Agency 80 Regs.

CHAPTER 80

NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

Authority

N.J.S.A. 55:14K-5g.

Source and Effective Date

R.2010 d.292, effective November 16, 2010.
See: 42 N.J.R. 1282(a), 42 N.J.R. 3055(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 80, New Jersey Housing and Mortgage Finance Agency, expires on November 16, 2017. See: 43 N.J.R. 1203(a).

Chapter Historical Note

Chapter 80, Housing Finance Agency, was adopted as R.1977 d.71, effective March 4, 1977. See: 9 N.J.R. 62(c), 9 N.J.R. 164(c).

Chapter 80, New Jersey Housing and Mortgage Finance Agency, was adopted as R.1985 d.241, effective May 20, 1985. See: 17 N.J.R. 505(a), 17 N.J.R. 1258(b).

Pursuant to Executive Order No. 66(1978), Chapter 80, New Jersey Housing and Mortgage Finance Agency, was readopted as R.1990 d.248, effective April 20, 1990. See: 22 N.J.R. 277(b), 22 N.J.R. 1556(a).

Pursuant to Executive Order No. 66(1978), Chapter 80, New Jersey Housing and Mortgage Finance Agency, was readopted as R.1995 d.247, effective April 17, 1995. See: 27 N.J.R. 265(a), 27 N.J.R. 1977(a).

Subchapter 33, Low Income Housing Tax Credit Qualified Allocation Plan, was adopted as R.1995 d.281, effective June 5, 1995. See: 27 N.J.R. 986(a), 27 N.J.R. 2190(a).

Subchapter 33, Low Income Housing Tax Credit Qualified Allocation Plan, was repealed and Subchapter 33, Low Income Housing Tax Credit Qualified Allocation Plan, was adopted as new rules by R.1996 d.255, effective June 3, 1996. See: 28 N.J.R. 1443(b), 28 N.J.R. 2843(a).

Pursuant to Executive Order No. 66(1978), Chapter 80, New Jersey Housing and Mortgage Finance Agency, was readopted as R.2000 d.132, effective February 28, 2000. See: 32 N.J.R. 191(a), 32 N.J.R. 1065(a).

Subchapter 26, Housing Affordability Controls, was repealed and a new Subchapter 26, Housing Affordability Controls, was adopted as new rules by R.2001 d.360, effective October 1, 2001. See: 33 N.J.R. 230(a), 33 N.J.R. 3432(b).

Chapter 80, New Jersey Housing and Mortgage Finance Agency, was readopted as R.2005 d.219, effective June 10, 2005. See: 37 N.J.R. 970(a), 37 N.J.R. 2476(a).

Chapter 80, New Jersey Housing and Mortgage Finance Agency, was readopted as R.2010 d.292, effective November 16, 2010. See: Source and Effective Date.

Subchapter 23, Housing Incentive Note Purchase Program, was repealed by R.2012 d.105, effective May 21, 2012. See: 44 N.J.R. 139(a), 44 N.J.R. 1611(b).

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APPENDIX A

APPENDIX B

SUBCHAPTER 1. GENERAL PROVISIONS

5:80-1.1 Authority

These regulations are issued pursuant to the authority of the New Jersey Housing and Mortgage Finance Agency Law of 1983, N.J.S.A. 55:14K-1 et seq., and specifically section 5g thereof, N.J.S.A. 55:14K-5g.

Amended by R.2005 d.219, effective July 5, 2005.
See: 37 N.J.R. 970(a), 37 N.J.R. 2476(a).
Rewrote the section.

5:80-1.2 Purpose and objective

(a) These regulations are established to effectuate and shall be applied to accomplish the general purposes of the New Jersey Housing and Mortgage Finance Agency including:

1. Assuring the availability of rental and owner-occupied housing in the State of New Jersey (State);

2. Stimulating the construction, rehabilitation and improvement of adequate and affordable housing in the State so as to increase the number of housing opportunities for New Jersey residents, particularly those of low and moderate income;

3. Enhancing the production capacity of the private sector in meeting the housing needs of residents of the State;

4. Assisting in the revitalization of the State's urban areas; and

5. Responding to changing housing demographic and economic circumstances by the development of innovative and flexible financing vehicles.

Amended by R.2005 d.219, effective July 5, 2005.
See: 37 N.J.R. 970(a), 37 N.J.R. 2476(a).
In (a), inserted "in the State of New Jersey (State)" at the end of 1, substituted "the State" for "New Jersey" in 3, and substituted "by" for "for" following "and economic circumstances" in 5.

5:80-1.3 General definitions

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

"Act" means the New Jersey Housing and Mortgage Finance Agency Law of 1983, P.L.1983, c.530 (N.J.S.A. 55:14K-1 et seq.).

"Agency" means the New Jersey Housing and Mortgage Finance Agency, created by section 4 of the Act, N.J.S.A. 55:14K-4.

"Assisted living" means a coordinated array of supportive personal and health services, available 24 hours per day, to residents who have been assessed to need these services, including residents who require formal long-term care. Assisted living promotes resident self direction and participation in decisions that emphasize independence, individuality, privacy, dignity, and homelike surroundings.

"Assisted living residence" (ALR) means a housing project which is a facility licensed by the New Jersey Department of Health and Senior Services to provide apartment-style housing and congregate dining and to assure that assisted living services are available when needed, for four or more adult persons unrelated to the proprietor. Apartment units in ALRs offer, at a minimum, one unfurnished room, a private bathroom, a kitchenette and a lockable door on the unit entrance.

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"Collateral" means, with respect to any loan, those securities, mortgages or other instruments defined as eligible pursuant to the terms of the Assignment of Collateral and Trust Agreement relating to such loan.

"Collateral requirement" means, as of any date of calculation and with respect to any loan, the amount at which collateral securing such loan is required to be maintained pursuant to the terms of the Assignment of Collateral and Trust Agreement relating to such loan.

"Executive Director" means the chief executive officer of the Agency, appointed and employed pursuant to section 5j of the Act, N.J.S.A. 55:14K–5j.

"Home Improvement Loan Program Commitment" means the aggregate unpaid principal amount of home improvement loans which a mortgage seller offers to deliver and sell to the Agency and the Agency agrees to purchase, such sale and purchase to be made under a Note Purchase Agreement.

"Housing project" or "project" means any work or undertaking, other than a continuing care retirement community, whether new construction, improvement, rehabilitation or acquisition of existing buildings or units, which is designed for the primary purpose of providing multi-family rental housing or the acquisition of sites for future multi-family rental housing, including an assisted living residence.

"Housing sponsor" means any person, partnership, corporation or association to which the Agency has made or proposes to make a loan, either directly or through an institutional lender, for a housing project.

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

"Mortgage Purchase Agreement" means an agreement entered into between a mortgage seller and the Agency under which the mortgage seller agrees to deliver and sell to the Agency and the Agency agrees to purchase mortgage loans.

"Mortgage Servicing Agreement" means an agreement entered into between a mortgage seller or other person acceptable to the Agency and the Agency under which the mortgage seller or other person agrees to service mortgage loans purchased by the Agency from such mortgage seller under a Mortgage Purchase Agreement.

"Note Purchase Agreement" means an agreement entered into between a mortgage seller and the Agency under which the mortgage seller agrees to deliver and sell to the Agency and the Agency agrees to purchase single family home improvement loans.

"Notice of Acceptance" means the Notice of Acceptance by the Agency to the mortgage seller of an application.

"Primarily residential in character" as set forth in N.J.S.A. 55:14K–3(e) means:

1. With regard to an individual unit, structure, or property, that at least 60 percent of the net sheltered area, not including areas for circulation, utilities and common space, is or will be upon completion of scheduled improvements used exclusively as a residence for one or more persons; or

2. With regard to a project or area, that at least 60 percent of the properties in the area or 60 percent of the floor area in the project, not including areas for circulation, utilities, and open space, consists of units, properties, or structures devoted primarily to residential use.

"Single family mortgage loan" means any mortgage loan for a structure which contains no more than four dwelling units, at least one of which is owner-occupied and may include an owner-occupied single dwelling unit within a condominium or cooperative apartment. Those areas which are non-residential in use shall not exceed those specified by the Federal Housing Administration Property Standards for one or two living units as in effect from time to time.

"Single family home improvement loan" means an eligible loan for the rehabilitation or improvement of a unit or structure which contains no more than four dwelling units where at least 90 percent of the structure or single dwelling unit is devoted to residential use and at least one such dwelling unit is owner-occupied.

"Special needs project" means a project serving special needs populations under the developmental disability housing programs, transitional housing revolving loan programs, shelter plus care programs, HIV/AIDS programs, and similar special needs housing programs, the primary purpose of which is to provide certain types of homes and/or community-based supportive services to individuals and families who are in need of such homes and/or services. Supportive services range across a wide continuum of care and will vary from person to person depending on their particular physical, psychosocial, and/or mental limitations, and may vary for one person over time. Examples of targeted populations that fall within a special needs project are:

1. Persons with AIDS/HIV-related illness;
2. Homeless;
3. Mentally ill;
4. Frail elderly;
5. Alcohol and/or substance abusers;
6. Persons with physical disabilities;
7. Mentally retarded/developmentally disabled;
8. Pregnant/parenting teens;
9. Victims of domestic violence; and

10. Orphans, children in foster care, and children who are wards of the Division of Youth and Family Services (DYFS).

"State" means the State of New Jersey.

"Term sheet" means the statement of terms, constituting part of the Notice of Acceptance of a commitment, governing the sale and purchase of mortgage loans pursuant to a commitment.

Amended by R.1998 d.80, effective February 2, 1998.
See: 29 N.J.R. 3214(a), 30 N.J.R. 539(b).
Inserted "Assisted living", and "Assisted living residence"; and rewrote "Housing Project" or "Project".
Amended by R.1999 d.329, effective October 4, 1999.
See: 30 N.J.R. 3355(a), 31 N.J.R. 2878(b).
Inserted definition of "Special needs project".
Amended by R.2000 d.132, effective March 20, 2000.
See: 32 N.J.R. 191(a), 32 N.J.R. 1065(a).
Rewrote "Special needs project"; and inserted "State".
Amended by R.2005 d.219, effective July 5, 2005.
See: 37 N.J.R. 970(a), 37 N.J.R. 2476(a).
Rewrote the section.

5:80–1.4 Regulations regarding housing projects

(a) All Agency financing in connection with housing projects having more than 25 units, including eligible loans and loans to lenders made with regard to housing projects, shall be subject to N.J.A.C. 5:80–2 through 9, 17, 18, 20, and 29 through 32. Where appropriate, other regulations within this chapter are specifically made applicable to housing projects. N.J.A.C. 5:80–2 through 9, 17, 18, 20, and 29 through 32 shall not apply to:

1. The construction or rehabilitation of:

i. Continuing care retirement communities;

ii. Nonresidential facilities or structures (other than those permitted within a housing project);

iii. Boarding houses;

iv. Residential developments having 25 dwelling units or less; or

v. Special needs projects;

2. The improvement, acquisition, operation, maintenance or repair of housing projects or any other structure or improvement financed by the Agency (other than that determined by the Agency to constitute substantial rehabilitation); or

3. Any housing project for which construction or substantial rehabilitation commenced more than one year prior to the actual date of the Agency's having provided financing for the project.

Amended by R.1998 d.80, effective February 2, 1998.
See: 29 N.J.R. 3214(a), 30 N.J.R. 539(b).
In (a), inserted "having more than 25 units," following "Projects", and inserted references to subchapters 20, 29 and 30 through 32.
Amended by R.1999 d.329, effective October 4, 1999.
See: 30 N.J.R. 3355(a), 31 N.J.R. 2878(b).
In (a), updated references, and added (a)1v.
Amended by R.2005 d.219, effective July 5, 2005.
See: 37 N.J.R. 970(a), 37 N.J.R. 2476(a).

SUBCHAPTER 2. ACTIONS REGARDING HOUSING SPONSORS

5:80–2.1 Rights of housing sponsors

(a) Wherever possible, the Agency will permit, provide for and encourage the right of local housing sponsors to exercise their own initiative and competence in the administration of their assets and the conduct and operation of housing projects, and exercise their rights and responsibilities to the fullest extent permitted by law.

(b) The provisions of the Act pertaining to the regulation and assumption of powers and duties of housing sponsors shall be for the purposes of protecting the collateral for any loan or loans; implementing or enforcing any condition, requirement or criterion for loans or any agreement between a housing sponsor and the Agency; securing the rights and remedies of lenders and bondholders; and protecting the interests of tenants at housing projects.

Amended by R.2005 d.219, effective July 5, 2005.
See: 37 N.J.R. 970(a), 37 N.J.R. 2476(a).
In (b), substituted "a" for "the" following "or any agreement between" and substituted "housing" for "the" preceding "projects".

5:80–2.2 Consultation with housing sponsors

(a) Prior to the adoption, amendment, or repeal of any rule governing the operation of Agency-financed housing projects, the Agency shall:

1. Submit a proposed form of the rule to be adopted, amended or repealed to the Office of Administrative Law for publication in the New Jersey Register for the requisite public comment period, in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B–1 et seq.; and

2. Give housing sponsors or their agent(s) written notice of the proposed rule to be adopted, amended or repealed. The notice shall be given prior to or simultaneously with the date the proposed rule will be published in the New Jersey Register for public comment.

(b) The notice to housing sponsors shall consist of a copy of the proposed rule to be adopted, amended or repealed and shall indicate the date the public comment period expires, as published in the New Jersey Register.

(c) Any housing sponsor wishing to submit data, views, or arguments concerning the proposed rule may do so in writing prior to the expiration of the public comment period as established in the New Jersey Register.

(d) The Agency will consider all timely submitted data, views, or arguments from housing sponsors before taking final action on the rule to be adopted, amended or repealed.

(e) The Agency shall respond in writing to each housing sponsor that has submitted data, views, or arguments concerning the proposed rule.

(f) No rule governing the operation of a housing project shall be effective unless adopted in substantial compliance with N.J.A.C. 5:80-2.

(g) Upon substantial compliance with N.J.A.C. 5:80-2, the Agency may approve the proposed rule for final adoption. Once the Agency approves the final version of the rule, it will be submitted to the Office of Administrative Law for publication and adoption in the New Jersey Register.

(h) The Agency also shall give direct notice concerning the adoption, amendment or repeal of any rules to any interested party who annually files a request for such information with the Executive Director.

(i) Whenever feasible, the Agency will circulate to housing sponsors notices of proposed changes in Federal Regulations that would affect the operation of Agency-financed housing projects on which the Agency intends to rely. The sponsor may submit comments or opinions on any proposed changes to the Executive Director for possible inclusion in the Agency comments. All comments will be forwarded to the office or the individual that the Federal Government designates in the notice.

Amended by R.1991 d.408, effective August 5, 1991.
See: 22 N.J.R. 3669(b), 23 N.J.R. 2306(b).
Added new (a)1; clarified length of comment period and promulgation process throughout section.
Amended by R.2005 d.219, effective July 5, 2005.
See: 37 N.J.R. 970(a), 37 N.J.R. 2476(a).
In (a), substituted "the requisite" for "a 30 day" preceding "public comment period" in 1; in (b), deleted "30-day" preceding "public comment period"; in (e), substituted "that has submitted " for ", submitting" preceding "data"; and in (i), deleted "of the Agency" following "opinions on any proposed changes to the Executive Director".

5:80-2.3 Temporary appointment of Agency representative to perform functions on behalf of housing sponsors

(a) The Agency will exercise its remedies and powers under N.J.S.A. 55:14K-7b(6) only with regard to material violations and only after reasonable notice and reasonable opportunity to correct the violation has been provided to the housing sponsor in accordance with the procedures set forth below.

(b) General areas in which material violations could result in Agency action include:

1. A material violation by the housing sponsor of the terms of any mortgage, mortgage note or regulatory agreement between the Agency and the housing sponsor;

2. A material violation by the housing sponsor of an agreement with the municipality under which it has been granted tax exemption;

3. A material violation by the housing sponsor of the Act or any rules and regulations of the Agency;

4. A determination by the Agency that any loan or advance from the Housing Development Fund pursuant to N.J.S.A. 55:14K-30 is in jeopardy of not being repaid.

(c) Specific material violations of the Act shall include, but are not limited to, the following events, which shall generally be sufficient to give rise to the exercise of remedies under N.J.S.A. 55:14K-7b(6) in accordance with the procedure noted in (e) below. The time periods specified here relate solely to initiating action under N.J.S.A. 55:14K-7b(6) and are in no way intended to waive or supersede any time period specified in any other contract, policy or procedure and all obligations of the housing sponsor and any rights and remedies of the Agency with regard thereto remain unchanged.

1. Violation of a subsidy contract as declared by HUD which is not corrected to HUD's satisfaction within the time frame as established by HUD;

2. Failure to submit final cost certification within seven months of substantial completion of construction;

3. Failure to submit a rent determination and annual operating budget at least 30 days prior to the end of the fiscal year;

4. Failure to submit the name of a qualified management firm at least 30 days prior to the end of an existing contract or 120 days prior to initial occupancy of the project;

5. Failure to submit an accountant engagement agreement at least 30 days prior to the end of the fiscal year and/or failure to submit the certified annual audit within five months after the close of the fiscal year;

6. Three months arrears of debt service;

7. Failure to maintain at required levels any reserve account required by the Agency in conjunction with the operation of the project;

8. Failure to correct a physical condition that jeopardizes the safety of tenants or the public or the integrity of any primary building system;

9. Failure to pay any utility bill after the receipt of written notice indicating that service would be terminated;

10. Failure to pay any lien or judgment, including municipal liens, which could jeopardize the financial viability of the project.

(d) It is the obligation of the Agency to give written notice to a sponsor that a condition exists which is of sufficient gravity to warrant the exercise of remedies under N.J.S.A.

55:14K-7b(6). The Agency will provide written notice of the specific material violation(s) to the sponsor, and may suggest courses of action to correct the violation(s).

(e) The housing sponsor shall take the following corrective actions:

1. Within 15 days of the receipt of the notice described in (d) above, the sponsor shall submit a statement to the Director of Property Management of the Agency setting forth its proposal for curing the violations indicated and a definite time schedule for the corrective actions.

2. If the sponsor is unable to develop a statement within 15 days, it shall submit a written request for an extension of time to prepare the plan to the Director of Property Management within the 15-day period.

3. The Director of Property Management may grant extensions of time for up to an additional 30 days for submission of the statement outlining the actions that the sponsor intends to take.

4. During the time allowed for submission of the statement, the Agency staff shall be available to meet with the sponsor in order to assist in the development of a program of corrective actions. If the sponsor does not submit a proposal, then the Director of Property Management shall propose a corrective plan to the sponsor.

5. Upon receipt of a proposal from the sponsor, the Director of Property Management may either accept the plan or suggest alternatives or modifications to the plan in writing to the sponsor.

6. If the sponsor is unwilling to accept the modifications or plan suggested by the Director of Property Management, then the sponsor may request in writing within 10 days that the matter be referred to the Executive Director, or his or her designee, for decision on the plan.

7. Once the commitments by the sponsor are accepted by the Agency, or an agreement is reached between the Agency and the sponsor, or a decision is made by the Executive Director, the sponsor shall implement the corrective actions within the time period specified in the plan.

(f) Any violations of or failure to implement the corrective plan shall be subject to the following:

1. The Executive Director shall bring the matter of such failures and a recommendation of remedy to the members of the Agency Board at the next regularly scheduled public meeting that will allow sufficient time for seven days written notice to be provided to the sponsor. The written notice shall advise that the failure to implement or abide by the recommended corrective actions is being brought to the attention of the Agency Board and that suspension of the sponsor may be requested.

2. The Agency Board shall hear the information provided by the Executive Director along with any information presented by the housing sponsor at a public meeting prior to taking any action pursuant to N.J.S.A. 55:14K-7b(6). The Agency Board may, however, discuss the matter at a session closed to the public if permitted by N.J.S.A. 10:4-1 et seq.

3. The decision by the Agency Board shall be final, subject only to review by a court of competent jurisdiction.

(g) Pursuant to the Act, persons appointed to administer the affairs of the project after suspension of the housing sponsor shall only serve for a period coextensive with the duration of the original violation giving rise to the need for the corrections or until the Agency is assured in a manner satisfactory to it that the violation, or violations of a similar nature, will not recur. Upon correction of the violation in a reasonable and satisfactory manner, the housing sponsor may submit a request to the Agency for restoration of control back to the sponsor. The Agency will respond to such request within 30 days. During that period in which the Agency is considering the housing sponsor's request, the term of the persons appointed to administer the affairs of the project will continue.

(h) The regulations in this subchapter are intended to be in addition to other powers and remedies which the Agency may have at law or by agreement and shall not be deemed to abridge any other rights or remedies of the Agency or the sponsor.

(i) Upon a vote by the Agency Board that there is an immediate need to take action and a finding that failure to take immediate action could jeopardize the health and safety of tenants at the housing project or cause substantial harm to the financial viability or physical structure of the project, the Agency may waive the regulations set forth above and immediately implement appropriate action.

Amended by R.2005 d.219, effective July 5, 2005.
See: 37 N.J.R. 970(a), 37 N.J.R. 2476(a).
Rewrote the section.

SUBCHAPTER 3. RETURN ON EQUITY

5:80-3.1 Authority

This subchapter is promulgated pursuant to authority of N.J.S.A. 55:14K-5g and N.J.S.A. 55:14K-7a(6).

5:80-3.2 Housing projects rate of return

(a) For all eligible loans for Housing Projects made by the Agency, the rate of return on its investment in the housing project, as determined by the Agency ("stated equity"), which can be paid or earned by the Housing Sponsor of the property and improvements or its principals or stockholders, shall be determined pursuant to N.J.A.C. 5:80-3.3 and be paid on a

cumulative but not compounded basis. This restriction shall apply for the full term of the Agency's loan and shall apply to return on investment earned or received upon construction and rehabilitation of the housing or from the operations of the housing or upon the sale, assignment or lease of the housing subject only to the applicable provisions, if any, of the Agency's regulations concerning the sale of projects owned by nonprofit sponsors and transfer of ownership interests.

(b) Housing sponsors who have agreed to an annual rate of return of less than eight percent pursuant to the Agency's former governing statute, N.J.S.A. 55:14J-1 et seq., may request a one-time increase in the rate that shall be calculated pursuant to N.J.A.C. 5:80-3.3(f) upon meeting the following criteria:

1. The housing project has funds, including Development Cost (DCE) or Community Development (CDE) Escrows operating, savings and investment accounts and all other funds, accounts and escrows of the project, of an amount equal to three months of operating expenses (for senior citizens projects) or six months of operating expenses (for family projects) which includes debt service and reserve payments of the Agency-approved annual budget in effect at the time of the request and after deducting the following:

i. Debt service arrearages;

ii. Current unpaid invoices;

iii. Fully-funded tax, insurance, reserve for repair and replacement and all other escrow accounts except the DCE and CDE;

iv. The amount of anticipated or proposed repairs or capital improvements; and

v. Any other current obligation of the project.

2. The housing project has been current in all escrow and debt service payments for the three fiscal years prior to the request.

3. The requirements at (b)1 and 2 above need only be met at the time the sponsor seeks approval of the increased rate of return. Once the sponsor qualifies and receives approval of the increased rate of return, future distributions of return on equity shall be governed by the rules at N.J.A.C. 5:80-3.4.

(c) Housing sponsors who meet the criteria in (b) above shall be granted an increase in the annual rate of return subject to the following conditions:

1. The increased rate of return shall be prospective only, which includes the year in which the sponsor applies;

2. Payment of a $3,500 processing fee;

3. Payments of the increased return on equity shall be subject to this subchapter; and

4. Amendments will be made to the appropriate mortgage documents to reflect the conditions in (c)1 and 3 above.

Amended by R.1994 d.398, effective August 1, 1994.
See: 26 N.J.R. 1186(a), 26 N.J.R. 3163(b).
Amended by R.2005 d.219, effective July 5, 2005.
See: 37 N.J.R. 970(a), 37 N.J.R. 2476(a).
Amended by R.2005 d.408, effective November 21, 2005.
See: 37 N.J.R. 2596(a), 37 N.J.R. 4400(b).
Section was "Housing projects prior to January 17, 1984"; in (a), deleted "prior to January 17, 1984" and substituted "be determined pursuant to N.J.A.C. 5:80-3.3 and be paid" for "not exceed eight percent per year"; rewrote (b), deleted "up to eight percent," from the introductory paragraph of (c).

5:80-3.3 Investment calculation for housing projects

(a) For each eligible loan made by the Agency for a housing project, the Agency shall determine, at the time of initial mortgage closing, the investment made by the housing sponsor. Investment shall include:

1. Actual cash or cash equivalent as determined by the Agency;

2. Professional fees pledged toward approved project cost; and

3. Any grants and/or loans procured by the Sponsor to the extent they are applied to Agency approved project costs and to the extent they are not repayable from project funds.

(b) Any additional cash contributions made by the housing sponsor subsequent to initial closing shall also be considered investment, if such contributions were used for project costs approved by the Agency.

(c) Increases in project value, as determined by an Agency approved appraisal, may also be recognized as part of the housing sponsor's investment; however, no request for a determination of increase in project value or rate of return shall be made or recognized for a HUD Section 8 project with a valid Housing Assistance Payment contract or if another superseding program or restriction is in effect that prohibits such an increase.

1. The following conditions must be met before an increase in project value may be recognized by the Agency, and the sponsor must satisfy the conditions required for distribution of return on investment as described in N.J.A.C. 5:80-3.4:

i. The housing sponsor shall submit to the Agency a written request for a determination of increased project value, and shall submit with its request payment for the new appraisal; and

ii. The project must not be in default in any of its obligations under the Agency's mortgage loan documents, must have fully funded escrows, and an operating reserve of three months of operating expenses (for senior citizen projects) or six months of operating

expenses (for family projects), as applicable, which includes debt service and reserve payments, and shall post the reserve prior to taking any increased return on equity. The operating expenses shall be calculated based on the most recent Agency-approved annual budget. The reserve shall remain at the Agency until the expiration of the original mortgage term. If the operating reserve is used, the value of the equity base prior to the recognized increase in value shall be reinstituted until the operating reserve is again fully funded. The determination of a fully-funded operating account after its initial establishment shall be based on the Agency-approved budget in effect at the then-current time.

2. Upon satisfaction of (c)1i and ii above, the Agency will order the appraisal. Upon receipt and approval of the new appraisal, the Agency may recognize an increase in project value and determine the new equity base as the new appraised value minus all existing debt on the project.

3. Any determination of an increase in investment shall be prospective only, which includes the year in which the housing sponsor applies.

(d) The housing sponsor shall be entitled to return on its investment at rates established in accordance with (e) or (f) below. It shall earn a return on any cash portion of its investment from the date it is actually contributed and on the non-cash portion of its investment from the date it is used toward approved project costs.

(e) For housing projects that receive a loan from the Agency under the New Jersey Urban Multi-family Production Program, the rate of return on investment may not exceed 12 percent.

(f) The Agency shall fix, at the time of the closing of the loan, the rate of return that may be earned or received by the housing sponsor on its investment on a cumulative but not compounded annual basis from the development, operation, sale, assignment or lease of the housing project according to the following schedule:

1. The Base Rate to be used in calculating the return on investment pursuant to (c)2 through 6 below shall be equal to the rate being paid on 30-year treasury bonds at the time of the mortgage closing. This Base Rate will be determined by the Agency in its sole discretion using any reasonable source of information;

2. For units occupied by individuals or families who at the time of occupancy have a household income that is less than 50 percent of the median income for the area in which the project is located, the annual rate of return on investment may not exceed the then applicable Base Rate plus six percent;

3. For units occupied by families or individuals who at the time of occupancy had a total household income of less than 80 percent of the median income for the area, the annual rate of return on investment may not exceed the Base Rate plus four percent;

4. For all other units financed by the Agency, the annual rate of return on investment may not exceed the Base Rate plus two percent;

5. For developments that have a mix of units serving populations with an assortment of income ranges, the Agency shall determine the limit on the rate of return that may be earned by the housing sponsor by pro-rating the rate of return based upon the number of units devoted to the various income levels;

6. If the Agency determines that as a result of restrictions on development costs, rents or other factors, that the actual amount of return on equity which can be paid in any year will be significantly below that allowed by the Agency pursuant to 2 through 5 above, the Agency may set a return on equity limit which may be paid or earned on an annual, cumulative but not compounded basis, not to exceed the base rate plus 10 percent.

(g) For assisted living residences (ALRs) that receive a loan from the Agency, the housing sponsor may receive a return on investment annually as follows:

1. The first 20 percent annual return on investment;

2. When an ALR realizes a greater than 20 percent annual return on investment in any given year, a special service subsidy fund shall be established and held by the Agency in which the next 10 percent or any part thereof above the first 20 percent return on investment shall be placed for the sole purpose of subsidizing rent and services to the low and/or moderate income residents of the ALR who may need assistance;

3. The housing sponsor may receive any and all annual return on investment that is greater than 30 percent for that calendar year in which it is earned.

Amended by R.1989 d.259, effective May 15, 1989.
See: 21 N.J.R. 94(a), 21 N.J.R. 1331(b).
Redesignated old (b) as (c) with no change in text and added new (b) regarding loans made under the New Jersey Urban Multi-Family Production Program.
Amended by R.1998 d.80, effective February 2, 1998.
See: 29 N.J.R. 3214(a), 30 N.J.R. 539(b).
Added (d).
Amended by R.2005 d.219, effective July 5, 2005.
See: 37 N.J.R. 970(a), 37 N.J.R. 2476(a).
Amended by R.2005 d.408, effective November 21, 2005.
See: 37 N.J.R. 2596(a), 37 N.J.R. 4400(b).
Section was "Housing projects on or after January 17, 1984"; rewrote the section.

Case Notes

Tax abatement did not violate constitutional profits and dividends limitation. Township of North Bergen v. City of Jersey City, 232 N.J.Super. 219, 556 A.2d 1255 (A.D.1989), certification denied 117 N.J. 632, 569 A.2d 1334.

5:80-3.4 Conditions required for distribution

(a) The following conditions must be met before a return on investment will be authorized by the Agency:

1. A final mortgage closing must be held, unless a waiver is granted in accordance with (b) below;

2. The project must be current in all financial obligations, including debt service, repair and replacement reserve and tax and insurance escrows. For purposes of this paragraph, project reserve accounts shall be considered current if they are funded to an acceptable level, as determined by the Agency, in accordance with the Agency's funding schedule;

3. Compliance with all repairs required by the Agency based upon the Agency's most recent physical inspection report;

4. All required reports and statements must be submitted by the housing sponsor;

5. Surplus cash must be available at the time of the request; and

6. The housing sponsor must use forms as required by the Agency when requesting a return on investment.

(b) The requirement of a final mortgage closing prior to receiving a return on investment may be waived by the Executive Director if it is determined that the closing is being delayed due to circumstances beyond the control of the housing sponsor (for example, construction litigation). In addition to the need for such a determination, in order to have such requirement waived, the housing sponsor must complete the following to the satisfaction of the Executive Director:

1. Submission of Development Cost Certification.

2. Submission of Bank Statements on the Construction Loan Account.

3. Execution of a Memorandum of Understanding setting forth agreement as to the final mortgage amount including any funds necessary for final construction payment and any additional development costs that are approved by the Agency; and agreement, if applicable, regarding a reduction in the original mortgage loan amount.

(c) In addition to the conditions listed in (a) above, the following conditions shall be met by assisted living residences (ALRs) before return on investment shall be approved by the Agency and disbursed to the housing sponsor:

1. The ALR shall have a sustaining occupancy for two full consecutive years; and

2. The operating reserve fund established pursuant to N.J.A.C. 5:80-1.4(c) 3 shall be fully funded with 75 days worth of operating expenses, including expenses of tenants' meals and basic services.

Amended by R.1998 d.80, effective February 2, 1998.
See: 29 N.J.R. 3214(a), 30 N.J.R. 539(b).
Added (c).
Amended by R.2000 d.132, effective March 20, 2000.

See: 32 N.J.R. 191(a), 32 N.J.R. 1065(a).
In (a), added the last sentence in 2, inserted a new 3, and recodified former 3 through 5 as 4 through 6.
Amended by R.2005 d.219, effective July 5, 2005.
See: 37 N.J.R. 970(a), 37 N.J.R. 2476(a).
Substituted "equity" for "investment" throughout.

5:80–3.5 Waiver

If the Agency grants any waiver pursuant to N.J.A.C. 5:80–19 which by its nature affects a rate of return established by this subchapter, then the Agency in granting such waiver will establish a revised rate of return for any affected project.

SUBCHAPTER 4. (RESERVED)

SUBCHAPTER 5. TRANSFER OF OWNERSHIP INTERESTS

5:80–5.1 Definitions

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

"Cash proceeds" means that portion of the purchase price paid by the buyer to the seller in cash equivalent acceptable to the Agency at closing or in successive years following the closing as determined by the Agency.

"Closing" means the date on which title or other interest in the housing project is transferred from seller to buyer.

"Conversion" means transfers involving sale of the housing project owned by a nonprofit corporation to an ownership entity having profit motivated status such as a limited partnership.

"Portfolio Reserve Account" means that fund established pursuant to N.J.A.C. 5:80–5.9(b) intended primarily for financial support for any housing project financed by the agency.

"Purchase price" means the cash proceeds plus secondary financing, if any, plus existing mortgage(s) assumed by the buyer.

"Secondary financing," both secured and unsecured, means any portion of the purchase price that is not paid in cash proceeds or by assuming an existing indebtedness. Secondary financing will be permitted as set forth in N.J.A.C. 5:80–5.7.

"Seller" means the existing mortgagor and owner of the housing project having a loan from the Agency.

Amended by R.1990 d.504, effective October 15, 1990.
See: 22 N.J.R. 1971(a), 22 N.J.R. 3220(a).
Definition for conversion amended; definitions for development costs, housing project, limited dividend corporation, net proceeds, resyndication and transaction cost deleted.
Amended by R.2005 d.219, effective July 5, 2005.
See: 37 N.J.R. 970(a), 37 N.J.R. 2476(a).
Deleted "Agency".

5:80–5.2 General policy

(a) To be effective, all proposed changes in ownership interests of an Agency-financed housing project must receive the prior review and written approval of the Executive Director.

(b) The prior specific review and approval of the Agency members is required if a proposed change involves a general partner, or shareholder with more than a 10 percent interest, or where the change involves a transfer of control of the housing sponsor.

(c) Changes in ownership processed under these rules shall not result in a modification of the statutory, regulatory or contractual requirements governing the housing sponsor and housing project except as may be provided in cases of prepayment pursuant to N.J.A.C. 5:80–5.10.

(d) The Agency is under no obligation to approve the transfer or resale, unless the proposed buyer has the financial sufficiency, organizational capabilities, background and previous housing experience that will help ensure that the buyer will be capable of operating the project.

(e) The approval of the Public Housing and Development Authority must be obtained where necessary pursuant to N.J.S.A. 55:16–1 et seq.

Amended by R.1990 d.504, effective October 15, 1990.
See: 22 N.J.R. 1971(a), 22 N.J.R. 3220(a).
Text at (b) amended to include shareholder and transfer of control exception added to (d); provision on general partner's withdrawal Federal subsidy contract deleted at (e) and (g).
Amended by R.1995 d.247, effective May 15, 1995.
See: 27 N.J.R. 265(a), 27 N.J.R. 1977(b).
Amended by R.2005 d.219, effective July 5, 2005.
See: 37 N.J.R. 970(a), 37 N.J.R. 2476(a).

5:80–5.3 Applicability

(a) The regulations in this subchapter are applicable in their entirety to all proposed changes to or transfers of ownership interests except the following:

1. Changes or transfers that are fully encompassed by the separate regulations involving nonprofit conversions (N.J.A.C. 5:80–6). The conversion regulation shall be applicable to transfers involving conversions unless the Agency determines that such treatment would jeopardize the viability of the housing project, in which case the Agency, in its discretion, may apply these regulations to such conversion. In the event, however, of any conflict or inconsistency between the provisions of these regulations

and N.J.A.C. 5:80–6 as it applies to such conversion, the provisions of N.J.A.C. 5:80–6 shall control;

2. Changes or transfers that represent the first sale of partnership or shareholder interests in order to provide syndication proceeds on nonprofit conversions, provided such sale occurs within nine months of the conversion closing;

3. Changes or transfers for projects that had profit motivated ownership status at initial mortgage closing and where such changes or transfers occur within three months of the Agency's recognition of completion of construction or rehabilitation of the project for projects receiving both construction and permanent financing or within three months following the mortgage closing for projects receiving permanent financing only;

4. In the case of proposed changes or transfers of ownership of assisted living residences (ALRs), if any provision(s) of this chapter are in conflict with any provision(s) of N.J.A.C. 8:36 the provision(s) of N.J.A.C. 8:36 shall govern.

(b) Changes or transfers that fall within (a)2 and 3 above shall be governed by the general policy as set forth in N.J.A.C. 5:80–5.2 as well as the required documents submission set forth in N.J.A.C. 5:80–5.6(a) for a modified review. In addition, the fee set forth at N.J.A.C. 5:80–5.9(a)3 shall apply except that in no event shall the fee be less than $1,000.

(c) The rules within this subchapter shall also be applicable to changes or transfers in ownership in cooperative or condominium projects financed by the Agency.

Amended by R.1985 d.241, effective May 20, 1985.
See: 17 N.J.R. 505(a), 17 N.J.R. 1258(b).
Old text deleted and new text substituted.
Amended by R.1990 d.504, effective October 15, 1990.
See: 22 N.J.R. 1971(a), 22 N.J.R. 3220(a).
Examples deleted from (a); exception at (a)3 clarified; lower limit of fee in (b) set at $1,000; (c) added.
Amended by R.1998 d.80, effective February 2, 1998.
See: 29 N.J.R. 3214(a), 30 N.J.R. 539(b).
In (a), added 4.
Amended by R.2005 d.219, effective July 5, 2005.
See: 37 N.J.R. 970(a), 37 N.J.R. 2476(a).

5:80–5.4 Procedure

(a) The seller must initially submit to the Executive Director a written request for approval of any proposed change in ownership. The request must contain a detailed description of the terms of sale or other ownership changes and a statement of the reasons for the proposed sale. The seller must also identify in detail and in a written report, the present physical, financial, management and tenant needs of the housing project. The Agency will review this report for completeness and accuracy, may require additional information or revisions to the report and may conduct its own review of the housing project's condition and operation.

(b) All essential parties within the seller's organization documents must approve the transfer or sale. An affidavit and opinion of the seller's legal counsel must be submitted to the Agency as proof of the legality of the transfer pursuant to the seller's Partnership Agreement or any other document and all applicable laws and regulations. An opinion of the buyer's legal counsel may also be requested by the Agency.

(c) In selecting the prospective buyer, the seller may solicit as many proposals as it deems necessary. Bidding is not required. The seller may negotiate among prospective buyers to obtain the best financial package/offer. Full and complete disclosure as to the nature and amount of the transaction must be made in writing to the Agency.

(d) As a condition of approving the transfer, the Agency will require that the housing project be restored to sound physical condition in accordance with the report submitted by the seller and the independent review by the Agency. Deferred maintenance must be corrected at the time of transfer unless otherwise approved by the Agency. Necessary repairs and capital improvements must be completed within a time frame acceptable to the Agency. A schedule for performing the work and a letter of credit or bond in the amount needed to complete the work must be provided to the Agency at closing.

(e) Cash contributions must be sufficient to fund both immediate and anticipated reserve needs. The mortgage and all fees and charges due the Agency must be current at the time of closing. All housing project reserve accounts must be funded to an acceptable level, as determined by the Agency, within 12 months from the date of transfer in accordance with the Agency's repair and replacement funding schedule.

(f) Contributions toward the purchase price from any sources other than cash proceeds must be identified.

(g) Upon assignment and assumption of the Agency's mortgage, modifications shall be made to the mortgage clearly specifying the Agency's right to enforce these regulations.

Amended by R.2005 d.219, effective July 5, 2005.
See: 37 N.J.R. 970(a), 37 N.J.R. 2476(a).

5:80–5.5 Scope of review

(a) The scope of the Agency's review of transfer depends on the nature of the interest to be transferred. A transfer of 90 percent or more of the ownership interest requires full review. Full review is also required in the following instances.

1. Transfer of title from the seller to any other party;

2. Any conveyance or attempted conveyance by land contract;

3. Transfer of 90 percent or more of the interest in the partnership/owner within a five year period;

4. A change in general partners or management control of the owner.

(b) In other cases, the Agency in its discretion may conduct a modified review.

5:80–5.6 Required documents

(a) Required documents for a modified review must be satisfactory to the Agency and include at least the following:

1. Administrative questionnaires for buyer;

2. Complete description as to the nature of the transition;

3. Copy of Partnership Certificate with proposed revisions;

4. Any other documents determined by the Agency to be necessary.

(b) The following additional documents may be required for full review:

1. Previous Participation Certificates (form 2530) for buyer;

2. Experience questionnaire for buyer;

3. Buyer's certified financial statements;

4. Legal opinion from seller's attorney and, if requested by the Agency, from buyer's attorney;

5. Appraisal of property;

6. Physical inspection report approved by the Agency;

7. Financial report on project operations approved by the Agency.

Amended by R.1985 d.241, effective May 20, 1985.
See: 17 N.J.R. 505(a), 17 N.J.R. 1258(b).
Section substantially amended.
Amended by R.2005 d.219, effective July 5, 2005.
See: 37 N.J.R. 970(a), 37 N.J.R. 2476(a).
In (b), substituted "from" for "for" in 4.

5:80–5.7 Secondary financing

(a) Secondary financing, representing a portion of the purchase price may be permitted by the Agency. However, the following limitations exist where secondary financing is an element of the transaction:

1. The Agency will review and may restrict all secondary financing particularly where the secondary financing is secured by a lien on the project;

2. Repayment of secondary financing cannot be taken into consideration in determining the rents to be charged tenants;

3. The second mortgage, security agreement, or any other debt instrument must be subordinate to any existing mortgage of the agency;

4. In the event of a declaration of default on any existing mortgage held by the Agency, the secondary financing debt and all rights thereunder to rent or any other project income or assets shall be assigned to the Agency.

5:80–5.8 Return on equity

(a) The buyer shall assume the same rate of return on equity that the seller had. The buyer's equity in the housing project shall be determined in accordance with N.J.A.C. 5:80–3.3(a).

(b) The seller shall be limited to a cumulative, but not compounded, return on its equity, from project operations or sale, at the rate of return as determined by N.J.A.C. 5:80–3 and set forth in the mortgage and other contractual documents between the seller and Agency.

1. Upon sale or other disposition of the project or any interest therein, the seller shall be entitled to a return of its equity in the project and any accrued but undistributed return on its equity. Such return shall be conditioned upon the Agency's mortgage and any other supplemental project financing from the Agency or other governmental agency or department being assumed by the buyer, and further conditioned upon the making of any required project repairs or improvements, pursuant to N.J.A.C. 5:80–5.4(d), and the payment of all amounts due the Agency and the funding of reserves pursuant to N.J.A.C. 5:80–5.4(e). The seller shall not be entitled to or paid any return until such conditions have been met. The seller's equity in the project shall be determined in accordance with N.J.A.C. 5:80–3.3(a).

2. Upon sale or other disposition of the project or any interest therein, the seller is not entitled to and may not retain or be paid any more than its equity in the project plus any accrued but undistributed return on its equity. Any amounts realized in excess of the aforementioned amounts less the total of the amounts listed below shall be paid into the Multi-family Rental Investment Program:

i. Any amount of the purchase price that is paid or escrowed in an Agency controlled account for repairs or improvements pursuant to N.J.A.C. 5:80–5.4(d);

ii. Any amounts paid to fund reserves pursuant to N.J.A.C. 5:80–5.4(e); and

iii. Any mortgages or other supplemental financing from the Agency or other governmental agency or department that are paid or assumed upon transfer.

3. Funds paid into the Multi-family Rental Investment Program shall be used as provided therein or in the case of a housing sponsor organized under N.J.S.A. 55:16–1 et seq., such excess shall be distributed pursuant to said Act.

The funds deposited into this program shall be used for the purpose of providing loans to rental projects meeting low and moderate income needs.

4. In cases where the sale or other disposition of the project includes a permitted prepayment of the Agency mortgage, return on equity shall be governed by the provisions of N.J.A.C. 5:80–5.10(b).

Amended by R.1990 d.504, effective October 15, 1990.
See: 22 N.J.R. 1971(a), 22 N.J.R. 3220(a).
References to rate of return on equity amended to conform to applicable statutes, in accordance with New Jersey Supreme Court holding in *Lower Main Street Associates v. New Jersey Housing and Mortgage Financing Agency,* 114 *N.J.* 226 (1989).
Amended by R.1995 d.247, effective May 15, 1995.
See: 27 N.J.R. 265(a), 27 N.J.R. 1977(b).
Amended by R.2005 d.219, effective July 5, 2005.
See: 37 N.J.R. 970(a), 37 N.J.R. 2476(a).

5:80–5.9 Required payment and repayments

(a) At closing, the following payments and repayments are required:

1. The buyer shall pay to the Portfolio Reserve Account a sum amounting to 3.25 percent of the purchase price.

2. The buyer shall submit with its request for review, a non-refundable fee of $5,000 which will be applied at closing toward any payment or repayments due.

3. The seller shall pay to the Agency, as a processing fee, an amount as determined by the Agency, to reimburse the Agency for its administrative cost in processing the seller's request to transfer ownership of the project or any interest therein.

4. Any outstanding supplemental financing must be paid at closing, unless the Agency determines the financial viability of the project is not jeopardized by the continuation of such supplemental financing and the buyer assumes all supplemental financing.

(b) The Portfolio Reserve Account is a fund established by the Agency to provide support for any project financed by the Agency that is in need of financial assistance. The Portfolio Reserve Account, and any interest or investment income earned thereon, may be used, at the Agency's discretion, to fund debt service arrears and other operating deficits, capital improvements, and repairs of any project that cannot fund these items from normal project income. The Portfolio Reserve Account will enable the Agency to assist projects in maintaining physical and fiscal viability so as to preserve the housing units at rents that are affordable to low- and moderate-income families. Eligibility for assistance from the Portfolio Reserve Account shall be subject to the terms and conditions as determined by the Agency.

Amended by R.1990 d.504, effective October 15, 1990.
See: 22 N.J.R. 1971(a), 22 N.J.R. 3220(a).
References to fees amended to conform to applicable statutes, in accordance with New Jersey Supreme Court holding in *Lower Main Street Associates v. New Jersey Housing and Mortgage Financing Agency,* 114 *N.J.* 226 (1989); contribution to Portfolio Reserve Account required in (b).
Amended by R.2005 d.219, effective July 5, 2005.
See: 37 N.J.R. 970(a), 37 N.J.R. 2476(a).

Case Notes

Regulation limiting profits on project financed by state Housing and Mortgage Finance Agency was invalid. Lower Main Street Associates v. New Jersey Housing and Mortg. Finance Agency, 114 N.J. 226, 553 A.2d 798 (1989).

Regulation imposing fees on sellers was invalid. Lower Main Street Associates v. New Jersey Housing and Mortg. Finance Agency, 114 N.J. 226, 553 A.2d 798 (1989).

Prepayment regulations do not violate the terms of the N.J. Housing and Mortgage Finance Agency, are statutorily authorized, and do not violate plaintiff's constitutional rights; regulation imposing closing fees is unreasonable and thus invalid. Lower Main Street Assoc. v. N.J. Housing and Mortgage Finance Agency, 219 N.J.Super. 263, 530 A.2d 324 (App.Div.1987) affirmed in part, reversed in part 114 N.J. 226, 553 A.2d 798.

5:80–5.10 Prepayment

(a) Prepayment of the mortgage loan made by the Agency is prohibited, except as permitted in (b) below.

(b) Prepayment of the Agency mortgage loan will be permitted, with the prior written approval of the Agency, provided all of the following conditions are met:

1. Sponsors of projects may prepay the mortgage at any time following the 20–year period following the date of the mortgage closing. However, any such prepayment shall be conditioned upon the housing sponsor's agreement that: the Agency policies on tax, insurance and repair and replacement reserves; the provisions of N.J.S.A. 55:14K–7b; and the statutory provisions at N.J.S.A. 55:14K–1 et seq. and the corresponding rules under this chapter regarding tenant income eligibility, tenant selection, rent increases, certification/recertification of income, affirmative fair housing marketing, and transfer of ownership interests shall continue to be applicable in their entirety to the sponsor, project and tenants residing therein until the original expiration date of the original mortgage loan. Such prepayment shall also be conditioned upon the agreement of the sponsor to pay the servicing fees and charges currently being paid by the sponsor under the mortgage documents, through the remainder of the original mortgage term, in order to cover the administrative costs of the Agency in monitoring the statutory and regulatory controls that will continue to apply to the project. The Agency may require housing sponsors to execute a deed restriction or other appropriate agreement upon prepayment whereby the sponsor acknowledges the continuing statutory and regulatory control of the Agency and its obligation to pay fees and charges determined by the Agency.

2. Any repairs or improvements pursuant to N.J.A.C. 5:80–5.4(d) must be made prior to prepayment or an amount sufficient to fund such repairs or improvements must be paid into an Agency controlled escrow account upon prepayment.

3. All fees and charges due the Agency must be paid prior to prepayment.

4. All supplemental financing on the project provided by the Agency or other State agency must be prepaid, unless prohibited by the terms of that supplemental financing or by (c) below or any other applicable law or regulation.

5. After prepayment, in implementing the provisions of N.J.S.A. 55:14K–7b, the Agency will initially require the following:

i. Submission of an annual budget;

ii. Submission of annual audited financial statements;

iii. Annual physical inspections conducted by the Agency.

6. The Agency reserves the right to implement any of the additional provisions of N.J.S.A. 55:14K–7b, if determined by the Agency to be needed to preserve the financial viability of the project or its status as a low-and moderate-income project, to maintain the physical condition of the project or to help ensure the safety and well-being of the tenants residing at the project.

7. After prepayment, return on equity rules at N.J.A.C. 5:80–3 shall continue until the expiration of the original mortgage term or until the owner funds an operating reserve account, whichever is sooner. Upon funding of an operating reserve account, return on equity rules shall terminate. The operating reserve shall be equal to three months of operating expenses (for senior citizen projects) or six months of operating expenses (for family projects), which includes debt service and reserve payments. The three/six months of operating expenses shall be calculated based on the Agency-approved annual budget. Once established, interest earned on a fully-funded operating reserve account may be withdrawn by the owner upon written request to and verification by the Agency that the account is fully-funded. If the operating reserve is thereafter used, return on equity rules shall be reinstituted until the operating reserve is again fully-funded. The determination of a fully-funded operating account after its initial establishment shall be based on the Agency-approved budget in effect at the time the project first established the operating reserve account.

(c) Notwithstanding (b) above, prepayment shall not be approved or permitted in cases that would:

1. Cause the Agency to be in default under its obligations to the bondholders of the bonds issued to finance the project;

2. Jeopardize the continuing tax exempt status of the bonds; or

3. Reduce or terminate subsidies to the project such as HUD Section 8 or Section 236, unless a reduction or termination is imposed by HUD or other issuing authority and results in a renewal of the subsidy to the project that will be sufficient to maintain the financial viability of the project through the end of the original mortgage term.

(d) Upon prepayment of the Agency mortgage as provided in (b) above, the Agency will endorse the mortgage for cancellation so the Sponsor may cancel it of record. In addition, upon prepayment, the statutory and regulatory controls of the Agency at N.J.S.A. 55:14K–1 et seq. and this chapter shall terminate for the Housing Sponsor and project, except for those preserved by (b)1 above. The termination of the Agency's statutory and regulatory controls shall not affect the requirements, restrictions and obligations of Housing Sponsors as mandated by N.J.S.A. 55:16–1 et seq. or any other applicable statute under which the corporate entity of the Housing Sponsor was created.

(e) The provisions of this section regarding prepayment shall not apply to projects financed under the Agency's New Jersey Urban Multi–Family Production Program (JUMPP).

(f) The provisions of this section that impose conditions on prepayment regarding Agency policies on the insurance and repair and replacement reserves, the provisions of N.J.S.A. 55:14K–7b, and the regulations on transfer of ownership interests and return on equity shall not be applicable to projects financed between October 15, 1990 and January 17, 1995.

Amended by R.1990 d.504, effective October 15, 1990.
See: 22 N.J.R. 1971(a), 22 N.J.R. 3220(a).
Exceptions to prepayment prohibition added, in accordance with New Jersey Supreme Court holding in *Lower Main Street Associates v. New Jersey Housing and Mortgage Finance Agency,* 114 *N.J.* 226 (1989).
Amended by R.1995 d.20, effective January 17, 1995.
See: 26 N.J.R. 1187(a), 27 N.J.R. 321(b).
Amended by R.1995 d.247, effective May 15, 1995.
See: 27 N.J.R. 265(a), 27 N.J.R. 1977(b).
Amended by R.2003 d.88, effective March 3, 2003.
See: 34 N.J.R. 3415(a), 35 N.J.R. 1267(b).
In (c), rewrote 3.
Amended by R.2005 d.197, effective June 20, 2005.
See: 37 N.J.R. 569(a), 37 N.J.R. 2203(a).
In (b), rewrote 4; in (c), substituted "that" for "which" following "permitted in cases" in the introductory paragraph; in (f), substituted "that" for "which" preceding "impose conditions on prepayment".
Amended by R.2005 d.219, effective July 5, 2005.
See: 37 N.J.R. 970(a), 37 N.J.R. 2476(a).

Case Notes

Regulation preventing prepayment of mortgage loans without agency approval was invalid. Lower Main Street Associates v. New Jersey Housing and Mortg. Finance Agency, 114 N.J. 226, 553 A.2d 798 (1989).

Prepayment regulations do not violate the terms of the N.J. Housing and Mortgage Finance Agency, are statutorily authorized, and do not violate plaintiff's constitutional rights; regulation imposing closing fees is unreasonable and thus invalid. Lower Main Street Assoc. v. N.J.

Housing and Mortgage Finance Agency, 219 N.J.Super. 263 (App.Div. 1987), affirmed in part, reversed in part 114 N.J. 226, 553 A.2d 798.

5:80–5.11 Approval and disclosure requirements

(a) The Agency specifically reserves the right to investigate and disapprove any prospective buyer or any other party involved in the transaction including without limitation all limited and general partners, attorneys, syndicators, brokers or consultants, as well as any partners or shareholders thereof. Prior to its approval, the Agency may require any party to disclose such information as may be reasonably related to the transaction and may require any party to sign such waivers, releases or affidavits as may be necessary to authenticate or investigate the information requested.

(b) All reviews, inspections, reports and other determinations received pursuant to these regulations shall be subject to final review, approval and determination by the Agency.

SUBCHAPTER 6. SALE OF PROJECTS OWNED BY NONPROFIT CORPORATIONS TO LIMITED PARTNERSHIPS

5:80–6.1 Definitions

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

"Cash proceeds" means that portion of the purchase price paid by the partnership to the nonprofit in cash at closing or in successive years following the closing.

"Closing" means the final steps of the procedure by which title to a project is transferred from the nonprofit to the partnership.

"Commitment Letter" means the initial proposal or letter of intention submitted by the prospective purchaser of a project, which outlines the parameters of the transaction and the offer.

"Community Development Escrow" (CDE) means that fund established pursuant to N.J.A.C. 5:80–6.5(a)2 or 5:80–6.6(b)4 primarily for use in assisting community improvements or services related to the development.

"Conversion" means the overall transaction in which ownership is transferred from the nonprofit to a partnership.

"Development Cost Escrow" (DCE) means that fund established pursuant to N.J.A.C. 5:80–6.2(e) or 6.5(a)1 intended primarily for use in improving or supporting the project itself.

"Gross syndication proceeds" means the sum of all capital contributions.

"Multi–Family Rental Investment Program" means the program funded through the use of Agency administrative funds and through payments as provided by N.J.A.C. 5:80–6.4 for the purpose of providing loans to rental projects meeting low and moderate income housing needs.

"Net proceeds" means the gross syndication proceeds less the costs of the syndication. The net proceeds include all payments made to or on behalf of the nonprofit and may include interest due on deferred payments. The net proceeds may not be used for any purpose other than to pay transaction costs or to fund the DCE or CDE unless otherwise expressly authorized by the Agency. Net proceeds does not include secondary financing granted on the sale from the nonprofit to the partnership.

"Nonprofit" means the nonprofit owner of a project that is conveying its interest in the project and assigning its Agency mortgage on the premises to the partnership.

"Operating deficits" means all obligations, to the extent such obligations have not been or will not be paid in full out of operating income, arising out of the management and operation of the project, including without limitation:

1. Reserves, escrows or fees required by the Agency or by law;

2. Taxes or payments in lieu of taxes;

3. Utility bills;

4. Legal, accounting and other professional fees incurred by the partnership which have received prior approval by the Agency;

5. Insurance premiums; and

6. Judgments or settlements approved by the Agency.

"Original Mortgage Amount" means the amount of the loan which was made to the nonprofit or its predecessors by the Agency for development costs and was financed by bonds issued by the Agency.

"Partnership" means the limited partnership, which qualifies as a limited dividend housing association pursuant to N.J.S.A. 55:16–1 et seq., repealed by P.L.1991, c.431, § 20, which takes title to the project from the nonprofit.

"Portfolio Reserve Account" (PRA) means that fund established by the Agency for the primary purpose of funding debt service arrearages and other operating deficits or capital improvements of any project financed by the Agency that cannot fund these items from normal project income. Funds deposited in the PRA and the investment income earned thereon will be available for use by the Agency for the aforesaid purposes.

"Project Subsidy Reserve Fund" (PSR) means that fund established pursuant to N.J.A.C. 5:80–6.2(e) or 6.6(b) intended primarily for maintaining the operative viability of Section 236 projects.

"Purchase price" means the total amount of capital pledged to the nonprofit sponsor including cash proceeds and secondary financing.

"Stated equity" means an amount equal to 10 percent of the revised total development cost determined by the Agency pursuant to N.J.A.C. 5:80–6.3.

"Surplus cash" means funds, including funds in the DCE and CDE accounts, available after payment of equity distributions, project expenses and operating deficits, including the full funding of all required reserve accounts and proposed capital improvements, plus:

1. Two to six months of the annual budgeted project expense for senior citizen projects; or

2. Four to 12 months of the annual budgeted project expense for family projects.

"Syndication" means the admission of limited partners to a partnership through the sale of partnership interests.

"Transaction costs" means those costs related directly to the sale of the project which are paid by or on behalf of the nonprofit. All transaction costs must be approved by the Agency and include, with limitation, required fees and payments specified in N.J.A.C. 5:80–6.4 as well as professional fees of the nonprofit and title insurance.

Amended by R.1985 d.241, effective May 20, 1985.
See: 17 N.J.R. 505(a), 17 N.J.R. 1258(b).
Added definition "Commitment Letter".
Amended by R.1989 d.524, effective October 2, 1989.
See: 21 N.J.R. 1509(b), 21 N.J.R. 3090(a).
Added new definitions: "Multi–Family Rental Investment Program" and "Surplus cash."
Revised "Portfolio Reserve Account" definition by specifying the purpose of PRA fund. Added new language: "for the primary ... aforesaid purposes."
Amended by R.2005 d.219, effective July 5, 2005.
See: 37 N.J.R. 970(a), 37 N.J.R. 2476(a).
Rewrote the section.

5:80–6.2 Procedures

(a) The sale of a nonprofit-sponsored project to a limited partnership is a complex transaction and involves substantial sums of money. Accordingly, the procedures in this section governing the transaction are intended to insure the integrity of the process and the protection of the nonprofit.

(b) The nonprofit may obtain such legal, financial and other professional services as are necessary to investigate, process and complete the transaction. The scope of all services and compensation for same must be approved by the Agency in advance. The amounts which can be paid for all such professional services may not exceed limits and hourly rates established from time to time by the Agency. If for any reason the conversion is not completed and approved services have been provided to the nonprofit, then the Agency may, if requested by the nonprofit, approve payment for professional services out of other assets of the nonprofit including operating income.

(c) No member of the nonprofit, its employees or professional advisors shall receive any fees in conjunction with the transaction other than those disclosed to and approved by the Agency. The president of the nonprofit, its attorney, the purchaser and the purchaser's attorney shall all provide affidavits at closing stating that to the best of their knowledge, no fees or payments have been made or will be made to any member of the nonprofit corporation, its employees or professional advisors other than those approved by the Agency.

(d) Since the nonprofit may become a partner with the purchaser of the development, the selection of same will be primarily in the hands of the nonprofit. However, the following procedures must be incorporated into the selection process:

1. While public bidding procedures are not required, equal information and opportunity must be provided to all potential purchasers.

2. Initial proposals must be solicited from as many interested parties as possible including all those on a list of interested parties maintained by the Agency.

3. All responses to proposals must be made in writing and should be submitted in a sealed envelope directly to a specific designee of the nonprofit on or prior to a certain date. No proposals shall be opened prior to the specified time and after the time set for submission of proposals, no new proposals should be accepted.

4. Upon opening the proposals, the nonprofit's designee shall immediately forward copies of all proposals to the Agency.

5. The nonprofit shall evaluate the proposals taking into account the initial purchase price offered; the amount of secondary financing involved in the transaction; the residual value to be returned to the nonprofit, if any; management support and control; and a variety of other business considerations. In evaluating all financial considerations, present value calculations should be included.

6. Upon the determination by the nonprofit as to choice of purchaser, it should submit a recommendation to the Agency along with a full report on the reasons behind the decision and an affidavit as to compliance with the procedures described in this section. As mortgagee, final approval of the transaction shall rest with the Agency.

(e) Within 21 days of the Agency's approval of the proposed sale of the project, the prospective purchaser shall

deliver to the Agency security, in the form of cash, bond or letter of credit, in an amount equal to five percent of the cash proceeds. This security will be held by the Agency until the purchaser has fulfilled its obligations under the Commitment Letter, subject to terms and conditions approved by the Agency. If the purchaser does not fulfill its obligations in accordance with the Commitment Letter as approved by the Agency within six months of the approval, then the security funds shall be deposited by the Agency into a Project Subsidy Reserve or Development Cost Escrow established in the name of the nonprofit. If the proposed purchaser demonstrates its willingness and ability to perform its obligations in accordance with the Commitment Letter and the transaction is not completed within six months of the Agency's approval, the security shall be returned to the proposed purchaser except for an amount not to exceed $15,000 to reimburse the nonprofit for its actual costs incurred in the attempted conversion.

(f) At closing, the purchaser must provide cash or letter of credit in an amount equal to 30 percent of the cash proceeds. The difference between the amount provided at closing and the stated equity amount must be funded at closing with cash or equivalents acceptable to the Agency.

(g) At closing, the purchaser shall deposit with the Agency a deed transferring title in the property back to the nonprofit. This deed will be held in escrow by the Agency subject to an agreement which authorizes the Agency to record the deed if the purchaser fails to pay any installment of the cash proceeds within 120 days of the date due.

Amended by R.1985 d.241, effective May 20, 1985.
See: 17 N.J.R. 505(a), 17 N.J.R. 1258(b).
Deleted "purchase agreement" and substituted "Commitment Letter".
Amended by R.2005 d.219, effective July 5, 2005.
See: 37 N.J.R. 970(a), 37 N.J.R. 2476(a).
In (a), substituted "project" for "development".

5:80–6.3 Determination of total development cost

Prior to granting its approval of the sale of the project, the Agency will make a determination as to the total development cost of the project. The total development cost shall include the original mortgage loan amount and may include any supplemental financing provided by the Agency or the State and any additional funds to be paid out of the net proceeds which the Agency has determined to be reasonable and necessary for the development or financial viability of the housing project.

Amended by R.2005 d.219, effective July 5, 2005.
See: 37 N.J.R. 970(a), 37 N.J.R. 2476(a).

5:80–6.4 Required fees and repayments

(a) The following fees and repayments shall generally apply to all sales. However, where the nonprofit can demonstrate that the payment of such fees would be detrimental to the viability of the project these provisions may be waived, adjusted or deferred.

1. At closing, the nonprofit shall pay to the Agency a processing fee of one-half of one percent of the cash proceeds including cash, existing indebtedness assumed and secondary financing.

2. At closing, the nonprofit will pay to the Agency for return to the Revolving Housing Development and Demonstration Grant Fund established under section 5 of the Department of Community Affairs Demonstration Grant Law of 1967, N.J.S.A. 52:27D–63, interest on any seed money originally loaned to the nonprofit. Such interest shall be calculated at a rate of one percent above the prime interest rate as reasonably determined by the Agency for each given year on the amount of outstanding principal from the date on which any disbursement is made until the time of repayment.

3. At closing, for projects subsidized under Section 236 the nonprofit shall pay 10 percent of the cash proceeds received and for projects subsidized under Section 8 the nonprofit shall pay 15 percent of the cash proceeds received into the Portfolio Reserve Account established by the Agency. Funds deposited in the Portfolio Reserve Account and the investment income earned on those funds will be used by the Agency to fund debt service arrearages, operating deficits or essential capital improvements of any project financed by the Agency that cannot fund these items from normal project income.

4. Any supplemental mortgages or advances made by the Agency to the nonprofit shall be repaid at closing.

5. There shall be paid from the interest income on the escrow accounts a yearly administrative fee to the Agency of $3,500 per project, which shall be assessed proportionately against the respective accounts for the project to the extent available.

6. In determining whether required fees and payments pursuant to this section are to be waived, adjusted or deferred or in determining the amount of funds which may be allocated to a CDE on Section 236 projects, the Agency will consider the factors set forth in (a)6i through iv below. Accordingly, the nonprofit shall submit detailed information on the following matters:

i. Operating revenue and expense projections for five years;

ii. The rents expected to be charged at the development assuming reasonable annual increases for five years;

iii. The rents charged and expected to be charged at comparable developments; and

iv. The effect of the requested action on (a)6i and ii above.

Amended by R.2005 d.219, effective July 5, 2005.
See: 37 N.J.R. 970(a), 37 N.J.R. 2476(a).
In (a), rewrote the first sentence in 2 and substituted "of" for "on" following "effect" in 6iv.

5:80–6.5 Use of funds with regard to projects subsidized under Section 8

(a) While the primary reason for permitting the sale and syndication of Section 8 projects is to insure financial viability of the project, a large portion of the proceeds will be available to the nonprofit to finance community activities. Accordingly, after payment of the amounts required under N.J.A.C. 5:80–6.4, the proceeds of the transaction shall be disbursed in the following manner:

1. There shall be deposited into a Development Cost Escrow (DCE) for the project those funds remaining after transaction costs are deducted from 60 percent of the cash proceeds or the stated equity amount, whichever is greater. With the approval of the Agency, the DCE shall be used to fund debt service arrearages and other operating deficits at the project, including appropriate funding of required reserve accounts as determined by the Agency and for such other purposes as may be approved by the Agency as will improve the financial viability or physical structure of the project or increase tenant safety and comfort.

2. The balance of the cash proceeds shall be deposited into a Community Development Escrow (CDE) in the name of the nonprofit. With the approval of the Agency these funds may be utilized by the nonprofit for any use permitted under (a)1 above or to increase amenities of the project; reduce maintenance and replacement costs of the project; provide or assist desirable social services benefiting the residents of the project or the community in which it is located; and finance various community development activities.

Amended by R.1989 d.524, effective October 2, 1989.
See: 21 N.J.R. 1509(b), 21 N.J.R. 3090(a).
Changed text to "project" from "development" throughout.
In (a)1: added "including . . . determined by the Agency."
Amended by R.2005 d.219, effective July 5, 2005.
See: 37 N.J.R. 970(a), 37 N.J.R. 2476(a).

5:80–6.6 Use of funds with regard to projects subsidized under Section 236 Interest Reduction Program

(a) These regulations recognize the essential difference between the Section 236 and Section 8 Programs. In projects subsidized through interest reductions, tenants must bear the full responsibility for all other operating costs. Accordingly, after payments required by N.J.A.C. 5:80–6.4, all proceeds of the sale of the project will be primarily pledged to easing the burden on the tenants by subsidizing repair and maintenance or operating costs. If, however, the nonprofit can demonstrate that the project is in sound physical and financial condition and will likely remain so for the foreseeable future, a portion of the proceeds or investment income on the proceeds may be deposited into a CDE.

(b) All cash proceeds received on the sale of a project subsidized under Section 236 shall, after payment of the amounts required under N.J.A.C. 5:80–6.4, be deposited into a Project Subsidy Reserve (PSR). The income and principal of the PSR may be utilized in the following manner:

1. First to pay any existing operating deficits, including debt service arrearages of the project;

2. To fund any capital improvements or repairs that are required for the viable operation of the project and cannot be funded out of other reserves at the project;

3. To provide an additional source of operating revenue to assist in financing the normal operations of the project, including debt service, so that future rent increases can be moderated or so that rents may be maintained, to the extent feasible, at a level that is appropriate to the tenant population for which the development is intended;

4. After the nonprofit has demonstrated, based on information required under N.J.A.C. 5:80–6.4(a)6, that the funds in the PSR are not required for any of the purposes listed in (b)1–3 above and will not be required for the foreseeable future, it may request that a portion of these funds or the investment income on these funds be deposited into a CDE as described in N.J.A.C. 5:80–6.5.

Amended by R.1989 d.524, effective October 2, 1989.
See: 21 N.J.R. 1509(b), 21 N.J.R. 3090(a).
In (b): deleted "of the fees" in regard to payments.
Amended by R.2005 d.219, effective July 5, 2005.
See: 37 N.J.R. 970(a), 37 N.J.R. 2476(a).
In (b), inserted "of the amounts" following "after payment" and substituted "of" for "on" in the introductory paragraph; substituted "project" for "development" throughout.

5:80–6.7 Investment income earned on the PSR, DCE and CDE

(a) After the payment of the fee specified in N.J.A.C. 5:80–6.4(a)5, the investment income earned on the DCE and CDE may be used:

1. To fund current operating deficits and/or arrearages including debt service arrearages of the project;

2. To pay the partners a return on equity to the extent allowed by law and to the extent not paid from operating revenues of the project, but only if there are no operating deficits or arrearages at the project;

3. In accordance with the designated uses of the accounts or for other purposes requested by the nonprofit and approved by the Agency.

(b) After funding the uses described in N.J.A.C. 5:80–6.6(b)1–3 and the required fee specified in N.J.A.C. 5:80–6.4(a)5, the investment income on the PSR may be utilized in the manner set forth in (a) above.

Amended by R.2005 d.219, effective July 5, 2005.
See: 37 N.J.R. 970(a), 37 N.J.R. 2476(a).
Substituted "project" for "development" throughout.

5:80–6.8 Use of DCE and CDE for development of housing

(a) In addition to uses permitted under N.J.A.C. 5:80–6.5, 6.6, and 6.7, housing sponsors, or the authorized entity

within the housing sponsor's organizational structure with financial control over the DCE/CDE accounts, may, with Agency approval, use DCE and CDE funds, and interest thereon, for the development, operation, maintenance, construction, rehabilitation or improvement of or investment in additional housing within the community or in other communities. DCE and CDE funds may only be used for such purposes if the Agency determines that DCE and CDE funds are not needed to insure the financial viability or physical structure of the project. This includes, but is not limited to, a finding by the Agency that the project has surplus cash and that DCE and CDE funds are not needed for providing an additional source of operating revenue to assist in financing any other aspect of the current or future operations of the project.

(b) Housing sponsors, or the authorized entity within the housing sponsor's organizational structure with financial control over the DCE/CDE accounts, may use DCE and CDE funds as specified in (a) above or may deposit DCE and CDE funds with the Agency to be used by the Agency or by the Agency in conjunction with other developers for the purposes and under the conditions outlined in (a) above.

New Rule, R.1989 d.524, effective October 2, 1989.
See: 21 N.J.R. 1509(b), 21 N.J.R. 3090(a).
Renumbered 5:80–6.8, "Additional terms of purchase," to 6.9.
Amended by R.2000 d.132, effective March 20, 2000.
See: 32 N.J.R. 191(a), 32 N.J.R. 1065(a).

5:80–6.9 Additional terms of purchase

(a) The terms and conditions between the selling nonprofit and the purchasing partnership may vary from transaction to transaction. However, the following matters should be considered:

1. The role of the nonprofit in the purchasing partnership must be determined based on the past performance record of the nonprofit and the extent to which it desires to remain actively involved in the project;

2. Deferred purchase payments in the form of a debt owed by the purchaser to the nonprofit will only be permitted to the extent allowable under applicable bond resolutions and shall incorporate at least the following provisions:

i. The second mortgage, security agreement, or any other debt instrument must be subordinate to any existing mortgage of the Agency; and

ii. In the event of a declaration of default on any existing mortgage of the Agency, the debt and all rights thereunder to rent or any other project income or assets shall be assigned to the Agency;

3. Upon sale or refinancing of the project, or upon termination of the mortgage other than by default, any remaining assets of the project may be shared among the nonprofit, other partners, the Agency and the municipality or municipalities in which the project is situated to the extent allowed by law.

