUD or is included in an approved HOPE VI proposal. If, because of lack of demand, the HOPE VI set-aside is not utilized, the credits in the HOPE VI set-aside shall be released into the Final Cycle for use by other applications.

2. Preservation set-aside: The second reservation of credits from the Final Cycle shall be given to the highest-ranking eligible application from a preservation project. If, because of lack of demand, the preservation set-aside is not utilized, the credits in the preservation set-aside shall be released into the Final Cycle for use by other eligible applications.

(b) In the unlikely event that less than 10 percent of the ceiling has been awarded to qualified nonprofit organizations, then awards from the Final Cycle shall first be made to such organizations until not less than 10 percent of the credit ceiling has been awarded to such organizations. If the Federal nonprofit requirement as stated in 26 U.S.C. § 42(h)(5)(A) is satisfied, reservations shall be awarded to the highest-ranking HOPE VI project. Then reservations shall be awarded to the highest-ranking eligible preservation project. Then, reservations shall be awarded to the highest-ranking eligible projects. To insure equitable distribution, if there are both excess demand and multiple ranking eligible applications from a single municipality or developer, NJHMFA shall fund no more than three projects per year and two projects per cycle from the same municipality and/or developer. Funding of projects shall be prioritized in the following manner: the highest ranking eligible project(s) in the Family Cycle, the Senior Cycle, the Special Needs Cycle and lastly, the Final Cycle.

(c) Projects can qualify for multiple set-asides. This potential overlapping of set-asides may expand the amount of credits in the general competition. However, projects which receive negative points under N.J.A.C. 5:80-33.15(a)17, 19 or 20 shall not be eligible to compete in any set-aside.

(d) Should NJHMFA receive any returned credits after the Final Cycle awards have been made, NJHMFA may, in its discretion, reallocate them to the next-highest ranking eligible project(s) from the Final Cycle.

(e) Projects that were admitted to a cycle in the same allocation year but did not receive a reservation of credits may reapply in the Final Cycle by submitting the reapplication fee and a sponsor certification for reapplication in which the applicant:

1. Certifies that there are no changes whatsoever to the previously submitted application; or
2. Identifies any and all changes to the previously submitted application, along with supporting documentation.

#### **5:80-33.8 Reserve**

(a) Projects that need credits because of technical errors and severe hardship can submit a reapplication for credits from the Reserve. The Reserve may also be used to fund supplemental awards or for unforeseen circumstances beyond the developer's control where NJHMFA determines that a project's financial feasibility is jeopardized. Any credits not dedicated to the Family, Senior, Special Needs and Final Cycles shall be deposited into the Reserve. Awards of credits from the Reserve are subject to availability and to NJHMFA's evaluation of the request.

1. Since NJHMFA does not award partial allocations, one of the purposes of the Reserve is to provide supplemental awards to eligible projects that can only be partially funded with the credits remaining in their respective cycles. Supplemental awards are given first to the highest ranking, partially funded eligible project from the Family Cycle. NJHMFA then evaluates the highest ranking, partially funded eligible projects from the Senior and Special Needs Cycles. Supplemental awards are given to the project which requires the least amount of credits from the Reserve to achieve the maximum eligible credit amount. Simultaneously, credits remaining from cycles that did not receive a supplemental award shall be deposited into the Reserve.

2. Hardship requests for additional credits from the Reserve are limited to \$100,000 per project. Hardship requests must be documented to the satisfaction of NJHMFA and must demonstrate the existence of an unforeseen emergency situation where the completion of the project is jeopardized without an award of additional low-income housing tax credits. Applicants cannot apply for hardship credits if they have already received the maximum credit allocation allowed by the eligible basis limits that were in effect at the time the project was awarded credits. Applicants cannot apply for hardship credits from the Reserve until the year in which the project places in service. If a project receiving a reservation of hardship credits from the Reserve fails to

place in service that same year, no allocation shall be issued to the project and the project will have to reapply to the Reserve in the following year. Hardship applications to the Reserve are accepted on an ongoing basis until July 15. To apply to the Reserve for a hardship reservation of additional credit, applicants must follow the procedures at N.J.A.C. 5:80-33.13(a)1.

3. Those projects which are the subject of the matter entitled *In re Allocation of Federal Low Income Housing Tax Credits under the Urban, HOPE VI and Final Cycles pursuant to the 2002 Low Income Housing Tax Credit Qualified Allocation Plan, N.J.A.C. 5:80-33.1 to 33.40, by the New Jersey Housing and Mortgage Finance Agency*, Superior Court of New Jersey, Appellate Division (Dkt. No. A-1551-02T2) may return their 2002 tax credit allocation to the Reserve in exchange for an allocation of current year credits in an amount not to exceed the amount allocated in the 2002 Carryover Allocation Agreement. A letter requesting such an exchange shall be submitted to the Division of Tax Credit Services no later than December 15, 2004 and shall include the following:

- i. Sponsor Certification for Re-Application;
- ii. The re-application fee set forth at N.J.A.C. 5:80-33.10(a)2;
- iii. Evidence of the project's continued eligibility under the requirements of N.J.A.C. 5:80-33.13, as in effect on July 15, 2002. The request shall include all updates to the original application. If no changes have been made since the original application submission, an affirmative statement from the project owner certifying the continued validity and accuracy of the information contained in the original application shall be provided; and
- iv. Evidence of the project's financial feasibility as required by 26 U.S.C. §42.

### **5:80-33.9 Volume cap credits**

(a) Projects financed by tax-exempt bonds that request tax credits pursuant to Section 42(h)(4) of the Code are required by Section 42(m)(1)(D) of the Code to satisfy the requirements for allocation of a housing credit dollar amount under the qualified allocation plan. Projects requesting tax credits entirely from volume cap do not have to compete and there are no cycle deadlines. However, complete applications should be submitted before the tax-exempt bonds are sold. The following information shall be included in order for the application to be deemed complete: all applicable sections of the application corresponding to eligibility requirements at N.J.A.C. 5:80-33.12; those sections of the application corresponding to the point categories for period of restriction, conversion to tenant ownership (if applicable), tax abatement (if applicable) and the negative point categories; and a sponsor certification and breakdown of costs and basis. A copy of the appraisal/market study required by the applicant's lender and/or syndicator may be submitted in lieu of the market study required at N.J.A.C. 5:80-33.12(c)1ii.

1. The governmental unit issuing the bonds is required by Section 42(m)(2)(D) of the Code to determine the credit amount needed for feasibility and viability of the project. If NJHMFA is the bond issuer, NJHMFA shall make this credit determination. If NJHMFA is not the bond-issuer,

the bond issuer shall provide a letter to NJHMFA assigning its responsibility under Section 42 (m)(2)(D) to NJHMFA.

2. In order for a project to qualify for all of its tax credits from volume cap, Section 42(h)(4) of the Code requires that 50 percent or more of the aggregate basis of the building and the land on which it is located be financed with tax-exempt bonds. Qualifying tax-exempt bonds are obligations the interest on which is exempt from tax under Section 103 of the Code if such obligation is taken into account under Section 146 of the Code, and the principal payments on such financing are applied within a reasonable period to redeem obligations the proceeds of which were used to provide such financing.

3. Projects that request both volume cap credits and ceiling (competitive) credits shall comply with the application requirements for both.

4. Projects that would have received negative points under N.J.A.C. 5:80-33.15(a)17, 19 or 20 shall not be issued tax credits until such items are corrected.

5. Projects that receive volume cap credits shall pay an allocation/issuance fee as described at N.J.A.C. 5:80-33.25.

(b) If a municipality has created a density bonus subsidy to assist the low- or moderate-income units in a project, the project may not receive volume cap credits unless the subsidy is insufficient to assure the financial feasibility of the project. This subsection shall not be evaded by failing to apply all or any portion of the subsidy to the low- or moderate-income units, by diverting all or any portion of the subsidy to other uses or by using any other device in which all or any portion of the subsidy is not used to benefit low- or moderate-income housing.

### **5:80-33.10 Application fee schedule**

(a) The following fees shall be submitted at the time the application or reapplication is submitted:

1. An application fee of \$2,500 shall be paid by applicants for projects applying to the Family, Senior or Special Needs Cycle, and any first-time applications to the Final Cycle, as well as for projects applying for volume cap tax credits.

2. A reapplication fee of \$100.00 is due for projects requesting hardship credits from the Reserve and for projects that applied to the Family, Senior or Special Needs Cycle, which did not receive a reservation of credits, and wish to reapply in the Final Cycle of the same allocation year. Projects that are in essence new projects (for example, changes in the project composition, sites, or owner or developer entities) shall submit a new application and application fee.

(b) Application fees and reapplication fees are non-refundable.

### **5:80-33.11 Cycle deadlines**

(a) Application cycles shall be announced by NJHMFA via notices sent to its mailing list no later than 45 days prior to the deadline. Applications shall be accepted beginning one month prior to the deadline date. Applications shall be submitted to NJHMFA by 12 noon of the application deadline date in order to be considered for review. Late and substantially incomplete applications shall not be admitted into a cycle and will be returned to the applicant.

(b) It is the burden of the applicant to comply literally with the requirements of these rules and to ensure that the application presented to NJHMFA is clear, unambiguous and complete in all respects at the time of submission.

(c) Applications that are substantially incomplete cannot be accepted, but applicants shall be given 48 hours to cure defects as follows:

1. If the applicant has failed to include a required document, the applicant may supply the document; provided, however, that the document existed on the application deadline date and, if the document is a legal agreement or instrument, the document was legally effective on the application deadline date.

2. If statements or items in the application are contradictory or mutually inconsistent, the applicant may present information resolving the contradiction or inconsistency; provided, however, that the information accurately reflects the state of affairs on the application deadline date.

3. The applicant may provide any required signature that has been omitted.

(d) NJHMFA shall notify the applicant of any curable defects it discovers by telephone and, simultaneously, in writing by facsimile transmission. The applicant's corrective submission shall not be considered unless it is received by NJHMFA no later than 48 hours (excluding weekends and legal holidays) from the applicant's receipt of the facsimile transmission. NJHMFA shall notify applicants of curable defects on Mondays, Tuesdays or Wednesdays. No application will receive more than one notice for a curable defect.

(e) If an applicant cures one or more defects in the manner set forth at (c)1 or 3 above, NJHMFA will deduct one point for each defect cured from the project's score in determining its ranking in the application cycle.

