

**Full text** of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

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

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.

...

["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 or that is or will be included in a municipal resolution of intent to petition COAH. Note: Projects that seek COAH credit shall be subject to the requirements of the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.]

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...

["Community revitalization plan" means an adopted redevelopment plan, as defined at N.J.S.A. 40A:12A-3, or an approved neighborhood revitalization plan, as defined at N.J.S.A. 52:27D-491, that includes a subject LIHTC project within its boundaries. For purposes of this subchapter, a community revitalization plan shall include, either within the adopted redevelopment plan or the approved neighborhood revitalization plan or as a separate document, the following criteria:

1. A tax map that delineates revitalization area boundaries and locates the subject LIHTC project within the boundaries;
2. A description of the community revitalization planning process;
3. A list of stakeholders that developed the community revitalization plan;
4. A parcel map that delineates land uses and vacant buildings and lots in the target area;
5. Demographic, social and economic profiles of the revitalization area;

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6. A narrative describing the revitalization area and the long-term vision and objectives for the area;

7. A description of the subject LIHTC project and how it furthers the community revitalization plan; and

8. An implementation strategy that contains:

i. A list of organizations participating in the implementation phase of the community revitalization plan; and

ii. A list of projects, programs and steps identified in the community revitalization plan to revitalize the area.]

...

[“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 or if the project is included within a

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municipal resolution of intent to file a declaratory judgment action with the court. Note: Projects that seek COAH credit shall be subject to the requirements of the Uniform Housing Affordability Controls (UHAC), N.J.A.C. 5:80-26.]

...

“Preservation Project” means an existing housing project that is at least 50 percent occupied and is at risk of losing its affordability controls or at risk of losing its level of affordability. In order to qualify for the preservation set-aside, the **proposal must be for the rehabilitation of 100 percent of the affordable units and no demolition of the existing building is permitted.** The application shall include the following:

1.-6. (No change.)

...

“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.-2. (No change.)

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The [nonprofit set-aside and] nonprofit points are available exclusively to Section 501(c)(3) or (4) housing sponsors who comprise at least 50 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] nonprofit points.

In order to qualify for the [nonprofit set-aside or] nonprofit points, the application shall include:

1.-4. (No change.)

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.

“Ready to grow area” means an area that has the capacity for growth and has received recognition from the State of this capacity, either through a planning process or through the presence of water supply and wastewater infrastructure to serve the project. A project shall be considered to be in a ready to grow area if it is located within at least one of the areas designated in 1 through 3 below by the tax credit application deadline:

1. (No change.)

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2. An area designated as a smart growth area on the [Preliminary] **Draft Final** State Plan Policy Map in a county that has completed the Cross-Acceptance III Process; or

3. An area that has the water and wastewater capacity and infrastructure to serve the project and that also has at least one of the features in 3i through iv below:

i. Is an area in need of redevelopment [designated pursuant to and in accordance with N.J.S.A. 40A:12A-6] **or an area in need of rehabilitation, as those terms are defined at N.J.S.A. 40A:12A-3;**

ii.-iv. (No change.)

**“Redevelopment project” means a project located within a designated “redevelopment area,” as defined at N.J.S.A. 40A:12A-3, an “area in need of rehabilitation,” as defined at N.J.S.A. 40A:12A-3 or within the boundary of an approved “neighborhood revitalization plan,” as defined at N.J.S.A. 52:27D-491. No later than the application deadline, the redevelopment plan must be approved by the municipal governing body or the neighborhood revitalization must be approved by the Commissioner of the Department of Community Affairs. The project must further the goals and objectives of the approved plan.**

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**“Rehabilitation” or “rehab” means the repair, renovation, alteration or reconstruction of any building or structure.**

...

“Smart growth areas” means areas that promote growth in compact forms and protect the character of existing stable communities. An area shall be considered to be a smart growth area if it is within Planning Area 1, Planning Area 2 or within a Designated Center on the State Plan Policy Map.

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 Development and Redevelopment Plan (State Plan), contact the New Jersey Office [of Smart Growth] **for Planning Advocacy**. 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.

For more information on whether a project is located within a smart growth area, visit the [smart growth locator] **site evaluator** website at [www.njlocator.gov](http://www.njlocator.gov) or contact the NJHMFA Director of Policy and Planning at (609) 278-7400.

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...