Renumbered from 5:80–6.8 by R.1989 d.524, effective October 2, 1989.
See: 21 N.J.R. 1509(b), 21 N.J.R. 3090(a).
Amended by R.2005 d.219, effective July 5, 2005.
See: 37 N.J.R. 970(a), 37 N.J.R. 2476(a).
In (a), inserted "or municipalities in which the project is situated" preceding "to the extent allowed by law."; and substituted "project" for "development" throughout.

5:80–6.10 Tax obligations

(a) The partnership shall be responsible for all tax consequences arising out of the sale of the project.

(b) All existing contractors shall be notified of the sale and of the fact that they shall be responsible for the payment of all New Jersey sales tax and other taxes arising out of the loss of nonprofit status by the owner from the date of closing forward.

Renumbered from 5:80–6.9 by R.1989 d.524, effective October 2, 1989.
See: 21 N.J.R. 1509(b), 21 N.J.R. 3090(a).
Amended by R.2005 d.219, effective July 5, 2005.
See: 37 N.J.R. 970(a), 37 N.J.R. 2476(a).
In (a), substituted "project" for "profit".

5:80–6.11 Approval and disclosure requirements

The Agency specifically reserves the right to investigate and approve any party involved in the transaction including without limitation all limited and general partners, attorneys, syndicators, brokers or consultants, as well as any partners or shareholders thereof. Prior to its approval the Agency may require any party to disclose such information as may be reasonably related to the transaction and may require any party to sign such waivers, releases or affidavits as may be necessary to authenticate or investigate the information requested.

Renumbered from 5:80–6.10 by R.1989 d.524, effective October 2, 1989.
See: 21 N.J.R. 1509(b), 21 N.J.R. 3090(a).

5:80–6.12 Requests for use of escrow funds

All requests for the use of escrow funds or the investment income earned thereon must receive written approval by the Agency in accordance with procedures adopted from time to time by the Agency.

Renumbered from 5:80–6.11 by R.1989 d.524, effective October 2, 1989.
See: 21 N.J.R. 1509(b), 21 N.J.R. 3090(a).
Amended by R.2005 d.219, effective July 5, 2005.
See: 37 N.J.R. 970(a), 37 N.J.R. 2476(a).
Substituted "requests for the use" for "use" preceding "of escrow funds".

5:80–6.13 (Reserved)

Repealed by R.1985 d.241, effective May 20, 1985.
See: 17 N.J.R. 505(a), 17 N.J.R. 1258(b).
Renumbered from 5:80–6.12 by R.1989 d.524, effective October 2, 1989.
See: 21 N.J.R. 1509(b), 21 N.J.R. 3090(a).

SUBCHAPTER 7. TENANT SELECTION STANDARDS

5:80–7.1 Definitions

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

"Affirmative Fair Housing Marketing Plan" is a plan to attract those people who would least likely apply for residence.

"Disabled person" means a person who has a disability as defined in section 223(d) of the Social Security Act, 42 U.S.C. § 423(d), or a person who has a "developmental disability" as defined at 42 U.S.C. § 6001(8).

"Displaced person" means a person or family who has been displaced by governmental action or whose dwelling has been extensively damaged or destroyed as a result of a disaster declared or otherwise formally recognized pursuant to Federal disaster relief laws.

"Elderly family" is one in which the head of household, spouse or sole member is 62 years of age or older, handicapped or disabled.

"Family" is two or more persons sharing residency and related by blood, marriage or operation of law, or who demonstrate a stable relationship which has existed over a period of time.

"Handicapped" is a person having a physical or mental impairment which is expected to be of long continued and indefinite duration and which substantially impedes his or her ability to live independently and which is of such a nature that such ability could be improved by more suitable housing conditions.

"Household" is one or more persons which share or will share a residence.

"Housing needs" is circumstances beyond the control of a family which are not one of the priorities set forth such as substandard housing, overcrowding, living with family or others, dangerous neighborhood, housing unsuitable because of medical reasons, etc.

"Minority" is a household of which one or more of whose members are either Black, Hispanic, American Indian or Oriental. A white person would be considered a minority if he were living in a predominantly black neighborhood.

Amended by R.2005 d.219, effective July 5, 2005.
See: 37 N.J.R. 970(a), 37 N.J.R. 2476(a).
Rewrote "Disabled person" and "Displaced person" and deleted "HUD".

5:80–7.2 General policy

(a) The process of screening applicants and selecting future residents is a crucial one. On one hand, a housing owner must keep units occupied to minimize vacancy loss and maintain cash flow. On the other hand, the owner must also take the time to screen applicants and to select only those applicants who will be responsible residents and meet HUD eligibility requirements.

(b) Careless selections can result in vandalism, high repair costs, costly evictions and increases in vacancies. To avoid such problems as much as possible, each owner should develop reasonable tenant selection procedures.

(c) The procedures should be designed to select applicants who will not only meet the tenant eligibility requirements for HUD's subsidy programs but will also be responsible tenants. The procedures should instruct project staff on at least:

1. How to screen tenants;

2. Fair Housing and Equal Opportunity laws;

3. Required preferences and economic mixes;

4. Limitations on admission of single persons and over-income applicants; and

5. How to select tenants from among eligible applicants.

(d) In the case of assisted living residences (ALRs), all ALRs are subject to the New Jersey Department of Health and Senior Services screening requirements as set forth in N.J.A.C. 8:36 and the requirements of the New Jersey Department of Health and Senior Services, Division of Consumer Support and/or the New Jersey Department of Human Services, Division of Medical Assistance and Health Services.

Amended by R.1998 d.80, effective February 2, 1998.
See: 29 N.J.R. 3214(a), 30 N.J.R. 539(b).
Added (d).

5:80–7.3 Screening criteria

(a) The Agency supports the owner's desire to select responsible tenants.

(b) Owners are expected to exercise sound judgment in the tenant selection process. The fact that an applicant qualifies for program benefits does not mean that he or she is a suitable tenant.

(c) Owners may consider the following factors when screening applicants. These factors are not all inclusive and the absence of any of these factors is not sufficient reason to reject an applicant. Costs of credit checks and home visits may be charged as a project expense.

1. Demonstrated ability to pay rent and make timely payment.

2. Comments from prior landlords: Tenants with histories of damaging units are obviously high risks. The endorsement of at least two prior landlords is preferable over the judgment of a present landlord. A responsible tenant may receive a bad recommendation just as a bad tenant might receive a good recommendation from the present landlord. The other landlord's interests are not always the same as the owner's interests.

3. Good credit references: Although the benefits of a credit check are debatable, credit checks may be useful when no rent-paying history is available. However, the lack of a credit history may not automatically disqualify an applicant.

4. Housekeeping habits: So-called "home visits" can be particularly valuable to make certain that the applicant maintains his or her housing unit in an acceptable manner.

5:80–7.4 Non-discrimination

(a) Owners must comply with all Federal, State or local fair housing and civil rights laws and regulations and with all equal opportunity requirements set forth in N.J.S.A. 55:14K–1 et seq., Agency regulations, and HUD's administrative procedures. Federal and State laws provide that owners may not discriminate based upon race, color, creed, religion, sex, national origin, age or handicap. Any complaints alleging violations of civil rights laws will be referred to the Agency or to HUD's Regional Offices of Fair Housing and Equal Opportunity for possible compliance actions.

(b) Owners must also comply with requirements imposed in Agency and HUD program statutes, regulations and administrative procedures. These administrative requirements prohibit restrictions on certain classes of persons. Examples of prohibited practices are shown in Exhibit A. This figure is not intended to be all inclusive.

(c) Owners are subject to all civil rights laws and Agency and HUD administrative requirements on non-discrimination. These civil rights laws and administrative requirements apply to the process of accepting applications and selecting tenants from among eligible applicants as well as to the process of assigning units. Under civil rights laws, an owner may not place minority tenants in one part of the project and non-minority tenants in another part.

(d) In partially assisted Section 8 projects (that is, those with less than 100 percent of the units under a Section 8 contract), HUD administratively requires that assisted tenants must be dispersed throughout the project. Note: In projects designed for both elderly and non-elderly families, owners may place elderly and non-elderly families in separate areas of the project.

5:80–7.5 Priorities and preferences

(a) Owners may give priority or preference for admission to otherwise eligible applicants in (b) and (c) below so long as such priorities and preferences are consistent with the fair housing laws and the owner's Affirmative Fair Housing Marketing Plan.

(b) Handicapped, disabled, displaced and substandard housing applicants shall be treated as follows:

1. For all units, owners must give preference to applicants who are either living in substandard housing or are displaced by government action or activity.

2. For all units designed specifically for the elderly, owners must give priority to elderly, handicapped and disabled applicants on an equal basis.

3. For all barrier free or partially barrier free units designed specifically for handicapped or disabled persons, owners must give first priority to handicapped or disabled persons who need the modified design to permit them to operate independently with comparative ease under normal circumstances. All other handicapped or disabled persons will be given second priority. The elderly will be given third priority.

(c) Residency preference shall be as follows:

1. While owners may not require local residency as a pre-requisite for admission, with Agency and HUD approval, owners may give priority to residents of the municipality (here defined as the smallest unit of government, that is, town, city, county) in which the project is located.

2. The Agency will approve the use of local residency preferences only if such preferences will not be inconsistent with equal opportunity requirements or frustrate achievement of the goals of the Affirmative Fair Housing Marketing Plan. For example, if the Agency determines that affirmative marketing goals and objectives cannot reasonably be achieved with a residency preference for all units, the Agency may deny a request for use of residency preferences or approve it for only a portion of the units. For example, where the affirmative marketing goal is five or 10 percent of the units in a project, the agency may approve a residency preference for only 95 or 90 percent of the units. Residency preferences may be used during initial rent-up and to fill vacancies occurring subsequent to the rent-up period.

i. When applying residency preferences, persons expected to reside in the municipality as a result of current or planned employment must be counted as residents. "Planned employment" means that an individual has a bona fide offer to work in the municipality.

ii. If there are applicants on the chronological waiting list, the owner may select a resident over a non-resident even if the non-resident is higher on the waiting list or exhibits greater need. However, if there are no eligible residents on the waiting list, an owner cannot hold a unit open until an eligible resident is found.

iii. If certain categories of applicants are targeted on the Affirmative Fair Housing Marketing Plan and if there are insufficient numbers of such applicants who are residents of the municipality, then the owner must solicit those applicants from outside the municipality.

(d) In the case of assisted living residences (ALRs), preferences and priorities may be set according to the New Jersey Medicaid procedures and guidelines or the guidelines of any other insurer that may be paying for the costs of services to the applicant.

Amended by R.1998 d.80, effective February 2, 1998.
See: 29 N.J.R. 3214(a), 30 N.J.R. 539(b).
Added (d).

5:80–7.6 Limitations on admission of over-income tenants

(a) When applicants who are income-eligible and otherwise qualified are available, the owner may not lease any unit to an applicant whose income exceeds the applicable income limit.

(b) The owner may lease such units to over-income applicants only after he or she has exerted good faith effort to attract income-eligible applicants and such applicants are not available.

(c) Under no circumstances may an owner lease more than 10 percent of the units to over-income applicants without the prior written approval of the Agency.

(d) At BMIR, rent supplement or 236 projects, an owner also must obtain the prior written approval of the HUD or the Contract Administrator.

(e) At Section 8 projects, an owner also must obtain prior written HUD approval, except in older projects where the Section 8 Contract allows up to 20 percent.

(f) Before admitting any over-income applicant in accordance with these regulations, the owner must certify in writing that:

1. He or she has made all assisted units committed under the contract available for occupancy by eligible families;

2. He or she had taken all reasonable steps to attract income-eligible applicants;

3. No income-eligible applicants were available when the over-income applicant was selected for admission.

(g) The owner must retain this certification in the over-income tenant's file.

(h) If an owner fails to comply with the provision of this section, the Agency may invoke any remedies available under N.J.S.A. 55:14K–1 et seq. or Agency regulations. In addition, the HAP contract and/or Section 8 regulations provide that HUD may reduce the number of units under the HAP contract, invoke other remedies available under the contract or consider such failure as grounds for suspension or debarment from HUD programs.

(i) In the case of assisted living residences (ALRs), where the owner has made a good faith effort to attract income-eligible applicants as provided in (b) above but there is no income-eligible applicant available, an ALR owner may be permitted to rent an income-restricted unit to an over-income applicant, provided that:

1. The ALR adheres to the provisions of (a), (c), (f) and (g) above; and

2. The ALR rents the next available non-restricted ALR unit to the next income-eligible applicant who applies.

Amended by R.1998 d.80, effective February 2, 1998.
See: 29 N.J.R. 3214(a), 30 N.J.R. 539(b).
Added (i).

5:80–7.7 Non-immigrant student aliens

(a) The Housing and Community Development Act of 1980 prohibits HUD from making housing assistance available to non-immigrant student aliens.

(b) A non-immigrant student alien is a person who:

1. Has a foreign residence which he or she has no intention of abandoning;

2. Is a bona fide student qualified to pursue a full course of study; and

3. Was admitted to the United States temporarily and solely for the purpose of pursuing a full course of study at an established institution of learning or other recognized place of study in the United States, particularly designed by him or her and approved by the Attorney General after consultation with the Department of Education of the United States.

(c) Non-immigrant student alien also means the alien spouse and alien minor children of such student as long as the spouse's and children's right to be in the United States depends on the alien's right.

(d) If an applicant identifies himself or herself or his or her spouse as a student the owner must request proof of United States citizenship, and ask the applicant to sign a statement certifying that he or she is not a non-immigrant student alien. An example certification form may be found as Exhibit B.

5:80–7.8 Prohibited conditions for admission

(a) In screening applicants for admission, owners may not impose irrelevant admissions criteria that are used to screen out otherwise eligible applicants.

(b) Physical examinations: Owners may not routinely require that all elderly applicants undergo physical examinations as a condition of admission. However, if the owner has reason to believe that the applicant's physical condition is such that his or her admission might have an adverse impact on the rights of other tenants to enjoy their units, or that he or she might not be able to care for the unit and carry out his or her obligations under the lease, the owner may require the applicant to furnish evidence of his or her ability to live independently (with or without attendant care). In the case of assisted living residences, screening of applicants' physical or medical conditions shall be conducted in accordance with N.J.A.C. 8:36.

(c) Donations or contributions: Owners of rental projects may not require a donation, contribution or membership fee as a condition of admission. Of course, owners of cooperative housing projects may charge membership fees.

HOUSING AND MORTGAGE FINANCE AGENCY

EXHIBIT A

EXAMPLE OF PROHIBITED DISCRIMINATION PRACTICES

Class	Civil Rights Laws and Regulations	HUD Statutes, Regulations and Administrative Requirements
Religion, Race, Color, Creed, National Origin	No priorities or application criteria, (e.g. variations in charges or deposits) based upon race, creed, color, religion, or national origin	
Sex	No renting units to single persons of one sex and not the other	In elderly housing, no discrimination against females/males because disproportionate mixture of sexes
Age	No minimum or maximum ages unless necessary to normal operation (e.g. elderly project), or required by State or local law	No maximum age for elderly. In housing for disabled and handicapped minimum age is 18; no minimum may be set above age 18
Children		In family housing no discrimination against families with children
Class Membership		No discrimination against socio-economic classes (e.g. welfare recipients, single parent households, etc.)
Membership in Sponsoring Organization		No priority to members of sponsoring organizations. No discrimination against nonmembers
Handicapped	No discrimination solely because of handicap	

Agency Statutes, Regulations and Administrative Requirements

No person shall be discriminated against because of race, religious principles, color, national origin or ancestry by the agency, any housing sponsor, any institutional lender, or any loan originator or agent or employee thereof in connection with any housing project or eligible loan. No persons shall be discriminated against because of age in admission to, or continuance of occupancy in any housing project receiving assistance under this act except for any housing project constructed under a governmental program restricting occupancy of at least 90 percent of the dwelling units to persons 62 years of age or older and any members of their immediate households or their occupant surviving spouses, or constructed as a retirement subdivision or retirement community as defined in the "Retirement Community Full Disclosure Act", P.L. 1968, c.215 (C.45:22A–1 et seq.). Any person who violates the provisions of this section is a disorderly person.

EXHIBIT B

FORMAT OF ADDENDUM TO APPLICATION FOR HOUSING ASSISTANCE

By law, housing assistance cannot be provided to any nonimmigrant student-alien or the alien spouse and minor children of such alien (Section 1436a of Title 42, U.S.C.).

Definition of Nonimmigrant Student-Alien: (1) an alien having a residence in a foreign country which he or she has no intention of abandoning, who is a bona fide student qualified to pursue a full course of study and who is admitted to the United States temporarily and solely for the purpose of study at an established institution of learning or other recognized place of study in the United States, particularly designated by him or her and approved by the Attorney General after consultation with the Department of Education of the United States, which institution or place of study shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant student and if any such institution of learning or place of study fails to make reports promptly the approval shall be withdrawn, and (2) the alien spouse and minor children of any such alien if accompanying him or her or following to join him or her.

I certify that I have read the information above and that I am not a nonimmigrant student-alien, and that no others in my household are nonimmigrant student-aliens.

_____ _____
Applicant Date

WARNING: Section 1001 of Title 18 U.S.C. provides: "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies ... a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both."

Amended by R.1998 d.80, effective February 2, 1998.
See: 29 N.J.R. 3214(a), 30 N.J.R. 539(b).
In (b), added a third sentence.

SUBCHAPTER 8. OCCUPANCY REQUIREMENTS REGARDING INCOME

5:80–8.1 General applicability

(a) The rules within this subchapter shall apply to all Agency-financed housing projects except as provided in (b) below.

(b) For housing projects assisted by subsidies from HUD, or financed with the proceeds of tax exempt bonds pursuant to the Internal Revenue Code or financed by a loan which is insured or guaranteed by the United States or any agency thereof or financed or assisted, in whole or in part under any program of the United States (collectively, "Federal Programs"), the rules, regulations and/or requirements under the Federal Programs for occupancy requirements regarding income shall be used in addition to or in place of, as appropriate, the rules within this subchapter. Reference to any State or Federal statutes shall include any amendments or reenactments which have been or may be made as to such statutes.

(c) For purposes of this subchapter, "family" means:

1. For projects receiving subsidies under Section 236 or Section 8 Programs, the same as defined under the applicable Section 236 or Section 8 rules, regulations or requirements; or

2. For all other projects, two or more persons who live or expect to live together as a single household in the same dwelling unit or an individual at least 18 years of age who is not a full-time student.

R.1977 d.71, effective March 4, 1977.
See: 9 N.J.R. 62(c), 9 N.J.R. 164(c).
Amended by R.1983 d.470, effective November 7, 1983.
See: 15 N.J.R. 1212(a), 15 N.J.R. 1860(a).
Increased maximum gross aggregate family income from $26,850 to $45,000. Also added new (b).
Amended by R.1985 d.241, effective May 20, 1985.
See: 17 N.J.R. 505(a), 17 N.J.R. 1258(b).
Subsections (c) through (f) added.
New Rule, R.1986 d.258, effective July 7, 1986.
See: 17 N.J.R. 1620(a), 18 N.J.R. 1373(b).
Amended by R.1994 d.300, effective June 20, 1994.
See: 26 N.J.R. 8(a), 26 N.J.R. 2569(a).
Amended by R.2005 d.219, effective July 5, 2005.
See: 37 N.J.R. 970(a), 37 N.J.R. 2476(a).

5:80–8.2 Maximum gross aggregate family income

(a) Admission to housing projects shall be limited to families whose gross aggregate family income at the time of admission does not exceed six times the annual rental or carrying charges approved by the Agency except for families with three or more dependents, whose incomes may be up to seven times the annual rental or carrying charges. Annual rental or carrying charges shall include the value or cost of heat, light, water, sewerage, parking facilities and cooking fuel that are provided to or incurred by the family in connection with its occupancy of a dwelling. In addition, carrying charges include rent normally associated with rental projects as well as other costs associated with cooperative apartments. There may also be included an amount equal to six percent of the original cash investment of the family in a mutual or cooperative housing project and the value or cost of repainting and replacing any fixtures or appliances.

(b) Notwithstanding (a) above, the Agency, in conjunction with any financing, may impose income limits at levels lower than those set forth above.

New Rule, R.1985 d.241, effective May 20, 1985.
See: 17 N.J.R. 505(a), 17 N.J.R. 1258(b).
Amended by R.1986 d.258, effective July 7, 1986.
See: 17 N.J.R. 1620(a), 18 N.J.R. 1454(b).
Recodified from section 1 and substantially amended.
Amended by R.1994 d.300, effective June 20, 1994.
See: 26 N.J.R. 8(a), 26 N.J.R. 2569(a).
Amended by R.2005 d.219, effective July 5, 2005.
See: 37 N.J.R. 970(a), 37 N.J.R. 2476(a).

5:80–8.3 Occupancy requirements for housing projects

(a) For housing projects financed by the Agency with the proceeds of bonds where the interest is exempt from Federal taxation, and where the project must contain a certain number of units to be occupied by individuals of specified income levels pursuant to section 142(d)(1) of the Internal Revenue Code (Code), at all times during the qualified project period as defined in section 142(d)(2)(A) of the Code, at least 20 percent of the residential units shall be occupied by individuals whose income is 50 percent or less of area median gross income or at least 40 percent of the residential units shall be occupied by individuals whose income is 60 percent or less of area median gross income (the "income-restricted units"). In allocating the units in a project which is to contain income-restricted units, the Agency may require the distribution of such units among the different sized units to reflect the same percentage distribution as the number of different sized units bears to the total number of units. A greater percentage of the income-restricted units may, however, be allocated to the larger units. Additionally, income-restricted 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. If there are changes in Federal law or in the Code or regulations with regard to the above-referenced matter, the Agency may adjust the above requirements accordingly.

(b) In assisted living residences financed by the Agency with the proceeds of Agency bonds where the interest on the bonds is exempt from Federal taxation, either not less than 20 percent of the units shall be occupied by individuals whose income is 50 percent or less of area median gross income, or not less than 40 percent of the units shall be occupied by persons whose income is 60 percent or less of area median gross income, at all times during the qualified project period as defined in section 142(d)(2)(A) of the Code (the "income-restricted units"). All ALRs shall reserve 10 percent of the income-restricted units for occupancy by persons whose monthly income does not exceed 300 percent of the monthly Federal Supplemental Security Income (SSI) benefit amount (which amount is determined and published annually by the Social Security Administration), unless such 10–percent utilization requirement is waived or reduced for the applicable region of the State or Statewide by the New Jersey Commissioner of Health and Senior Services (Commissioner) pursuant to N.J.S.A. 26:2H–12.17 or any successor statute. Income-restricted units shall be distributed throughout the project such that the residents of such units shall have equal access to and enjoyment of all common areas of the project.

(c) For assisted living residences financed by the Agency with the proceeds of bonds where the interest is not exempt from Federal taxation, 20 percent of the units shall be set aside for persons whose incomes are 80 percent or less of the area median income. Ten percent of the 20 percent of the units set aside shall be reserved for persons whose monthly income does not exceed 300 percent of the monthly Federal Supplemental Security Income (SSI) benefit amount (which amount is determined and published annually by the Social Security Administration) unless such 10–percent utilization requirement is waived or reduced for the applicable region of the State or Statewide by the Commissioner pursuant to N.J.S.A. 26:2H–12.17 or any successor statute.

New Rule, R.1985 d.241, effective May 20, 1985.
See: 17 N.J.R. 505(a), 17 N.J.R. 1258(b).
Amended by R.1986 d.258, effective July 7, 1986.
See: 17 N.J.R. 1620(a), 18 N.J.R. 1373(b).
Recodified from section 2 and substantially amended.
Amended by R.1998 d.80, effective February 2, 1998.
See: 29 N.J.R. 3214(a), 30 N.J.R. 539(b).
Added (b) and (c).
Amended by R.2005 d.219, effective July 5, 2005.
See: 37 N.J.R. 970(a), 37 N.J.R. 2476(a).
Rewrote the section.

5:80–8.4 Special Multiple Family Unit within Housing Projects located in municipalities affected by casino gaming

(a) Special Multiple Family Units may be approved and designated by the Agency in accordance with this Section on application by the Housing Sponsor where the Agency determines the municipality wherein the project is located is experiencing housing shortages as a result of the authorization of casino gaming.

(b) A Special Multiple Family Unit is a dwelling unit specifically designed to accommodate two or more families as defined in N.J.A.C. 5:80–8.1(c), and which has been so certified by the Agency after adequately meeting the following minimum criteria:

1. The dwelling unit has separate sleeping areas, each with adequate privacy, for each family; and

2. The dwelling unit has separate full bathrooms, each with adequate privacy, for each family; and

3. The rental of the dwelling unit complies with all relevant State and local occupancy laws.

(c) For purposes of determining income eligibility for admission into a Special Multiple Family Unit, the gross aggregate family income of each family is to be considered separate and apart from the gross aggregate family income of the other family or families occupying the unit. The full rental and carrying charges of the unit are to be used in determining each family's eligibility for admission, notwithstanding each family's planned or actual percentage contribution toward those charges, provided there is a written consent in the lease holding each family jointly and severably liable for these charges.

(d) A single family is deemed to exist among two or more individuals if those individuals have a joint personal economic relationship, other than their mutual interest in renting the same dwelling unit. Joint ownership of personal assets, commingling of personal accounts, economic dependency among the individuals, and/or the joint filing of income tax returns shall be evidence of a joint personal economic relationship.

(e) The rental of units to families must be consistent with Federal housing and tax laws and/or regulations, where such laws or regulations apply to government-financed developments or Agency tax-exempt bond financing of such developments.

(f) The rental of Special Multiple Family Units, irrespective of the income levels of tenants therein, shall not be considered the rental of units to low and moderate income families for purposes of meeting Federal and State requirements to provide a certain percentage of units for those of low and moderate income, pursuant to N.J.A.C. 5:80–8.3.

New Rule, R.1986 d.258, effective July 7, 1986.
See: 17 N.J.R. 1620(a), 18 N.J.R. 1373(b).
Amended by R.1994 d.300, effective June 20, 1994.
See: 26 N.J.R. 8(a), 26 N.J.R. 2569(a).

5:80–8.5 Recertification of income

The procedure for calculation and certification of gross aggregate family income in determining a family's eligibility for admission to a housing project as required under this subchapter shall be conducted as set forth in N.J.A.C. 5:80–20.

Amended by R.1986 d.258, effective July 7, 1986.
See: 17 N.J.R. 1620(a), 18 N.J.R. 1373(b).
Recodified from section 3 and substantially amended.
Amended by R.1994 d.300, effective June 20, 1994.
See: 26 N.J.R. 8(a), 26 N.J.R. 2569(a).

SUBCHAPTER 9. RENTS

5:80–9.1 Purpose

It is the express purpose of the following regulations to promote the statutory functions and obligations of the Agency by ensuring that the rents and/or carrying charges applied in housing projects are sufficient to pay normal operating, maintenance and utility costs; provide an adequate rate of return to individuals or corporations that provide capital to assist in the development of housing projects; provide debt service payments adequate to protect the financial interest of the Agency and its bondholders; provide reserves for repair and replacement; and ensure adequate, safe and sanitary housing for the low and moderate income families that the Agency was created to serve.

Amended by R.1991 d.334, effective July 1, 1991.

See: 22 N.J.R. 2389(b), 23 N.J.R. 2055(a).
Specification added.

Case Notes

Rent increase at housing project was adequate and not excessive. In the Matter of the Application for a Rental Increase at Jasontown II Apartments, 96 N.J.A.R.2d (HFA) 1.

5:80–9.2 Applicability

The rules within this subchapter shall apply to all housing projects. In the event the housing project is assisted, directly or indirectly, by the Department of Housing and Urban Development (HUD) or is financed by a loan from the Agency which is insured or guaranteed by the United States, or any agency thereof, the Agency may utilize the rent regulations, requirements or criteria for such project which is prescribed, utilized or required by HUD or such guarantor or insurer. In the event there are any inconsistencies between these rules and the regulations, requirements or criteria of HUD or other United States agency insuring or guaranteeing the Agency loan, the latter shall prevail.

New Rule, R.1991 d.334, effective July 1, 1991.
See: 22 N.J.R. 2389(b), 23 N.J.R. 2055(a).
Old section 9.2, "Rent determination" was recodified to 9.3.

5:80–9.3 Rent determination

(a) At least once each year, each housing sponsor shall make a determination of the rents and/or carrying charges to be applied in the housing project. Hereinafter, the term "rent" shall be construed to include carrying charges and the term "housing sponsor" shall be construed to include a properly authorized representative of the housing sponsor. An annual rent determination shall be made regardless of whether or not a rent increase is being requested.

(b) The rent determination shall be in the form of a resolution or letter from the sponsor.

Amended by R.1991 d.334, effective July 1, 1991.
See: 22 N.J.R. 2389(b), 23 N.J.R. 2055(a).
Text on supporting documentation recodified to 9.4; text on rent determination recodified from 9.2; determination to occur once, at any time, during each year.

Case Notes

Proposal for rent increase procedures cited (11 N.J.R. 304); rent varying power under former N.J.A.C. 5:18–1.2; rent control ordinance cannot restrict rent increase approved by State agency for a State financed, supervised and regulated housing project. Overlook Terrace Management Corp. v. Rent Control Board of West New York, 71 N.J. 451, 366 A.2d 321 (1976).

5:80–9.4 Rent increase application

(a) Housing sponsors desiring to implement a rent increase of an amount greater than three percent of the current rent, or the increase which would be derived by multiplying the current rent by the increase, if any, in the overall Consumer Price Index for New York–Northeastern New Jersey as published by the United States Department of Labor, Bureau of Labor Statistics as of September 30 of the year preceding the year in which the increase is sought to be implemented, whichever is less, or for a project receiving subsidy, assistance, insurance or guarantee by HUD shall submit a rent increase application to the Agency's Director of Property Management. The application shall consist of the rent determination and the following supporting documents:

1. Name of sponsor, location of housing project, number of apartments of each type;

2. Date of initial occupancy;

3. For Section 236 developments, a status report on the housing project's implementation of its current energy conservation plan;

4. A narrative statement of the reasons for the rent increase;

5. Most recent certified audit report prepared in accordance with Agency regulations;

6. Summary of income and expenses for the preceding 12 month period prepared on an accrual basis for non-federally subsidized housing projects. For all projects with Federal subsidy, monthly operating reports will be required for the preceding three months;

7. Annual budget on which the requested rent increase is based; and

8. Copy of notice to tenants in accordance with N.J.A.C. 5:80–9.6.

(b) In housing projects where there is a valid Housing Assistance Payments contract, in accordance with which rents are or may be adjusted, the sponsor is not required to submit a rent increase application. Rents will be adjusted in accordance with the contract without resort to the rules within this subchapter, except that the sponsor shall still be obligated to make the rent determination as required by N.J.A.C. 5:80–9.3.

(c) In housing projects where there is no Housing Assistance Payments contract or other subsidy, assistance, insurance or guarantee from HUD, the sponsor is not required to submit a rent increase application for an annual rent increase for an amount not greater than the lesser of:

1. Three percent of the current rent; or

2. The increase which would be derived by multiplying the current rent by the increase, if any, in the overall Consumer Price Index for New York–Northeastern New Jersey as published by the United States Department of Labor, Bureau of Labor Statistics as of September 30 of the year preceding the year in which the increase is sought to be implemented.

(d) For projects under (c) above, the sponsor may implement an annual rent increase for an amount not greater than the amount calculated pursuant to this subsection by submitting a letter so notifying the Agency's Director of Property Management at least 30 days prior to implementation of such increase.

Amended by R.1991 d.334, effective July 1, 1991.
See: 22 N.J.R. 2389(b), 23 N.J.R. 2055(a).
Text on notice to tenants and cooperators recodified to 9.6; text on supporting documentation recodified from 9.3 and renamed rent increase application; text from old 9.8, on automatic annual adjustments added at (b).
Amended by R.2003 d.128, effective March 17, 2003.
See: 34 N.J.R. 3153(a), 35 N.J.R. 1409(c).
In (a), rewrote the introductory paragraph and inserted "N.J.A.C." following "in accordance with" in 8; added (c) and (d).

5:80–9.5 Additional rent increases in given fiscal year

The submission of a rent increase application for any given fiscal year shall not preclude any sponsor from making additional or revised rent increase applications in the same fiscal year, provided that they are submitted in accordance with all the procedures set forth in this subchapter. Rent increases implemented pursuant to N.J.A.C. 5:80–9.4(c), however, shall not be implemented more than once in any given fiscal year.

Repeal and New Rule, R.1991 d.334, effective July 1, 1991.
See: 22 N.J.R. 2389(b), 23 N.J.R. 2055(a).
Amended by R.2003 d.128, effective March 17, 2003.
See: 34 N.J.R. 3153(a), 35 N.J.R. 1409(c).
Added the last sentence.

5:80–9.6 Notice to tenants and cooperators

(a) Prior to or simultaneous with the submission of the rent increase application pursuant to N.J.A.C. 5:80–9.4(a) to the Agency, each housing sponsor shall provide, in writing, to each tenant and cooperator and conspicuously post at the housing project, a notice, in a form prescribed by the Agency, setting forth the following:

1. The rent determination;

2. A statement that the rent determination is subject to the review and approval of the Agency and, if applicable, subject to the review and approval of HUD;

3. Reasons for the increase;

4. A statement that tenants and cooperators will have 30 days to inspect the rent increase application submitted by the housing sponsor pursuant to N.J.A.C. 5:80–9.4(a); and

5. A statement that written comments on the proposed rents may be submitted to the housing sponsor, managing agent or the Agency's Director of Property Management, at their current address within 30 days of the rent increase application being available for review.

(b) Upon expiration of the comment period, the housing sponsor shall submit a certification to the Agency, in the form prescribed by the Agency, that it has complied with the requirements of N.J.A.C. 5:80–9.6(a).

(c) If the housing sponsor fails to substantially comply with the notice requirement of (a) above, the Agency shall withhold processing of the rent increase application until there is substantial compliance with such requirements.

(d) Upon implementation of an annual rent increase pursuant to N.J.A.C. 5:80–9.4(c), the housing sponsor shall notify each tenant and/or cooperator of the amount and the

effective date of the increase in accordance with the provisions of the tenant's or cooperator's lease.

Amended by R.1991 d.334, effective July 1, 1991.
See: 22 N.J.R. 2389(b), 23 N.J.R. 2055(a).
Text on rent schedules approvable by the Department of Housing and Urban Development repealed; text on notice to tenants and cooperators recodified from 9.4; submission attachments specified; (c) added.
Amended by R.2003 d.128, effective March 17, 2003.
See: 34 N.J.R. 3153(a), 35 N.J.R. 1409(c).
In (a), inserted "pursuant to N.J.A.C. 5:80–9.4(a)" following "rent increase application" in the introductory paragraph and inserted "Property" preceding "Management" in 5; added (d).

5:80–9.7 Agency review

(a) The Agency will review the rent increase application submitted pursuant to N.J.A.C. 5:80–9.4(a) to verify the need for the rent increase requested. If the application contains errors or omissions of a material nature, the Director of Property Management shall require the housing sponsor to submit the corrected or omitted material and provide tenants and cooperators with notice that they will have 15 days to inspect and comment upon the corrected or omitted material.

(b) Within 10 business days after receipt of the complete rent increase application and any comments thereto, the Agency shall:

1. For housing projects receiving subsidies under HUD, submit the rent increase application to HUD for approval pursuant to N.J.A.C. 5:80–9.8;

2. For all other projects submitting a rent increase application pursuant to N.J.A.C. 5:80–9.4(a), process the application in accordance with N.J.A.C. 5:80–9.9 and, if applicable, 5:80–9.10. The 10 business day requirement in (b) above shall not apply to rent increases subject to a hearing as provided by N.J.A.C. 5:80–9.10.

(c) Prior to submission of any rent increase application to HUD, the Agency may attach its comments and recommend a rent increase different from that requested by the housing sponsor. If the Agency reduces or eliminates that portion of the requested increase that would provide return on owner's equity, written notice of such reduction or elimination will be provided to the housing sponsor by the Executive Director of the Agency.

Amended by R.1991 d.334, effective July 1, 1991.
See: 22 N.J.R. 2389(b), 23 N.J.R. 2055(a).
Application procedure specified further; tenants given 15 days to inspect documents.
Amended by R.2003 d.128, effective March 17, 2003.
See: 34 N.J.R. 3153(a), 35 N.J.R. 1409(c).
In (a), inserted "submitted pursuant to N.J.A.C. 5:80–9.4(a)" following "rent increase application" and inserted "Property" preceding "Management" in the introductory paragraph; in (b)2, inserted "submitting a rent increase application pursuant to N.J.A.C. 5:80–9.4(a)" following "For all other projects".

5:80–9.8 Rent increases approvable by the Department of Housing and Urban Development

(a) In all housing projects receiving subsidies under the Section 236 Interest Reduction Payments Program or Section 8 Housing Assistance Payments Program, rent increase applications shall be submitted to and are subject to approval by HUD, unless the rent increase is automatically authorized pursuant to N.J.A.C. 5:80–9.4(b).

(b) Upon verification of the completeness, accuracy and validity of the rent increase application pursuant to its review under N.J.A.C. 5:80–9.7, the Agency will forward the rent increase application to HUD for final action. The Agency will notify the housing sponsor of HUD's final decision.

Repeal and New Rule, R.1991 d.334, effective July 1, 1991.
See: 22 N.J.R. 2389(b), 23 N.J.R. 2055(a).

5:80–9.9 Increases approved by Agency

(a) If the rents are not subject to review and approval by HUD nor subject to automatic annual adjustments pursuant to a valid Housing Assistance Payments contract, then the Executive Director may make or approve a rent increase without a hearing as long as the resulting rents do not exceed the rents in effect for the same units in the housing project at any time in the previous 12 months by more than the combined percentage of paragraphs 1 and 2 below:

1. The percentage increase in the Consumer Price Index for rent and utilities for the most recently preceding 12 month period for which information has been published by the United States Department of Labor; plus

2. Either of:

i. The percentage, up to a maximum of 12 percent annually, needed to fund operating deficits, debt service arrears or reserves for repair and replacement incurred at the housing project during the preceding 12 months, provided that no part of the rent increase includes an amount allocated toward providing a return on equity to the sponsor; or

ii. The percentage, up to a maximum of six percent annually, needed to offset an inability to provide a return on equity and to offset operating deficits, debt service arrears or reserves for repair and replacement delinquencies incurred during the preceding 12 months, if all or a portion of the requested increase is intended to pay return on equity.

(b) For housing projects receiving subsidies under the New Jersey Urban Multi–Family Production Program (JUMPP), the Agency shall consider the amount by which the JUMPP subsidy decreases annually, as well as any operating deficits existing after distribution of the annual JUMPP subsidy, in determining the amount of rent increase needed pursuant to (a) above.

(c) The Agency shall provide the housing sponsor with a copy of its calculations done pursuant to (a) above.

Amended by R.1991 d.334, effective July 1, 1991.
See: 22 N.J.R. 2389(b), 23 N.J.R. 2055(a).
Stylistic changes.
Amended by R.1991 d.335, effective July 1, 1991.
See: 23 N.J.R. 646(a), 23 N.J.R. 2058(a).
Clarification of application of requirements to JUMPP added at (b).

Case Notes

Citation to former N.J.A.C. 5:80–1.9; defense of rent increase unconscionability not available to tenant in summary dispossess action; agency approval of rent increase can only be reviewed by Appellate Division. Marine View Housing Co. No. 1 v. Benoit, 188 N.J.Super. 539, 457 A.2d 1241 (Law Div.1982).

5:80–9.10 Increase subject to hearing

(a) In projects not subject to HUD approval nor subject to automatic annual adjustments, if the Executive Director of the Agency approves a rent increase which exceeds the amounts specified in N.J.A.C. 5:80–9.9(a), in order to cover any purpose including but not limited to operating deficits, debt service arrears, reserves for repair and replacement delinquencies incurred during the preceding 12 months, inability to pay return on equity, increases in permitted return on equity and accelerated amortization of any supplemental financing, then any person, association or corporation aggrieved by such determination may file for a hearing by submitting a written request to the Executive Director. Housing sponsors shall give written notice to all tenants and cooperators affected by such rent increase approved by the Executive Director and of their opportunity to request a hearing. Persons, associations or corporations aggrieved by the increase must file their request for a hearing within 21 days of said notice.

(b) Upon receipt of a request for a hearing or upon his or her own initiative, the Executive Director shall request that the Office of Administrative Law conduct same. All hearings shall be conducted according to the procedures established by the Office of Administrative Law pursuant to N.J.S.A. 52:14B–10. When the date of the hearing has been established, housing sponsors shall provide notices, in a manner approved by the Agency, of the date, time, place and nature of said hearing to all tenants, cooperators and other persons requesting notice of said hearing. The scope of the hearing shall be limited to consideration of the amount in excess of the increases approvable by the Executive Director under N.J.A.C. 5:80–9.9(a). Upon review of the record submitted by the administrative law judge, the Agency members shall adopt, reject or modify the recommended decision and issue a final written order.

(c) The request for a hearing, or the hearing itself, shall in no way affect or delay the authority of the Executive Director to approve increases up to the amounts specified pursuant to N.J.A.C. 5:80-9.9(a). If the Executive Director approves an amount equal to or less than the amount calculated in accordance with N.J.A.C. 5:80-9.9(a), then no hearing is required.

Amended by R.1991 d.334, effective July 1, 1991.
See: 22 N.J.R. 2389(b), 23 N.J.R. 2055(a).
Hearing circumstances specified further; tenant notice requirement added.

Case Notes

Defense of rent increase unconscionability not available to tenant in summary dispossess action; objection of unconscionable rent increase proper at hearing under former N.J.A.C. 5:80-1.10; agency approval of rent increase can only be reviewed in Appellate Division. Marine View Housing Co. No. 1 v. Benoit, 188 N.J.Super. 539, 457 A.2d 1241 (Law Div.1982).

5:80-9.11 Notice of final approval

(a) Upon final action by HUD or the Agency, the Agency will provide written notice to the housing sponsor of the finally approved rent increase. Such notice will set forth in writing the reasons for the Agency's decision with regard to the finally approved rent increase.

(b) The housing sponsor shall provide written notice of the finally determined rent increase and the reasons for the Agency's decision with regard thereto and, if applicable, the Agency's calculations pursuant to N.J.A.C. 5:80-9.9(a) to all tenants and cooperators, as well as all other interested parties. Written notice shall be provided to each tenant by mail or by hand delivery to the tenant/cooperator's apartment or by personal service and shall be posted in conspicuous places throughout the housing project. Other interested parties may receive a copy of the final notice if they provide a written request for same to the sponsor.

Amended by R.1991 d.334, effective July 1, 1991.
See: 22 N.J.R. 2389(b), 23 N.J.R. 2055(a).
Text on notice of hearing repealed; text on notice of final approval recodified from 9.12 and reference to 9.9 added.

5:80-9.12 Effective date of increase

The new rents shall be effective on the first day of the month following one calendar month's written notice to the tenants, cooperators and other interested parties which submitted a written request for the notice.

Amended by R.1989 d.591, effective December 4, 1989.
See: 21 N.J.R. 2160(a), 21 N.J.R. 3748(a).
Changed text from "following the mailing of ..." to "following written" notice.
Amended by R.1991 d.334, effective July 1, 1991.
See: 22 N.J.R. 2389(b), 23 N.J.R. 2055(a).
Text on notice of final approval recodified to 9.11; text on effective date of increase recodified from 9.13.

5:80-9.13 Rent increases for low and/or moderate income projects without Federal project-based rent subsidies

(a) Sponsors of housing projects without project-based Federal rent subsidies may elect to implement rent increases in accordance with the rules in this section rather than those in N.J.A.C. 5:80-9.1 through 9.12. The rules within this section may be used only after the owner demonstrates through an Agency approved annual tenant income certification process that at least 10 percent of the units are rented to low income families and the balance rented to moderate income families. For the purposes of this section, a low income family is a family that earns 50 percent or less of the HUD area median income and a moderate income family is one that earns greater than 50 percent but no more than 80 percent of the HUD area median income. The foregoing provision defining a low income family and a moderate income family in effect as of March 20, 2006 shall be retroactive and considered effective as of June 20, 1994.

1. Sponsors shall submit a written request to the Agency, accompanied by the current tenant income certifications, the most recent HUD median income figures and the maximum rents corresponding to the median income figures. The Agency will review and verify the information contained therein and, if accurate, approve the rent increase, up to a maximum of 10 percent for low income units and 20 percent for moderate income units, not to exceed the maximum rents corresponding to the median income figures. The Agency will provide written notice of the approval to the Sponsor.

2. Upon approval from the Agency, the Sponsor shall notify tenants in writing. Notice shall be by mail or hand delivery to each tenant's unit or by personal service. The notice shall include the calculation of how the increase was determined pursuant to HUD's increase in median income.

3. The new rents shall be effective on the first day of the month following one calendar month's written notice to the tenants.

(b) Sponsors of projects without project-based Federal rent subsidies, which do not meet the low and moderate income unit distribution set forth in (a) above, may elect to convert their project to that unit distribution. Following a successful conversion to a project with at least 10 percent of the units reserved for or rented by low income families and the remainder reserved for or rented by moderate income families, rent increases may be implemented via (a)1 through 3 above.

1. Sponsors who elect to convert shall get credit toward the 10 percent or greater low income and 90 percent or less moderate income family unit distribution for any existing tenants meeting such standard following an Agency approved tenant income certification process. As vacancies occur, the units shall first be rented to low income families to fulfill the 10 percent or greater low income requirement

and then the remainder to moderate income families to fulfill the moderate income requirement.

2. In the event that any of the moderate income units have current rents at less than the maximum moderate income rent provided under (a)1 above, rent increases shall be phased in over the first five years following election to convert until the maximum rent is reached for a moderate income family. The maximum allowable annual rent increase is determined by taking the dollar difference between the current rent of a unit and the maximum moderate income rent provided herein at the time of election to convert, and dividing the difference by five. The resulting number will be the maximum allowable annual increase for moderate income units under this section. However, in no event may the rent increase in a given year be greater than 20 percent of the then current rent for a unit. Thereafter, rents for moderate income units shall be implemented pursuant to (a)1 through 3 above.

(c) Low income units may revert to moderate income units 15 years after the conversion. At such time, rent increases shall be phased in over the next five years until the maximum rent is reached for a moderate income family. The maximum allowable annual rent increase is determined by taking the dollar difference between the current rent of a unit and the maximum moderate income rent provided herein at the time of the reversion of the low income units, and dividing the difference by five. The resulting number will be the maximum allowable annual increase for moderate income units under this section. However, in no event may the rent increase in a given year be greater than 10 percent of the then current rent for a unit. Thereafter, rents shall be implemented pursuant to (a)1 through (3) above.

(d) If a project currently has more than 10 percent low income residents, such units must be maintained as low income units until vacancies occur.

(e) When calculating the maximum rent for low and moderate income units, sponsors shall use the following formula for determining family size:

1. For efficiency units, family size shall be based on a one person household.

2. For all other units, family size shall be based on one and one-half persons per number of bedrooms in the unit.

(f) Sponsors who wish to implement rent increases in excess of those permitted in (a) and (b) above may request such increase in writing. The excess rent increase amount shall be subject to the procedures at N.J.A.C. 5:80-9.4 through 9.12. The entire rent increase amount shall be considered for determining whether or not a hearing is required pursuant to N.J.A.C. 5:80-9.10.

(g) No rent increase may be approved which would increase rents in excess of those permitted by other applicable rent restrictions, for example, low income tax credit restrictions, tax exempt bond financing restrictions.

New Rule, R.1994 d.301, effective June 20, 1994.
See: 26 N.J.R. 1188(a), 26 N.J.R. 2570(a).
Amended by R.2006 d.111, effective March 20, 2006.
See: 37 N.J.R. 4363(a), 38 N.J.R. 1430(b).
Rewrote the section.

5:80-9.14 Resident monthly fee increases for low and/or moderate income-restricted units in assisted living residences (ALRs)

(a) For the purposes of this section, the term "monthly fee" includes charges for rent, meals and basic services. The Agency shall regulate the monthly fees for all low and moderate income-restricted ALR units. Monthly fees for income-restricted ALR units may not exceed 80 percent of the percentage of HUD median income applicable to that ALR as set forth in the Financing, Deed Restriction and Regulatory Agreement executed by the housing sponsor and the Agency ("applicable HUD median income level"). The foregoing shall not apply to units occupied by persons who have insurance and/or another contracted third-party payor.

(b) Sponsors of ALRs may implement increases of monthly fees with Agency approval as provided in N.J.A.C. 5:80-9.13(a)1 for the income-restricted ALR units, provided that the maximum monthly fee for the income-restricted ALR units may not exceed 80 percent of the applicable HUD median income level. Monthly fee increases for non income-restricted ALR units do not require Agency approval.

(c) When calculating the maximum monthly fees for low and/or moderate income-restricted ALR units, housing sponsors shall use the HUD median income level for the area where the ALR is located, adjusted for family size following the formula below:

1. For efficiency or studio units, monthly fees shall be based on a one person household; and

2. For a one bedroom unit, monthly fees shall be based on a one and one-half person household.

(d) Upon approval from the Agency, the housing sponsor shall notify each tenant and/or designated family member, guardian or community agency of the monthly fee increase by mail or hand delivery to each tenant's unit or by personal service. The notice shall include a calculation of how the increase was determined based upon the applicable HUD median income level.

(e) The new monthly fees shall be effective on the first day of the month following one calendar month's notice to the tenants and/or their designated representatives.

New Rule, R.1998 d.80, effective February 2, 1998.
See: 29 N.J.R. 3214(a), 30 N.J.R. 539(b).

SUBCHAPTER 10. LOANS TO LENDERS FOR SINGLE FAMILY MORTGAGE LOANS

5:80-10.1 Authority

This subchapter is promulgated pursuant to the authority of N.J.S.A. 55:14K-11(b), whereby the Agency may make loans to institutional lenders in order to furnish funds to make eligible loans, provided such loans are authorized by Federal Taxation Laws.

5:80-10.2 Requests for loans

(a) The Agency shall provide a loan application to each mortgage lender located within any particular area of the State for which the Agency has determined that there is an inadequate supply of single family mortgage loans. Alternatively, the Agency may notify mortgage lenders of a proposed loan program and provide a loan application only to those mortgage lenders requesting the same. Such application shall be sent to mortgage lenders at least 14 days in advance of the date all such applications must be submitted to the Agency. The loan application shall be in the form prescribed by the Agency and shall contain, among other things:

1. Provision for the mortgage lender to state the maximum amount of loan requested;

2. The date by which the loan application must be submitted so as to be considered for an allocation of loan funds and the date upon which loans will be awarded by the Agency;

3. Provision for the mortgage lender to furnish information regarding the mortgage lender's deposit and mortgage activity during a time period prescribed by the Agency;

4. The terms and conditions of the loan including, among others, the maximum interest rate, the term, the percentage of the principal to be paid each year or the manner of determining principal payments, and the prepayment terms;

5. The terms and conditions of the reinvestment of the loan proceeds, including:

i. The type of single family mortgage loan;

ii. Maximum sales price or loan amounts;

iii. Minimum or maximum mortgage terms;

iv. Maximum income levels for owners or occupants;

v. Location;

vi. Loan to ratio value; and

vii. Number of units;

6. The schedule of any fees and charges of the Agency with respect to loans; and

7. An undertaking by the mortgage lender to take any loan granted by the Agency up to the amounts specified in the application and providing for liquidated damages or other remedies in the event that the mortgage lender does not take such loan.

5:80–10.3 Allocation of loans

In allocating funds available for loans, the Agency shall consider, among other things, the credit worthiness of the mortgage lender submitting loan applications, the adequacy of supply of single family mortgage loans in the areas in which the mortgage lender operates, and the mortgage and deposit activity reported in the loan application. Allocations of loan funds by the Agency shall be conclusive.

5:80–10.4 Award of loans

The amount of loan awarded to each mortgage lender shall be promptly confirmed by the Agency to such Mortgage Lender. Thereupon each such mortgage lender shall be obligated to take such loan in accordance with the terms thereof. The obligations of the Agency to make any loan or loans shall be, in each case, subject to the sale and issuance of bonds of the Agency within the period prescribed by the loan application in an amount sufficient to make the loans which shall be awarded.

5:80–10.5 Interest and other terms of loan

Loans shall bear interest at a rate which shall not exceed the maximum rate of interest specified in, or determined in accordance with the provisions of the loan application. Other terms of the loans shall comply with the loan application, the Act and the provisions of any contract with holders of outstanding bonds of the Agency. Each loan shall be evidenced by a note in the forms prescribed by the Agency.

5:80–10.6 Collateral for loans

(a) As security for the payment of the principal of an interest on each loan to a mortgage lender, collateral in an amount at least equal to the collateral requirement shall be assigned in trust to the Agency and maintained by such mortgage lender, all in accordance with an assignment of collateral and trust agreement in the form prescribed by the Agency which shall be entered into by the mortgage lender with the Agency at such time as the Agency shall require.

(b) The collateral for each loan to a mortgage lender may be held by such mortgage lender in accordance with and subject to the terms of the Act and said assignment of collateral and trust agreement.

(c) Each mortgage lender shall service or cause to be serviced and preserve the collateral securing its loan or loans from the Agency at its own expense in accordance with said assignment of collateral and trust agreement.

(d) The collateral shall be valued periodically by the Agency or a person or institution designated by the Agency in accordance with the provision of the assignment of collateral and trust agreement relating to such collateral.

5:80–10.7 Application of loan proceeds; restriction as to single family mortgage loans

(a) The terms of each loan shall require that the proceeds thereof paid to the mortgage lender be segregated from its other funds, and that such mortgage lender shall, within the time period specified in the loan agreement relating to such loan, make and disburse from such loan proceeds, single family mortgage loans to individuals only. The Agency may require that such new single family mortgage loans be restricted in certain areas of the State if the Agency determines that such areas are in particular need of loan funds.

(b) Each such single family mortgage loan shall comply with such terms and conditions as shall be prescribed by the Agency in connection with the loan application therefor.

(c) The aggregate principal amount of such single family mortgage loans made by a mortgage lender from such loan proceeds shall at least equal the amount of such loan proceeds. All such single family mortgage loans shall be made pursuant to written commitments issued subsequent to the date of the submission by the mortgage lender of its loan application. Such written commitments shall specify the maximum interest rate which will be borne by the single family mortgage loan and must state that such loan covered by the commitment is to be funded out of the proceeds of a loan from the Agency. Reports by mortgage lenders as to the application of loan proceeds shall be made at such time and in such manner as shall be provided by the terms of the loan.

(d) Such single family mortgage loans may be made by the mortgage lender either directly or through one or more agents. All loans made by a mortgage lender through an agent shall be made pursuant to a written agreement between such mortgage lender and such agent which agreement shall have been approved in writing by the Agency. The Agency may decline to approve any such agreement for any reason which it, in its sole discretion, deems sufficient. The Agency may require any such agreement to provide, among other things, the following:

1. Such agreement shall not take effect until the approval of the Agency is endorsed on an executed copy thereof;

2. All single family mortgage loans made thereunder shall be made in the name of the mortgage lender pursuant to written commitments issued in the name of the mortgage lender subsequent to the date of the Agency's approval of such agreement;

3. The Agency shall have the right to inspect the books and records of the agent appointed pursuant to such agreement at any and all reasonable times;

4. No compensation or fees of any kind shall be paid to or charged by the agent in connection with any single family mortgage loan made pursuant thereto except as therein specifically set forth;

5. All commitments issued by an agent shall be subject to the same requirements as hereinabove set forth for mortgage lenders.

5:80–10.8 Restrictions on return realized by mortgage lenders

The Agency may in the case of loans to be made from any issue of bonds of the Agency establish maximum rates of return which may be realized by any mortgage lender or any agent of any mortgage lender from the single family mortgage loan made from the proceeds of loans and may regulate, limit, restrict, or prohibit the charge or collection of any commitment fee, premium, bonus, points or other fees in connection with the making of any single family mortgage loan.

5:80–10.9 Fees and charges of the Agency; loan account

(a) An initial fee may be established by the Agency in connection with loans to be made from the proceeds of any issue of Agency bonds, and collected by the Agency as and for a discount below par with respect to each such loan. The initial fee shall be for the purpose of reimbursing the Agency for all or part of its reasonably expected administrative costs of issuing such Agency bonds and making the loans.

(b) The Agency may establish such other premiums, penalties, fees and charges, as it in its sole discretion shall determine to be necessary in connection with the prepayment of, or any default on, or any default under any agreements relating to, any loan or loans.

5:80–10.10 Purchase of Agency bonds

No mortgage lender (including any related person thereof, as defined in Section 103(b)(6)(C) of the Internal Revenue Code) shall, pursuant to any arrangement, formal or informal, purchase the bonds of the Agency in an amount related to the amount of the Agency loans to be made to such mortgage lender (or related person, as aforesaid) by the Agency.

SUBCHAPTERS 11 THROUGH 12. (RESERVED)

SUBCHAPTER 13. MAKING OR PURCHASING ELIGIBLE LOANS FOR SINGLE FAMILY MORTGAGES

5:80–13.1 Authority

This subchapter is promulgated pursuant to the authority of N.J.S.A. 55:14K–12c, whereby the Agency may make, purchase or participate in the purchase of eligible loans in order to encourage the development, operation, construction, improvement and rehabilitation of affordable housing.

5:80–13.2 Commitment applications

(a) The Agency shall make available to all mortgage sellers who request a form of commitment application for each proposed program to purchase single family mortgage loans at least 14 days in advance of the date all such applications must be submitted to the Agency. The commitment application shall be in the form prescribed by the Agency and shall contain, among other things:

1. Provision for the mortgage seller to state the maximum principal amount of single family mortgage loans which the mortgage seller offers to the Agency;

2. The date by which the commitment application must be submitted to the Agency in order to be considered for an allocation of funds and the date by which commitments will be accepted by the Agency;

3. Form of the proposed mortgage purchase agreement and mortgage servicing agreement;

4. Provision for the mortgage seller to furnish information regarding its mortgage loan origination and serving activities during a time period to be prescribed by the Agency;

5. Provision for liquidated damages to be paid or other penalties to be incurred by the mortgage seller in the event that it fails to execute or perform under the mortgage purchase agreement for the commitment accepted by the Agency; and

6. Provision for payment by the mortgage seller of a commitment fee in an amount prescribed by the Agency as consideration for the Agency's acceptance of the commitment application and agreement to purchase mortgage loans from the mortgage seller.

5:80–13.3 Allocation of commitments

In allocating funds available to meet the commitments requested by mortgage seller, the Agency shall consider, among other things, the amounts of the commitments requested by the various mortgage sellers, the adequacy of supply of single family mortgage loans in the areas in which the mortgage sellers propose to originate mortgage loans, the financial strength and stability of the mortgage seller, the mortgage loan originating and servicing activity reported in the commitment application and the ability of the mortgage sellers to originate and/or service single family mortgage loans under the terms and conditions of the mortgage purchase agreement and the mortgage servicing agreement.

5:80–13.4 Execution of mortgage purchase agreement, mortgage servicing agreement; Term Sheet; Notice of Acceptance

The Agency and each mortgage seller will enter in a Mortgage Purchase Agreement and Mortgage Servicing Agreement stating the conditions under which sellers will originate and the Agency will purchase mortgage loans financed under this Section. The Agency will provide a Term Sheet for each mortgage program which shall set forth the terms of all loans, mortgage delivery period and other requirements. All loans originated under a commitment allocation must conform to the requirements of the Term Sheet which shall be incorporated into the Mortgage Purchase Agreement by reference. The amount of the allocation provided to each mortgage seller for each program shall be set forth in a Notice of Acceptance.

5:80–13.5 Eligible neighborhoods

The Agency may designate special areas of the State in which the purchase of mortgage loans by the Agency will best effectuate the general purposes of the Act and the objectives of expansion of supply of funds in the State available for single family mortgage loans, provision of additional housing needs to remedy the shortage of adequate housing in the State and elimination of substandard dwellings. If the Agency makes such a designation, special allocations and conditions may be imposed or waived for single family mortgage loans in these areas.

5:80–13.6 Limitations on loans

The Agency may set limitations on the principal amounts of a mortgage loan or upon the incomes of homebuyers in any area to effectuate the purposes of the Act.

5:80–13.7 Regulation of points charged by mortgage sellers

The Agency may regulate, limit, restrict or prohibit the charge or collection of any commitment fee, premium, bonus, points or other fees in connection with the origination of mortgage loans by mortgage sellers to be purchased by the Agency.

5:80–13.8 Refinancing of pre-existing single family mortgage loans

(a) The Agency shall not acquire any single family mortgage loans made for the purpose of refinancing pre-existing single family mortgage loans. However, a mortgage loan made by a mortgage seller to finance the substantial rehabilitation of property upon which there is a pre-existing mortgage loan may include the refinancing of the pre-existing mortgage loan and still qualify as a single family mortgage loan under the following conditions:

1. At least 50 percent of the proceeds of the single family mortgage loans made by the mortgage seller shall be used to pay for labor and materials used to rehabilitate the property;

2. The single family mortgage loan shall be made only to a person determined in advance by the Agency to be a person of low or moderate income;

3. The economic facts and circumstances of the mortgagor and the property are such that the rehabilitation could not have been financed by other means;

4. The mortgage seller delivers to the Agency a certificate executed by the mortgage seller certifying that it reasonably believes, based upon prior investigation, that the conditions above have been met and that the refinancing of the pre-existing mortgage loan is incidental and necessary to the purpose of accomplishing the rehabilitation of the property and stating the facts and circumstances upon which the determination in (a)3 above was made; and

5. The executive director of the Agency determines and certifies that the facts and circumstances in the mortgage seller's certificate support the conclusion that the refinancing of the pre-existing mortgage loan is incidental and necessary to the purpose of accomplishing the rehabilitation of the property.

5:80–13.9 Purchase of Agency bonds

No mortgage seller (including any related person thereof, as defined in Section 103(b)(6)(C) of the Internal Revenue Code) shall, pursuant to any arrangement, formal or informal, purchase the bonds of the Agency in an amount related to the amount of the mortgage loans to be purchased from such mortgage seller (or related person, as aforesaid) by the Agency.

5:80–13.10 Return on equity for eligible loans

For each eligible loan made for owner-occupied structures of four dwelling units or less, there is no general restriction on the rate of return which the owner may receive on its investment whether from rental of the other units in the structure or on sale of the property. However, the Agency may establish limitations on the rate of return on investment for owner-occupied, one to four family units, either at the time of the making of the original loan or upon the sale, of all or a portion of the property and improvement, upon a finding that such restrictions are necessary to assure the continued use of the property for individuals of low to moderate income.

SUBCHAPTER 14. MAKING OR PURCHASING ELIGIBLE LOANS FOR SINGLE FAMILY HOME IMPROVEMENT

5:80–14.1 Commitment applications

(a) Upon request, the Agency shall make available to all mortgage sellers a single family home improvement loan application form. Such form shall be provided at least 14 days in advance of the date all such applications must be submitted to the Agency. The single family home improvement loan application shall contain, among other things:

1. Provision for the mortgage seller to state the maximum principal amount of single family home improvement loans which the mortgage seller offers to the Agency;

2. The date by which the commitment application must be submitted to the Agency in order to be considered for an allocation of funds and the date by which program commitments will be accepted by the Agency;

3. A form of the proposed note purchase agreement to be executed by the mortgage seller; and

4. Provision for the mortgage seller to furnish information regarding its residential loan origination activities during a time period to be prescribed by the Agency.

Amended by R.2000 d.132, effective March 20, 2000.
See: 32 N.J.R. 191(a), 32 N.J.R. 1065(a).
In (a), inserted "family" following "single" in 1.

5:80–14.2 Allocation of commitments

(a) In allocating funds available to meet the commitments requested by mortgage sellers, the Agency shall consider, among other things:

1. The amounts of the program commitments requested by the various mortgage sellers;

2. The adequacy of supply of affordable single family home improvement loans in the areas in which the mortgage seller proposes to originate single family home improvement loans;

3. The financial strength and stability of the mortgage seller; and

4. The residential loan originating activity reported in the commitment application and the ability of the mortgage seller to originate single family home improvement loans under the terms and conditions of the note purchase agreement.

Amended by R.2000 d.132, effective March 20, 2000.
See: 32 N.J.R. 191(a), 32 N.J.R. 1065(a).

5:80–14.3 Execution of note purchase agreement

Upon notice of acceptance by the Agency to a mortgage seller of all or a portion of the home improvement loan program commitment requested by it, the Agency shall specify the date by which the Agency shall execute the note purchase agreement executed by the mortgage seller.

5:80–14.4 Unsecured single family home improvement loans

Single family home improvement loans which are not secured by a mortgage on the property being improved or rehabilitated shall be limited to loans specified in the Term Sheet for each single family Home Improvement Loan Program fully insured under the Federal Housing Administration Title I Property Improvement Loan Program.

5:80–14.5 Eligibility requirements

The Agency may designate income and other limitations with respect to persons eligible to receive single family home improvement loans and with respect to the use of proceeds of single family home improvement loans by such persons, which limitations may vary according to geographical area, in order that the purchase of single family home improvement loans by the Agency shall best effectuate the general purpose of the Act and the objectives of expansion of the supply of funds in the State available for single family home improvement loans, provision of additional housing needed to remedy the shortage of adequate housing in the State and elimination of substandard and energy inefficient dwellings. The Agency may set limitations on the principal amounts of single family home improvement loans to effectuate the aforesaid purposes of the Act.

Amended by R.2000 d.132, effective March 20, 2000.
See: 32 N.J.R. 191(a), 32 N.J.R. 1065(a).

5:80–14.6 Regulation of points charged by mortgage sellers

The Agency may regulate, limit or prohibit the charge or collection of any commitment fee, premium, bonus, points or other fees in connection with the origination of single family home improvement loans by mortgage seller to be purchased by the Agency.

Amended by R.2000 d.132, effective March 20, 2000.
See: 32 N.J.R. 191(a), 32 N.J.R. 1065(a).

5:80–14.7 Refinancing of pre-existing debt

The Agency shall not acquire any single family home improvement loans made for the purpose of refinancing pre-existing debt.

5:80–14.8 Purchase of Agency bonds

No mortgage seller (including any related person thereof, as defined in Section 103(b)(6)(C) of the Internal Revenue Code) shall, pursuant to any arrangement, formal or informal, purchase the bonds of the Agency in an amount related to the amount of the single family home improvement loans to be purchased from such mortgage seller (or related person, as aforesaid) by the Agency.

SUBCHAPTERS 15 THROUGH 16. (RESERVED)

SUBCHAPTER 17. PREVAILING WAGE RATE

5:80–17.1 Applicability of prevailing wage rate

(a) Not less than the prevailing wage rate shall be paid in the construction or rehabilitation of housing projects the construction or rehabilitation of which is fully or partially financed by a loan from the Agency by all housing sponsors, or builders, contractors or subcontractors engaged by housing sponsors, except as may be provided under the provisions of N.J.A.C. 5:80–1.4 or N.J.S.A. 55:14K–5y. The Agency may also require that not less than the prevailing wage rate be paid in connection with the operation, repair or improvement of any housing project or in conjunction with the construction or rehabilitation of any improvement or project financed by a loan from the Agency.

(b) The prevailing wage rate required to be paid pursuant to (a) above shall be determined in accordance with N.J.S.A. 55:14K–42.

Recodified from N.J.A.C. 5:80–17.2 and amended by R.2005 d.219, effective July 5, 2005.
See: 37 N.J.R. 970(a), 37 N.J.R. 2476(a).
Former N.J.A.C. 5:80–17.1, Authority, repealed.

5:80–17.2 (Reserved)

Recodified to N.J.A.C. 5:80–17.1 by R.2005 d.219, effective July 5, 2005.
See: 37 N.J.R. 970(a), 37 N.J.R. 2476(a).
Section was "Applicability of prevailing wages".

SUBCHAPTER 18. DEBARMENT AND SUSPENSION FROM AGENCY CONTRACTING

5:80–18.1 Definitions

When used in this subchapter, the following terms shall have the following meanings:

"Affiliates" means persons having an overt or covert relationship such that any one of them directly or indirectly controls or has the power to control another.

"Agency contracting" means any arrangement giving rise to an obligation to supply anything to or perform any service for the Agency, other than by virtue of State or Agency employment, or to supply anything to or perform any service for a private or public person where Agency provides substantial financial assistance and retains the right to approve or disapprove the cost, nature or quality of the goods or service or the persons who may supply or perform the same.

"Debarment" means an exclusion from the New Jersey Housing and Mortgage Finance Agency (Agency) contracting, on the basis of a lack of responsibility evidenced by an offense, failure, or inadequacy of performance, for a reasonable period of time commensurate with the seriousness of the offense, failure, or inadequacy of performance.

"Person" means any natural person, company, firm, association, corporation or other entity that is engaged in or offers or proposes to be engaged in Agency contracting.

"Suspension" means an exclusion from Agency contracting for a temporary period of time, pending the completion of an investigation or legal proceedings.

Amended by R.1990 d.247, effective May 21, 1990.
See: 21 N.J.R. 3350(a), 22 N.J.R. 1556(b).
Definitions of agency contracting and person added.

Case Notes

Cited as former codification N.J.A.C. 5:80–4.1. New Jersey Housing Finance Agency v. Canino, 7 N.J.A.R. 182 (1983).

5:80–18.2 Causes for debarment of a person(s)

(a) In the public interest, the Agency may debar a person for any of the following causes:

1. Commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract, or subcontract thereunder, or in the performance of such contract or subcontract.

2. Violation of the Federal Organized Crime Control Act of 1970, or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, perjury, false swearing, receiving stolen property, obstruction of justice, or any other offense indicating a lack of business integrity or honesty.

3. Violation of any Federal or State antitrust statute or of the Federal Anti Kickback Acts, 18 U.S.C. § 874, 40 U.S.C. § 276 c.

4. Violations of any of the laws governing the conduct of elections of the Federal Government, of the State of New Jersey, or of its political subdivisions.

5. Violation of the New Jersey Law Against Discrimination, N.J.S.A. 10:5–1 et seq., or of the Act banning discrimination in public works employment, N.J.S.A. 10:2–1 et seq., or of the Act prohibiting employment discrimination by industries engaged in defense work, N.J.S.A. 10:1–10 et seq.

6. Violations of any laws governing hours of labor, minimum wage standards, prevailing wage standards, discrimination in wages, or child labor.

7. Violations of any laws governing the conduct of occupations or professions or regulated industries.

8. Violations of any other laws which may bear upon a lack of responsibility or moral integrity.

9. Willful failure to perform in accordance with contract specifications or within contractual time limits.

10. A record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts, provided that such failure or unsatisfactory performance has occurred within a reasonable time preceding the determination to debar and was caused by acts within the control of the person to be debarred.

11. Violation of contractual or statutory provisions regulating contingent fees.

12. Any other cause affecting responsibility as an Agency contractor of such serious and compelling nature as may be determined by the Agency to warrant debarment, even if such conduct has not been or may not be prosecuted as violations of such laws or contracts.

13. Debarment by some other department or agency in the Executive Branch.

14. Debarment by the Department of Housing and Urban Development, Federal Housing Administration or any other instrumentality, agency or department of the United States Government.

15. Any violation of the prohibited activities listed at N.J.A.C. 5:80–18.8(a) or failure to report violations of prohibited activities as required under N.J.A.C. 5:80–18.8(b).

Amended by R.1985 d.559, effective November 4, 1985.
See: 17 N.J.R. 1174(b), 17 N.J.R. 2607(a).
(a)12 deleted text "including such conduct as may be proscribed by the laws or contracts enumerated in this section".
(a)14 added.
Amended by R.1990 d.247, effective May 21, 1990.
See: 21 N.J.R. 3350(a), 22 N.J.R. 1556(b).
Text at 15 added.
Amended by R.2000 d.132, effective March 20, 2000.
See: 32 N.J.R. 191(a), 32 N.J.R. 1065(a).
In (a), changed U.S.C. reference in 3, rewrote 5, and substituted "occurred" for "occupied" following "performance has" and inserted "to be" following "the person" in 10.

Case Notes

Offenses indicating lack of business integrity or honesty as grounds for disbarment (citing former codification N.J.A.C. 5:80–4.2). New Jersey Housing Finance Agency v. Canino, 7 N.J.A.R. 182 (1983).