(f) If an applicant fails to respond to NJHMFA's notification of curable defects within the 48-hour cure period, or if an applicant's response is non-responsive to the question asked, a negative inference shall be drawn. Failure to respond to an item in a cure letter will result in the denial of points if the question is with respect to a point category; negative points if with respect to the point categories at N.J.A.C. 5:80-33.15(a)16 to 20; or ineligibility if with respect to an eligibility requirement.

(g) After the application deadline, telephone calls or other oral or written communications on behalf of a tax credit applicant (for example, from a project's development team, elected representatives, etc.) other than information submitted pursuant to (d) and (e) above shall not be accepted or considered before reservation awards have been announced.

### **5:80-33.12 Application to a cycle/eligibility requirements**

(a) If a municipality has created a density bonus subsidy to assist the low or moderate-income units in a project, the project may not compete for tax credits (ceiling tax credits). This subsection shall not be evaded by failing to apply all or any portion of the subsidy to the low- or moderate-income units, by diverting all or any portion of the subsidy to other uses or by using any other device by which all or any portion of the subsidy is not used to benefit low- or moderate-income housing. For example, if a site was originally zoned at four units per acre and a rezoning resulted in six units per acre with a 20 percent set-aside for low and/or moderate-income units, then the site would be the recipient of a density bonus subsidy. If the developer built at six market units per acre, subdivided a portion of the acreage and donated that land to a for profit or non-profit developer, then the new owner may not compete for ceiling tax credits because there was a density bonus attributed to the site that should have been utilized to subsidize the affordable units. Alternatively, if on the same site the number of low and moderate units is increased without a corresponding increase in density, then the additional affordable units would be eligible to compete for ceiling tax credits.

(b) In performing its review of all applicable eligibility requirements, NJHMFA staff may contact the applicant to ask questions if there are unclear aspects of the application. Such contact should not be construed by the applicant as an approval or rejection, but simply as an attempt to clarify the application.

(c) Applications shall meet all of the eligibility requirements listed in this section in order to be admitted into a cycle. NJHMFA reserves the right to contact the applicant if the need arises.

1. Applications shall include the information set forth in (c)1i, either (c)1ii or (c)1iii, and (c)1iv below in order to demonstrate the need and demand for the proposed project in a market area. If NJHMFA determines an insufficient market need or demand exists, the project shall be deemed ineligible.

i. The proposed development, including all amenities and services shall be described in a narrative format by the applicant. The narrative shall include an explanation of how the services shall be paid for, as well as the need and demand for the project and its impact upon the neighborhood. Commercial space, if any, shall be disclosed. Photographs of the site and existing structures shall be provided from all significant perspectives and show all significant nearby land uses, including, but not limited to, those land uses listed at N.J.A.C. 5:80-33.15(a)11. Preliminary drawings of the finished project, including the site plan, floor plan and elevations drawn to scale, shall be submitted with the narrative.

ii. A market study, certified to both the applicant and NJHMFA in the analyst's Certification, shall be submitted for all projects. Two copies of the report shall be submitted. The market study shall be no more than six months old; therefore, unsuccessful Spring Cycle applicants may have to update their market study prior to applying to the Final Cycle. Projects applying for additional credits (either from the Reserve or a competitive cycle) that have already received a previous allocation of tax credits shall not be required to submit a new market study. The analyst shall state in the certification that all market study requirements have been fully addressed. If any relevant information cannot be obtained, the analyst shall explain why the information cannot be obtained. The study shall also identify any assumptions, estimates, projections and models used in the analysis. The assumptions used in the market study (for example, project rents, unit mix, amenities, etc.) must precisely reflect the information provided in the tax credit application. The data and analysis shall clearly indicate enough demand in the market to support the proposed development. Any additional information appropriate to the market area and the project shall be submitted to demonstrate the demand for the proposed housing project. The report shall include, at a minimum;

(1) A brief executive summary which includes the appropriate vacancy rate, capture rate and absorption period given the rents projected by the applicant, as well as a detailed table of contents which clearly identifies the location of the items listed below;

(2) A description of the proposed site (including pictures of the site and existing structures, pictures of the immediate neighborhood, visibility/access/exposure, proximity to retail and employment, detailed neighborhood and market area maps showing all significant nearby land uses, block and lot numbers of each parcel, site acreage, available public services and public transportation, and existing infrastructure) and a description of the proposed improvements (including unit mix, a commentary on the preliminary drawings including size and design, proposed project and unit amenities and any applicable tenant charges, tenant-paid utilities and project-paid utilities) ;

(3) Geographic definition and analysis of the market area, including a comprehensive and reasonable rationale for the suggested market area with supporting evidence. For example, the market area may be defined as the area in which similar properties compete with the subject property for tenants, or the area immediately surrounding the project from which 60 to 70 percent of the residents are expected to be drawn, taking into account political and natural boundaries, socioeconomic characteristics, and the areas from which nearby rental developments draw new tenants. The market area shall be evaluated on the basis of employment and income levels and trends, the presence of local revitalization projects, the number of substandard units in the market and the number of cost burdened households in the market;

(4) A demographic analysis of the households in the market area in (c)1ii(3) above which are income eligible and can afford to pay the rent (assuming potential households may spend up to 40 percent of their income on housing expenses). When appropriate, the eligible

population shall also be analyzed by tenure (owner/renter), size of renter households, and age. Market studies submitted for projects applying to the Senior Cycle shall include an evaluation of the market for the eligible population over 70 years old. Demographics from the last census shall be updated to reflect current market conditions and shall be the basis for projected demographics. This research data shall be provided in the appendix and shall be from an organization such as Claritas or a governmental source. Special needs projects shall also provide demographics on the special needs population in the project in order to substantiate need and demand at projected rent levels;

(5) Rent, vacancy and amenity surveys by unit size of both market and subsidized properties. The subsidized property survey shall include a representative sample of all LIHTC properties in the market area and those projects that are currently under construction or have received preliminary site plan approval. In addition, a rent adjustment analysis shall be provided of the properties most comparable to the subject property. Data shall include, at a minimum, a grid analysis by unit size for rents, amenities, unit square footage, age, number of bathrooms, tenant-paid utilities, rent per square foot, location, physical condition and curb appeal. Rents shall be adjusted, especially for utility and amenity charges, so that fair comparisons can be made. Additional information concerning unit mix, vacancy and turnover rates, operating expenses, rent trends, rent concessions, rent control, waiting lists, absorption per month, design, name of property contact and contact phone number shall be provided in a grid or narrative format when available. The market study shall contain a minimum of three rent comparables for each unit size. At least one picture of each comparable and a detailed street map which shows the location of each comparable shall be provided. In addition, if the building that is the subject of the tax credit application is currently occupied, rent rolls and current tenant incomes shall be provided and analyzed;

(6) The capture rate, absorption period and the effect of the proposed rental housing on the market area. The capture rate is the number of units in the project divided by the net demand for the project, where the net demand is the number of households which are income eligible and can afford to pay the rent minus the number of comparable subsidized units in the market area. For purposes of the market study, the maximum annual household income for the tax credit units shall be equal to 50 or 60 percent of the area median income (depending on whether the applicant chooses the 20 percent at 50 percent or 40 percent 60 percent Federal set-aside) of a household. The household size to be used shall be 1.5 persons per the number of bedrooms in the largest tax credit unit. For single room occupancy projects, assume one person per unit. The minimum annual household income for the tax credit units shall be equal to the lowest tax credit gross rent multiplied by 30 (which assumes that potential households may spend up to 40 percent of their income on housing expenses on a monthly basis). The absorption period is a forecast of the number of months that will elapse from the completion of construction to the achievement of stabilization of the project as a whole, taking into consideration a reasonable vacancy rate. Sample calculations of capture rate and absorption period shall be shown in the report, and NJHMFA shall be able to reconstruct the estimates using the data and methods in the market study. When additional analysis is appropriate, methods shall consider demographic trends, age of householders, the

size of renter households, the unit mix of the project, the amount of home ownership in the target population, the cost of home ownership in the market area, approved projects not yet placed in service and any other significant factors. The impact of the subject project on existing housing in the market area shall also be addressed;

(7) If applicable, the appropriate rent per square foot and vacancy factor based on market conditions for any commercial space in the project;

(8) A conclusion forecast regarding the potential viability of the proposed project which states the strengths and weaknesses of the project, compatibility of surrounding land uses, appropriateness of project design and amenities, and the reasonableness of projected rents. In addition, the analyst shall state whether sufficient demand from targeted households exists for the development as proposed. Suggestions to make the project more marketable shall be provided if appropriate. All conclusions shall be based on data analyzed in the body of the report; and

(9) A statement of the competency of the analyst conducting the study. The market analyst shall certify that:

(A) He or she is an independent, third party professional with no financial interest in the project other than in the practice of his or her profession (for example, his or her fee for preparing the report is not contingent upon project completion and/or an award of tax credits);

(B) He or she has the requisite knowledge to proceed with the study;

(C) He or she has personally inspected the subject property and the comparable properties analyzed in the report; and

(D) He or she has conducted the study in accordance with Standards 4 and 5 of the 2001 edition of the Uniform Standards of Professional Appraisal Practice (USPAP), incorporated herein by reference, as amended and supplemented.

(10) The provisions of N.J.A.C. 5:80-33.11(d) and (e) shall not apply to market studies submitted under this subsection. Instead, during the market study review process, a reviewer contracted by NJHMFA shall notify the independent, third party professional who completed the market study by telephone and, simultaneously, in writing by facsimile transmission about significant missing or unclear components of the market study. A copy of such correspondence shall also be simultaneously sent to NJHMFA and the tax credit applicant. Failure of the independent, third party professional who completed the market study to provide a sufficient response within five business days about significant missing or unclear components of a market study shall result in an application being declared ineligible.

iii. For projects of 25 units or less, projects receiving Project Based Section 8 rental assistance for 100 percent of the units and projects in which all of the units are funded by the Division of Developmental Disabilities as described under the developmentally disabled set-aside described at N.J.A.C. 5:80-33.6(a)1, the form of market analysis described below may be submitted in lieu of the market study requirements listed in (c)1ii(1) through (6) above:

(1) The third party analyst shall provide a description of the proposed site and proposed improvements, a geographic definition and analysis of the market area, age and income demographics within the defined market area and rent, vacancy and amenity surveys by unit size of both market and subsidized properties. In addition, a rent adjustment analysis shall be provided of the properties most comparable to the subject property. For suggestions, see related subsections of (c)1ii above; and

(2) The requirements at (c)1ii(7) through (10) above shall be complied with.

iv. Updates of market studies more than six months old shall reflect a recent site visit by the market analyst, updated information on the comparable properties and an analysis of any significant changes to the subject development. Updated demographic information is not required if the market study is less than two years old unless relevant new decennial census data has become available since the original study.