**“Supportive housing population needs analysis” means a needs analysis that demonstrates the current and projected need and demand for housing for the targeted population(s). A supportive housing population needs analysis shall address the following:**

- 1. The scope of the current and 15-year projected need of the target population(s) for supportive housing;**
  - 2. Define the market area, including sources of referrals for supportive housing;**
  - 3. Current and estimated population needs assessment for the defined market area. Applicants can obtain this information from Federal, State and local agencies and sources;**
  - 4. The estimated time it will take to fill the units;**
  - 5. The estimated income and sources of income for the target population(s);**
- and**

**6. The number of supportive housing and other types of designated housing serving the target population(s) in the defined market area.**

“Supportive housing project” means a project which shall rent a minimum of 10 units or 25 percent of the total project units, whichever is greater, to individuals with special needs. At a minimum, a supportive housing project must have a social service coordinator and a social services plan that addresses the needs of the identified special needs population. 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. 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 meal 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.

Examples of supportive services include, but are not limited to, the following:

1.-12. (No change.)

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[“Supportive housing population needs analysis” means a needs analysis that demonstrates the current and projected need and demand for housing for the targeted population(s). A supportive housing population needs analysis shall address the following:

1. The scope of the current and 15-year projected need of the target population(s) for supportive housing;
2. Define the market area, including sources of referrals for supportive housing;
3. Current and estimated population needs assessment for the defined market area. Applicants can obtain this information from Federal, State and local agencies and sources;
4. The estimated time it will take to fill the units;
5. The estimated income and sources of income for the target population(s); and
6. The number of supportive housing and other types of designated housing serving the target population(s) in the defined market area.]

**“Supportive housing unit” means a unit within a project that is rented to an individual with special needs, with a social service coordinator, a supportive services plan that addresses the needs of the identified special needs population and the provision of**

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**supportive services, just as with supportive housing projects, as defined above in this section.**

**“Transit Oriented Development” or “TOD” means a mixed use development within walking distance (1/2 mile) of a rail, light rail, subway, ferry or major bus corridor station.**

...

“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. (No change.)
  
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[.]; **or**
  
- 4. Failure of the owner to complete and fully execute the Deed of Easement and Restrictive Covenant for Extended Low-Income Occupancy.**

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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 fair share obligation either by a petition to the Council on Affordable Housing (COAH) or by a request to the court and its 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).]

#### 5:80-33.4 Family Cycle

(a) Non-age restricted developments may apply to this cycle. Not less than [\$9,000,000] **50 percent of the available tax credit authority attributable to a particular calendar year** will be available in the Family Cycle, and the maximum annual allocation of credits to developments competing in this cycle is [\$2,250,000] **the lesser of \$1,750,000 in tax credits or the credit equivalent of \$200,000 in eligible basis per tax credit unit. Total development costs shall not exceed \$250,000 per unit. If multiple tranches of this Cycle are awarded, all set-asides for this cycle will be applicable to each tranche.** Minimum rehab projects are not eligible to apply in this cycle. Unless market area demographics and/or financial feasibility demonstrate otherwise, all non-age-restricted projects (except minimum rehabilitation, preservation and historic rehabilitation projects) must adhere to the following minimum bedroom distributions:

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the combined number of efficiency and one-bedroom tax credit units shall be no greater than 20 percent of the tax credit units; at least 30 percent of the tax credit units shall be two-bedroom units; and at least 20 percent of the tax credit units shall be three-bedroom units. There are two set-asides in the Family Cycle:

1. [HOPE VI/Replacement Housing set-aside: The first reservation of credits from the Family Cycle shall be given to the highest-ranking eligible application which utilizes HOPE VI or Replacement Housing Factor funds from HUD or is included in an approved HOPE VI proposal. If, because of lack of demand, the HOPE VI/Replacement Housing set-aside is not utilized, the credits in this set-aside shall be released into the Family Cycle for use by other eligible applications.] **Redevelopment set-aside: The first reservation of credits from the Family Cycle shall be given to the highest-ranking eligible application from a redevelopment project located within a Qualified Census Tract. If, because of lack of demand, the redevelopment set-aside is not utilized, the credits in this set-aside shall be released into the Family Cycle for use by other eligible applications after satisfaction of any other set-aside, as applicable.**

2. [Nonprofit set-aside: The second reservation of credits from the Family Cycle shall 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.] **Preservation set-aside: The second reservation of credits from the Family Cycle shall be given to the highest-ranking eligible application from a preservation project. The maximum**