5:80–18.3 Conditions affecting the debarment of a person(s)

(a) The following conditions shall apply concerning debarment:

1. Debarment shall be made only upon approval of the members of the Agency, upon their own action or upon recommendation by the Executive Director of the Agency, except as otherwise provided by law.

2. The existence of any of the causes set forth in N.J.A.C. 5:80–18.2 shall not necessarily require that a person be debarred. In each instance, the decision to debar shall be made within the discretion of the members of the Agency, upon their own action or upon recommendation by the Executive Director of the Agency, unless otherwise required by law, and shall be rendered in the best interests of the State.

3. All mitigating factors shall be considered in determining the seriousness of the offense, failure or inadequacy of performance, in deciding whether debarment is warranted.

4. The existence of a cause set forth in N.J.A.C. 5:80–18.2(a)1–8 shall be established upon the rendering of a final judgment or conviction, including a guilty plea or a plea of nolo contendere by a court of competent jurisdiction or by an administrative agency empowered to render such judgment. In the event an appeal taken from such judgment or conviction results in reversal thereof, the debarment shall be removed upon the request of the debarred person unless other cause for debarment exists.

5. The existence of a cause set forth in N.J.A.C. 5:80–18.2(a)9–12 and 15 shall be established by evidence which the Agency determines to be clear and convincing in nature.

6. Debarment for the cause set forth in N.J.A.C. 5:80–18.2(a)13 and 14 shall be proper, provided that one of the causes set forth in N.J.A.C. 5:80–18.2(a)1–12 was the basis for debarment by the original debarring agency. Such debarment may be based entirely on the record of facts obtained by the original debarring agency, or upon a combination of such facts and additional facts.

Amended by R.1990 d.247, effective May 21, 1990.
See: 21 N.J.R. 3350(a), 22 N.J.R. 1556(b).
References to 5:80–18.2(a)14 and 15 added at (a)6 and (a)5.

5:80–18.4 Procedures; period of debarment; scope of debarment affecting the debarment of a person(s)

(a) The Agency in seeking to debar a person or his affiliates shall furnish such party with a written notice:

1. Stating that debarment is being considered;

2. Setting forth the reasons for the proposed debarment; and

3. Indicating that such party will be afforded an opportunity for a hearing if he so requests within a stated period of time. All such hearings shall be conducted in accordance with the provisions of the Administrative Procedure Act. However, where another department or agency has imposed debarment upon a party, the Agency may also impose a similar debarment without affording an opportunity for a hearing, provided that the Agency furnishes notice of the proposed similar debarment to that party, and affords that party an opportunity to present information in his behalf to explain why the proposed similar debarment should not be imposed in whole or in part.

(b) Debarment shall be for a reasonable, definitely stated period of time which as a general rule shall not exceed five years. Debarment for an additional period shall be permitted provided that notice thereof is furnished and the party is afforded an opportunity to present information in his behalf to explain why the additional period of debarment should not be imposed.

(c) Except as otherwise provided by law, a debarment may be removed or the period thereof may be reduced in the discretion of the members of the Agency upon their own action or upon recommendation by the Executive Director of the Agency upon the submission of a good faith application under oath, supported by documentary evidence, setting forth substantial and appropriate grounds for the granting of relief, such as newly discovered material evidence, reversal of a conviction or judgment, actual change of ownership, management or control, or the elimination of the causes for which the debarment was imposed.

(d) A debarment may include all known affiliates of a person, provided that each decision to include an affiliate is made on a case by case basis after giving due regard to all relevant facts and circumstances.

(e) The offense, failure or inadequacy of performance of an individual may be imputed to a person with whom he is affiliated, where such conduct was accomplished within the course of his official duty or was effected by him with the knowledge or approval of such person.

Amended by R.1985 d.559, effective November 4, 1985.
See: 17 N.J.R. 1174(b), 17 N.J.R. 2607(a).
(d) substantially amended; (e) added.
Amended by R.2000 d.132, effective March 20, 2000.
See: 32 N.J.R. 191(a), 32 N.J.R. 1065(a).

Case Notes

Affiliates controlled directly or indirectly by offender also subject to debarment (citing former codification N.J.A.C. 5:80–4.4). New Jersey Housing Finance Agency v. Canino, 7 N.J.A.R. 182 (1983).

Suspension of defendants from agency contracting pending formal debarment hearing constitutional (citing former codification N.J.A.C. 5:80–4); suspension to run from original notice of suspension rather than from date of final agency decision (appeal modification). New Jersey Housing Finance Agency v. Canino, 7 N.J.A.R. 182 (1983).

5:80–18.5 Causes for suspension of a person(s)

In the public interest, the Agency, upon approval of the Attorney General, may suspend a person for any cause specified in N.J.A.C. 5:80–18.2 or upon a reasonable suspicion that such cause exists.

Case Notes

Cited as former codification N.J.A.C. 5:80–4.5. New Jersey Housing Finance Agency v. Canino, 7 N.J.A.R. 182 (1983).

5:80–18.6 Conditions for suspension of a person(s)

(a) The following conditions concerning suspension are to be adhered to:

1. Suspension shall be imposed only upon approval of the members of Agency, upon their own action or upon recommendation by the Executive Director of the Agency, and upon approval of the Attorney General, except as otherwise provided by law.

2. The existence of any cause for suspension shall not require that a suspension be imposed, and a decision to suspend shall be made at the discretion of the members of the Agency, upon their own action or upon recommendation by the Executive Director of the Agency, and at the discretion of the Attorney General, and shall be rendered in the best interests of the State.

3. Suspension shall not be based upon unsupported accusation, but upon adequate evidence that cause exists or upon evidence adequate to create a reasonable suspicion that cause exists.

4. In assessing whether adequate evidence exists, consideration shall be given to the amount of credible evidence which is available, to the existence or absence of corroboration as to important allegations, and to inferences which may properly be drawn from the existence or absence of affirmative facts.

5. Reasonable suspicion of the existence of a cause described in N.J.A.C. 5:80–18.2(a)1–8 may be established by the rendering of a final judgment or conviction by a court or administrative agency of competent jurisdiction, by grand jury indictment, or by evidence that such violations of civil or criminal law did in fact occur.

6. A suspension invoked by another agency for any of the causes described in N.J.A.C. 5:80–18.2(a)1–13 may be the basis for the imposition of a concurrent suspension by the Agency, which suspension may be imposed when found to be in the best interest of the State.

5:80–18.7 Procedures; period of suspension; scope of suspension affecting the suspension of a person(s)

(a) The following provisions regarding procedures, period of suspension and scope of suspension shall be adhered to by the Agency.

1. Upon approval of the Attorney General, the Agency, may suspend a person or his affiliates, provided that within 10 days after the effective date of the suspension, the Agency, provides such party with a written notice:

i. Stating that a suspension has been imposed and its effective date;

ii. Setting forth the reasons for the suspension to the extent that the Attorney General determines that such reasons may be properly disclosed;

iii. Stating that the suspension is for a temporary period pending the completion of an investigation and such legal proceedings as may ensue; and

iv. Indicating that, if such legal proceedings are not commenced or the suspension removed within 60 days of the date of such notice, the party will be given either a statement of the reasons for the suspension and an opportunity for a hearing if he so requests, or a statement declining to give such reasons and setting forth the Agency's position regarding the continuation of the suspension. Where a suspension by another agency has been the basis for suspension by the Agency, the latter shall note that fact as a reason for its suspension.

2. A suspension shall not continue beyond 18 months from its effective date unless civil or criminal action regarding the alleged violation shall have been initiated within that period, or unless debarment action has been commenced. Whenever prosecution or debarment action has been initiated, the suspension may continue until the legal proceedings are completed.

3. A suspension may include all known affiliates of a person, provided that each decision to include an affiliate is made on a case by case basis after giving due regard to all relevant facts and circumstances.

4. The offense, failure or inadequacy of performance of an individual may be imputed to a person with whom he is affiliated, where such conduct was accomplished within the course of his official duty or was effectuated by him with the knowledge or approval of such person.

Amended by R.1985 d.559, effective November 4, 1985.
See: 17 N.J.R. 1174(b), 17 N.J.R. 2607(a).
(a)3 substantially amended; (a)4 added.

5:80–18.8 Prohibited activities of persons; reporting requirement

(a) In order to ensure that all persons meet a standard of responsibility which assures the Agency, the State and its citizens that such persons will both compete and perform honestly in their dealings with the Agency and avoid conflicts of interest, all persons are prohibited from engaging in the following activities:

1. No person shall pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any Agency member or employee or to any member of the immediate family, as defined by N.J.S.A. 52:13D–13i, of any such member or employee, or to any partnership, firm, or corporation with which such member, employee or member of their immediate family is employed or associated, or in which such member or employee has an interest within the meaning of N.J.S.A. 52:13D–13g.

2. No person shall, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such person to, any Agency member or employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to the Agency. No person shall, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such person to any individual, firm or entity with which such member or employee is employed or associated or has an interest within the meaning of N.J.S.A. 52:13D–13g. Any relationships subject to this provision shall be reported in writing forthwith to the Executive Commission on Ethical Standards, which may grant a waiver of this restriction upon application of the member or employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest.

3. No person shall influence, or attempt to influence or cause to be influenced, any Agency member or employee in his official capacity in any manner which might tend to impair the objectivity or independence of judgment of said member or employee.

4. No person shall cause or influence, or attempt to cause or influence, any Agency member or employee to use, or attempt to use, his official position to secure unwarranted privileges or advantages for the person or any other individual or entity.

(b) All persons shall report to the Attorney General of New Jersey and the Executive Commission on Ethical Standards the solicitation of such persons of any fee, commission, compensation, gift, gratuity or other thing of value by an Agency member or employee.

(c) The prohibited activities in (a)1 through 4 above shall not be construed to prohibit a person from offering or giving gifts to or contracting with an Agency member or employee, nor be construed to prohibit an Agency member or employee from receiving gifts from or contracting with a person, and shall not be grounds for debarment pursuant to N.J.A.C. 5:80–18.2(a)15, provided that such activities are offered or made under the same terms and conditions that are available to members of the general public and are consistent with any rules promulgated by the Executive Commission on Ethical Standards.

(d) The Agency shall include the prohibited activities and reporting requirements in (a) and (b) above in requests for proposals by the Agency and in all contracts with every person.

New Rule, R.1990 d.247, effective May 21, 1990.
See: 21 N.J.R. 3350(a), 22 N.J.R. 1556(b).
Amended by R.2000 d.132, effective March 20, 2000.
See: 32 N.J.R. 191(a), 32 N.J.R. 1065(a).
In (a)2, substituted "shall" for "may" following "person" throughout.

Case Notes

Cited as former codification N.J.A.C. 5:80–4.8. New Jersey Housing Finance Agency v. Canino, 7 N.J.A.R. 182 (1983).

5:80–18.9 Extent of debarment and suspension

The exclusion from Agency contracting by virtue of debarment or suspension shall extend to all contracting and subcontracting within the control or jurisdiction of the Agency including any contracts which utilize Agency funds. When it is determined by the members of the Agency, upon their own action or upon recommendation by the Executive Director of the Agency, to be essential to the public interest, and upon filing of a finding thereof with the Attorney General and, in the case of suspension, upon approval of the Attorney General, an exemption from total exclusion may be made with respect to a particular Agency contract.

Amended by R.2000 d.132, effective March 20, 2000.
See: 32 N.J.R. 191(a), 32 N.J.R. 1065(a).

5:80–18.10 Prior notice by the Agency

Insofar as practicable, prior notice of any proposed debarment or suspension shall be given by the Agency to the Attorney General and Treasurer.

5:80–18.11 List of debarred and suspended

The Agency shall supply to the State Treasurer a monthly list of all persons having been debarred or suspended in accordance with the procedures prescribed herein, including the effective date and term, if any, of such debarment or suspension. Such list shall at all times be available for public inspection.

5:80–18.12 Discretion

Nothing contained herein shall be construed to limit the authority of the Agency to contract or to refrain from contracting within the discretion allowed by law.

5:80–18.13 Lists of other agencies

Notwithstanding the failure of the Agency to debar or suspend any person or contractor pursuant to these regulations, whenever the Agency participates in any program financed, issued or guaranteed by any department, agency or instrumentality of the United States Government, it may rely on and distribute lists of persons suspended or debarred by such agency, department or instrumentality and prevent the listed person from participating in that program.

New Rule, R.1985 d.559, effective November 4, 1985.
See: 17 N.J.R. 1174(b), 17 N.J.R. 2607(a).

SUBCHAPTER 19. WAIVERS

5:80–19.1 Waivers

Any party desiring a waiver or release from the express provisions of any of the regulations in this chapter may submit a written request to the Agency to the attention of the Executive Director. Waivers may be granted only by the Agency Board when such waiver would not contravene the provisions of N.J.S.A. 55:14K–1 et seq. and upon a finding that, in granting the waiver, the Board will be promoting the statutory purposes of the Agency.

SUBCHAPTER 20. CERTIFICATION AND RECERTIFICATION OF INCOME

5:80–20.1 Authority

This subchapter is promulgated pursuant to the authority of N.J.S.A. 55:14K–8b.

5:80–20.2 General applicability

(a) Regulations within this subchapter shall apply to all housing projects financed by a loan from the Agency.

(b) In addition to (a) above, if a unit within a housing project is assisted by subsidies provided by the United States Department of Housing and Urban Development, (HUD) such as Section 8 (Housing Assistance Payments) and Section 236 (Interest Reduction Payments) of the National Housing Act of 1937, or is financed pursuant to Section 103(b)(4) of the Internal Revenue Code, or is financed by a loan from the Agency which is insured or guaranteed by the United States or any agency thereof, then any additional Federal regulations, if applicable, regarding certification and recertification of income shall also apply to the unit. In such cases, the Housing Sponsor shall notify families that they are residing in housing projects which are subject to such Federal regulation. In the event there are any inconsistencies between the regulations in this subchapter and said Federal regulations, the Federal regulations shall prevail.

(c) References to any statutes, State or Federal, within this subchapter include any amendments which have been or may be made to such statutes.

(d) "Income-restricted units" means the percentage of units in a housing project where occupancy is restricted to low-or moderate-income tenants pursuant to the requirements of the Agency or the Internal Revenue Code and will qualify the housing project for tax-exempt bond financing and/or Federal low-income housing tax credits.

(e) "Market-rate units" means all units in a housing project financed by the Agency where tenant income and occupancy are governed only by the requirements of N.J.S.A. 55:14K–8 and N.J.A.C. 5:80–8.2(a).

Amended by R.2001 d.82, effective March 5, 2001.
See: 32 N.J.R. 4166(a), 33 N.J.R. 781(a).
Added (d) and (e).

5:80–20.3 Documentation

(a) Each family applying for admission to or occupying an income-restricted unit within a housing project shall provide information and documentation which verifies, to the satisfaction of the Agency, gross aggregate family income. The documentation which the Agency shall require families to submit to housing sponsors may include but is not necessarily limited to:

1. A copy of the first page of their most recent Federal income tax return, or a signed certification stating that no tax return was filed;

2. Permission for the Agency and Housing Sponsor to contact the Internal Revenue Service for additional information which is necessary to verify gross aggregate family income and/or copies of the first page of a family's income tax returns;

3. Verification of employment;

4. Check stubs from employers, pensions, annuities, social security, unemployment, public assistance and workers' compensation;

5. A copy of any court order for alimony and/or child support;

6. Confirmation of income from assets (for example, bank statements).

(b) For market-rate units only, a written statement by the applicant(s) or tenant(s) certifying that aggregate family income does not exceed the maximum income limits prescribed by N.J.A.C. 5:80–8.2 may be accepted as sufficient verification of income.

(c) In addition to the documentation required pursuant to this section, any family applying for admission to or occupying a unit within a housing project assisted by subsidies provided by HUD, such as Section 8 and 236, and/or financed pursuant to Section 103(b)(4) of the Internal Revenue Code, may be required to submit additional documentation as required by Federal regulations regarding certification and recertification of income.

Amended by R.2000 d.132, effective March 20, 2000.
See: 32 N.J.R. 191(a), 32 N.J.R. 1065(a).
Amended by R.2001 d.82, effective March 5, 2001.
See: 32 N.J.R. 4166(a), 33 N.J.R. 781(a).
In (a), substituted "an income restricted" for "a"; added a new (b) and recodified former (b) as (c).

5:80–20.4 Calculation of income

(a) For families applying for admission to or occupying a unit which is assisted by HUD subsidies such as Section 8 and 236 or families occupying a unit within a housing project financed pursuant to Section 103(b)(4) of the Internal Revenue Code, where such unit is restricted to families of low and moderate income as defined in Section 103(b)(12)(C), gross aggregate family income shall be calculated in accordance with applicable Federal regulations.

(b) For all other families, gross aggregate family income shall be calculated by the total annual income of all family members, from whatever source derived, including but not limited to pension, annuity, retirement and social security benefits. However, the calculation for gross aggregate family income shall not include such income as the Agency determines may be excluded. Such excludable income shall include but is not limited to the following:

1. Income from a dependent minor under 18 years of age, who is not the head of household or spouse of the head of household;

2. Lump-sum additions to family assets such as inheritances, capital gains, insurance payments included under health, accident, hazard or worker's compensation policies, and settlements for personal or property losses;

3. For income from dependents who are secondary wage earners but who are not included within (b)1 above, such wages up to a maximum of $3,000.

(c) The calculation of gross aggregate family income with regard to (b) above, shall include an allowance of $480.00 for each dependent minor under 18 years of age who is not the head of household or spouse of the head of household.

Amended by R.2000 d.132, effective March 20, 2000.
See: 32 N.J.R. 191(a), 32 N.J.R. 1065(a).

5:80–20.5 Recertification periods and procedures

(a) Family income shall be recertified on an annual basis for:

1. Families occupying a unit which is assisted by HUD subsidies, such as Section 8 and 236.

2. Families occupying a unit within a housing project financed under Section 103(b)(4) of the Internal Revenue Code where such unit is restricted to families of low and moderate income as defined in Section 103(b)(12)(C).

(b) Family income shall be recertified at least every three years but not more than once each year, for all other families not included within (a)1 or 2 above.

(c) Housing sponsors shall notify each family in writing, not more than 100 days and not less than 91 days prior to expiration of a family's lease, that they must recertify family income. Such notification shall include but is not necessarily limited to:

1. A statement that families must recertify within 30 days of the notice;

2. A list of the documentation required for recertification;

3. A statement that families who fail to recertify income are subject to provisions set forth in N.J.A.C. 5:80–20.6, such statement including a description of such provisions;

4. A statement that after recertification, families whose income is in excess of the Federal or Agency maximum income limit may be subject to provisions set forth in N.J.A.C. 5:80–20.7, such statement including a description of such provisions.

(d) After recertification, housing sponsors shall calculate a family's gross aggregate family income. If there will be an adjustment in HUD subsidy or imposition of a surcharge as provided by N.J.A.C. 5:80–20.7, housing sponsors shall provide families with notice at least 30 days prior to the expiration of the lease. If requested by families, housing sponsors shall provide an explanation of how they calculated the family's income and arrived at the adjustment of subsidy or imposition of a surcharge. Housing sponsors must submit all family recertification calculations and supporting documents to the Agency at least 30 days prior to the expiration of a family's lease.

(e) The Agency shall review the recertification calculations and supporting documents and notify the Housing Sponsor of its approval or any adjustments to the calculations within 30 days of receipt. If the review results in an adjustment which will decrease or further decrease a family's HUD subsidy or impose or increase a surcharge, Housing Sponsors shall provide the family with an additional 30 days notice prior to implementing such adjustment.

(f) Failure of the housing sponsor to comply with the time requirements in (c) and (d) above shall not relieve families of their obligation to complete their recertification within 30 days of receiving notice to recertify.

(g) Housing sponsors shall provide a written acknowledgment indicating the documents submitted, if requested at the time of submission.

Amended by R.2000 d.132, effective March 20, 2000.
See: 32 N.J.R. 191(a), 32 N.J.R. 1065(a).

Case Notes

Regulations requiring housing project sponsor to follow specific procedure in notifying tenants about recertifying their income and possibility of eviction upon failing to do so did not apply only to noncertifying tenants whose income made them ineligible to remain tenants. N.C. Housing Associates, No. 100 v. Hightower-Cooper, 281 N.J.Super. 317, 657 A.2d 478 (L.1995).

5:80–20.6 Failure to recertify

(a) Any family which fails to recertify income after notification pursuant to this subchapter shall be subject to the following:

1. For families occupying a unit which is assisted by HUD subsidies, such as Section 8 and 236, such subsidies shall be terminated as needed to comply with applicable Federal regulations.

2. For all other families, they shall be subject to imposition of surcharges pursuant to N.J.A.C. 5:80–20.8, and may also be subject to eviction pursuant to N.J.A.C. 5:80–20.9.

(b) Families subject to the provisions in (a) above, upon satisfactory completion of recertification, may have subsidies restored, provided said subsidies are available, or may, with Agency approval, have surcharges removed. Surcharges paid to the Agency for failure to recertify, as required by N.J.A.C. 5:80–20.8(d), may be returned, with Agency approval, if satisfactory completion of recertification is made within six months of the notice to recertify. Neither the agency nor the housing sponsor is responsible for the return of surcharges paid to the municipality.

Amended by R.2000 d.132, effective March 20, 2000.
See: 32 N.J.R. 191(a), 32 N.J.R. 1065 (a).

5:80–20.7 Adjustments in tenancy

(a) For families occupying a unit assisted by HUD subsidies such as Section 8 and 236, upon recertification, families whose income is in excess of the maximum income limit under applicable federal regulations are subject to adjustment or termination of HUD subsidies as needed to comply with applicable Federal regulations.

(b) For all other families, upon recertification, those whose income is in excess of the maximum income limit under N.J.A.C. 5:80–8.2 may be subject to surcharges pursuant to N.J.A.C. 5:80–20.8, and may also be subject to eviction pursuant to N.J.A.C. 5:80–20.9.

(c) Upon recertification, Housing Sponsors must assure that the project contains the required number of low and moderate income families as required by N.J.A.C. 5:80–8.3.

5:80–20.8 Surcharges

(a) Upon recertification, if the gross aggregate family income exceeds the maximum income limit pursuant to N.J.A.C. 5:80–8.2 by 25 percent or less, the family shall continue to occupy the unit without the imposition of any surcharges. If the gross aggregate family income exceeds the maximum income limit by more than 25 percent, the family may continue to occupy the unit, subject to payment of a surcharge as outlined in (c) below. Such surcharges may only be imposed with approval of the Agency. When imposing surcharges, housing sponsors shall give families notice that they may be subject to eviction if their income continues to exceed the maximum income limit for six months from the expiration of the family's lease.

(b) Families subject to surcharges for failing to complete the recertification process (see N.J.A.C. 5:80–20.6) shall be surcharged at the maximum rate outlined in (c) below and may also be subject to eviction in accordance with N.J.A.C. 5:80–20.9. Sponsors shall provide families with notice at least 30 days prior to the expiration of the lease that a surcharge will be imposed for failure to recertify. Such surcharges or eviction actions require Agency approval.

(c) Surcharges imposed shall be based upon a family's unit rent in accordance with the following schedule:

Percentage that Gross Aggregate Income exceeds the Maximum Income Limit	Surcharge on Unit Rent
Up to and including 125%	None
In excess of 125% up to and including 130%	5%
In excess of 130% up to and including 135%	10%
In excess of 135% up to and including 140%	15%
In excess of 140% up to and including 145%	20%
In excess of 145% up to and including 150%	25%
In excess of 150%	30%

(d) Housing sponsors shall pay the surcharge to the municipality granting tax exemption to the project but only up to an amount that, together with payments made to the municipality in lieu of taxes and for any land taxes, equals 25 percent of the total rents or carrying charges of the project for the current and any prior years that the project has been in operation. For projects on which the Agency has made a loan financed with the proceeds of bonds issued prior to January 1, 1973, any remainder of the surcharge or the total surcharge, if tax exemption has not been granted, shall be paid into the Agency's housing finance fund securing the bonds issued to finance the project. For projects financed on or after January 1, 1973, any remainder of the surcharge or the total surcharge, if tax exemption has not been granted, shall be paid to the Agency.

(e) Surcharges shall be imposed upon expiration of the lease provided families have received 30 days notice pursuant to N.J.A.C. 5:80–20.5. Families which have not received 30 days notice prior to lease expiration shall not have surcharges imposed until the 30 day notice has expired.

Amended by R.2000 d.132, effective March 20, 2000.
See: 32 N.J.R. 191(a), 32 N.J.R. 1065(a).

5:80–20.9 Eviction

(a) Families who fail to recertify income following notification pursuant to N.J.A.C. 5:80–20.5 may, with Agency approval, be evicted by the housing sponsor if such failure continues for at least six months after expiration of the lease.

(b) Upon recertification, families whose gross aggregate family income exceeds the maximum income limit pursuant to N.J.A.C. 5:80–8.2 by more than 25 percent and continues to do so for at least six months after expiration of the lease may, with Agency approval, be evicted by the housing sponsor.

(c) Prior to eviction under this section, Housing Sponsors must provide families with written notice at the end of the six month period indicating that eviction procedures will begin unless they recertify within 10 days of the notice and show that family income has decreased below the maximum income limit. Families who fail to recertify within the 10 days or upon recertification are in excess of the maximum income limit may be evicted by following the provisions of N.J.S.A. 2A:18–61.1 et seq.

(d) In the case of tenants of income-restricted ALR units, neither failure to recertify nor income exceeding the maximum income limit shall be cause for eviction. However, the next available nonincome-restricted ALR unit shall be rented to an income-eligible tenant and shall be deemed an income-restricted ALR unit thereafter.

Amended by R.1998 d.80, effective February 2, 1998.
See: 29 N.J.R. 3214(a), 30 N.J.R. 539(b).
Added (d).
Amended by R.2000 d.132, effective March 20, 2000.
See: 32 N.J.R. 191(a), 32 N.J.R. 1065(a).

5:80–20.10 Confidentiality

Housing sponsors shall maintain files on the certification and recertification of family income at the project. Such files are to be kept as confidential and shall not be accessible to nor shall information contained therein be disclosed to any person except authorized representatives of the housing sponsor, the Agency and, if applicable, HUD. Housing sponsors shall require identification from each person claiming authority to review such confidential files and maintain a list of individuals who have been provided access to same. If a housing sponsor is not satisfied that a person requesting review has proper authority, review shall be denied and the matter referred to the Agency for final determination. Any copies of family files sent to the Agency pursuant to the certification or recertification process shall be maintained in the same confidential manner. If requested by a family at the time of submission, submitted material shall be returned to a family when it is no longer needed.

Amended by R.2000 d.132, effective March 20, 2000.
See: 32 N.J.R. 191(a), 32 N.J.R. 1065 (a).
Inserted "and, if applicable" following "Agency" in the second sentence.

SUBCHAPTER 21. TRANSFER OF SERVICING OF SINGLE FAMILY MORTGAGE LOANS

5:80–21.1 General applicability

(a) The rules set forth within N.J.A.C. 5:80–21.1 through 21.4 shall apply to all servicers of Agency single family mortgage program loans upon:

1. Sale or transfer of a majority interest in the servicing company or entity;

2. Sale or transfer of a majority ownership interest of the holding company;

3. Sale or transfer of the portfolio of Agency loans to another service; or

4. Merger.

(b) The rules within this subchapter shall also apply to any change in the servicer's organizational structure, which in the Agency's determination, amounts to the type of

transfer specified in (a) above. In determining whether a change in the servicer's organizational structure is a transfer subject to these rules, the Agency may consider:

1. Name change of servicer;

2. Change of location of servicer;

3. Staff changes by servicer;

4. Legal or other significant organizational changes in the servicer's structure; and

5. Compensation paid to the servicer.

(c) The rules within this subchapter shall not apply to loan originators who are not servicers or to newly originated loans that are being transferred from the originating lender to an approved servicer.

Amended by R.1997 d.523, effective December 15, 1997.
See: 28 N.J.R. 4833(a), 29 N.J.R. 5285(a).
Rewrote (a)1 through (a)3, inserted (a)4 and (b)5; and in (c), extended the exception to newly originated loans transferred to an approved servicer.

5:80–21.2 Agency review and approval of transfer

(a) No servicer may enter into any transfer as specified in N.J.A.C. 5:80–21.1 without obtaining prior written consent of the Agency. Approval of all transfers shall be made by the Executive Director of the Agency.

(b) In order for a transfer to be approved, the successor servicer must meet all of the following requirements:

1. Is a currently approved Agency seller/servicer and has a demonstrable ability to service an Agency portfolio, of the size to be transferred;

2. Have a net worth consistent with the standards set forth by the Federal National Mortgage Association (FNMA) and acceptable to bond insurers, where applicable;

3. Have a servicing portfolio of at least $25 million in total outstanding principal balances.

4. Be an approved servicer for the FNMA or Federal Home Loan Mortgage Corporation (FHLMC). If the servicer is not FNMA/FHLMC approved, the Agency reserves the right to make its own determination;

5. Have current certified financial statements and servicing and delinquency statistics that are satisfactory to the Agency;

6. Completion of the participation application to the satisfaction of the Agency;

7. Completion of the Agency's Questionnaire for Servicing Transfers to the satisfaction of the Agency. This form must also be completed by the transferring servicer;

8. Evidence of fidelity insurance, errors and omission insurance and other insurance required by the Agency;

9. If a successor servicer is an existing Agency servicer, there must be a record of acceptable servicing performance, as determined by the Agency; and

10. Be approved by any entity which has provided insurance for the specified bonds, if required by that entity.

(c) In addition to the requirements in (b) above, the successor servicer shall meet all requirements of the Agency's General Resolution and other documents issued in connection with the sale of bonds from which the financing for the serviced loans has been provided.

Amended by R.1997 d.523, effective December 15, 1997.
See: 28 N.J.R. 4833(a), 29 N.J.R. 5285(a).
Renamed the section; rewrote (b)1 and (b)2; in (b)3, deleted the requirement that the servicing portfolio contain at least 200 loans, and increased the minimum portfolio size to $25 million dollars; and added (b)10 and (c).
Amended by R.2000 d.132, effective March 20, 2000.
See: 32 N.J.R. 191(a), 32 N.J.R. 1065(a).

5:80–21.3 Compensation adjustment due on transfer

(a) The compensation paid to the Agency shall be adjusted upon sale or transfer by a servicer of Agency loans. At the time of the transfer, the servicer shall pay to the Agency an amount equal to three times the service fee earned for the month during which the transfer occurs.

(b) Compensation adjustment shall not be paid on loans in foreclosure or loans in default over 60 days.

(c) The compensation adjustment set forth in (a) above shall not apply to:

1. Newly originated loans sold or transferred by sellers (originators) who are not Agency approved servicers;

2. Servicers of portfolios with 150 loans or less that are transferring their entire Agency portfolio;

3. Servicers who are subject to a servicer's agreement that provides for compensation adjustment of amounts less than those provided by these rules; and

4. Loan sale or organizational transactions for which no compensation is involved.

Amended by R.1997 d.523, effective December 15, 1997.
See: 28 N.J.R. 4833(a), 29 N.J.R. 5285(a).
Renamed the section; rewrote (a); in (b) substituted "Compensation adjustment" for "A transfer fee" and added (c).

5:80–21.4 Subsequent transfers

(a) The rules within this subchapter and all terms and conditions of the then current agreements between the Agency and the transferring servicer shall apply in their entirety to any subsequent transfers by servicers who became successor servicers under the provisions of these rules.

(b) Successors servicers shall assume and abide by all the terms, including compensation adjustments, of the applicable mortgage servicing agreements on the loans being serviced unless different terms are agreed to in writing by the successor servicer and the Agency. Portfolio records shall be delivered to the successor, including, but not limited to, current and past status, escrow balances, and prepayment and curtailment information. Transferor and transferee shall fully indemnify the Agency against losses or claims resulting from the transfer.

Amended by R.1997 d.523, effective December 15, 1997.
See: 28 N.J.R. 4833(a), 29 N.J.R. 5285(a).
In (a), inserted a reference to agreements between the Agency and the transferring servicer; and in (b), inserted the second sentence.

5:80–21.5 Termination of servicing by Agency

(a) The Agency may terminate the servicing agreement with a servicer with or without cause. If termination is without cause the Agency shall pay to the servicer 50 basis points of the outstanding principal loan balance of any loan that is less than 84 months old and that is not in default by 60 or more days. No compensation shall be paid for any loan that is older than seven years.

(b) If the Agency terminates the servicing agreement with cause, in accordance with the agreement, no compensation adjustment shall be paid unless the Agency permits the servicer to transfer servicing, in which case the rules set forth in N.J.A.C. 5:80–21.1 through 21.4 shall apply.

(c) In the event that the Agency terminates the servicing agreement, the servicer shall compensate and indemnify the Agency for losses to the Agency or for which the Agency becomes responsible, which are attributable to the servicer. In addition, the servicer shall not receive a compensation adjustment as may have otherwise been provided under (a) above, unless the servicer shall have first made the Agency whole. The servicer shall not be permitted to set off any compensation adjustment under (a) above against its obligations to the Agency.

New Rule, R.1997 d.523, effective December 15, 1997.
See: 28 N.J.R. 4833(a), 29 N.J.R. 5285(a).

SUBCHAPTER 22. AFFIRMATIVE FAIR HOUSING MARKETING

5:80–22.1 Definitions

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

"Applicant" means one or more persons, corporations, partnerships, associations, or other entities applying for financing or funding assistance from the Agency.

"Disabled person" means a person who has a disability as defined in section 223(d) of the Social Security Act, 42 U.S.C. § 423(d), or a person who has a "developmental disability" as defined at 42 U.S.C. § 6001(8).

"Displaced person" means a person or family who has been displaced by governmental action or whose dwelling has been extensively damaged or destroyed as a result of a disaster declared or otherwise formally recognized pursuant to Federal disaster relief laws.

"Eligible household" means a household whose eligibility requirements are determined in accordance with the program regulations under which a project is financed.

"Housing market area" means that geographic region from which it is likely that renters and/or purchasers would be drawn for a given multifamily rental housing project or single family sales unit. For projects financed under the Affordable Housing Program, the housing market area may be considered a housing region as determined by the Council on Affordable Housing. In most instances the housing market area consists of the county in which the project or homes will be located.

"Initial rent-up" means that period beginning with the date on which the applicant is granted permission by the local government and the Agency to begin occupancy or rent-up and ending on the date sustaining occupancy (usually 95 percent) is attained.

"Low income housing" means housing affordable according to the Federal Department of Housing and Urban Development or other recognized standards for home ownership and/or rental. Certain housing programs require a portion of the units to be occupied or reserved for occupancy by households with a gross household income equal to 50 percent or less of the median gross household income for households of the same size within the applicable housing market area. Other housing programs require units to be affordable to the aforementioned population.

"Moderate income housing" means housing affordable according to the Federal Department of Housing and Urban Development or other recognized standards for home ownership and/or rental. Certain housing programs require that a portion of the units be occupied or reserved for occupancy by households with a gross household income equal to more than 50 percent but less than 80 percent of the median gross household income for households of the same size within the applicable housing market area. Other housing programs require units to be affordable to the aforementioned population.

"Minority" means an individual who is a member of one of the following racial or ethnic groups:

1. Black or African–American: A person having origins in any of the black racial groups of Africa, but not of Hispanic origin;

2. American Indian or Alaskan Native: A person having origins in any of the original people of North America and who maintains cultural identification through tribal affiliation or community recognition;

3. Hispanic or Latino: A person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin regardless of race; or

4. Asian or Pacific Islander: A person having origins in any of the original peoples of the Far East, Southeast Asia, and the Indian subcontinent, or the Pacific Islands. This area includes, for example, China, India, Japan, Korea, the Philippine Islands, and Samoa.

"Target group" means an identifiable segment of the eligible population identified by the applicant as least likely to apply for occupancy. An applicant undertakes special outreach to attract members of these groups to the housing being offered. Examples include specific racial/ethnic groups.

Amended by R.2005 d.219, effective July 5, 2005.
See: 37 N.J.R. 970(a), 37 N.J.R. 2476(a).
Rewrote the section.

5:80–22.2 Purpose of the Affirmative Fair Housing Marketing Plan

(a) The Affirmative Fair Housing Marketing Plan (the Plan) is a marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of sex, to rental projects and sales dwellings that are being marketed by an applicant. The Plan describes initial advertising and other marketing activities which inform potential buyers and renters of the existence of the units.

(b) More than one Plan may be required in housing developments where there is a combination of market units and low and moderate income units or where there is a combination of sales and rental housing.

(c) The Plan remains in force throughout the life of a multifamily project. For single-family dwellings located in subdivisions of five or more units, the Plan remains in effect until all of the units in the project are sold.

(d) No application for Agency assistance may be funded without an approved Plan.

(e) Upon approval, the applicant is required to make good faith efforts to carry out the provisions of the Plan.

(f) In formulating the Plan the applicant shall do the following:

1. Refer to the demographic statistics for the applicable housing market area and identify the segments of the eligible population which are least likely to apply for housing without special outreach because of such factors as neighborhood customs, price, institutionalized discrimination in the housing market and other factors which have the effect of denying housing choice.

2. Design an outreach program which will have the best chance of producing a prospective occupant pool reflective of the racial/ethnic composition of the population of the housing market area and which includes special measures designed to attract those groups identified as least likely to apply and other efforts designed to attract persons from the total eligible population.

3. Establish as one indicator of marketing effectiveness the racial/ethnic composition of the low and moderate income population of the housing market area, and identify any other indicators to be used to measure the effectiveness of the marketing program.

4. Demonstrate capacity to provide training and information to sales and/or rental staff on fair housing laws and objectives.

Amended by R.2005 d.219, effective July 5, 2005.
See: 37 N.J.R. 970(a), 37 N.J.R. 2476(a).
In (b), inserted "units" following "market"; in (c), substituted "units in the project" for "dwellings" preceding "are sold".

5:80–22.3 Who submits a Plan

(a) The following applicants are required to submit a Plan:

1. Any applicant applying for funding under the Affordable Housing Program;

2. Any applicant applying for funding under the Continuing Care Retirement Community Program;

3. Any applicant applying for funding under the Repair Loan Program;

4. Any applicant applying for funding under the Agency's Policies and Procedures for Housing Projects;

5. Any applicant applying for funding allocations for special projects, including projects applying for funding under the Agency's Market Oriented Neighborhood Investment (MONI) program, consisting of 25 or more units; and

6. Assisted living residences applying for funding for projects consisting of 25 or more units.

(b) Projects receiving assistance from the Federal government are subject to the Affirmative Fair Housing Marketing Guidelines established and enforced by HUD. However, copies of the HUD-approved Plan must be on file with the Agency prior to the issuance of a "firm commitment."

Amended by R.1998 d.80, effective February 2, 1998.
See: 29 N.J.R. 3214(a), 30 N.J.R. 539(b).
In (a), added 6.
Amended by R.2005 d.219, effective July 5, 2005.
See: 37 N.J.R. 970(a), 37 N.J.R. 2476(a).
In (a), substituted "a Plan" for "an Affirmative Fair Housing Marketing Plan" in the introductory paragraph, rewrote 5; in (b), deleted "Affirmative Fair Housing Marketing" preceding "Plan" in the second sentence.

5:80–22.4 Plan submission deadlines

(a) The Plan must be submitted as part of the application for Agency financing for those projects financed under the Agency's Policies and Procedures for Housing Projects, Repair Loan Program and Continuing Care Retirement Community Program.

(b) For assistance under the Affordable Housing Program, the applicant must submit an approved Plan prior to fund reservation. The Agency will, however, defer to those procedures which are different from the procedures stated herein for projects subject to a court-ordered settlement and/or consent order.

Amended by R.2005 d.219, effective July 5, 2005.
See: 37 N.J.R. 970(a), 37 N.J.R. 2476(a).
In (b), substituted "approved" for "approval" preceding "Plan" in the first sentence and "the" for "those" preceding "procedures stated herein" in the second sentence.

5:80–22.5 Format of the Plan

(a) The applicant shall provide the following information:

1. Name and address of both the applicant and the proposed project;

2. Number of units and the application number;

3. Price and/or rent of units and range of affordability by household size of prospective purchasers and/or renters;

4. Census tract or affordable housing region in which the project will be located;

5. The household types to be served by the project, for example, the elderly, non-elderly;

6. The approximate starting date for advertising to target groups and for initial occupancy; and

7. Name of managing/sales agent.

Amended by R.2005 d.219, effective July 5, 2005.
See: 37 N.J.R. 970(a), 37 N.J.R. 2476(a).

5:80–22.6 Direction of marketing activity

(a) The applicant is responsible for the development and implementation of the Plan. For projects financed under the Affordable Housing Program, the municipality may work with the applicant to help identify those persons who are least likely to apply. However, the applicant has ultimate responsibility for the units' marketing and sales/rental transactions. Employment of a sales or management agent does not relieve the applicant of these responsibilities and the applicant must assure that such agents will carry out affirmative marketing and non-discrimination requirements.

(b) The applicant shall identify the groups that are least likely to apply for housing. For these groups, special outreach is required to inform them of the upcoming housing opportunities.

(c) The applicant shall describe efforts to reach target groups that are not covered elsewhere in the Plan. Such groups may include female-headed households and the working poor.

(d) If the applicant believes that no single group will need special outreach, the applicant so indicates in the Plan and explains the reasons for such determination.

(e) In determining which groups may require special outreach, the applicant should consider, as appropriate, the following factors:

1. The possible existence of practices or policies of discrimination on the basis of race, color, creed, religion, sex, or national origin, which have historically affected the ability of members of particular groups to obtain the housing of their choice. These practices or policies can include exclusionary zoning practices which may have limited the construction of housing for lower income families; lending and/or appraisal practices and other practices which may have resulted in discrimination on the basis of race, color, creed, sex, or national origin. Information on these practices may be found in court decisions, compliance findings, newspaper articles or other sources which illustrate patterns relating to these practices.

2. Any known fact about the effects of the language barrier upon potential homeseekers and/or renters whose native language is not English. Examples of such homeseekers include Hispanic and Vietnamese.

3. The racial/ethnic composition of defined geographic areas and comparable projects of comparable size within the housing market area. Information regarding these factors may be found in the Housing Assistance Plan (HAP), US Census Reports or Regional Housing Needs Reports approved by the Council on Affordable Housing. Furthermore, the applicant should consider the income of the eligible population of the housing market area including, where applicable, those persons expected to reside in the community because of planned employment and current employment.

4. Income eligibility requirements affect the selection of tenants/purchasers from the segments of the eligible population that might be targeted for special outreach and affect the marketing technique to be used in attracting such persons to the housing.

5. The racial/ethnic composition of the group of persons who are not residents, but who may reasonably be expected to reside in the community in the future because of present or planned employment.

Amended by R.2005 d.219, effective July 5, 2005.
See: 37 N.J.R. 970(a), 37 N.J.R. 2476(a).
In (a), deleted "the" following "the development and" and deleted "Affirmative Fair Housing Marketing" preceding "Plan."; in (e), substituted "Council on Affordable Housing" for "Affordable Housing Council" in 3, and substituted "affect" for "effect" in 4.

5:80–22.7 Marketing program

(a) The marketing program shall include the following:

1. The applicant shall describe the marketing program and outline the methods to be used in reaching all segments of the eligible population; and

2. The marketing program must include special outreach steps which will be taken to attract the groups identified in the Plan as persons least likely to apply for housing.

(b) The applicant shall indicate the commercial media to be used, if any, to advertise the availability of housing. The use of commercial media is not required; however, the applicant should publicize the availability of housing through the type of media customarily used by the applicant, including minority publications or other minority outlets which are available in the housing market area.

(c) If the applicant does not intend to use any commercial media, the Plan should explicitly indicate that no commercial media will be used and state the reasons for this decision.

(d) The applicant shall indicate the type of media to be used, including:

1. Newspapers of general circulation;

2. Radio stations;

3. Television stations; or

4. Other types of media, including publications of limited circulation such as neighborhood-oriented weekly newspapers, religious publications, and the publications of local real estate industry groups.

(e) For each of the media selected, the applicant shall indicate:

1. The name of the media;

2. The type (for example, classified, display) and size of the newspaper advertisement and the initial date of its appearance. If copies of such advertising are available, the applicant should submit them to the Agency. If no copies are available at the time the Plan is being prepared, the applicant shall submit them as soon as possible after the Plan has been approved;

3. The frequency and length of any radio and/or television advertising; and

4. The identity of the racial/ethnic group within the audience or readership of the commercial media to be used.

(f) The applicant is encouraged to use minority-owned and/or operated media as part of the overall marketing program to publicize the housing to both majority and minority persons. Where Blacks, Hispanics, and other racial/ethnic minority groups have been identified as special outreach groups, minority-owned media may be a particularly effective outreach mechanism. Even when such groups are not being specifically targeted for special outreach efforts, the use of minority-owned media is recommended as part of the outreach to the general population. In such cases, the applicant may consider factors such as data on the racial/ethnic composition of the majority-owned media's readership or audience and the applicant's past experience in utilizing such media.

(g) The applicant should consider using brochures as part of the total marketing program. Brochures can be tailored to meet specific housing information needs of those persons who are members of groups identified as least likely to apply for the housing. The brochure can also contain a greater quantity of information about the project or subdivision than that contained in mass media advertising.

1. A brochure may include a range of information which influences decisions regarding housing choice, for example, price/rent; proximity to schools; transportation; shopping and employment centers; and the availability of medical facilities for disabled persons.

2. The brochure should communicate the applicant's equal housing opportunity policy.

(h) Signs are another means of advertising. The applicant must indicate the size of any existing or proposed permanent project site sign, which sign must include the equal opportunity housing logo. The applicant must indicate the size of the logo. A photograph of the project sign must be submitted with the Plan or be submitted as soon as possible after erection of the sign.

Amended by R.2005 d.219, effective July 5, 2005.
See: 37 N.J.R. 970(a), 37 N.J.R. 2476(a).
Rewrote (c); in (d), substituted "of" for "for" in 1; in (e), substituted "television" for "telephone" in 3.

5:80–22.8 Community contacts

(a) Community contacts can supplement formal communications media for the purpose of soliciting tenants/buyers. The applicant shall include only those individuals or organizations that have direct and frequent contact with those groups identified earlier in the Plan as least likely to apply. The applicant shall choose community contacts on the basis of their position of influence within the general community and the particular target groups.

(b) Examples of suitable community contacts include:

1. Fair housing organizations and local non-profit housing associations, housing counseling agencies, regional tenant referral services;

2. Minority organizations (for example, NAACP, Urban League), women's organizations, religious institutions, civil rights groups, editors of majority-owned and minority-owned newspapers;

3. Local government agencies which are in a position to make referrals of potential homeseekers and/or renters to the project or subdivision;

4. Real estate industry related groups such as local real estate boards; and

5. Local employment centers, including large industrial and commercial employers, labor unions, hospitals, and educational institutions.

(c) The applicant shall give the following information regarding the community contacts:

1. Name of the organization or individual;

2. The racial/ethnic identification of the group or individual;

3. The approximate date the group or individual is to be contacted. This date should be consistent with the requirements for advance marketing to those persons least likely to apply where applicable;

4. The address and telephone number of the person to be contacted;

5. The methods of contact, for example, community meetings, briefing sessions by the applicant and community organizations, brochures, walking or bus tours of the proposed housing, radio talk shows; and

6. The specific functions the group will perform.

Amended by R.2005 d.219, effective July 5, 2005.
See: 37 N.J.R. 970(a), 37 N.J.R. 2476(a).
In (b), inserted "for example, " preceding "NAACP" in 2, and deleted ", Community Housing Resource Boards, organized pursuant to HUD voluntary agreements with the National Association of Realtors and the National Association of Real Estate Brokers" in 4.

5:80–22.9 Future marketing activities for rental units only

(a) The applicant shall describe the types of activities to be undertaken after the completion of initial occupancy of rental units in order to fill vacancies resulting from normal turnover.

(b) The applicant may undertake the same marketing activities which were performed during the initial occupancy. A modified Plan may reflect a reduced level of marketing activity as units are available only through turnover and may reflect changes in the media, community contacts or procedures in order to continue a marketing approach that is consistent with the Affirmative Fair Housing Marketing objectives.

(c) Examples of such marketing activities which may be performed following the initial rent-up can include the use of advertising media which may be targeted to the same groups previously identified as least likely to apply for the housing without special outreach, or to different groups chosen on the basis of need to encourage their greater representation in the prospective occupant pool. The media advertising can be similar in content and format to that used during the initial rent-up or can be changed by adjusting the scale of the advertising program.

(d) The applicant may use brochures and/or site signs to publicize the project after initial rent-up has been completed. The applicant may elect to eliminate community contacts altogether or may use contacts such as churches, local businesses, civic groups, the local government or individual community leaders as distributors of brochures or as information sources about the project. Participation in the regional tenant referral clearing house operated by local real estate industry, Public Housing Authorities (PHAs), fair housing groups or public agencies is also encouraged. Such services match prospective homeseekers and/or renters with vacant units of suitable size or price.

5:80–22.10 Assessment of marketing efforts

(a) The applicant shall describe the indicators to be used in measuring the effectiveness of the marketing efforts. Measuring effectiveness is an integral part of the applicant's Affirmative Fair Housing Marketing strategy, and the indicators selected should be consistent with other actions the applicant plans to undertake.

(b) The applicant may estimate the possible racial/ethnic composition of the prospective occupant pool which is anticipated as a result of the marketing efforts, including special outreach activities undertaken in accordance with the Plan. The prospective occupant pool should reflect the racial/ethnic composition of the housing market area.

(c) The applicant may estimate the distribution by race/ethnicity of the projected tenant population or owner population resulting from both the implementation of marketing activities and the tenant or homeowner selection process. Under no circumstances is this statement of anticipated occupancy results to be used as a quota in the tenant/owner selection process.

Amended by R.2005 d.219, effective July 5, 2005.
See: 37 N.J.R. 970(a), 37 N.J.R. 2476(a).
In (b), substituted "is" for "may be" following "the prospective occupant pool which".

5:80–22.11 Composition of the prospective occupant pool

(a) In determining the anticipated racial/ethnic composition of the prospective occupant pool or tenant/homeowner population, the applicant must consider any of the following factors as appropriate:

1. Physical characteristics of the proposed project or subdivision, including:

i. Project size, that is, number of units;

ii. Distribution of units by bedroom size;

iii. Household type to be served by the housing, that is, nonelderly families or elderly persons;

iv. Income eligibility requirements; and

v. The demographic characteristics of the housing market area in which the project or subdivision is to be located, including the racial/ethnic composition.

2. Demographic changes (social and economic) in the housing market area in which the project is to be located may result from publicly or privately financed revitalization activities which may displace lower income persons and encourage the immigration of higher income persons. Demographic changes may also result from illegal housing practices such as racial "redlining" by financial institutions, residential appraisals based on the racial composition of the neighborhood or the offering of financial incentives to sell homes because of racial or ethnic groups moving into the neighborhood (blockbusting).

Amended by R.2005 d.219, effective July 5, 2005.
See: 37 N.J.R. 970(a), 37 N.J.R. 2476(a).

5:80–22.12 Demographic characteristics

Applicants shall include data on any newly assisted project that may also be available at the time of occupancy of the proposed project. Such data should include project size and location, stage of construction, and anticipated dates of initial marketing activity and initial occupancy.

Amended by R.2005 d.219, effective July 5, 2005.
See: 37 N.J.R. 970(a), 37 N.J.R. 2476(a).

5:80–22.13 Residency preferences

(a) Residency preferences are generally prohibited in housing that is financially assisted by the Agency. The use of residency preferences as part of a project tenant selection and assignment procedure may be permitted under certain circumstances such as a court-ordered settlement and/or consent order with prior approval of the Agency. In these instances, prior approval of the Agency is required, and the residency preferences may be used in such a manner that housing opportunity will not be denied to any particular group.

(b) In connection with housing assisted under the Fair Housing Act, residency preferences shall be limited to the indigenous need portion of the community's housing obligation, but not more than 50 percent in any one project.

(c) In formulating the request for a residency preference, the applicant should calculate the size of the potential population of households eligible for the proposed housing and should also indicate the potential population of eligible households or families identified as expected to reside in the housing market area because of present or planned employment. Using the results of this calculation, the applicant should then determine whether an eligible population of residents exists which contains sufficient numbers of households from both majority and minority groups to yield a prospective occupant or tenant/homeowner pool. If such a population does exist, the owner may confine the marketing to that jurisdiction and all the units in the project can be subject to the preference. If, however, an insufficient number of one or more categories of eligible households exists within the jurisdiction, the applicant should open marketing to the entire housing market area.

(d) In formulating the request for residency preference, the applicant may use data on the housing assistance needs of particular segments of the eligible population contained in the local Housing Assistance Plan, the Census Bureau's census of population and housing reports which gives statistics on income for each SMSA by race, and other locally compiled data sources such as regional planning agency reports and locally performed census counts.

Amended by R.2005 d.219, effective July 5, 2005.
See: 37 N.J.R. 970(a), 37 N.J.R. 2476(a).
In (a), inserted "that is" following "generally prohibited in housing" in the first sentence; in (c), inserted "market" following "housing" in the first sentence and inserted "housing" preceding "market area" in the last sentence.

5:80–22.14 Staff experience and instructions for fair housing training

(a) The applicant shall indicate whether it has had any experience in marketing housing to the group(s) identified as least likely to apply.

(b) The applicant is responsible for instructing all employees and agents in writing and verbally concerning nondiscrimination in housing. Instructions regarding fair housing requirements and objectives should also be a continuing part of the agenda of staff meetings or other regular orientation activities carried on for sales and rental staff.

(c) The applicant shall submit a copy of the instructions given to submanagement staff on fair housing concerns such as Federal, State, or local housing laws, and the applicant's Plan. These materials should indicate the date established for conducting such training and the name and title of the person responsible for developing the fair housing training program.

Amended by R.2005 d.219, effective July 5, 2005.
See: 37 N.J.R. 970(a), 37 N.J.R. 2476(a).
In (c), deleted "Affirmative Fair Housing Marketing" preceding "Plan" in the first sentence.

5:80–22.15 Other indicators of successful implementation

The applicant may describe indicators other than the projected racial/ethnic composition of the prospective occupant pool or the tenant population. These indicators can measure the effectiveness of various components of the Plan such as the advertising methods, the outreach activities targeted toward the group identified as least likely to apply or the use of community contacts.

5:80–22.16 Approval of the Plan

(a) If the Plan is deficient, the Agency will notify the applicant of the nature of the deficiencies and request any additional information. Copies of approved plans will be distributed as follows:

1. Original to the applicant;

2. A copy to be maintained by the Agency's Assistant Director of Property Management; and

3. For projects financed under the Affordable Housing Program, copies to the respective community and the designated developer.

(b) The letter of approval to the applicant will include the following information:

1. The procedure to follow in notifying the Agency of intent to market;

2. Notification that submission to the Agency of copies of the advertisements, project signs, brochures and letters used during the marketing period and developed as part of the marketing program is required; and

3. Submission of required occupancy reports, monthly sales reports, and monthly rental reports.

Amended by R.2005 d.219, effective July 5, 2005.
See: 37 N.J.R. 970(a), 37 N.J.R. 2476(a).
Rewrote the section.

5:80–22.17 The Management Plan

(a) The applicant shall submit a Management Plan setting forth roles, responsibilities, policies and procedures regarding all aspects of management, including, but not limited to, parking and tenant selection. The Management Plan shall contain the applicant's plan for implementing the Plan and for equal employment opportunities. The Agency will review the Management Plan to determine consistency with the approved Plan. Particular attention will be paid to the following in determining consistency with the Plan:

1. Advertising of units; and

2. Tenant selection and assignment methods. Although the Affirmative Fair Housing Marketing requirements apply to advertising the availability of the housing, the selection procedures adopted by the applicant affect the opportunity of eligible persons to exercise their housing choice. These selection procedures and methods of administration should not directly or indirectly discriminate against any person on the basis of race, color, religion, creed, sex, or national origin or have the effect of hindering the achievement of the purposes of the Plan objectives. Applicants are encouraged to adopt the Agency's Tenant/Owner Selection Guidelines as their own.

Amended by R.2005 d.219, effective July 5, 2005.
See: 37 N.J.R. 970(a), 37 N.J.R. 2476(a).
In (a), deleted "Affirmative Fair Housing Marketing" following "implementing the" and "the approved" in the introductory paragraph and substituted "adopted" for "adapted" in 2.

5:80–22.18 Notification of intent to begin marketing

The applicant shall notify the Agency no later than 90 days prior to the commencement of any sales or rental marketing activities of the applicant's intent to begin such activities.

Amended by R.2005 d.219, effective July 5, 2005.
See: 37 N.J.R. 970(a), 37 N.J.R. 2476(a).
Substituted "such" for "sales and rental" following "the applicant's intent to begin".

5:80–22.19 Preoccupancy conference

Upon receipt of the notification of intent to begin marketing, the Agency may schedule a preoccupancy conference with the applicant's advertising firm and rental and/or sales agent.

Amended by R.2005 d.219, effective July 5, 2005.
See: 37 N.J.R. 970(a), 37 N.J.R. 2476(a).

5:80–22.20 Marketing for initial sales or rent-up

(a) In carrying out the provisions of the approved Plan, the applicant shall implement the following procedures which apply to advance marketing activities as well as to marketing activities targeted to the general eligible population:

1. Prior to initiating general marketing, contact the commercial media, fair housing groups, employment centers and civil rights organizations which have been identified as resources for attracting persons who are "least likely to apply" for the housing.

2. Establish a system for documenting outreach activities and for maintaining records of prospective occupants and approved eligible families which provides racial, ethnic and gender data.

3. Prior to the commencement of application taking or sales, provide training to all management or sales staff in Federal, State and local fair housing laws and with respect to the Plan objectives.

4. Submit materials to the Agency which document activities taken to implement the approved Plan, that is, copies of advertisements, brochures, leaflets, and letters to community organizations, fair housing groups, major employment centers, referral services, and other contacts utilized as part of the marketing program; photographs of project signs; a copy of the instructions used to train sales/rental staff in fair housing laws; and anticipated dates of advertising and occupancy.

5. Prior to initiation of marketing, the applicant may compile a list of those persons who indicated an interest in applying for the housing. Such persons shall not be considered prospective occupants and placed in the prospective occupant pool until they have filed a formal application during the regular, publicized application-taking period. Application forms should not be provided to such persons in advance of other persons to whom the marketing program is directed.

Amended by R.2005 d.219, effective July 5, 2005.
See: 37 N.J.R. 970(a), 37 N.J.R. 2476(a).
In (a), deleted "Affirmative Fair Housing Marketing" preceding "Plan" in the introductory paragraph.

5:80–22.21 Assessment of the Plan's implementation

(a) The applicant shall monitor and carefully evaluate the results of the special outreach and general marketing activities undertaken during the initial sales or rent-up period. Through such evaluation, the applicant can determine whether the provisions of the Plan have been successfully implemented and how effectively the Affirmative Marketing Program has helped attract buyers or tenants of majority and minority groups. Examples of factors to be examined in the population of the relevant housing market area include:

1. The actual racial/ethnic composition of either the tenant/owner population or the prospective occupant pool. The applicant should compare this data with the anticipated composition of prospective occupants or tenants/owners the applicant has projected in the Plan. If the anticipated and actual compositions are similar, then the advertising program can be considered successful. If the actual occupant or prospective occupant pool composition does not reflect the projected pattern, the marketing program should be carefully reviewed to determine, for example:

i. Whether outreach efforts are yielding fewer or more applicants from the target groups;

ii. Whether the prospective occupant pool composition itself appears to be realistic in light of marketing experience related to the project in question;

iii. Whether adjustments in the advertising strategy or other outreach efforts are warranted; and

iv. Whether tenant/owners selection criteria appear to be a factor in producing a racial/ethnic composition of occupants which is different from that of the prospective occupant pool.

2. Measures relating directly to special outreach and other advertising techniques used in the marketing program. For example, the applicant may keep a running tabulation of responses to questions relating to the manner in which the prospective buyer or renter had heard about housing. Through such techniques, the applicant can determine, for example, whether foreign language or minority media are effective marketing mechanisms; whether the equal housing opportunity logo effectively conveys to such buyers or renters the message that they are welcome to apply and will not encounter discrimination; whether community contacts used by the applicant are advertising the housing effectively; and whether members of groups targeted for special outreach activities are learning about the housing through informal means rather than commercial media.

Amended by R.2005 d.219, effective July 5, 2005.
See: 37 N.J.R. 970(a), 37 N.J.R. 2476(a).

5:80–22.22 Modification of the approved Plan

(a) Modification of the approved Plan may be appropriate under certain circumstances prior to initial marketing, after commencement of initial marketing, or after rent-up is completed. Circumstances which may generate modifications in the Plan include:

1. Significant changes in the parties implementing the Plan, for example, sales company, management company or applicant. If such changes occur, the applicant should identify the new parties and inform the Agency of such changes.

2. Significant changes in the demographic or economic characteristics of the housing market area in which the project is located, for example, racial/ethnic composition. Such changes can affect the direction of the outreach activities, that is, the group or groups within the eligible population which have been identified as least likely to apply. If the demographic or economic characteristics of the area in which the proposed housing is to be located have changed very significantly, the applicant should consider changing the group(s) to be targeted for special outreach activities as well as the specific aspects of the advertising program, for example, commercial media, brochures and signs, which relate to the choice of target groups. Similarly if new information with respect to community contacts which may be helpful in reaching the target groups, for example, establishment of a Community Resources Housing Board or the dissolution of a housing referral service previously listed in the approved plan, comes to light, then changes might be warranted.

(b) If the applicant concludes that changes would be appropriate, the applicant should, as early in the marketing process as possible, discuss possible changes with the Agency and submit any proposed changes for Agency review and approval.

Amended by R.2005 d.219, effective July 5, 2005.
See: 37 N.J.R. 970(a), 37 N.J.R. 2476(a).

5:80–22.23 Recordkeeping and recording requirements

(a) The applicant shall collect and maintain information relating to sales and rental activities, including documentation connected with the outreach program, race and gender for both occupants and prospective occupants. The applicant shall maintain this data for the most recent three-year period of operation or portion thereof, if the project has not been in operation for more than three years. The applicant shall submit monthly reports on occupancy to the Agency, as follows:

1. The monthly sales report is to be submitted for all single-family subdivisions and multifamily cooperative projects on or before the fifth day of the month following initial sales of any housing units and monthly thereafter until 95 percent of the units are sold. For housing units built in scattered sites, separate sales reports must be submitted for each type of area in which the units are built, that is, minority area, racially-mixed area, or non-minority area.

2. The applicant must submit monthly rental reports for rental housing programs on or before the fifth day of the month following the rental of the first unit. This report is submitted monthly until 95 percent of the units are occupied.

Amended by R.2005 d.219, effective July 5, 2005.
See: 37 N.J.R. 970(a), 37 N.J.R. 2476(a).

5:80-22.24 Future marketing activities for rental projects

(a) Upon completion of the initial rent-up, the applicant initiates appropriate marketing activities for filling vacancies resulting from normal turnover. The applicant may utilize the list of remaining prospective occupants as the waiting list for the project. The applicant is encouraged to contact the Agency for assistance in adapting the Plan to the post-initial occupancy period. The nature of this adaptation would normally depend on such factors as:

1. The size and racial/ethnic composition of the waiting list, if one is maintained;

2. The assessment by the Agency and the applicant of the effectiveness of the initial marketing Plan, especially with respect to participation by members of those groups identified as least likely to apply; and

3. Any changes in the demographic and socio-economic composition of the housing market area.

Amended by R.2005 d.219, effective July 5, 2005.
See: 37 N.J.R. 970(a), 37 N.J.R. 2476(a).

5:80-22.25 Monitoring

(a) Monitoring will be conducted to assess the degree to which the activities undertaken pursuant to an approved Plan conform with the applicable Fair Housing Laws and Regulations. In conducting monitoring, the Agency will determine:

1. Whether the applicant has made a good-faith effort to carry out the provisions of the approved Plan and related Affirmative Fair Housing Marketing requirements; and

2. Whether progress has been made toward the achievement of the objectives of the Plan.

(b) Agency staff will conduct on-site monitoring which will entail an examination of records, visual inspection of the project and interviews with applicants, rental/sales agent and staff, occupants and community organizations identified in the Plan. Records which may be examined include applications (for both accepted and rejected prospective occupants), and documentation relating to advertising.

(c) Failure to make a "good faith effort" to comply with the Plan could result in the loss of Agency financial assistance. All complaints regarding discrimination will be forwarded to the New Jersey Division on Civil Rights for formal criminal investigation.

Amended by R.2005 d.219, effective July 5, 2005.
See: 37 N.J.R. 970(a), 37 N.J.R. 2476(a).
In (a), deleted "Affirmative Fair Housing Marketing" following "to an approved" in the introductory paragraph.

SUBCHAPTER 23. (RESERVED)

SUBCHAPTER 24. LEASE-PURCHASE PROGRAM

5:80-24.1 Authority

The rules in this subchapter are issued under and pursuant to the authority of the New Jersey Housing and Mortgage Finance Agency Law of 1983 constituting Chapter 530 of the Laws of 1983, N.J.S.A. 55:14K-1 et seq., including N.J.S.A. 55:14K-5e and 55:14K-5aa.

5:80-24.2 Purpose

These rules are established to assist the Agency to make available a base of housing stock of residential units in the State of New Jersey as contemplated by N.J.S.A. 55:14K-5e and 55:14K-5aa for families under the lease-purchase arrangement. It is intended that the residential units would become owner occupied after a maximum 36-month rental period during which a portion of the monthly fair market lease payments received by the Agency would be set aside by the Agency to enable it to make a grant towards the downpayment and/or closing costs of an eligible buyer who exercises the purchase option.

(b) The Agency may enter into a housing incentive note purchase agreement for any eligible project pursuant to which the Agency agrees to purchase an undivided interest for a purchase price not exceeding $2,000,000 provided that the dollar amount of the purchase price to be paid by the Agency pursuant to such housing incentive note purchase agreement with respect to an eligible project, when added to the aggregate purchase price payable by the Agency pursuant to existing housing incentive note purchase agreements (whether or not a demand for purchase has been made), does not exceed the then available note purchase commitment and provided further that the provisions at N.J.A.C. 5:80–23.6(b) are met. In determining whether the foregoing limits for a housing incentive note purchase agreement proposed to be entered into with respect to any eligible project are met, the Agency need not consider as an aggregate, separate eligible projects undertaken by the same person or such person's affiliates as one project, unless they are, in the judgment of the Agency, subdivisions of the same residential project, physically contiguous or located within the same municipality.

(c) In the event that the available note purchase commitment at any time is insufficient to meet the applications for financial support of the Agency in the form of requested housing incentive note purchase agreements, the Agency may prioritize requests for housing incentive note purchase agreements in its sole discretion, taking into consideration the goals of this program, together with the creditworthiness of the respective residential project, the location of existing eligible projects and the location of the proposed residential project, the readiness of the developer to proceed, the experience of the developer, and the marketability of the residential project.

5:80–23.6 Applications

(a) An application for a housing incentive note purchase agreement for a residential project shall be made by the proposed developer in writing to the Agency.

(b) Such application shall set forth the following:

1. The amount of the requested commitment to purchase an undivided interest pursuant to a housing incentive note purchase agreement, the amount of the loan, and the name of the lender;

2. A description of the residential project (including the status thereof, for example, whether fully or partially completed, in foreclosure, ground not yet broken) together with an appraisal, not more than six months old, of the residential project by a New Jersey certified general real estate appraiser, a title report not more than six months old, a site plan, a survey by a licensed surveyor, a copy of applicable zoning ordinances, and the status of utilities, roads and existing financing, if any, relating to the residential project;

3. A description of the developer, including a description of all real estate projects undertaken by the developer for the five years prior to the application, outstanding judgments against the developer and pending litigation involving the developer, if any, the type of person (for example, whether a corporation, limited or general partnership, or joint venture), list of all existing and proposed owners of equity in the developer and the residential project, and the most recent financial statements of the developer;

4. A description of the proposed financing for the residential project, including the name of the lender, any term sheets or commitment letters which have been provided to the developer and any draft documentation relating thereto;

5. If the lender is not a bank or other financial institution having one of the three highest investment grade ratings issued by Standard and Poor's Corporation or Moody's Investors Service, Inc., the application shall be accompanied by the most recent annual report of such lender;

6. An analysis of the cost to complete the residential project, together with a tabulation of the source and use of funds necessary to meet such costs; and

7. Any other documents or information (such as, but without limitation, environmental audits) the Agency deems necessary or appropriate to determine whether the residential project is an eligible project.

5:80–23.7 Housing incentive note purchase commitment and requirements

(a) The Agency may issue to the developer of a residential project which is determined by the Agency to be an eligible project, a commitment to enter into a housing incentive note purchase agreement, only upon the approval of the members of the Agency after a review of the application delivered by the developer and such other information as the Agency may request from the developer and any qualified lender. Such commitment to enter into a housing incentive note purchase agreement shall contain such conditions precedent and other terms as the Agency shall deem appropriate. The members of the Agency may delegate to any officer of the Agency the authority to execute and deliver a housing incentive note purchase agreement pursuant to a commitment upon a determination by such officer that all conditions precedent and other terms of such commitment have been satisfied.

(b) Each commitment to issue a housing incentive note purchase agreement shall require that:

1. All documents relating to an eligible project shall be in form and substance satisfactory to the Agency;

2. All mortgages of an eligible project securing repayment of the financing thereof shall identify and set release prices for the individual parcels comprising the eligible project and require the mortgagee to release each parcel upon its sale provided the release price has been paid;

3. The developer provide mortgagee's title insurance, casualty and liability insurance and builders risk insurance, all by insurers and in such amounts as the Agency may require;

4. The mortgage in favor of the qualified lender financing the eligible project be the only first lien encumbrance on the eligible project securing indebtedness for borrowed money. Subordinated financing may be permitted with the approval of the Agency provided the subordinated financing, collectively with the first lien financing provided by qualified lenders, meet standard underwriting criteria used in the lending industry; and

5. Loan documents and all security therefor expressly reflect the rights and benefits of the Agency arising from the undivided interest and providing for the recognition of the rights of the Agency as a lender pursuant to its acquisition of the undivided interest.

Amended by R.1994 d.302, effective June 20, 1994.
See: 26 N.J.R. 9(a), 26 N.J.R. 2571(a).

5:80–23.8 Housing incentive note purchase agreement requirements

(a) Each housing incentive note purchase agreement entered into by the Agency shall state that it expires at a date not later than the second anniversary of the date of entering into such housing incentive note purchase agreement.

(b) The amount of the undivided interest agreed to be purchased pursuant to each housing incentive note purchase agreement may not exceed 30 percent of the monies being loaned by a qualified lender with respect to such eligible project. The foregoing restriction is in addition to, and not in derogation of, any other limits contained within this subchapter.

(c) Each housing incentive note purchase agreement shall require that the developer pay all costs incurred by the Agency in connection with the preparation, execution and delivery of such housing incentive note purchase agreement, and in connection with any litigation arising out of such housing incentive note purchase agreement or any rights the Agency may have with respect thereto, including, in each case, and without limitation, all reasonable fees and disbursements of counsel to the Agency.

(d) Any request for an extension of the termination date of a housing incentive note purchase agreement shall be treated as an application for a new housing incentive note purchase agreement, and all of the provisions of this subchapter shall apply to such request as if it were an application for a new housing incentive note purchase agreement.

5:80–23.9 Fees

(a) No application for a housing incentive note purchase agreement shall be accepted unless it is accompanied by a nonrefundable application fee of $3,500.

(b) No commitment to enter into a housing incentive note purchase agreement shall be issued by the Agency pursuant to N.J.A.C. 5:80–23.5 unless on or before the date of issuance of such commitment there has been paid to the Agency a nonrefundable commitment fee as follows:

1. No commitment fee shall be due for projects of 12 units or less;

2. $300.00 for every unit over 12 for projects of 13 to 41 units;

3. $9,000 for projects of 42 units or more.

(c) No housing incentive note purchase agreement shall be entered into by the Agency unless on or before the date of entering into such agreement, there has been paid to the Agency a nonrefundable purchase fee (the "HINPA Fee") in an amount equal to one percent of the principal amount of the respective loan in which an undivided interest is being purchased, but not to exceed $67,000.

(d) The Agency may establish, from time to time, additional fees as it deems necessary to defray its reasonably estimated costs of administering the program contemplated hereby.

Amended by R.1994 d.302, effective June 20, 1994.
See: 26 N.J.R. 9(a), 26 N.J.R. 2571(a).

5:80–23.10 No discrimination

(a) Developers must comply with all applicable Federal, State or local fair housing and civil rights laws and regulations. Federal and State laws provide that developers may not discriminate based upon race, color, creed, religion, sex, national origin, age or handicap.

(b) Developers must also comply with requirements imposed in Agency statutes and rules.