2. Applications shall include the information set forth in (c)2i and ii below in order to demonstrate site control:

i. The applicant shall be either the owner or developer of the project and shall demonstrate that it has site control of the property via any one or a combination of the following: fee simple title; long-term leasehold interest (for a minimum term of the compliance and extended use periods); option to purchase or lease, including evidence that options are renewable until at least the start of construction; executed land sales contract or other enforceable agreement for acquisition of the property; and/or an executed disposition and development agreement with a public agency that specifies the site to be acquired and, if the property is to be or may be acquired by eminent domain, identifying the condemnor, as such term is defined at N.J.S.A. 20:3-1 et seq. or its successor.

ii. The applicant assumes the full burden for disclosing with certainty in its application how it shall obtain and maintain site control. The application shall set forth with specificity by what means each parcel of the project's real property is to be acquired if such acquisition has not yet been perfected; applications shall not indicate alternate means of acquisition for any particular parcel. For all forms of site control, a copy of the current owner's recorded deed shall be submitted as supporting documentation. In the case of a municipality or other entity acquiring property through eminent domain, at a minimum, the applicant shall submit as part of its application a copy of all written offers, as described at N.J.S.A. 20:3-6 or its successor, executed by the condemnor to the condemnee(s) with regard to all real property comprising the project which are to be acquired by this means, which offers must be in effect and valid at the

time of submission to NJHMFA. If additional documents have been executed and/or filed with regard to eminent domain at the time of application deadline, the applicant shall append a copy of those documents with its application and shall continue to supplement the application with such documents as required by N.J.A.C. 5:80-33.31; additionally, the declaration of taking shall be recorded within three months from the date of the Tax Credit Committee meeting at which awards/decisions are announced.

3. Applicants shall submit a copy of the preliminary or final site plan resolution as well as all other approvals. For substantial rehabilitation projects with sites that are not required by the municipality to obtain site plan approval, a letter from the planning board (or appropriate municipal official) stating that the sites are not subject to site plan approval shall be provided. It is the applicant's responsibility to insure that the project complies with all applicable local land use and zoning ordinances and that nothing at the local or county level will interfere with the project obtaining all necessary permits.

4. Applicants shall disclose the existence of any known environmental conditions/constraints including, but not limited to, wetlands, stream encroachment, and steep slope grading, which may impact development on the project site. In addition, applicants shall certify that all necessary environmental approvals have been obtained from the Department of Environmental Protection, or at a minimum, applied for. If remediation is necessary, the remediation plan shall be accounted for in total development costs. If a Phase I environmental study conducted in accordance with A.S.T.M. E1527-97, Standard and Poors Enhanced Protocol (which includes testing for lead, asbestos and radon) has been completed for the project, the findings shall be submitted. A Phase I is not required; however, if a project is awarded credits and a Phase I was not submitted with the application, the applicant shall not be allowed to apply for hardship credits for unforeseen environmental issues.

5. As required by Section 42(m)(2)(B)(i) of the Code, all financing information shall be disclosed in the application, including information about letters of interest and other undertakings that the applicant does not identify as funding sources in the application. The applicant shall provide all syndication documents in existence at the time of application including, but not limited to, the prospectus (offering memorandum), limited partnership agreement, joint venture agreement, partnership administration services agreement, development agreement and any amendments to the aforementioned documents and any relevant agreement between and among the relevant parties setting forth the terms of the financial arrangements, commitment letters, if any (firm or otherwise) and mortgage documents. All documents must include all exhibits and schedules. In addition, Section 42(m)(2)(C)(ii) of the Code requires the taxpayer to "certify to the housing credit agency the full extent of all Federal, State, and local subsidies which apply (or which the taxpayer expects to apply) with respect to the building."

6. All funding sources planned for the project shall be committed to the project. The amount and all terms of the funding commitment shall be listed in the documentation provided under (c)6i through viii below. The amount and terms shall be used by NJHMFA in its underwriting analysis.

Expired commitments, letters of interest/intent and term sheets do not qualify as commitments. To evidence commitments for funding sources, the following is required:

i. Banks and other lending institutions: Commitment letters for construction and permanent financing must indicate the interest rate (or the basis on which the interest rate will be set), term of the loan (at least 15 years for permanent financing, or if less than 15 years, loan must be fully amortizing) and all conditions. If the interest rate is floating after permanent loan closing, a maximum interest rate shall be stated in the commitment letter, and shall be the rate at which NJHMFA conducts its underwriting analysis. The commitment shall have been approved by the lender's final approval authority (for example, from a bank's loan review committee or if a lending consortium, from the consortium itself) and shall be countersigned/accepted by the applicant. The maximum mortgage supportable shall have been obtained.

ii. State Balanced Housing or State HOME funds: Projects applying for both Balanced Housing funds and tax credits shall comply with the rules of both programs. The Department of Community Affairs (DCA) shall inform NJHMFA of those projects that have submitted a complete application for State Balanced Housing or State HOME funds by the tax credit application deadline. DCA will inform NJHMFA of the projects it intends to fund and the subsidy amounts if those projects are sufficiently competitive to receive tax credits. DCA will announce the Balanced Housing and HOME commitments at the same time NJHMFA awards the reservations of tax credits. The expenditure of Balanced Housing funds is conditioned upon the entry of a judgment of repose (in the case of a project meeting a court-ordered obligation) or upon the receipt of substantive certification (in the case of a project meeting a COAH obligation). Thus, an applicant with a Balanced Housing commitment may not include Balanced Housing funds as an initial funding source unless, at the time of the application deadline, any applicable judgment of repose or grant of substantive certification has occurred. Where such events have not occurred by the application deadline, the applicant shall provide a fully committed alternate initial source of funding that will later be replaced with the Balanced Housing monies and include the Balanced Housing commitment as a part of the overall plan of funding for the project.

iii. Grants: Commitment letters for grants must be firm or contain only conditions that are under the control of the applicant (that is, grant commitments cannot be conditioned on the availability of funds). All private, State or local grants shall be deducted from basis unless the grantee is taking the grant into income and paying income tax on it or the grantee is making a loan to the partnership. All Federal grants must be subtracted from basis.

iv. Municipal, county or PHA grants or loans: Funding approvals for municipal or county grants or loans (for example, CDBG, RCA, HOME) vary from county to county and from municipality to municipality. NJHMFA is sensitive to the regulatory constraints and administrative processes of local governmental funding sources. Therefore, evidence of firm commitments may vary from one government entity to the next. Generally, it is the municipal council and county board of freeholders that have final approval authority; therefore, a copy of the county or municipal resolution approving the funds for the project is required to be

submitted with the application. However, for governmental entities where that is not the standard approval process, NJHMFA shall accept comparable commitments. For example, for projects receiving HOME funds from participating jurisdictions ("PJs"), NJHMFA shall accept one of four forms of commitments in light of the many ways that local governmental entities combine their local approval process with Federal HOME regulations. First, applicants may simply submit an approved municipal or county resolution described in the beginning of this subsection. Second, an applicant may submit a copy of the HUD form 7015.15 "Request for Release of Funds & Certification" along with a copy of the PJ's cover letter transmitting it to HUD. Third, the applicant may submit a copy of their PJ's Comprehensive Housing Affordability Strategy (CHAS) with the project and the funding amount specifically cited in the CHAS along with a copy of the PJ's resolution approving the CHAS. Fourth, for those PJs that have authorized their staff to make final funding decisions, a commitment letter signed by the authorized signatory (that is, the person having final approval authority) shall be sufficient so long as documentation delegating final approval authority to the signatory is also submitted.

v. Owner equity/loans and developer fee pledges: All applicants representing that they shall be contributing equity beyond that generated by the tax credit shall disclose the amount, the source and all terms. Applicants "coming out-of-pocket" to fill a funding gap shall provide a letter from an independent C.P.A. who certifies that the applicant has the amount of cash that is needed to fill the funding gap. Cash already expended on the project by the applicant can be utilized as a source of funds if said expenditures are verified by an independent C.P.A. and said cash is not an advance of other project funding sources. If the developer fee is pledged, applicants shall specify the amount, and when and how it will be paid. (NJHMFA establishes maximum developer fees.) Projects which utilize more than 50 percent of the total developer fee as a funding source at the application stage shall be declared infeasible, unless such use of the developer fee is on an interim basis (that is, if an anticipated funding source to replace the developer fee pledge is identified in the application, and the commitment of said funds is received no later than the issuance of the carryover allocation). Failure to secure said funding source and subsequently reduce the developer fee pledge to 50 percent of the total amount by carryover shall result in a cancellation of the tax credit reservation. Contractor fees cannot be pledged. Applicant equity or developer fee pledges may be subsequently replaced by State HOME or Balanced Housing resources only if the project is a COAH/Court-ordered project referenced in (c)6ii above or if the application for State HOME or Balanced Housing resources has been submitted by the tax credit application deadline.

vi. Investor commitments: Applicants who do not have an agreement with a syndicator/investor at the time of application or who have only received an investor's term sheet may still apply for tax credits; however, NJHMFA shall underwrite the project at the NJHMFA equity factor to be determined from time to time based on current market conditions. Applicants that have an investment agreement with their investor shall have their project underwritten at a price higher than the NJHMFA equity factor and shall include in their application a commitment letter (not a term sheet) from an investor evidencing the net pricing (cents per credit dollar) and total anticipated net proceeds. Applicants of projects where the

general partner(s) (or equivalent) will be retaining two or more percent ownership interest will have a retention factor added to the NJHMFA equity factor or the project's net pricing.

vii. All-equity projects: Such projects include those where the applicant is financing the project and is taking the credits itself and those where the project is permanently financed solely on tax credit proceeds (that is, no mortgage, grants, etc.). Applicants of projects in the former category shall comply with (c)6v above and shall have a retention factor added to the NJHMFA equity factor. Applicants of the projects in the latter category shall submit a fully executed investor commitment evidencing the pricing per credit dollar and total anticipated net proceeds shown in the application. If there is sufficient cash flow to amortize debt, the applicant shall obtain a mortgage commitment for such debt.

viii. Federal Home Loan Bank (FHLB): Applicants simultaneously applying in the Spring funding cycles for tax credits (Family, Senior or Special Needs Cycle) and in the FHLB Affordable Housing Program (Spring window only) shall not be required to submit a commitment letter from FHLB by the application deadline so long as the FHLB awards are scheduled to be announced during the Spring tax credit cycles. If a project fails to receive FHLB funding, the project may be declared infeasible unless there is an alternate source of financing, such as a pledged developer fee, identified in the tax credit application. Final Cycle applicants must submit their FHLB commitment with the application by the Final Cycle application deadline.