**annual allocation of credits to developments competing in this set-aside is \$1,250,000. HOPE VI/Replacement Housing/CFRC projects do not qualify for this set-aside. 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 Family Cycle for use by other eligible applications after satisfaction of any other set-aside, as applicable.**

(b) If the highest-ranking eligible project in the [HOPE VI/Replacement Housing] **redevelopment** set-aside also applies for and qualifies for the [nonprofit] **preservation** set-aside, the project shall be deemed to satisfy NJHMFA's obligation to fund both set-asides. In such a case, the project shall have an ongoing obligation to meet the requirements for both set-asides. This overlapping of set-asides shall expand the amount of credits available in the general competition. However, projects which receive negative points under N.J.A.C. 5:80-33.15(a)16, 18 or 19 shall not be eligible to compete in any set-aside.

(c) (No change.)

#### 5:80-33.5 Senior Cycle

(a) Senior projects may apply to this cycle. Not less than [\$3,000,000] **20 percent of the available tax credit authority attributable to a particular calendar year** will be available in the Senior Cycle, and the maximum annual allocation of credits to developments competing in this cycle is [\$1,750,000] **the lesser of \$1,400,000 in tax credits or the credit equivalent of \$200,00 in eligible basis per tax credit unit. Total development costs shall not exceed**

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**\$250,000 per unit. If multiple tranches of this cycle are awarded, all set-asides for this cycle will be applicable to each tranche.** 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 is one set-aside in the Senior Cycle:

1. [HOPE VI/Replacement Housing set-aside: The first reservation of credits from the Senior Cycle shall be given to the highest-ranking eligible application which utilizes HOPE VI or Replacement Housing Factor funds from HUD or is included in an approved HOPE VI proposal. If, because of lack of demand, the HOPE VI/Replacement Housing set-aside is not utilized, the credits in this set-aside shall be released into the Senior Cycle for use by other eligible applications.] **Redevelopment set-aside: The first reservation of credits from the Senior Cycle shall be given to the highest-ranking eligible application from a redevelopment project located within a Qualified Census Tract. If, because of lack of demand, the redevelopment set-aside is not utilized, the credits in this set-aside shall be released into the Family Cycle for use by other eligible applications.**

(b) – (c) (No change.)

#### 5:80-33.6 Supportive Housing Cycle

(a) Supportive housing projects in which a minimum of 10 units or 25 percent of the total project units, whichever is greater, are rented to individuals with special needs and at least three

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appropriate services are provided may apply to the Supportive Housing Cycle. There must be an executed agreement between the proposed owner entity and a supportive services provider that will submit a social services plan consistent with requirements of this subsection for the Supportive Housing Cycle and approved by NJHMFA. There will be not less than [\$2,000,000] **12.5 percent of the available tax credit authority attributable to a particular calendar year** available in the Supportive Housing Cycle and the maximum annual allocation of credits to projects competing in this cycle is [\$1,200,000] **\$1,000,000. Total development costs shall not exceed \$250,000 per unit. If multiple tranches of this cycle are awarded, all set-asides for this cycle will be applicable to each tranche.**

(b) – (c) (No change.)

#### 5:80-33.7 Final Cycle

(a) All projects, including minimum rehab projects, may apply to this cycle. All credits not utilized under N.J.A.C. 5:80-33.4 through 33.6 and 33.8 (**if any**) shall be made available in the Final Cycle and the maximum annual allocation of credits to projects competing in this cycle is [\$2,250,000] **the lesser of \$1,750,000 in tax credits or the credit equivalent of \$200,000 in eligible basis per tax credit unit. Total development costs shall not exceed \$250,000 per unit.** Unless market area demographics and/or financial feasibility demonstrate otherwise, all non-age-restricted projects (except minimum rehabilitation, preservation and historic rehabilitation projects) must adhere to the following minimum bedroom distributions: the combined number of efficiency and one-bedroom tax credit units shall be no greater than 20

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percent of the tax credit units; at least 30 percent of the tax credit units shall be two-bedroom units; and at least 20 percent of the tax credit units shall be three-bedroom units. [There is one set-aside in the Final Cycle: the preservation set-aside. The first reservation of credits from the Final Cycle shall be given to the highest-ranking eligible application from a preservation project. HOPE VI/Replacement Housing projects do not qualify for this set-aside. 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) If 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 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, NJHMFA shall fund no more than two projects per year from the same municipality. Funding of projects shall be prioritized in the following manner: the highest ranking eligible project(s) in the Family Cycle, the Senior Cycle, the Supportive Housing Cycle and lastly, the Final Cycle. Projects that received an award of credits in a previous year that are now re-competing shall not be included in the totals for purposes of the equitable distribution provision described herein.