SUBCHAPTER 24. LEASE–PURCHASE PROGRAM

5:80–24.1 Authority

The rules in this subchapter are issued under and pursuant to the authority of the New Jersey Housing and Mortgage Finance Agency Law of 1983 constituting Chapter 530 of the Laws of 1983, N.J.S.A. 55:14K–1 et seq., including N.J.S.A. 55:14K–5e and 55:14K–5aa.

5:80–24.2 Purpose

These rules are established to assist the Agency to make available a base of housing stock of residential units in the State of New Jersey as contemplated by N.J.S.A. 55:14K–5e and 55:14K–5aa for families under the lease-purchase arrangement. It is intended that the residential units would become owner occupied after a maximum 36–month rental period during which a portion of the monthly fair market lease payments received by the Agency would be set aside by the Agency to enable it to make a grant towards the downpayment and/or closing costs of an eligible buyer who exercises the purchase option.

5:80-24.3 Definitions

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

"Act" means the New Jersey Housing and Mortgage Finance Agency Law, N.J.S.A. 55:14K-1 et seq.

"Agency" means the New Jersey Housing and Mortgage Finance Agency.

"Developer" means any individual, corporation, general or limited partnership, joint venture or other entity.

"Eligible buyer" means one or more natural persons intending upon execution of a lease-purchase agreement to live together (together with any dependents), who execute a lease-purchase agreement, and who intend to exercise the option on the housing unit subject to such lease-purchase agreement and to purchase that unit in the name of the eligible buyer.

1. To be an eligible buyer, the one or more natural persons must together have an annual income:

i. Sufficient to pay the fair market rental required by the lease-purchase agreement and, in the reasonable estimation of the Agency, sufficient to qualify for any financing required to enable such person to exercise the option to purchase from the Agency the unit subject to the proposed lease-purchase agreement (taking into account the proposed grant). Income sufficient to pay the rent shall be determined in accordance with industry standards for market rate rental housing. Income sufficient to qualify for financing shall be determined in accordance with standard underwriting criteria used in the mortgage lending industry; and

ii. Not exceeding 200 percent of the median income, adjusted for family size, in the county where the eligible development is located, as such percentage may be further adjusted by the Agency by amendment of this definition in its reasonable discretion from time to time, and from eligible development to eligible development, to reflect the cost of living and affordable housing prices in the county where the eligible development is located.

2. Notwithstanding 1ii above, admission to eligible developments shall be limited to families whose gross aggregate family income at the time of admission does not exceed six times the annual rental or carrying charges approved by the Agency except for families with three or more dependents whose incomes may be up to seven times the annual rental or carrying charge.

"Eligible development" means that portion of any partially or wholly completed development which is offered for sale to the Agency:

1. The purpose of which is to create one or more residential structures for owner occupancy whether in the form of detached units or attached units for separate occupancy (including, with limitation, condominiums, but excluding cooperative apartments) together with any land, utilities, sewers, structures, facilities or other improvements, appurtenant or ancillary thereto; and

2. Which is located entirely within the geographic boundaries of the State of New Jersey.

"Grant" means the amount designated in the lease-purchase agreement with respect to a unit which the Agency agrees to contribute at the closing on that unit to an eligible buyer who exercises an option to buy that unit, to enable that eligible buyer to meet downpayment and/or closing costs, subject to such recapture provisions on the occurrence of a resale of that unit as set forth in the lease-purchase agreement.

"Lease-purchase agreement" means a contract between the Agency, as lessor/seller, and an eligible buyer, as lessee/option holder, pursuant to which the eligible buyer agrees to rent a unit within an eligible development with an option to buy.

"Purchase agreement" means any purchase agreement entered into by the Agency pursuant to these rules in which the Agency agrees, subject to the terms and conditions set forth in such agreement, to purchase some or all of the housing units, land and other appurtenances related thereto constituting an eligible development.

"Purchase price" means the dollar amount, payable by the Agency to acquire an eligible development pursuant to and as adjusted by the terms of the relevant purchase agreement, as determined on the date of purchase.

"Sales price" means that fair market price set forth in the purchase option that the eligible buyer will pay upon exercise of that option to purchase a housing unit within an eligible development.

5:80-24.4 Authority to enter into purchase agreements

(a) The Agency may enter into a purchase agreement for any eligible development, provided that the maximum purchase price for a unit within the eligible development may not exceed the higher of 250 percent of the annual maximum income of an eligible buyer of that unit or the median sales price of existing single-family homes in the area where the eligible development is located. The median sales price shall be determined from the State of New Jersey, Department of Treasury figures for the then most recent fiscal year.

(b) The Agency may prioritize requests for purchase agreements, taking into consideration the goals of this program, market conditions for the Agency's securities, together with the feasibility of the respective eligible development, the location of existing eligible developments and the location of the proposed eligible development, the readiness of the developer to proceed, the experience of the developer, and the marketability of the units in the eligible development.

5:80–24.5 Purchase agreement requirements

(a) Each purchase agreement shall contain the following conditions precedent to the Agency's obligation to purchase an eligible development:

1. At least 50 percent of all housing units in the partially or wholly completed development of which the eligible development is a portion, shall have been previously sold to buyers not participating in this lease-purchase program. This requirement shall not apply to eligible developments of 25 or fewer units;

2. At least 50 percent of all housing units comprising the eligible development shall be complete and in move-in condition, with certificates of occupancy issued and in effect for them, and with signed lease-purchase agreements with eligible buyers. The remaining housing units of the eligible development to be purchased by the Agency must be completed, with certificates of occupancy in effect, and with signed lease-purchase agreements with eligible buyers, within one year of the signing of the purchase agreement. The Agency must be the first user of each unit except that the Agency may agree to purchase a substantially rehabilitated unit. A unit shall be treated as substantially rehabilitated when rehabilitation expenditures equal or exceed 25 percent of the purchase price of the unit to the Agency;

3. A builder's warranty must be provided in a form and substance equivalent to the new homeowner's warranty required by N.J.S.A. 46:3B–1 et seq.; and

4. The Agency must have, prior to or simultaneously with such purchase, received proceeds from the sale of the Agency's securities in an amount equal to as much as 110 percent of the purchase price (the purpose of such excess being to provide a cash reserve of up to 10 percent for the payment of such securities, if required in order to market such securities and if such reserve is not established from other funds, allocated or credited to the lease-purchase program).

(b) Each purchase agreement shall contain the following requirements:

1. All documents relating to an eligible development shall be in form and substance satisfactory to the Agency;

2. The developer shall provide title insurance, casualty and liability insurance and builder's risk insurance, all by insurers and in such amounts sufficient to protect against the risk of loss associated with the development, purchase and financing of the eligible developments;

3. Real estate taxes, assessments or like payments relating to the eligible development accruing for the period ending on the last day of the calendar year during which the transactions contemplated by the purchase agreement are consummated shall be paid by the seller of the eligible development; and

4. At closing, the eligible development shall be subject to no encumbrances other than encumbrances acceptable to the Agency.

5:80–24.6 Application

(a) An application for a purchase agreement for an eligible development shall be made by the proposed developer in writing to the Agency, and shall contain the following information:

1. The amount of the requested purchase price, in total and by unit;

2. A description of the eligible development together with a recent appraisal of the eligible development by a New Jersey certified general real estate appraiser, a recent title report, a site plan, a survey by a licensed surveyor, the applicable zoning ordinances, a report on the status of utilities, roads, and the existing financing, if any, relating to the eligible development;

3. A description of the developer (for example, whether a corporation, limited or general partnership, joint venture or otherwise), including a list of all existing and proposed owners of equity in the developer; and

4. At the Agency's discretion, an environmental audit, which will be required if any of the information received in connection with the application indicates that there may be environmental concerns associated with the proposed eligible development.

(b) Prior to the signing of each lease-purchase agreement with an eligible buyer, the developer shall obtain the Agency's approval of that eligible buyer. To enable the Agency to determine whether to approve a proposed eligible buyer, the developer shall submit to the Agency the following information:

1. The name, annual income, and employment history of the proposed eligible buyer, together with the Federal and state income tax returns most recently filed by the individual or individuals constituting the eligible buyer; and

2. Such other information as shall be required by the Agency from time to time pertaining to a specific proposed eligible buyer.

5:80–24.7 Authority to enter into lease-purchase agreements

(a) The Agency may enter into a lease-purchase agreement with an eligible buyer, provided that such lease-purchase agreement contains as a condition precedent to the Agency's obligations thereunder that lease-purchase agreements for at least 50 percent of the housing units in the subject eligible development be or have been fully executed and delivered by all parties thereto prior to, or simultaneously with, the Agency's consummation of the transactions contemplated by the related purchase agreement.

(b) Each lease-purchase agreement with an eligible buyer shall contain the following terms and conditions, in addition to such other terms and conditions that the Agency may from time to time deem appropriate for a particular agreement:

1. The eligible buyer shall agree to rent at a fair market rental a housing unit in an eligible development for a fixed period as determined by the Agency, not to exceed 36 calendar months, and to pay the monthly rental promptly and fully. Failure to make such rental payments promptly and fully, or physical abuse of the unit, shall result in prompt eviction and the termination of the option described in (b)3 below;

2. The eligible buyer shall agree that such housing unit be used solely as a principal residence, and shall further agree that the unit shall not be used for seasonal use, as an investment property, or for business purposes;

3. The eligible buyer shall pay upon the execution of the lease-purchase agreement, a nonrefundable option fee of $1,000 for an option to purchase for cash the housing unit which is the subject of the lease-purchase agreement, on the expiration date of the lease period set forth therein. If the eligible buyer does not exercise the option, the lease will terminate at the expiration of the lease period, the eligible buyer will immediately vacate the unit, and the Agency will retain the option fee;

4. In return for the option fee, the Agency shall grant the eligible buyer an option to purchase the subject housing unit at a fixed price; each price being the unit's estimated fair market value at the end of the lease period, such estimate being set pursuant to an appraisal prior to the execution of the lease-purchase agreement;

5. The Agency shall accumulate in a segregated fund a percentage (calculated at the time of execution of the lease-purchase agreement) of the fair market monthly rent it will receive during the lease period set forth in the lease-purchase agreement at a rate calculated by the Agency to be sufficient, together with the option fee, and its projected profit on the sale of the unit, if the option is exercised, to enable it to make the grant. The grant will be applied towards closing costs and the downpayment on the sales price for such housing unit for which the eligible buyer has otherwise obtained or is expected to obtain his or her own financing. The amount of the grant to be made will be calculated by the Agency (at the time the lease-purchase agreement is executed) as the amount, given anticipated market conditions, to be necessary, taking into account the assets of the eligible buyer, to induce a mortgage lender to finance the balance of the sales price for the housing unit. Such calculation by the Agency shall not constitute a representation or warranty to the eligible buyer of the availability of mortgage financing and the eligible buyer shall have no recourse against the Agency in the event such eligible buyer fails to obtain mortgage financing or is otherwise unable to exercise the option to purchase the housing unit which is subject to the lease-purchase agreement. If, for any reason, the eligible buyer is unable to or chooses not to exercise the option to purchase, all monies so set aside shall be retained by the Agency.

i. Notwithstanding anything to the contrary contained in these rules, the percentage rent to be set aside by the Agency to fund a portion of the grant shall not reduce the unrestricted portion of the rent to an amount less than the amount sufficient to maintain and operate the rental housing and to meet debt service on the portion of the securities issued by the Agency to finance the purchase of such housing, and all monies set aside with respect to such downpayment and/or closing costs shall be subject to application to pay required debt service on such securities; and

6. The eligible buyer shall acknowledge that the Agency may give a mortgage and/or other security interests in the housing unit to secure repayment of the financing undertaken by the Agency to finance the purchase price for the eligible development.

SUBCHAPTER 25. (RESERVED)

SUBCHAPTER 26. HOUSING AFFORDABILITY CONTROLS

5:80-26.1 Purpose and applicability

This subchapter is designed to implement the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301 et seq.) by assuring that low-and moderate-income units created under the Act are occupied by low-and moderate-income households for an appropriate period of time. This subchapter provides rules for the establishment and administration of affordability controls on restricted units that receive COAH credit under the Fair Housing Act; that receive funding from the Division under the Neighborhood Preservation Balanced Housing Program; that receive funding from the Agency under its UHORP and MONI programs; or with respect to which a municipality or developer contracts with the Agency, HAS or other experienced administrative agent approved by DCA, the Agency or COAH for the administration of affordability controls pursuant to the Fair Housing Act. Unless expressly stated otherwise herein, this subchapter shall apply to all restricted units described in the foregoing sentence, regardless of the date on which the units were created; provided, however, that the rules do not apply to units qualifying for the Federal Low-Income Housing Tax Credit under Section 42 of the Internal Revenue Code, units that receive Balanced Housing funds under the Agency's Home Express program or to units receiving assistance under the Federal HOME program, 24 C.F.R. § 92.252(e), § 92.254(a)(4); HUD 202 program, 24 C.F.R. Part 891; HUD 811 program, 24 C.F.R. Part 890;

HUD HOPE VI program; or Federal Home Loan Bank, Affordable Housing Program, 12 C.F.R. Part 60.

Amended by R.2004 d.475, effective December 20, 2004.
See: 36 N.J.R. 3655(a), 36 N.J.R. 5713(a).
Rewrote the section.

Case Notes

N.J.A.C. 5:80-26, which establishes affordability ranges for the provision of housing pursuant to the Mount Laurel doctrine and has been incorporated by the New Jersey Council on Affordable Housing (COAH) into its third-round regulations, is a valid regulation since it is consistent with the legislative mandate and is not arbitrary, capricious, nor unreasonable in light of the deference granted to COAH and the New Jersey Housing and Mortgage Finance Agency. In re Adoption of Unif. Hous. Affordability Controls, 390 N.J. Super. 89, 914 A.2d 402, 2007 N.J. Super. LEXIS 19 (App.Div. 2007).

5:80-26.2 Definitions

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

"Administrative agent" means the entity responsible for administering the affordability controls of this subchapter with respect to specific restricted units, as designated pursuant to N.J.A.C. 5:80-26.14.

"Affordability average" means an average of the percentage of median income at which restricted units in an affordable development are affordable to low-and moderate-income households. For example, if the rents for the five restricted rental units in an affordable housing development were affordable at 46, 48, 50, 52 and 54 percent of median income, respectively, the average affordability for those units would be 50 percent of median income.

"Affordable" means, in the case of an ownership unit, that the sales price for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.6 and, in the case of a rental unit, that the rent for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.12.

"Affordable development" means a housing development all or a portion of which consists of restricted units.

"Agency" means the New Jersey Housing and Mortgage Finance Agency established by P.L. 1983, c.530 (N.J.S.A. 55:14K-1 et seq.) and in, but not of, the DCA.

"Age-restricted unit" means a housing unit designed to meet the needs of, and exclusively for, the residents of an age-restricted segment of the population where the head of the household is a minimum age of either 62 years, or 55 years and meets the provisions of the 42 U.S.C. §§ 3601 et seq., except that due to death, a remaining spouse of less than 55 years of age shall be permitted to continue to reside.

"Assisted living residence" means a facility licensed by the New Jersey Department of Health and Senior Services to provide apartment-style housing and congregate dining and to assure that assisted living services are available when needed for four or more adult persons unrelated to the proprietor. Apartment units offer, at a minimum, one unfurnished room, a private bathroom, a kitchenette and a lockable door on the unit entrance.

"Balanced Housing" means the Neighborhood Preservation Balanced Housing Program of the DCA as set forth at N.J.S.A. 52:27D-320 and N.J.A.C. 5:43.

"Certified household" means a household that has been certified by an administrative agent as a low-income household or moderate-income household.

"COAH" means the Council on Affordable Housing in, but not of, the DCA, established under the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301 et seq.).

"DCA" means the State of New Jersey Department of Community Affairs.

"Division" means the Division of Housing in the DCA.

"HAS" means the Housing Affordability Service, formerly known as the "Affordable Housing Management Service," in the Department of Community Affairs, Division of Housing.

"High-poverty census tract" means a census tract with a census-determined average poverty rate equal to or greater than 25 percent, as determined by the United States Census Bureau.

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

"Low-income household" means a household with a total gross annual household income equal to 50 percent or less of the median income.

"Low-income unit" means a restricted unit that is affordable to a low-income household.

"Median income" means the median income by household size for an applicable county, as adopted annually by COAH.

"Moderate-income household" means a household with a total gross annual household income in excess of 50 percent but less than 80 percent of the median income.

"Moderate-income unit" means a restricted unit that is affordable to a moderate-income household.

"MONI" means the Agency's Market Oriented Neighborhood Investment Program, as it may be authorized from time to time by the Agency.

"95/5 unit" means a restricted ownership unit that is part of a housing element that received substantive certification from COAH pursuant to N.J.A.C. 5:93 before October 1, 2001.

"Non-exempt sale" means any sale or transfer of ownership other than the transfer of ownership between husband and wife; the transfer of ownership between former spouses ordered as a result of a judicial decree of divorce or judicial separation, but not including sales to third parties; the transfer

of ownership between family members as a result of inheritance; the transfer of ownership through an executor's deed to a class A beneficiary; and the transfer of ownership by court order.

"Random selection process" means a process by which currently income-eligible households are selected for placement in affordable housing units such that no preference is given to one applicant over another except for purposes of matching household income and size with an appropriately priced and sized affordable unit (for example, by lottery).

"Rent" means the gross monthly cost of a rental unit to the tenant, including the rent paid to the landlord, as well as an allowance for tenant-paid utilities computed in accordance with allowances published by DCA for its Section 8 program. With respect to units in an assisted living residence, rent does not include charges for food and services.

"Restricted unit" means a dwelling unit, whether a rental unit or ownership unit, that is subject to the affordability controls of this subchapter, but does not include a market-rate unit financed under UHORP or MONI.

"UHORP" means the Agency's Urban Homeownership Recovery Program, as it may be authorized from time to time by the Agency Board.

Amended by R.2004 d.475, effective December 20, 2004.
See: 36 N.J.R. 3655(a), 36 N.J.R. 5713(a).
Rewrote the section.

5:80-26.3 Affordability average; bedroom distribution

(a) In each affordable development, at least 50 percent of the restricted units within each bedroom distribution shall be low-income units and the remainder may be moderate-income units.

(b) Affordable developments that are not age-restricted shall be structured in conjunction with realistic market demands such that:

1. The combined number of efficiency and one-bedroom units is no greater than 20 percent of the total low-and moderate-income units;

2. At least 30 percent of all low-and moderate-income units are two bedroom units;

3. At least 20 percent of all low-and moderate-income units are three bedroom units; and

4. The remainder, if any, may be allocated at the discretion of the developer.

(c) Age-restricted low-and moderate-income units may utilize a modified bedroom distribution. At a minimum, the number of bedrooms shall equal the number of age-restricted low-and moderate-income units within the affordable development. The standard may be met by creating all one-bedroom units or by creating a two-bedroom unit for each efficiency unit.

(d) Municipalities shall establish by ordinance that the maximum rent for affordable units within each affordable development shall be affordable to households earning no more than 60 percent of median income. The municipal ordinance shall require that the average rent for low-and moderate-income units be affordable to households earning no more than 52 percent of median income. The developers and/or municipal sponsors of restricted rental units shall establish at least one rent for each bedroom type for both low-income and moderate-income units, provided that at least 10 percent of all low-and moderate-income units shall be affordable to households earning no more than 35 percent of median income.

(e) The maximum sales price of restricted ownership units within each affordable development shall be affordable to households earning no more than 70 percent of median income. Each affordable development must achieve an affordability average of 55 percent for restricted ownership units. In achieving this affordability average, moderate-income ownership units must be available for at least three different prices for each bedroom type, and low-income ownership units must be available for at least two different prices for each bedroom type.

(f) Municipal ordinances regulating owner-occupied and rental units shall require that affordable units utilize the same type of heating source as market units within the affordable development.

(g) The provisions of this section shall not apply to affordable developments financed under UHORP or MONI or to assisted living residences, which shall comply with applicable Agency regulations.

Amended by R.2004 d.475, effective December 20, 2004.
See: 36 N.J.R. 3655(a), 36 N.J.R. 5713(a).
Rewrote the section.

Case Notes

N.J.A.C. 5:80-26, which establishes affordability ranges for the provision of housing pursuant to the Mount Laurel doctrine and has been incorporated by the New Jersey Council on Affordable Housing (COAH) into its third-round regulations, is a valid regulation since it is consistent with the legislative mandate and is not arbitrary, capricious, nor unreasonable in light of the deference granted to COAH and the New Jersey Housing and Mortgage Finance Agency. In re Adoption of Unif. Hous. Affordability Controls, 390 N.J. Super. 89, 914 A.2d 402, 2007 N.J. Super. LEXIS 19 (App.Div. 2007).

5:80-26.4 Occupancy standards

(a) In determining the initial rents and initial sales prices for compliance with the affordability average requirements for restricted units other than assisted living facilities, the following standards shall be used:

1. A studio shall be affordable to a one person household;

2. A one bedroom unit shall be affordable to a one and one-half person household;

3. A two bedroom unit shall be affordable to a three person household;

4. A three bedroom unit shall be affordable to a four and one-half person household; and

5. A four bedroom unit shall be affordable to a six person household.

(b) For assisted living facilities, the following standards shall be used:

1. A studio shall be affordable to a one person household;

2. A one-bedroom unit shall be affordable to a one and one-half person household; and

3. A two-bedroom unit shall be affordable to a two person household or to two one-person households.

(c) In referring certified households to specific restricted units, to the extent feasible, and without causing an undue delay in occupying the unit, the administrative agent shall strive to:

1. Provide an occupant for each unit bedroom;

2. Provide children of different sex with separate bedrooms; and

3. Prevent more than two persons from occupying a single bedroom.

Amended by R.2004 d.475, effective December 20, 2004.
See: 36 N.J.R. 3655(a), 36 N.J.R. 5713(a).
In (a), substituted "affordability average" for "range of affordability" preceding "requirements"; inserted a new (b); recodified former (b) as (c).

5:80-26.5 Control periods for ownership units

(a) Each restricted ownership unit shall remain subject to the requirements of this subchapter until the municipality in which the unit is located elects to release the unit from such requirements pursuant to action taken in compliance with (g) below. Prior to such a municipal election, a restricted ownership unit must remain subject to the requirements of this subchapter for a period of at least 30 years; provided, however, that:

1. Units located in high-poverty census tracts shall remain subject to these affordability requirements for a period of at least 10 years;

2. Any unit that, prior to December 20, 2004, received substantive certification from COAH, was part of a judgment of compliance from a court of competent jurisdiction or became subject to a grant agreement or other contract with either the State or a political subdivision thereof, shall have its control period governed by said grant of substantive certification, judgment or grant agreement or contract; and

3. 95/5 units are subject to the option and price restriction rules set forth at N.J.A.C. 5:80-26.20 through 26.26.

(b) The affordability control period for a restricted ownership unit shall commence on the date the initial certified household takes title to the unit and shall terminate only at such time as the municipality opts to release the unit from the requirements of this subchapter in accordance with (g) below, or at such other time as is applicable under (a) above.

(c) Prior to the issuance of the initial certificate of occupancy for a restricted ownership unit and upon each successive sale during the period of restricted ownership, the administrative agent shall determine the restricted price for the unit and shall also determine the non-restricted, fair market value of the unit based on either an appraisal or the unit's equalized assessed value. At the time of the sale of the unit, the purchaser shall execute and deliver to the administrative agent a recapture note obligating the purchaser (as well as the purchaser's heirs, successors and assigns) to repay, upon the first non-exempt sale after the unit's release from the requirements of this subchapter, an amount equal to the difference between the unit's non-restricted fair market value and its restricted price. The recapture note shall be secured by a recapture lien evidenced by a duly recorded mortgage on the unit. The recapture note and recapture mortgage lien shall be in favor of the Agency if the unit was financed under UHORP or MONI, in favor of the State if State funds other than UHORP or MONI contributed to the financing of the unit, and, in all other cases, in favor of the municipality in which the unit is located. The recapture note and recapture mortgage lien shall be in the form prescribed in subchapter Appendices L, M, N, O, P and Q, incorporated herein by reference, as applicable.

1. The recapture lien shall also provide the that recapture amount shall be reduced by the cumulative dollar value of capital expenditures by all owners during the control period for improvements and/or upgrades to the unit, as approved by the administrative agent.

2. Municipalities that exercise the option to purchase restricted ownership units pursuant to (f) below shall not be required to satisfy the recapture lien.

3. Upon termination of the affordability control period pursuant to (g) below, and satisfaction of the recapture of the lien, the unit may be sold at fair market value and the proceeds retained by the seller.

(d) All conveyances of restricted ownership units shall be made by deeds and restrictive covenants substantially in the form prescribed in subchapter Appendices A, B, C, D, L, M, N, O, P and Q, incorporated herein by reference, as applicable. Each purchaser of a 95/5 unit, in addition, shall execute a note and mortgage in the form of Appendices G and H, incorporated herein by reference.

(e) The affordability controls set forth in this subchapter and incorporated in instruments in the forms presented in subchapter Appendices A, D, E, F, G, H, I, J, K, L, M, N, O, P and Q, incorporated herein by reference, shall remain in effect despite the entry and enforcement of any judgment of foreclosure with respect to restricted ownership units.

(f) At the time of the first non-exempt sale following a 30-year interval from the date of the issuance of the initial certificate of occupancy, a municipality shall have the right of first refusal to purchase a restricted ownership unit at the maximum restricted price, with the exceptions noted under (a) above, provided that:

1. The municipality enters into a contract to purchase the unit within 60 days of notification of intent to sell by the owner of the restricted unit; and

2. The recapture lien described in (c) above remains in full force and effect.

(g) Any municipality may elect to release a restricted ownership from the requirements of this subchapter at a time to be set forth in the municipal ordinance required under (g)3 below, but after the expiration of the applicable minimum control period specified under (a) above, provided that:

1. The recapture lien described in (c) above remains in full force and effect;

2. If the lien required under (c) above is in favor of the municipality, the municipality has a COAH-approved spending plan pursuant to N.J.A.C. 5:94–6.5(c) requiring that all proceeds from the satisfaction of a recapture lien on a restricted ownership unit be used to create one new affordable unit for every unit released from affordability controls within the municipality; and

3. The municipal election to release the unit from the requirements of this subchapter is made pursuant to a municipal ordinance authorizing such elections with respect to units located either in areas specifically identified in the Housing Element of the municipal Master Plan or throughout the entire municipality.

(h) A municipality may use development fees to purchase and/or rehabilitate a restricted ownership unit.

(i) In those instances in which control periods expire pursuant to this section, the administrative agent shall, within 60 days of the expiration of the control period, execute a release, substantially in form set forth in Appendix F to this subchapter, incorporated herein by reference, of all restriction instruments with respect to the unit. The owner of the restricted unit is responsible for recording the release instruments and returning the recorded originals promptly to the administrative agent. Upon the expiration of the control period for a restricted ownership unit established in this section, the owner of the unit shall be entitled to sell it to any purchaser at the fair market price.

Amended by R.2004 d.475, effective December 20, 2004.
See: 36 N.J.R. 3655(a), 36 N.J.R. 5713(a).
Rewrote the section.

5:80–26.6 Price restrictions for ownership units

(a) The initial purchase price for a restricted ownership unit shall be approved by the administrative agent and, if the unit is receiving assistance under the Balanced Housing Program, shall be consistent with the Balanced Housing grant agreement.

(b) The initial purchase price for all restricted ownership units except those financed under UHORP or MONI shall be calculated so that the monthly carrying costs of the unit, including principal and interest (based on a mortgage loan equal to 95 percent of the purchase price and the Federal Reserve H.15 rate of interest), taxes, homeowner and private mortgage insurance and condominium or homeowner association fees do not exceed 28 percent of the eligible monthly income of an appropriate household size as determined under N.J.A.C. 5:80–26.4; provided, however, that the price shall be subject to the affordability average requirement of N.J.A.C. 5:80–26.3.

(c) The initial purchase price of a restricted ownership unit financed under UHORP or MONI unit shall be calculated so that the monthly carrying costs of the unit, including principal and interest (based on a mortgage loan equal to 95 percent of the purchase price and the Federal Reserve HR15 rate of interest), taxes, homeowner and private mortgage insurance and condominium or homeowner association fees do not exceed 28 percent of the eligible monthly income of a household whose income does not exceed 45 percent of median income, in the case of a low-income unit, or 72 percent of median income, in the case of a moderate-income unit, and that is of an appropriate household size as determined under N.J.A.C. 5:80–26.4.

(d) The maximum resale price for a restricted ownership unit, if the resale occurs prior to the one-year anniversary of the date on which title to the unit was first transferred to a certified household, is the initial purchase price. If the resale occurs on or after such anniversary date, the maximum resale price shall be consistent with the regional income limits most recently published by COAH and calculated pursuant to N.J.A.C. 5:94–7.2(b). The administrative agent shall approve all resale prices, in writing and in advance of the resale, to assure compliance with the foregoing standards.

(e) The master deeds of affordable developments shall provide no distinction between the condominium or homeowner association fees and special assessments paid by low- and moderate-income purchasers and those paid by market purchasers. Notwithstanding the foregoing sentence, condominium units subject to a municipal ordinance adopted before October 1, 2001, which provides for condominium or homeowner association fees and/or assessments different

from those provided for in this subsection shall have such fees and assessments governed by said ordinance.

(f) 95/5 units are subject to the option and price restriction rules set forth in N.J.A.C. 5:80–26.20 through 26.26.

Amended by R.2004 d.475, effective December 20, 2004.
See: 36 N.J.R. 3655(a), 36 N.J.R. 5713(a).
Rewrote the section.

5:80–26.7 Buyer income eligibility for ownership units

(a) Low-income ownership units shall be reserved for households with a gross household income less than or equal to 50 percent of median income. Moderate income ownership units shall be reserved for households with a gross household income less than 80 percent of median income. For example, a household earning 48 percent of median income may be placed in any low-income unit; however, a household earning 53 percent does not qualify for a low-income unit. A household earning 67 percent of median may be placed in any moderate income housing unit. A household earning less than 50 percent of median may be placed in a moderate income housing unit. Notwithstanding the foregoing, however, the administrative agent may permit moderate-income purchasers to buy low-income units in housing markets where, as determined by COAH or the Division, as applicable, low-income prices are required but there is an insufficient number of low-income purchasers to permit prompt occupancy of the units. A certified household that purchases a restricted ownership unit must occupy it as the principal residence and not lease the unit; provided, however, the administrative agent may permit the owner of a restricted ownership unit, upon a showing of hardship, to lease the unit to a certified household for a period not to exceed one year.

(b) The administrative agent shall certify a household as eligible for a restricted ownership unit when the household is a low-income household or a moderate-income household, as applicable to the unit, and the estimated monthly housing cost for the unit (including principal, interest, taxes, homeowner and private mortgage insurance and condominium or homeowner association fees as applicable) does not exceed 33 percent of the household's eligible monthly income. The administrative agent, however, may exercise the discretion to certify a low-or moderate-income household as eligible despite the fact that the unit's monthly housing cost would exceed the 33 percent level, if the household obtains a firm mortgage loan commitment at the higher level from a licensed financial institution, under terms consistent with the requirements of the New Jersey Home Ownership Security Act of 2002, N.J.S.A. 46:10B–22 et seq., including certification from a non-profit counselor approved by HUD or the New Jersey Department of Banking and Insurance that the borrower has received counseling on the advisability of the loan transaction.

Amended by R.2004 d.475, effective December 20, 2004.
See: 36 N.J.R. 3655(a), 36 N.J.R. 5713(a).
Rewrote the section.

5:80–26.8 Limitations on indebtedness secured by ownership unit; subordination

(a) Prior to incurring any indebtedness to be secured by an ownership unit, the owner shall submit to the administrative agent a notice of intent to incur such indebtedness, in such form and with such documentary support as determined by the administrative agent, and the owner shall not incur any such indebtedness unless and until the administrative agent has determined in writing that the proposed indebtedness complies with the provisions of this section.

(b) With the exception of original purchase money mortgages, during a control period, neither an owner nor a lender shall at any time cause or permit the total indebtedness secured by an ownership unit to exceed 95 percent of the maximum allowable resale price of that unit, as such price is determined by the administrative agent in accordance with N.J.A.C. 5:80–26.6(c).

5:80–26.9 Capital improvements to ownership units

(a) The owners of ownership units may apply to the administrative agent to increase the maximum sales price for the unit on the basis of capital improvements made since the purchase of the unit. Eligible capital improvements shall be those that render the unit suitable for a larger household or that add an additional bathroom. In no event shall the maximum sales price of an improved housing unit exceed the limits for affordability for the larger household.

(b) Upon the resale of a restricted ownership unit, all items of property that are permanently affixed to the unit or were included when the unit was initially restricted (for example, refrigerator, range, washer, dryer, dishwasher, wall-to-wall carpeting) shall be included in the maximum allowable resale price. Other items may be sold to the purchaser at a reasonable price that has been approved by the administrative agent at the time of signing the agreement to purchase. The purchase of central air conditioning installed subsequent to the initial sale of the unit and not included in the base price may be made a condition of the unit resale provided the price, subject to 10–year, straight-line depreciation, has been approved by the administrative agent. Unless otherwise approved by the administrative agent, the purchase of any property other than central air conditioning shall not be made a condition of the unit resale. The owner and the purchaser must personally certify at the time of closing that no unapproved transfer of funds for the purpose of selling and receiving property has taken place at resale.

Amended by R.2004 d.475, effective December 20, 2004.
See: 36 N.J.R. 3655(a), 36 N.J.R. 5713(a).
In (b), deleted "prorated" preceding "price" and inserted ", subject to 10-year, straight-line depreciation," following "price" at the end of the third sentence.

5:80–26.10 Maintenance of restricted ownership units

A restricted ownership unit shall be required to obtain a Continuing Certificate of Occupancy or a certified statement from the municipal building inspector stating that the unit meets all code standards upon the first transfer of title that follows the expiration of the applicable minimum control period provided under N.J.A.C. 5:80–26.5(a).

Amended by R.2004 d.475. effective December 20, 2004.
See: 36 N.J.R. 3655(a), 36 N.J.R. 5713(a).
Rewrote the section.

5:80–26.11 Control periods for rental units

(a) Each restricted rental unit shall remain subject to the requirements of this subchapter until the municipality in which the unit is located elects to release the unit from such requirements pursuant to action taken in compliance with (e) below. Prior to such a municipal election, a restricted rental unit must remain subject to the requirements of this subchapter for a period of at least 30 years; provided, however, that:

1. Units located in high-poverty census tracts shall remain subject to these affordability requirements for a period of at least 10 years;

2. Any unit included in a Neighborhood Rehabilitation Project pursuant to N.J.A.C. 5:43–4.4(b) shall remain subject to these affordability requirements for a period of at least 10 years; and

3. Any unit that, prior to December 20, 2004, received substantive certification from COAH, was part of a judgment of compliance from a court of competent jurisdiction or became subject to a grant agreement or other contract with either the State or a political subdivision thereof, shall have its control period governed by said grant of substantive certification, judgment or grant agreement or contract.

(b) The affordability control period for the restricted rental units in a development shall commence on the first date that a certified household occupies a unit and shall terminate only at such time that the municipality opts to release the unit from the requirements of this subchapter in accordance with (e) below, except that the affordability controls set forth in this subchapter shall remain in effect until the date on which a rental unit shall become vacant, provided that the occupant household continues to earn a gross annual income of less than 80 percent of the applicable median income. If, at that time, a rental household's income is found to exceed 80 percent of the regional median income, the rental rate restriction shall expire at the later of either the next scheduled lease renewal or 60 days.

(c) Deeds of all real property that include restricted rental units shall contain deed restriction language substantially in the form set forth in Appendix E to this subchapter, incorporated herein by reference. The deed restriction shall have priority over all mortgages on the property. The deed restriction shall be filed by the developer or seller with the records office of the county in which the unit is located, and a copy of the filed document shall be provided to the administrative agent within 30 days of the receipt of a certificate of occupancy. The preparer of the foregoing instrument shall certify to the administrative agent that the deed restriction language in Appendix E has been included therein.

(d) A restricted rental unit shall remain subject to the affordability controls of this subchapter despite the occurrence of any of the following events:

1. A sublease or assignment of the lease of the unit;

2. A sale or other voluntary transfer of the ownership of the unit; or

3. The entry and enforcement of any judgment of foreclosure.

(e) Any municipality may elect to release any or all of the restricted rental units in a development from the requirements of this subchapter at a time to be set forth in the municipal ordinance required below, but after the expiration of the minimum control period specified under (a) above, provided that:

1. The municipal election to release the unit from the requirements of this subchapter is made pursuant to a municipal ordinance authorizing such elections with respect to units located either in areas specifically identified in the Housing Element of the municipal Master Plan or throughout the entire municipality; and

2. The administrative agent shall, within 60 days of the municipal election shall, execute a release, in the form set forth in Appendix F to this subchapter, incorporated herein by reference, of all restriction instruments with respect to the unit(s). The owner of the restricted unit(s) is responsible for recording the release instruments and returning the recorded originals promptly to the administrative agent. Upon the expiration of the control period for a restricted rental unit established in this section, the owner of the unit shall be entitled to lease it to any tenant at the fair market rent.

Amended by R.2004 d.475, effective December 20, 2004.
See: 36 N.J.R. 3655(a), 36 N.J.R. 5713(a).
Rewrote the section.

5:80–26.12 Restrictions on rents

(a) The initial rent for a restricted rental unit shall be approved by the administrative agent and, if the unit is receiving assistance under the Balanced Housing Program, shall be consistent with the Balanced Housing grant agreement. The initial rent shall be calculated so as not to exceed 30 percent of the eligible monthly income of the appropriate household size as determined under N.J.A.C. 5:80–26.4; provided, however, that the rent shall be subject to the affordability average requirement of N.J.A.C. 5:80–26.3.

(b) At the anniversary date of the tenancy of the certified household occupying a restricted rental unit, the rent may be increased, if such increase is consistent with the regional income limits most recently published by COAH, calculated pursuant to N.J.A.C. 5:94–7.2(b), and has been filed with the administrative agent. If the landlord has charged a tenant less than the initial maximum allowable rent for a restricted unit, the landlord may, with the approval of the administrative agent, use the maximum allowable rent instead of the current rent in performing this multiplication to establish the rent for the next tenant under a new lease.

(c) Approved initial rents may not be increased when an announcement of a COAH-adopted increase occurs during initial lease-up activity. Rents may not be increased more than once a year. Rents may not be increased by more than one COAH-approved increment at one time. Rents may not be increased at the time of a new occupancy if the new occupancy occurs within a year of the last occupancy and prior to the next published COAH-adopted increase. No additional fees or charges may be added to the approved rent (except, in the case of units in an assisted living residence, for the customary charges for food and services) without the express written approval of the administrative agent. Application fees (including the charge for any credit check) may not exceed five percent of the monthly rental of the applicable restricted unit and shall be payable to the administrative agent to be applied to the costs of administering the controls in this subchapter as applicable to the unit.

(d) A written lease is required for all restricted rental units, except for units in an assisted living residence. Final lease agreements are the responsibility of the landlord and the prospective tenant. Tenants are responsible for security deposits and the full amount of the rent as stated on the lease. All lease provisions shall comply with applicable law. The landlord shall provide the administrative agent with sufficient information for a preparation of a unit inventory form for entry into the centralized affordable housing unit inventory system. The landlord shall submit a copy of each lease entered into with a certified household to the administrative agent within 10 business days after the execution of each lease.

(e) Those tenant-paid utilities that are included in the utility allowance shall be so stated in the lease. The allowance for utilities shall be consistent with the utility allowance approved by DCA for its Section 8 program.

Amended by R.2004 d.475, effective December 20, 2004.
See: 36 N.J.R. 3655(a), 36 N.J.R. 5713(a).
Rewrote the section.

5:80–26.13 Tenant income eligibility

(a) Low-income rental units shall be reserved for households with a gross household income less than or equal to 50 percent of median income. Moderate income rental units shall be reserved for households with a gross household income less than 80 percent of median income.

(b) The administrative agent shall certify a household as eligible for a restricted rental unit when the household is a low-income household or a moderate-income household, as applicable to the unit, and the rent proposed for the unit does not exceed 35 percent (40 percent for age-restricted units) of the household's eligible monthly income as determined pursuant to N.J.A.C. 5:80–26.16; provided, however, that this limit may be exceeded if one or more of the following circumstances exists:

1. The household currently pays more than 35 percent (40 percent for households eligible for age-restricted units) of its gross household income for rent and the proposed rent will reduce its housing costs;

2. The household has consistently paid more than 35 percent (40 percent for households eligible for age-restricted units) of eligible monthly income for rent in the past and has proven its ability to pay;

3. The household is currently in substandard or overcrowded living conditions;

4. The household documents the existence of assets, with which the household proposes to supplement the rent payments; or

5. The household documents proposed third-party assistance from an outside source such as a family member in a form acceptable to the administrative agent and the owner of the unit.

(c) The applicant shall file documentation sufficient to establish the existence of the circumstances in (b) above with the administrative agent, who shall counsel the household on budgeting.

Amended by R.2004 d.475, effective December 20, 2004.
See: 36 N.J.R. 3655(a), 36 N.J.R. 5713(a).
Rewrote (a); in (b), amended the N.J.A.C. reference and substituted "may" for "shall" in the last sentence of the introductory paragraph.

5:80–26.14 Administrative agent

(a) The affordability controls set forth in this subchapter shall be administered and enforced by the administrative agent. The primary responsibility of the administrative agent shall be to ensure that the restricted units under administration are sold or rented, as applicable, only to low-and moderate-income households. Among the responsibilities of the administrative agent are the following:

1. Conducting an outreach process to insure affirmative marketing of affordable housing units in accordance with the provisions of N.J.A.C. 5:80–26.15;

2. Soliciting, scheduling, conducting and following up on interviews with interested households;

3. Conducting interviews and obtaining sufficient documentation of gross income and assets upon which to base a determination of income eligibility for a low-or moderate-income unit;

4. Providing written notification to each applicant as to the determination of eligibility or non-eligibility;

5. Creating and maintaining a referral list of eligible applicant households living in the COAH region and eligible applicant households with members working in the COAH region where the units are located;

6. Employing a random selection process when referring households for certification to affordable units;

7. Furnishing to attorneys or closing agents forms of deed restrictions and mortgages for recording at the time of conveyance of title of each restricted unit;

8. Creating and maintaining a file on each restricted unit for its control period, including the recorded deed with restrictions, recorded mortgage and note, as appropriate;

9. Instituting and maintaining an effective means of communicating information between owners and the administrative agent regarding the availability of restricted units for resale or rental;

10. Instituting and maintaining an effective means of communicating information to low-and moderate-income households regarding the availability of restricted units for resale or rerental;

11. Reviewing and approving requests from owners of restricted units who wish to take out home equity loans or refinance during the term of their ownership;

12. Reviewing and approving requests to increase sales prices from owners of restricted units who wish to make capital improvements to the units that would affect the selling price, such authorizations to be limited to those improvements resulting in additional bedrooms or bathrooms and the cost of central air conditioning systems;

13. Processing requests and making determinations on requests by owners of restricted units for hardship waivers;

14. Communicating with lenders regarding foreclosures;

15. Ensuring the issuance of Continuing Certificates of Occupancy or certifications pursuant to N.J.A.C. 5:80–26.10;

16. Notifying the municipality of an owner's intent to sell a restricted unit;

17. Ensuring that the removal of the deed restrictions and cancellation of the mortgage note are effectuated and properly filed with the appropriate county's register of deeds or county clerk's office after the termination of the affordability controls in this subchapter for each restricted unit;

18. Providing annual reports to COAH as required; and

19. Such other responsibilities as may be necessary to carry out the provisions of this subchapter.

(b) The administrative agent shall create and shall publish in plain English, and in such other languages as may be appropriate to serving its client base, a written operating manual, as approved by COAH, setting forth procedures for administering such affordability controls, including procedures for long-term control of restricted units; for enforcing the covenants set forth in Appendices A, B, C, D and E of this subchapter, consistent with the provisions of N.J.A.C. 5:80–26.18; and for releasing restricted units promptly at the conclusion of applicable control periods. The administrative agent shall have authority to take all actions necessary and appropriate to carrying out its responsibilities hereunder. The operating manual shall have a separate and distinct chapter or section setting forth the process for identifying applicant households seeking certification to restricted units, for reviewing applicant household eligibility, and for certifying applicant households in accordance with the household certification and referral requirements set forth in N.J.A.C. 5:80–26.16.

1. Such process shall require that an applicant household be notified in writing of the results of its application for certification within 20 days of the administrative agent's determination thereof.

2. At the discretion of the administrative agent, such process may include either or both an outreach requirement and a face-to-face applicant interview process.

3. The administrative agent shall establish and maintain a ready database of applicant households as a referral source for certifications to restricted units, and shall establish written procedures to ensure that selection among applicant households be via the database, and in accordance with a uniformly applied random selection process and all applicable State and Federal laws relating to the confidentiality of applicant records.

(c) Except in the case of restricted units receiving UHORP or MONI funding, the municipality in which restricted units are located shall select one or more administrative agents for those units. A municipality itself (through a designated municipal employee, department, board, agency or committee) may elect to serve as the administrative agent for some or all restricted units in the municipality, or the municipality may select HAS or an experienced private entity approved by the Division, the Agency or COAH to serve as administrative agent for some or all restricted units in the municipality. HAS may delegate a portion or portions of its administrative agent duties to third parties, by written contract, provided that in such case HAS shall retain oversight and monitoring responsibilities, including, but not limited to, authority over enforcement policy and actions and confidentiality of tenant/applicant data solicited for rent-up and certification purposes. When a municipality selects an experienced private entity to serve as administrative agent for specific restricted units, the administrative agent must be

approved by the Division, if the restricted units are to receive funding under the Neighborhood Preservation Balanced Housing Program, or by COAH, if the restricted units are not to receive funding under the Neighborhood Preservation Balanced Housing Program but are to receive COAH credit. The foregoing approval by COAH or the Division is to be based on the private entity's demonstration of the ability to provide a continuing administrative responsibility for the length of the control period for the restricted units. The Agency shall select the administrative agents for restricted units receiving UHORP or MONI funding.

(d) In all cases where a municipality has selected HAS as its administrative agent, HAS and the municipality shall enter into a contract for the provision of housing affordability control services substantially in the form set forth in Appendix I.

(e) When reviewing a private entity to determine whether it should be designated as administrative agent, a municipality shall obtain and review the following and submit it to the Division, the Agency or COAH, as applicable, for approval:

1. Documentation which demonstrates that the private entity's purposes include the provision of housing services and housing counseling and the promotion of the principles underlying the Federal Fair Housing laws and that the private entity has knowledge of and familiarity with the New Jersey Fair Housing Act, P.L. 1985, c.222 (N.J.S.A. 52:27D–301 et seq.) and its implementing rules;

2. Evidence of a history of successful management of restricted affordable housing units, particularly those produced as a result of the New Jersey Fair Housing Act or through a *Mount Laurel* court settlement;

3. Representations and warranties from the experienced private entity that, if the entity serves as administrative agent with respect to restricted units in which it has a pecuniary interest, the entity shall not allow the pecuniary interest to compromise in any way its administration of the controls set forth in this subchapter;

4. The draft contract between the municipality and the private entity serving as administrative agent;

5. Documentation of the private entity's capacity to undertake the duties of an administrative agent;

6. A statement of intent to attend continuing education opportunities on affordability controls and compliance monitoring when available; and

7. Such other relevant documents from a specific applicant as required by the municipality to justify approval as an administrative agent.

(f) The administrative agent shall have the authority to discharge and release any or all instruments, as set forth in the Appendices of this subchapter, filed of record to establish affordability controls.

Amended by R.2004 d.475, effective December 20, 2004.
See: 36 N.J.R. 3655(a), 36 N.J.R. 5713(a).
Rewrote the section.

5:80–26.15 Affirmative marketing

(a) The affirmative marketing plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age or number of children to housing units which are being marketed by a developer or sponsor of affordable housing. The affirmative marketing plan is also intended to target those potentially eligible persons who are least likely to apply for affordable units in that region. It is a continuing program that directs all marketing activities toward the COAH Housing Region in which the municipality is located and covers the period of deed restriction.

(b) The administrative agent shall assure the affirmative marketing of affordable units. Municipalities may designate an experienced municipal staff person approved by COAH to be the administrative agent responsible for implementing the affirmative marketing plan. The administrative agent shall attend an affirmative marketing training program approved by COAH.

(c) If the municipality does not designate a municipal staff person, it shall contract with other experienced administrative agents approved by COAH to administer the affirmative marketing plan. Where a municipality contracts with another administrative agent to administer the affirmative marketing plan, the municipality shall appoint a housing officer who shall supervise the contracting administrative agent. In addition, where the contracting administrative agent is not responsible for the entire affirmative marketing plan, the municipality shall outline who or what municipal agent is responsible for the remaining portion of the affirmative marketing plan. The municipality shall also ensure that all original applicant and sales records of affordable units are returned to the municipality for reporting purposes and to aid with future resales. The municipality has the ultimate responsibility for the proper administration of the affirmative marketing program, including initial sales and rentals and resales and rerentals.

(d) In implementing the affirmative marketing plan, administrative agents shall designate an experienced staff person approved by COAH to provide counseling services to low and moderate income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law. Alternatively, the administrative agent may contract with an experienced agency approved by COAH to provide such counseling services.

(e) The affirmative marketing plan shall provide the following information:

1. The name and address of the project;

2. The number of units, including the number of sales and/or rental units;

3. The price of sales and/or rental units;

4. The name of the sales agent and/or rental manager;

5. A description of the random selection method that will be used to select occupants of affordable housing; and

6. Disclosure of required application fees.

(f) The affirmative marketing plan shall describe the media to be used in advertising and publicizing the availability of housing. In developing the plan, the administrative agent shall consider the use of language translations. The plan shall include the following:

1. The names of specific newspapers of general circulation within the housing region;

2. The names of specific radio and television stations broadcasting throughout the housing region;

3. The names of other publications circulated within the housing region, such as neighborhood oriented weekly newspapers, religious publications and organizational newsletters;

4. The names of employers throughout the housing region that will be contacted to post advertisements and distribute flyers regarding available affordable housing;

5. The names of specific community and regional organizations that will aid in soliciting low and moderate income applicants. Such organizations may include non-profit, religious, governmental, fraternal, civic, and other organizations; and

6. Other advertising and outreach efforts to groups that are least likely to be reached by commercial media efforts.

(g) The affirmative marketing process for available affordable units shall begin at least four months prior to expected occupancy. In implementing the marketing program, the administrative agent shall undertake all of the following strategies:

1. Publication of one advertisement in a newspaper listed under (f)1 above;

2. Broadcast of one advertisement by a radio or television station listed under (f)2 above; and

3. At least one additional regional marketing strategy using one of the sources listed under (f)3 through 6 above.

(h) Such advertising and outreach shall take place during the first week of the marketing program and each month thereafter until all the units have been leased or sold. The advertisement shall include at least the following:

1. The location of the units;

2. Directions to the housing units;

3. A range of prices for the housing units;

4. The size, as measured in bedrooms, of the housing units;

5. The maximum income permitted to qualify for the housing units;

6. The location of applications for the housing units;

7. The business hours when interested households may obtain an application for a housing unit; and

8. Application fees, if any.

(i) Applications for affordable housing shall be available in several locations, including, at a minimum, the county administrative building and/or the county library for each county within the housing region; the municipal administrative building(s) and the municipal library in the municipality in which the units are located; and the developer's sales office. Applications shall be mailed to prospective applicants upon request.

(j) If the costs of advertising affordable units are to be a developer's responsibility, the requirement shall be a condition of the municipal planning board or zoning board approval and required by ordinance.

New Rule, R.2004 d.475, effective December 20, 2004.
See: 36 N.J.R. 3655(a), 36 N.J.R. 5713(a).
Former N.J.A.C. 5:80–26.15, Household certification and referral, recodified to N.J.A.C. 5:80–26.16.

5:80–26.16 Household certification and referral; related project information

(a) The administrative agent shall secure all information from applicant households necessary and appropriate to determine that restricted units are occupied by properly sized households with appropriate low-or moderate-income levels. No household may be referred to a restricted unit, or may receive a commitment with respect to a restricted unit, unless that household has received a signed and dated certification, as set forth in this section, and has executed a certificate in the form set forth in Appendices J or K to this subchapter, as applicable.

(b) The administrative agent shall prepare a standard form of certification and shall sign and date one for each household when certified. An initial certification shall be valid for no more than 180 days unless a valid contract for sale or lease has been executed within that time period. In this event, certifications shall be valid until such time as the contract for sale or lease is ruled invalid and no occupancy has occurred. Certifications may be renewed in writing at the request of a certified household for an additional period of 180 days at the discretion of the administrative agent.

1. When reviewing an applicant household's income to determine eligibility, the administrative agent shall compare the applicant household's total gross annual

income to the regional low-and moderate-income limits then in effect, as adopted by COAH. For the purposes of this subchapter, income includes, but is not limited to, wages, salaries, tips, commissions, alimony, regularly scheduled overtime, pensions, social security, unemployment compensation, TANF, verified regular child support, disability, net income from business or real estate, and income from assets such as savings, certificates of deposit, money market accounts, mutual funds, stocks, bonds and imputed income from non-income producing assets, such as equity in real estate.

2. Except as otherwise specifically provided in this subchapter, the sources of income considered by the administrative agent shall be the types of regular income reported to the Internal Revenue Service and which can be used for mortgage loan approval. Household annual gross income shall be calculated by projecting current gross income over a 12–month period.

3. Assets not earning a verifiable income shall have an annual imputed interest income using a current average annual savings interest rate. Assets not earning income include present real estate equity. Applicants owning real estate must produce documentation of a market value appraisal and outstanding mortgage debt. The difference shall be treated as the monetary value of the asset and the imputed interest added to income. If the applicant household owns a primary residence with no mortgage on the property valued at or above the regional asset limit as published annually by COAH, a certificate of eligibility shall be denied by the administrative agent, unless the applicant's existing monthly housing costs (including principal, interest, taxes, homeowner and private mortgage insurance, and condominium and homeowner association fees as applicable) exceed 38 percent of the household's eligible monthly income.

4. Rent from real estate is considered income, after deduction of any mortgage payments, real estate taxes, property owner's insurance and reasonable property management expenses as reported to the Internal Revenue Service. Other expenses are not deductible. If actual rent is less than fair market rent, the administrative agent shall impute a fair market rent.

5. Income does not include benefits, payments, rebates or credits received under any of the following: Federal or State low-income energy assistance programs, food stamps, payments received for foster care, relocation assistance benefits, income of live-in attendants, scholarships, student loans, personal property such as automobiles, lump-sum additions to assets such as inheritances, lottery winnings, gifts, insurance settlements, and part-time income of persons enrolled as full-time students. Income, however, does include interest and other earnings from the investment of any of the foregoing benefits, payments, rebates, or credits.

(c) The administrative agent shall require each member of an applicant household who is 18 years of age or older to provide documentation to verify the member's income, including income received by adults on behalf of minor children for their benefit. Household members 18 years of age or older who do not receive income must produce documentation of current status.

(d) Income verification documentation may include, but is not limited to, the following for each and every member of a household who is 18 years of age or older:

1. Four consecutive pay stubs, not more than 120 days old, including bonuses, overtime or tips, or a letter from the employer stating the present annual income figure;

2. Copies of Federal and State income tax returns for each of the preceding three tax years;

3. A letter or appropriate reporting form verifying monthly benefits such as Social Security, unemployment, welfare, disability or pension income (monthly or annually);

4. A letter or appropriate reporting form verifying any other sources of income claimed by the applicant, such as alimony or child support;

5. Income reports from banks or other financial institutions holding or managing trust funds, money market accounts, certificates of deposit, stocks or bonds; and

6. Evidence or reports of income from directly held assets such as real estate or businesses.

(e) Court ordered payments for alimony or child support to another household, whether or not it is being paid regularly, shall be excluded from income for purposes of determining income eligibility.

(f) At the discretion of the administrative agent, households may also be required to produce documentation of household composition for determining the correct unit size and applicable median income guide.

(g) A certificate of eligibility may be withheld by the administrative agent as a result of an applicant's inability to demonstrate sufficient present assets for down payment or security deposit purposes, subject to development phasing that may provide opportunity for future savings.

(h) A certificate of eligibility may be withheld by the administrative agent as a result of an applicant's inability to verify funds claimed as assets, household composition or other facts represented.

(i) A certificate of eligibility shall be denied by the administrative agent as a result of any willful and material misstatement of fact made by the applicant in seeking eligibility.

(j) The administrative agent shall screen households that apply for low-and moderate-income housing for preliminary income eligibility, by comparing their total gross annual income to the regional low-and moderate-income limits adopted for that year by COAH.

(k) The following information shall promptly be provided to the administrative agent by the developer or sponsor of any project containing any affordable units subject to the requirements of this subchapter, upon the latter of either final municipal land use approval or issuance of a grant contract by a governmental authority:

1. The total number of units in the project, and number of restricted units, broken down by bedroom size, identifying which are low-and which are moderate-income units, and including street addresses of restricted units;

2. Floor plans of all affordable units, including complete and accurate identification of uses and dimensions of all rooms;

3. A project map identifying the locations of affordable units and market units;

4. A list of project principals or partners, together with a list of all other affordable projects in which they have been involved over the previous five years;

5. Projected construction schedule;

6. Proposed pricing for all units, including any purchaser options and add-on items;

7. A list of all public funding sources, and copies of grant or loan agreements for those sources;

8. Condominium fees or homeowner association and any other maintenance or other fees;

9. Estimated real property taxes for sale units;

10. Sewer, trash disposal and any other utility assessments;

11. Flood insurance requirement, if applicable;

12. A description of all HVAC systems;

13. Location of any common areas and elevators;

14. Proposed form of lease for any rental units;

15. The name of the person who will be responsible for official contact with the administrative agent for the duration of the project; and

16. The State-approved Planned Real Estate Development public offering statement and/or master deed where available.

(*l*) The administrative agent shall employ a random selection process when referring households for certification to affordable units.

Recodified from N.J.A.C. 5:80–26.15 and amended by R.2004 d.475, effective December 20, 2004.
See: 36 N.J.R. 3655(a), 36 N.J.R. 5713(a).
Rewrote the section. Former N.J.A.C. 5:80–26.16, Procedures for changing administrative agents, recodified to N.J.A.C. 5:80–26.17.

5:80–26.17 Procedures for changing administrative agents

(a) In order to ensure an orderly transfer of control responsibility from a municipality to an administrative agent, from one administrative agent to another administrative agent, or other transfer, the following minimum requirements are necessary before or during the transition:

1. A letter advising of the change shall be sent to all low-and moderate-income homeowners in the case of ownership units, and all landlords or their agents in the case of rental developments;

2. In the case of ownership units, legal assignments to the name of the new administrative agent of all restriction instruments shall be prepared and recorded;

3. Hard copy files on each unit, to contain at a minimum the original deed restriction, repayment mortgage and mortgage note (if applicable), the application materials, verifications and certifications of all present owners, pertinent correspondence, any documentation of home improvement, hardship waiver or other approvals granted by the former administrative agent and other miscellaneous correspondence, shall be physically transferred to the custody of the incoming or new administrative agent; and

4. The new administrative agent must be provided with:

i. A written methodology, such as the operating manual required in this subchapter, applied in the past and to be applied in the future for a calculation of maximum resale prices and rents;

ii. The base sales price or initial base rent for each unit;

iii. Identification for each unit as to whether categorized as low-income or moderate-income;

iv. A description of the number of bedrooms and physical layout of each unit;

v. Floor plans; and

vi. In the case of condominiums and units within a homeowner association, a copy of the master deed and public offering statement.

(b) HAS shall assume the duties of administrative agent by default with respect to any restricted units that are not effectively under the supervision of a competently performing administrative agent as determined by COAH, in the case of units receiving COAH credit, or by DCA, in the case of units receiving Balanced Housing funding but not receiving COAH credit.

Recodified from N.J.A.C. 5:80–26.16 and amended by R.2004 d.475, effective December 20, 2004.
See: 36 N.J.R. 3655(a), 36 N.J.R. 5713(a).
Rewrote the section. Former N.J.A.C. 5:80–26.17, Enforcement, recodified to N.J.A.C. 5:80–26.18.

5:80–26.18 Enforcement

(a) By accepting State funds for affordable housing purposes, or by submitting to the jurisdiction of COAH, a municipality shall be deemed to have delegated to its administrative agent the day-to-day responsibility for implementing practices and procedures designed to ensure effective compliance with the controls set forth in this subchapter. The municipality, however, shall retain the ultimate responsibility for ensuring effective compliance with this subchapter.

(b) The administrative agent's enforcement responsibility for implementing such practices and procedures shall not be delegated or otherwise transferred to any other party, except to a successor administrative agent. Anything in this subchapter to the contrary notwithstanding, the Agency and DCA each may, in their discretion, contract with for-profit and nonprofit organizations to carry out delegated administrative agent functions, provided, however, that in any such case the Agency or DCA shall maintain primary responsibility for the delegated functions.

(c) The municipality shall:

1. Provide to the administrative agent the name, title and telephone number of the municipal official who shall be responsible for liaison with the administrative agent on all matters related to this subchapter;

2. Ensure that applicable local ordinances are not in conflict with, and enable efficient implementation of, this subchapter;

3. Retain or otherwise designate legal counsel for the purposes of representing any municipal entity acting as administrative agent and of enforcing the controls set forth in this subchapter;

4. Ensure that all restricted units are identified as affordable within the tax assessor's office and any municipal utility authority (MUA). The municipality and MUA shall promptly notify the administrative agent of a change in billing address, payment delinquency of two consecutive billing cycles, transfer of title, or institution of a writ of foreclosure on all affordable units; and

5. Provide all reasonable and necessary assistance in support of the administrative agent's efforts to ensure effective compliance with the controls set forth in this subchapter.

(d) Administrative agent practices and procedures shall include, but shall not necessarily be limited to, the following:

1. Securing from all developers and sponsors of restricted units, at the earliest point of contact in the processing of the project or development, written acknowledgement of the requirement that no restricted unit can be offered, or in any other way committed, to any person, other than a household duly certified to the unit by the administrative agent;

2. Requiring that all certified applicants for restricted units execute a certificate substantially in the form, as applicable, of either the ownership or rental certificates set forth in Appendices J and K;

3. The posting annually in all rental properties, including two-family homes, of a notice as to the maximum permitted rent together with the telephone number of the administrative agent where complaints of excess rent can be made;

4. Annual mailings to all owners of affordable dwelling units, reminding them of the following notices and requirements:

i. If the unit is owner-occupied, that the unit may be resold only to a household that has been approved in advance and in writing by the administrative agent;

ii. That no sale of the unit shall be lawful, unless approved in advance and in writing by the administrative agent, and that no sale shall be for a consideration greater than regulated maximum permitted resale price, as determined by the administrative agent;

iii. That no refinancing, equity loan, secured letter of credit, or any other mortgage obligation or other debt secured by the unit may be incurred except as approved in advance and in writing by the administrative agent, and that at no time will the administrative agent approve any debt, if incurring the debt would make the total of all such debt exceed 95 percent of the then applicable maximum permitted resale price;

iv. That the owner of the unit shall at all times maintain the unit as his or her principal place of residence, which shall be defined as residing at the unit at least 260 days out of each calendar year;

v. That, except as set forth in N.J.A.C. 5:80–26.18(c)4vii, at no time shall the owner of the unit lease or rent the unit to any person or persons, except on a short-term hardship basis, as approved in advance and in writing by the administrative agent;

vi. That the maximum permitted rent chargeable to affordable tenants is as stated in the notice required to be posted in accordance with N.J.A.C. 5:80–26.18(d)3, a copy of which shall be enclosed, and that copies of all leases for affordable rental units must be submitted annually to the administrative agent;

vii. If the affordable unit is a two-family home, that the owner shall lease the rental unit only to certified households approved in writing by the administrative agent, shall charge rent no greater than the maximum permitted rent as determined by the administrative agent, and shall submit for written approval of the administrative agent copies of all proposed leases prior to having them signed by any proposed tenant; and

viii. That no improvements may be made to any unit that would affect its bedroom configuration, except as provided in subsection (a) of N.J.A.C. 5:80–26.9(a) and in any event, that no improvement made to the unit will be taken into consideration to increase the maximum permitted resale price, except for improvements approved in advance and in writing by the administrative agent;

5. Securing annually from municipalities lists of all affordable housing units for which tax bills are mailed to absentee owners, and notifying all such owners that they must either move back to their unit or sell it;

6. Establishing a program for diverting unlawful rent payments to the municipality's affordable housing trust fund or other appropriate municipal fund approved by the DCA. For purposes of this subsection, unlawful rent payments shall mean:

i. All rent monies paid by a person who has not been duly certified in accordance with the provisions of N.J.A.C. 5:80–26.16;

ii. All rent paid by a person or persons renting an ownership unit from an owner who has moved out of his or her unit illegally;

iii. Rent paid by a lawful tenant in excess of amounts permitted by law; and

iv. Rent paid to an affordable owner who is claiming a hardship, when the owner has not received prior authorization from the administrative agent as is provided for under the provisions of N.J.A.C. 5:80–26.7(a); and

7. Establishing a rent-to-equity program, to be implemented in situations where an affordable owner has unlawfully rented out his or her unit, and where the tenant has entered into a tenancy without knowledge of its unlawful nature. Under such rent-to-equity program, the tenant, including the immediate family of such tenant, shall be given an opportunity to purchase the unit from the affordable owner, and the affordable owner shall be compelled to sell the unit to the tenant, with the total of all rent paid to the owner being credited to tenant as down payment money paid to the affordable owner. Anything herein to the contrary notwithstanding, any person offered a unit under such a rent to equity program must first be certified as eligible under the provisions of N.J.A.C. 5:80–26.16.

(e) Banks and other lending institutions are prohibited from issuing any loan secured by owner-occupied real property subject to the affordability controls set forth in this subchapter, if such loan would be in excess of amounts permitted by the restriction documents recorded in the deed or mortgage book in the county in which the property is located. Any loan issued in violation of this subsection shall be void as against public policy.

(f) The Agency, COAH and the DCA hereby reserve, for themselves and for each administrative agent appointed pursuant to this subchapter, all of the rights and remedies available at law and in equity for the enforcement of this subchapter.

Recodified from N.J.A.C. 5:80–26.17 and amended by R.2004 d.475, effective December 20, 2004.
See: 36 N.J.R. 3655(a), 36 N.J.R. 5713(a).
Rewrote the section. Former N.J.A.C. 5:80–26.18, Appeals, recodified to N.J.A.C. 5:80–26.19.

5:80–26.19 Appeals

Appeals from all decisions of an administrative agent appointed pursuant to this subchapter shall be filed in writing with the Executive Director of the Agency. When acting in this capacity, the Executive Director may appoint one or more employees of the Agency, COAH and/or the Department of Community Affairs to assist him or her in rendering the final decision, whenever he or she, in his or her sole discretion, determines that committee participation would materially promote a fair and just disposition of the appeal. A written decision of the Executive Director upholding, modifying or reversing an administrative agent's decision shall be a final administrative action.

Recodified from N.J.A.C. 5:80–26.18 and amended by R.2004 d.475, effective December 20, 2004.
See: 36 N.J.R. 3655(a), 36 N.J.R. 5713(a).
Deleted the third sentence and ", subject to judicial review" at the end of the last sentence.

5:80–26.20 Option to buy 95/5 units

(a) Each 95/5 unit shall be subject to an option permitting purchase of the unit at the maximum allowable restricted sales price at the time of the first non-exempt sale after controls on affordability have been in effect on the unit for the period specified in N.J.A.C. 5:93–9.2. The option to buy shall be available to the municipality, the DCA, the Agency, or a qualified non-profit entity as defined in this chapter.

(b) The owner of a 95/5 unit shall notify the administrative agent and COAH by certified mail of any intent to sell the unit 90 days prior to entering into an agreement for the first non-exempt sale after controls have been in effect on the housing unit for the period specified in N.J.A.C. 5:93–9.2.

(c) Upon receipt of such notice, the option to buy the unit at the maximum allowable restricted sales price or any

mutually agreed upon sales price that does not exceed the maximum allowable restricted sales price shall be available for 90 days. The administrative agent shall notify the municipality, the DCA, the Agency, and COAH that the unit is for sale. The municipality shall have the right of first refusal to purchase the unit. If the municipality exercises this option, it may enter into a contract of sale. If the municipality fails to exercise this option within 90 days, the first of the other entities giving notice to the seller of its intent to purchase during the 90–day period shall be entitled to purchase the unit. If the option to purchase the unit at the maximum allowable restricted sales price is not exercised by one of the above entities by a written offer to purchase the housing unit within 90 days of receipt of the intent to sell, the owner may proceed to sell the housing unit pursuant to N.J.A.C. 5:93–9.8. If the owner does not sell the unit within one year of the date of the delivery of notice of intent to sell, the option to buy the unit shall be restored and the owner shall be required to submit a new notice of intent to sell 90 days prior to any future proposed date of sale.

(d) Any option to buy a housing unit at the maximum allowable restricted sales price shall be exercised by certified mail and shall be deemed exercised upon mailing.

New Rule. R.2004 d.475, effective December 20, 2004.
See: 36 N.J.R. 3655(a), 36 N.J.R. 5713(a).

5:80–26.21 Municipal option on 95/5 units

(a) Any municipality that elects to purchase a 95/5 unit pursuant to N.J.A.C. 5:93–9.4 may:

1. Convey or rent the unit to a low-or moderate-income purchaser or tenant at a price or rent not to exceed the maximum allowable restricted sales price or rent provided the unit is controlled by a deed restriction in accordance with Appendix A or an alternative form approved by COAH; or

2. Convey the unit at fair market value subject to the provisions of (b) and (c) below.

(b) Municipalities that purchase low-income 95/5 units shall maintain them as low-income housing units.

(c) Municipalities that elect to purchase 95/5 units and convey them at a fair market value shall:

1. Notify COAH of any proposed sale and sales price 90 days before closing;

2. Notify COAH of the price differential as defined in N.J.A.C. 5:93–1.3; and

3. Deposit the price differential in an interest-bearing housing trust fund devoted solely to the creation, rehabilitation or maintenance of low-and moderate-income housing.

(d) Money deposited in housing trust funds may not be expended until the municipality submits and COAH approves a spending plan in accordance with the applicable COAH rules at that time. Money deposited in housing trust funds shall be subject to the applicable COAH rules at that time.

New Rule, R.2004 d.475, effective December 20, 2004.
See: 36 N.J.R. 3655(a), 36 N.J.R. 5713(a).

5:80–26.22 State option on 95/5 units

(a) When the DCA or the Agency elects to purchase a 95/5 unit pursuant to N.J.A.C. 5:93–9.4 and this section, it may:

1. Convey or rent the 95/5 unit to a low-or moderate-income purchaser or tenant at a price or rent not to exceed the allowable restricted sales price or rental; or

2. Convey the unit at fair market value and utilize the price differential to subsidize the construction, rehabilitation or maintenance of low-and moderate-income housing within the appropriate housing region.

New Rule. R.2004 d.475, effective December 20, 2004.
See: 36 N.J.R. 3655(a), 36 N.J.R. 5713(a).

5:80–26.23 Non-profit option on 95/5 units

(a) Non-profit entities may apply to COAH at any time for the right to purchase 95/5 units subsequent to the period of controls on affordability, provided the unit remains controlled by a deed restriction approved by COAH.

(b) Non-profit entities that have been designated by COAH shall be eligible to purchase low-or moderate-income units pursuant to N.J.A.C. 5:93–9.4 for the sole purpose of conveying or renting the housing unit to a low-or moderate-income purchaser or tenant at a price or rent not to exceed the allowable restricted sales price or rental. Low-income units shall be made available to low-income purchasers or tenants and the housing unit shall be regulated by the deed restriction and lien adopted by COAH, appended to this subchapter as Appendix B. The term of the controls on affordability shall be the same as those required by N.J.A.C. 5:93–9.2

New Rule. R.2004 d.475, effective December 20, 2004.
See: 36 N.J.R. 3655(a), 36 N.J.R. 5713(a).

5:80–26.24 Seller option on 95/5 units

(a) An eligible seller of a 95/5 unit that has been controlled for the period established in N.J.A.C. 5:93–9.2 who has provided the requisite notice of an intent to sell, may proceed with the sale if no eligible entity as outlined in N.J.A.C. 5:80–26.19(c) and 26.22 exercises its option to purchase within 90 days.