7. In accordance with the Code, NJHMFA shall examine the reasonableness of the operational costs of the project. Applicants shall demonstrate that their project is financially feasible and viable as a qualified low-income housing project throughout the tax credit compliance period.

i. Projects shall be underwritten to demonstrate project feasibility at a household median income percentage that is at or below the set-aside selected. For example, if the 20 percent at 50 percent Federal set-aside is selected, the project shall be underwritten with rents affordable to tenants at or below 50 percent of the area median income adjusted for family size.

ii. Applicants shall submit a 15-year cash flow pro forma signed by the first mortgagee (or syndicator/investor if the project has no hard debt) which exclusively reflects the following language verbatim: "We acknowledge that this pro forma substantially matches the assumptions used in our underwriting of the mortgage (equity investment)."

(1) The proforma must precisely reflect the rent structure in the tax credit application, all lenders' assumptions such as principal and interest payments, non-rental income, operating expenses, required reserves, annual fees, etc. as well as other characteristics of the application that impact financial feasibility (for example, cost of social services). For example, a project's Balanced Housing application (or other lender application) must mirror the development cost, operating assumptions, rent structure, etc., shown in the tax credit application.

(2) Year one of the proforma shall show stabilized operations. If the proforma reflects negative cash flows in any year, the application shall demonstrate the funding and utilization of an Operating Deficit Escrow Account (ODEA). Assumptions regarding interest on the ODEA shall be reasonable.

(3) The pro forma may reflect rental assistance only if such assistance is project based and is evidenced by the submission requirements described in (c)12 below. The subsidy may be illustrated only for the initial contractual term; that is, future renewals of project based subsidy contracts cannot be assumed. Upon the expiration of project based rental assistance, Special Needs projects shall be underwritten at rents no more than 20 percent of area median income adjusted for family size. For non-Special Needs projects, the project shall be underwritten at rents that are appropriate for market conditions (and are thus supported by the market study required at (c)1ii above); however, in no event shall rents exceed 50 percent of area median income adjusted for family size.

(4) Year one of the pro forma should reflect core operating expenses between \$1,800 and \$3,400 per unit. For those projects with core operating expenses less than \$1,800 per unit or more than \$3,400 per unit, the application shall include an explanation supported by audited financial statements as to why the per unit operating expenses fall outside this recommended range, except that no family project shall have core operating expenses below \$1,800 per unit and no senior project shall have core operating expenses above \$3,400 per unit. Other operating expenses will be evaluated for reasonableness given the characteristics of the project.

iii. Applicants shall submit at least two forms of data supporting the operating expenses stated in the proforma (for example, database information, comparable project information, Institute of Real Estate Management (IREM) statistics). NJHMFA reserves the right to require submission of the audited financial statements for comparable projects owned by the applicant.

iv. NJHMFA reserves the right to require a residual value analysis (conducted by the partnership's accountant) of any project with significant soft debt, at any time during the application and/or allocation process.

v. Projects with market-rate units shall distribute the low and moderate income units among the different sized units to reflect the same percentage distribution as the number of different sized units bear to the total number of units. A greater percentage of the low and moderate income units may, however, be allocated to the larger units. Additionally, low and moderate income units shall be distributed throughout the project such that the tenants of such units will have equal access to, and enjoyment of, all common facilities of the project. (See N.J.A.C. 5:80-8.3)

8. Successful participation in the Environmental Protection Agency's (EPA) ENERGY STAR Homes Program or equivalent (for example, New Jersey's ENERGY STAR Homes Program) shall be required for all applications except master-metered rehabilitation and minimum rehab

projects. Applications shall include a copy of the signed ENERGY STAR Partnership Agreement or Specification Form between the applicant and the EPA (or equivalent) or a letter from the project architect certifying that individually metered units in the proposed rehabilitation project would be impractical. At the time a project places in service, owners shall submit to NJHMFA the ENERGY STAR Homes Certificate issued by the EPA (or equivalent) for each building in the project.

9. Applicants requesting acquisition credits shall include an attorney's opinion regarding each building's eligibility for acquisition credits. Applicants shall submit an appraisal not older than six months. The acquisition basis shall be limited to the lesser of the purchase price or appraised value of the building. If acquisition credits are denied, the application shall still be considered for rehabilitation credits so long as the project remains feasible without the acquisition credit.

10. For all projects that are claiming a prior owner's expenditures in basis, a C.P.A. shall itemize the step-in-the-shoes costs and certify that the amount of the step-in-the-shoes costs shown in the application has indeed been spent and is accurately reflected in eligible basis. Prior owner's developer fees shall not be recognized.

11. All projects funded by the U.S. Department of Rural Economic and Community Development (RE&CD) shall provide a letter from the State Director approving the loan and stating that the funds have been obligated. Because RE&CD does not fund a developer fee, the allocated credit amount may be limited to an amount sufficient to pay only the developer fee. NJHMFA establishes the maximum developer fee.

12. All applicants receiving rental subsidy from a government or private source shall submit with the tax credit application evidence of receipt of such assistance. Evidence of Project Based Section 8 Rental Assistance shall include, at a minimum, a letter from the Public Housing Authority (PHA) firmly approving the project for Section 8 Project Based Assistance subject to the completion of the subsidy layering review. For projects involved in the AFL-CIO Pension Fund Program, a preliminary commitment from the AFL-CIO shall suffice. For other types of (non-Section 8) rental assistance, evidence shall include a fully executed rental assistance contract that specifies the source and term of the subsidy. Only projects receiving Project Based Section 8 Rental Assistance may underwrite the project using the fair market rents (FMRs) as defined by the project's approved HAP contract. Upon the expiration of project based rental assistance, Special Needs projects shall be underwritten at rents no more than 20 percent of area median income adjusted for family size. For non-Special Needs projects, the project shall be underwritten at rents that are appropriate for market conditions (and are thus supported by the market study required at (c)1ii above); however, in no event shall rents exceed 50 percent of area median income adjusted for family size.

13. Special needs projects applying to any cycle shall submit the following items in addition to those items at N.J.A.C. 5:80-33.15(a)5:

i. A special needs marketing analysis;

- ii. A special needs marketing plan;
- iii. Evidence of the special needs housing development or management experience of the social service provider (or the applicant); and
- iv. For projects applying to the Developmentally Disabled set-aside, the application shall include a letter from the New Jersey Department of Human Services, Division of Developmental Disabilities (Division) which confirms that the Division has reviewed and agreed to the owner's service plan and that the cost is within the amount the Division has available for the operating and social service funding for at least 25 percent of the tax credit units in the project.

14. NJHMFA encourages all owners/developers to affirmatively market their projects. For projects over 25 units, applicants shall submit an Affirmative Fair Housing Marketing Plan, which, in short, documents how the project will be marketed to those people who are least likely to apply. For instance, if the proposed development is located in an area predominantly populated by Caucasians, outreach should be directed to non-Caucasians. Conversely, if the population is predominantly African-American, outreach should be directed to non-African-American groups. At the time the units are placed in service, the owner/developer and rental agent shall certify that the project was affirmatively marketed.

15. Applicants applying in the HOPE VI set-asides shall submit the following:

- i. A copy of the commitment letter from HUD awarding funds to the public housing authority. The applicant shall disclose the terms and conditions of the HOPE VI grant to the public housing authority that funds the project, as well as the terms and conditions of the funding arrangements between the public housing authority and the applicant.

- ii. An opinion of tax counsel in support of the dollar amount of the eligible basis for the project set forth in the application. Attached to this opinion, and incorporated therein, shall be the accountant's analysis required in (c)15iii below.

- iii. An analysis conducted by the applicant's accountant of anticipated project cash flow and residual value demonstrating a reasonable prospect of repayment of all loans funded by the proceeds of the HOPE VI grant and all debt. This analysis shall incorporate the same assumptions utilized in the 15-year operating proforma submitted pursuant to (c)7ii above; and

- iv. The applicant shall demonstrate that any HOPE VI funds used in the application to establish eligible basis at any time during the credit 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.

### 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 in 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. The developer fee cannot exceed that stated in the 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 pledged and that applicant has attempted to increase funding from every other source (except State Balanced Housing from the New Jersey Department of Community Affairs) before applying to the Reserve for additional credits; and
- vi. A letter from the syndicator/investor which addresses the eligibility and specific need for the 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.)

2. Requests for additional credit of more than \$100,000 shall be made through application to a competitive cycle. Such submission shall consist of the complete application as well as items (a) iiv through vi above.

(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.

### **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, with the exception of the highest-ranking and otherwise eligible application in the preservation set-aside under N.J.A.C. 5:80-33.7(a)2. NJHMFA will rank projects according to the score sheet submitted in the project's application. 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 that win the tie-breakers, with reservations first going to projects in the set-asides.

(c) All units in the project must qualify for a point category in order for the application to receive the points, unless expressly stated otherwise in the point categories described at N.J.A.C. 5:80-33.15 through 33.18.

(d) Applicants who are successful in receiving tax credits are strongly advised to closely oversee during construction the implementation of all categories for which the application received points. Implementation shall be verified through certifications and on-site inspection by NJHMFA (or its authorized designee). The IRS Form(s) 8609 shall not be issued until all owner representations have been fulfilled. If they are incapable of being fulfilled in a timely manner, NJHMFA may unilaterally cancel the allocation to the project.