(c) – (d) (No change.)

## 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, Supportive Housing 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.-2. (No change.)

[3. Projects that received a tax credit award in 2007 or 2008 that have not yet closed with an investor and can demonstrate that their financial feasibility has been detrimentally impacted by the significant downturn in the tax credit equity market may request additional credits based on the Reduction in the Equity Market (REM). REM requests are limited to \$250,000 per project. The eligible basis/basis limits in place at the time of the project's initial credit award shall be used to determine the amount of REM credits. An award of REM credits shall not count against the per project limitations in (a)2 above. Applications for REM credits are accepted on an ongoing basis until May 15. Projects awarded REM credits must start construction within 90 days of the tax credit award. Failure to start construction within 90 days shall result in immediate recapture of the tax credit award. To

apply to the Reserve for a reservation of REM credits, applicants shall follow the procedures at N.J.A.C. 5:80-33.13(a)1i through iv and vi.]

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

(a) – (b) (No change.)

(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.-5. (No change.)

6. All funding sources planned for the project shall be committed to the project. Commitments shall be firm and contain only conditions that are under the control of the applicant (that is, commitments cannot be conditioned on the availability of funds.) 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. Commitment letters shall be countersigned/accepted in writing by the applicant. 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. (No change.)

ii. State Balanced Housing, Home Express or State HOME funds: Projects applying for Balanced Housing or Home Express funds and tax credits shall comply with the applicable rules of these 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, Home Express and HOME commitments at the same time NJHMFA awards the reservations of tax credits.

[(1) An applicant requesting Balanced Housing or Home Express funding may not include Balanced Housing or Home Express funds as an initial funding source unless the municipality in which the project is located has petitioned COAH for substantive certification (funds may be committed but not provided until a municipality's Fair Share Plan has received substantive certification from COAH) or has entered into a judicially approved compliance agreement to settle its fair share housing obligation and/or has been designated as a receiving municipality under a regional contribution agreement and project plan approved by COAH and/or has, at any time since Fiscal Year 1988, been eligible to receive State aid pursuant to P.L. 1978, c. 14 (N.J.S.A. 52:27D-178 et seq.).

(2) Where such events as described in (c)6ii(1) above have not occurred by the application deadline, the applicant shall provide a fully committed alternate initial source of funding that may later be replaced with the Balanced Housing or Home Express monies and shall identify the intent to have Balanced Housing or Home Express funds as a part of the overall plan of funding for the project. Note: Balanced Housing funds may be available if a municipality submits a resolution appropriating funds from the general revenue or a resolution of intent to bond in the event there is a shortfall of funding from the initial identified source(s) in accordance with N.J.A.C. 5:94-4.2(a)1. In the event the municipality withdraws its third round petition, does not receive substantive certification or a judgment of compliance within two years of the municipality's adoption of the resolution of intent to bond, allows its certification to lapse or has its substantive certification revoked by COAH or the court, the municipality's resolution of intent to bond shall become effective and the municipality shall be responsible to reimburse the DCA Neighborhood Preservation Nonlapsing Revolving Fund.]

iii. - iv. (No change.)

v. Owner equity/loans and deferred developer fee: 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 deferred, 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 deferred developer fee 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 deferred portion of the developer fee 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 deferred developer fee 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. - ix. (No change.)

x. Municipal Affordable Housing Trust Funds: A copy of the current spending plan listing the project which has been approved by the municipality and submitted to [COAH] **DCA** by the application deadline shall be submitted in the application.

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. (No change.)

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) – (3) (No change.)

(4) Year one of the pro forma should reflect core operating expenses between [\$2,200] **\$3,000** and [\$3,800] **\$4,000** per unit. For those projects with core operating expenses less than [\$2,200] **\$3,000** per unit or more than [\$3,800] **\$4,000** 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 [\$2,200] **\$3,000** per unit and no senior project shall have core operating expenses above [\$3,800] **\$4,000** per unit. Other operating expenses will be evaluated for reasonableness given the characteristics of the project.

iii. - v. (No change.)

8. - 9. (No change.)