(b) Subject to N.J.A.C. 5:93–9.9, the seller may elect to:

1. Sell to a certified household at a price not to exceed the maximum permitted sales price in accordance with existing COAH rules, provided that the unit is regulated by the deed restriction and lien adopted by COAH, appended to this subchapter as Appendix B for a period of at least 30 years; or

2. Exercise the repayment option and sell to any purchaser at market price, providing that 95 percent of the price differential is paid to the administrative agent, as an instrument of the municipality, at closing.

(c) If the sale will be to a qualified low-or moderate-income household, the administrative agent shall certify the income qualifications of the purchaser and shall ensure the housing unit is regulated by the deed restriction and lien required by COAH, which has been appended to this subchapter as Appendix B.

(d) The administrative agent shall examine any contract of sale containing a repayment option to determine if the proposed sales price bears a reasonable relationship to the housing unit's fair market value. In making this determination, the administrative agent may rely on comparable sales data or an appraisal. The administrative agent shall not approve any contract of sale where there is a determination that the sales price does not bear a reasonable relationship to fair market value. The administrative agent shall make a determination within 20 days of receipt of the contract of sale and shall calculate the repayment option payment.

(e) The administrative agent shall adopt an appeal procedure by which a seller may submit written documentation requesting the administrative agent to recompute the repayment obligation if the seller believes an error has been made, or to reconsider a determination that a sales price does not bear a reasonable relationship to fair market value. A repayment obligation determination made as a result of an owner's appeal shall be a final determination of the administrative agent appealable under N.J.A.C. 5:80–26.18.

(f) The repayment shall occur at the date of closing and transfer of title for the first non-exempt transaction after the expiration of controls on affordability.

(g) The administrative agent shall deposit all repayment proceeds in a housing trust fund (see N.J.A.C. 5:93–8.15) and may be used as per N.J.A.C. 5:93–8.16. Money deposited in housing trust funds may not be expended until the municipality submits and COAH approves a spending plan (see N.J.A.C. 5:93–5.1(c)).

New Rule, R.2004 d.475, effective December 20, 2004.
See: 36 N.J.R. 3655(a), 36 N.J.R. 5713(a).

5:80–26.25 Municipal rejection of repayment option on 95/5 units

(a) A municipality shall have the right to determine that the most desirable means of promoting an adequate supply of low-and moderate-income housing is to prohibit the exercise of the repayment option and maintain controls on lower income housing units sold within the municipality beyond the period required by N.J.A.C. 5:93–9.2. Such determination shall be made by resolution of the municipal governing body and shall be effective upon filing with COAH. The resolution shall specify the time period for which the repayment option shall not be applicable. During such period, no seller in the municipality may utilize the repayment option permitted by N.J.A.C. 5:93–9.8.

(b) Municipalities that exercise the option outlined in (a) above shall:

1. Provide public notice in a newspaper of general circulation; and

2. Notify the administrative agent and COAH of its governing body's action.

(c) The administrative agent shall ensure that the deed restriction on all affected housing units reflects the extended period of controls.

New Rule, R.2004 d.475, effective December 20, 2004.
See: 36 N.J.R. 3655(a), 36 N.J.R. 5713(a).

5:80–26.26 Continued application of options to create, rehabilitate or maintain 95/5 units

When a housing unit has been maintained as a low-or moderate-income unit after controls have been in effect for the period specified in N.J.A.C. 5:93–9.2, the deed restriction governing the housing units shall allow municipalities, DCA, the Agency, COAH, non-profit agencies and sellers of low-and moderate-income units to again exercise all the same options as provided in this subchapter.

New Rule, R.2004 d.475, effective December 20, 2004.
See: 36 N.J.R. 3655(a), 36 N.J.R. 5713(a).

APPENDIX A

MANDATORY DEED FORM FOR OWNERSHIP UNITS

Deed

To State Regulated Property
With Covenants Restricting Conveyance
And Mortgage Debt

THIS DEED is made on this the ____ day of _____, 20__ by and between

_____ (Grantor) and
_____ (Grantee).

Article 1. Consideration and Conveyance
In return for payment to the Grantor by the Grantee of _____ Dollars ($_____), the receipt of which is hereby acknowledged by the Grantor, the Grantor hereby grants and conveys to the Grantee all of the land and improvements thereon as is more specifically described in Article 2, hereof (the Property).

Article 2. Description of Property

The Property consists of all of the land, and improvements thereon, that is located in the municipality of _____, County of _____, State of New Jersey, and described more specifically as Block No. ___ Lot No. ___, and known by the street address:

_____

_____

Article 3. Grantor's Covenant

The Grantor hereby covenants and affirms that Grantor has taken no action to encumber the Property.

Article 4. Affordable Housing Covenants

Sale and use of the Property is governed by regulations known as the Uniform Housing Affordability Controls, which are found in New Jersey Administrative Code at Title 5, chapter 80, subchapter 26 (N.J.A.C. 5:80–26.1, *et seq*, the "Regulations"). Consistent with the Regulations, the following covenants (the "Covenants") shall run with the land for the period of time commencing upon the earlier of (a) the date hereof or (b) the prior commencement of the "Control Period", as that term is defined in the Regulations, and terminating upon the expiration of the Control Period as provided in the Regulations.

A. The Property may be conveyed only to a household who has been approved in advance and in writing by the Housing Affordability Service of the New Jersey Department of Community Affairs, or other administrative agent appointed under the Regulations (hereinafter, collectively, the "Administrative Agent").

B. No sale of the Property shall be lawful, unless approved in advance and in writing by the Administrative Agent, and no sale shall be for a consideration greater than maximum permitted price ("Maximum Resale Price", or "MRP") as determined by the Administrative Agent.

C. No refinancing, equity loan, secured letter of credit, or any other mortgage obligation or other debt (collectively, "Debt") secured by the Property, may be incurred except as approved in advance and in writing by the Administrative Agent. At no time shall the Administrative Agent approve any such Debt, if incurring the Debt would make the total of all such Debt exceed Ninety–Five Percentum (95%) of the applicable MRP.

D. The owner of the Property shall at all times maintain the Property as his or her principal place of residence.

E. Except as set forth in F, below, at no time shall the owner of the Property lease or rent the Property to any person or persons, except on a short-term hardship basis as approved in advance and in writing by the Administrative Agent.

F. If the Property is a two-family home, the owner shall lease the rental unit only to income-certified low-income households approved in writing by the Administrative Agent, shall charge rent no greater than the maximum permitted rent as determined by the Administrative Agent, and shall submit for written approval of the Administrative Agent copies of all proposed leases prior to having them signed by any proposed tenant.

G. No improvements may be made to the Property that would affect its bedroom configuration, and in any event, no improvement made to the Property will be taken into consideration to increase the MRP, except for improvements approved in advance and in writing by the Administrative Agent.

Article 5. Remedies for Breach of Affordable Housing Covenants

A breach of the Covenants will cause irreparable harm to the Administrative Agent and to the public, in light of the public policies set forth in the New Jersey Fair Housing Act, the Uniform Housing Affordability Control rules found at N.J.A.C. 5:80–26, and the obligation for the provision of low and moderate-income housing. Accordingly, and as set forth in N.J.A.C. 5:80–26.18:

A. In the event of a threatened breach of any of the Covenants by the Grantee, or any successor in interest or other owner of the Property, the Administrative Agent shall have all remedies provided at law or equity, including the right to seek injunctive relief or specific performance.

B. Upon the occurrence of a breach of any Covenants by the Grantee, or any successor in interest or other owner of the Property, the Administrative Agent shall have all remedies provided at law or equity including but not limited to forfeiture, foreclosure, acceleration of all sums due under any mortgage, recouping of any funds from a sale in violation of the Covenants, diverting of rent proceeds from illegal rentals, injunctive relief to prevent further violation of said Covenants, entry on the premises, those provided under Title 5, Chapter 80, Subchapter 26 of the New Jersey Administrative Code and specific performance.

EXECUTION BY GRANTOR

Signed by the Grantor on the date hereof. If the Grantor is a corporation, this Deed is signed by a corporate officer who has authority to (a) convey all interests of the corporation that are conveyed by this Deed, and (b) to bind the corporation with respect to all matters dealt with herein.

_____

Signed, sealed and delivered in the presence of or attested by: _____ [seal]

_____ [seal]

_____ [seal]

_____ [seal]

CERTIFICATE OF ACKNOWLEDGEMENT BY INDIVIDUAL

State of New Jersey, County of _____

I am either (check one) ____ a Notary Public or ____ a _____, an officer authorized to take acknowledgements and proofs in the state of New Jersey. I sign this acknowledgement below to certify that it was executed before me. On this the ____ day of _____, 20___ _____ appeared before me in person. *(If more than one person appears, the words "this person" shall include all persons named who appeared before the officer making this acknowledgement).* I am satisfied that this person is the person named in and who signed this Deed.

This person also acknowledged that the full and actual consideration paid or to be paid for the transfer of title to realty evidenced by this Deed, as such consideration is defined in P.L. 1968, c. 49, sec. 1(c), is $_____.

_____

Officer's signature: Sign above, and print stamp or type name below

CORPORATE PROOF BY SUBSCRIBING WITNESS

State of New Jersey, County of _____

I am either (check one) ____ a Notary Public or ____ a _____, an officer authorized to take acknowledgements and proofs in the state of New Jersey. On this the _____ day of _____, 20___, _____ (hereinafter the "Witness") appeared before me in person. The Witness was duly sworn by me, and under oath stated and proved to my satisfaction that:

1. The Witness is the _____ secretary of the corporation which is the Grantor described as such in this deed (hereinafter the "Corporation").

2. _____, the officer who signed this Deed is the *(title)* _____ of the Corporation (hereinafter the "Corporate Officer").

3. The making, signing, sealing and delivery of this Deed have been duly authorized by a proper resolution of the Board of Directors of the Corporation.

4. The Witness knows the corporate seal affixed to this Deed is the corporate seal of the Corporation. The Corporate Officer affixed the seal to this Deed. The Corporate Officer signed and delivered this Deed as and for the voluntary act and deed of the Corporation. All this was done in the presence of the Witness who signed this Deed as attesting witness. The Witness signs this proof to attest to the truth of these facts.

The Witness also acknowledges that the full and actual consideration paid or to be paid for the transfer of title to realty evidenced by this Deed, as such consideration is defined in P.L. 1968, c. 49, sec. 1(c), is $_____

Sworn and signed before me on the date above written:

_____

Witness: Sign above and print or type name below

_____

Officer's signature: Sign above, and print stamp or type name below

Repeal and New Rule, R.2004 d.475, effective December 20, 2004.
See: 36 N.J.R. 3655(a), 36 N.J.R. 5713(a).
Section was "Affordability deed restriction for ownership rights".

APPENDIX B

MANDATORY DEED FORM FOR OWNERSHIP 95/5 UNITS

Deed

To State Regulated Property
With Covenants Restricting Conveyance
And Mortgage Debt—With 95/5 Recapture

THIS DEED is made on this the ____ day of _____, 20__ by and between

_____ (Grantor) and

_____ (Grantee).

Article 1. Consideration and Conveyance

In return for payment to the Grantor by the Grantee of _____ Dollars ($_____), the receipt of which is hereby acknowledged by the Grantor, the Grantor hereby grants and conveys to the Grantee all of the land and improvements thereon as is more specifically described in Article 2, hereof (the Property).

Article 2. Description of Property

The Property consists of all of the land, and improvements thereon, that is located in the municipality of _____, County of _____, State of New Jersey, and described more specifically as Block No. ___ Lot No. ___, and known by the street address:

_____

_____

Article 3. Grantor's Covenant

The Grantor hereby covenants and affirms that Grantor has taken no action to encumber the Property.

Article 4. Affordable Housing Covenants

Sale and use of the Property is governed by regulations known as the Uniform Housing Affordability Controls, which are found in New Jersey Administrative Code at Title 5, chapter 80, subchapter 26 (N.J.A.C. 5:80–26.1, *et seq*, the "Regulations"). Consistent with the Regulations, the following covenants (the "Covenants") shall run with the land for the period of time commencing upon the earlier of (a) the date hereof or (b) the prior commencement of the "Control Period", as that term is defined in the Regulations, and terminating upon the expiration of the Control Period as provided in the Regulations.

A. The Property may be conveyed only to a household who has been approved in advance and in writing by the Housing Affordability Service of the New Jersey Department of Community Affairs, or other administrative agent appointed under the Regulations (hereinafter, collectively, the "Administrative Agent").

B. No sale of the Property shall be lawful, unless approved in advance and in writing by the Administrative Agent, and no sale shall be for a consideration greater than maximum permitted price ("Maximum Resale Price", or "MRP") as determined by the Administrative Agent.

C. No refinancing, equity loan, secured letter of credit, or any other mortgage obligation or other debt (collectively, "Debt") secured by the Property, may be incurred except as approved in advance and in writing by the Administrative Agent. At no time shall the Administrative Agent approve any such Debt, if incurring the Debt would make the total of all such Debt exceed Ninety–Five Percentum (95%) of the applicable MRP.

D. The owner of the Property shall at all times maintain the Property as his or her principal place of residence.

E. Except as set forth in F, below, at no time shall the owner of the Property lease or rent the Property to any person or persons, except on a short-term hardship basis as approved in advance and in writing by the Administrative Agent.

F. If the Property is a two-family home, the owner shall lease the rental unit only to income-certified low-income households approved in writing by the Administrative Agent, shall charge rent no greater than the maximum permitted rent as determined by the Administrative Agent, and shall submit for written approval of the Administrative Agent copies of all proposed leases prior to having them signed by any proposed tenant.

G. No improvements may be made to the Property that would affect its bedroom configuration, and in any event, no improvement made to the Property will be taken into consideration to increase the MRP, except for improvements approved in advance and in writing by the Administrative Agent.

Article 5. Remedies for Breach of Affordable Housing Covenants

A breach of the Covenants will cause irreparable harm to the Administrative Agent and to the public, in light of the public policies set forth in the New Jersey Fair Housing Act, the Uniform Housing Affordability Control rules found at N.J.A.C. 5:80–26, and the obligation for the provision of low and moderate-income housing. Accordingly, and as set forth in N.J.A.C. 5:80–26.18:

A. In the event of a threatened breach of any of the Covenants by the Grantee, or any successor in interest or other owner of the Property, the Administrative Agent shall have all remedies provided at law or equity, including the right to seek injunctive relief or specific performance.

B. Upon the occurrence of a breach of any Covenants by the Grantee, or any successor in interest or other owner of the Property, the Administrative Agent shall have all remedies provided at law or equity including but not limited to forfeiture, foreclosure, acceleration of all sums due under any mortgage, recouping of any funds from a sale in violation of the Covenants, diverting of rent proceeds from illegal rentals, injunctive relief to prevent further violation of said Covenants, entry on the premises, those provided under Title 5, Chapter 80, Subchapter 26 of the New Jersey Administrative Code and specific performance.

Article 6. Notice of Resale, Recapture Covenant and 95/5 Purchase Options

A. The owner of the Property is required notify the [. . . ADMINISTRATIVE AGENT . . .] and New Jersey Council On Affordable Housing by certified mail of any intent to sell the property 90 days prior to entering into an agreement for the first non-exempt sale of the Property after the conclusion of the Control Period, as set forth in Section 5:93–9.8(b)2 of the Substantive Rules of the New Jersey Council On Affordable Housing as in effect at the time the Property was first restricted as part of the Affordable Housing Program.

B. Upon the first such non-exempt sale of the Property Ninety–Five Percentum (95%) of the difference between (i) the actual sale price and (ii) the regulated maximum sales price that would be applicable were the Control Period still in effect, shall be paid at closing to the New Jersey Department of Community Affairs, acting as receiving agent for the local municipality.

C. Such non-exempt sale is subject to the options provided for in Sections 5:80–26.20 (Option to buy 95/5 units), 5:80–26.21 (Municipal option on 95/5 units), 5:80–26.22 (State option on 95/5 units), 5:80–26.23 (Non-profit option on 95/5 units), 5:80–26.24 (Seller option on 95/5 units), 5:80–26.25 (Municipal rejection of repayment option on 95/5 units) and 5:80–26.26 (Continued application of options to create, rehabilitate or maintain 95/5 units) of the Uniform Housing Affordability Control Rules, found in Title 5, Chapter 80, Subchapter 26, of the New Jersey Administrative Code.

EXECUTION BY GRANTOR

Signed by the Grantor on the date hereof. If the Grantor is a corporation, this Deed is signed by a corporate officer who has authority to (a) convey all interests of the corporation that are conveyed by this Deed, and (b) to bind the corporation with respect to all matters dealt with herein.

_____

Signed, sealed and delivered in the presence of or attested by: _____ [seal]

_____ [seal]
_____ [seal]
_____ [seal]

CERTIFICATE OF ACKNOWLEDGEMENT BY INDIVIDUAL

State of New Jersey, County of _____

I am either (check one) ____ a Notary Public or ____ a _____, an officer authorized to take acknowledgements and proofs in the state of New Jersey. I sign this acknowledgement below to certify that it was executed before me. On this the ____ day of _____, 20___ _____ appeared before me in person. *(If more than one person appears, the words "this person" shall include all persons named who appeared before the officer making this acknowledgement).* I am satisfied that this person is the person named in and who signed this Deed.

This person also acknowledged that the full and actual consideration paid or to be paid for the transfer of title to realty evidenced by this Deed, as such consideration is defined in P.L. 1968, c. 49, sec. 1(c), is $_____

_____

Officer's signature: Sign above, and print stamp or type name below

CORPORATE PROOF BY SUBSCRIBING WITNESS

State of New Jersey, County of _____

I am either (check one) _____ a Notary Public or _____ a _____, an officer authorized to take acknowledgements and proofs in the state of New Jersey. On this the _____ day of _____, 20___, _____ (hereinafter the "Witness") appeared before me in person. The Witness was duly sworn by me, and under oath stated and proved to my satisfaction that:

1. The Witness is the _____ secretary of the corporation which is the Grantor described as such in this deed (hereinafter the "Corporation").

2. _____, the officer who signed this Deed is the *(title)*_____ of the Corporation (hereinafter the "Corporate Officer").

3. The making, signing, sealing and delivery of this Deed have been duly authorized by a proper resolution of the Board of Directors of the Corporation.

4. The Witness knows the corporate seal affixed to this Deed is the corporate seal of the Corporation. The Corporate Officer affixed the seal to this Deed. The Corporate Officer signed and delivered this Deed as and for the voluntary act and deed of the Corporation. All this was done in the presence of the Witness who signed this Deed as attesting witness. The Witness signs this proof to attest to the truth of these facts.

The Witness also acknowledges that the full and actual consideration paid or to be paid for the transfer of title to realty evidenced by this Deed, as such consideration is defined in P.L. 1968, c. 49, sec. 1(c), is $_____.

Sworn and signed before me on the date above written:

_____

Witness: Sign above and print or type name below

_____

Officer's signature: Sign above, and print stamp or type name below

Repeal and New Rule, R.2004 d.475, effective December 20, 2004.
See: 36 N.J.R. 3655(a), 36 N.J.R. 5713(a).
Section was "Affordability deed restriction for rental units".

APPENDIX C

RESTRICTIVE COVENANT REQUIRED BY SECTION 5:80–26.5(d)

Declaration Of Covenants, Conditions

And Restrictions

Implementing Affordable Housing Controls

On State Regulated Property

Fair Housing Act Required Covenants

Restricting Use, Conveyance

And Mortgage Debt

THIS DECLARATION is made this ___ day of _____, 200___, by _____, a ___(State of domicile)___ (corporation, limited partnership or other entity), having its principle address at _____ (hereinafter referred to as "Developer").

WHEREAS, Developer is the owner of _____ units, more fully described on Schedule A attached hereto and made a part hereof (hereinafter referred to as the "Affordable Units") which are situated within _____ a (condominium or residential development)___ consisting of a total of ___ dwelling units located in the Municipality of _____, County of _____, State of New Jersey; and

WHEREAS, municipalities within the State of New Jersey are required by the Fair Housing Act (P.L. 1985, c. 222) (hereinafter the "Act") to provide for their fair share of housing that is affordable to households with low or moderate incomes in accordance with the provisions of the Act; and

WHEREAS, the Act requires that municipalities insure that such designated housing remains affordable to low and moderate income households;

WHEREAS, pursuant to the Act, the Affordable Units described in Exhibit A attached to this Agreement have been designated as low and moderate income housing as defined by the Act; and

WHEREAS, the purpose of this Declaration is to insure that the described Affordable Units remain affordable to low and moderate-income eligible households for that period of time described in Section ___ of this Declaration.

NOW, THEREFORE, it is the intent of this Declaration to insure that the affordability controls are recorded on each of the affordable units so as to bind the owners of the Affordable Units of the covenants, conditions and restrictions which they shall be required to comply and to notify all future purchasers of the affordable units that the housing unit is encumbered with affordability controls.

Article 1. Affordable Housing Covenants

The sale and use of each Affordable Unit subject to this Declaration is governed by regulations governing controls on affordability, which are found in New Jersey Administrative Code at Title 5, chapter 93, subchapter 9 (N.J.A.C. 5:93–9.1, *et seq*), and chapter 80, subchapter 26 (N.J.A.C. 5:80–26.1, *et seq*) (the "Regulations"). Consistent with the Regulations, the following covenants (the "Covenants") shall run with the land, for each respective Affordable Unit, for the period of time commencing upon the earlier of (a) the date hereof or (b) the prior commencement of the "Control Period", as that term is defined in the Regulations, and terminating upon the expiration of the Control Period as provided in the Regulations.

A. The Affordable Unit may be conveyed only to a household who has been approved in advance and in writing by the Housing Affordability Service of the New Jersey Department of Community Affairs, or other administrative agent appointed under the Regulations (hereinafter, collectively, the "Administrative Agent").

B. No sale of the Affordable Unit shall be lawful, unless approved in advance and in writing by the Administrative Agent, and no sale shall be for a consideration greater than maximum permitted price ("Maximum Resale Price", or "MRP") as determined by the Administrative Agent.

C. No refinancing, equity loan, secured letter of credit, or any other mortgage obligation or other debt (collectively, "Debt") secured by the Affordable Unit, may be incurred except as approved in advance and in writing by the Administrative Agent. At no time shall the Administrative Agent approve any such Debt, if incurring the Debt would make the total of all such Debt exceed Ninety–Five Percentum (95%) of the applicable MRP.

D. The owner of the Affordable Unit shall at all times maintain the Affordable Unit as his or her principal place of residence.

E. Except as set forth in F, below, at no time shall the owner of the Affordable Unit lease or rent the Affordable Unit to any person or persons, except on a short-term hardship basis as approved in advance and in writing by the Administrative Agent.

F. If the Affordable Unit is a two-family home, the owner shall lease the rental unit only to income-certified low-income households approved in writing by the Administrative Agent, shall charge rent no greater than the maximum permitted rent as determined by the Administrative Agent, and shall submit for written approval of the Administrative Agent copies of all proposed leases prior to having them signed by any proposed tenant.

G. No improvements may be made to the Affordable Unit that would affect its bedroom configuration, and in any event, no improvement made to the Affordable Unit will be taken into consideration to increase the MRP, except for improvements approved in advance and in writing by the Administrative Agent.

Article 2. Remedies for Breach of Affordable Housing Covenants

A breach of the Covenants will cause irreparable harm to the Administrative Agent and to the public, in light of the public policies set forth in the New Jersey Fair Housing Act, the Uniform Housing Affordability Control rules found at N.J.A.C. 5:80–26, and the obligation for the provision of low and moderate-income housing. Accordingly, and as set forth in N.J.A.C. 5:80–26.18:

A. In the event of a threatened breach of any of the Covenants by the Grantee, or any successor in interest or other owner of the Affordable Unit, the Administrative Agent shall have all remedies provided at law or equity, including the right to seek injunctive relief or specific performance.

B. Upon the occurrence of a breach of any Covenants by the Grantee, or any successor in interest or other owner of the Property, the Administrative Agent shall have all remedies provided at law or equity including but not limited to forfeiture, foreclosure, acceleration of all sums due under any mortgage, recouping of any funds from a sale in violation of the Covenants, diverting of rent proceeds from illegal rentals, injunctive relief to prevent further violation of said Covenants, entry on the premises, those provided under Title 5, Chapter 80, Subchapter 26 of the New Jersey Administrative Code and specific performance.

IN WITNESS WHEREOF, Developer has caused this instrument to be executed by its duly authorized partners and proper officers, respectively, this ___ day of December 2002.

ATTEST: _____

(DEVELOPER)

By: _____

Repeal and New Rule, R.2004 d.475, effective December 20, 2004.
See: 36 N.J.R. 3655(a), 36 N.J.R. 5713(a).
Section was "Form of release of affordability deed restriction".

APPENDIX D

MANDATORY DEED FORM FOR OWNERSHIP UNITS SUBJECT TO RESTRICTIVE COVENANT REQUIRED BY SECTION 5:80–26.5(d)

Deed

To State Regulated Property

Subject To Restrictive Covenant Limiting Conveyance

And Mortgage Debt

THIS DEED is made on this the ___ day of _____, 20__ by and between

_____ (Grantor) and

_____ (Grantee).

Article 1. Consideration and Conveyance

In return for payment to the Grantor by the Grantee of _____ Dollars ($_____), the receipt of which is hereby acknowledged by the Grantor, the Grantor hereby grants and conveys to the Grantee all of the land and improvements thereon as is more specifically described in Article 2, hereof (the Property).

Article 2. Description of Property

The Property consists of all of the land, and improvements thereon, that is located in the municipality of _____, County of _____, State of New Jersey, and described more specifically as Block No. ___ Lot No. ___, and known by the street address:

Article 3. Grantor's Covenant

The Grantor hereby covenants and affirms that Grantor has taken no action to encumber the Property.

Article 4. Affordable Housing Covenants and Remedies

Sale and use of the Property is governed by the *Declaration Of Covenants, Conditions And Restrictions Implementing Affordable Housing Controls On State Regulated Property* that was filed against the Property and recorded on _____, 20___ in Deed Book ___ at pages ___ through ___, in the offices of the Clerk, County of _____ (the "Restrictions), and is subject to all remedies set forth in the Restrictions.

EXECUTION BY GRANTOR

Signed by the Grantor on the date hereof. If the Grantor is a corporation, this Deed is signed by a corporate officer who has authority to (a) convey all interests of the corporation that are conveyed by this Deed, and (b) to bind the corporation with respect to all matters dealt with herein.

_____

Signed, sealed and delivered in the presence of or attested by: _____ [seal]

_____ [seal]
_____ [seal]
_____ [seal]

CERTIFICATE OF ACKNOWLEDGEMENT BY INDIVIDUAL

State of New Jersey, County of _____

I am either (check one) ___ a Notary Public or ___ a _____, an officer authorized to take acknowledgements and proofs in the state of New Jersey. I sign this acknowledgement below to certify that it was executed before me. On this the ___ day of _____, 20___ _____ appeared before me in person. *(If more than one person appears, the words "this person" shall include all persons named who appeared before the officer making this acknowledgement).* I am satisfied that this person is the person named in and who signed this Deed.

This person also acknowledged that the full and actual consideration paid or to be paid for the transfer of title to realty evidenced by this Deed, as such consideration is defined in P.L. 1968, c. 49, sec. 1(c), is $_____

_____
Officer's signature: Sign above, and print stamp or type name below

CORPORATE PROOF BY SUBSCRIBING WITNESS

State of New Jersey, County of _____

I am either (check one) ___ a Notary Public or ___ a _____, an officer authorized to take acknowledgements and proofs in the state of New Jersey. On this the _____ day of _____, 20___, _____ (hereinafter the "Witness") appeared before me in person. The Witness was duly sworn by me, and under oath stated and proved to my satisfaction that:

1. The Witness is the _____ secretary of the corporation which is the Grantor described as such in this deed (hereinafter the "Corporation").

2. _____, the officer who signed this Deed is the *(title)*_____ of the Corporation (hereinafter the "Corporate Officer").

3. The making, signing, sealing and delivery of this Deed have been duly authorized by a proper resolution of the Board of Directors of the Corporation.

4. The Witness knows the corporate seal affixed to this Deed is the corporate seal of the Corporation. The Corporate Officer affixed the seal to this Deed. The Corporate Officer signed and delivered this Deed as and for the voluntary act and deed of the Corporation. All this was done in the presence of the Witness who signed this Deed as attesting witness. The Witness signs this proof to attest to the truth of these facts.

The Witness also acknowledges that the full and actual consideration paid or to be paid for the transfer of title to realty evidenced by this Deed, as such consideration is defined in P.L. 1968, c. 49, sec. 1(c), is $_____

Sworn and signed before me on the date above written:

_____
Witness: Sign above and print or type name below

_____
Officer's signature: Sign above, and print stamp or type name below

New Rule, R.2004 d.475. effective December 20, 2004.
See: 36 N.J.R. 3655(a), 36 N.J.R. 5713(a).

APPENDIX E

MANDATORY DEED RESTRICTION FOR RENTAL PROJECTS

Deed Restriction

To State Regulated Multi-Family Rental Property

With Covenants Restricting Rentals,

Conveyance and Improvements

And Requiring Notice of Foreclosure and Bankruptcy

THIS DEED RESTRICTION, entered into as of this the ___ day of _____, 20___, by and between the [Administrative Agent] ("Administrative Agent"), and _____ a New Jersey [Corporation/Partnership/Limited Partnership]having offices at _____ the developer/sponsor (the "Owner") of a residential low-or moderate-income rental project subsidized by the State Of New Jersey (the "State") in cooperation with the Administrative Agent, under the [Name of Program] (the "Project"):

WITNESSETH

Article 1. Consideration

In consideration of the subsidies received for the Project, the Owner hereby agrees to abide by the covenants, terms and conditions set forth in this Deed restriction, with respect to the land and improvements more specifically described in Article 2, hereof (the Property).

Article 2. Description of Property

The Property consists of all of the land, and improvements thereon, that is located in the municipality of _____, County of _____, State of New Jersey, and described more specifically as Block No. ___ Lot No. ___, and known by the street address:

_____

_____

Article 3. Affordable Housing Covenants

The following covenants (the "Covenants") shall run with the land for the period of time (the "Control Period"), determined separately with respect for each dwelling unit, commencing upon the earlier of the date hereof or the date on which the first certified household occupies the unit, and shall and expire as determined under the Uniform Controls, as defined below.

A. Sale and use of the Property is governed by regulations known as the Uniform Housing Affordability Controls, which are found in New Jersey Administrative Code at Title 5, chapter 80, subchapter 26 (N.J.A.C. 5:80–26.1, *et seq*, the "Uniform Controls").

B. The Property shall be used solely for the purpose of providing rental dwelling units for low-or moderate-income households, and no commitment for any such dwelling unit shall be given or implied, without exception, to any person who has not been certified for that unit in writing by the Administrative Agent. So long as any dwelling unit remains within its Control Period, sale of the Property must be expressly subject to these Deed Restrictions, deeds of conveyance must have these Deed Restrictions appended thereto, and no sale of the Property shall be lawful, unless approved in advance and in writing by the Administrative Agent.

C. No improvements may be made to the Property that would affect the bedroom configuration of any of its dwelling units, and any improvements to the Property must be approved in advance and in writing by the Administrative Agent.

D. The Owner shall notify the Administrative Agent and the State of any foreclosure actions filed with respect to the Property within five (5) business days of service upon Owner.

E. The Owner shall notify the Administrative Agent and the State within three (3) business days of the filing of any petition for protection from creditors or reorganization filed by or on behalf of the Owner.

Article 4. Remedies for Breach of Affordable Housing Covenants

A breach of the Covenants will cause irreparable harm to the Administrative Agent, to the State and to the public, in light of the public policies set forth in the New Jersey Fair Housing Act, the Uniform Housing Affordability Control rules found at N.J.A.C. 5:80–26, and the obligation for the provision of low and moderate-income housing.

A. In the event of a threatened breach of any of the Covenants by the Owner, or any successor in interest of the Property, the Administrative Agent and the State shall have all remedies provided at law or equity, including the right to seek injunctive relief or specific performance.

B. Upon the occurrence of a breach of any Covenants by the Grantee, or any successor in interest or other owner of the Property, the Administrative Agent shall have all remedies provided at law or equity including but not limited to forfeiture, foreclosure, acceleration of all sums due under any mortgage, recouping of any funds from a sale in violation of the Covenants, diverting of rent proceeds from illegal rentals, injunctive relief to prevent further violation of said Covenants, entry on the premises, those provided under Title 5, Chapter 80, Subchapter 26 of the New Jersey Administrative Code and specific performance.

IN WITNESS WHEREOF, the Administrative Agent and the Owner have executed this Deed Restriction in triplicate as of the date first above written.

[THE ADMINISTRATIVE AGENT]
BY:

_____
xxxxxxxxxxxx
Title

[THE OWNER]
BY:

_____
xxxxxxxxxxxx
Title

APPROVED BY
THE STATE OF NEW JERSEY
BY _____
xxxxxxxxxxxx
Title

ACKNOWLEDGEMENTS

On this the day ___ of _____, 20___ before me came _____, to me known and known to me to be the _____ of the Department of Community Affairs of the State of New Jersey, who states that (s)he has signed said Agreement on behalf of said State for the purposes stated therein.

_____
NOTARY PUBLIC

On this the ___ day of _____, 20___ before me came _____ known and known to me to be _____ of _____, the municipality identified as such in the foregoing Agreement, who states that (s)he is duly authorized to execute said Agreement on behalf of said Municipality, and that (s)he has so executed the foregoing Agreement for the purposes stated therein

NOTARY PUBLIC

New Rule, R.2004 d.475, effective December 20, 2004.
See: 36 N.J.R. 3655(a), 36 N.J.R. 5713(a).

APPENDIX F

FORM OF RELEASE (Quitclaim Deed) FOR RESTRICTED UNITS

QUITCLAIM DEED

RELEASING OWNERSHIP UNIT FROM AFFORDABILITY CONTROLS

THIS DEED, made as of this the ___ day of _____, 20___ by and between The STATE OF NEW JERSEY, acting by and through its Commissioner of the Department of Community Affairs, PO Box 806, Trenton, New Jersey, 08625, (the "GRANTOR"), and the _____, (the "GRANTEE");

WHEREAS, on or about _____, an [Affordable Housing Agreement or Deed] [and a Repayment Mortgage (the "Mortgage") together] containing Fair Housing Act deed restrictions (the "RESTRICTIONS") were executed by _____, and were subsequently recorded in the Registrar's Office of the Clerk, County of _____, State of New Jersey, in, respectively, Deed Book ___ at pages ___ through ___, [and Mortgage Book ___ at pages ___ through ___,] in connection with the property identified below (the "PROPERTY");

WHEREAS, under the terms of the Agreement and Mortgage, all Restrictions lapsed on _____

NOW THEREFORE, and in consideration of $1 in hand received and other good and valuable consideration,

The GRANTOR grants and forever releases to the GRANTEE, so that the lands described below may be conveyed free from the encumbrance of the RESTRICTIONS, any and all restrictions and claims of the GRANTOR, upon that certain real property, located in the Municipality of _____, County of _____, State of New Jersey, more particularly described as:

Being known and designated as Lot ___, Block _____ in the Municipality of _____, County of _____, State of New Jersey, and more commonly known as _____, New Jersey _____

SUBJECT TO all easements, covenants and restrictions of record.

The GRANTOR has received full consideration from the GRANTEE.

The GRANTOR signs this Deed as of the date first above written.

Attest: _____ [Administrative Agent] by: _____

STATE OF NEW JERSEY)
) ss.:
COUNTY OF _____)

On this the ___ day of _____, 20___ before me came _____, who acknowledges and makes proof to my satisfaction that he/she is a duly authorized agent of the _____, the Grantor named within this document, and that the execution, as well as the making of this instrument has been duly authorized by said _____ as the voluntary act and deed of _____, sworn to and subscribed by him in my presence on this date.

A Notary Public/Attorney of the State of New Jersey

New Rule, R.2004 d.475, effective December 20, 2004.
See: 36 N.J.R. 3655(a), 36 N.J.R. 5713(a).

APPENDIX G

FORM OF NOTE FOR PAYMENT OF RECAPTURE AMOUNT FOR A 95/5 UNIT

State of New Jersey

Department of Community Affairs

Housing and Mortgage Finance Agency

95/5 Mortgage Note

In Connection With Payment of Amounts Due

Upon First Non–Exempt Sale

After Expiration of Control Period

THIS NOTE, is dated as of _____. For value received _____ (referred to "Owner") promises to pay to THE STATE OF NEW JERSEY, acting by and through its Department of Community Affairs, which has its principal offices at 101 South Broad Street in the City of Trenton, County of Mercer, State of New Jersey (the "STATE"), and which is acting as receiving agent for the [MUNICIPALITY], the amounts specified in this Note and promises to abide by the terms contained below.

Article 1. REPAYMENT MORTGAGE

As security for the payment of amounts due under this Note and the performance of all promises contained in this Note, the Owner is giving the State a "Repayment Mortgage To Secure Payment of Amounts Due Upon First Non–Exempt Sale After Expiration of Control Period" (the "MORTGAGE"), dated _____, of the property described below (the "PROPERTY"). The Mortgage covers real estate owned by the Owner. The Mortgage will not be subordinate, and will not be subordinated by the State, to any mortgage,

refinancing, equity loan, secured letter of credit, or any other obligation secured by the Property, except with respect to (a) any such obligation which was duly recorded prior to the recording hereof, and (b) any such obligation which, when added to all other such obligations recorded against the Property, shall result in total debt secured by the Property being an amount less than the MRP that would be applicable were the Control Period still in effect, as those terms are defined in Article 2 of the Mortgage.

Article 2. OWNERS PROMISE TO PAY AND OTHER TERMS

Upon the first non-exempt sale of the Property after the date of this Note, Ninety–Five Percentum (95%) of the difference between (i) the actual sale price and (ii) the regulated maximum sales price that would be applicable were the Control Period still in effect, as set forth in Section 5:93–9.8(b)(2) of the Substantive Rules of the New Jersey Council On Affordable Housing as in effect at the time the Property was first restricted as part of the Affordable Housing Program in October of 1990, shall be paid at closing to the State of New Jersey, acting as receiving agent for the local municipality.

Article 3. PROPERTY DESCRIPTION

All of the land and improvements thereon located in the municipality of _____ in the County of _____, State of New Jersey, described more specifically as Block No. ___ Lot No. ___, and known by the street address: _____.

Article 4. WAIVER OF FORMAL ACTS

The Owner waives its right to require the State to do any of the following before enforcing its rights under this Note:

1. To demand payment of amount due (known as Presentment).
2. To give notice that amounts due have not been paid (known as Notice of Dishonor).
3. To obtain an official certificate of non-payment (known as Protest).

Article 5. RESPONSIBILITY UNDER NOTE

All Owners signing this Note are jointly and individually obligated to pay the amounts due and to abide by the terms under this Note. The Authority may enforce this Note against any one or more of the Owners or against all Owners together.

The Owner agrees to the terms of this Note by signing below.

ACKNOWLEDGEMENT

Owner acknowledges receipt of a true copy of the Mortgage and this Note at no charge.

Dated:

ATTEST:

By: _____
Signature (Owner)

_____
Signature (Co–Owner)

STATE OF NEW JERSEY)
) ss.:
COUNTY OF _____)

On this the ___ day of _____, 20___ before me came _____, who acknowledges and makes proof to my satisfaction that she is the Owner named within this Note, and that she has executed said Note for the purposes set forth therein, sworn to and subscribed by her in my presence on this date.

Sworn to and subscribed before me this the ___ day of _____, 20___.

_____
A Notary Public/Attorney of the State of New Jersey

New Rule, R.2004 d.475, effective December 20, 2004.
See: 36 N.J.R. 3655(a), 36 N.J.R. 5713(a).

APPENDIX H

FORM OF MORTGAGE SECURING PAYMENT OF RECAPTURE AMOUNT FOR A 95/5 UNIT

State of New Jersey

Department of Community Affairs

Housing and Mortgage Finance Agency

Affordable Housing Program

Repayment Mortgage

To Secure Payment of Amounts Due

Upon First Non–Exempt Sale

After Expiration of Control Period

THIS MORTGAGE, made on this the ___ day of _____, 20_____ by and between _____, (the "OWNER") and THE STATE OF NEW JERSEY, acting by and through its Commissioner of the Department of Community Affairs (the "STATE"), in connection with the property described herein (the "PROPERTY");

Article 1. REPAYMENT MORTGAGE NOTE

In consideration of value received, including but not limited to certification by the State for participation in the affordable Housing Program and for release by the State of prior recorded restriction documents, the Owner has signed a Repayment Mortgage Note (the "Note") dated _____ The Owner promises to pay to the State amounts due under the Repayment Mortgage Note, and to abide by all obligations contained therein.

Article 2. MORTGAGE AS SECURITY FOR AMOUNT DUE

This Mortgage is given to the State as security for the payment required to be paid upon the first non-exempt sale of the Property, which requirement is set forth in Section 5:93–9.8(b)(2) of the Substantive Rules of the New Jersey Council On Affordable Housing, as in effect at the time the Property was first restricted under the Affordable Housing program, after the completion of the control period established pursuant to Section 5:93–9.2 of said Rules (the "Control Period"). The amount of any such payment shall be determined by calculating Ninety–Five Percentum (95%) of the difference between (a) the actual sale price and (b) the regulated maximum sales price (Maximum Resale Price, or "MRP") that would be applicable were the Control Period still in effect.

Article 3. PROPERTY DESCRIPTION

All of the land and improvements thereon located in the municipality of _____ in the County of _____, State of New Jersey (hereinafter the "Property"), described more specifically as Block No. ___ Lot No. ___, and known by the street address:

_____

_____

Article 4. RIGHTS GIVEN TO STATE

The Owner, by mortgaging the Property to the State, gives the State those rights stated in this Mortgage, and all the rights the law gives to the State under Uniform Housing Affordability Controls, which are found in New Jersey Administrative Code at Title 5, chapter 80, subchapter 26 (N.J.A.C. 5:80–26.1, *et seq*). The rights given to the state are covenants running with the land. The rights, terms and restrictions in this Mortgage shall bind the Owner and all subsequent purchasers and owners of the Property, and the heirs and assigns of all of them. Upon performance of the promises contained in Note and Mortgage, the state will prepare and deliver to the then current owner of record a quitclaim deed or other document of release.

Article 5. DEFAULT

The State may declare the Owner in default on this Mortgage and on the Note if:

1. The Owner attempts to convey an interest in the Property without giving prior written notice to the State;
2. The ownership of the Property is changed for any reason other than in the course of an exempt sale;
3. The Owner fails to make any payment required by the Note;
4. The holder of any lien on the Property starts foreclosure proceedings; or
5. Bankruptcy, insolvency or receivership proceedings are commenced by or against the Owner.

Article 6. STATE'S RIGHTS UPON DEFAULT

If the State declares that the Note and this Mortgage are in default, the State shall have all of the rights given by law or set forth in this Mortgage.

Article 7. NOTICES

ALL NOTICES MUST BE IN WRITING AND PERSONALLY DELIVERED OR SENT BT CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE ADDRESSES GIVEN IN THIS MORTGAGE. ADDRESS CHANGES MAY BE MADE UPON WRITTEN NOTICE, MADE IN ACCORDANCE WITH THIS ARTICLE 7.

Article 8. NO WAIVER BY STATE

The State may exercise any right under this Mortgage or under any law, even if the state has delayed in exercising that authority, or has agreed in an earlier instance not to exercise that right. The State does not waive its right to declare the Owner is in default by making payments or incurring expenses on behalf of the Owner.

Article 9. EACH PERSON LIABLE

The Mortgage is legally binding upon each Owner individually and all their heirs, assigns, agents and designees who succeed to their responsibilities. The State may enforce any of the provisions of the Note and of this Mortgage against any one or more liable individual.

Article 10. SUBORDINATION

This Mortgage will not be subordinate, and will not be subordinated by the State, to any mortgage, refinancing, equity loan, secured letter of credit, or any other obligation secured by the Property, except with respect to (a) any such obligation which was duly recorded prior to the recording hereof, and (b) any such obligation which, when added to all other such obligations recorded against the Property, shall result in total debt secured by the Property being an amount less than the MRP that would be applicable were the Control Period still in effect.

Article 11. SUBSEQUENT OWNERS

This Mortgage shall not be released, with respect to any subsequent owner who acquires the property through an exempt transfer unless the transferee shall execute a note and mortgage in the form of the Note and this Mortgage, and the same has been duly recorded.

Article 12. AMENDMENTS

No amendment or change to the Note and this Mortgage may be made, except in a written document signed by both parties.

Article 13. · SIGNATURES

By executing this Mortgage on page 3, hereof, the Owner agrees to all of its terms and conditions.

Article 14. ACKNOWLEDGEMENT

The Owner acknowledges receipt of a true copy of this Mortgage, at no charge to the State.

IN WITNESS WHEREOF, the Owner(s) has executed this Mortgage for the purposes stated herein.

ATTEST:

_____
Signature (Owner)

_____
Signature (Co–Owner)

STATE OF NEW JERSEY)
) ss:
COUNTY OF _____)

BE IT REMEMBERED, that on this the ____ day of _____, 20_____ the subscriber _____ appeared personally before me *(If more than one person signed the foregoing mortgage and appeared before me, the words "the subscriber" and "the Owner" shall include all such persons)* and who, being duly sworn by me, deposed and made proof to my satisfaction (i) that he/she is the Owner named in the foregoing mortgage and (ii) and that he/she has executed said mortgage with respect to the Property and for the purposes described and set forth therein.

Sworn to and subscribed before me, _____ on the date set forth above.

_____
NOTARY PUBLIC

New Rule, R.2004 d.475, effective December 20, 2004.
See: 36 N.J.R. 3655(a), 36 N.J.R. 5713(a).

APPENDIX I

FORM OF HAS MUNICIPAL AGREEMENT CONTRACT FOR THE PROVISION OF HOUSING AFFORDABILITY CONTROL SERVICES

THIS AGREEMENT, entered into as of this the ____ day of _____, 20___, by and between the STATE OF NEW JERSEY (the "State"), acting by and through its Commissioner of The Department of Community Affairs, who has offices at 101 South Broad Street in the City of Trenton, County of Mercer and State of New Jersey, ("Department"), and _____ a municipality and instrumentality of the State, acting by and through its _____, who has offices at _____ (the "Municipality").

WITNESSETH

WHEREAS, under authorization of the New Jersey Fair Housing Act (N.J.S.A. 52:27D–301, *et seq.*, hereinafter the "Act") the Municipality is implementing a program to provide affordable housing units to low and moderate-income households desiring to live within the Municipality;

WHEREAS, at Title 5, Chapter 80, Subchapter 26 of the New Jersey Administrative Code, the State has promulgated affordability controls in regulations designed to implement the Act, by assuring that low and moderate-income units that are created under the Act are occupied by low and moderate-income households for an appropriate period of time (the "Rules");

WHEREAS, Section 5:80–26.14 of the Rules provides that affordability controls are to be administered by an administrative agent acting on behalf of a municipality, and provides further that a municipality may select the Department's Housing Affordability Service ("HAS") to administer such controls; and

WHEREAS, the Municipality has selected HAS to be the administrative agent for the purposes of providing affordability control services for all affordable housing constructed and to be constructed within the Municipality,

NOW THEREFORE, the State and the Municipality hereby agree to the following terms and conditions:

Section 1. Term

This Agreement shall become effective as of the ____ day of _____, 20___, and shall have a term of three (3) years, terminating at the close of State business on the ____ day of _____, 20___, subject to the termination and renewal provisions set forth in *Section 5*, below.

Section 2. Applicability and Supersession

This Agreement shall define and govern all terms between the parties with respect to affordability controls for affordable housing units provided under the Act, and shall supersede all prior agreements or documents related thereto.

Section 3. Exclusions

This Agreement shall not apply to units funded under:

a. The Federal Low–Income Housing Tax Credit program under Section 42 of the Internal Revenue Code;

b. The Federal HOME program, 24 C.F.R. § 92.252(e), § 92.254(a)(4);

c. The HUD 202 program, 24 C.F.R. Part 891;

d. The HUD 811 program, 24 C.F.R. Part 890;

e. The HUD HOPE VI program;

f. Federal Home Loan Bank, Affordable Housing Program, 12 C.F.R. Part 60; or

g. Or any other program excluded under the Rules.

Section 4. Agency and Enforcement Delegation

The State and the Municipality acknowledge that under the Rules the State is acting hereunder primarily as an agent of the Municipality. Anything herein to the contrary notwithstanding, however, the Municipality hereby delegates to the State, and the State hereby accepts, primary responsibility for enforcing substantive provisions of the Act and the Rules.

Section 5. Termination and Renewal

a. The Agreement may be terminated by either party, by giving six (6) months advanced written notice to the other, to the address and in the form as set forth in *Section 15*, below, provided however, that no such termination may take effect unless and until an alternate administrative agent has been selected by the Municipality and approved by all required governmental authorities.

b. Unless terminated, this Agreement shall automatically be renewed for two (2) successive terms of three (3) years each.

Section 6. Exclusivity of Agreement, Project Amendments

a. For the term hereof, and without exception, this Agreement shall govern the provision of affordability control services for all projects located within the Municipality that fall under the jurisdiction of the Act.

b. Individual projects for which affordability control services are to be provided hereunder shall each be evidenced by a contract amendment ("Project Amendment") that has been executed by the State, by the Municipality and by the project developer. All such Project Amendments shall be in the specific form set forth as *Exhibit A*, hereto.

c. The annexing of a fully executed original of a Project Amendment to HAS' original of this Agreement shall be a condition precedent to the provision of any affordability control services to the related project.

Section 7. Responsibilities of The State

The State shall perform all of the duties and responsibilities of an administrative agent as are set forth in the Rules, including those set forth in Sections 5:80-26.14, 26.16 and 26.18 thereof, as such Rules may from time to time be amended.

Section 8. Responsibilities of The Municipality

The Municipality shall:

a. Provide to the State the name, title and telephone number of the municipal official who shall be responsible for liaison with the State on all matters related to this Agreement;

b. Use its best efforts to ensure that applicable local ordinances are not in conflict with either the Rules or the provisions of this Agreement;

c. Ensure that all restricted units are identified as affordable within the tax assessor's office and any municipal utility authority (MUA). The municipality and MUA shall promptly notify the administrative agent of a change in billing address, payment delinquency of two billing cycles, transfer of title, or institution of a writ of foreclosure on all affordable units.

d. Provide all reasonable and necessary assistance to the State in support of efforts to enforce provisions of the Act, the Rules, deed covenants, mortgages court decisions or other authorities governing the affordability control services to be provided under the Agreement.

Section 9. Notices

All notices and other written communications between the State and the Municipality shall be to the addresses and personnel specified below:

if to the State:

New Jersey Department of Community Affairs

DHCR—Housing Affordability Service

PO Box 806

Trenton, NJ 08625-0806

if to the Municipality:

....

....

....

Attn: .....

Section 10. Non-Waiver of Conditions

The failure of either party to insist upon strict performance of any provision of this Agreement in any one or more instances shall not constitute a consent to waiver of or excuse for any other different or subsequent breach of the same of other provision, nor as a result shall either part relinquish any rights which it may have under this Agreement. No terms or provisions hereof shall be deemed waived and no breach excused unless such waiver or consent is in writing and signed by the waiving party.

Section 11. Incorporation of Standard State Conditions

Exhibit B, the general provisions required to be included in this Agreement by the Office of the Attorney General, "_____", is hereby incorporated into and made a part of this Agreement.

Section 12. Priority of Documents

Should a conflict or inconsistency exist between the terms of this Agreement and *Exhibits A*, and *B*, incorporated herein by reference, said conflict or inconsistency shall be resolved by giving precedence to the Agreement and Exhibits in the following order:

1. Agreement (Including *Exhibit A*)

2. *Exhibit B* (State Conditions)

Section 13. Merger and Amendment

This written Agreement, together with its Exhibits, constitutes the sole agreement between the parties with respect to the matters covered therein, and no other written or oral communication exists which shall bind the parties with respect thereto, provide however that this Agreement may be modified by written amendments clearly identified as such and signed by both the State and the Municipality.

Section 14. Partial Invalidation of Agreement

Should any provision of this Agreement be deemed or held to be invalid, ineffective or unenforceable, under present or future laws, the remainder of the provisions shall remain in full force and effect.

IN WITNESS WHEREOF, the State and the Municipality have executed this Agreement in triplicate as of the date first above written.

THE STATE OF NEW JERSEY
DEPARTMENT OF COMMUNITY AFFAIRS

BY: _____
xxxxxxxxxxxx
Title

THE MUNICIPALITY OF _____
BY: _____
xxxxxxxxxxxx
Title

ACKNOWLEDGEMENTS

On this the ___ day of _____, 20___ before me came _____, to me known and known to me to be the _____ of the Department of Community Affairs of the State of New Jersey, who states that (s)he has signed said Agreement on behalf of said State for the purposes stated therein.

_____
NOTARY PUBLIC

On this the ___ day of _____, 20___ before me came _____ known and known to me to be _____ of _____, the municipality identified as such in the foregoing Agreement, who states that (s)he is duly authorized to execute said Agreement on behalf of said Municipality, and that (s)he has so executed the foregoing Agreement for the purposes stated therein.

_____
NOTARY PUBLIC

New Rule, R.2004 d.475, effective December 20, 2004.
See: 36 N.J.R. 3655(a), 36 N.J.R. 5713(a).

APPENDIX J

FORM OF CERTIFICATE FOR APPLICANTS CERTIFIED TO OWNERSHIP UNIT, REQUIRED BY SECTION 5:80–26.18(c)2

CERTIFICATE FOR APPLICANT

CERTIFIED TO AN OWNERSHIP UNIT SUBJECT TO

AFFORDABLE HOUSING RESTRICTIONS

My name is _____ and I am making this certificate in connection with my certification to purchase

_____

_____,

a home provided under the New Jersey Affordable Housing Program.

I am aware, as the purchaser of an Affordable Home, that from this date until _____, 20___ I have to follow the rules and requirements that are listed below: _____

1. I am allowed to sell my home only a person or a family who is part of the Affordable Housing Program, and who has been certified, like I have been, in writing by _____.

2. The price for which I can sell my house is limited by law, and may be much less than the sale prices other homes similar to mine, but which are not part of the Affordable Housing Program.

3. I cannot take out any loans of any kind secured by my house (a "mortgage loan") unless my plans to get the loan are approved by _____ before I sign any loan papers. The total amount of mortgage loans I am allowed to have is limited by law.

4. I know that I am required to live in my house, and that I cannot rent it out to any other person, not even to members of my family. If I have a temporary need to move away that is not my fault, such as if my employer is temporarily sending me to a work place a great distance from my home, or if I am being called up for military service, I should call _____ and ask for a "temporary waiver" of this rule. It is up to _____ whether I get a temporary waiver.

5. If my home is a two-family home, I know that I am allowed to rent the rental apartment in my home only to a person or to a family who is part of the Affordable Housing Program, and who has been certified to rent my rental apartment in writing by _____

6. Furthermore, I know that the rent I am allowed to charge a tenant is limited by law, and is announced each year by _____. I know that it is my responsibility to find out what is the maximum rent I am allowed to charge by calling _____

7. I know that I am required to send copies of all leases with my tenants to _____

8. I know that I am not allowed to make any improvements to my home unless they have been approved in writing by _____

9. Finally, I know that if I break any of these rules I will be breaking the law, and that I will be subject to penalties provided by law, including having to pay fines and possibly losing my home.

BE IT REMEMBERED, that on this the ____ day of _____, 20___ the signer of this Certificate _____ appeared personally before me and who, being duly sworn by me, deposed and made proof to my satisfaction (i) that he/she is the Purchaser of the Affordable home that is identified as said Purchaser in the foregoing Certificate, and (ii) and that he/she has executed said Certificate with respect to the purchase of the property described in the Certificate and for the purposes described and set forth therein.

Sworn to and subscribed before me, _____ on the date set forth above.

_____
NOTARY PUBLIC

New Rule, R.2004 d.475, effective December 20, 2004.
See: 36 N.J.R. 3655(a), 36 N.J.R. 5713(a).

APPENDIX K

FORM OF CERTIFICATE FOR APPLICANTS CERTIFIED TO RENTAL UNIT, REQUIRED BY SECTION 5:80-26.18(c)2

CERTIFICATE FOR APPLICANT

CERTIFIED TO A RENTAL UNIT SUBJECT TO

AFFORDABLE HOUSING RESTRICTIONS

My name is _____ and I am making this certificate in connection with my certification to rent the Affordable Housing unit located at

_____

I am aware, as the renter of an Affordable unit, that from this date until _____, 20___ as long as I am renting the unit described above, my renting the apartment is subject to the requirements that are listed below:

1. I am required to pay all rent set forth in my lease on time and in the manner provided for in my lease.

2. I know that I am required to live in my apartment, and that I cannot sublease it or rent it out to any other person, not even to members of my family.

3. I know that the maximum rent I am supposed to pay to my landlord is limited by law, that it is announced each year by _____, and that I can call _____ at any time if I have any questions about what rent I am supposed to be paying.

4. I know that I am not allowed to make any improvements to my apartment unless they have been approved in writing by _____

BE IT REMEMBERED, that on this the ____ day of _____, 20___ the signer of this Certificate _____ appeared personally before me and who, being duly sworn by me, deposed and made proof to my satisfaction (i) that he/she is the Purchaser of the Affordable home that is identified as said Purchaser in the foregoing Certificate, and (ii) and that he/she has executed said Certificate with respect to the purchase of the property described in the Certificate and for the purposes described and set forth therein.

Sworn to and subscribed before me, _____ on the date set forth above.

_____
NOTARY PUBLIC

New Rule, R.2004 d.475, effective December 20, 2004.
See: 36 N.J.R. 3655(a), 36 N.J.R. 5713(a).

APPENDIX L

FORM OF RECAPTURE MORTGAGE NOTE IN FAVOR OF STATE, REQUIRED BY SECTION 5:80-26.5(c)

State of New Jersey

Department of Community Affairs

Housing and Mortgage Finance Agency

Recapture Mortgage Note

In Connection With Payment of Amounts Due

Upon First Non-Exempt Sale

After Expiration of Control Period

THIS NOTE is dated as of _____. For value received _____ (referred to "Owner") promises to pay to THE STATE OF NEW JERSEY, acting by and through its Department of Community Affairs, which has its principal offices at 101 South Broad Street in the City of Trenton,

County of Mercer, State of New Jersey (the "STATE"), the amounts specified in this Note and promises to abide by the terms contained below.

Article 1. REPAYMENT MORTGAGE

As security for the payment of amounts due under this Note and the performance of all promises contained in this Note, the Owner is giving the State a "Repayment Mortgage To Secure Payment of Amounts Due Upon First Non-Exempt Sale After Expiration of Control Period" (the "MORTGAGE"), dated _____, of the property described below (the "PROPERTY"). The Mortgage covers real estate owned by the Owner. The Mortgage will not be subordinate, and will not be subordinated by the State, to any mortgage, refinancing, equity loan, secured letter of credit, or any other obligation secured by the Property, except with respect to (a) any such obligation which was duly recorded prior to the recording hereof, and (b) any such obligation which, when added to all other such obligations recorded against the Property, shall result in total debt secured by the Property being an amount less than the MRP that would be applicable were the Control Period still in effect, as those terms are defined in Article 2 of the Mortgage.

Article 2. OWNERS PROMISE TO PAY AND OTHER TERMS

Upon the first non-exempt sale of the Property after the date of this Note, the Owner, or the heir, successor or assignee of the Owner then selling the Property, shall pay the sum of $to the State of New Jersey, acting by and through its Department of Community Affairs. The obligation evidenced by this note shall not accrue interest.

Article 3. PROPERTY DESCRIPTION

All of the land and improvements thereon located in the municipality of _____ in the County of _____, State of New Jersey, described more specifically as Block No. ___ Lot No. ___, and known by the street address: _____.

Article 4. WAIVER OF FORMAL ACTS

The Owner waives its right to require the State to do any of the following before enforcing its rights under this Note:

1. To demand payment of amount due (known as Presentment).
2. To give notice that amounts due have not been paid (known as Notice of Dishonor).
3. To obtain an official certificate of non-payment (known as Protest).

Article 5. RESPONSIBILITY UNDER NOTE

All Owners signing this Note are jointly and individually obligated to pay the amounts due and to abide by the terms under this Note. The State may enforce this Note against any one or more of the Owners or against all Owners together.

The Owner agrees to the terms of this Note by signing below.

ACKNOWLEDGEMENT

Owner acknowledges receipt of a true copy of the Mortgage and this Note at no charge.

Dated:
ATTEST:
By: _____
Signature (Owner)

_____
Signature (Co-Owner)

STATE OF NEW JERSEY)
) ss.:
COUNTY OF _____)

On this the ___ day of _____, 20___ before me came _____, who acknowledges and makes proof to my satisfaction that she is the Owner named within this Note, and that she has executed said Note for the purposes set forth therein, sworn to and subscribed by her in my presence on this date.

Sworn to and subscribed before me this the ___ day of _____, 20___

_____
A Notary Public/Attorney of the State of New Jersey

New Rule, R.2004 d.475, effective December 20, 2004.
See: 36 N.J.R. 3655(a), 36 N.J.R. 5713(a).

APPENDIX M

FORM OF MORTGAGE SECURING PAYMENT OF RECAPTURE NOTE IN FAVOR OF THE STATE, REQUIRED BY SECTION 5:80-26.5(c)

State of New Jersey

Department of Community Affairs

Affordable Housing Program

Repayment Mortgage

To Secure Payment of Amounts Due

Upon First Non-Exempt Sale

After Expiration of Control Period

THIS MORTGAGE, made on this the _____ day of _____, 20_____ by and between _____, (the "OWNER") and THE STATE OF NEW JERSEY, acting by and through its Commissioner of the Department of Community Affairs (the "STATE"), in connection with the property described herein (the "PROPERTY");

Article 1. REPAYMENT MORTGAGE NOTE

In consideration of value received, the Owner has signed a Recapture Mortgage Note (the "Note") dated _____. The Owner promises to pay to the State amounts due under the Repayment Mortgage Note, and to abide by all obligations contained therein.

Article 2. MORTGAGE AS SECURITY FOR AMOUNT DUE

This Mortgage is given to the State as security for the payment required to be paid upon the first non-exempt sale of the Property, as provided under the rules of the New Jersey Housing and Mortgage Finance Agency set forth in N.J.A.C. 5:80–26.1 et seq.

Article 3. PROPERTY DESCRIPTION

All of the land and improvements thereon located in the municipality of _____ in the County of _____, State of New Jersey (hereinafter the "Property"), described more specifically as Block No. ___ Lot No. ___, and known by the street address:

_____

_____

Article 4. RIGHTS GIVEN TO STATE

The Owner, by mortgaging the Property to the State, gives the State those rights stated in this Mortgage, and all the rights the law gives to the State under Uniform Housing Affordability Controls, which are found in New Jersey Administrative Code at Title 5, chapter 80, subchapter 26 (N.J.A.C. 5:80–26.1, *et seq*). The rights given to the state are covenants running with the land. The rights, terms and restrictions in this Mortgage shall bind the Owner and all subsequent purchasers and owners of the Property, and the heirs and assigns of all of them. Upon performance of the promises contained in Note and Mortgage, the State will prepare and deliver to the then current owner of record a quitclaim deed or other document of release.

Article 5. DEFAULT

The State may declare the Owner in default on this Mortgage and on the Note if:

1. The Owner attempts to convey an interest in the Property without giving prior written notice to the State;
2. The ownership of the Property is changed for any reason other than in the course of an exempt sale;
3. The Owner fails to make any payment required by the Note;
4. The holder of any lien on the Property starts foreclosure proceedings; or
5. Bankruptcy, insolvency or receivership proceedings are commenced by or against the Owner.

Article 6. STATE'S RIGHTS UPON DEFAULT

If the State declares that the Note and this Mortgage are in default, the State shall have all of the rights given by law or set forth in this Mortgage.

Article 7. NOTICES

ALL NOTICES MUST BE IN WRITING AND PERSONALLY DELIVERED OR SENT BT CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE ADDRESSES GIVEN IN THIS MORTGAGE. ADDRESS CHANGES MAY BE MADE UPON WRITTEN NOTICE, MADE IN ACCORDANCE WITH THIS ARTICLE 7.

Article 8. NO WAIVER BY STATE

The State may exercise any right under this Mortgage or under any law, even if the state has delayed in exercising that authority, or has agreed in an earlier instance not to exercise that right. The State does not waive its right to declare the Owner is in default by making payments or incurring expenses on behalf of the Owner.

Article 9. EACH PERSON LIABLE

The Mortgage is legally binding upon each Owner individually and all their heirs, assigns, agents and designees who succeed to their responsibilities. The State may enforce any of the provisions of the Note and of this Mortgage against any one or more liable individual.

Article 10. SUBORDINATION

This Mortgage will not be subordinate, and will not be subordinated by the State, to any mortgage, refinancing, equity loan, secured letter of credit, or any other obligation secured by the Property, except with respect to (a) any such obligation which was duly recorded prior to the recording hereof, and (b) any such obligation which, when added to all other such obligations recorded against the Property, shall result in total debt secured by the Property being an amount less than the maximum resale price that would be applicable were the Control Period still in effect.

Article 11. SUBSEQUENT OWNERS

This Mortgage shall not be released, with respect to any subsequent owner who acquires the property through an exempt transfer unless the transferee shall execute a note and mortgage in the form of the Note and this Mortgage, and the same has been duly recorded.

Article 12. AMENDMENTS

No amendment or change to the Note and this Mortgage may be made, except in a written document signed by both parties and approved by the administrative agent appointed pursuant to N.J.A.C. 5:80–26.1 et seq.

Article 13. SIGNATURES

By executing this Mortgage on page 3, hereof, the Owner agrees to all of its terms and conditions.

Article 14. ACKNOWLEDGEMENT

The Owner acknowledges receipt of a true copy of this Mortgage, at no charge to the State.

IN WITNESS WHEREOF, the Owner(s) has executed this Mortgage for the purposes stated herein.

ATTEST:

By: _____

Signature of (Owner)

Signature (Co–Owner)

STATE OF NEW JERSEY)
) ss:
COUNTY OF _____)

BE IT REMEMBERED, that on this the _____ day of _____, 20_____ the subscriber _____ appeared personally before me *(If more than one person signed the foregoing mortgage and appeared before me, the words "the subscriber" and "the Owner" shall include all such persons)* and who, being duly sworn by me, deposed and made proof to my satisfaction (i) that he/she is the Owner named in the foregoing mortgage and (ii) and that he/she has executed said mortgage with respect to the Property and for the purposes described and set forth therein.

Sworn to and subscribed before me, _____ on the date set forth above.

_____

NOTARY PUBLIC

New Rule, R.2004 d.475, effective December 20, 2004.
See: 36 N.J.R. 3655(a), 36 N.J.R. 5713(a).

APPENDIX N

FORM OF RECAPTURE MORTGAGE NOTE IN FAVOR OF MUNICIPALITY, REQUIRED BY SECTION 5:80–26.5(c)

State of New Jersey

Department of Community Affairs

Housing and Mortgage Finance Agency

[NAME OF MUNICIPALITY]

Recapture Mortgage Note

In Connection With Payment of Amounts Due

Upon First Non–Exempt Sale

After Expiration of Control Period

THIS NOTE is dated as of _____. For value received _____ (referred to "Owner") promises to pay to [NAME OF MUNICIPALITY], which has its principal offices at [ADDRESS OF MUNICIPAL OFFICES] (the "Municipality"), the amounts specified in this Note and promises to abide by the terms contained below.

Article 1. REPAYMENT MORTGAGE

As security for the payment of amounts due under this Note and the performance of all promises contained in this Note, the Owner is giving the Municipality a "Repayment Mortgage To Secure Payment of Amounts Due Upon First Non–Exempt Sale After Expiration of Control Period" (the "MORTGAGE"), dated _____, of the property described below (the "PROPERTY"). The Mortgage covers real estate owned by the Owner. The Mortgage will not be subordinate, and will not be subordinated by the Municipality, to any mortgage, refinancing, equity loan, secured letter of credit, or any other obligation secured by the Property, except with respect to (a) any such obligation which was duly recorded prior to the recording hereof, and (b) any such obligation which, when added to all other such obligations recorded against the Property, shall result in total debt secured by the Property being an amount less than the MRP that would be applicable were the Control Period still in effect, as those terms are defined in Article 2 of the Mortgage.

Article 2. OWNERS PROMISE TO PAY AND OTHER TERMS

Upon the first non-exempt sale of the Property after the date of this Note, the Owner, or the heir, successor or assignee of the Owner then selling the Property, shall pay the sum of $ [add amount determined pursuant to N.J.A.C. 5:80–26.5(c)] to the Municipality. The obligation evidenced by this note shall not accrue interest.

Article 3. PROPERTY DESCRIPTION

All of the land and improvements thereon located in the municipality of _____ in the County of _____, State of New Jersey, described more specifically as Block No. ___ Lot No. ___, and known by the street address: _____.

Article 4. WAIVER OF FORMAL ACTS

The Owner waives its right to require the Municipality to do any of the following before enforcing its rights under this Note:

1. To demand payment of amount due (known as Presentment).
2. To give notice that amounts due have not been paid (known as Notice of Dishonor).
3. To obtain an official certificate of non-payment (known as Protest).

Article 5. RESPONSIBILITY UNDER NOTE

All Owners signing this Note are jointly and individually obligated to pay the amounts due and to abide by the terms under this Note. The Municipality may enforce this Note against any one or more of the Owners or against all Owners together.

The Owner agrees to the terms of this Note by signing below.

ACKNOWLEDGEMENT

Owner acknowledges receipt of a true copy of the Mortgage and this Note at no charge.

Dated:
ATTEST:
By: _____
Signature (Owner)

_____
Signature (Co-Owner)

STATE OF NEW JERSEY)
) ss.:
COUNTY OF _____)

On this the ___ day of _____, 20___ before me came _____, who acknowledges and makes proof to my satisfaction that she is the Owner named within this Note, and that she has executed said Note for the purposes set forth therein, sworn to and subscribed by her in my presence on this date.

Sworn to and subscribed before me this the ___ day of _____, 20___

_____
A Notary Public/Attorney of the State of New Jersey

New Rule, R.2004 d.475, effective December 20, 2004.
See: 36 N.J.R. 3655(a), 36 N.J.R. 5713(a).

APPENDIX O

FORM OF MORTGAGE SECURING PAYMENT OF RECAPTURE NOTE IN FAVOR OF THE MUNICIPALITY, REQUIRED BY SECTION 5:80–26.5(c)

State of New Jersey

Department of Community Affairs

New Jersey Housing and Mortgage Finance Agency

[name of municipality]

Affordable Housing Program

Repayment Mortgage

To Secure Payment of Amounts Due

Upon First Non–Exempt Sale

After Expiration of Control Period

THIS MORTGAGE, made on this the ___ day of _____, 20___ by and between_____, (the "OWNER") and (the "Municipality"), in connection with the property described herein (the "PROPERTY");

Article 1. REPAYMENT MORTGAGE NOTE

In consideration of value received, the Owner has signed a Recapture Mortgage Note (the "Note") dated _____ The Owner promises to pay to the State amounts due under the Repayment Mortgage Note, and to abide by all obligations contained therein.

Article 2. MORTGAGE AS SECURITY FOR AMOUNT DUE

This Mortgage is given to the Municipality as security for the payment required to be paid upon the first non-exempt sale of the Property, as provided under the rules of the New Jersey Housing and Mortgage Finance Agency set forth in N.J.A.C. 5:80–26.1 et seq.

Article 3. PROPERTY DESCRIPTION

All of the land and improvements thereon located in the municipality of _____ in the County of _____, State of New Jersey (hereinafter the "Property"), described more specifically as Block No. ___ Lot No. ___, and known by the street address:

_____
_____

Article 4. RIGHTS GIVEN TO MUNICIPALITY

The Owner, by mortgaging the Property to the State, gives the Municipality those rights stated in this Mortgage, and all the rights the law gives to the Municipality under Uniform Housing Affordability Controls, which are found in New Jersey Administrative Code at Title 5, chapter 80, subchapter 26 (N.J.A.C. 5:80–26.1, *et seq*). The rights given to the Municipality are covenants running with the land. The rights, terms and restrictions in this Mortgage shall bind the Owner and all subsequent purchasers and owners of the Property, and the heirs and assigns of all of them. Upon performance of the promises contained in Note and Mortgage, the Municipality will prepare and deliver to the then

current owner of record a quitclaim deed or other document of release.

Article 5. DEFAULT

The Municipality may declare the Owner in default on this Mortgage and on the Note if:

1. The Owner attempts to convey an interest in the Property without giving prior written notice to the Municipality;
2. The ownership of the Property is changed for any reason other than in the course of an exempt sale;
3. The Owner fails to make any payment required by the Note;
4. The holder of any lien on the Property starts foreclosure proceedings; or
5. Bankruptcy, insolvency or receivership proceedings are commenced by or against the Owner.