### **5:80-33.15 Point system for the Family Cycle**

(a) The point system for the Family Cycle shall be as follows:

1. Applicants may select one of the following options: (10 to 15 points):

i. Projects not located within qualified census tracts which extend their compliance period for an additional 15 years shall receive 15 points. The minimum term of the low-income occupancy commitment is 30 years: a 15-year compliance period plus a 15-year extended use period. Extension of the compliance period bars the utilization of Section 42(h)(6)(I) of the Code until the beginning of the last year of the extended compliance period. An owner electing to extend the compliance period for 15 years will be restricting the property for 45 years—a 30-year compliance period and a 15-year extended use period. Therefore, the owner cannot request the housing credit agency to find a buyer for the tax credit project until the beginning of year

30. This restriction will be enforceable by NJHMFA and future tenants via a deed of easement and restrictive covenant which shall be recorded by NJHMFA pursuant to State law at the later of the carryover allocation described at N.J.A.C. 5:80-33.24(a)1 or acquisition of the property;

ii. Projects located in qualified census tracts shall be awarded 15 points. To qualify for this point category, a majority of the units shall be located within a qualified census tract; or

iii. For single family and duplex housing which will convert to tenant ownership, 10 points shall be awarded. Such projects must convert to home ownership at the end of the compliance period. Syndication documents must reflect the conversion. The deed of easement and restrictive covenant shall reflect a right of first refusal to be granted by the owner to the tenants.

2. A project shall receive one point if the project utilizes public housing waiting lists.

3. Zero to 10 points shall be awarded based on the percentage of the low-income units meeting the definition of a large family unit. Points are based on the percentage of large family units with respect to the total number of low-income units; it is not based on square footage. Points are maximized when large family units make up 30 percent of the low-income units for low-rise, garden apartments, single family and townhome/rowhome projects. New construction mid-rise and high-rise projects cannot qualify for these points unless the project contains 25 units or less. For mid-rise and high-rise rehabilitation projects, and mid-rise and high-rise new construction projects of 25 units or less, points are maximized in this category where 20 percent of the low-income units meet the large family unit definition. Large family units are not required to be located within every residential building in the project.

4. Applicants may select one of the following options for municipal, county and public housing authority (PHA) support.

i. Projects that receive a fixed rate tax abatement for a 15-year term shall receive five points. If the specifics of the tax abatement (for example, percentage of rent roll, term) are not recited in the resolution/ordinance, the financial agreement to the tax abatement shall be included with the application. Proof of an applicant's tax-exempt nonprofit status is not sufficient to qualify for points for a tax abatement. In order to receive points under this category, the resolution/ordinance approving the abatement must cite the proper statutory authority. For projects receiving a tax abatement under the New Jersey Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq., the first stage of the exemption period shall be for no less than 15 years. Only projects utilizing financing from NJHMFA may be granted an abatement under N.J.S.A. 55:14K-37(b). For information regarding NJHMFA financing, please contact the NJHMFA Business Development Officer at (609) 278-7527.

ii. Projects that capitalize an escrow in an amount equal to two years worth of taxes, have a 1.20 debt coverage ratio with a minimum of \$2,600 per unit core operating expenses and

receive municipal, county or PHA support of more than five percent of total project costs shall receive four points.

iii. Projects that capitalize an escrow in an amount equal to two years worth of taxes, have a 1.20 debt coverage ratio with a minimum of \$2,600 per unit core operating expenses and receive municipal, county or PHA support totaling five percent of total project costs shall receive three points.

iv. Projects that capitalize an escrow in an amount equal to two years worth of taxes, have a 1.20 debt coverage ratio with a minimum of \$2,600 per unit core operating expenses and receive municipal, county or PHA support of less than five percent of total project costs shall receive two points.

v. For purposes of this point category, municipal, county or PHA support means contribution of land for nominal consideration (\$100.00 per parcel or less) or monetary contribution to the project (for example, HOME, RCA, CDBG, UDAG). Evidence of support shall be in the form of an authorized resolution or ordinance from the appropriate authority, and all steps necessary to make the resolution or ordinance legally binding shall have been completed. As evidence of the fair market value of a land contribution, the application shall include an appraisal (not older than six months) stating the value of contributed land. The tax escrow shall equal the two year amount reflected in the operating proforma, and shall be confirmed by the municipality prior to the application deadline as the anticipated tax assessment when the project is completed.

5. Because the availability of social services greatly improves the quality of life for residents, NJHMFA awards up to three points for the provision of up to three social services for the compliance period. One point will be awarded per service offered. The services shall be affordable, appropriate, available and accessible to the project's tenants. Applicants shall support their claim to provide social services by providing the following:

i. Evidence of funding sources or documentation of how or by whom the services shall be paid;

ii. Evidence of experience of the service provider for both provision of social service and fulfillment of prior private or governmental contracts; and

iii. Evidence of firm agreements (executed contracts) with service providers for the services.

6. Four points are awarded to projects which pledge to expend a sum equaling at least 15 percent of construction cost on contractors, subcontractors and material suppliers which are certified as minority business enterprises (MBE) and women business enterprises (WBE) by the New Jersey Department of Commerce and Economic Development ("Certified MBE's and WBE's").

7. NJHMFA supports the implementation of the New Jersey State Plan for housing development. The State Plan identifies the unique natural and built infrastructure in areas across the State and presents specific recommendations for growth. To qualify for this point category, a majority of the units shall be located within the qualifying area and the qualifying area shall be delineated by the application deadline. In order to receive points as a project satisfying a COAH obligation, the petition for substantive certification or amendment to a plan that has previously received substantive certification must be received by COAH by the tax credit application deadline. For more information on whether projects are located in smart growth areas, visit the NJHMFA website at [www.nj-hmfa.com](http://www.nj-hmfa.com) or contact the NJHMFA Manager of Policy, Research and Planning at (609) 278-7504. Applicants may select one of the following options:

i. Projects located within a smart growth area that are not located in a qualified census tract but which satisfy a COAH obligation, satisfy a court-ordered obligation, are in voluntary compliance with the courts or are within a transit village shall be awarded ten points;

ii. Projects located within both a smart growth area and a qualified census tract which contribute to a concerted community revitalization plan (“CRP”) shall be awarded seven points. HOPE VI projects shall not be required to submit a CRP to be eligible for points in this sub-category; or

iii. Projects located within a smart growth area only shall be awarded five points.

8. NJHMFA awards up to three points for the provision of unit amenities. One point will be awarded per amenity offered. The costs of the amenities must be shown in the capital and/or operating budgets, as appropriate. Amenities must be appropriate to the proposed tenant population. The list provided below is not all-inclusive. Substitutions are permitted at NJHMFA discretion; however, it is incumbent upon the applicant to demonstrate how each substitute amenity provides a comparable benefit to the tenants as those amenities listed below.

i. A security alarm;

ii. A washer and dryer hook-up with drip pan or floor drain;

iii. A frost free refrigerator of 14 cubic feet for efficiencies and one bedroom, 16 cubic feet for two bedrooms, 18 cubic feet for three bedrooms and 20 cubic feet for four bedrooms;

iv. A washer and dryer;

v. A dishwasher;

vi. Central air conditioning;

vii. A minimum bedroom size of 100 square feet;

viii. Minimum kitchen cabinets of 14 linear feet (for up to two bedrooms) and 16 linear feet (for three bedrooms or more);

ix. Minimum closet space of 14 linear feet for efficiencies and one bedroom, 24 linear feet for two bedrooms, 30 linear feet for three bedrooms and 35 linear feet for four bedrooms;

x. Emergency pull cords/call button—senior projects only;

xi. Garages;

xii. Patios;

xiii. Outside storage lockers.

9. NJHMFA awards points for the provision of project amenities, up to a maximum of two points. One point will be awarded per amenity provided. The costs of the amenities must be shown in the capital and/or operating budgets, as appropriate. Amenities must be appropriate to the proposed tenant population. Applicants may select any combination of the following amenities in order to receive the maximum two points. The list provided below is not all-inclusive. Substitutions are permitted at NJHMFA discretion; however, it is incumbent upon the applicant to demonstrate how each substitute amenity provides a comparable benefit to the tenants as those amenities listed below.

i. A playground (family projects only);

ii. A community room/building (minimum 1,600 square feet);

iii. Laundry facilities in each building;

iv. Community gardens;

v. Average interior unit sizes of 500 square feet for efficiencies, 650 square feet for one bedroom, 800 square feet for two bedrooms, 1,100 square feet for three bedrooms and 1,200 square feet for four bedrooms;

vi. 1.0 parking spaces per unit (may be off-street: garage, parking lot, pad or driveway, or on-street: designated/permit); and

vii. A 25 year manufacturer's warranty on roof shingles for sloped roofs, 20 year for low slope roofing.

10. Projects which demonstrate community policing or public safety enhancements shall be awarded one point. Applicants may select any of the following strategies in order to receive the

point. The list provided below is not all-inclusive. Substitutions are permitted at NJHMFA discretion; however, it is incumbent upon the applicant to demonstrate how the proposed substitution provides a comparable benefit to the tenants as those items listed below.

- i. An evening hour security guard;
- ii. On-site community policing station;
- iii. Camera/security system in each building;
- iv. Coordination/training for community policing groups and/or property manager by a governmental law enforcement agency;
- v. Incorporation of Community Policing Through Environmental Design (CPTED) characteristics in the design, layout and construction of buildings and on-site facilities;
- vi. Partnerships or agreements which increase on-site police and security patrols on the development site (that is, leveraging partnerships with other funding sources for police salaries such as State Urban Enterprise Zones, Special Improvement Districts, Community Oriented Policing grants, etc.)
- vii. Innovative approaches which increase the number of community policing volunteers as residents of the development (including rent reductions or subsidies where allowable); and
- viii. Using operating funds or alternative funding sources such as Urban Enterprise Zone funds or HUD grants to purchase or subsidize the purchase of take-home police vehicles for law enforcement officers in the development.

11. Applications may receive up to a maximum of two points for the following (to be eligible for points in this category, proximity to the following locations shall be addressed in the market analysis as required at N.J.A.C. 5:80-33.12(c)1):

- i. Projects located within a school renaissance zone shall be awarded two points. To qualify for this point category, a majority of the units shall be located within the qualifying area and the qualifying area shall be delineated by the application deadline;
- ii. Projects located within one-half mile of the positive land uses below shall receive one point for proximity to each of the following:
  - (1) Primary/elementary school (family projects only);
  - (2) Day care center;
  - (3) Food store;

(4) Community center or faith-based organization;

(5) Public transportation;

(6) Park;

iii. Projects located within one mile of the following negative land uses shall have two points deducted from the project score:

(1) Land fill;

(2) Garbage dump;

(3) Trash incinerator;

(4) Nuclear power plant;

(5) Oil/chemical refinery;

(6) Unremediated Superfund or toxic waste site as identified by the Environmental Protection Agency (EPA) or the New Jersey Department of Environmental Protection (DEP).

iv. Example: A project is located within one-half mile of an elementary school, a food store and an oil refinery. The project shall be awarded zero points.