10. 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 the "as-is" 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. NJHMFA reserves the right to require **a capital needs assessment for any project seeking acquisition credits and/or** an independent appraisal which conforms to the Uniform Standards of Professional Appraisal Practice (USPAP) for those projects that have land acquisition costs totaling over \$7,500 per unit. For all projects seeking acquisition credits, calculation of the developer fee for building acquisition costs shall be limited to eight percent of the acquisition amount. In addition, the non-deferred amount of this portion of the developer fee shall not exceed four percent of the acquisition amount.

11. - 13. (No change.)

14. Supportive Housing projects **or projects** applying to any cycle **that contain supportive housing units** shall submit the following items in addition to those items at N.J.A.C. 5:80-33.15(a)5:

i. - vi. (No change.)

15. (No change.)

16. [Applicants applying in the] **Projects with HOPE VI/Replacement Housing** [set-asides] **funding** shall submit the following:

i. - iv. (No change.)

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

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

1. - 2. (No change.)

3. Applicants may select one of the following options (three or seven points):

i. Low-density buildings where at least 30 percent of the tax credit units are large family units **or projects located within a transit oriented development** shall receive

seven points. Points are based on the percentage of large family units with respect to the total number of tax credit units, not on square footage; or

ii. Rehabilitation projects that do not [meet the definition of low-density] **qualify under (a)3i above** shall receive three points.

iii. (No change.)

4. - 6. (No change.)

7. Applicants may select one of the following options:

i. Projects located within a ready to grow area that are [not located in] **either outside of** 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 10 points[.]; **or** [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. A resolution of intent to petition COAH shall only be accepted if COAH is unable to accept petitions by the tax credit application deadline;

ii. Projects located within a ready to grow area that are located in a qualified census tract and 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 eight points. 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. A resolution of intent to petition COAH shall only be accepted if COAH is unable to accept petitions by the tax credit application deadline;]

iii. **ii.** Projects located within both a ready to grow area and a qualified census tract [which contribute to a concerted community revitalization plan] shall be awarded seven points. [HOPE VI projects only shall not be required to submit a community revitalization plan to be eligible for points in this point category; or

iv. Projects located within a ready to grow 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] **Substitution of amenities is only permitted with prior approval from NJHMFA.** 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. - xiv. (No change.)

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] **Substitution of amenities is only permitted with prior approval from NJHMFA. 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. - vii. (No change.)

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] **Substitutions are only permitted with prior approval from NJHMFA. 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. - viii. (No change.)

11.-13. (No change.)

14. Applicants may select one of the following options. To qualify for this point category, a significant component of the development (40 percent or more 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. - ii. (No change.)

iii. [Projects which are developed on a] Brownfields [site] **projects that have a Remedial Action Work Plan approved by the New Jersey Department of Environmental Protection (DEP) or its designee, or a No Further Action letter issued by the DEP for an unrestricted use within the past 10 years** shall receive two points[. In order to qualify for the Brownfields points, the application must include the site's]; **or**

**iv. Projects that have a** Brownfields Site Marketing Inventory (BSMI) Project Tracking Number [(“OSP BF#”)] that has been verified by the municipality **shall receive one point.** [If the site does not have a tracking number that has been verified by the municipality, a copy of the approved New Jersey Department of Environmental Protection (DEO) Remedial Action Work Plan or a No Further Action letter issued by DEP for an unrestricted use shall be submitted.] For a list of Brownfields sites and the

corresponding tracking numbers, please call the Office [of Smart Growth] **for Planning Advocacy** in the New Jersey Department of Community Affairs at (609) 292-7156 or visit <http://www.njbrownfieldsproperties.com/>.

15. - 18. (No change.)

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 submit its annual project certifications and/or [building status reports] **annual tenant information** 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. (No change.)

21. [Projects that certify to start construction within 120 days of the tax credit award shall be awarded two points. If points are awarded under this provision, failure to start construction within 120 days shall result in immediate recapture of the tax credit award.] **Projects that rent a minimum of five units or five percent of the total project costs, whichever is greater, to individuals with special needs and meet the criteria of N.J.A.C. 5:80-33.12(c)14 shall receive one point.**

22. Projects that select the 20 percent at 50 percent Federal set aside as defined under Section 42(g)(1)(A) of the Code or elect to restrict 10 percent of the tax credit units to households earning 30 percent or less of area median income adjusted for family size shall receive one point. 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 election shall be reflected on each building's IRS Form 8609 and/or on the deed of easement and restrictive covenant. **Projects that select the 10 percent at 30 percent option must still satisfy the Code minimum tenant income elections at Section 42(g)(1)(A) or (B) and demonstrate that best efforts will be made to distribute the 30 percent units proportionately across all unit sizes.**

23. (No change.)