Article 6. MUNICIPALITY'S RIGHTS UPON DEFAULT

If the Municipality declares that the Note and this Mortgage are in default, the Municipality shall have all of the rights given by law or set forth in this Mortgage.

Article 7. NOTICES

ALL NOTICES MUST BE IN WRITING AND PERSONALLY DELIVERED OR SENT BT CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE ADDRESSES GIVEN IN THIS MORTGAGE. ADDRESS CHANGES MAY BE MADE UPON WRITTEN NOTICE, MADE IN ACCORDANCE WITH THIS ARTICLE 7.

Article 8. NO WAIVER BY MUNICIPALITY

The Municipality may exercise any right under this Mortgage or under any law, even if the Municipality has delayed in exercising that authority, or has agreed in an earlier instance not to exercise that right. The Municipality does not waive its right to declare the Owner is in default by making payments or incurring expenses on behalf of the Owner.

Article 9. EACH PERSON LIABLE

The Mortgage is legally binding upon each Owner individually and all their heirs, assigns, agents and designees who succeed to their responsibilities. The Municipality may enforce any of the provisions of the Note and of this Mortgage against any one or more liable individual.

Article 10. SUBORDINATION

This Mortgage will not be subordinate, and will not be subordinated by the Municipality, to any mortgage, refinancing, equity loan, secured letter of credit, or any other obligation secured by the Property, except with respect to (a) any such obligation which was duly recorded prior to the recording hereof, and (b) any such obligation which, when added to all other such obligations recorded against the Property, shall result in total debt secured by the Property being an amount less than the maximum resale price that would be applicable were the Control Period still in effect.

Article 11. SUBSEQUENT OWNERS

This Mortgage shall not be released, with respect to any subsequent owner who acquires the property through an exempt transfer unless the transferee shall execute a note and mortgage in the form of the Note and this Mortgage, and the same has been duly recorded.

Article 12. AMENDMENTS

No amendment or change to the Note and this Mortgage may be made, except in a written document signed by both parties and approved by the administrative agent appointed pursuant to N.J.A.C. 5:80-26.1 et seq.

Article 13. SIGNATURES

By executing this Mortgage on page 3, hereof, the Owner agrees to all of its terms and conditions.

Article 14. ACKNOWLEDGEMENT

The Owner acknowledges receipt of a true copy of this Mortgage, at no charge to the State.

IN WITNESS WHEREOF, the Owner(s) has executed this Mortgage for the purposes stated herein.

ATTEST:
By: _____
Signature of (Owner)

_____
Signature (Co-Owner)

STATE OF NEW JERSEY)
) ss:
COUNTY OF _____)

BE IT REMEMBERED, that on this the _____ day of _____, 20_____ the subscriber _____ appeared personally before me *(If more than one person signed the foregoing mortgage and appeared before me, the words "the subscriber" and "the Owner" shall include all such persons)* and who, being duly sworn by me, deposed and made proof to my satisfaction (i) that he/she is the Owner named in the foregoing mortgage and (ii) and that he/she has executed said mortgage with respect to the Property and for the purposes described and set forth therein.

Sworn to and subscribed before me, _____ on the date set forth above.

_____
NOTARY PUBLIC

New Rule, R.2004 d.475, effective December 20, 2004.
See: 36 N.J.R. 3655(a), 36 N.J.R. 5713(a).

APPENDIX P

FORM OF RECAPTURE MORTGAGE NOTE FOR UHORP AND MONI UNITS, REQUIRED BY SECTION 5:80–26.5(c)

State of New Jersey

Department of Community Affairs

Housing and Mortgage Finance Agency

Recapture Mortgage Note

In Connection With Payment of Amounts Due

Upon First Non–Exempt Sale

After Expiration of Control Period

THIS NOTE is dated as of _____ For value received _____ (referred to "Owner") promises to pay to The New Jersey Housing and Mortgage Finance Agency, which has its principal offices at 637 South Clinton Avenue, Trenton, NJ 08650–2085 (the "Agency"), the amounts specified in this Note and promises to abide by the terms contained below.

Article 1. REPAYMENT MORTGAGE

As security for the payment of amounts due under this Note and the performance of all promises contained in this Note, the Owner is giving the Agency a "Repayment Mortgage To Secure Payment of Amounts Due Upon First Non–Exempt Sale After Expiration of Control Period" (the "MORTGAGE"), dated _____, of the property described below (the "PROPERTY"). The Mortgage covers real estate owned by the Owner. The Mortgage will not be subordinate, and will not be subordinated by the Agency, to any mortgage, refinancing, equity loan, secured letter of credit, or any other obligation secured by the Property, except with respect to (a) any such obligation which was duly recorded prior to the recording hereof, and (b) any such obligation which, when added to all other such obligations recorded against the Property, shall result in total debt secured by the Property being an amount less than the MRP that would be applicable were the Control Period still in effect, as those terms are defined in Article 2 of the Mortgage.

Article 2. OWNERS PROMISE TO PAY AND OTHER TERMS

Upon the first non-exempt sale of the Property after the date of this Note, the Owner, or the heir, successor or assignee of the Owner then selling the Property, shall pay the sum of $[add amount determined pursuant to N.J.A.C. 5:80–26.5(c)] to the Agency. The obligation evidenced by this note shall not accrue interest.

Article 3. PROPERTY DESCRIPTION

All of the land and improvements thereon located in the municipality of _____ in the County of _____, State of New Jersey, described more specifically as Block No. ___ Lot No. ___, and known by the street address: _____.

Article 4. WAIVER OF FORMAL ACTS

The Owner waives its right to require the Agency to do any of the following before enforcing its rights under this Note:

1. To demand payment of amount due (known as Presentment).
2. To give notice that amounts due have not been paid (known as Notice of Dishonor).
3. To obtain an official certificate of non-payment (known as Protest).

Article 5. RESPONSIBILITY UNDER NOTE

All Owners signing this Note are jointly and individually obligated to pay the amounts due and to abide by the terms under this Note. The Agency may enforce this Note against any one or more of the Owners or against all Owners together.

The Owner agrees to the terms of this Note by signing below.

ACKNOWLEDGEMENT

Owner acknowledges receipt of a true copy of the Mortgage and this Note at no charge.

Dated:
ATTEST:
By: _____
Signature (Owner)

_____
Signature (Co–Owner)

STATE OF NEW JERSEY)
) ss.:
COUNTY OF _____)

On this the ____ day of _____, 20___ before me came _____, who acknowledges and makes proof to my satisfaction that she is the Owner named within this Note, and that she has executed said Note for the purposes set forth therein, sworn to and subscribed by her in my presence on this date.

Sworn to and subscribed before me this the ____ day of _____, 20___.

A Notary Public/Attorney of the State of New Jersey

New Rule. R.2004 d.475. effective December 20. 2004.
See: 36 N.J.R. 3655(a), 36 N.J.R. 5713(a).

APPENDIX Q

FORM OF MORTGAGE SECURING PAYMENT OF RECAPTURE NOTE IN FAVOR OF THE AGENCY, REQUIRED BY SECTION 5:80–26.5(c)

State of New Jersey

Department of Community Affairs

New Jersey Housing and Mortgage Finance Agency

Affordable Housing Program

Repayment Mortgage

To Secure Payment of Amounts Due

Upon First Non–Exempt Sale

After Expiration of Control Period

THIS MORTGAGE, made on this the _____ day of _____, 20_____ by and between _____, (the "OWNER") and the New Jersey Housing and Mortgage Finance Agency (the "Agency"), in connection with the property described herein (the "PROPERTY");

Article 1. REPAYMENT MORTGAGE NOTE

In consideration of value received, the Owner has signed a Recapture Mortgage Note (the "Note") dated _____. The Owner promises to pay to the State amounts due under the Repayment Mortgage Note, and to abide by all obligations contained therein.

Article 2. MORTGAGE AS SECURITY FOR AMOUNT DUE

This Mortgage is given to the Agency as security for the payment required to be paid upon the first non-exempt sale of the Property, as provided under the rules of the New Jersey Housing and Mortgage Finance Agency set forth in N.J.A.C. 5:80–26.1 et seq.

Article 3. PROPERTY DESCRIPTION

All of the land and improvements thereon located in the municipality of _____ in the County of _____, State of New Jersey (hereinafter the "Property"), described more specifically as Block No. ___ Lot No. ___, and known by the street address:

_____

_____

Article 4. RIGHTS GIVEN TO AGENCY

The Owner, by mortgaging the Property to the State, gives the Agency those rights stated in this Mortgage, and all the rights the law gives to the Agency under Uniform Housing Affordability Controls, which are found in New Jersey Administrative Code at Title 5, chapter 80, subchapter 26 (N.J.A.C. 5:80–26.1, *et seq*). The rights given to the Agency are covenants running with the land. The rights, terms and restrictions in this Mortgage shall bind the Owner and all subsequent purchasers and owners of the Property, and the heirs and assigns of all of them. Upon performance of the promises contained in Note and Mortgage, the Agency will prepare and deliver to the then current owner of record a quitclaim deed or other document of release.

Article 5. DEFAULT

The Agency may declare the Owner in default on this Mortgage and on the Note if:

1. The Owner attempts to convey an interest in the Property without giving prior written notice to the Agency;
2. The ownership of the Property is changed for any reason other than in the course of an exempt sale;
3. The Owner fails to make any payment required by the Note;
4. The holder of any lien on the Property starts foreclosure proceedings; or
5. Bankruptcy, insolvency or receivership proceedings are commenced by or against the Owner.

Article 6. AGENCY'S RIGHTS UPON DEFAULT

If the Agency declares that the Note and this Mortgage are in default, the Agency shall have all of the rights given by law or set forth in this Mortgage.

Article 7. NOTICES

ALL NOTICES MUST BE IN WRITING AND PERSONALLY DELIVERED OR SENT BT CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE ADDRESSES GIVEN IN THIS MORTGAGE. ADDRESS CHANGES MAY BE MADE UPON WRITTEN NOTICE, MADE IN ACCORDANCE WITH THIS ARTICLE 7.

Article 8. NO WAIVER BY AGENCY

The Agency may exercise any right under this Mortgage or under any law, even if the Agency has delayed in exercising that authority, or has agreed in an earlier instance not to exercise that right. The Agency does not waive its right to declare the Owner is in default by making payments or incurring expenses on behalf of the Owner.

Article 9. EACH PERSON LIABLE

The Mortgage is legally binding upon each Owner individually and all their heirs, assigns, agents and designees who succeed to their responsibilities. The Agency may enforce any of the provisions of the Note and of this Mortgage against any one or more liable individual.

Article 10. SUBORDINATION

This Mortgage will not be subordinate, and will not be subordinated by the Agency, to any mortgage, refinancing, equity loan, secured letter of credit, or any other obligation secured by the Property, except with respect to (a) any such obligation which was duly recorded prior to the recording hereof, and (b) any such obligation which, when added to all other such obligations recorded against the Property, shall result in total debt secured by the Property being an amount less than the maximum resale price that would be applicable were the Control Period still in effect.

Article 11. SUBSEQUENT OWNERS

This Mortgage shall not be released, with respect to any subsequent owner who acquires the property through an exempt transfer unless the transferee shall execute a note and mortgage in the form of the Note and this Mortgage, and the same has been duly recorded.

Article 12. AMENDMENTS

No amendment or change to the Note and this Mortgage may be made, except in a written document signed by both parties and approved by the administrative agent appointed pursuant to N.J.A.C. 5:80-26.1 et seq.

Article 13. SIGNATURES

By executing this Mortgage on page 3, hereof, the Owner agrees to all of its terms and conditions.

Article 14. ACKNOWLEDGEMENT

The Owner acknowledges receipt of a true copy of this Mortgage, at no charge to the State.

IN WITNESS WHEREOF, the Owner(s) has executed this Mortgage for the purposes stated herein.

ATTEST:
By: _____
Signature of (Owner)

_____
Signature (Co-Owner)

STATE OF NEW JERSEY)
) ss:
COUNTY OF _____)

BE IT REMEMBERED, that on this the _____ day of _____, 20_____ the subscriber _____ appeared personally before me *(If more than one person signed the foregoing mortgage and appeared before me, the words "the subscriber" and "the Owner" shall include all such persons)* and who, being duly sworn by me, deposed and made proof to my satisfaction (i) that he/she is the Owner named in the foregoing mortgage and (ii) and that he/she has executed said mortgage with respect to the Property and for the purposes described and set forth therein.

Sworn to and subscribed before me, _____ on the date set forth above.

_____
NOTARY PUBLIC

New Rule, R.2004 d.475, effective December 20, 2004.
See: 36 N.J.R. 3655(a), 36 N.J.R. 5713(a).

SUBCHAPTER 27. (RESERVED)

SUBCHAPTER 28. NONPUBLIC RECORDS

5:80-28.1 Nonpublic records

(a) The documents, files, data and other records of the Agency which are listed below shall not be deemed to be government records subject to public access pursuant to N.J.S.A. 47:1A-1 et seq. Such records shall not be available for inspection, examination or copying by members of the public or by any other individual except authorized members and employees of the Agency or except as provided by order of the Governor of the State, a court or tribunal of competent jurisdiction, or applicable law.

1. All confidential reports, executive memoranda and evaluations submitted to the Executive Director of the Agency, the members of the Agency or to any other State Agency;

2. All personnel records;

3. All records concerning applications for employment with the Agency;

4. All records concerning personal or financial information submitted by applicants for or tenants of rental housing units financed by the Agency;

5. All records concerning personal or financial information submitted by applicants for or recipients of any single family mortgage loan or home improvement loan of the Agency;

6. All records concerning personal or financial information, including Agency form, Certification and Questionnaire, submitted by individuals, corporations, partnerships and other entities doing or seeking to do business with the Agency; and

7. All reports, correspondence and other documents or data provided or discussed at executive sessions of the meetings held by the members of the Agency, except that any action taken or other information required to be disclosed to the public pursuant to the provisions of the Open Public Meetings Act, N.J.S.A. 10:4-6 et seq., shall not be deemed to be nonpublic records within the scope of this subchapter.

Amended by R.2005 d.219, effective July 5, 2005.
See: 37 N.J.R. 970(a), 37 N.J.R. 2476(a).
In (a), rewrote the introductory paragraph and 7.

SUBCHAPTER 29. INVESTMENT OF HOUSING PROJECT FUNDS

5:80-29.1 Permitted investments

(a) Housing sponsors whose Agency mortgages are insured by HUD may, with prior Agency approval, invest available funds, including escrow funds, in taxable or tax-free investments permitted by HUD. To the extent that investment of specific project funds is not governed by HUD, the requirements in this subchapter as to projects subject to (b) below shall apply.

(b) Housing sponsors of all other projects, with prior Agency approval, may invest available funds, including escrow funds, in the following:

1. State of New Jersey general obligation bonds with a final maturity or average duration not to exceed seven years at the time of initial investment;

2. New Jersey Housing and Mortgage Finance Agency bonds, which shall be rated A or higher and with a final maturity or average duration not to exceed seven years at the time of initial investment;

3. Bonds of municipalities, instrumentalities or agencies of the State of New Jersey, which shall be rated A or higher and with a final maturity or average duration not to exceed seven years at the time of initial investment, and whose rating of A or higher has been confirmed within the past 12 months;

4. National municipal bond funds and New Jersey bond funds, each of which at the time of initial investment at least 80 percent of the bonds within the fund are rated A or higher or the funds' average credit quality rating is in the AA/Aa category or higher and whose ratings have been confirmed within the past 12 months. Additionally, the funds' average maturity or average duration at the time of initial investment shall not exceed seven years;

5. Interest-bearing instruments which are AAA/Aaa rated. These instruments are limited to U.S. Treasury Notes, U.S. Treasury Bills, U.S. Treasury Bonds, Federal National Mortgage Association direct debt obligations, Government National Mortgage Association direct debt obligations, and Federal Home Loan Mortgage Corporation direct debt obligations, each with a final maturity not to exceed seven years at the time of initial investment. Investments in mortgage pools of the aforementioned United States agencies are not permitted. Bond funds consisting of the instruments specified in this paragraph are limited to an average maturity or average duration not to exceed seven years at the time of initial investment;

6. Certificates of deposit with a final maturity not to exceed seven years at the time of initial investment, provided such certificates of deposit are insured in full by the Federal Deposit Insurance Corporation (FDIC);

7. Money market accounts and other bank accounts, provided such accounts are insured in full by the FDIC;

8. For projects that received Agency financing prior to August 15, 2011 and had project funds invested therein as of such date, the State of New Jersey Cash Management Fund or other similar common trust funds of which the New Jersey State Treasurer is custodian;

9. Securities and Exchange Commission-registered money market funds as defined by Rule 2a-7 under the Investment Company Act of 1940, 17 CFR § 270.2a-7, with a minimum $1 billion average asset size for the previous 12 months; and

10. Any other investment as permitted under (a) above.

(c) For all projects subject to (b) above, the investment of escrow funds constituting the repair and replacement reserve shall be further limited as follows:

1. Where the project's repair and replacement reserve balance is funded at a level of 50 percent or less of the amount required by the Agency, all investments shall be limited to those set forth in (b)7 through 9 above.

2. Where the project's repair and replacement reserve balance is funded at a level greater than 50 percent but less than 90 percent of the amount required by the Agency, and where 50 percent or more of the balance on hand is scheduled to be used within the next three years, at least 75 percent of investments shall be limited to those set forth in (b)7 through 9 above.

3. Where the project's repair and replacement reserve balance is funded at a level of 90 percent or greater of the amount required by the Agency, and where 50 percent or more of the balance on hand is scheduled to be used within the next three years, at least 50 percent of investments shall be limited to those set forth in (b)7 through 9 above.

4. Where the project's repair and replacement reserve balance is funded at a level greater than 50 percent but less than 90 percent of the amount required by the Agency, and

where less than 50 percent of the balance on hand is scheduled to be used within the next three years, at least 25 percent of investments shall be limited to those set forth in (b)7 through 9 above.

5. Where the project's repair and replacement reserve balance is funded at a level of 90 percent or greater of the amount required by the Agency, and where less than 50 percent of the balance on hand is scheduled to be used within the next three years, at least 10 percent of investments shall be limited to those set forth in (b)7 through 9 above.

6. The determination of the level and scheduled use of repair and replacement reserve funds over the next three-year period shall be based on the most recent Agency-approved repair and replacement funding schedule.

(d) For all projects subject to (b) above, funds constituting tax escrow accounts, insurance escrow accounts, and escrow accounts consisting of residual receipts as defined at N.J.A.C. 5:80-30.1 shall be limited to those investments as set forth in (b)7 through 9 above.

(e) For all projects subject to (b) above, temporary escrow accounts, such as construction-related escrow accounts and working capital accounts, shall be limited to those investments as set forth in (b)7 through 9 above.

(f) For all projects subject to (b) above, at least 10 percent of investments of long-term escrow accounts, such as Development Cost Escrow (DCE), Community Development Escrow (CDE), Project Subsidy Reserve (PSR), and Reserve for Bonded Projects, shall be limited to those investments as set forth in (b)7 through 9 above.

(g) For all projects subject to (b) above, operating account funds may only be invested as set forth in (b)7 above, except that investments may be made as set forth in (b)1 through 6 and 9 and 10 above, where and only to the extent that funds in the operating account are available after payment of debt service, including any arrears and other operating expenses, and provided that all escrows are funded as required by the most recent Agency-approved project budget. Notwithstanding anything to the contrary in this subchapter, requests for investment of operating account funds may be made at any time by a housing sponsor to the director of the Agency's Property Management Division (Director) and shall not be subject to (m) below.

(h) Changes to escrow investments shall be limited to no more often than once annually.

(i) At loan closing, the housing sponsor shall complete an application for the investment of escrow account funds, which shall initially be limited to investments specified in (b)7 and 9 above, with the Agency's designated investment services firm. Housing sponsors of projects having already received Agency financing that seek to invest escrow funds to the extent permitted by this subchapter shall complete or have completed such application with the Agency's designated investment services firm. All required monthly escrow deposits shall thereafter be initially deposited into those fund(s) specified in (b)7 and 9 above.

(j) Once the Agency has approved a project's initial repair and replacement reserve funding schedule, the housing sponsor may submit a written request to the Director to invest escrow funds in investments specified in (b)1 through 6 and 10 above, as permitted by this subchapter. The project's escrow funds must be invested with the Agency's designated investment services firm, not in the New Jersey Cash Management Fund, at the time of such request in order for the request to be considered by the Agency. Agency staff shall determine, pursuant to the standards set forth in (b) through (h) above, the amounts of escrow funds which are the subject of the request that shall be limited to the investments set forth in (b)7 through 9 above, and shall determine whether the investments selected by the housing sponsor are permitted pursuant to (b) above.

(k) The rating designation in (b) above shall be from either Standard and Poor's or Moody's Investor Services.

(*l*) Agency staff, at the sponsors' written request, shall respond within 30 days after the complete request is received. The sponsors shall submit a certification that the investments requested are within the permissible investments listed in these rules.

(m) Investment of escrow funds shall be made by an Agency designated investment services firm, except as to permitted investments under (b)8 above, which shall be made by the Agency.

(n) Any transaction costs related to the investment of project funds will be the responsibility of the applicable housing sponsor.

(*o*) Neither the Agency nor its members, officers, agents, servants or employees shall be responsible for any loss in the value of, or to replace or replenish any account that has sustained a loss as the result of, a permitted investment.

Recodified from 5:80-29.2 and amended by R.1994 d.303, effective June 20, 1994.
See: 25 N.J.R. 4830(a), 26 N.J.R. 2572(a).
Prior text at 5:80-29.1, Definition of surplus funds, repealed.
Amended by R.2011 d.220, effective August 15, 2011.
See: 43 N.J.R. 707(a), 43 N.J.R. 2169(a).
Rewrote the section.

5:80-29.2 (Reserved)

5:80-29.3 General applicability

The rules within this subchapter shall apply to all Agency-financed housing projects and to housing projects no longer financed by the Agency but remaining subject to Agency statutory and regulatory control. In the event the housing project receives HUD Section 8 or Section 236 subsidies or has an Agency mortgage insured, directly or indirectly, by HUD, or the project receives other HUD financial assistance,

any appropriate HUD rules, regulations or requirements (hereinafter "HUD directives") shall also apply. In the event that there are any inconsistencies between the rules in this subchapter and applicable HUD directives, the HUD directives shall prevail.

Amended by R.2011 d.220, effective August 15, 2011.
See: 43 N.J.R. 707(a), 43 N.J.R. 2169(a).
Rewrote the section.

SUBCHAPTER 30. RESIDUAL RECEIPTS

5:80-30.1 Definitions

The following terms, when used in this subchapter, shall have the following meanings:

"Qualifying development" means an Agency-financed housing project owned by a nonprofit sponsor, except for projects receiving Section 8 subsidies pursuant to an Annual Contributions Contract executed after the adoption of regulations by the U.S. Department of Housing and Urban Development on February 29, 1980, at 24 CFR 883, which has:

1. Produced a positive cash flow from operations in each of the past three fiscal years; and

2. Been current in all escrow and debt service payments for the past three fiscal years.

"Residual receipts" means the balance of funds remaining after the deduction of the following items from the cash and the investment accounts of a qualifying development:

1. Debt service arrearages;

2. Current unpaid invoices;

3. Three months of operating expenses (for senior citizen projects) or six months of operating expenses (for family projects), which includes debt service and reserve payments, of the latest Agency approved annual budget;

4. Full funding of all required reserve accounts;

5. Anticipated or proposed capital improvements; and

6. Any other current obligations of the qualifying development.

5:80–30.2 Uses of residual receipts

(a) For qualifying developments, residual receipts may be used:

1. To provide funding to expand the supply of "affordable rental housing" or to render financial assistance to other Agency financed or "affordable housing projects" (the terms "affordable rental housing" and "affordable housing project" shall mean housing with income unit distribution consistent with the requirements of tax-exempt financing pursuant to the then-current Internal Revenue Code);

2. For funding of supplementary services to the qualifying development, such as free senior citizens transportation, medical assistance and other social services programs and activities; and

3. For other uses as may from time to time, be requested, which will enhance the feasibility of a new project or the financial and social condition of an existing project.

(b) Residual receipt funding may include any one or more of the following:

1. First and supplemental mortgages, including construction mortgages;

2. Operating deficit subsidies;

3. Seed money loans; and

4. Grants.

(c) Disbursements of residual receipts shall be in the form of a loan, grant or equity contribution, as approved by the Agency, from the nonprofit sponsor to the entity receiving the funds. However, for all sponsors formed under N.J.S.A. 55:16–1 et seq., repealed by P.L. 1991, c.431, § 20, approval by the Public Housing Development Authority is required with respect to the form of the disbursement.

Amended by R.2005 d.219, effective July 5, 2005.
See: 37 N.J.R. 970(a), 37 N.J.R. 2476(a).
In (c), inserted "repealed by P.L. 1991, c.431, § 20, " following the N.J.S.A. reference.

5:80–30.3 Request for use of residual receipts

(a) All requests to use residual receipts funds must be approved by the Agency in advance. Requests shall be made in writing by the sponsor of a qualifying development and submitted to the Agency's Director of Management.

(b) The request shall specify the purpose, amount and payee. The request shall be accompanied by a resolution of the nonprofit sponsor's board of directors. If the request is for social services or professional services, the request shall also be accompanied by a proposal outlining the services and the cost. If the request involves payment to a third party, an Administrative Questionnaire, completed by the third party, shall also accompany the request.

(c) The officers, directors and principals of the qualifying development shall submit certifications that they will not receive any fee or compensation, other than reimbursement for out-of-pocket expenses, for services performed in connection with the use of residual receipts. Such certification may also be required for the officers, directors and principals of the entity receiving the funds, as determined by the Agency.

5:80–30.4 Agency review and approval

(a) Upon receipt of a complete request package as delineated in N.J.A.C. 5:80–30.3, the Agency will review the request to determine whether the requested use of funds falls within the permissible uses set forth in N.J.A.C. 5:80–30.2(a) and whether there are sufficient residual receipts to fund the undertaking requested. The Agency will also evaluate the requested undertaking for feasibility.

(b) If the use of the receipts is for total funds of $25,000 or less, it may be approved by the Executive Director. If the request is for funds in excess of $25,000, the recommendation and request package shall be submitted to the Agency Board for approval.

(c) Agency approval will be subject to receipt of:

1. An opinion from Agency bond counsel that the proposed use of residual receipts is permitted under the terms of the Bond Resolution and other Bond documents in connection with the Bonds issued to finance the qualifying development; and

2. An opinion by counsel for the qualifying development that the sponsor's formation documents and the laws under which the sponsor was formed permit the proposed use of residual receipts.

(d) Agency review will be subject to the payment of a $3,500 fee to the Agency to cover administrative costs in reviewing and processing the use of residual receipts and to maintain the account established pursuant to N.J.A.C. 5:80–30.5. In addition, Agency review is subject to the payment of Agency bond counsel costs. Payment may be made by the entity receiving the residual receipts or the qualifying development's sponsor.

Amended by R.2005 d.219, effective July 5, 2005.
See: 37 N.J.R. 970(a), 37 N.J.R. 2476(a).
Rewrote (b).

5:80–30.5 Disbursement of residual receipts

(a) Upon approval of a request for the use of residual receipts, the sponsor of the qualifying development shall transfer the residual receipts to the Agency. The Agency shall maintain the residual receipts in a separate account and shall make all disbursements from the account to pay for the cost of the approved undertaking. The Agency shall maintain accounting records reflecting the disbursement.

(b) Prior to the disbursement of any residnal receipts, the Agency will require acceptable documentation of expenses associated with the undertaking being financed with residual receipts.

SUBCHAPTER 31. ATTORNEY SERVICES

5:80–31.1 Applicability

The rules within this subchapter apply to the engagement of the services of an attorney by housing sponsors during the operation of their housing project and which services will be paid out of project funds. These rules shall not apply to attorney services paid for out of return on equity funds approved by the Agency for distribution or out of non-project funds.

5:80–31.2 Scope of services

(a) Sponsors may engage the services of an attorney to perform necessary general legal services in connection with and respecting the operation of their project. Such general legal services include, but are not limited to:

1. Advising the sponsor with regard to the rules of the project, the Agency and, if applicable, the Department of Housing and Urban Development;

2. Advising the officers and directors on elections as provided by the by-laws or partnership agreement of the sponsors and supervision of elections of all officers and directors;

3. Preparation and filing of any necessary reports, forms and other documents required by law;

4. Advising the sponsor with regard to legal matters related to project bank accounts, resolutions, duties of officers, directors and employed personnel;

5. Preparation and review of contracts and purchase orders concerning the housing project;

6. Advising the sponsor and managing agent with regard to tenant and lease matters, but not including summary dispossess actions; and

7. Such other services as the sponsor may direct to be performed in connection with and respecting the operations of the project.

(b) Sponsors may engage the services of an attorney to perform tenancy related court actions including the enforcement of leases, collection of rent and dispossession of tenants. For cooperative or condominium projects, sponsors may engage the services of an attorney to perform court actions related to the collection of association dues or carrying charges and the enforcement of subscription agreements, stock certificates or other forms of agreements related to the cooperative or condominium project.

(c) Sponsors may engage the services of an attorney to perform services outside the scope of services in (a) and (b) above, as the need arises for the project. Such services include, but are not limited to, litigation, mortgage loan close-outs, conversion closings and issues requiring special expertise.

5:80-31.3 Maximum fees

(a) The maximum fees that can be paid from project funds for Agency approved attorney services are as follows:

1. General legal matters . . . up to $192.00/hour;

2. Tenancy actions, as follows:

i. For each of the first two cases (requiring court appearance) on the same day . . . up to $153.00;

ii. For each additional case presented on the same day . . . up to $114.00; and

iii. For each case prepared for trial but resolved prior to actual court appearance . . . up to $77.00; and

3. General litigation, as follows:

i. Non-trial hours . . . up to $267.00/hour; and

ii. Trial hours . . . up to $307.00/hour.

(b) For conversion closing, mortgage close-outs, special expertise and all other matters not covered by (a) above, housing sponsors shall submit a fee structure to the Agency for approval.

(c) Paralegal and secretarial services in connection with (a) and (b) above shall be included within the fees outlined above. No additional fees will be paid for paralegal or secretarial services.

(d) Additional compensation may be paid for reasonable out-of-pocket expenses, approved by the Agency, including copying, travel, postage, filing fees, transcripts, and expert witnesses, etc.

(e) The above fees may not exceed fees charged to other clients for comparable work.

(f) The maximum fees in (a) above will be adjusted annually based on the overall Consumer Price Index for New York-Northeastern New Jersey as published by the United States Department of Labor, Bureau of Labor Statistics as of September 30 of the year preceding the year for which the adjustment is to be implemented. The increases will be effected through a notice of administrative changes published in the New Jersey Register. The Agency will notify housing sponsors of the new rates.

Amended by R.2004 d.449, effective December 6, 2004.
See: 36 N.J.R. 3654(a), 36 N.J.R. 5336(a).
Rewrote (a); added (f).
Administrative change.
See: 37 N.J.R. 4910(c).
Administrative change.
See: 38 N.J.R. 5356(a).
Administrative change.
See: 39 N.J.R. 5077(a).
Administrative change.
See: 41 N.J.R. 127(c).
Administrative change.
See: 42 N.J.R. 2952(c).
Administrative change.
See: 43 N.J.R. 3083(b).
Administrative change.
See: 44 N.J.R. 2999(a).
Administrative change.
See: 45 N.J.R. 2471(b).
Administrative change.
See: 46 N.J.R. 2351(b).

5:80-31.4 Agency approval

(a) Housing sponsors desiring to engage the services of an attorney pursuant to the rules within this subchapter shall obtain the written approval of the Agency. Sponsors shall submit a proposal outlining the scope of services to be performed by the attorney.

(b) The Agency shall approve the engagement of attorney services provided the services and fees to be charged fall within those permitted by N.J.A.C. 5:80-31.2(a) or (b) and 31.3, respectively. For services outlined in N.J.A.C. 5:80-31.2(c), the Agency shall approve the engagement of an attorney provided the services are necessary or beneficial to the project, as determined by the Agency, and there are sufficient project funds to pay for such services. The Agency does not guarantee the availability of funds.

(c) All sponsors shall enter into a written attorney engagement agreement using forms approved by the Agency.

SUBCHAPTER 32. HOUSING INVESTMENT SALES

5:80-32.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings:

"Available cash" means all the cash available to an eligible LD sponsor upon the closing of a housing investment sale (after payment of all transaction costs) including, but not limited to:

1. The cash portion of the purchase price paid by the buyer;

2. Any obligations or instruments of indebtedness of the buyer in favor of the seller constituting a portion of the purchase price as provided in these rules; and

3. Any accumulated residual receipts, that are not subject to recapture by the United States Department of Housing and Urban Development.

"Eligible LD sponsor" means a for-profit corporation or partnership organized under, and remaining subject to, the Limited Dividend Law, L. 1949, c.184, § 1 et seq., as amended (N.J.S.A. 55:16-1 et seq.), that owns and operates an Agency-financed, multifamily, rental housing project that, in each of the three fiscal years preceding the housing investment sale, has:

1. Produced a positive cash flow from operations; and

2. Been current in all debt service and escrow payments required by the Agency.

"Housing investment sale" means a transaction that promotes the provision or maintenance of low and moderate income housing, as defined pursuant to the Fair Housing Act, through the sale by an eligible LD sponsor of an Agency-financed, multifamily, rental housing project to a qualified housing sponsor upon the following terms:

1. The buyer executes a deed restriction (and such other instruments reasonably required by the Agency) at the closing of the housing investment sale to ensure that the project will remain affordable to low and/or moderate income tenants as provided in the original mortgages; and subject to Agency restrictions regarding tenant income eligibility, tenant selection, project reserves, return on equity, rent increases and the provisions at N.J.S.A. 55:14K-7b for 35 years after the expiration of the term of the project mortgage. The foregoing documents shall also provide for the payment of a servicing fee to the Agency through the end of the additional 35 years for monitoring the restrictions that apply to the project. Such fee shall not be less than the servicing fee being paid by the eligible LD sponsor seller at the time of the housing investment sale; and

2. The eligible LD sponsor invests an amount equal to 50 percent of the maximum additional return in the Housing Investment Sale.

"Housing Investment Sales Account" means an account established under the Agency's administrative fund. Moneys on deposit in the account may be used, at the Agency's sole discretion, to provide loans or grants that will promote the provision or maintenance of low and moderate income housing as defined pursuant to the Fair Housing Act.

"Maximum additional return" means the additional return payable to the owners of an eligible LD sponsor under the Limited Dividend Law but not under the Housing and Mortgage Finance Agency (HMFA) Law, N.J.S.A. 55:14K-1 et seq., consisting of:

1. Cash invested by the owners in the eligible LD sponsor that has not previously been recognized by the Agency as investment in a housing project (including, but not limited to, those amounts invested by the owners at the initial Agency mortgage closing; any DCE/CDE funds; and the reserve for repair and replacement account, the operating reserve account and the tax and insurance escrow accounts (being transferred to the buyer in conjunction with the housing investment sale);

2. A cumulative annual return of eight percent on the investment described in 1 above;

3. If project revenues representing the return described in 2 above have been invested in the project's residual receipts account or otherwise, any income earned on said annual return;

4. An amount equal to the total reduction or amortization of the original principal owing on the eligible LD sponsor's mortgage loan from the Agency; and

5. An amount equal to the increase in the market value of the eligible LD sponsor's realty and tangible personalty during the period such assets were owned by the eligible LD sponsor, such increase to be determined by subtracting the following from the purchase price for those assets:

i. The eligible LD sponsor's investment in the project as determined by the Agency under the HMFA Law; and

ii. The original principal amount of the eligible LD sponsor's mortgage indebtedness to the Agency.

"Purchase price" means, in a housing investment sale, a sum equal to the fair market value of the realty and tangible personalty transferred to the buyer in the sale said sum to be comprised of:

1. Assumption of the eligible LD sponsor's first mortgage loan from the Agency and any other indebtedness of the eligible LD sponsor secured by project assets;

2. Cash paid by the buyer at the closing of the housing investment sale; and

3. Such obligations or instruments of indebtedness of the buyer in favor of the seller as the Agency may approve pursuant to N.J.A.C. 5:80-32.3(c).

"Residual receipts" means the balance of funds (including Development Cost Escrow and Community Development Escrow funds) remaining after the deduction of the following items from the cash and the investment accounts of an eligible LD sponsor:

1. Debt service arrearages;

2. Current unpaid invoices;

3. Three months of operating expenses (for senior citizen projects) or six months of operating expenses (for family projects), which includes debt service and reserve payments, of the latest Agency approved annual budget;

4. Full funding of all required reserve accounts;

5. Anticipated or proposed capital improvements;

6. Any other current obligations of the qualifying development; and

7. Accrued but undistributed return on equity.

Amended by R.1997 d.102, effective March 3, 1997.
See: 28 N.J.R. 321(a), 29 N.J.R. 763(a).
Added "Residual receipts"; amended "Available cash", "Housing investment sale", "Maximum additional return", and "Purchase price"; and changed the name of "MAR Revolving Account" to "Housing Investment Sale Account".
Amended by R.2005 d.197, effective June 20, 2005.
See: 37 N.J.R. 569(a), 37 N.J.R. 2203(a).
In "Housing investment sale", inserted "through the end of the additional 35 years" preceding "for monitoring the restrictions" in 1.

5:80-32.2 Realization of maximum additional return

Upon the approval of its members in the exercise of their authority under the Fair Housing Act, N.J.S.A. 52:27D-321f, the Agency shall waive any or all of the investment-return restrictions imposed under the HMFA Law, N.J.S.A. 55:14K-1 et seq., in order to permit an eligible LD sponsor to realize, from available proceeds upon the closing of a housing investment sale, a maximum additional return, as well as any return otherwise allowable under the HMFA law. Sponsors who agree to comply with the requirements of this subchapter will meet the waiver criteria.

Amended by R.1997 d.102, effective March 3, 1997.
See: 28 N.J.R. 321(a), 29 N.J.R. 763(a).
Substituted "proceeds" for "cash".

5:80-32.3 Application procedure

(a) The eligible LD sponsor proposing to sell its project in a housing investment sale must submit to the Executive Director of the Agency a written request for approval of the sale, containing a detailed description of the terms of the sale. The request must also include a detailed project report presenting the current physical, financial, management and tenant needs of the housing project. The Agency will review this report for completeness and accuracy, may require additional information and may conduct its own review of the housing project's condition and operation. Full and complete disclosure of all material facts relating to the proposed sale must be made to the Agency in the request for approval, and the seller and all other parties to the transaction shall be under a continuing obligation to disclose such material facts through the closing of the sale.

(b) In selecting the prospective buyer for the project, the seller may solicit as many proposals as it deems necessary. Bidding is not required. The seller may negotiate among prospective buyers to obtain the best offer.

(c) The housing investment sale shall include an assignment from the seller and an assumption by the buyer of all existing project indebtedness. If the sale includes any supplemental financing, the amount of such financing shall not exceed the debt that the project can reasonably sustain from project income through the remainder of the Housing Assistance Payments (HAP) contract or, if no HAP contract exists, through the remainder of the original mortgage term, without jeopardizing the viability of the project as a low-income project for the remainder of the original mortgage term. Supplemental financing may be provided by the Agency or other lender or may be provided by the seller. The terms of any supplemental financing shall be subject to the approval of the Agency provided, however, that: in no event may the aggregate principal repayment of such indebtedness result in amounts in excess of the amounts payable to the seller under N.J.A.C. 5:80-32.6(b)3i and ii; and all such indebtedness must be subordinate to the Agency's first mortgage lien and security interest in the project. The Agency's approval of a sale requiring supplemental financing shall be subject to the receipt of an opinion by nationally recognized bond counsel, in form and substance satisfactory to the Agency and the Attorney General, that such financing is permitted under any Bond resolution to which the payments under the Agency's mortgage on the project are pledged, and does not adversely affect the Federal and State tax treatment of any outstanding bonds, notes or other obligations of the Agency. The cost of such opinion shall be borne by the seller.

(d) As a condition of approving the sale, the Agency will require that the housing project be restored to sound physical condition in accordance with the report submitted by the seller under (a) above and the independent review by the Agency. Deferred maintenance must be completed no later than the closing of the sale, unless otherwise agreed by the Agency. Necessary repairs and capital improvements must be completed within a time frame acceptable to the Agency.

(e) As a condition of approving the sale, the Agency will also require payment of debt service arrearage, current unpaid invoices, total operating expenses covering three months (for senior citizen projects) and six months (for family projects), full funding of all reserves and any other obligations of the project.

(f) Upon assignment and assumption of the Agency's mortgage, provisions shall be included in the deed restriction clearly specifying the Agency's right to enforce these regulations for the 35-year period after the expiration of the term of the Agency's first mortgage.

(g) Any prepayment of the first mortgage subsequent to a housing investment sale as may be permitted by the Agency's regulations on prepayment shall not operate to relieve the buyer of the continuing requirements of this subchapter. As a condition to prepayment, a new or amended deed restriction as may be required by the Agency shall be recorded upon prepayment and shall contain the same affordability restrictions as the project's deed restriction in effect at the time of

prepayment. These affordability provisions shall continue from the date of prepayment through the end of the regulatory period as required by this subchapter and the project's deed restriction in effect at the time of prepayment.

Amended by R.1997 d.102, effective March 3, 1997.
See: 28 N.J.R. 321(a), 29 N.J.R. 763(a).
In (c), inserted text "Supplemental Financing may be provided ... prepay the Agency's first mortgage." and "is permitted under any Bond resolution ... project are pledged, and"; and in (f), substituted reference to inserting a provision in the deed for reference to modifying the mortgage, and inserted reference to 35-year post expiration period.
Amended by R.2005 d.197, effective June 20, 2005.
See: 37 N.J.R. 569(a), 37 N.J.R. 2203(a).
In (c), rewrote the fourth sentence; added (g).

5:80-32.4 Required documents

(a) To assist the Agency in its review of an eligible LD sponsor's request for approval of a housing investment sale, as described in N.J.A.C. 5:80-32.3(a), the seller shall supply the Agency with the following documents, in form and substance satisfactory to the Executive Director:

1. Administrative questionnaires for the buyer;

2. Copies of the buyer's organizational documents;

3. Any Previous Participation Certificates (form 2530) for the buyer;

4. A physical inspection report approved by the Agency;

5. A financial report on project operations approved by the Agency; and

6. Any other documents or other information requested by the Agency that would reasonably assist it in reviewing the proposed housing investment sale.

Amended by R.1997 d.102, effective March 3, 1997.
See: 28 N.J.R. 321(a), 29 N.J.R. 763(a).
Deleted (a)4, relating to a buyer's certified financial statement, and recodified former (a)5 through (a)7 as (a)4 through (a)6.

5:80-32.5 Fee

The eligible LD sponsor seller shall pay a processing fee to the Agency in such amount, as determined by the Agency, as will reimburse the Agency for its administrative cost (that is, Agency staff time and actual expenses incurred) in reviewing and processing the seller's request to engage in a housing investment sale. With its initial request for approval of the sale, the seller shall submit a non-refundable $5,000 deposit that shall be credited toward the processing fee. The seller will be billed for any balance due at the closing of the sale, and said balance shall be due and payable at that time.

5:80-32.6 Closing

(a) At the closing of any approved housing investment sale, the following documents, in form and substance satisfactory to the Agency, shall be delivered:

1. Legal opinions from the seller's and buyer's attorneys to the effect that the respective entities' participation in the housing investment sale is fully lawful; and

2. Any legal opinion of nationally recognized bond counsel reasonably required by the Agency relating to the proposed housing investment sale or its effect upon any outstanding obligations of the Agency.

(b) At the closing of any approved housing investment sale, the following shall occur:

1. The eligible LD sponsor shall transfer title to the realty and tangible personalty comprising its project, as well as any required project accounts, escrows and reserves, to the buyer;

2. The buyer shall pay to the eligible LD sponsor the purchase price for the project by assuming the project indebtedness of the eligible LD sponsor and paying the balance of the purchase price in cash and indebtedness of the buyer in favor of the seller; and

3. The Agency shall review and approve the following payments to be made from the available cash of the eligible LD sponsor:

i. To the eligible LD sponsor, an amount equal to its investment in the project, as determined under the HMFA Law payable in cash and/or permitted indebtedness of the buyer;

ii. To the eligible LD sponsor, an amount equal to 50 percent of its maximum additional return payable in cash and/or permitted indebtedness of the buyer;

iii. To the Housing Investment Sales Account, an amount equal to 50 percent of the maximum additional return of the eligible LD sponsor payable in cash and/or permitted indebtedness of the buyer to the seller assigned by the seller to the Agency;

iv. To the State Treasurer, the balance of eligible LD sponsor's available cash, as required under the Limited Dividend Law payable in cash only;

v. In the case of indebtedness of the buyer in favor of the seller, the amount payable to the Agency under (b)3iii above representing such indebtedness is not required to be paid in cash at closing. Instead, the Agency shall receive such amount through assignment by the seller to the Agency of 50 percent of the annual repayment of the indebtedness of the buyer in favor of the seller.

Amended by R.1997 d.102, effective March 3, 1997.
See: 28 N.J.R. 321(a), 29 N.J.R. 763(a).
In (b)2, inserted reference to payment by buyer's indebtedness to the seller; in (b)3i and (b)3ii, inserted reference to payment in cash and/or indebtedness; in (b)3ii, substituted "Housing Investment Sales Account" for "MAR Revolving Account"; in (b)3iv, inserted "payable in cash only"; and added (b)3v.

5:80-32.7 Developer's fee and return on equity

(a) The Agency may credit buyers with a developer's fee of 10 percent of the purchase price at the time of closing. The developer's fee may only be pledged as equity in the project. No project funds or available cash may be used to pay a developer's fee to the buyer.

(b) Buyers shall be eligible to earn a return on equity based upon any equity investment in the project including the developer's fee which is being pledged as equity. The rate of return shall be established pursuant to N.J.A.C. 5:80-3.3(e), unless the buyer elects to qualify for enhanced return on equity under (c) below. During the regulatory period, after expiration of the term of the Agency mortgage, the return on equity restrictions shall continue as provided in this section until the owner funds an operating reserve account in the amount provided in N.J.A.C. 5:80-5.10(b)7. The operating reserve account shall be maintained until the expiration of the deed restriction and administered as provided in N.J.A.C. 5:80-5.10(b)7. If the operating reserve account is used, the return on equity restrictions hereunder shall be reinstituted until the operating reserve account is again fully funded.

(c) Buyers who agreed to fund a capital improvement account, and agree to preserve the low-income status of the project for an additional 15 years, as provided below, may receive enhanced return on equity during the term of the Agency's mortgage through a split of the project's residual receipts on a 50/50 basis with the Agency.

1. The capital improvement account would be in addition to the reserve for repair and replacement account, the operating reserve account, and any rehabilitation expenditures escrow funded in connection with secondary financing. The capital improvement account shall be used for capital improvements, repairs, maintenance and any other expense of the project which will help ensure that the project is maintained as safe and sanitary rental housing during the mortgage term and thereafter. Ten percent of the annual residual receipts must be deposited into the capital improvement account prior to distribution of the residual receipts between the Agency and owner;

2. The buyer shall execute a deed restriction which preserves the project as affordable rental housing for an additional 15-year period, subject to the same Agency restrictions as are applicable during the 35-year period under the definition of housing investment sales in N.J.A.C. 5:80-32.1;

3. The Agency's annual share of the residual receipts shall be deposited into the Housing Investment Sales Account;

4. Buyers who elect to participate in this option must make such election at the time of closing. Buyers may elect to participate subsequent to closing, provided they fund the capital improvement account with an amount equivalent to the amount that would have been required since closing and distribute 50 percent of the accumulated residual receipts to the Agency for deposit into the Housing Investment Sales Account.

(d) The distribution of amounts to the buyer pursuant to this section shall be subject to those conditions set forth at N.J.A.C. 5:80-3.4.

New Rule, R.1997 d.102, effective March 3, 1997.
See: 28 N.J.R. 321(a), 29 N.J.R. 763(a).
Amended by R.2005 d.197, effective June 20, 2005.
See: 37 N.J.R. 569(a), 37 N.J.R. 2203(a).
In (b), amended the N.J.A.C. references in the third and fourth sentences; in (c), substituted "who" for "which" in the introductory paragraph and the first sentence of 4, and substituted "that" for "which" in the second sentence of 4.
Amended by R.2005 d.408, effective November 21, 2005.
See: 37 N.J.R. 2596(a), 37 N.J.R. 4400(b).
In (b), substituted "N.J.A.C. 5:80-3.3(e)" for "N.J.A.C. 5:80-3.3(b)."

APPENDIX

Example of Application of Subchapter Rules

(a) A group of individuals formed an eligible LD sponsor and invested $1,500,000 in it: $1,000,000 was invested in the physical assets of the project (that is, its realty and tangible personalty) and was recognized as investment in the project under the HMFA Law; $500,000 represented promoters' fees and was not recognized as investment in the project under the HMFA Law. The eligible LD sponsor received a non-recourse loan of $9,000,000 from the HMFA.

(b) If the Agency had recognized the entire $1,500,000 as investment in the project, which it was not required to do, the eligible LD sponsor would have been entitled to an additional return on its investment of $40,000 in each year of operation. For 15 years the project generated revenues sufficient to cover this additional $40,000. The $600,000 (15 years x $40,000) aggregate representing this additional return, along with other surpluses, was invested and earned a total of $200,000 in interest income over the 15 years.

(c) Fifteen years after the formation of the eligible LD sponsor, a qualified housing sponsor proposes to buy the physical assets of the eligible LD sponsor in a housing investment sale. At the time of the sale, the eligible LD sponsor has repaid $1,800,000 of the HMFA loan and has received the full annual return on investment permitted under the HMFA Law. At the closing of the housing investment sale, the project's residual receipts, as defined in N.J.A.C. 5:80-30.1 were $2,200,000. The purchase price paid by the buyer to the eligible LD sponsor is $10,900,000, paid by assuming the $7,200,000 mortgage loan still outstanding and paying $3,700,000 cash at closing.

(d) At the closing of the housing investment sale, $200,000 of the purchase price is applied to transaction costs. Thus, the available proceeds of the eligible LD sponsor is $5,700,000, computed as follows: $3,500,000 (the cash portion of the Purchase Price, $3,700,000, less $200,000 in transaction

costs), plus $2,200,000 (the residual receipts). (See N.J.A.C. 5:80-32.1, "available cash".)

(e) The maximum additional return is $4,000,000, computed as follows:

1. $500,000 cash invested by the owners of the eligible LD sponsor that was not recognized as investment in the project (see N.J.A.C. 5:80-32.1, "maximum additional return" paragraph 1), plus

2. $600,000 representing cumulative annual return on the $500,000 described in (e)1 above (see N.J.A.C. 5:80-32.1, "maximum additional return" paragraph 2), plus

3. $200,000 investment income earned on the $600,000 described in (e)2 above (see N.J.A.C. 5:80-32.1, "maximum additional return" paragraph 3), plus

4. $1,800,000 representing amortization of principal on the Agency's mortgage loan (see N.J.A.C. 5:80-32.1, "maximum additional return" paragraph 4), plus

5. $900,000 in market appreciation of realty and tangible personalty (that is, the purchase price of $10,900,000 less investment in the project of $1,000,000 and original mortgage loan of $9,000,000, as provided in N.J.A.C. 5:80-32.1, "maximum additional return" paragraph 5).

(f) At closing, the following payments are made from the available proceeds:

1. To the eligible LD sponsor, $1,000,000, representing its investment in the project, as determined under the HMFA Law (see N.J.A.C. 5:80-32.6(b)3i);

2. To the eligible LD sponsor, $2,000,000, representing 50 percent of its maximum additional return (see N.J.A.C. 5:80-32.6(b)3ii);

3. To the Housing Investment Sales Account, $2,000,000 representing 50 percent of the maximum additional return (see N.J.A.C. 5:80-32.6(b) 3iii); and

4. To the State Treasurer, $700,000, representing the balance of available proceeds (see N.J.A.C. 5:80-32.6(b)3iv).

Amended by R.1997 d.102, effective March 3, 1997.
See: 28 N.J.R. 321(a), 29 N.J.R. 763(a).
In (d), (f), and (f)4, substituted "proceeds" for "cash"; and in (f)3, substituted "Housing Investment Sales Account" for "MAR Revolving Account".

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. 5:80-33.15, 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 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).

Amended by R.1998 d.279, effective June 1, 1998.
See: 30 N.J.R. 1132(a), 30 N.J.R. 1978(a).
Rewrote (a); added new (b) through (d); and recodified former (b) and (c) as (e) and (f).
Amended by R.1999 d.120, effective April 5, 1999.
See: 31 N.J.R. 122(a), 31 N.J.R. 860(a).
In (b) and (c), changed N.J.A.C. references.
Amended by R.2002 d.233, effective July 15, 2002.
See: 34 N.J.R. 1574(a), 34 N.J.R. 2417(a).
Added (g).
Amended by R.2003 d.300, effective July 21, 2003.
See: 35 N.J.R. 1616(a), 35 N.J.R. 3298(b).
In (a), (b), amended N.J.A.C. reference.
Amended by R.2013 d.086, effective June 17, 2013.
See: 45 N.J.R. 530(a), 45 N.J.R. 1511(a).
In (d), deleted "literally" following "comply", and inserted a comma following "unambiguous".

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.

"At risk of losing its affordability controls" means a project with a deed restriction that expires within five years that is "likely" to convert to market rate (as supported by the market analysis at N.J.A.C. 5:80-33.12(c)1ii), project based assistance that expires within five years, a project that may be condemned or a project that is subject to foreclosure, unless NJHMFA determines such acquisition is part of an arrangement a purpose of which is to terminate such affordability controls. For multi-phase projects, forestalling of a foreclosure by funding of the initial phase shall not preclude latter phases of the same project from qualifying for the set-asides at N.J.A.C. 5:80-33.4(a)1, 33.5(a)1 and 33.7(a)2, provided the latter phases satisfy the remaining elements of the definition of "preservation project" below.

"At risk of losing its level of affordability" means that operating expenses or capital repair needs are so high that without an award of tax credits, only very high rent increases will keep the project in an acceptable condition and financially feasible. If the current owner or a related party of the current owner shall retain an ownership interest in the project post-rehabilitation, the owner must demonstrate it did not materially contribute to the decline of the property that created the high operating expenses or capital repair needs.

"Brownfield 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 a contaminant." For the purposes of this subchapter, the proposed redevelopment for the site under consideration may also have an approved New Jersey Department of Environmental Protection Remedial Action Work Plan.

"Center" means an efficient and compact form of development having one or more mixed-use Cores as well as residential neighborhoods and green spaces. Center designations are based on the area, population, density, and employment of the Center being considered and features of the surrounding areas. Centers can range in scale from very large, an urban center, to the smallest, a hamlet. Centers range in scale in the following order: urban, regional, town, village, and hamlet.

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

"Common area" means, for purposes of the point category at N.J.A.C. 5:80-33.15(a)13ii, the area in a sub/individually-metered project where electric usage is not paid for by a tenant or the area in a master-metered project where utility usage cannot be attributed to individual dwelling units, whether bedrooms, apartments, townhomes or condominiums.

"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, clubhouse 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" means a pedestrian-oriented area of commercial and civic uses serving the surrounding municipality or Center, generally including housing and access to public transportation.

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

"DCA" means the New Jersey Department of Community Affairs, established in the executive branch of State government pursuant to N.J.S.A. 52:27D-1.

"Density bonus" means an economic benefit for low- and moderate-income housing resulting from a zoning change that increases permitted density. Determination of whether a project is the recipient of a density bonus shall be made by the municipality or, in the case of a court-ordered project, the Superior Court judge or special master with jurisdiction over the suit.

"Designated Center" means a Center that has been officially recognized as such by the State Planning Commission. In the Pinelands Area, Designated Center means a Regional Growth Area, Pinelands Village, or Pinelands Town designated by the Pinelands Commission.

"Designated Highlands Center" means a Center that has been officially recognized by the Highlands Council.

"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.

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.

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.

To the extent there is a reasonable expectation of repayment (as evidenced by available cash flow and/or confirmation by the applicant's syndicator/investor or tax attorney), the amount of developer fee allowed for eligible rehabilitation or new construction costs is limited to 15.00 percent of total development cost excluding acquisition (that is, land and building) cost, 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 20.00 percent (of total development cost excluding acquisition cost, 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. Supportive Housing Cycle projects

The non-deferred portion of the developer fee shall not exceed 8.00 percent (13.00 percent for the three types of housing referenced at i, ii and iii above) of total development cost excluding acquisition cost, working capital, marketing expenses, escrows, operating deficit reserves, step-in-the-shoes costs, and costs associated with syndication.

A developer fee of up to 8.00 percent shall be permitted for building acquisition costs; however, the non-deferred amount of this portion of the developer fee shall not exceed four percent of the acquisition amount. The cost of acquiring a building shall not be allowed in the calculation of the developer fee if the acquisition is between related parties.

"Eligible basis limits" are limitations on total eligible basis (except for projects in the Supportive Housing Cycle or those projects that receive credits from volume cap). 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). The eligible basis limits are listed in the application and may change as market conditions dictate. 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 shall be recognized in eligible basis; and

2. Duplicative professional costs shall not be recognized in eligible basis. For example, for HOPE VI/Replacement Housing projects 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 range" means the range of tax credit pricing that NJHMFA shall utilize in its needs analysis. The equity range is listed in the application and may change as market conditions dictate.

"Highlands Council" means the Highlands Water Protection and Planning Council established by section 4 of the Highlands Water Protection and Planning Act ("Highlands Act"), N.J.S.A. 13:20-4.

"Highlands Development Credit Receiving Area" means an area designated by the Highlands Council for the receipt of Highlands Development Credits under the Highlands Transfer of Development Rights Program authorized under section 13 of the Highlands Act, N.J.S.A. 13:20-13.

"Highlands Redevelopment Area" means a land area designated as such by the Highlands Council that is a brownfields, grayfields, and/or other previously developed area within the Highlands Region that is suitable for development.

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

1. Building(s) listed on the New Jersey or National Register of Historic Places either individually or as a contributing building to a historic district;

2. Building(s) that have been issued a Determination of Eligibility by the Keeper of the National Register of Historic Places;

3. 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

4. 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.

"Individuals and families who are homeless" means any individual or family who does not have stable housing. In addition, depending on the funding sources, individuals coming out of a State psychiatric hospital, transitional living program, half-way house, jail, or a correctional facility, with no place to live upon release may be considered homeless.

"Individuals in treatment for substance abuse" means any individual who is a client of programs funded and/or licensed by the New Jersey Department of Human Services, Division of Mental Health and Addiction Services.

"Individuals with developmental disabilities" means any individual with a severe, chronic disability that is attributable to a mental or physical impairment or combination of mental or physical impairments, is manifested before the person attains 22 years of age, and is likely to continue indefinitely. The disability results in substantial functional limitations in three or more of the following areas of major life activity: self-care, receptive and expressive languages, learning, mobility, self-direction, capacity for independent living, and economic sufficiency; and 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.

"Individuals with mental illness" means any individual with a mental illness as that term is defined at N.J.S.A. 30:4-27.2, incorporated herein by reference, as amended and supplemented, and/or any individual with a mental illness eligible for housing or services funded by the Division of Mental Health and Addiction Services in the New Jersey Department of Human Services.

"Individuals with physical disabilities" means any individual who, because of a physical condition with adult onset, needs affordable housing with supportive services, including assistance with three or more activities of daily living (that is, bathing, dressing, using the toilet, eating, and getting in or out of a bed or chair), to live independently in community settings.

"Individuals with special needs" means:

1. Individuals with mental illness;

2. Individuals with physical disabilities;

3. Individuals with developmental disabilities;

4. Victims of domestic violence;

5. Ex-offenders and youth offenders;

6. Youth aging out of foster care;

7. Runaway and homeless youth;

8. Individuals and families who are homeless;

9. Disabled and homeless veterans;

10. Individuals with AIDS/HIV;

11. Individuals in treatment for substance abuse; and

12. Individuals in other emerging special needs groups identified by State agencies.

"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-density" means a building having one to four residential floors or stories.

"Main Street Designated District" means a district designated as such by DCA pursuant to the "Main Street New Jersey" program created under N.J.S.A. 52:27D-452.a to support economic and community development in historic commercial districts with a long-term goal of revitalizing downtown areas. The District must be designated by the tax credit application deadline. Only traditional or partner designations qualify, not associate selections.

"Meadowlands Commission" means the New Jersey Meadowlands Commission created by section 5 of the Hackensack Meadowlands Reclamation and Development Act, N.J.S.A. 13:17-5.

"Minimum rehab project" means any project undertaking only a minimum amount of rehabilitation. Minimum rehab is defined as construction cost totaling less than $25,000 per unit. Minimum rehab projects are eligible to apply only in the Supportive Housing Cycle and Final Cycle. In the Final Cycle, unless it is a preservation project, a minimum rehab project 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).

"Pinelands Commission" means the Pinelands Commission created by section 4 of the Pinelands Protection Act, N.J.S.A. 13:18A-4.

"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 at least 75 percent of the affordable units and no new construction of units is permitted. The application shall include the following:

1. Documentation that the property is at risk of losing its affordability controls or level of affordability;

2. An agreement precluding the involuntary displacement of any existing resident (other than for good cause) and, in the case of scattered site projects, a copy of the relocation plan for over-income residents;

3. Documentation of how rents will remain at or near existing levels;

4. Utilization of an applicable fraction based on an analysis of both the income levels of existing residents and the market analysis required under N.J.A.C. 5:80-33.12(c)1ii; and

5. A capital needs assessment certified by the project architect which illustrates that the proposed rehabilitation meets identified critical repair items and 12-month physical needs.

"Qualified Census Tract," as defined in Section 42(d)(5)(C) of the Code, means a census tract designated by the Secretary of HUD 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 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 points.

In order to qualify for the nonprofit points, 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 or joint venture agreement that clearly defines the nonprofit's ownership interest and participation in the development and operation of the project.

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 and 2 below by the tax credit application deadline:

1. A smart growth area or, alternatively, an area suitable for growth as may be defined when the State Planning Commission revises and readopts the State Strategic Plan and adopts regulations to refine this definition as it pertains to Statewide planning areas; and

2. 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 2i through vi below:

i. Is located within an area in need of redevelopment or an area in need of rehabilitation, as defined at N.J.S.A. 40A:12A-3;

ii. Is located within a previously Designated Center on the State Plan Policy Map;

iii. Is located within a municipality whose master plan has received Plan Endorsement from the State Planning Commission and the project is consistent with the housing element within the endorsed master plan;

iv. Contains a site with an existing building footprint within which the project will be built;

v. Is located within a designated Highlands Redevelopment Area, a Designated Highlands Center, or a Highlands Development Credit Receiving Area; or

vi. Is located within an area identified for development and/or redevelopment within the "Land Use Plan Map of the Meadowlands District Master Plan" and the "Hackensack Meadowlands District Official Zoning Map" as amended and supplemented by the Meadowlands Commission.

"Redevelopment project" means a project fully located within a "redevelopment area" or "area in need of redevelopment" or a "rehabilitation area" or "area in need of rehabilitation," as those four terms are defined in the Local Redevelopment and Housing Law at N.J.S.A. 40A:12A-3, or within the boundary of an approved "neighborhood revitalization plan," as defined in the Neighborhood Revitalization State Tax Credit Act at N.J.S.A. 52:27D-491. No later than the application deadline, the redevelopment plan must be adopted by the municipal governing body or the neighborhood revitalization plan must be approved by the Commissioner of DCA. The project must further the goals and objectives of the approved plan.

"Rehabilitation" or "rehab" means the repair, renovation, alteration or reconstruction of any building or structure.

"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 base of the equity range 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 2.00 percent ownership interest. For projects where the general partner's ownership interest is between 2.01 and 5.00 percent, $.05 shall be added to the base of the equity range. If the general partner's ownership interest is 5.01 to 49.99 percent, $0.10 shall be added to the base of the equity range. If the general partner's ownership interest is at least 50.00 percent, $0.20 shall be added to the base of the equity range.

"Scattered site project" means a project that consists of buildings which are not all proximate to one another, is financed pursuant to a common financing plan and 100 percent of the residential rental units of which are rent-restricted within the meaning of section 42(g)(2) of the Code.

"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 of 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.

"Services for Independent Living (SIL) Program" means a program established at NJHMFA to enhance the quality of life for residents living in NJHMFA-financed senior housing developments.

"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. In the Pinelands Area, an area shall be considered to be a smart growth area if it is within a Regional Growth Area, a Pinelands Village, or a Pinelands Town.

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 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 site evaluator website at www.evaluator.nj.gov or contact NJHMFA.

"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 case management services to the residents and/or providing linkages to community resources by providing a signed agreement between the parties;

2. Providing information and referrals to residents on programs and resources on local, State and Federal levels;

3. Interviewing and screening residents for eligibility for programs and entitlements and assisting with application procedures;

4. Assessing the needs of residents, including physical, mental, social and financial needs, and developing a plan for service delivery;

5. Monitoring and evaluating service delivery, and reassessing as necessary;

6. Establishing links with agencies and service providers;

7. Serving as residents' advocate/liaison; and

8. Planning and implementing monthly programs and activities to meet the needs of residents, including establishment of social, educational and recreational programs.

"Social services plan" means a description of the scope of social and support services to be provided for supportive housing projects, including a staffing plan and how the services will be delivered and funded. The services must be affordable and appropriate to the target population to the satisfaction of NJHMFA, available and accessible to the project's tenants and the social service provider must have the capacity to perform such services. The social services plan must address the target population's(s') support service needs and may include a range of services across a wide continuum of care and intensity appropriate to the target population(s). Appropriate and needed services must be supported by evidence-based practice, research and/or direct practice experience. Each special needs tenant does not have to utilize all of the services provided by the project; however, the services must be available. The social services plan shall address, but is not limited to, the following items:

1. Hiring 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 a reasonable amount of hours based on the number of supportive housing units in the project (generally 20 hours a week);

2. A description of the targeted population(s), including criteria which will qualify proposed tenants for the supportive housing units and expected support services that are likely to be required;

3. A description of the proposed services, including how services respond to need areas of tenants, how services will be funded, and service location (on site or in the community);

4. A description of how services will be coordinated or made available to all special need tenants, including a listing of referral sources; and

5. A description of tenant/landlord relationships, including roles of the service provider and developer in tenant/landlord relationships, how prospective tenants will be recruited, screened, and selected, and the plan for problem resolution to minimize evictions for supportive housing tenants.

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.

"Sponsor-based rental assistance" means rental assistance that is provided to a sponsor from the HUD McKinney-Vento Programs or other government sources.

"Sponsor certification" means the certification signed by the developer(s), applicant(s) and general partner(s) 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.

"Start construction" means to issue a notice to proceed to a project's contractor, mobilize equipment on the site, and physically commence construction/site work. It is the responsibility of the developer and contractor to ensure that all applicable local and State permits, Federal approvals, inspections, surveys and/or reports have been received before work has commenced. NJHMFA reserves the right to conduct a site inspection to ensure the timely start of construction.

"State Planning Commission" means the New Jersey State Planning Commission established in the executive branch of State Government pursuant to N.J.S.A. 52:18A-197.

"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. An application deemed to be substantially incomplete is not eligible for the 48-hour period to cure such defects under N.J.A.C. 5:80-33.11(c).

"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.

"Supportive housing marketing plan" means a marketing plan that contains a list of State and community-based organizations that serve the target population that the sponsor is planning to house, as well as a detailed list of referral sources for tenant applications.

"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 25.00 percent of the total project units 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. Social service coordinator/case manager;

2. Counseling and crisis intervention;

3. Health care advocacy and linkages;

4. Assistance with activities of daily living and/or instrumental activities of daily living;

5. Entitlement counseling and advocacy;

6. Employment counseling and training;

7. Home-based personal or medical assistance;

8. Skilled nursing;

9. Meals preparation;

10. Housekeeping;

11. Substance abuse and mental health supports; and

12. Child care/adult day care.

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

"Targeted Urban Municipalities" means those Urban Aid Municipalities designated pursuant to N.J.S.A. 52:27D-178 plus Atlantic City, with a poverty rate greater than 8.1 percent.

"Total development cost" or "total project cost" means the cost to complete the development of a proposed project.

"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.

"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);

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.

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

"Urban transit hub" means a property defined and designated as such by the New Jersey Economic Development Authority pursuant to the Urban Transit Hub Tax Credit Act, N.J.S.A. 34:1B-207 et seq.

Amended by R.1997 d.284, effective July 7, 1997.
See: 29 N.J.R. 1441(a), 29 N.J.R. 2818(a).
Added "COAH", "Density bonus", "Designated center", "Developmentally disabled", "Eligible basis limits", "High-rise", "HUD", "Inclusionary development", "Low-rise", "Mid-rise", "Retention factor", and "Uncorrected noncompliance"; amended "COAH obligation", "Court-ordered obligation", "De minimis award", "Developer fee", "Minimum rehab project", "Related party", "Social services model", and "Sponsor certification"; and deleted "After-school program", "Daycare", "Intermediary fees", "Partial allocation", "Urban aid municipality", and "Urban center".
Amended by R.1998 d.279, effective June 1, 1998.
See: 30 N.J.R. 1132(a), 30 N.J.R. 1978(a).
Rewrote the section.
Amended by R.1999 d.120, effective April 5, 1999.
See: 31 N.J.R. 122(a), 31 N.J.R. 860(a).
Substituted "clearly" for "already" in the introductory paragraph; in "COAH obligation" and "Court-ordered obligation", deleted "to encourage family rental units in non-urban municipalities," following "addition," and substituted a reference to affordable rental units for a reference to family rental units in the fourth sentences, and deleted former sixth sentences; deleted "De minimis award"; in "Developer fee" or "development fee", rewrote the first paragraph; in "Eligible basis limits", deleted a reference to the Mixed Income Cycle; in "Qualified nonprofit organization", rewrote the concluding paragraph; rewrote "Retention factor"; in "Social services model", inserted ", appropriate" in the second sentence of the introductory paragraph; in "Special needs project", substituted "tax credit units in the project to" for "total units in the project for occupancy by" in the first sentence, and substituted "the tax credit units to" for "their affordable units for occupancy by" in the third sentence; inserted "Supplemental award"; and rewrote "Uncorrected noncompliance".
Amended by R.2000 d.132, effective March 20, 2000.
See: 32 N.J.R. 191(a), 32 N.J.R. 1065(a).
Rewrote the section.
Amended by R.2001 d.170, effective May 21, 2001.
See: 33 N.J.R. 932(a), 33 N.J.R. 1573(b).
Added "Brownfield site", "Mixed income project", "NPP projects", "Preservation project", "Qualified census tract", "Substantially incomplete" and "Voluntary compliance with the courts"; and in "Scattered site project", deleted last sentence.
Amended by R.2002 d.233, effective July 15, 2002.
See: 34 N.J.R. 1574(a), 34 N.J.R. 2417(a).
Rewrote the section.
Amended by R.2003 d.300, effective July 21, 2003.
See: 35 N.J.R. 1616(a), 35 N.J.R. 3298(b).
Rewrote the section.
Amended by R.2006 d.112, effective March 20, 2006.
See: 37 N.J.R. 3879(a), 38 N.J.R. 1432(a).
Added definitions "At risk of losing its affordability controls," "At risk of losing its level of affordability" and "Supportive Housing project"; rewrote definitions "Brownfields site," "Community revitalization plan," "Community service facility," "Court-ordered obligation," "Density bonus subsidy," "Developer fee," "Eligible basis limits," "Frail elderly," "Minimum rehab project," "Mixed income project," "Preservation Project," "Qualified Census Tract," "Qualified nonprofit organization," "Social service coordinator," "Social services model," "Sponsor certification," "Substantially incomplete" and "Voluntary compliance with the courts"; deleted definition "Special needs project".
Amended by R.2007 d.168, effective May 21, 2007.
See: 39 N.J.R. 281(a), 39 N.J.R. 2011(a).
In definitions "COAH obligation" and "Court-ordered obligation", inserted the last sentence; added definition "Common area"; deleted definitions "High-rise" and "Mid-rise"; substituted definition "Low-density" for "Low-rise"; in introductory paragraph of definition "Preservation Project", substituted "Family, Senior and Final Cycles" for "Final Cycle"; in paragraph 2 of definition "Preservation Project", inserted "and, in the case of scattered site projects, a copy of the relocation plan for over-income residents"; and rewrote definition "Smart growth areas".
Amended by R.2007 d.297, effective September 17, 2007.
See: 39 N.J.R. 2302(a), 39 N.J.R. 3913(a).
Added definition "Ready to grow area"; and rewrote definition "Smart growth areas".
Amended by R.2008 d.133, effective May 19, 2008.
See: 40 N.J.R. 839(a), 40 N.J.R. 2429(b).
In definition "At risk of losing its affordability controls", inserted the last sentence; in definition "COAH obligation", inserted a byphen following "low", inserted "or that is or will be included in a municipal

resolution of intent to petition COAH" and substituted "shall" for "may" and "the" for "certain" preceding "requirements"; in definition "Common area", updated the N.J.A.C. reference; in definition "Court-ordered obligation", inserted "or if the project is included within a municipal resolution of intent to file a declaratory judgment action with the court", substituted "shall" for "may" and substituted "the" for "certain" preceding "requirements"; in definition "Density bonus subsidy", deleted "entity with jurisdiction over the" preceding "municipality" and deleted "(either the Executive Director of COAH" following "municipality", inserted ", in the case of a court-ordered project,", substituted "judge" for "Judge" and "special master" for "Special Master" and deleted the closing parenthesis following "suit"; in the introductory paragraph of definition "Eligible basis limits", substituted "/Replacement Housing Factor funds" for "assistance"; in paragraph 2 of definition "Eligible basis limits", substituted "/Replacement Housing projects" for "applications"; rewrote definitions "Minimum rehab project", "Scattered site project" and "Social services plan"; substituted definition "Supportive housing project" for definition "Supportive Housing project"; rewrote definition "Supportive housing project"; and added definition "Supportive housing population needs analysis".
Amended by R.2009 d.154, effective May 4, 2009.
See: 41 N.J.R. 917(a), 41 N.J.R. 1994(a).