12. Projects with a property manager that will have successfully completed an NJHMFA approved tax credit certification course prior to the project being placed in service shall receive two points. For the list of approved tax credit certification courses, please contact NJHMFA's Division of Tax Credit Services at (609) 278-7421.

13. Applications which include a commitment letter signed by the syndicator or investor specifying net pricing and net capital contributions at least one full cent higher than NJHMFA's equity factor shall receive one point. Applicants utilizing the credits themselves do not have to submit a syndicator letter to receive the point. Term sheets do not qualify for this point.

14. Applications shall receive one point per percentage point reduction in the developer fee up to a maximum of seven points. For example, an application by a 25 unit project which lists a 15 percent developer fee shall receive five points because it is five percentage points below the maximum allowance of 20 percent.

15. Applicants may select one of the following options. To qualify for this point category, a significant component of the development (40 percent of the units) shall be located within a historic building, a building being adaptively re-used or a building located on a Brownfields site:

i. Rehabilitation of historic buildings shall receive two points. If the project is also utilizing the historic tax credit recited under Section 47 of the Code, an additional one point shall be awarded. In order to qualify for the historic tax credit point, the application shall include a copy of Part 1 Evaluation of Significance and Part 2 Description of Rehabilitation of the Historic Preservation Certification application approved by the National Park Service. A copy of the Request for Certification of Completed Work shall be submitted to NJHMFA at the time the project places in service; or

ii. Projects which involve the adaptive re-use of a non-residential building shall receive two points; or

iii. Projects which are developed on a Brownfields site shall receive two points. In order to qualify for the Brownfields points, the application must include the site's Brownfields Site Marketing Inventory (BSMI) Project Tracking Number ("OSP BF#") or, if the site does not have a tracking number, a copy of the approved New Jersey Department of Environmental Protection Remedial Action Work Plan shall be submitted. For a list of Brownfields sites and the corresponding tracking numbers, please call the Office of Smart Growth in the New Jersey Department of Community Affairs at (609) 633-7730.

16. Applications which have a general partner, voting member, developer or a related party who owned a managing or controlling interest in a LIHTC project when title was foreclosed by entry of judgment or deed in lieu of foreclosure during the past seven years shall have three points deducted from the application's score. Failure to respond to this point category shall result in the deduction of points as provided under this paragraph.

17. Applications which have a general partner, voting member, developer, or related party that owns a managing or controlling interest in a New Jersey LIHTC project with an uncorrected noncompliance shall have the following points deducted from the application's score: 10 points shall be deducted for violations of State and local building codes or health ordinances or failure of one or more major systems (for example, roof, HVAC, elevators, plumbing and electric); and five points shall be deducted for a failure to fulfill any Qualified Allocation Plan provisions as represented by an owner in a project's New Jersey LIHTC application. For noncompliance that cannot be corrected, points under this category shall only be deducted for the first year each application is submitted. Failure to respond to this point category shall result in the deduction of points as provided under this paragraph. Applications that receive negative points in this category do not qualify for the set-asides described at N.J.A.C. 5:80-33.4, 33.5, 33.6 and 33.7.

18. Three points shall be deducted from applications which have a general partner, voting member, developer, or related party that was involved in a full return of tax credits to NJHMFA within the past two years and such return occurred after October 15 of the year in which the project would have been required to be placed in service. Failure to respond to this point category shall result in the deduction of points as provided under this paragraph.

19. Applications which have a general partner, voting member, developer, or related party that owns a managing or controlling interest in a New Jersey LIHTC project that has failed to pay NJHMFA monitoring fees (unless NJHMFA has formally issued a deferral) shall have 10 points deducted from the application's score. Failure to respond to this point category shall result in the deduction of points as provided under this paragraph. Applications that receive negative points in this category do not qualify for the set-asides described at N.J.A.C. 5:80-33.4, 33.5, 33.6 and 33.7.

20. Applications which have a general partner, voting member, developer, or related party that owns a managing or controlling interest in a New Jersey LIHTC project that has failed to submit its annual project certifications shall have 10 points deducted from the application's score. Failure to respond to this point category shall result in the deduction of points as provided under this paragraph. Applications that receive negative points in this category do not qualify for the set-asides described at N.J.A.C. 5:80-33.4, 33.5, 33.6 and 33.7.

21. Applicants that utilize the cure period in N.J.A.C. 5:80-33.11(c)1 or 3 shall have one point per each defect cured deducted from the application's score.

#### **5:80-33.16 Point system for the Senior Cycle**

(a) The point system for the Senior Cycle includes all point categories of the Family Cycle except the point category in N.J.A.C. 5:80-33.15(a)3 concerning large family units and the point category at N.J.A.C. 5:80-33.15(a)7 concerning smart growth areas is replaced with the following:

1. Applicants may select one of the following options:

i. Projects located within both a smart growth area and a qualified census tract which contribute to a concerted community revitalization plan shall be awarded ten points. HOPE VI projects shall not be required to submit a CRP to be eligible for points in this sub-category;

ii. Projects located within a smart growth area that are not located in a qualified census tract which satisfy a COAH obligation, satisfy a court-ordered obligation, are in voluntary compliance with the courts or are within a transit village shall be awarded seven points; or

iii. Projects located within a smart growth area only shall be awarded five points.

#### **5:80-33.17 Point system for the Special Needs Cycle**

(a) The point system for the Special Needs Cycle includes all point categories of the Family Cycle except for the point categories in N.J.A.C. 5:80-33.15(a)3 concerning large family units and N.J.A.C. 5:80-33.15(a)5 concerning social services.

(b) The Special Needs Cycle also includes the following point categories:

1. Applications shall be awarded one-half of a point per year of guaranteed funding from any program under the HUD McKinney Act (including Shelter Plus Care) or project based rental assistance for at least 25 percent of the project up to a maximum of five points.

2. Applications shall earn one point for each year of experience its social service provider has in providing social services to the special needs population stated in the application. No points shall be awarded if the special needs provider has less than three years of experience. The maximum points available for this category is six.

3. Applications shall earn one point for each special needs housing project that the applicant and/or social service provider has successfully developed or managed. The maximum number of points available for this category is six.

4. To qualify for the Special Needs Cycle, at least three services for the targeted special needs population shall be provided. If the owner of the project is capable of providing additional appropriate services, NJHMFA shall award two points per additional service up to a maximum of three additional services. Services shall be affordable, available, appropriate and accessible to the project's tenants. Applicants shall support their claim to provide social services by providing the following:

- i. Evidence of funding sources or documentation of how or by whom the services will be paid;
- ii. Evidence of experience of the service provider for both provision of social service and fulfillment of prior private or governmental contracts; and
- iii. Evidence of firm agreements (executed contracts) with service providers for the services.

5. Applications in which the social service provider has greater than a 50 percent interest in the general partnership or voting membership in a limited liability company shall earn an additional six points.

6. Applications demonstrating provision of appropriate services at no charge to the tenants shall earn one point for each free service up to a maximum of three points. The applicant shall provide evidence of funding for these services.

7. Applications submitted by a qualified nonprofit organization shall be awarded five points.

### **5:80-33.18 Point system for the Final Cycle**

The point system for the Final Cycle is the same as for the Family Cycle.

### **5:80-33.19 Tiebreaker system**

(a) The following tiebreaker system shall be used in all cycles to break ties between projects with the same score:

1. If competing projects within a cycle have a tie score, a tax credit reservation shall be awarded to the project with the lowest amount of low-income housing tax credits (unadjusted for the 130 percent difficult development area or qualified census tract bonus) per low-income bedroom. The tax credit percentage to be utilized in calculating this tiebreaker shall be the appropriate percentage prescribed by the Internal Revenue Service for the month in which the application is submitted subject to 26 U.S.C. § 42(m)(2)(A).

2. If there is still a tie after the first tie-breaker, the tax credit reservation shall be awarded to the project with a lower total development cost per bedroom.

### **5:80-33.20 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. The application may include a letter from the chief executive officer of the municipality or NJHMFA staff shall notify the chief executive officer of the municipality and allow him or her a reasonable opportunity to comment on the project.

### **5:80-33.21 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 the housing credit agency 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. 5:80-33.12. In the needs analysis, NJHMFA shall compare the project's total development costs to the funding sources the applicant has identified to meet the 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. 5:80-33.12(c)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. NJHMFA reserves the right to require an appraisal at the applicant's expense. If the applicant acquires the property for more than appraised value, the overage shall be added to the sources of funds so as not to create artificial need.

(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. 5:80-33.23 and 33.27.) 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.

#### **5:80-33.22 Committee review and reconsideration process**

(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 tiebreaker decisions as well as requests for reservations from the Reserve. 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.

(c) An applicant may appeal any decision of the Tax Credit Committee by submitting a written request for reconsideration to the Executive Director of NJHMFA no later than 10 business days from the date of the Tax Credit Committee meeting at which awards/decisions are announced. The request shall include a comprehensive discussion of the basis for reconsideration. Such requests will be considered promptly by the Tax Credit Committee and the Committee's disposition of the request shall

constitute final agency action. In the absence of a request for reconsideration, the date of the Tax Credit Committee meeting at which awards/decisions are announced shall constitute the date of final agency action.

### **5:80-33.23 Allocation needs analysis**

In accordance with Section 42(m)(2) of the Code, NJHMFA evaluates the need for the tax credit at the time of application, 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.

### **5:80-33.24 Reservations, allocations and binding commitments**

(a) Once the reservation is final as described in N.J.A.C. 5:80-33.22(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 30 for Final Cycle reservations) or the next business day if the 15th (or the 30th) is a weekend or holiday. The deadline for meeting the 10 percent test required under 26 U.S.C. § 42(h)(1)(E)(ii) is three months from the date a tax credit reservation is issued by the Tax Credit Committee. The NJHMFA form evidencing satisfaction of this test must be completed and certified by an independent certified public accountant. 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. On a case-by-case basis, NJHMFA may extend its filing deadline if the owner can show good cause; however, in order to defray the added expense and regulatory burden of processing allocation requests that arrive after the deadline, an extension fee of \$1,000 shall be payable to NJHMFA for each week or part thereof that the owner is late in submitting a complete package. NJHMFA reserves the right to rescind a reservation if a deadline is unmet.