#### 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 at 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 ready to grow areas is replaced with the following:

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1. Applicants may select one of the following options:

i. Projects located within both a ready to grow area and a qualified census tract [which contribute to a concerted community revitalization plan] shall be awarded seven points[. HOPE VI projects only shall not be required to submit a community revitalization plan to be eligible for points in this point category]; **or**

ii. Projects located within a ready to grow area that [satisfy a COAH obligation, satisfy a court-ordered obligation, are in voluntary compliance with the courts or] **are either outside of a qualified census tract or** are within a transit village shall be awarded 10 points. [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. A resolution of intent to petition COAH shall only be accepted if COAH is unable to accept petitions by the tax credit application deadline; or

iii. Projects located within a ready to grow area only shall be awarded five points.]

2. (No change.)

#### 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:

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1. If competing projects within a cycle have a tie score, a tax credit reservation shall be awarded to the project with the least amount of tax credits per tax credit [unit] **bedroom**.

2. (No change.)

#### 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 **a quorum of** the Tax Credit Committee. The Tax Credit Committee shall consist of the Commissioner of the Department of Community Affairs or designee, the Executive Director and three members of the NJHMFA [executive] staff designated by the Executive Director. After projects have been awarded tax credits based on their competitive rankings, the Tax Credit Committee shall have the authority to adjust the amount of Tax Credit Assistance Program (TCAP) subsidies, Tax Credit Exchange Program (TCX) subsidies and tax credits awarded to a project in order to fully exhaust subsidies provided under the American Recovery and Reinvestment Act of 2009, P.L. 111-5 (ARRA).

(b) – (c) (No change.)

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

(a) (No change.)

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(b) NJHMFA may, in its discretion, enter into a binding commitment to allocate credits from future years' tax credit authority to [projects described below] **fund projects that successfully compete in additional tranches of the Cycles at N.J.A.C. 5:80-33.4 through 33.7, subject to any set-asides thereunder, as the Tax Credit Committee may decide to conduct in its discretion, or projects**[:

1. Projects] in a competitive cycle affected by [a technical] **an** 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 time frame 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 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.]

5:80-33.26 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 that contains tax credit units. 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) may 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] **or representative** 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) – (d) (No change.)

#### 5:80-33.32 Compliance monitoring

(a) – (c) (No change.)

(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:

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1. - 3. (No change.)

4. The number of occupants and the number of full-time [college] students in each low-income household;

5. (No change.)

6. The annual income certification of each low-income [tenant per unit] **household**;

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 100 percent low-income buildings, income verification from third parties shall only be required for initial certification and the first re-certification.] **For 100 percent tax credit properties, an initial certification shall be required at move-in, followed by a re-certification on the one-year anniversary of move-in. Re-certification shall no longer be required in subsequent years, provided the property continues to**

**operate as 100 percent affordable. While a resident shall still be required to complete the Tenant Income Certification and other forms on an annual basis, third-party verification of income shall no longer be required;**

8. - 9. (No change.)

(e) (No change.)

(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. - 2. (No 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. - 14. (No change.)

**(g) As required by the Housing and Economic Recovery Act of 2008, 110 P.L. 289 (HR 3221) (HERA), owners are required to submit, on an annual basis, data pertaining to the residents of low-income housing tax credit (LIHTC)-funded units. Such data must contain, but is not limited to, income, rental assistance, disability status, monthly rental payment, race, ethnicity, family composition and age.**

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

Pursuant to Section 1.42-5 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 **via electronic copy** and the [Building Status Report] **annual tenant information**. The [Building Status Report] **annual tenant information** must indicate the income of and rent charged to tenants for each unit. This package shall be submitted on an annual basis via the MITAS/NJHMFA Low Income Housing Tax Credit Internet System and is due on January 31. Requests for extensions beyond the January 31 deadline must be submitted by December 31 of the prior year.

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5:80-33.34 NJHMFA review and inspection

(a) – (c) (No change.)

(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] **made available**. Reviews may occur more frequently than on a 12-month basis, provided that all months within each 12-month period are subject to certification. **The method of choosing the sample files or units to be inspected will not give the owner advance notice of which units and tenant records are to be inspected and reviewed.**