Rewrote the introductory paragraph to definition "Community revitalization plan"; in the fourth paragraph of definition "Developer fee" inserted "or tax attorney"; in definition "Eligible basis limits", rewrote the introductory paragraph and paragraph 1; deleted definitions "Equity factor", "Mixed income project", and "School renaissance zone"; added definitions "Equity range", "Individuals and families who are homeless", "Individuals in treatment for substance abuse", "Individuals with mental illness", "Individuals with physical or developmental disabilities", "Individuals with special needs" and "Start construction"; in definition "Preservation project", in the introductory paragraph, deleted ", currently occupied" following "existing" and "in the Family, Senior and Final Cycles" following "set-aside" and inserted "that is at least 50 percent occupied and is", in paragraph 5, inserted "certified by the project architect", and deleted the final undesignated paragraph; rewrote definitions "Qualified nonprofit organization" and "Supported housing project"; rewrote paragraph 3ii of definition "Ready to grow area"; in definition "Retention factor", inserted "base of the" throughout and substituted "range" for "factor" throughout; and in definition "Sponsor certification", substituted "developer(s)" for "developer", "applicant(s)" for "applicant" and "partner(s)" for "partner".
Amended by R.2011 d.239, effective September 6, 2011.
See: 43 N.J.R. 917(a), 43 N.J.R. 2293(a).

Deleted definitions "COAH", "COAH obligation", "Community revitalization plan", "Court-ordered obligation", "Supportive housing population needs analysis", and "Voluntary compliance with the courts"; in definition "Preservation project", rewrote the introductory paragraph; in definition "Qualified nonprofit organization", deleted "nonprofit set-aside or" and "nonprofit set-aside and" preceding "nonprofit points" throughout; in definition "Ready to grow area", substituted "Draft Final" for "Preliminary" in paragraph 2, and rewrote paragraph 3i; in definition "Smart growth areas", substituted "for Planning Advocacy" for "of Smart Growth" in the second paragraph, and substituted "site evaluator" for "smart growth locator" in the third paragraph; added definitions "Redevelopment project", " 'Rehabilitation' or 'rehab' ", "Supportive housing population needs analysis", "Supporting housing unit", and " 'Transit oriented development' or 'TOD' "; and in definition "Uncorrected noncompliance", deleted "or" at the end of paragraph 2, substituted "; or" for a period at the end of paragraph 3; and added paragraph 4.
Amended by R.2013 d.086, effective June 17, 2013.
See: 45 N.J.R. 530(a), 45 N.J.R. 1511(a).

Added definitions "Center", "Core", "DCA", "Designated Center", "Designated Highlands Center", "Highlands Council", "Highlands Development Credit Receiving Area", "Highlands Redevelopment Area", "Individuals with developmental disabilities", "Individuals with physical disabilities", "Main Street Designated District", "Meadowlands Commission", "Pinelands Commission", "Services for Independent Living (SIL) Program", "Sponsor-based rental assistance", "State Planning Commission", "Supporting housing marketing plan", "Targeted Urban Municipalities", "Total development cost", and "Urban transit hub"; substituted definition "Density bonus" for definition "Density bonus (subsidy)"; rewrote definitions " 'Developer fee' or 'development fee' ", "Eligible basis limits", "Individuals and families who are homeless", "Individuals in treatment for substance abuse", "Individuals with mental illness", "Preservation project", "Ready to grow area", "Redevelopment project", "Retention factor", "Smart growth areas", "Social services plan", and "Supportive housing project"; and deleted definitions "Frail elderly" and "Individuals with physical or developmental disabilities".

Case Notes

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

5:80-33.3 Application cycles

Each year, NJHMFA shall establish funding cycles and the amount of credits available in each cycle. They will be advertised on the NJHMFA website www.nj-hmfa.com and in at least five of the following newspapers: 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.

Amended by R.1997 d.284, effective July 7, 1997.
See: 29 N.J.R. 1441(a), 29 N.J.R. 2818(a).

Lowered maximum yearly credit allocation from $2,000,000 to $1,500,000.
Amended by R.2001 d.170, effective May 21, 2001.
See: 33 N.J.R. 932(a), 33 N.J.R. 1573(b).

Inserted "Applications shall be submitted to NJHMFA by 12 noon of the application deadline date in order to be considered for review".
Amended by R.2002 d.233, effective July 15, 2002.
See: 34 N.J.R. 1574(a), 34 N.J.R. 2417(a).

Inserted "as early in the year as possible. Reservations shall be announced" following "shall be announced" in the fifth and sixth sentences; deleted the last sentence.
Amended by R.2006 d.112, effective March 20, 2006.
See: 37 N.J.R. 3879(a), 38 N.J.R. 1432(a).

Added the NJHMFA website and narrowed the advertisements to at least five of the listed newspapers.

5:80-33.4 Family Cycle

(a) Non-age restricted developments may apply to this cycle. Not less than 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 any developments competing in this cycle is $1,750,000. Total development costs shall not exceed $250,000 per unit for buildings of one to four residential stories, $275,000 per unit for buildings with five or six residential stories, and $300,000 per unit for buildings with over six residential stories, excluding capitalized permanent reserves, non-basis eligible off-site improvements, and required deferred developer fee, if any. 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: the combined number of efficiency and one-bedroom tax credit units shall be no greater than 20.00 percent of the tax credit units; at least 30.00 percent of the tax credit units shall be two-bedroom units; and at least 20.00 percent of the tax credit units shall be three-bedroom units. There are two set-asides in the Family Cycle:

1. HOPE VI/Choice Neighborhood set-aside: The first reservation of credits from the Family Cycle shall be given to the highest-ranking eligible application from a HOPE VI or Choice Neighborhood project with a majority of its units located within a Qualified Census Tract. If, because of lack of demand, this set-aside is not utilized, the credits shall be released into the Family Cycle for use by other eligible applications after satisfaction of any other set-aside, as applicable.

2. 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 that meets all of the following criteria: project-based rental assistance expires/lapses earlier than the mortgage is paid off; project-based rental assistance subsidizes at least 50.00 percent of the total units; and the project has achieved a Real Estate Assessment Center (REAC) score of 60 or higher (if applicable) for the preceding three years or if the project's REAC score is below 60, the general partner/managing member of the proposed rehabilitation project shall not be a related party to the current ownership entity. Should no such projects apply, then 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/Choice Neighborhood 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) Projects that 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) Reservations shall first be awarded to the highest-ranking eligible 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, NJHMFA shall fund no more than two projects per year from the same municipality (however, projects funded through the Supportive Housing Cycle will not be included in this count). Funding of projects shall be prioritized in the following manner: the highest ranking eligible project(s) in the Family Cycle, the Senior 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.

(d) Forty percent of the credits in this cycle (inclusive of all set-asides) shall be made available to Targeted Urban Municipalities and the remaining credits shall be allocated to the remainder of the State, provided NJHMFA receives a sufficient number of eligible applications from areas outside of Targeted Urban Municipalities to result in these allocation percentages. The credits allocated toward Targeted Urban Municipalities could exceed 40 percent if necessary to fully fund a project.

Amended by R.1997 d.284, effective July 7, 1997.
See: 29 N.J.R. 1441(a), 29 N.J.R. 2818(a).
In (a), substituted reference to municipalities on the Urban Cycle List for reference specifying types of municipalities.
Amended by R.1998 d.279, effective June 1, 1998.
See: 30 N.J.R. 1132(a), 30 N.J.R. 1978(a).
In (a), inserted a reference to HOPE VI funding in the introductory paragraph and inserted "that are part of an approved neighborhood plan" preceding "within targeted neighborhoods" in 1.
Amended by R.1999 d.120, effective April 5, 1999.
See: 31 N.J.R. 122(a), 31 N.J.R. 860(a).
In (a)3, inserted a reference to nonprofit points in the last sentence.
Amended by R.2000 d.132, effective March 20, 2000.
See: 32 N.J.R. 191(a), 32 N.J.R. 1065(a).
In (a)3, substituted "40" for "15" following "credit program," and deleted a former fourth sentence.
Amended by R.2001 d.170, effective May 21, 2001.
See: 33 N.J.R. 932(a), 33 N.J.R. 1573(b).
Rewrote (a)1; in (a)3, substituted "25" for "40" preceding "percent"; and in (c), added the last sentence.
Amended by R.2002 d.233, effective July 15, 2002.
See: 34 N.J.R. 1574(a), 34 N.J.R. 2417(a).
Rewrote the section.
Repeal and New Rule, R.2003 d.300, effective July 21, 2003.
See: 35 N.J.R. 1616(a), 35 N.J.R. 3298(b).
Section was "Urban Cycle".
Amended by R.2006 d.112, effective March 20, 2006.
See: 37 N.J.R. 3879(a), 38 N.J.R. 1432(a).
Rewrote (a) and (c).
Amended by R.2007 d.168, effective May 21, 2007.
See: 39 N.J.R. 281(a), 39 N.J.R. 2011(a).
Rewrote (a); and in (c), inserted the last sentence.
Amended by R.2008 d.133, effective May 19, 2008.
See: 40 N.J.R. 839(a), 40 N.J.R. 2429(b).
In the introductory paragraph of (a), substituted "$7,000,000" for "$5,000,000" and "$2,000,000" for "$1,800,000" and inserted "tax credit" following "one-bedroom"; in (a)2, inserted "or elects to restrict 10 percent of the tax credit units to households earning 35 percent or less of area median income adjusted for family size", deleted "20 percent at 50 percent" preceding "election shall", inserted "/or" and inserted "eligi-

ble" preceding "applications"; in (a)3, inserted "/Replacement Housing" twice, inserted "or Replacement Housing factor" and inserted "eligible" preceding "applications"; in (a)4, inserted "either", substituted an opening parenthesis for a semicolon preceding "that is", inserted ") or offers services, such as daycare, job training or other community services, to the qualified census tract in which the project is located" and deleted "located within the qualified census tract in which the project is located" following the third occurrence of "organization"; in (a)5, substituted "income" for the first occurrence of "Income" and substituted "mixed income" for "Mixed Income" twice; in (b), updated the N.J.A.C. reference; and in (c), deleted "or developer" following the first occurrence of "municipality" and deleted "and/or developer/general partner/managing member" following the second occurrence of "municipality".
Amended by R.2009 d.154, effective May 4, 2009.
See: 41 N.J.R. 917(a), 41 N.J.R. 1994(a).
In the introductory paragraph of (a), substituted "$9,000,000" for "$7,000,000", "$2,250,000" for "$2,000,000" and "two" for "five"; deleted former (a)1 and (a)2; recodified former (a)3 and (a)4 as (a)1 and (a)2; in (a)1, substituted "first" for "third"; rewrote (a)2; deleted (a)5; rewrote (b); and in (c), substituted "two" for "three" and deleted "and two projects per cycle" preceding the first occurrence of "year".
Amended by R.2010 d.060, effective April 19, 2010.
See: 42 N.J.R. 583(a), 42 N.J.R. 776(a).
In (a)1, inserted "/CFRC" twice, substituted a comma for "or" preceding "Replacement Housing Factor", and inserted "or Capital Fund Recovery Competition (CFRC)".
Amended by R.2011 d.239, effective September 6, 2011.
See: 43 N.J.R. 917(a), 43 N.J.R. 2293(a).
Rewrote (a); and in (b), substituted "redevelopment" for "HOPE VI/ Replacement Housing" and "preservation" for "nonprofit".
Amended by R.2013 d.086, effective June 17, 2013.
See: 45 N.J.R. 530(a), 45 N.J.R. 1511(a).
Rewrote (a) through (c); and added (d).

5:80-33.5 Senior Cycle

(a) Senior projects may apply to this cycle. Not less than 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 $1,400,000. Total development costs shall not exceed $250,000 per unit for buildings of one to four residential stories, $275,000 per unit for buildings with five or six residential stories, and $300,000 per unit for buildings with over six residential stories, excluding capitalized permanent reserves, non-basis eligible off-site improvements, and required deferred developer fee, if any. 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/Choice Neighborhood set-aside: The first reservation of credits from the Senior Cycle shall be given to the highest-ranking eligible application from a HOPE VI or Choice Neighborhood project with a majority of its units located within a Qualified Census Tract. If, because of lack of demand, this set-aside is not utilized, the credits shall be released into the Senior Cycle for use by other eligible applications.

(b) 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) Reservations shall first be awarded to the highest-ranking eligible project qualifying for the aforementioned prioritized set-aside. 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, NJHMFA shall fund no more than two projects per year from the same municipality (however, projects funded through the Supportive Housing Cycle will not be included in this count). Funding of projects shall be prioritized in the following manner: the highest ranking eligible project(s) in the Family Cycle, the Senior 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.

(d) Forty percent of the credits in this cycle (inclusive of all set-asides) shall be made available to Targeted Urban Municipalities and the remaining credits shall be allocated to the remainder of the State, provided NJHMFA receives a sufficient number of eligible applications from areas outside of Targeted Urban Municipalities to result in these allocation percentages. The credits allocated toward Targeted Urban Municipalities could exceed 40 percent if necessary to fully fund a project.

Amended by R.1997 d.284, effective July 7, 1997.
See: 29 N.J.R. 1441(a), 29 N.J.R. 2818(a).
Substituted references to family project or family set-aside for references to senior project or senior set-aside throughout; in (a), substituted reference to municipalities on the Urban Cycle List for reference specifying types of municipalities; rewrote (a)1; and in (a)2, inserted references to the Rural Cycle.
Amended by R.1999 d.120, effective April 5, 1999.
See: 31 N.J.R. 122(a), 31 N.J.R. 860(a).
Rewrote the section.
Amended by R.2000 d.132, effective March 20, 2000.
See: 32 N.J.R. 191(a), 32 N.J.R. 1065(a).
In (a), inserted a new second sentence in the introductory paragraph.
Amended by R.2001 d.170, effective May 21, 2001.
See: 33 N.J.R. 932(a), 33 N.J.R. 1573(b).
In (a), substituted "are three set-asides" for "is one set-aside" and added new 2 and 3; rewrote (b) and added new (c).
Amended by R.2002 d.233, effective July 15, 2002.
See: 34 N.J.R. 1574(a), 34 N.J.R. 2417(a).
Rewrote the section.
Repeal and New Rule, R.2003 d.300, effective July 21, 2003.
See: 35 N.J.R. 1616(a), 35 N.J.R. 3298(b).
Section was "Suburban/Rural Cycle".
Amended by R.2006 d.112, effective March 20, 2006.
See: 37 N.J.R. 3879(a), 38 N.J.R. 1432(a).
Rewrote (a) and (c).
Amended by R.2007 d.168, effective May 21, 2007.
See: 39 N.J.R. 281(a), 39 N.J.R. 2011(a).
Rewrote (a); and in (c), inserted the last sentence.
Amended by R.2008 d.133, effective May 19, 2008.
See: 40 N.J.R. 839(a), 40 N.J.R. 2429(b).
In the introductory paragraph of (a), substituted "$3,000,000" for "$2,400,000" and "$1,500,000" for "$1,200,000"; in (a)2, inserted "or elects to restrict 10 percent of the tax credit units to households earning 35 percent or less of area median income adjusted for family size", deleted "20 percent at 50 percent" preceding "election shall", inserted "/or" and inserted "eligible" preceding "applications"; in (a)3, inserted "/Replacement Housing" twice, inserted "or Replacement Housing factor" and inserted "eligible" preceding "applications"; in (b), updated the N.J.A.C. reference; and in (c), deleted "or developer" following the

first occurrence of "municipality" and deleted "and/or developer/general partner/managing member" following the second occurrence of "municipality".
Amended by R.2009 d.154, effective May 4, 2009.
See: 41 N.J.R. 917(a), 41 N.J.R. 1994(a).
In the introductory paragraph of (a), substituted "$1,750,00" for "$1,500,00" and "is one set-aside" for "are three set-asides"; deleted former (a)1 and (a)2; recodified former (a)3 as (a)1; in (a)1, substituted "first" for "third"; rewrote (b); and in (c), substituted "two" for "three" and deleted "and two projects per cycle" following "projects per year".
Amended by R.2010 d.060, effective April 19, 2010.
See: 42 N.J.R. 583(a), 42 N.J.R. 776(a).
In (a)1, inserted "/CFRC" twice, substituted a comma for "or" preceding "Replacement Housing Factor", and inserted "or Capital Fund Recovery Competition (CFRC)".
Amended by R.2011 d.239, effective September 6, 2011.
See: 43 N.J.R. 917(a), 43 N.J.R. 2293(a).
Rewrote (a).
Amended by R.2013 d.086, effective June 17, 2013.
See: 45 N.J.R. 530(a), 45 N.J.R. 1511(a).
Rewrote the introductory paragraph of (a) and (a)1, and (c); and added (d).

5:80-33.6 Supportive Housing Cycle

(a) Supportive housing projects in which a minimum of 25.00 percent of the total project units are rented to individuals with special needs 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 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. Total development costs shall not exceed $250,000 per unit for buildings of one to four residential stories, $275,000 per unit for buildings with five or six residential stories, and $300,000 per unit for buildings with over six residential stories, excluding capitalized permanent reserves, non-basis eligible off-site improvements, and required deferred developer fee, if any.

(b) Reservations shall be awarded to the highest-ranking eligible projects.

(c) 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 a set-aside.

(d) Forty percent of the credits in this cycle (inclusive of all set-asides) shall be made available to Targeted Urban Municipalities and the remaining credits shall be allocated to the remainder of the State, provided NJHMFA receives a sufficient number of eligible applications from areas outside of Targeted Urban Municipalities to result in these allocation percentages. The credits allocated toward Targeted Urban Municipalities could exceed 40 percent if necessary to fully fund a project.

Amended by R.1997 d.284, effective July 7, 1997.
See: 29 N.J.R. 1441(a), 29 N.J.R. 2818(a).
Substantially amended section.
Recodified from N.J.A.C. 5:80-33.6 and amended by R.1998 d.279, effective June 1, 1998.
See: 30 N.J.R. 1132(a), 30 N.J.R. 1978(a).
Rewrote (a). Former N.J.A.C. 5:80-33.8, Reserve, was recodified to N.J.A.C. 5:80-33.10.
Recodified from N.J.A.C. 5:80-33.8 and amended by R.1999 d.120, effective April 5, 1999.
See: 31 N.J.R. 122(a), 31 N.J.R. 860(a).
In (a), substituted "tax credit" for "total number of" preceding "units" in the first sentence, and rewrote 1. Former N.J.A.C. 5:80-33.7, Mixed Income Cycle, repealed.
Amended by R.2000 d.132, effective March 20, 2000.
See: 32 N.J.R. 191(a), 32 N.J.R. 1065(a).
In (a), inserted "(10 percent of the tax credit units for Work First projects)" following "credit units" in the introductory paragraph, substituted "$210,000" for "$300,000" in the first sentence in 1, and rewrote 2; and in (b), substituted "Work First" for "HIV/AIDS" throughout.
Amended by R.2001 d.170, effective May 21, 2001.
See: 33 N.J.R. 932(a), 33 N.J.R. 1573(b).
Rewrote (a)1; and added (c).
Amended by R.2002 d.233, effective July 15, 2002.
See: 34 N.J.R. 1574(a), 34 N.J.R. 2417(a).
Rewrote the section.
New Rule, R.1998 d.279, effective June 1, 1998.
See: 30 N.J.R. 1132(a), 30 N.J.R. 1978(a).
Former N.J.A.C. 5:80-33.6, Special Needs Cycle, was recodified to N.J.A.C. 5:80-33.8.
Amended by R.1999 d.120, effective April 5, 1999.
See: 31 N.J.R. 122(a), 31 N.J.R. 860(a).
Rewrote the section.
Amended by R.2002 d.233, effective July 15, 2002.
See: 34 N.J.R. 1574(a), 34 N.J.R. 2417(a).
Rewrote the section.
Recodified from N.J.A.C. 5:80-33.7 and amended by R.2003 d.300, effective July 21, 2003.
See: 35 N.J.R. 1616(a), 35 N.J.R. 3298(b).
Rewrote (a), (b); and in (c), amended N.J.A.C. reference.
Amended by R.2006 d.112, effective March 20, 2006.
See: 37 N.J.R. 3879(a), 38 N.J.R. 1432(a).
Section heading was "Special Needs Cycle"; rewrote (a) and (b).
Amended by R.2007 d.168, effective May 21, 2007.
See: 39 N.J.R. 281(a), 39 N.J.R. 2011(a).
In (b), inserted the last sentence.
Amended by R.2008 d.133, effective May 19, 2008.
See: 40 N.J.R. 839(a), 40 N.J.R. 2429(b).
In the introductory paragraph of (a), substituted "$2,000,000" for "$1,800,000"; in (b), deleted "or developer" following the first occurrence of "municipality" and deleted "and/or developer/general partner/managing member" following the second occurrence of "municipality"; and in (c), updated the N.J.A.C. reference.
Amended by R.2009 d.154, effective May 4, 2009.
See: 41 N.J.R. 917(a), 41 N.J.R. 1994(a).
In (a), substituted "Supportive housing projects" for "Projects", "individuals with special needs" for "a special needs client population" and "$1,200,000" for "$900,000", and inserted the second sentence; in (b), substituted "two" for "three" and deleted "and two projects per cycle" following "projects per year".
Amended by R.2011 d.239, effective September 6, 2011.
See: 43 N.J.R. 917(a), 43 N.J.R. 2293(a).
In (a), substituted "12.5 percent of the available tax credit authority attributable to a particular calendar year" for "$2,000,000" and "$1,000,000" for "$1,200,000"; and added the last two sentences.
Amended by R.2013 d.086, effective June 17, 2013.
See: 45 N.J.R. 530(a), 45 N.J.R. 1511(a).
Rewrote (a) and (b); and added (d).

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 $1,750,000. Total development costs shall not exceed $250,000 per unit for buildings of one to four residential stories, $275,000 per unit for buildings with five or six residential stories, and $300,000 per unit for buildings with over six residential stories, excluding capitalized permanent reserves, non-basis eligible off-site improvements, and required deferred developer fee, if any. 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 20.00 percent of the tax credit units; at least 30.00 percent of the tax credit units shall be two-bedroom units; and at least 20.00 percent of the tax credit units shall be three-bedroom units.

(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 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 (however, projects funded through the Supportive Housing Cycle will not be included in this count). Funding of projects shall be prioritized in the following manner: the highest ranking eligible project(s) in the Family Cycle, the Senior 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) 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.

Amended by R.1997 d.284, effective July 7, 1997.
See: 29 N.J.R. 1441(a), 29 N.J.R. 2818(a).
Inserted references to Rural Cycle.
Recodified from N.J.A.C. 5:80-33.7 and amended by R.1998 d.279, effective June 1, 1998.
See: 30 N.J.R. 1132(a), 30 N.J.R. 1978(a).
In (a), inserted "including minimum rehab projects" following "All projects". Former N.J.A.C. 5:80-33.9, Application fee schedule, was recodified to N.J.A.C. 5:80-33.12.
Recodified from N.J.A.C. 5:80-33.9 and amended by R.1999 d.120, effective April 5, 1999.
See: 31 N.J.R. 122(a), 31 N.J.R. 860(a).
Rewrote the section. Former N.J.A.C. 5:80-33.8, Special Needs Cycle, recodified to N.J.A.C. 5:80-33.7.
Amended by R.2001 d.170, effective May 21, 2001.
See: 33 N.J.R. 932(a), 33 N.J.R. 1573(b).
Rewrote the section.
Amended by R.2002 d.233, effective July 15, 2002.
See: 34 N.J.R. 1574(a), 34 N.J.R. 2417(a).
Rewrote the section.
Recodified from N.J.A.C. 5:80-33.8 and amended by R.2003 d.300, effective July 21, 2003.
See: 35 N.J.R. 1616(a), 35 N.J.R. 3298(b).
Rewrote (a), (b); in (c), amended N.J.A.C. reference; in (d), inserted "eligible" following "ranking"; in (e), introductory paragraph deleted "simply"; rewrote 2. Former N.J.A.C. 5:80-33.7, Special needs cycle, recodified to N.J.A.C. 5:80-33.6.
Amended by R.2006 d.112, effective March 20, 2006.
See: 37 N.J.R. 3879(a), 38 N.J.R. 1432(a).
In introductory paragraph (a), added "at least"; in (b), added "general partner/managing member" and substituted "Supportive Housing" for "Special Needs".
Amended by R.2007 d.168, effective May 21, 2007.
See: 39 N.J.R. 281(a), 39 N.J.R. 2011(a).
In (a), inserted the third sentence; and in (b), inserted a comma following "Then" in the third sentence; and inserted the last sentence.
Amended by R.2008 d.133, effective May 19, 2008.
See: 40 N.J.R. 839(a), 40 N.J.R. 2429(b).
In the introductory paragraph of (a), rewrote the second sentence and inserted "tax credit" following "one-bedroom" in the third sentence; in (a)1, inserted "/Replacement Housing" twice, inserted "or Replacement Housing Factor" and substituted "this" for "the HOPE VI" preceding "set-aside"; in (b), substituted "If" for "In the unlikely event that", inserted "/Replacement Housing" and deleted "or developer" following the first occurrence of "municipality" and deleted "and/or developer/general partner/managing member" following the second occurrence of "municipality"; and in (c), updated the N.J.A.C. reference.
Amended by R.2009 d.154, effective May 4, 2009.
See: 41 N.J.R. 917(a), 41 N.J.R. 1994(a).
Rewrote (a) and (c); in (b), substituted "preservation" for "HOPE VI/Replacement Housing", deleted the former third sentence, substituted "two" for "three" and deleted "and two projects per cycle" following "projects per year"; deleted former (d); and recodified former (e) as (d).
Amended by R.2011 d.239, effective September 6, 2011.
See: 43 N.J.R. 917(a), 43 N.J.R. 2293(a).
Rewrote (a); and in (b), deleted "reservations shall be awarded to the highest-ranking eligible preservation project. Then" following "satisfied,".
Amended by R.2013 d.086, effective June 17, 2013.
See: 45 N.J.R. 530(a), 45 N.J.R. 1511(a).
Rewrote (a); in (b), inserted "(however, projects funded through the Supportive Housing Cycle will not be included in this count)", and deleted "the Supportive Housing Cycle" preceding "and lastly"; deleted former (c); and recodified former (d) as (c).

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. 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 Supportive Housing Cycles. The next supplemental awards shall be given to the project which requires the least amount of credits from the Reserve to achieve the maximum eligible credit amount. Should sufficient credits exist in the Reserve, NJHMFA shall give a supplemental award to the highest-ranking, partially funded eligible projects from both the Senior and Supportive Housing Cycles. 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. Total development costs shall not exceed $250,000 per unit for buildings of one to four residential stories, $275,000 per unit for buildings with five or six residential stories, and $300,000 per unit for buildings with over six residential stories, excluding capitalized permanent reserves, non-basis eligible off-site improvements, and required deferred developer fee, if any. 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. No more than one hardship award shall be approved with respect to a given project. Hardship applications to the Reserve are accepted on an ongoing basis until May 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. Approximately $2,000,000 in credits shall be set aside for eligible family projects with up to a 55 percent affordability component. The project's market study at N.J.A.C. 5:80-33.12(c)1ii shall clearly demonstrate that the tax credit units provide a minimum 20 percent market advantage compared to comparable market rate units. Total development costs shall not exceed $250,000 per unit for buildings of one to four residential stories, $275,000 per unit for buildings with five or six residential stories, and $300,000 per unit for buildings with over six residential stories, excluding capitalized permanent reserves, non-basis eligible off-site improvements, and required deferred developer fee, if any. Projects shall achieve a minimum of 65 percent of the maximum score under the ranking criteria established under N.J.A.C. 5:80-33.15. Should multiple projects be deemed eligible at the same Tax Credit Committee meeting, credits shall be awarded in accordance with the tiebreaker at N.J.A.C. 5:80-33.19(a)1iii; however, NJHMFA shall fund at least one project in a Targeted Urban Municipality and one project not in a Targeted Urban Municipality, provided NJHMFA receives eligible applications from both areas. Mixed income applications to the Reserve are accepted until two months prior to the anticipated date that credits for the Family Cycle at N.J.A.C. 5:80-33.4 are to be awarded. Credits not awarded under this paragraph shall be deposited for use in the Family Cycle at N.J.A.C. 5:80-33.4.

Amended by R.1997 d.284, effective July 7, 1997.
See: 29 N.J.R. 1441(a), 29 N.J.R. 2818(a).
Substantially amended section.
Recodified from N.J.A.C. 5:80-33.8 and amended by R.1998 d.279, effective June 1, 1998.
See: 30 N.J.R. 1132(a), 30 N.J.R. 1978(a).
Rewrote (a). Former N.J.A.C. 5:80-33.10, Cycle deadlines, was recodified to N.J.A.C. 5:80-33.13.
Recodified from N.J.A.C. 5:80-33.10 and amended by R.1999 d.120, effective April 5, 1999.
See: 31 N.J.R. 122(a), 31 N.J.R. 860(a).
Rewrote (a). Former N.J.A.C. 5:80-33.9, Final Cycle, recodified to N.J.A.C. 5:80-33.8.
Amended by R.2000 d.132, effective March 20, 2000.
See: 32 N.J.R. 191(a), 32 N.J.R. 1065(a).
Rewrote (a).
Amended by R.2002 d.233, effective July 15, 2002.
See: 34 N.J.R. 1574(a), 34 N.J.R. 2417(a).
In (a), rewrote 1 and inserted "for additional credits from the Reserve" following "Hardship requests" in the first sentence and amended N.J.A.C. reference in 2.
Recodified from N.J.A.C. 5:80-33.9 and amended by R.2003 d.300, effective July 21, 2003.
See: 35 N.J.R. 1616(a), 35 N.J.R. 3298(b).
Rewrote the section. Former N.J.A.C. 5:80-33.8, Final cycle, recodified to N.J.A.C. 5:80-33.7.
Amended by R.2006 d.112, effective March 20, 2006.
See: 37 N.J.R. 3879(a), 38 N.J.R. 1432(a).
Rewrote (a)1, deleted (a)3.
Amended by R.2008 d.133, effective May 19, 2008.
See: 40 N.J.R. 839(a), 40 N.J.R. 2429(b).
In the introductory paragraph of (a), substituted "Family, Senior, and Supportive Housing Cycles and Final Cycles" for "Family, Senior, Supportive Housing and Final Cycles"; and in (a)2, rewrote the third sentence and deleted the former fourth and fifth sentences.
Amended by R.2009 d.154, effective May 4, 2009.
See: 41 N.J.R. 917(a), 41 N.J.R. 1994(a).
In the introductory paragraph of (a), deleted "and" preceding "Supportive" and substituted a comma for "Cycles" following "Housing"; in (a)2, substituted "May" for "July"; and added (a)3.
Amended by R.2011 d.239, effective September 6, 2011.
See: 43 N.J.R. 917(a), 43 N.J.R. 2293(a).
Deleted (a)3.
Amended by R.2013 d.086, effective June 17, 2013.
See: 45 N.J.R. 530(a), 45 N.J.R. 1511(a).
In (a)2, inserted the second sentence; and added (a)3.

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 shall be submitted at least one month 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)16, 18 or 19 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 granted a density bonus to assist the low- or moderate-income units in a project, the project may not receive volume cap credits unless the applicant can conclusively demonstrate that the market rate residential or commercial units are unable to internally subsidize the affordable units despite the density bonus and the affordable units are developed contemporaneously with the commercial or market rate residential units. In evaluating these criteria, NJHMFA shall adopt the standards as promulgated by the DCA for similar types of projects seeking Balanced Housing funds. 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.

New Rule, R.1998 d.279, effective June 1, 1998.
See: 30 N.J.R. 1132(a), 30 N.J.R. 1978(a).
Former N.J.A.C. 5:80-33.11, Application to a cycle/eligibility requirements, was recodified to N.J.A.C. 5:80-33.14.
Recodified from N.J.A.C. 5:80-33.11 and amended by R.1999 d.120, effective April 5, 1999.
See: 31 N.J.R. 122(a), 31 N.J.R. 860(a).
In (a), changed N.J.A.C. references throughout, added the last sentence in the introductory paragraph, and added the last sentence in 1. Former N.J.A.C. 5:80-33.10, Reserve, recodified to N.J.A.C. 5:80-33.9.
Amended by R.2000 d.132, effective March 20, 2000.
See: 32 N.J.R. 191(a), 32 N.J.R. 1065(a).
Added paragraph (b).
In (a), rewrote the fourth sentence in the introductory paragraph, and changed N.J.A.C. reference in 4; and added (b).
Amended by R.2001 d.170, effective May 21, 2001.
See: 32 N.J.R. 932(a), 33 N.J.R. 1573(b).
In (a), inserted "except the eligibility requirement at N.J.A.C. 5:80-33.13(c)8 concerning strategic neighborhood plan;" following NJAC reference; added (a)5.
Amended by R.2002 d.233, effective July 15, 2002.
See: 34 N.J.R. 1574(a), 34 N.J.R. 2417(a).
In (a), inserted ", ENERGY STAR Homes participation (new construction projects only)" following "(if applicable)" and amended N.J.A.C. reference in the introductory paragraph and amended N.J.A.C. reference in 4.
Recodified from N.J.A.C. 5:80-33.10 and amended by R.2003 d.300, effective July 21, 2003.
See: 35 N.J.R. 1616(a), 35 N.J.R. 3298(b).
In (a), introductory paragraph inserted "of the Code" following "Section 42(m)(1)(D)", substituted "33.12" for "33.13 except the eligibility requirement at N.J.A.C. 5:80-33.13(c) concerning strategic neighborhood plan", amended N.J.A.C. references throughout. Former N.J.A.C. 5:80-33.9, Reserve, recodified to N.J.A.C. 5:80-33.8.
Amended by R.2008 d.133, effective May 19, 2008.
See: 40 N.J.R. 839(a), 40 N.J.R. 2429(b).
In the introductory paragraph of (a), substituted the first occurrence of "shall" for "should" and inserted "at least one month"; and in (a)4, updated the N.J.A.C. reference.
Amended by R.2009 d.154, effective May 4, 2009.
See: 41 N.J.R. 917(a), 41 N.J.R. 1994(a).
Rewrote (b).
Amended by R.2013 d.086, effective June 17, 2013.
See: 45 N.J.R. 530(a), 45 N.J.R. 1511(a).
In (b), substituted "granted" for "created" and "DCA" for "Department of Community Affairs", and deleted "subsidy" following the first occurrence of "density bonus".

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 Supportive Housing 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 for projects requesting credits from the Reserve and for projects that applied to the Family, Senior or Supportive Housing 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 fee.

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

Amended by R.1997 d.284, effective July 7, 1997.
See: 29 N.J.R. 1441(a), 29 N.J.R. 2818(a).
In (a)1, inserted reference to Rural Cycle and added "as well as for projects applying for volume cap tax credits"; and in (a)2, inserted "B" following "Reserve" and inserted reference to Rural Cycle.

Recodified from N.J.A.C. 5:80-33.9 and amended by R.1998 d.279, effective June 1, 1998.
See: 30 N.J.R. 1132(a), 30 N.J.R. 1978(a).
In (a), inserted references to HOPE VI, Mixed Income. Former N.J.A.C. 5:80-33.12, Application to the Reserve (B), was recodified to N.J.A.C. 5:80-33.15.
Recodified from N.J.A.C. 5:80-33.12 and amended by R.1999 d.120, effective April 5, 1999.
See: 31 N.J.R. 122(a), 31 N.J.R. 860(a).
In (a), deleted references to the Mixed Income Cycle throughout. Former N.J.A.C. 5:80-33.11, Volume cap credits, recodified to N.J.A.C. 5:80-33.10.
Amended by R.2002 d.233, effective July 15, 2002.
See: 34 N.J.R. 1574(a), 34 N.J.R. 2417(a).
In (a)2, substituted "owner" for "sponsor" following "sites, or".
Recodified from N.J.A.C. 5:80-33.11. and amended by R.2003 d.300, effective July 21, 2003.
See: 35 N.J.R. 1616(a), 35 N.J.R. 3298(b).
In (a)1, substituted "$2,500" for "$1,000" "Family, Senior" for "Urban, Suburban/Rural, HOPE VI" throughout. Former N.J.A.C. 5:80-33.10, Volume cap credits, recodified to N.J.A.C. 5:80-33.9.
Amended by R.2006 d.112, effective March 20, 2006.
See: 37 N.J.R. 3879(a), 38 N.J.R. 1432(a).
In (a)1 and 2, substituted "Supportive Housing" for "Special Needs".
Amended by R.2009 d.154, effective May 4, 2009.
See: 41 N.J.R. 917(a), 41 N.J.R. 1994(a).
In (a)2, deleted "is due" preceding and "hardship" following "for projects requesting" and deleted a comma following "reservation of credits".

5:80-33.11 Cycle deadlines

(a) Application cycles shall be announced by NJHMFA via notices sent to the mailing list maintained by the Tax Credit Division 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. Late applications shall be returned to the applicant.

(b) It is the burden of the applicant to comply 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) Applicants shall be given 48 hours to cure defects as follows, except for applications that NJHMFA deems to be substantially incomplete:

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) Except for applications that NJHMFA deems to be substantially incomplete, NJHMFA shall notify the applicant of any curable defects it discovers by telephone and, simultaneously, in writing by electronic mail (e-mail). 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 e-mail. No application will receive more than one notice for a curable defect. A project that has previously applied for competitive credits (a reapplication) may receive notification of a curable defect regardless of whether such project has received notification in the past.

(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)15 to 19; 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.

Recodified from N.J.A.C. 5:80-33.10 and amended by R.1998 d.279, effective June 1, 1998.
See: 30 N.J.R. 1132(a), 30 N.J.R. 1978(a).
Added new (b) through (e); and recodified former (b) as (f). Former N.J.A.C. 5:80-33.13, Scoring and ranking, was recodified to N.J.A.C. 5:80-33.16.
Recodified from N.J.A.C. 5:80-33.13 and amended by R.1999 d.120, effective April 5, 1999.
See: 31 N.J.R. 122(a), 31 N.J.R. 860(a).
In (e), changed the deduction from two points to one point; inserted a new (f); and recodified former (f) as (g). Former N.J.A.C. 5:80-33.12, Application fee schedule, recodified to N.J.A.C. 5:80-33.11.
Amended by R.2000 d.132, effective March 20, 2000.
See: 32 N.J.R. 191(a), 32 N.J.R. 1065(a).
In (f), changed N.J.A.C. reference.
Amended by R.2001 d.170, effective May 21, 2001 .
See: 33 N.J.R. 932(a), 33 N.J.R. 1573(b).
In (a), inserted "Applications shall be submitted to NJHMFA by 12 noon of the application deadline date in order to be considered for law review" and "(see definition)"; in (c), inserted "(see definition)" following "incomplete"; in (e), inserted "for each defect cured" following "point".
Amended by R.2002 d.233, effective July 15, 2002.
See: 34 N.J.R. 1574(a), 34 N.J.R. 2417(a).
In (f), amended N.J.A.C. reference.
Recodified from N.J.A.C. 5:80-33.12 and amended by R.2003 d.300, effective July 21, 2003.
See: 35 N.J.R. 1616(a), 35 N.J.R. 3298(b).
In (a), inserted "date" preceding the third sentence, deleted "(see definition)" following "incomplete"; in (f) substituted "Failure" for "For

example, failure", amended N.J.A.C. reference; in (g), substituted "pursuant to (d) and (e) above" for "under the cure period", inserted "or considered" following "accepted". Former N.J.A.C. 5:80-33.11, Application fee schedule, recodified to N.J.A.C. 5:80-33.10.
Amended by R.2006 d.112, effective March 20, 2006.
See: 37 N.J.R. 3879(a), 38 N.J.R. 1432(a).
In (a), added "maintained by the Tax Credit Division" and "Late applications"; rewrote introductory paragraph (c); in (d), added "Except for applications that NJHMFA deems to be substantially incomplete" and the last sentence.
Amended by R.2008 d.133, effective May 19, 2008.
See: 40 N.J.R. 839(a), 40 N.J.R. 2429(b).
In (f), updated the N.J.A.C. reference.
Amended by R.2009 d.154, effective May 4, 2009.
See: 41 N.J.R. 917(a), 41 N.J.R. 1994(a).
In (a), substituted "shall" for "will" in the last sentence.
Amended by R.2013 d.086, effective June 17, 2013.
See: 45 N.J.R. 530(a), 45 N.J.R. 1511(a).
In (b), deleted "literally" following "comply", and inserted a comma following "unambiguous"; and rewrote (d).

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

(a) If a municipality has granted a density bonus to assist the low- or moderate income units in a project, the project may not compete for tax credits (ceiling tax credits) unless the applicant can conclusively demonstrate that the market rate residential or commercial units are unable to internally subsidize the affordable units despite the density bonus and the affordable units are developed contemporaneously with the commercial or market rate residential units. In evaluating these criteria, NJHMFA shall adopt the standards as promulgated by the DCA for similar types of projects seeking Balanced Housing funds. 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. 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 nonprofit developer, then the new owner may not compete for ceiling tax credits if the market rate residential units were able to subsidize the affordable units. Alternatively, if on the same site the number of low- and moderate-income 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 by the application deadline 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. 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, absorption period, and the market advantage compared to comparable market rate properties 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. A description of the proposed improvements including unit mix, a commentary on the preliminary drawings including unit size and design, proposed project and unit amenities, and any applicable tenant charges, tenant-paid utilities, and project-paid utilities shall be provided;

(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. Interviews shall be conducted with area apartment managers to establish mobility patterns in the area. Particular attention should be given to tax credit properties. As available, the results of the interviews shall be reported, showing the percentage of residents by neighborhood/community. For cases in which the subject property is an existing rental development or later phase of an existing development, detailed tenure by prior residence must be shown. Additional explanation shall be provided for any market area with boundaries in excess of three miles (urban site) or five miles (rural site) of the site;

(4) An economic analysis that provides the reader context to better understand the household and rent trends in the market. Topics to be addressed shall include:

(A) Presentation of data and analysis pertaining to the trend in resident employment and unemployment;

(B) Presentation of data and analysis pertaining to trends over the past five years in total at-place employment (that is, jobs) in the county in which the subject site is located;

(C) Presentation of data and analysis pertaining to at-place employment by industry sector for the primary market area (PMA) or smallest available geographic area that includes the PMA and comparison to appropriate larger geographic area (that is, city, county, metropolitan statistical area, or labor market area);

(D) A list of major employers in the PMA or other appropriate small geographic area and announced changes in workforce (that is, expansions, contractions, and relocations), contractions in their workforces, as well as newly announced employers and their anticipated effect on the local economy; and

(E) A map of major employers and employment centers in relation to the subject property;

(5) 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 households 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 decennial 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 Nielsen or a governmental source such as the American Community Survey, metropolitan planning organizations, or local planning agencies. Supportive Housing projects shall also provide demographics on the special needs population in the project in order to substantiate need and demand at projected rent levels;

(6) Rent, vacancy, and amenity surveys by unit size of market rate, affordable, and subsidized properties. The affordable property survey shall include all LIHTC properties in the market area and those projects that are currently under construction or have received preliminary site plan approval. A rent adjustment analysis of the most comparable properties to the subject shall be presented to derive a market rent for each unit type. Data shall include, at a minimum, a grid analysis by unit size for rents, amenities, unit features, 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 appropriate comparisons can be made. The proposed rent shall have at least a 10 percent rent advantage in relation to the estimate of market rent. Additional information concerning unit mix, vacancy and turnover rates, operating expenses, rent trends, rent concessions, rent control, waiting lists, absorption per month, design, 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. All comparable properties should be within the delineated market area when possible. In cases where a comparable project has to be chosen from outside the market area (for example, where there is not enough similar rental product in the market area), appropriate adjustments should be made for location differences. 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;

(7) The capture rate, absorption period, and the impact the proposed rental housing may have on existing inventory. 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 affordable 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 at 60 percent Federal set-aside) of a household. The maximum income limit shall be based on an average household size of 1.5 persons per bedroom for the largest tax credit unit. For single room occupancy projects, assume one person per unit. Maximum income limits for all proposed senior projects shall be limited to a two-person household. 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 stabilization (93 percent occupancy) 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;

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

(9) 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

(10) 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 the Model Content Standards for Market Studies for Rental Housing of the National Council of Housing Market Analysts (NCHMA), 1400 16th Street NW, Suite 420, Washington, DC 20036, which Market Content Standards are available at http://www.housingonline.com/resources.aspx, incorporated herein by reference, as amended and supplemented.

(11) 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 and projects receiving Project Based Section 8 rental assistance for 100 percent of the units, the form of market analysis described below may be submitted in lieu of the market study requirements listed in (c)1ii(1) through (7) 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 market rate, affordable, 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(8) through (11) 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.

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 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(s) to be acquired and, if the property is to be or may be acquired by eminent domain, identifies the condemnor, as such term is defined at N.J.S.A. 20:3-1 et seq. or its successor. The acquisition price and basis shall be limited to the lesser of the purchase price or the "as is" appraised value of the building and/or land.

ii. The applicant assumes the full burden of 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 (or equivalent) 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 is 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 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 site(s) 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. 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. 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). The maximum mortgage supportable shall have been obtained.

ii. State Balanced Housing, Home Express, State Community Development Block Grant (CDBG), or HOME funds: Projects applying for Balanced Housing or Home Express funds and tax credits shall comply with the applicable rules of these programs. DCA shall inform NJHMFA of those projects that have submitted a complete application for State Balanced Housing, State CDBG, 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, State CDBG, and HOME commitments at the same time NJHMFA awards the reservations of tax credits.

iii. Grants: 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, 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 and recognizes that 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/ordinance 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 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 supporting documentation (that is, bank statements) and 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 50.00 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/binding agreement). Failure to secure said funding source and subsequently reduce the deferred portion of the developer fee to 50.00 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 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 lowest level of the NJHMFA equity range. Applicants that have an investment agreement with their investor shall have their project underwritten at a higher price, upon request, provided the equity pricing falls within the NJHMFA equity range. The applicant shall include in the 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 base of the equity range 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 base of the NJHMFA equity range. 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 applying for tax credits and the FHLB Affordable Housing Program shall not be required to submit a commitment letter from FHLB by the application deadline. 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 deferred developer fee, identified in the tax credit application and commitment of the alternate funding is received by issuance of the carryover allocation/binding agreement.

ix. Regional contribution agreements (RCAs): A copy of the municipal resolution/ordinance approving the funds for the project or the project plan amendment that includes the project and is approved by the receiving municipality is required to be submitted with the application.

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 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. Projects shall be underwritten to demonstrate project feasibility at a household median income percentage that is 2.5 percent 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 47.5 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, including 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). That is, a project's applications for any and all other financing must mirror the development cost, operating assumptions, rent structure, etc., shown in the tax credit application.

(2) Year one of the pro forma shall show stabilized operations. If the pro forma 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)13 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, supportive housing projects shall be underwritten at

rents no more than 20 percent of area median income adjusted for family size. For non-supportive housing 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 a-bove); 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 $3,000 and $4,000 per unit. For those projects with core operating expenses less than $3,000 per unit or more than $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 $3,000 per unit and no senior project shall have core operating expenses above $4,000 per unit. Other operating expenses will be evaluated for reasonableness given the characteristics of the project.

(5) Executed leases for a minimum term of five years shall be required for projects that rely upon commercial income to demonstrate financial feasibility. Should the term of the executed lease end prior to the end of the compliance period, NJHMFA shall use a vacancy rate of 50 percent for the years not covered by the lease.

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) or an NJHMFA Form 10 signed by the NJHMFA Property Management Division. 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 New Jersey Clean Energy Program's (NJCEP) NJ *ENERGY*Efficient Homes Program or equivalent per the Guide to NJHMFA ENERGY STAR Equivalency Requirements (Guide), incorporated herein by reference as subchapter Appendix A, shall be required for all applications. All applicants shall comply with the requirements of the Guide. Applications shall include a copy of a signed contract between the applicant and a Home Energy Rating System (HERS) rater (per NJCEP NJ *ENERGY*Efficient Homes Program guidelines) and a signed letter of intent provided by NJHMFA, which states that the applicant has read the Guide and will comply with all requirements thereof. At the time a project places in service, owners shall submit to NJHMFA the NJ *ENERGY*Efficient Homes Certificate issued by the NJCEP (or equivalent) for each dwelling unit/building, as applicable, in the project.

9. Successful completion of an NJHMFA-approved tax credit certification program prior to the project being placed in service. The staff person responsible for verification of tenant income must be the person to successfully pass the certification examination and meet a continuing education requirement of at least six hours annually by an approved provider for the term of the compliance and extended use periods. For the list of approved tax credit certification programs, please contact NJHMFA's Division of Tax Credit Services at (609) 278-7400.

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. 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.

11. 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.

12. All projects funded by the United States Department of Agriculture (USDA) Rural Development shall provide a letter from the State Director approving the loan and stating that the funds have been obligated. Because USDA Rural Development 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.

13. 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 Project Based Section 8 Rental Assistance subject to the completion of the subsidy layering review or a Commitment to enter into a Housing Assistance Payments Contract (CHAP) under the HUD Rental Assistance Demonstration (RAD). 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 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, Supportive Housing projects shall be underwritten at rents no more than 20 percent of area median income adjusted for family size. For non-Supportive Housing 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. If State Rental Assistance Program (SRAP) rental subsidy is available, projects applying for SRAP and tax credits shall comply with the applicable rules of these programs. DCA will inform NJHMFA of those projects that have submitted a complete application for SRAP 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 SRAP commitments at the same time NJHMFA awards the reservations of tax credits.

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. A supportive housing population needs analysis;

ii. A A supportive housing marketing plan. The plan must identify the organizations that will be used for referrals and evidence, such as a letter of support, must be provided attesting that such organizations have experience serving the target population and can be a source for referrals. For example, if the target population is homeless individuals or homeless families, a resolution indicating that referrals will be provided or a letter of support from the local/county Continuum of Care (CoC) is recommended;

iii. Evidence of the supportive housing development, management and/or supportive services experience of the owner entity, property management entity and/or social service provider who will be providing the property management and supportive services to the residents;

iv. Sources of funding and a social services plan that includes a detailed description of the scope of services to be provided to the individuals with special needs. If the social service provider is partnering with other community services, that relationship must be substantiated with executed letters of agreement detailing the services to be provided and the term thereof;

v. An executed supportive services agreement between the supportive services provider and the owner entity; and

vi. Evidence of the receipt of rental assistance or operating subsidy commitment(s) for special needs populations below 30 percent of area median income and/or evidence that the supportive housing units are affordable to the target population.

15. 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.

16. Projects with HOPE VI/Replacement Housing funding 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/Replacement Housing 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 an independent auditor 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/Replacement Housing funds and all debt. This analysis shall incorporate the same assumptions utilized in the 15-year cash flow pro forma submitted pursuant to (c)7ii above; and

iv. The applicant shall demonstrate that any HOPE VI/Replacement Housing 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.

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

i. The project must be a redevelopment project;

ii. The project does not add more low-income units to the census tract;

iii. The project plan includes relocation options to higher opportunity areas and mobility counseling assistance for existing residents; and

iv. The application includes a municipal resolution that references this paragraph (N.J.A.C. 5:80-33.12(c)17) and supports the allocation of housing tax credits for the development.

Amended by R.1997 d.284, effective July 7, 1997.
See: 29 N.J.R. 1441(a), 29 N.J.R. 2818(a).
Substantially amended paragraphs under (a); deleted former (b), relating to requirements upon additional award of credits; and recodified former (c) as (b).
Recodified from N.J.A.C. 5:80-33.11 and amended by R.1998 d.279, effective June 1, 1998.
See: 30 N.J.R. 1132(a), 30 N.J.R. 1978(a).
Rewrote (a). Former N.J.A.C. 5:80-33.14, Point system for the Urban Cycle, was recodified to N.J.A.C. 5:80-33.17.
Recodified from N.J.A.C. 5:80-33.14 and amended by R.1999 d.120, effective April 5, 1999.
See: 31 N.J.R. 122(a), 31 N.J.R. 860(a).
Rewrote (a). Former N.J.A.C. 5:80-33.13, Cycle deadlines, recodified to N.J.A.C. 5:80-33.12.
Amended by R.2000 d.132, effective March 20, 2000.
See: 32 N.J.R. 191(a), 32 N.J.R. 1065(a).
Rewrote the section.
Amended by R.2001 d.170, effective May 21, 2001.
See: 33 N.J.R. 932(a), 33 N.J.R. 1573(b).
Rewrote section.
Amended by R.2002 d.233, effective July 15, 2002.
See: 34 N.J.R. 1574(a), 34 N.J.R. 2417(a).
Rewrote the section.
Recodified from N.J.A.C. 5:80-33.13 and amended by R.2003 d.300, effective July 21, 2003.
See: 35 N.J.R. 1616(a), 35 N.J.R. 3298(b).
Rewrote the section. Former N.J.A.C. 5:80-33.12, Cycle deadlines, recodified to N.J.A.C. 5:80-33.11.
Amended by R.2006 d.112, effective March 20, 2006.
See: 37 N.J.R. 3879(a), 38 N.J.R. 1432(a).
Rewrote (c).
Amended by R.2007 d.168, effective May 21, 2007.
See: 39 N.J.R. 281(a), 39 N.J.R. 2011(a).
Rewrote (c)6ii, and the introductory paragraph of (c)8; added (c)8i through (c)8iii; in (c)9, inserted "the 'as-is' "; and in (c)11, substituted "United States Department of Agriculture (USDA) Rural Development" for "U.S. Department of Rural Economic and Community Development (RE & CD)" and "USDA Rural Development" for "RE & CD".
Amended by R.2008 d.133, effective May 19, 2008.
See: 40 N.J.R. 839(a), 40 N.J.R. 2429(b).
In (c)2ii, inserted "(or equivalent)"; in (c)6iv, deleted "RCA," preceding "HOME" and substituted "and recognizes that" for ". Therefore,"; added (c)6ix; in (c)7ii(3), substituted "13" for "12", "supportive housing" for "Supportive Housing" and "non-supportive housing" for "non-Supportive Housing"; rewrote (c)8; added new (c)9; recodified former (c)9 through (c)15 as (c)10 through (c)16; in the introductory paragraph of (c)14, substituted "housing" for "Housing"; rewrote (c)14i through (c)14iv; added (c)14v; in the introductory paragraph of (c)16, (c)16i, (c)16iii and (c)16iv, inserted "/Replacement Housing".
Amended by R.2009 d.154, effective May 4, 2009.
See: 41 N.J.R. 917(a), 41 N.J.R. 1994(a).
Rewrote (a); in the introductory paragraph of (c)1, substituted "(c)1i" for "(c)1"; in (c)1ii(1), substituted a comma for "and" following "rate" and inserted "and the discount from comparable market rate units"; in (c)1ii(3), inserted the last four sentences; in (c)1ii(5), inserted the sixth, ninth and tenth sentences; in the introductory paragraph of (c)6, inserted the second and fifth sentences; in (c)6i, deleted "and shall be countersigned/accepted by the applicant" following "itself)"; in (c)6iii, deleted the former first sentence; rewrote (c)6vi and (c)6viii; in (c)6vii, inserted "base of the" preceding "NJHMFA" and substituted "range" for "factor"; in (c)6ix, inserted "or the project plan amendment that includes the project and is approved by the receiving municipality"; added (c)6x; in (c)7i, deleted "at or" following "that is", inserted "2.5 percent" and substituted "47.5" for "50"; in (c)7ii, substituted "assumptions" for "assumption"; in (c)7ii(4), substituted "$2,200" for "$1,800" three times and "$3,800" for "$3,400" three times; in (c)7iii, inserted "or an NJHMFA Form 10 signed by the NJHMFA Property Management Division"; rewrote (c)9 and (c)14; in (c)10, inserted the last two sentences; in (c)13, deleted "Section 8" preceding and inserted "Section 8 Rental" following "Project Based", substituted "project based rental assistance" for "Project Based Section 8 Rental Assistance" and inserted the last four sentences; and in (c)16iii, substituted "an independent auditor" for "the applicant's accountant".
Amended by R.2011 d.239, effective September 6, 2011.
See: 43 N.J.R. 917(a), 43 N.J.R. 2293(a).
Deleted (c)6ii(1) and (c)6ii(2); in (c)6v, deleted "the project is a COAH/Court-ordered project referenced in (c)6ii above or if" following "only if"; in (c)6x, substituted "DCA" for "COAH"; in (c)7ii(4), substituted "$3,000" for "$2,200" and "$4,000" for "$3,800" throughout; in (c)10, inserted "a capital needs assessment for any project seeking acquisition credits and/or"; in the introductory paragraph of (c)14, inserted "or projects" and "that contain supportive housing units"; and in the introductory paragraph of (c)16, substituted "Projects with" for "Applicants applying in the" and "funding" for "set-asides".
Amended by R.2013 d.086, effective June 17, 2013.
See: 45 N.J.R. 530(a), 45 N.J.R. 1511(a).
Rewrote the section.

Case Notes

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

5:80-33.13 Application for additional credits

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

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

i. The re-application fee;

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

iii. A rent qualification chart, income and expense statements and 15-year cash flow proforma all reflecting

current projections. The proforma shall be signed by the first mortgagee (or syndicator/investor if the project has no hard debt) exclusively reflecting the following language verbatim: "We acknowledge that this proforma substantially matches the assumptions used in our underwriting of the mortgage (equity investment)";

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

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

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

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

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

Amended by R.1997 d.284, effective July 7, 1997.
See: 29 N.J.R. 1441(a), 29 N.J.R. 2818(a).
In (a), deleted text relating to requirements for additional credit applications and awards, and inserted "See N.J.A.C. 5:80-33.8 for a description of the Reserve B."; and in (a)2, inserted reference to developer fee.
Recodified from N.J.A.C. 5:80-33.12 and amended by R.1998 d.279, effective June 1, 1998.
See: 30 N.J.R. 1132(a), 30 N.J.R. 1978(a).
In (a), added new 3 and 5 and recodified former 3 and 4 as 4 and 6. Former N.J.A.C. 5:80-33.15, Point system for the Suburban/Rural Cycle, was recodified to N.J.A.C. 5:80-33.18.
Recodified from N.J.A.C. 5:80-33.15 and amended by R.1999 d.120, effective April 5, 1999.
See: 31 N.J.R. 122(a), 31 N.J.R. 860(a).
In (a), changed N.J.A.C. reference in the introductory paragraph, and inserted "(or syndicator/investor if the project has no hard debt)" and "(equity investment)" in 3. Former N.J.A.C. 5:80-33.14, Application to a cycle/eligibility requirements, recodified to N.J.A.C. 5:80-33.13.
Amended by R.2000 d.132, effective March 20, 2000.
See: 32 N.J.R. 191(a), 32 N.J.R. 1065(a).
In (a)4, inserted "(conducted in accordance with A.S.T.M. E1527-97, Standard and Poors Enhanced Protocol)" following "environmental assessment".
Amended by R.2001 d.170, effective May 21, 2001.
See: 33 N.J.R. 932(a), 33 N.J.R. 1573(b).
Rewrote (b).
Amended by R.2002 d.233, effective July 15, 2002.
See: 34 N.J.R. 1574(a), 34 N.J.R. 2417(a).
Rewrote the section.
Recodified from N.J.A.C. 5:80-33.14 and amended by R.2003 d.300, effective July 21, 2003.
See: 35 N.J.R. 1616(a), 35 N.J.R. 3298(b).
In (a), amended N.J.A.C. reference in the introductory paragraph; in 2, deleted "(see definition)"; in (b), amended N.J.A.C. reference. Former N.J.A.C. 5:80-33.13, Application to a cycle/eligibility requirements, recodified to N.J.A.C. 5:80-33.12.
Amended by R.2006 d.112, effective March 20, 2006.
See: 37 N.J.R. 3879(a), 38 N.J.R. 1432(a).
Deleted "The developer fee cannot exceed that stated in the original application" from (a)1ii and added the language to (a)1v; also in (a)1v, substituted "deferred" for "pledged"; in (a)2, added the last sentence.
Amended by R.2008 d.133, effective May 19, 2008.
See: 40 N.J.R. 839(a), 40 N.J.R. 2429(b).
In (a)1vi, deleted "eligibility and" preceding "specific" and inserted "and the pricing to be paid for the additional credits".
Amended by R.2009 d.154, effective May 4, 2009.
See: 41 N.J.R. 917(a), 41 N.J.R. 1994(a).
In (a)1vi, substituted "agreement with" for "from", deleted "the specific need for the additional credits and" following "addresses", inserted "original and" and inserted the last sentence; in (a)2, substituted "that do not qualify for application under N.J.A.C. 5:80-33.8(a)2 or 3" for "of more than $100,000".
Amended by R.2013 d.086, effective June 17, 2013.
See: 45 N.J.R. 530(a), 45 N.J.R. 1511(a).
In (a)1v, substituted "DCA" for "the New Jersey Department of Community Affairs".
Administrative correction.
See: 45 N.J.R. 2032(a).

5:80-33.14 Scoring and ranking

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

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

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).

Recodified from N.J.A.C. 5:80-33.13 and amended by R.1998 d.279, effective June 1, 1998.
See: 30 N.J.R. 1132(a), 30 N.J.R. 1978(a).
Added a new (c). Former N.J.A.C. 5:80-33.16, Point system for the Special Needs Cycle, was recodified to N.J.A.C. 5:80-33.21.
Recodified from N.J.A.C. 5:80-33.16 and amended by R.1999 d.120, effective April 5, 1999.
See: 31 N.J.R. 122(a), 31 N.J.R. 860(a).
Rewrote the section. Former N.J.A.C. 5:80-33.15, Application to the Reserve, recodified to N.J.A.C. 5:80-33.14.
Amended by R.2000 d.132, effective March 20, 2000.
See: 32 N.J.R. 191(a), 32 N.J.R. 1065(a).
Rewrote (c)1.
Amended by R.2001 d.170, effective May 21, 2001.
See: 33 N.J.R. 932(a), 33 N.J.R. 1573(b).
Rewrote (c).
Amended by R.2002 d.233, effective July 15, 2002.
See: 34 N.J.R. 1574(a), 34 N.J.R. 2417(a).
In (c), amended the N.J.A.C. reference; in (d), substituted "(or its authorized designee)" for "staff" following "NJHMFA".
Recodified from N.J.A.C. 5:80-33.15 and amended by R.2003 d.300, effective July 21, 2003.
See: 35 N.J.R. 1616(a), 35 N.J.R. 3298(b).
Rewrote (a); in (c), amended N.J.A.C. reference. Former N.J.A.C. 5:80-33.14, Application for additional credits, recodified to N.J.A.C. 5:80-33.13.
Amended by R.2006 d.112, effective March 20, 2006.
See: 37 N.J.R. 3879(a), 38 N.J.R. 1432(a).
In (a), deleted ", 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".
Amended by R.2007 d.168, effective May 21, 2007.
See: 39 N.J.R. 281(a), 39 N.J.R. 2011(a).
In (a), inserted the fourth and fifth sentences; and in (d), deleted the last sentence.

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 20 points):

i. Projects not located within Qualified Census Tracts which extend their compliance period for an additional 15 years shall receive 20 points. To qualify for this point category, a majority of the units shall be located outside a Qualified Census Tract. 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 latter 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 two points if the project utilizes public housing waiting lists.

3. Applicants may select one of the following options for five points:

i. Low-density buildings where at least 25 percent of the tax credit units are large family units. 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. Projects located within a transit oriented development where at least five percent of the tax credit units are large family units.

iii. A weighted average of the units shall be used to calculate points for multi-building projects where not all of the buildings qualify under (a)3i or ii above.

4. Applicants may select the options in (a)4i and ii below, or the options in (a)4i and iii below, for municipal, county, and public housing authority (PHA) support.

i. Projects that receive a fixed rate tax abatement for a 15-year term with a rate of no more than 10 percent (inclusive of all fees) on the residential component shall receive five points or projects that receive a fixed rate tax abatement for a 15-year term with a rate on the residential component of more than 10 percent shall receive three 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 tax abatement. In order to receive points under this category, the resolution/ordinance approving the abatement shall be submitted and must cite the proper statutory authority. For projects receiving 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 abatement under N.J.S.A. 55:14K-37(b). For information regarding NJHMFA financing, please contact the NJHMFA Division of Multifamily Programs and Credit at (609) 278-7400.

ii. Projects that receive municipal, county, Casino Reinvestment Development Authority (CRDA), or PHA support shall receive up to five points for the contribution (one point per percentage of total development costs, up to a maximum of five points).

iii. Projects that receive project-based rental assistance for at least 25 percent of the total units for a minimum term of 10 years shall receive three points.

iv. Projects seeking points under (a)4ii or iii above that do not receive tax abatement under (a)4i above shall capitalize an escrow in an amount equal to two years worth of taxes and have a 1.20 debt coverage ratio with a minimum of $3,000 per unit core operating expenses.

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 a discounted rate, or monetary contribution to the project (for example, HOME, RCA, CDBG, UDAG, or other non-amortizing, cash flow repayment, subordinate debt). 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) certified to NJHMFA, conducted by an NJHMFA-approved appraiser stating the "as is" value of contributed land. The acquisition price shall then be subtracted from the land value in order to determine the amount of the contribution for point purposes. The tax escrow shall equal the two year amount reflected in the cash flow pro forma, 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 six points for the provision of up to three social services for the compliance period. Two points will be awarded per service offered. For projects in the Senior Cycle, participation in the Services for Independent Living (SIL) Program qualifies for the maximum points. The services shall be affordable, appropriate, available and accessible to the project's tenants. Services provided free of charge to all residents/seniors of a county/municipality based solely on residency status shall not qualify for points in this category. 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. Five 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 Division of Minority and Women Business Development in the New Jersey Department of the Treasury ("Certified MBE's and WBE's").

7. Projects located within both a ready to grow area and any of a transit village, an urban transit hub, a Main Street Designated District, or a Designated Center, or redevelopment projects located within a ready to grow area shall be awarded five points.

8. NJHMFA awards up to six points for the provision of unit amenities. Two points 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. 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. A security alarm;

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

iii. An ENERGY STAR-labeled 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. An ENERGY STAR-labeled washer and dryer;

v. An ENERGY STAR-labeled dishwasher;

vi. Through the wall, individual dwelling unit 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; and

xiv. High speed internet access.

9. NJHMFA awards points for the provision of project amenities, up to a maximum of four points. Two points 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 four points. The list provided below is not all-inclusive. 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. A playground (family projects only);

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

iii. On-site laundry facilities, using ENERGY STAR-labeled commercial equipment;

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; and

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

10. Projects which demonstrate community policing or public safety enhancements shall be awarded two points. Applicants may select any of the following strategies in order to receive the points. The list provided below is not all-inclusive. 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. 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 six 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). At a minimum, structures must have building permits issued and be under construction to qualify:

i. Unless otherwise indicated, projects located within one-half mile of the positive land uses below shall receive two points for proximity to each of the following. Multiple points shall not be awarded for proximity to multiple positive land uses of the same category (that is, a project located within one-half mile of two supermarkets will receive two points, not four points):

(1) Full-service grocery store or supermarket (minimum 15,000 square feet);

(2) Pharmacy;

(3) Department or retail merchandise store;

(4) Bank/credit union;

(5) Restaurant, exclusive of fast-food restaurants;

(6) Indoor public recreation facilities, such as civic centers, community centers, and libraries;

(7) Outdoor public recreation facilities, such as parks and swimming pools;

(8) Hospital/medical clinic;

(9) Medical offices (physician, dentistry, optometry);

(10) Public schools (non-senior projects only);

(11) Senior center;

(12) Religious institution – eligible for only one point;

(13) Licensed day care services (non-senior projects only);

(14) Post office, city hall, county courthouse; and

(15) Fire/police station.

ii. Projects located within one mile of the following negative land uses shall have three 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).

iii. Example: A project is located within one-half mile of an elementary school, a grocery store and an oil refinery. The project shall be awarded one point.

12. Applications which include a commitment letter signed by the syndicator or investor or executed partnership agreement/operating agreement specifying net pricing and net capital contributions within the NJHMFA equity range shall receive three points. Applicants utilizing the credits themselves do not have to submit a syndicator letter to receive the points. Term sheets do not qualify for these points.

13. Applications may receive up to a maximum of six points for the following:

i. Participants in the New Jersey Housing and Mortgage Finance Agency's Energy Benchmarking Initiative shall receive two points. In order to qualify for these points, the application shall include a copy of the completed and signed letter of intent from the developer to NJHMFA. Prior to issuance of the IRS Form 8609, the developer/owner shall submit the forms in (a)13i(1) through (3) below. The applicant shall also be required to include the tenant utility release form as a part of the lease agreement. For the next three years, the applicant shall ensure that at least 75 percent of the tenants have active utility release forms (or provide documentation of the efforts to obtain such forms) and common area utility data shall be reported. Common area utility data shall be uploaded into the EPA Portfolio Manager (www.energystar.gov/benchmark) per the procedures outlined in the NJHMFA Energy Benchmarking Technical Manual, incorporated herein by reference as subchapter Appendix B. Utility data shall be submitted by January 31 for the first three years.

(1) A completed NJHMFA New Jersey Green Homes Office Building Owner Utility Release Form for all common area meters (gas, oil, electric, cogeneration);

(2) A completed NJHMFA New Jersey Green Homes Office Energy Benchmarking Survey Form, which includes building data consisting of the name, age, address, number of floors, inclusion of elevators, square footage, number of buildings, whether building(s) are master- or individually-metered, a description of any previously completed energy-efficiency work, and utility account information; and

(3) Completed NJHMFA New Jersey Green Homes Office Tenant Utility Release Forms and/or evidence that requests for such forms were made from at least 75 percent of tenants occupying the project at the time of the IRS Form 8609 issuance.

ii. Applicants may select one of the following green building options and receive four points:

(1) Incorporation of a solar hot water or water retainage and reuse system. The solar hot water equipment must be designed and installed to meet 100 percent of hot water demands for common area need. The water retainage and reuse system must be designed and installed to meet 100 percent of non-potable common area demands (that is, all toilet flushing and landscaping needs). In order to qualify for these points, the application shall include a copy of the completed and signed letter of intent from the developer to NJHMFA. At the time a project places in service, the proposed system must be installed and it shall be inspected by NJHMFA.

(2) Successful participation in the New Jersey Housing and Mortgage Finance Agency Green Future Program. In order to qualify for these points, the application shall include a copy of the completed and signed letter of intent from the developer to NJHMFA. Prior to issuance of the IRS Form 8609, the owner shall have successfully completed the requirements of the Green Future Program, fully approved by NJHMFA.

(3) EPA ENERGY STAR Homes V.3 Certification. Applications shall include a copy of a signed contract between the applicant and a Home Energy Rating System (HERS) rater (per NJCEP ENERGY STAR Homes Program (tier 2) guidelines) and an

NJHMFA form letter of intent executed by the applicant, which states that the applicant has read the NJHMFA Green Point Guide and will comply with all requirements thereof. At the time a project places in service, owners shall submit to NJHMFA the ENERGY STAR Homes Certificate issued by the EPA or NJCEP for each dwelling unit/building in the project.