1. Owners requesting a carryover allocation shall submit their certification for carryover which demonstrates that all sources shown on the owner's carryover schedule are accurate; and that the costs shown in eligible basis are allowable under the Code. 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. Owners 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 owner shall submit all requirements listed in N.J.A.C. 5:80-33.26 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, in its discretion, enter into a binding commitment to allocate credits from future years' tax credit authority to projects described below:

1. 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 within the timeframe described in (a) above. In no event shall the project receive credits and/or a binding commitment exceeding the maximum eligible tax credit amount; or

2. The next-highest ranking eligible project in the Final Cycle if that project is a preservation project and received only a partial allocation because NJHMFA exhausted its tax credit authority for the current year. Together, the partial carryover allocation and the binding commitment shall not exceed the maximum eligible tax credit amount.

### **5:80-33.25 Allocation/issuance fee schedule**

Projects requesting an allocation of tax credits shall pay a fee equaling two percent of the carryover allocation amount over the 10-year credit period. One-half of the fee shall be paid at the time the allocation criteria described above at N.J.A.C 5:80-33.24(a) is submitted to NJHMFA. For projects requesting an issuance of tax credits from volume cap, the issuance fee shall equal two percent of the issuance amount over the 10-year credit period for NJHMFA financed projects and three percent of the issuance amount over the 10-year credit period for non-NJHMFA financed projects. One-half of the fee shall be paid at the time the credit determination described at N.J.A.C. 5:80-33.9(a)1 is made. For both types of project, the balance (adjusted higher if volume cap tax credit issuance increases) shall be paid prior to issuance of the IRS Form 8609.

### **5:80-33.26 Obtaining IRS Form 8609: deadlines and extension fees**

(a) The IRS Form 8609 is the form used by owners to claim the low-income housing tax credit. A form is issued for each building in the project. Prior to issuance of the IRS Form 8609, NJHMFA must receive all required information from the owner, including the allocation/issuance fee described at N.J.A.C. 5:80-33.25. For projects receiving credits from the nonprofit set-aside, this shall include an attorney's opinion letter which states that no for-profit developer or member of the investor limited partner held a seat on the nonprofit's board of directors. NJHMFA (or its authorized designee) shall also conduct an on-site inspection of the project to confirm that all representations made in the project's tax credit application have been met. Upon completion of the NJHMFA evaluation (which includes the placed in service needs analysis) and attendance by the project owner and managing agent at an NJHMFA-sponsored compliance monitoring seminar, NJHMFA shall complete Part I of the IRS Form 8609 and shall forward a copy, as filed with the IRS, to the project owner. Owners should be sure to make copies of the signed IRS Form 8609 as a copy must be filed each year with Federal tax returns.

(b) The entire IRS Form 8609 request package, including the allocation/issuance fee described at N.J.A.C. 5:80-33.25 and the audit report, in a form acceptable to NJHMFA, must be submitted to NJHMFA at the later of six months following the issuance of the final certificate of occupancy for the project or two months after the first year of the credit period. On a case-by-case basis, NJHMFA may extend its filing deadline if the owner can show good cause; however, in order to defray the added expense and regulatory burden of processing IRS Form 8609 requests that arrive after the deadline, an extension fee of \$1,000 shall be payable to NJHMFA for each week or part thereof that the owner is late in submitting a complete package. NJHMFA reserves the right to recapture an allocation if a deadline is unmet.

### **5:80-33.27 Placed in service needs analysis**

(a) Pursuant to Section 42(m)(2) of the Code, NJHMFA shall conduct the last of its required needs analysis evaluations at the time the project places in service. The analysis shall be based on the project cost certification of an independent C.P.A. and the permanent financing sources (see N.J.A.C. 5:80-33.28). If the amount of the tax credit request is not needed for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the credit period, the amount of the tax credit shall be reduced to the needed amount.

(b) The determination of whether the amount requested is needed for 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. The Code requires that NJHMFA reduce the credit amount based upon need; however, this does not mean that NJHMFA will jeopardize the long-term financial feasibility

and viability of the project by arbitrarily taking back credits. For example, if the equity market improved so that projects were able to get better pricing from investors, NJHMFA would not necessarily reduce the credit on those projects that use the "excess" credits to cover cost overruns or provide betterments in the projects such as upgrading the security system, landscaping, provision of appliances such as washers, and the like. NJHMFA shall not allow these additional funds to be used to increase the developer fee over that shown on the application.

(c) For each needs analysis, a Sponsor Certification shall be submitted. 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.

**5:80-33.28 Project cost certification and contractor fee limits**

(a) An independent C.P.A. shall audit the development costs of the project in accordance with generally accepted auditing standards. To make sure that the necessary paperwork is submitted to NJHMFA in a timely manner, owners shall ensure that the cost certification process begins immediately upon construction completion. NJHMFA reserves the right to require a compilation of the construction costs of the project as approved by an independent C.P.A.

(b) "Contractor fee limits" with regard to contractor profit and overhead shall be set in accordance with the schedule below. Maximum fees include the base profit and overhead and any incentive cost savings fee realized. Costs included on the general conditions line must be broken out on a separate schedule. Unreasonable costs shall be disallowed.

CONTRACTOR FEE SCHEDULE

<u>Construction Contract Amount</u>	<u>Fee (Overhead and Profit)</u>
\$ 0 - \$ 500,000+	11.75 percent
\$ 500,001 - \$ 1,000,000+	10.75 percent
\$ 1,000,001 - \$ 5,000,000+	9.50 percent
\$ 5,000,001 - \$10,000,000+	8.50 percent
\$10,000,001 - \$15,000,000+	7.00 percent
\$15,000,001- \$20,000,000+	6.70 percent
\$20,000,000+	6.20 percent

(c) For projects seeking IRS Form 8609 allocations and for projects with carryover allocations, where completion is scheduled to occur close to the end of the year, interim audits should be taking place throughout construction so that when the certificate of occupancy is issued, the final cost certification is virtually complete. For projects still incurring eligible costs, NJHMFA may consider the owner's projection of costs and basis incurred through the end of the first year of the credit period. The projection shall be based on executed contracts with contractors/vendors for amenities such as security system, playground, and landscaping.

(d) In addition to the audit report, the owner shall submit a Sponsor Certification for Placed in Service showing all sources, uses and eligible basis items as well as the pricing from the limited partner investor.

### **5:80-33.29 Extended use agreement**

Section 42(h)(6) of the Code requires the project owner to enter into an "extended low-income housing commitment agreement" that adds an additional 15-year low-income occupancy requirement to the initial 15-year compliance period. The agreement shall be recorded in order to claim the tax credits when filing Federal tax returns. Owners must complete NJHMFA's deed of easement and restrictive covenant at the later of the carryover allocation described at N.J.A.C. 5:80-33.24(a)1 or acquisition of the property. Upon receipt and review of a complete and fully executed agreement, NJHMFA shall file the restrictive covenant pursuant to State law. Applicants are responsible for paying the fee required to record the agreement in the County Clerk's Office. Note: For projects which received points for agreeing to extend the project compliance period beyond the minimum 15-year period, the deed of easement and restrictive covenant shall reflect the increased compliance term stated in the application.

### **5:80-33.30 Returning credits**

Applicants unable to utilize their allocation should return their allocation to NJHMFA as soon as possible. Returned credits are deposited into the Reserve or in the Final Cycle if the Reserve has been fully utilized.

### **5:80-33.31 Applicant's affirmative obligation to disclose changes**

(a) Applicants are under a continuing affirmative obligation to advise NJHMFA of any changes to any aspect of the proposed development and provide relevant information as it becomes available, including pending/anticipated litigation which may affect the proposed development. NJHMFA shall require the owner to certify and may require further documentation to verify that all representations made in the application concerning the proposed development, including representations relied upon to determine the applicant's eligibility, scoring and ranking, are, and continue to be, true at the time of carryover allocation and issuance of the IRS Form 8609. Substantive changes may cause the project's allocation to be reconsidered by NJHMFA. NJHMFA reserves the right to ask for any documentation necessary throughout the application, reservation, carryover and placed in service processes.

(b) NJHMFA shall have the authority to rescind a reservation or an allocation if any representations made in the application are mistakenly or intentionally misrepresented or not fulfilled.

(c) Failure to disclose all relevant information is grounds for disqualification of the application or recapture of the allocation.

### **5:80-33.32 Compliance monitoring**

(a) The owners of all projects with an allocation of low-income housing tax credits must contact NJHMFA's compliance monitoring section before the project places in service and prior to rent up. In addition, the owner must submit to NJHMFA a copy of the completed IRS Form 8609 (Part I completed by NJHMFA and Part II completed by the owner) within 30 days of completion of Part II of the IRS Form 8609 and the filing of same with the Internal Revenue Service. This form contains information necessary for NJHMFA to monitor the project for compliance. Failure to submit a copy of the completed IRS Form 8609 within the specified time frame may constitute noncompliance and may be reported by NJHMFA to the IRS.

(b) The owner of a tax credit project shall agree to submit to NJHMFA copies of any correspondence, notice or other document the owner receives from the Internal Revenue Service regarding compliance or noncompliance issues, audits, or other forms of communication regarding their low income tax credit project(s).

(c) Owners shall submit to NJHMFA on an annual basis a copy of the project's audited financial statements for the prior fiscal year, including a detailed income and expense schedule and vacancy rate calculation by May 1.

(d) Owners/agents are required to keep records for each qualified low-income building in the project which will show for each year of the compliance period the following information:

1. The total number of residential rental units in the building, including the number of bedrooms and the size in square feet of each residential rental unit;
2. The percentage of residential rental units in the building that are low-income units;
3. The rent charged on each residential rental unit in the building, including any utility allowances;
4. The number of occupants and the number of full-time college students in each low-income household;
5. The low-income unit vacancies in the building and information that shows when and to whom the next available units (whether market rate or low-income) were rented;
6. The annual income certification of each low-income tenant per unit;
7. Documentation to support each low-income tenant's income certification (that is, income verification from third parties such as employers or agencies paying unemployment compensation). Tenant income is calculated in a manner consistent with the determination of

annual income under Section 8 of the United States Housing Act of 1937, not in accordance with the determination of gross income for Federal income tax liability. In the case of a tenant receiving housing assistance payments under Section 8, the documentation requirement is satisfied if the public housing authority provides a statement to the building owner declaring that the tenant's income does not exceed the applicable income limit under Section 42(g) of the Code. For an exception to this requirement, see Section 42(g)(8)(B) of the Code which provides a special rule for a 100 percent low-income building;

8. The eligible basis and qualified basis of the building at the end of the first year of the credit period; and

9. The character and use of the non-residential portion of the building included in the building's eligible basis under Section 42(d) of the Code (that is, tenant facilities that are available on a comparable basis to all tenants and for which no separate fee is charged for use of the facilities, or facilities reasonably required by the project).

(e) Owners/agents are required to retain records for each qualified low-income housing project as follows:

1. Owners/agents are required to retain the records described above for at least six years after the due date (with extensions) for filing the Federal income tax return for that year.

2. The records for the first year of the credit period, however, shall be retained for the entire compliance period plus six years beyond the due date (with extensions) for filing the Federal income tax return for the last year of the compliance period of the building. Therefore, records for the first year of the compliance period shall be retained for a minimum of 21 years. If credits were allocated based on a compliance period that was greater than 15 years, all first year records shall be retained for six years beyond the compliance period. (For example: If credits were allocated in 1996 based on a compliance period of 25 years, all first year records must be retained for 31 years or 25 years plus six years.) Records for each year thereafter shall be retained for six years after filing the Federal income tax return for that particular year.

(f) The owner/agent of a low-income housing project shall certify, under penalty of perjury, that it has complied with the low-income housing tax credit restrictions of the Code, the Qualified Allocation Plan and the project's tax credit application by providing an Owner's Certificate of Continuing Program Compliance to NJHMFA. The Owner's Certificate of Continuing Program Compliance shall be sent annually to NJHMFA for each year of the compliance period for the preceding 12-month period and contain the following:

1. That the project met the requirements of the 20-50 test under Section 42(g)(1)(A) or the 40-60 test under Section 42(g)(1)(B), whichever Federal minimum set-aside test was applicable to the project, and, if applicable to the project, the 40-50 HOME test under Section 42(i)(2)(E)(i) and the 15-40 test under Sections 42(g)(4) and 142(d)(4)(B) for "deep rent skewed" projects;

2. That there was no change in the applicable fraction of any building in the project (as defined by Section 42(c)(1)(B) of the Code) or that there was a change and a description of the change;

3. That the owner received an annual income certification from each low-income tenant and documentation to support that certification, or, in the case of a tenant receiving Section 8 Housing Assistance Payments, the statement from a public housing authority declaring that the tenant's income does not exceed the applicable limit under Section 42(g) of the Code. For an exception to the portion of this requirement regarding supporting documentation, see section 42(g)(8)(B) of the Code which provides a special rule for a 100 percent low-income building;

4. That each low-income unit in the project was rent restricted under Section 42(g)(2) of the Code;

5. That all units in the project were for use by the general public and used on a non-transient basis (except for transitional housing for the homeless provided under Section 42(i)(3)(B)(iii) of the Code);

6. That each building in the project was suitable for occupancy, taking into account local health, safety and building codes (or other habitability standards), and the State and local government unit responsible for making building code inspections did not issue a report of a violation for any building or low-income unit in the project;

7. That there was no change in the eligible basis (as defined in Section 42(d) of the Code) of any building in the project or, if there was a change, the nature of the change (that is, a common area has become commercial space, or a fee is now charged for a tenant facility formerly provided without charge);

8. That all tenant facilities included in the eligible basis under Section 42(d) of the Code of any building in the project, such as swimming pools, other recreational facilities, and parking areas, were provided on a comparable basis without charge to all tenants in the building;

9. That if a low-income unit in the project became vacant during the year, that reasonable attempts were or are being made to rent that unit or the next available unit of comparable or smaller size to tenants having a qualifying income before any units in the project were or will be rented to tenants not having a qualifying income;

10. That if the income of tenants of a low-income unit, which was previously verified, increases above 140 percent of the applicable limit allowed in Section 42(g)(2)(D)(ii) of the Code, the next available unit of comparable or smaller size in the project was or will be rented to tenants having a qualifying income;

11. That an extended low-income housing commitment as described in Section 42(h)(6) of the Code was in effect for buildings subject to Section 7108-(c)(1) of the Revenue Reconciliation Act of 1989, including the requirement under Section 42(h)(6)(B)(iv) that the owner cannot refuse to

lease a unit in the project to an applicant because the applicant holds a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1937, 42 U.S.C. § 1437s. In addition, that the owner has not refused to lease a unit to an applicant based solely on his or her status as a holder of a Section 8 voucher and the project otherwise meets the provisions, including any special provisions, as outlined in the extended low-income housing commitment;

12. That no finding of discrimination under the Fair Housing Act, 42 U.S.C. §§ 3601 through 3619, has occurred for the project. A finding of discrimination includes an adverse final decision by the Secretary of Housing and Urban Development, 24 CFR § 180.680, an adverse final decision by a substantially equivalent State or local fair housing agency, 42 U.S.C. § 3616a(a)(1), or an adverse judgment from a Federal court;

13. That if the owner received its credit allocation from the Nonprofit Set Aside (Section 42(h)(5) of the Code), that the nonprofit entity materially participated in the operation of the development within the meaning of Section 469(h) of the Code; and

14. That there has been no change in the ownership or management of the project or that there was a change and a description of the change.

### **5:80-33.33 Owner's annual reports: deadlines**

Pursuant to Section 1.42-5(c)(2)(ii)(C) of the IRS Regulations, NJHMFA requires the owners of all low-income housing projects to submit annually to NJHMFA for review the Owner's Certificate of Continuing Program Compliance and the Building Status Report. The Building Status Report must indicate the income of and rent charged to tenants for each low-income unit. This package shall be submitted on an annual basis (preferably in digital format) and is due on January 31. Requests for extensions beyond the January 31 deadline must be submitted by December 31 of the prior year.

### **5:80-33.34 NJHMFA review and inspection**

(a) Prior to the issuance of the IRS Form 8609, NJHMFA (or its authorized designee) may conduct an on-site inspection of the project to confirm that all representations made in the project's tax credit application have been met. (See N.J.A.C. 5:80-33.26.) NJHMFA (or its authorized designee) shall perform its first inspection of the project no later than the end of the second calendar year following the year the last building in the project is placed in service. NJHMFA also reserves the right to perform an on-site inspection of any low-income housing project at least through the end of the compliance period and have access to all books and records which would document compliance.

(b) On an annual basis, owners of at least 33 percent of all tax credit projects shall submit to NJHMFA for compliance review the following information for a minimum of 20 percent of all low-income units (units shall be identified by NJHMFA):

1. A copy of the annual income certification for the household;
2. The documentation the owner has received to support the certification; and
3. The rent record.

(c) NJHMFA (or its authorized designee) shall also, on an annual basis, select 33 percent of all tax credit developments and shall perform physical inspections of the low-income units corresponding to (b) above to determine suitability for occupancy, taking into account State and local health, safety and building codes. NJHMFA (or its authorized designee) shall also perform physical inspections of every building in the development. If NJHMFA (or its authorized designee) determines a violation(s) exist(s) which could render a building unsuitable for occupancy, such violation may be considered an issue of noncompliance which must be reported to the Internal Revenue Service. The owner shall be given a reasonable period of time to correct the violation(s). At the end of the correction period, NJHMFA shall notify the IRS whether the owner has or has not corrected the violation(s). Such violation(s) shall also be reported for appropriate action to the Division of Codes and Standards, Bureau of Housing Inspection in the New Jersey Department of Community Affairs.

(d) NJHMFA shall select which projects shall undergo NJHMFA review and give owners reasonable notice that their project has been chosen as well as identify which documents shall need to be submitted. Reviews may occur more frequently than on a 12-month basis, provided that all months within each 12-month period are subject to certification.

#### **5:80-33.35 Notification of noncompliance**

(a) Upon determination by NJHMFA of noncompliance with Section 42 of the Code, this subchapter, or any other relevant rules, regulations, or procedures, NJHMFA shall give notice to the owner of the noncompliance. The owner shall then be given sufficient notice to correct the noncompliance.

(b) NJHMFA is required to notify the IRS, via IRS Form 8823, within 45 days after the end of the correction period, of all noncompliance and whether the owner has or has not corrected such noncompliance.

#### **5:80-33.36 Confidentiality of tax credit applications and information**

(a) Applications submitted to NJHMFA for tax credit reservations and all supporting documents submitted by the applicant for a reservation shall be confidential, non-public records until Final Cycle awards or cancellation of the Final Cycle is announced by NJHMFA. Applications submitted by applicants requesting volume cap tax credits and all supporting documents shall be confidential, non-public records until NJHMFA has issued a determination letter. Thereafter, applications and all

supporting documents submitted shall be deemed to be public records, except the following supporting documents shall remain non-public records:

1. Financing information and syndication documents submitted in compliance with N.J.A.C. 5:80-33.12(c)5. However, the applicant's Certification of the Extent of Federal, State and local subsidies shall be a public record;

2. Financing commitments and other documents submitted in compliance with N.J.A.C. 5:80-33.12(c)6 evidencing:

i. Mortgage commitments from banks and other lending institutions;

ii. Owner equity pledges or loans (including the required C.P.A. certifications); and

iii. Investor commitments;

3. Financing information and 15-year operating pro forma submitted in compliance with N.J.A.C. 5:80-33.12(c)7; and

4. Financing information and Breakdown of Costs and Basis submitted in compliance with N.J.A.C. 5:80-33.21.

(b) Information or documents submitted or prepared with respect to binding commitments, carryover allocations, placed in service allocations, and IRS Form 8609 shall be confidential and shall be disclosed only as permitted by Section 6103 of the Code.

(c) Information submitted to NJHMFA by or on behalf of a project owner with respect to compliance monitoring, and reports, compliance notices, and IRS Forms 8823 prepared by NJHMFA with respect to monitoring the compliance of any project shall be confidential and shall be disclosed only as permitted by Section 6103 of the Code.

**5:80-33.39 (Reserved)**

**5:80-33.40 (Reserved)**