(4) Incorporation of a solar photovoltaic system into the project. The solar photovoltaic system must meet the following standards: Be sized to cover at least 75 percent of the project's common area electrical expense and be at least a 20 kilowatt system. Documentation for this point includes a written and signed quote from a Board of Public Utilities (BPU)-certified solar installer indicating the location, size, type, cost, and energy output of the proposed system and a signed affidavit from the developer agreeing to purchase, install, and maintain the system for a minimum of 20 years. (Note: Contact the BPU for information on programs available for solar photovoltaic installations. www.njcleanenergy.com.)

Example: A project has an estimated common area electricity need of 50 kilowatts. The roof of the project can accommodate a 40 kilowatt system. The developer is eligible for the solar point since the 40 kilowatt system covers 80 percent of the common area usage and the system is larger than 20 kilowatts.

(5) Leadership in Energy and Environmental Design (LEED) Certification. In order to qualify for these points, the applicant shall submit the following:

(A) A signed letter of intent to become LEED certified;

(B) A copy of the applicant's proposal from an LEED accredited professional;

(C) The LEED accredited professional's accreditation certificate or LEED Provider's Provider Agreement;

(D) The LEED accredited professional's or LEED Provider's experience documentation; and

(E) For issuance of the IRS Form 8609, successful completion of the project as documented by an LEED Certificate or letter of completion from the United States Green Building Council (USGBC) is required.

(6) National Green Building Standard (NGBS) Certification. The applicant shall submit the following:

(A) A signed letter of intent to become National Green Building certified (a Certified Green Home); and

(B) A written proposal from an NGBS Verifier, including:

I. A copy of the NGBS Verifier's Accreditation Certificate; and

II. Documentation of the NGBS Verifier's experience.

(C) For issuance of the IRS Form 8609, successful completion of the program as documented by the NGBS Verifier is required.

(7) Climate Choice Homes Program/Energy Star Tier 3 Participation. Achievement of a Final HERS Index of 45 or below for each unit. In order to qualify for this point, the applicant shall include:

(A) A copy of the completed and signed letter of intent from the developer to NJHMFA;

(B) A signed contract with a certified HERS rater; and

(C) A letter from a contracted HERS rater attesting to design measures already incorporated and the developer's path to successful achievement of a HERS Index of 45 or below.

(D) For issuance of the IRS Form 8609, successful completion of the program as documented by the NJ Clean Energy Program is required.

14. Applicants may select any of the following options. A maximum of six points shall be available in this category:

i. Rehabilitation of historic buildings, projects which involve the adaptive re-use of a non-residential building, or Brownfields projects that have a Remedial Action Work Plan or Response Action Outcome (RAO) approved by the New Jersey Department of Environmental Protection (DEP) or its designee (a Licensed Site Remediation Professional or LSRP), or a No Further Action (NFA) letter issued by the DEP within the past 10 years shall receive two points. The NFA shall be for an unrestricted use or, if it is for a limited restricted use, the applicant shall provide confirmation from an LSRP that the proposed development may still be constructed despite the limited use. 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;

ii. A project that is fully located within one-half mile of public transportation shall receive two points;

iii. A project that is fully located within a school district wherein 66 percent or more of the students are either proficient or advanced proficient on the NJ ASK 4 in both math and language arts based on data available from the New Jersey Department of Education as of the

application deadline shall receive two points. NJHMFA shall rely upon the data effective in the calendar year of the application deadline as well as the preceding year; and

iv. A project that is fully located within a municipality with public and private sector jobs that total at least 95 percent of the housing units shall receive two points. To confirm that a project satisfies this point category, NJHMFA shall use the annual average of total public and private sector jobs (including suppressed data) from the New Jersey Department of Labor and Workforce Development Quarterly Census of Employment and Wages, Municipal Annual Reports, and the number of housing units according to the five-year American Community Survey, Table B25001, U.S. Department of the Census as of the application deadline. NJHMFA shall rely upon the data effective in the calendar year of the application deadline as well as the preceding year.

15. 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 five 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.

16. 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: 15 points shall be deducted for violations of State and municipal maintenance ordinances or health ordinances or failure of one or more major systems (for example, roof, HVAC, elevators, plumbing, and electric); and 10 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.

17. Five 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. This point category shall only apply to the first application from the involved general partner, voting member, developer, or related party following the full return of tax credits.

18. 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 15 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.

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 annual tenant information shall have 15 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. Applicants may select one of the following:

i. Applications with a general partner, voting member, developer, or related party (with at least a 50 percent interest in the general partner/managing member) that has successfully developed and operated at least two other LIHTC projects shall receive three points; or

ii. Applications with a general partner, voting member, developer, or related party (with at least a 50 percent interest in the general partner/managing member) that has successfully developed and operated at least one other LIHTC project and has entered into a management agreement with a property management company that has at least five years of experience monitoring LIHTC projects and a tax credit portfolio of no less than 300 units shall receive two points.

iii. "Successfully developed and operated" is defined as a tax credit project with no outstanding issues of noncompliance that has achieved 93 percent occupancy and has maintained a permanent debt service coverage ratio of at least 1.15 percent for six consecutive months during the project's most recent full fiscal year preceding the application deadline.

21. Applicants may select one of the following:

i. Projects that rent five units or five percent of the total project units, whichever is greater, to individuals or families who are homeless and meet the criteria of N.J.A.C. 5:80-33.12(c)14 shall receive three points.

ii. Projects that rent five units or five percent of the total project units, whichever is greater, to disabled

individuals who are leaving institutions under the decision in *Olmstead v. L.C.*, 527 *U.S.* 581 (1999), and who meet the criteria of N.J.A.C. 5:80-33.12(c)14 shall receive two points.

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 eight points. 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. 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.

24. Applications which have a general partner, voting member, developer, or related party that owns a managing or controlling interest in an NJHMFA-financed property with three or more months of arrearages, with no workout plan (as approved by the Executive Director), shall have 15 points deducted from their scores.

Amended by R.1997 d.284, effective July 7, 1997.
See: 29 N.J.R. 1441(a), 29 N.J.R. 2818(a).
Substantially amended section.
Recodified from N.J.A.C. 5:80-33.14 and amended by R.1998 d.279, effective June 1, 1998.
See: 30 N.J.R. 1132(a), 30 N.J.R. 1978(a).
Rewrote (a). Former N.J.A.C. 5:80-33.17, Point system for the Final Cycle, was recodified to N.J.A.C. 5:80-33.22.
Recodified from N.J.A.C. 5:80-33.17 and amended by R.1999 d.120, effective April 5, 1999.
See: 31 N.J.R. 122(a), 31 N.J.R. 860(a).
Rewrote (a). Former N.J.A.C. 5:80-33.16, Scoring and ranking, recodified to N.J.A.C. 5:80-33.15.
Amended by R.2000 d.132, effective March 20, 2000.
See: 32 N.J.R. 191(a), 32 N.J.R. 1065(a).
Rewrote the section.
Amended by R.2001 d.170, effective May 21, 2001.
See: 33 N.J.R. 932(a), 33 N.J.R. 1573(b).
Rewrote the section.
Amended by R.2002 d.233, effective July 15, 2002.
See: 34 N.J.R. 1574(a), 34 N.J.R. 2417(a).
Rewrote the section.
Recodified from N.J.A.C. 5:80-33.16 and amended by R.2003 d.300, effective July 21, 2003.
See: 35 N.J.R. 1616(a), 35 N.J.R. 3298(b).
Rewrote the section. Former N.J.A.C. 5:80-33.15, Scoring and ranking, recodified to N.J.A.C. 5:80-33.14.
Amended by R.2006 d.112, effective March 20, 2006.
See: 37 N.J.R. 3879(a), 38 N.J.R. 1432(a).
Rewrote (a).
Administrative correction.
See: 38 N.J.R. 2796(a).
Amended by R.2007 d.168, effective May 21, 2007.
See: 39 N.J.R. 281(a), 39 N.J.R. 2011(a).
In (a)3i, substituted "Low-density" for "Low-rise"; in (a)3ii, substituted "Rehabilitation projects that do not meet the definition of low-density" for "Mid-rise or high-rise rehabilitation projects"; in (a)4i, inserted "shall be submitted and"; rewrote (a)7; in (a)8iii, (a)8iv, and (a)8v, substituted "An ENERGY STAR-labeled" for "A"; in (a)9iii, inserted ", using ENERGY STAR-labeled commercial equipment"; in (a)9vii, substituted "30-year" for "25 year" and "20-year" for "20 year"; and rewrote (a)12 and (a)14i.
Amended by R.2007 d.297, effective September 17, 2007.
See: 39 N.J.R. 2302(a), 39 N.J.R. 3913(a).
Rewrote (a)7.
Amended by R.2008 d.133, effective May 19, 2008.
See: 40 N.J.R. 839(a), 40 N.J.R. 2429(b).
In the introductory paragraph of (a)3, substituted "or" for "to"; in (a)3i, inserted "tax credit" twice; in (a)7i, inserted "or the resolution of intent to petition COAH must be submitted to NJHMFA"; in (a)7ii, inserted "only"; deleted former (a)12; recodified (a)13 through (a)21 as (a)12 through (a)20; in (a)13i, deleted "Affordable" preceding "Green" and inserted "Future"; added (a)13iii; and in (a)17, inserted the last sentence.
Amended by R.2009 d.154, effective May 4, 2009.
See: 41 N.J.R. 917(a), 41 N.J.R. 1994(a).
Rewrote (a).
Amended by R.2011 d.239, effective September 6, 2011.
See: 43 N.J.R. 917(a), 43 N.J.R. 2293(a).
In (a)3i, inserted "or projects located within a transit oriented development"; in (a)3ii, substituted "qualify under (a)3i above" for "meet the definition of low-density"; rewrote (a)7i; deleted former (a)7ii; recodified former (a)7iii as (a)7ii; rewrote (a)7ii; deleted (a)7iv; in the introductory paragraphs of (a)8 and (a)9, substituted "Substitution of amenities is only permitted with prior approval from NJHMFA. It" for "Substitutions are permitted at NJHMFA discretion; however, it"; in the introductory paragraph (a)10, substituted "Substitutions are only permitted with prior approval from NJHMFA. It" for "Substitutions are permitted at NJHMFA discretion; however, it"; rewrote (a)14iii; added designation (a)14iv; rewrote (a)14iv; in (a)19, substituted "annual tenant information" for "building status reports"; rewrote (a)21; and in (a)22, inserted the last sentence.
Amended by R.2013 d.086, effective June 17, 2013.
See: 45 N.J.R. 530(a), 45 N.J.R. 1511(a).
Rewrote the section.

5:80-33.16 Point system for the Senior Cycle

The point system for the Senior Cycle includes all point categories of the Family Cycle except the point categories at N.J.A.C. 5:80-33.15(a)3 concerning large family units and N.J.A.C. 5:80-33.15(a)14iii concerning proficient schools.

New Rule, R.2003 d.300, effective July 21, 2003.
See: 35 N.J.R. 1616(a), 35 N.J.R. 3298(b).
Former N.J.A.C. 5:80-33.16, Point system for the urban cycle, recodified to N.J.A.C. 5:80-33.15.
Amended by R.2006 d.112, effective March 20, 2006.
See: 37 N.J.R. 3879(a), 38 N.J.R. 1432(a).
Added (a)2.
Amended by R.2007 d.297, effective September 17, 2007.
See: 39 N.J.R. 2302(a), 39 N.J.R. 3913(a).
In the introductory paragraph of (a) and in (a)1i through (a)1iii, substituted "ready to grow" for "smart growth"; and in (a)1ii, inserted ". 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".
Amended by R.2008 d.133, effective May 19, 2008.
See: 40 N.J.R. 839(a), 40 N.J.R. 2429(b).
In (a)1i, inserted "only"; and in (a)1ii, inserted "or the resolution of intent to petition COAH must be submitted to NJHMFA".
Amended by R.2009 d.154, effective May 4, 2009.

See: 41 N.J.R. 917(a), 41 N.J.R. 1994(a).
In (a)1i, substituted "seven" for "10"; and rewrote (a)1ii.
Amended by R.2011 d.239, effective September 6, 2011.
See: 43 N.J.R. 917(a), 43 N.J.R. 2293(a).
Rewrote (a)1i and (a)1ii; and deleted (a)1iii.
Amended by R.2013 d.086, effective June 17, 2013.
See: 45 N.J.R. 530(a), 45 N.J.R. 1511(a).
Rewrote the section.

5:80-33.17 Point system for the Supportive Housing Cycle

(a) The point system for the Supportive Housing Cycle includes all point categories of the Family Cycle except for the point categories at N.J.A.C. 5:80-33.15(a)3 concerning large family units, N.J.A.C. 5:80-33.15(a)5 concerning social services, and N.J.A.C. 5:80-33.15(a)21 concerning supportive housing units.

(b) The Supportive Housing Cycle also includes the following point categories:

1. Applicants shall be awarded up to five points to the extent the social services plan required at N.J.A.C. 5:80-33.12(c)14iv incorporates the following:

i. A description of the target population's(s') supportive service needs, which may include a range of services across a wide continuum of care and intensity appropriate to the target population(s). The description must acknowledge that each special needs tenant does not have to utilize the services appropriate to the target population(s). The social services plan must address the specific appropriate and needed services to assist tenants to maintain their housing and stable community living at no cost to the tenant. Appropriate and needed services must be supported by supportive service agreements and evidence-based practice, research and/or direct practice experience. Supportive housing projects must have, at a minimum, a social service coordinator. The supportive services plan must address the following:

(1) The social service provider(s) must demonstrate three or more years of experience in providing social services to the target population(s) or to a related special needs population;

(2) A description of the proposed services that will benefit the targeted population, including location of services (that is, on-site or in the community) and documentation to support how these services will be funded;

(3) A description of how the service provider will facilitate tenant/landlord relationships, including detailed eligibility and ineligibility criteria for tenant selection and screening, as well as a plan for problem resolution to minimize evictions for supportive housing tenants; and

(4) Provision of at least one of the following services:

(A) Twenty-four-hour, seven-day a week on-call crisis response capability;

(B) Financial management training from a qualified provider and ongoing budget support; and

(C) Linkage and ongoing follow-up services to health care, including dental care, and physical health care and primary health care prevention services.

2. Up to two points will be awarded as follows: one point will be awarded to applicants that will provide on-site or off-site education for tenants of the supportive housing units; and one point will be awarded to applicants that will provide job training and job search assistance and support to tenants of the supportive housing units. Applicants shall provide evidence of funding commitments and signed agreements with qualified service providers specifically identifying a detailed scope of services to be provided and term for the provision of these services. The identified education and/or employment service provider must have a verifiable track record for the provision of these services.

3. Applicants that plan to develop all of the units as lease-based permanent supportive housing (no time limit for tenancy and/or program participation) shall be awarded two points.

4. Applications that evidence rental assistance funding commitments from the HUD McKinney-Vento Programs or other government source(s) of project-based or sponsor-based rental assistance for all the special needs units shall be awarded two points.

5. Applications submitted by a qualified nonprofit organization shall be awarded two points.

6. Projects that encourage integrated community living opportunities, including mixed-income projects, mixed-special needs projects, and scattered site projects, shall be awarded two points.

7. Five points shall be awarded to projects that meet all of the following minimum living standards:

i. Dwelling units in which each bedroom measures not less than 100 square feet;

ii. Unrelated residents have their own bedroom;

iii. No more than four unrelated adults share a bathroom; and

iv. Residents have access to a full kitchen for meal preparation.

Amended by R.1997 d.284, effective July 7, 1997.
See: 29 N.J.R. 1441(a), 29 N.J.R. 2818(a).
In (a), inserted reference to Rural Cycle and amended N.J.A.C. reference; in (a)1, inserted "up to a maximum of 10 points"; in (a)3, substituted "the sponsor/social service" for "its social service"; and in (a)4, added last two sentences.
Recodified from N.J.A.C. 5:80-33.16 and amended by R.1998 d.279, effective June 1, 1998.

See: 30 N.J.R. 1132(a), 30 N.J.R. 1978(a).
In (a), rewrote the introductory paragraph and 4, and deleted 7.
Former N.J.A.C. 5:80-33.21, Committee review, was recodified to N.J.A.C. 5:80-33.26.
Recodified from N.J.A.C. 5:80-33.21 and amended by R.1999 d.120, effective April 5, 1999.
See: 31 N.J.R. 122(a), 31 N.J.R. 860(a).
In (a), changed N.J.A.C. references in the introductory paragraph, substituted "sponsor and/or social" for "sponsor/social" in 3, and substituted a reference to six points for a reference to four points in 5.
Former N.J.A.C. 5:80-33.19, HOPE VI Cycle, recodified to N.J.A.C. 5:80-33.18.
Amended by R.2000 d.132, effective March 20, 2000.
See: 32 N.J.R. 191(a), 32 N.J.R. 1065(a).
In (a), rewrote the introductory paragraph and 1, inserted "stated in the application" at the end of the first sentence in 2, inserted "housing" following "needs" in 3, inserted ", available, appropriate" following "affordable" in 4, and added 7.
Amended by R.2001 d.170, effective May 21, 2001.
See: 33 N.J.R. 932(a), 33 N.J.R. 1573(b).
Rewrote section.
Amended by R.2002 d.233, effective July 15, 2002.
See: 34 N.J.R. 1574(a), 34 N.J.R. 2417(a).
In (a), amended N.J.A.C. references in the first sentence and deleted the second sentence in the introductory paragraph, deleted 1 and i; in (b), substituted "applicant" for "sponsor" in 3 and 6, and substituted "owner" for "sponsor" in 4.
Amended by R.1997 d.284, effective July 7, 1997.
See: 29 N.J.R. 1441(a), 29 N.J.R. 2818(a).
Recodified from N.J.A.C. 5:80-33.15 and amended by R.1998 d.279, effective June 1, 1998.
See: 30 N.J.R. 1132(a), 30 N.J.R. 1978(a).
In (a), changed N.J.A.C. reference in the introductory paragraph.
Former N.J.A.C. 5:80-33.18, Tie-breaker system, was recodified to N.J.A.C. 5:80-33.23.
Recodified from N.J.A.C. 5:80-33.18 and amended by R.1999 d.120, effective April 5, 1999.
See: 31 N.J.R. 122(a), 31 N.J.R. 860(a).
Rewrote (a). Former N.J.A.C. 5:80-33.17, Point system for the Urban Cycle, recodified to N.J.A.C. 5:80-33.16.
Amended by R.2000 d.132, effective March 20, 2000.
See: 32 N.J.R. 191(a), 32 N.J.R. 1065(a).
Rewrote the section.
Amended by R.2001 d.170, effective May 21, 2001.
See: 33 N.J.R. 932(a), 33 N.J.R. 1573(b).
Rewrote (a)1; added a new (a)2; recodified former (a)2 as (a)3 and added the last sentence; added (c).
Amended by R.2002 d.233, effective July 15, 2002.
See: 34 N.J.R. 1574(a), 34 N.J.R. 2417(a).
In (a), amended the N.J.A.C. reference in the introductory paragraph, rewrote 3; rewrote (c).
Recodified from N.J.A.C. 5:80-33.19 and amended by R.2003 d.300, effective July 21, 2003.
See: 35 N.J.R. 1616(a), 35 N.J.R. 3298(b).
In (a), substituted "Family" for "Suburban/Rural", amended N.J.A.C. reference; in (b), added 7.
Amended by R.2006 d.112, effective March 20, 2006.
See: 37 N.J.R. 3879(a), 38 N.J.R. 1432(a).
Section heading was "Point system for the Special Needs Cycle"; substituted "Supportive Housing" for "Special Needs" throughout; rewrote (b).
Amended by R.2008 d.133, effective May 19, 2008.
See: 40 N.J.R. 839(a), 40 N.J.R. 2429(b).
Rewrote (b)1; added new (b)2; recodified former (b)2 through (b)5 as (b)3 through (b)6; rewrote (b)3; in (b)4, inserted "lease-based"; in (b)5, substituted "project-based or sponsor-based" for "project based" and substituted "all the special needs units" for "at least 50 percent of the project"; in (b)6, substituted "one point" for "two points"; and added (b)7.
Amended by R.2009 d.154, effective May 4, 2009.
See: 41 N.J.R. 917(a), 41 N.J.R. 1994(a).
Rewrote (b).
Amended by R.2013 d.086, effective June 17, 2013.
See: 45 N.J.R. 530(a), 45 N.J.R. 1511(a).
In (a), substituted "at" for "in", a comma for "and" following "units", and inserted ", and N.J.A.C. 5:80-33.15(a)21 concerning supportive housing units".

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.

New Rule, R.1998 d.279, effective June 1, 1998.
See: 30 N.J.R. 1132(a), 30 N.J.R. 1978(a).
Former N.J.A.C. 5:80-33.19, Municipal comment, was recodified to N.J.A.C. 5:80-33.24.
Recodified from N.J.A.C. 5:80-33.19 and amended by R.1999 d.120, effective April 5, 1999.
See: 31 N.J.R. 122(a), 31 N.J.R. 860(a).
Changed N.J.A.C. reference, and deleted "and the point category in N.J.A.C. 5:80-33.17(a)9 concerning HUD troubled projects" at the end.
Former N.J.A.C. 5:80-33.18, Point system for the Suburban/Rural Cycle, recodified to N.J.A.C. 5:80-33.17.
Amended by R.2000 d.132, effective March 20, 2000.
See: 32 N.J.R. 191(a), 32 N.J.R. 1065(a).
Amended by R.2002 d.233, effective July 15, 2002.
See: 34 N.J.R. 1574(a), 34 N.J.R. 2417(a).
Amended N.J.A.C. reference, deleted "municipal, county and" preceding "public housing" and substituted "waiting lists" for "support" following "authority".
Recodified from N.J.A.C. 5:80-33.20 and amended by R.2003 d.300, effective July 21, 2003.
See: 35 N.J.R. 1616(a), 35 N.J.R. 3298(b).
Rewrote the section.

5:80-33.19 Tiebreaker system

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

1. If competing projects have a tie score, a tax credit reservation shall be awarded based on the following:

i. In the HOPE VI/Choice Neighborhood set asides at N.J.A.C. 5:80-33.4(a)1 and 33.5(a)1, a tax credit reservation shall be awarded to the project with the greatest percentage of HOPE VI/Choice Neighborhood funds committed in relation to Total Development Cost.

ii. In the Senior Cycle, a tax credit reservation shall be awarded to the project with the least amount of tax credits per tax credit unit.

iii. In all other cycles and set-asides, a tax credit reservation shall be awarded to the project with the least amount of tax credits per tax credit bedroom.

iv. In all cycles, superintendent unit(s) shall not be included for purposes of calculating the tiebreaker.

2. If there is still a tie after the first tiebreaker, the tax credit reservation shall be awarded to the project with a lower total development cost per bedroom. Superintendent unit(s) shall not be included for purposes of calculating the tiebreaker.

Amended by R.1997 d.284, effective July 7, 1997.
See: 29 N.J.R. 1441(a), 29 N.J.R. 2818(a).
In (a)1, substituted "the lowest amount ___ per low-income bedroom" for "lower intermediary fees per low income unit"; in (a)2, substituted "per bedroom" for "per unit"; and deleted (a)3 and 4.

Recodified from N.J.A.C. 5:80-33.18 by R.1998 d.279, effective June 1, 1998.
See: 30 N.J.R. 1132(a), 30 N.J.R. 1978(a).
Former N.J.A.C. 5:80-33.23, Reservations, allocations and binding commitments, was recodified to N.J.A.C. 5:80-33.28.
Recodified from N.J.A.C. 5:80-33.23 by R.1999 d.120, effective April 5, 1999.
See: 31 N.J.R. 122(a), 31 N.J.R. 860(a).
Former N.J.A.C. 5:80-33.21, Point system for the Special Needs Cycle, recodified to N.J.A.C. 5:80-33.19.
Amended by R.2001 d.170, effective May 21, 2001.
See: 3 N.J.R. 932(a), 33 N.J.R. 1573(b).
In (a)1, added the last sentence.
Recodified from N.J.A.C. 5:80-33.21 by R.2003 d.300, effective July 21, 2003.
See: 35 N.J.R. 1616(a), 35 N.J.R. 3298(b).
Former N.J.A.C. 5:80-33.19, Point system for the Special Needs Cycle, recodified to N.J.A.C. 5:80-33.17.
Amended by R.2006 d.112, effective March 20, 2006.
See: 37 N.J.R. 3879(a), 38 N.J.R. 1432(a).
Rewrote (a)1.
Amended by R.2008 d.133, effective May 19, 2008.
See: 40 N.J.R. 839(a), 40 N.J.R. 2429(b).
Rewrote (a)1.
Amended by R.2010 d.060, effective April 19, 2010.
See: 42 N.J.R. 583(a), 42 N.J.R. 776(a).
In (a)1, substituted "tax credits per tax credit unit" for "Balanced Housing/Home Express funds per Balanced Housing/Home Express unit".
Amended by R.2011 d.239, effective September 6, 2011.
See: 43 N.J.R. 917(a), 43 N.J.R. 2293(a).
In (a)1, substituted "bedroom" for "unit".
Amended by R.2013 d.086, effective June 17, 2013.
See: 45 N.J.R. 530(a), 45 N.J.R. 1511(a).
Rewrote the section.

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.

Recodified from N.J.A.C. 5:80-33.19 by R.1998 d.279, effective June 1, 1998.
See: 30 N.J.R. 1132(a), 30 N.J.R. 1978(a).
Former N.J.A.C. 5:80-33.24, Obtaining IRS Form 8609, was recodified to N.J.A.C. 5:80-33.29.
Recodified from N.J.A.C. 5:80-33.24 by R.1999 d.120, effective April 5, 1999.
See: 31 N.J.R. 122(a), 31 N.J.R. 860(a).
Former N.J.A.C. 5:80-33.22, Point system for the Final Cycle, recodified to N.J.A.C. 5:80-33.20.
Amended by R.2002 d.233, effective July 15, 2002.
See: 34 N.J.R. 1574(a), 34 N.J.R. 2417(a).
Amended the second sentence.
Recodified from N.J.A.C. 5:80-33.22 by R.2003 d.300, effective July 21, 2003.
See: 35 N.J.R. 1616(a), 35 N.J.R. 3298(b).
Former N.J.A.C. 5:80-33.20, Point system for the Final Cycle, recodified to N.J.A.C. 5:80-33.18.

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 those costs. As part of its obligation under Section 42(m)2 of the Code, NJHMFA shall determine the reasonableness of the developmental and operational costs of the project and may make adjustments to costs as necessary to ensure the viability of the project throughout the credit period and compliance with the QAP. Such adjustments shall not trigger a point deduction under N.J.A.C. 5:80-33.15(a)23. 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.) Pursuant to the Housing and Economic Recovery Act of 2008, Pub. L. 110-289 (HR 3221), the applicable credit percentage shall be nine percent for the 70 percent present value credit for buildings that place in service between July 31, 2008 and December 30, 2013. NJHMFA shall announce the tax credit percentage to be used for application purposes,

by written and/or electronic notices to the mailing list maintained by the Tax Credit Division, at least 30 days prior to the application deadline. 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 deferred, 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.

(d) Buildings placed in service after July 30, 2008 that receive the 70 percent value credit shall be eligible for up to a 30 percent boost in eligible basis to the extent that the developer can demonstrate that the boost is necessary to achieve financial feasibility.

Amended by R.1997 d.284, effective July 7, 1997.
See: 29 N.J.R. 1441(a), 29 N.J.R. 2818(a).
In (a), substituted "Section 42(m)(2)(a) of the Code" for "The Code"; in (b), amended N.J.A.C. reference; in (b)2, inserted ", as (potentially) ___ syndication proceeds".
Recodified from N.J.A.C. 5:80-33.20 and amended by R.1998 d.279, effective June 1, 1998.
See: 30 N.J.R. 1132(a), 30 N.J.R. 1978(a).
In (a), changed N.J.A.C. references in the introductory paragraph and in 2; in (b), added a new last sentence; and in (c), changed the N.J.A.C. reference in the introductory paragraph. Former N.J.A.C. 5:80-33.25, Placed in service needs analysis, was recodified to N.J.A.C. 5:80-33.30.
Recodified from N.J.A.C. 5:80-33.25 and amended by R.1999 d.120, effective April 5, 1999.
See: 31 N.J.R. 122(a), 31 N.J.R. 860(a).
In (a) and (c), changed N.J.A.C. references throughout. Former N.J.A.C. 5:80-33.23, Tie-breaker system, recodified to N.J.A.C. 5:80-33.21.
Administrative change.
See: 31 N.J.R. 1311(b).
Amended by R.2000 d.132, effective March 20, 2000.
See: 32 N.J.R. 191(a), 32 N.J.R. 1065(a).
In (a)2, changed N.J.A.C. reference; and in (b), added the last two sentences.
Amended by R.2001 d.170, effective May 21, 2001.
See: 33 N.J.R. 932(a), 33 N.J.R. 1573(b).
In (c), changed N.J.A.C. reference.
Recodified from N.J.A.C. 5:80-33.23 and amended by R.2003 d.300, effective July 21, 2003.
See: 35 N.J.R. 1616(a), 35 N.J.R. 3298(b).
Former N.J.A.C. 5:80-33.21, Tiebreaker system, recodified to N.J.A.C. 5:80-33.19.
Amended by R.2006 d.112, effective March 20, 2006.
See: 37 N.J.R. 3879(a), 38 N.J.R. 1432(a).
In (c)2, substituted "deferred" for "pledged".
Amended by R.2008 d.133, effective May 19, 2008.
See: 40 N.J.R. 839(a), 40 N.J.R. 2429(b).
Rewrote the introductory paragraph of (c).
Amended by R.2009 d.154, effective May 4, 2009.
See: 41 N.J.R. 917(a), 41 N.J.R. 1994(a).
In the introductory paragraph of (c), inserted the second sentence and inserted "for the 30 percent present value credit" in the third sentence; and added (d).
Amended by R.2013 d.086, effective June 17, 2013.
See: 45 N.J.R. 530(a), 45 N.J.R. 1511(a).
In the introductory paragraph of (a), inserted the fourth and fifth sentences, and inserted a comma following "provided"; and in (c), substituted "30" for "31", and deleted "for the 30 percent present value credit" following "percentage".

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 DCA or designee, the Executive Director and three members of the NJHMFA 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, and shall award tax credit reservations accordingly. 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.

Recodified from N.J.A.C. 5:80-33.21 by R.1998 d.279, effective June 1, 1998.
See: 30 N.J.R. 1132(a), 30 N.J.R. 1978(a).
Former N.J.A.C. 5:80-33.26, Project cost certification, was recodified to N.J.A.C. 5:80-33.31.
Recodified from N.J.A.C. 5:80-33.26 and amended by R.1999 d.120, effective April 5, 1999.
See: 31 N.J.R. 122(a), 31 N.J.R. 860(a).
In (c), rewrote 1 and 2. Former N.J.A.C. 5:80-33.24, Municipal comment, recodified to N.J.A.C. 5:80-33.22.
Amended by R.2000 d.132, effective March 20, 2000.
See: 32 N.J.R. 191(a), 32 N.J.R. 1065(a).
Amended by R.2001 d.170, effective May 21, 2001.
See: 33 N.J.R. 932(a), 33 N.J.R. 1573(b).
In (b), deleted the last two sentences; deleted (c).
Recodified from N.J.A.C. 5:80-33.24 and amended by R.2003 d.300, effective July 21, 2003.
See: 35 N.J.R. 1616(a), 35 N.J.R. 3298(b).
In (b), deleted "Committee decisions are final" preceding the second sentence; added (c). Former N.J.A.C. 5:80-33.22, Municipal comment, recodified to N.J.A.C. 5:80-33.20.
Amended by R.2010 d.060, effective April 19, 2010.
See: 42 N.J.R. 583(a), 42 N.J.R. 776(a).
In (a), deleted "of NJHMFA" following "Executive Director" and inserted the last sentence.
Amended by R.2011 d.239, effective September 6, 2011.
See: 43 N.J.R. 917(a), 43 N.J.R. 2293(a).
In (a), inserted "a quorum of", and deleted "executive" preceding "staff".
Amended by R.2013 d.086, effective June 17, 2013.
See: 45 N.J.R. 530(a), 45 N.J.R. 1511(a).
Rewrote (a); and in (b), inserted a comma following "eligibility", and inserted ", and shall award tax credit reservations accordingly".

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.

Recodified from N.J.A.C. 5:80-33.22 and amended by R.1998 d.279, effective June 1, 1998.
See: 30 N.J.R. 1132(a), 30 N.J.R. 1978(a).
Added a new fourth sentence. Former N.J.A.C. 5:80-33.27, Extended use agreement, was recodified to N.J.A.C. 5:80-33.32.
Recodified from N.J.A.C. 5:80-33.27 by R.1999 d.120, effective April 5, 1999.
See: 31 N.J.R. 122(a), 31 N.J.R. 860(a).
Former N.J.A.C. 5:80-33.25, Application needs analysis, recodified to N.J.A.C. 5:80-33.23.
Amended by R.2000 d.132, effective March 20, 2000.
See: 32 N.J.R. 191(a), 32 N.J.R. 1065(a).
Inserted "at the time" following "tax credit" in the first sentence.
Recodified from N.J.A.C. 5:80-33.25 by R.2003 d.300, effective July 21, 2003.
See: 35 N.J.R. 1616(a), 35 N.J.R. 3298(b).
Former N.J.A.C. 5:80-33.23, Application needs analysis, recodified to N.J.A.C. 5:80-33.21.

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 November 30 or the next business day if 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 six months from the date the carryover allocation agreement is executed by NJHMFA. 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 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 in a competitive cycle affected by an error as determined by the Tax Credit Committee. In no event shall the project receive credits and/or a binding commitment exceeding the maximum eligible tax credit amount.

Amended by R.1997 d.284, effective July 7, 1997.
See: 29 N.J.R. 1441(a), 29 N.J.R. 2818(a).
Deleted former (a); recodified former (a)1 through 3 as (a) through (c); in (b), substituted "October 15 (November 15 for Final Cycle reservations)" for "November 1st", and inserted sixth through eighth sentences; and in (c), inserted "typically" following "allocating document is", substituted "October 15 (November 15 for Final Cycle reservations) all items required by" for "November 1st all the requirements listed under", inserted fifth and sixth sentences, and deleted "(evidenced by a signed IRS Form 8609 from NJHMFA" following failed to receive an allocation".
Recodified from N.J.A.C. 5:80-33.23 and amended by R.1998 d.279, effective June 1, 1998.
See: 30 N.J.R. 1132(a), 30 N.J.R. 1978(a).

Rewrote the section. Former N.J.A.C. 5:80-33.28, Returning credits, was recodified to N.J.A.C. 5:80-33.33.
Recodified from N.J.A.C. 5:80-33.28 and amended by R.1999 d.120, effective April 5, 1999.
See: 31 N.J.R. 122(a), 31 N.J.R. 860(a).
In (a), changed N.J.A.C. references throughout; and in (b), deleted "provided such project can meet the ten percent carryover test" at the end of the introductory paragraph, rewrote 1, and inserted a new third sentence in 2. Former N.J.A.C. 5:80-33.26, Committee review, recodified to N.J.A.C. 5:80-33.24.
Amended by R.2000 d.132, effective March 20, 2000.
See: 32 N.J.R. 191(a), 32 N.J.R. 1065(a).
In (a)1, inserted ", fully executed deed of easement and restrictive covenant (if the property has been acquired by the carryover allocation date)" following "carryover"; and in (b)1, deleted "(or the Reserve if the Final Cycle is cancelled)" following "Final Cycle" in the first sentence, and inserted a new second sentence.
Amended by R.2001 d.170, effective May 21, 2001.
See: 33 N.J.R. 932(a), 33 N.J.R. 1573(b).
In (a), substituted "30" for "15", inserted "or the 30th" after "15th", substituted "an" for "a graduated" following "deadline" and deleted "$500.00 per week or part thereof in November and" following "Cycle"; and in (a)2i, changed N.J.A.C. reference.
Amended by R.2002 d.233, effective July 15, 2002.
See: 34 N.J.R. 1574(a), 34 N.J.R. 2417(a).
In (a), rewrote the introductory paragraph and substituted "Owners" for "Sponsors" throughout; in (b), rewrote 1 and added 3.
Recodified from N.J.A.C. 5:80-33.26 and amended by R.2003 d.300, effective July 21, 2003.
See: 35 N.J.R. 1616(a), 35 N.J.R. 3298(b).
In (a), amended N.J.A.C. reference in the introductory paragraph; in 1, substituted "which demonstrates" for ", fully executed deed of easement and restrictive covenant (if the property has been acquired by the carryover allocation date); rewrote (b). Former N.J.A.C. 5:80-33.24, Committee review, recodified to N.J.A.C. 5:80-33.22.
Amended by R.2006 d.112, effective March 20, 2006.
See: 37 N.J.R. 3879(a), 38 N.J.R. 1432(a).
In (b)2, deleted "is a preservation project and".
Amended by R.2007 d.168, effective May 21, 2007.
See: 39 N.J.R. 281(a), 39 N.J.R. 2011(a).
In (a), substituted "November 30 or the next business day if the 30th is a weekend" for "October 15 (November 30 for Final Cycle reservations) or the next business day if the 15th (or the 30th) is a weekend", and "the carryover allocation agreement is executed" for "a tax credit reservation is issued by the Tax Credit Committee".
Amended by R.2008 d.133, effective May 19, 2008.
See: 40 N.J.R. 839(a), 40 N.J.R. 2429(b).
In the introductory paragraph of (a), inserted "by NJHMFA".
Amended by R.2009 d.154, effective May 4, 2009.
See: 41 N.J.R. 917(a), 41 N.J.R. 1994(a).
In the introductory paragraph of (a), substituted "six" for "three".
Amended by R.2011 d.239, effective September 6, 2011.
See: 43 N.J.R. 917(a), 43 N.J.R. 2293(a).
Rewrote (b).

5:80-33.25 Allocation/issuance fee schedule

Projects requesting an allocation of tax credits shall pay a fee equaling two percent of the 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. Allocation/issuance fees are non-refundable.

New Rule, R.2001 d.170, effective May 21, 2001.
See: 33 N.J.R. 932(a), 33 N.J.R. 1573(b).
Former N.J.A.C. 5:80-33.27, Obtaining IRS Form 8609, recodified to N.J.A.C. 5:80-33.28.
Amended by R.2002 d.233, effective July 15, 2002.
See: 34 N.J.R. 1574(a), 34 N.J.R. 2417(a).
Rewrote the section.
Recodified from N.J.A.C. 5:80-33.27 and amended by R.2003 d.300, effective July 21, 2003.
See: 35 N.J.R. 1616(a), 35 N.J.R. 3298(b).
Former N.J.A.C. 5:80-33.25, Allocation needs analysis, recodified to N.J.A.C. 5:80-33.23.
Amended by R.2006 d.112, effective March 20, 2006.
See: 37 N.J.R. 3879(a), 38 N.J.R. 1432(a).
Deleted "carryover".
Amended by R.2008 d.133, effective May 19, 2008.
See: 40 N.J.R. 839(a), 40 N.J.R. 2429(b).
Inserted the last sentence.

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 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) 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 within 90 days after permanent loan closing. 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.

(c) Failure of a project to fulfill all representations made in its application may result in a delay and/or non-issuance of the IRS Form 8609. At its sole discretion, NJHMFA may im-

pose penalties for failure to comply with eligibility or point requirements, such penalties to include, but not be limited to, the imposition of financial penalties, a reduction in the allocated credit amount or the unilateral cancellation of an allocation. Generally, a financial penalty or reduction in the amount of credits will be imposed in an amount commensurate with the violation. For example, if a project fails to meet the minimum expenditures under N.J.A.C. 5:80-33.15(a)6, credits may be reduced by or a financial penalty imposed in the delinquent amount, which amount may be affected by remedial measures, if any, taken in order to comply with the representation(s). However, NJHMFA reserves the right to unilaterally cancel an allocation for severe and/or persistent violations.

(d) IRS Form 8609 shall not be issued to projects that 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 until such noncompliance is corrected.

Amended by R.1997 d.284, effective July 7, 1997.
See: 29 N.J.R. 1441(a), 29 N.J.R. 2818(a).
In third sentence, substituted reference to required information for reference to specified required items and in the fourth sentence substituted reference to completed NJHMFA evaluation and placed in service needs analysis for reference to completed items and any other requested information.
Recodified from N.J.A.C. 5:80-33.24 by R.1998 d.279, effective June 1, 1998.
See: 30 N.J.R. 1132(a), 30 N.J.R. 1978(a).
Former N.J.A.C. 5:80-33.29, Returning credits, was recodified to N.J.A.C. 5:80-33.34.
Recodified from N.J.A.C. 5:80-33.29 and amended by R.1999 d.120, effective April 5, 1999.
See: 31 N.J.R. 122(a), 31 N.J.R. 860(a).
Inserted a new third sentence. Former N.J.A.C. 5:80-33.27, Allocation needs analysis, recodified to N.J.A.C. 5:80-33.25.
Amended by R.2000 d.132, effective March 20, 2000.
See: 32 N.J.R. 191(a), 32 N.J.R. 1065(a).
Inserted a new fourth sentence, and inserted "and attendance by the project owner and managing agent at an NJHMFA-sponsored compliance monitoring seminar," following "needs analysis)" in the new sixth sentence.
Recodified from N.J.A.C. 5:80-33.27 and amended by R.2001 d.170, effective May 21, 2001.
See: 33 N.J.R. 973(a), 33 N.J.R. 1573(b).
Rewrote the second sentence. Former N.J.A.C. 5:80-33.28, Placed in service needs analysis, recodified to N.J.A.C. 5:80-33.29.
Amended by R.2002 d.233, effective July 15, 2002.
See: 34 N.J.R. 1574(a), 34 N.J.R. 2417(a).
Designated the existing text as (a) and substituted "(or its authorized designee)" for "staff" following "NJHMFA"; added (b).
Recodified from N.J.A.C. 5:80-33.28 and amended by R.2003 d.300, effective July 21, 2003.
See: 35 N.J.R. 1616(a), 35 N.J.R. 3298(b).
In (a), amended N.J.A.C. reference; in (b), substituted "Form 8609" for "form", amended N.J.A.C. reference. Former N.J.A.C. 5:80-33.26, Reservations, allocations and binding commitments, recodified to N.J.A.C. 5:80-33.24.
Amended by R.2006 d.112, effective March 20, 2006.
See: 37 N.J.R. 3879(a), 38 N.J.R. 1432(a).
In (a), added "that contains tax credit units" and substituted "may" for "shall".
Amended by R.2007 d.168, effective May 21, 2007.
See: 39 N.J.R. 281(a), 39 N.J.R. 2011(a).
Added (c) and (d).
Amended by R.2008 d.133, effective May 19, 2008.
See: 40 N.J.R. 839(a), 40 N.J.R. 2429(b).
In (b), substituted "within 90 days after the last building in the development is placed in service pursuant to IRS Notice 88-116" for "at the latter 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".
Amended by R.2011 d.239, effective September 6, 2011.
See: 43 N.J.R. 917(a), 43 N.J.R. 2293(a).
In (a), substituted "or representative" for "and managing agent".
Amended by R.2013 d.086, effective June 17, 2013.
See: 45 N.J.R. 530(a), 45 N.J.R. 1511(a).
In (b), substituted "permanent loan closing" for "the last building in the development is placed in service pursuant to IRS Notice 88-116".

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.

Amended by R.1997 d.284, effective July 7, 1997.
See: 29 N.J.R. 1441(a), 29 N.J.R. 2818(a).
Deleted "eligible basis amount" following "increase the developer fee".
Recodified from N.J.A.C. 5:80-33.24 and amended by R.1998 d.279, effective June 1, 1998.
See: 30 N.J.R. 1132(a), 30 N.J.R. 1978(a).
In (a), changed N.J.A.C. reference; and in (b), added a new second sentence. Former N.J.A.C. 5:80-33.29, Returning credits, was recodified to N.J.A.C. 5:80-33.34.

Recodified from N.J.A.C. 5:80-33.30 and amended by R.1999 d.120, effective April 5, 1999.
See: 31 N.J.R. 122(a), 31 N.J.R. 860(a).
In (a), rewrote the second sentence. Former N.J.A.C. 5:80-33.28, Reservations, allocations and binding commitments, recodified to N.J.A.C. 5:80-33.26.
Amended by R.2000 d.132, effective March 20, 2000.
See: 32 N.J.R. 191(a), 32 N.J.R. 1065(a).
Recodified from N.J.A.C. 5:80-33.28 and amended by R.2001 d.170, effective May 21, 2001.
See: 33 N.J.R. 932(a), 33 N.J.R. 1573(b).
In (a), changed N.J.A.C. reference. Former N.J.A.C. 5:80-33.29, Project cost certification, recodified to N.J.A.C. 5:80-33.30.
Recodified from N.J.A.C. 5:80-33.29 and amended by R.2003 d.300, effective July 21, 2003.
See: 35 N.J.R. 1616(a), 35 N.J.R. 3298(b).
In (a), amended N.J.A.C. reference. Former N.J.A.C. 5:80-33.27, Allocation/issuance fee schedule, recodified to N.J.A.C. 5:80-33.25.

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. For purposes of calculating the contractor fee limits below, the construction contract amount shall not include contractor overhead and profit.

CONTRACTOR FEE SCHEDULE

Construction Contract Amount			Fee (Overhead and Profit)
$ 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.

Amended by R.1997 d.284, effective July 7, 1997.
See: 29 N.J.R. 1441(a), 29 N.J.R. 2818(a).
In (a), in the first sentence inserted "both the development and construction costs of", inserted the second sentence, and in third and fourth sentences, substituted "October 15" for "November 1st"; inserted new (b); recodified former (b) and (c) as (c) and (d); and in (c), substituted "may consider" for "shall consider".
Recodified from N.J.A.C. 5:80-33.26 and amended by R.1998 d.279, effective June 1, 1998.
See: 30 N.J.R. 1132(a), 30 N.J.R. 1978(a).
In (b), changed the date from 1997 to 1998 in the Contractor Fee Schedule. Former N.J.A.C. 5:80-33.31, NJHMFA review, was recodified to N.J.A.C. 5:80-33.36.
Recodified from N.J.A.C. 5:80-33.31 and amended by R.1999 d.120, effective April 5, 1999.
See: 31 N.J.R. 122(a), 31 N.J.R. 860(a).
In (b), changed year in table heading. Former N.J.A.C. 5:80-33.29, Obtaining IRS Form 8609, recodified to N.J.A.C. 5:80-33.27.
Amended by R.2000 d.132, effective March 20, 2000.
See: 32 N.J.R. 191(a), 32 N.J.R. 1065(a).
Rewrote (a); in (b), substituted "CONTRACTOR FEE SCHEDULE" for "1999 Low Income Housing Tax Credit" and substituted "$20,000,000+" for "$20,000, 001+" in the table; and in (c), inserted "playground" following "system" in the last sentence.
Recodified from N.J.A.C. 5:80-33.29 and amended by R.2001 d.170, effective May 21, 2001.
See: 33 N.J.R. 932(a), 33 N.J.R. 1573(b).
In (a), rewrote the first through third sentences. Former N.J.A.C. 5:80-33.30, Extended use agreement, recodified to N.J.A.C. 5:80-33.31.
Amended by R.2002 d.233, effective July 15, 2002.
See: 34 N.J.R. 1574(a), 34 N.J.R. 2417(a).
Rewrote (a), and substituted references tu owner for sponsor throughout.
Recodified from N.J.A.C. 5:80-33.30 and amended by R.2003 d.300, effective July 21, 2003.
See: 35 N.J.R. 1616(a), 35 N.J.R. 3298(b).
In (a), added last sentence. Former N.J.A.C. 5:80-33.28, Obtaining IRS Form 8690: deadlines and extension, recodified to N.J.A.C. 5:80-33.26.
Amended by R.2006 d.112, effective March 20, 2006.
See: 37 N.J.R. 3879(a), 38 N.J.R. 1432(a).
Added the last sentence to introductory paragraph (b).

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 latter 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. 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.

Recodified from N.J.A.C. 5:80-33.27 by R.1998 d.279, effective June 1, 1998.
See: 30 N.J.R. 1132(a), 30 N.J.R. 1978(a).
Former N.J.A.C. 5:80-33.32, Compliance monitoring fee, was recodified to N.J.A.C. 5:80-33.37.
Recodified from N.J.A.C. 5:80-33.32 by R.1999 d.120, effective April 5, 1999.
See: 31 N.J.R. 122(a), 31 N.J.R. 860(a).
Former N.J.A.C. 5:80-33.30, Placed in service needs analysis, recodified to N.J.A.C. 5:80-33.28.
Amended by R.2000 d.132, effective March 20, 2000.
See: 32 N.J.R. 191(a), 32 N.J.R. 1065(a).
Substituted "at the later of the carryover allocation described at N.J.A.C. 5:80-33.26(a)1 or acquisition of the property" for "above" at the end of the third sentence.
Recodified from N.J.A.C. 5:80-33.30 by R.2001 d.170, effective May 21, 2001.
See: 33 N.J.R. 932(a), 33 N.J.R. 1573(b).
Former N.J.A.C. 5:80-33.31, Returning credits, recodified to N.J.A.C. 5:80-33.32.
Recodified from N.J.A.C. 5:80-33.31 and amended by R.2003 d.300, effective July 21, 2003.
See: 35 N.J.R. 1616(a), 35 N.J.R. 3298(b).
Former N.J.A.C. 5:80-33.29, Placed in service needs analysis, recodified to N.J.A.C. 5:80-33.27.
Amended by R.2006 d.112, effective March 20, 2006.
See: 37 N.J.R. 3879(a), 38 N.J.R. 1432(a).
Deleted "Applicants are responsible for paying the fee required to record the agreement in the County Clerk's Office".

5:80-33.30 Returning credits

Applicants unable to utilize their allocation should return their allocation to NJHMFA as soon as possible. NJHMFA shall deposit returned or recaptured credits into the Reserve or in the Final Cycle. In addition, for credits returned within the same calendar year of award, NJHMFA reserves the right to fund the next highest ranking eligible project from the cycle in which the initial award was made.

Amended by R.1997 d.284, effective July 7, 1997.
See: 29 N.J.R. 1441(a), 29 N.J.R. 2818(a).
Substituted "applicants" for "projects" and "October 15" for "November 1st" throughout.
Recodified from N.J.A.C. 5:80-33.28 by R.1998 d.279, effective June 1, 1998.
See: 30 N.J.R. 1132(a), 30 N.J.R. 1978(a).
Former N.J.A.C. 5:80-33.33, Inspection, was recodified to N.J.A.C. 5:80-33.38.
Recodified from N.J.A.C. 5:80-33.33 and amended by R.1999 d.120, effective April 5, 1999.
See: 31 N.J.R. 122(a), 31 N.J.R. 860(a).
Substituted "administered" for "returned after the Reserve deadline" at the end. Former N.J.A.C. 5:80-33.31, Project cost certification, recodified to N.J.A.C. 5:80-33.29.
Recodified from N.J.A.C. 5:80-33.31 and amended by R.2001 d.170, effective May 21, 2001.
See: 33 N.J.R. 932(a), 33 N.J.R. 1573(b).
Deleted second and third sentence. Former N.J.A.C. 5:80-33.32, Applicant's affirmative obligation to disclose changes, recodified to N.J.A.C. 5:80-33.33.
Recodified from N.J.A.C. 5:80-33.32 and amended by R.2003 d.300, effective July 21, 2003.
See: 35 N.J.R. 1616(a), 35 N.J.R. 3298(b).
Substituted "the Reserved has been fully utilized" for "administered". Former N.J.A.C. 5:80-33.30, Project cost certification and contractor fee limits, recodified to N.J.A.C. 5:80-33.28.
Amended by R.2009 d.154, effective May 4, 2009.
See: 41 N.J.R. 917(a), 41 N.J.R. 1994(a).
Rewrote the section.

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) Any transfer of a general partner/managing member interest shall require pre-approval by the NJHMFA Division of Tax Credit Services.

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

Amended by R.1997 d.284, effective July 7, 1997.
See: 29 N.J.R. 1441(a), 29 N.J.R. 2818(a).
Inserted new (b); recodified former (b) as (c).
Recodified from N.J.A.C. 5:80-33.29 by R.1998 d.279, effective June 1, 1998.
See: 30 N.J.R. 1132(a), 30 N.J.R. 1978(a).
Former N.J.A.C. 5:80-33.34, Notification of noncompliance, was recodified to N.J.A.C. 5:80-33.39.
Recodified from N.J.A.C. 5:80-33.34 by R.1999 d.120, effective April 5, 1999.
See: 31 N.J.R. 122(a), 31 N.J.R. 860(a).
Former N.J.A.C. 5:80-33.32, Extended use agreement, recodified to N.J.A.C. 5:80-33.30.
Amended by R.2000 d.132, effective March 20, 2000.
See: 32 N.J.R. 191(a), 32 N.J.R. 1065(a).
Recodified from N.J.A.C. 5:80-33.32 by R.2001 d.170, effective May 21, 2001.
See: 33 N.J.R. 932(a), 33 N.J.R. 1573(b).
Former N.J.A.C. 5:80-33.33, Compliance monitoring, recodified to N.J.A.C. 5:80-33.34.
Amended by R.2002 d.233, effective July 15, 2002.
See: 34 N.J.R. 1574(a), 34 N.J.R. 2417(a).
In (a), substituted "owner" for "sponsor" preceding "to certify".
Recodified from N.J.A.C. 5:80-33.33 and amended by R.2003 d.300, effective July 21, 2003.
See: 35 N.J.R. 1616(a), 35 N.J.R. 3298(b).
In (a), inserted "including pending/anticipated litigation which may affect the proposed development" preceding the second sentence. Former N.J.A.C. 5:80-33.31, Extended use agreement, recodified to N.J.A.C. 5:80-33.29.
Amended by R.2008 d.133, effective May 19, 2008.
See: 40 N.J.R. 839(a), 40 N.J.R. 2429(b).
Added new (c); and recodified former (c) as (d).

Amended by R.2009 d.154, effective May 4, 2009.
See: 41 N.J.R. 917(a), 41 N.J.R. 1994(a).
In (c), inserted "the" and "Division of Tax Credit Services".

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 most recent audited financial statements, including a detailed income and expense schedule and vacancy rate calculation by January 31.

(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 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 household;

7. Documentation to support each low-income tenant's income (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 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. 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 Code 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;

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. §1437f. 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 C.F.R. § 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.

(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.

Amended by R.1997 d.284, effective July 7, 1997.
See: 29 N.J.R. 1441(a), 29 N.J.R. 2818(a).
In (b)9, inserted "that is," preceding "tenant facilities that are available"; in (d)1, inserted "Federal" and moved reference to the 40-50 test.
Recodified from N.J.A.C. 5:80-33.30 and amended by R.1998 d.279, effective June 1, 1998.
See: 30 N.J.R. 1132(a), 30 N.J.R. 1978(a).
Added new (b) and (c) and recodified former (b) through (d) as (d) through (f). Former N.J.A.C. 5:80-33.35, Confidentiality of tax credit applications, and information, was recodified to N.J.A.C. 5:80-33.40.
Recodified from N.J.A.C. 5:80-33.35 by R.1999 d.120, effective April 5, 1999.
See: 31 N.J.R. 122(a), 31 N.J.R. 860(a).
Former N.J.A.C. 5:80-33.33, Returning credits, recodified to N.J.A.C. 5:80-33.31.
Amended by R.2000 d.132, effective March 20, 2000.
See: 32 N.J.R. 191(a), 32 N.J.R. 1065(a).
In (a), inserted "contact NJHMFA's compliance monitoring section before the project places in service and prior to rent up. In addition, the owner must" following "credits must"; and in (c), substituted "120" for "90" following "later than".
Recodified from N.J.A.C. 5:80-33.33 and amended by R.2001 d.170, effective May 21, 2001.

See: 33 N.J.R. 932(a), 33 N.J.R. 1573(b).
In (a), rewrote the second sentence; in (d), rewrote 4 and 5; in (f), rewrote the introductory paragraph, 6 and 11 and inserted 12 through 14. Former N.J.A.C. 5:80-33.34, NJHMFA review, recodified to N.J.A.C. 5:80-33.35.
Amended by R.2002 d.233, effective July 15, 2002.
See: 34 N.J.R. 1574(a), 34 N.J.R. 2417(a).
Rewrote the section.
Recodified from N.J.A.C. 5:80-33.34 and amended by R.2003 d.300, effective July 21, 2003.
See: 35 N.J.R. 1616(a), 35 N.J.R. 3298(b).
In (a), substituted "owners" for "owner", inserted "Completion of Part II of the IRS Form 8609 and the filing of same with the Internal Revenue Service" preceding the third sentence; rewrote (d)4. Former N.J.A.C. 5:80-33.32, Returning credits, recodified to N.J.A.C. 5:80-33.30.
Administrative correction.
See: 38 N.J.R. 3530(a).
Amended by R.2009 d.154, effective May 4, 2009.
See: 41 N.J.R. 917(a), 41 N.J.R. 1994(a).
In (c), inserted "most recent", deleted "for the prior fiscal year" following "financial statements" and substituted "January 31" for "May 1"; and rewrote (d)7.
Amended by R.2011 d.239, effective September 6, 2011.
See: 43 N.J.R. 917(a), 43 N.J.R. 2293(a).
In (d)4, deleted "college" preceding "students"; in (d)6, substituted "household" for "tenant per unit"; rewrote (d)7 and (f)3; and added (g).

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 annual tenant information. The 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.

Amended by R.1997 d.284, effective July 7, 1997.
See: 29 N.J.R. 1441(a), 29 N.J.R. 2818(a).
Recodified from N.J.A.C. 5:80-33.31 and amended by R.1998 d.279, effective June 1, 1998.
See: 30 N.J.R. 1132(a), 30 N.J.R. 1978(a).
Added a new (c) and recodified former (c) as (d).
Recodified from N.J.A.C. 5:80-33.36 by R.1999 d.120, effective April 5, 1999.
See: 31 N.J.R. 122(a), 31 N.J.R. 860(a).
Former N.J.A.C. 5:80-33.34, Applicant's affirmative obligation to disclose changes, recodified to N.J.A.C. 5:80-33.32.
Amended by R.2000 d.132, effective March 20, 2000.
See: 32 N.J.R. 191(a), 32 N.J.R. 1065(a).
Recodified from N.J.A.C. 5:80-33.34 and amended by R.2001 d.170, effective May 21, 2001.
See: 33 N.J.R. 932(a), 33 N.J.R. 1573(b).
In (b) and (c), substituted "33" for "20" preceding "percent"; in (c), rewrote the first sentence and inserted a second sentence. Former N.J.A.C. 5:80-33.35, Compliance monitoring fee, repealed.
Amended by R.2002 d.233, effective July 15, 2002.
See: 34 N.J.R. 1574(a), 34 N.J.R. 2417(a).
Rewrote the section.
Recodified from N.J.A.C. 5:80-33.35 and amended by R.2003 d.300, effective July 21, 2003.
See: 35 N.J.R. 1616(a), 35 N.J.R. 3298(b).
Substituted "IRS Regulations" for "Code". Former N.J.A.C. 5:80-33.33, Applicant's affirmative obligation to disclose changes, recodified to N.J.A.C. 5:80-33.31.
Amended by R.2007 d.168, effective May 21, 2007.
See: 39 N.J.R. 281(a), 39 N.J.R. 2011(a).
Deleted "(c)(2)(ii)(C)" following "Section 1.42-5"; and substituted "in digital format" for "(preferably in digital format)".
Amended by R.2008 d.133, effective May 19, 2008.
See: 40 N.J.R. 839(a), 40 N.J.R. 2429(b).
Deleted "low-income" preceding "unit" and substituted "via the MITAS/NJHMFA Low Income Housing Tax Credit Internet System" for "in digital format".
Amended by R.2011 d.239, effective September 6, 2011.
See: 43 N.J.R. 917(a), 43 N.J.R. 2293(a).
Inserted "via electronic copy", and substituted "annual tenant information" for "Building Status Report" twice.

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 through the end of the extended use period and have access to all books and records which would document compliance.

(b) On an annual basis, owners of at least 33.33 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 33.33 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 and every vacant unit 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) may also be reported for appropriate action to the Division of Codes and Standards, Bureau of Housing Inspection in DCA.

(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 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.

Recodified from N.J.A.C. 5:80-33.33 by R.1998 d.279, effective June 1, 1998.
See: 30 N.J.R. 1132(a), 30 N.J.R. 1978(a).
Recodified from N.J.A.C. 5:80-33.38 and amended by R.1999 d.120, effective April 5, 1999.
See: 31 N.J.R. 122(a), 31 N.J.R. 860(a).
Rewrote the section. Former N.J.A.C. 5:80-33.36, NJHMFA review, recodified to N.J.A.C. 5:80-33.34.
Amended by R.2001 d.170, effective May 21, 2001.
See: 33 N.J.R. 932(a), 33 N.J.R. 1573(b).
In first sentence, substituted "may" for "shall" and changed N.J.A.C. reference; and inserted the second sentence.
Amended by R.2002 d.233, effective July 15, 2002.
See: 34 N.J.R. 1574(a), 34 N.J.R. 2417(a).
Rewrote the section.
Recodified from N.J.A.C. 5:80-33.36 and amended by R.2003 d.300, effective July 21, 2003.
See: 35 N.J.R. 1616(a), 35 N.J.R. 3298(b).
In (a), amended N.J.A.C. reference. Former N.J.A.C. 5:80-33.34, Compliance monitoring, recodified to N.J.A.C. 5:80-33.32.
Amended by R.2006 d.112, effective March 20, 2006.
See: 37 N.J.R. 3879(a), 38 N.J.R. 1432(a).
In (c), substituted "may" for "shall".
Amended by R.2008 d.133, effective May 19, 2008.
See: 40 N.J.R. 839(a), 40 N.J.R. 2429(b).
In (a), deleted "at least" preceding "through" and substituted "extended use" for "compliance"; and in (c), inserted "and every vacant unit".
Amended by R.2011 d.239, effective September 6, 2011.
See: 43 N.J.R. 917(a), 43 N.J.R. 2293(a).
In (d), substituted "made available" for "submitted", and inserted the last sentence.
Amended by R.2013 d.086, effective June 17, 2013.
See: 45 N.J.R. 530(a), 45 N.J.R. 1511(a).
In the introductory paragraph of (b) and in (c), substituted "33.33" for "33"; in (c), inserted a comma following "safety", and substituted "DCA" for "the New Jersey Department of Community Affairs".

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.

Recodified from N.J.A.C. 5:80-33.34 and amended by R.1998 d.279, effective June 1, 1998.
See: 30 N.J.R. 1132(a), 30 N.J.R. 1978(a).
In (a), changed the N.J.A.C. reference.
Recodified from N.J.A.C. 5:80-33.39 and amended by R.1999 d.120, effective April 5, 1999.
See: 31 N.J.R. 122(a), 31 N.J.R. 860(a).
In (a), changed N.J.A.C. reference. Former N.J.A.C. 5:80-33.37, Compliance monitoring fee, recodified to N.J.A.C. 5:80-33.35.
Amended by R.2000 d.132, effective March 20, 2000.
See: 32 N.J.R. 191(a), 32 N.J.R. 1065(a).
Amended by R.2001 d.170, effective May 21, 2001.
See: 33 N.J.R. 932(a), 33 N.J.R. 1573(b).
In (a), changed N.J.A.C. reference.
Amended by R.2002 d.233, effective July 15, 2002.
See: 34 N.J.R. 1574(a), 34 N.J.R. 2417(a).
In (a), substituted "this subchapter" for the N.J.A.C. reference.
Recodified from N.J.A.C. 5:80-33.37 by R.2003 d.300, effective July 21, 2003.
See: 35 N.J.R. 1616(a), 35 N.J.R. 3298(b).
Former N.J.A.C. 5:80-33.35, Owner's annual reports: deadlines, recodified to N.J.A.C. 5:80-33.33.

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

(a) Applications and all supporting documents submitted to NJHMFA for tax credit reservations shall be confidential, non-public records until Final Cycle awards are announced or until cancellation of the Final Cycle is announced by NJHMFA. Thereafter, applications and all supporting documents submitted to NJHMFA for tax credit reservations shall be deemed to be public records, except the documents set forth in item (c) below shall remain confidential, non-public records.

(b) Applications and all supporting documents submitted to NJHMFA for volume cap tax credits shall be confidential, non-public records until NJHMFA has issued a determination letter. Thereafter, applications and all supporting documents submitted to NJHMFA for volume cap tax credits shall be deemed to be public records, except the documents set forth in item (c) below shall remain confidential, non-public records.

(c) To the extent they constitute "trade secrets" or "proprietary commercial or financial information" within the meaning of the New Jersey Open Public Records Act, N.J.S.A. 47:1A-1 et seq., the following documents are confidential, non-public records:

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

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

3. Documents and other information, including 15-year cash flow proforma, submitted in compliance with N.J.A.C. 5:80-33.12(c)7;

4. Financing information and Breakdown of Costs and Basis submitted in support of the application needs analysis described at N.J.A.C. 5:80-33.21;

5. Data submitted for comparable projects pursuant to N.J.A.C. 5:80-33.12(c)7iii; and

6. Third-party reports, including, but not limited to, market studies, appraisals, cost certifications, and economic feasibility analyses.

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

(e) 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 authorized by Section 6103 of the Code.

Recodified from 5:80-33.36 and amended by R.1997 d.284, effective July 7, 1997.
See: 29 N.J.R. 1441(a), 29 N.J.R. 2818(a).
Substantially amended (a); in (a)1 and 2, amended N.J.A.C. reference; rewrote (b); and added (c). Former section "Tax exempt financed projects" was recodified to N.J.A.C. 5:80-33.11(a)17.
Recodified from N.J.A.C. 5:80-33.35 and amended by R.1998 d.279, effective June 1, 1998.
See: 30 N.J.R. 1132(a), 30 N.J.R. 1978(a).
In (a)1 and 2, changed N.J.A.C. references.
Recodified from N.J.A.C. 5:80-33.40 and amended by R.1999 d.120, effective April 5, 1999.
See: 31 N.J.R. 122(a), 31 N.J.R. 860(a).
In (a), inserted a reference to cancellation of the Final Cycle in the first sentence, and changed N.J.A.C. references in 1 and 2. Former N.J.A.C. 5:80-33.38, Inspection, recodified to N.J.A.C. 5:80-33.36.
Amended by R.2000 d.132, effective March 20, 2000.
See: 32 N.J.R. 191(a), 32 N.J.R. 1065(a).
In (a)1, changed N.J.A.C. reference.
Amended by R.2001 d.170, effective May 21, 2001.
See: 33 N.J.R. 932(a), 33 N.J.R. 1573(b).
Added (a)3 and 4.
Recodified from N.J.A.C. 5:80-33.38 and amended by R.2003 d.300, effective July 21, 2003.
See: 35 N.J.R. 1616(a), 35 N.J.R. 3298(b).
In (a), 1 through 4 amended N.J.A.C. reference; in (b), deleted "forward" after "binding". Former N.J.A.C. 5:80-33.36, NJHMFA review and inspection, recodified to N.J.A.C. 5:80-33.34.
Administrative correction.
See: 36 N.J.R. 1776(a).
Amended by R.2006 d.112, effective March 20, 2006.
See: 37 N.J.R. 3879(a), 38 N.J.R. 1432(a).
Rewrote the section.
Amended by R.2008 d.133, effective May 19, 2008.
See: 40 N.J.R. 839(a), 40 N.J.R. 2429(b).
In (c)3, deleted "and" from the end; in (c)4, substituted "; and" for a period at the end; and added (c)5.
Amended by R.2009 d.154, effective May 4, 2009.
See: 41 N.J.R. 917(a), 41 N.J.R. 1994(a).
Rewrote the introductory paragraph of (c).
Amended by R.2013 d.086, effective June 17, 2013.
See: 45 N.J.R. 530(a), 45 N.J.R. 1511(a).
In (c)4, deleted "and" at the end; in (c)5, substituted "; and" for a period at the end; and added (c)6.

5:80-33.37 Exchange of credits

(a) A sponsor may return previously allocated credits to the Reserve in exchange for an allocation of current year credits or, at the discretion of NJHMFA, a binding commitment to allocate credits from future years' tax credit authority if the exchange is made after September 30, in an amount not to exceed the amount of the returned credits, if the sponsor establishes to the satisfaction of the Tax Credit Committee that the sponsor, despite its timely and diligent efforts, is in jeopardy of failing to meet the placed-in-service deadline for the building with respect to which the prior credits were allocated as a result of either:

1. Litigation that the sponsor could not reasonably have anticipated at the time of application submission; provided, however, that the sponsor has used its best efforts to obtain expeditious review; or

2. Catastrophic events that the sponsor could not reasonably have anticipated or controlled.

(b) To qualify for the exchange permitted in this section, the sponsor must provide the Tax Credit Committee with evidence of:

1. The due diligence performed by the sponsor in attempting to meet the placed-in-service deadline;

2. The specific circumstances causing the delay that jeopardizes the sponsor's compliance with the placed-in-service deadline;

3. The attempted remedial measures taken by the sponsor in order to mitigate the delay; and

4. Any other information that may be requested by NJHMFA staff on behalf of the Tax Credit Committee.

(c) To be eligible for the exchange permitted under this section, the sponsor must establish to the satisfaction of the Tax Credit Committee that:

1. The project with respect to which the prior credits were allocated will meet the Energy Star requirements set forth in the QAP in effect at the time the exchange is requested, if applicable to the type of building; and

2. The project would receive at least 65 percent of the maximum score under the QAP in effect at the time the exchange is requested, based on the point system applicable to the type of project for which the exchange of credits is sought. Negative points related to the full return of tax credits to NJHMFA under the QAP in effect at the time the exchange is requested shall not be imposed based upon an exchange pursuant to this section.

(d) A sponsor who receives an exchange of credits as provided in this section, as well as any affiliate entity effectively under the sponsor's control and any entity that is a related party with respect to the sponsor, shall be precluded from applying for tax credits for a new project for the next tax credit cycle following the day on which the Tax Credit Committee approves the exchange. When the sponsor, affiliate entity and any related party may again apply for tax credits for a new project, negative points related to the full return of tax credits to NJHMFA under the QAP in effect at the time the exchange is requested shall not be imposed based on an exchange pursuant to this section.

(e) No more than one exchange of credits may be approved with respect to a given project, but a sponsor may, in a single application, ask to exchange more than one year's allocation of credits.

(f) To request an exchange of credits, a sponsor must submit to the Tax Credit Committee, by no later than November 1 of the year in which the project is required to place in service based on the original allocation, a letter setting forth the reasons justifying the exchange and including the following:

1. A Sponsor Certification for Reapplication;

2. The reapplication fee set forth at the QAP's fee provision in effect at the time the exchange is requested;

3. Evidence of the project's continued eligibility under the requirements of the QAP as in effect at the time of the original allocation; and

4. Evidence of the project's continued financial feasibility as required by 26 U.S.C. §42.

(g) Projects that request an exchange of a binding commitment of credits shall be subject to the timing, application, and eligibility/justification limitations and requirements of this section.

Recodified to N.J.A.C. 5:80-33.35 by R.2003 d.300, effective July 21, 2003.
See: 35 N.J.R. 1616(a), 35 N.J.R. 3298(b).
New Rule, R.2005 d.271, effective August 15, 2005.
See: 37 N.J.R. 1109(a), 37 N.J.R. 3036(a).
Amended by R.2006 d.112, effective March 20, 2006.
See: 37 N.J.R. 3879(a), 38 N.J.R. 1432(a).
In introductory paragraph (a), added "or, at the discretion of NJHMFA, a binding commitment to allocate credits from future years' tax credit authority if the exchange is made after September 30"; in (d), substituted "the next tax credit cycle" for "a period of 365 days".
Amended by R.2008 d.133, effective May 19, 2008.
See: 40 N.J.R. 839(a), 40 N.J.R. 2429(b).
In (a)1, deleted "brought by parties other than the sponsor and" following "Litigation" and inserted "at the time of application submission".
Amended by R.2009 d.154, effective May 4, 2009.
See: 41 N.J.R. 917(a), 41 N.J.R. 1994(a).
Added new (b); recodified former (b) through (e) as (c) through (g); in the introductory paragraph of (g), inserted a comma following "exchange of credits"; and added (h).
Amended by R.2013 d.086, effective June 17, 2013.
See: 45 N.J.R. 530(a), 45 N.J.R. 1511(a).
Deleted (b); and recodified former (c) through (h) as (b) through (g).

5:80-33.38 Disclaimer and limitation of liability

(a) NJHMFA makes no representations to the applicant, developer, owner, syndicator, or to any other person as to project eligibility or compliance with the Code, IRS treasury regulations, or any other laws or regulations governing the LIHTC program.

(b) Applicants, development team members, lenders, equity investors, and syndicators participate in the tax credit program at their own risk and expense. No member, officer, agent, or employee of NJHMFA or the State will be liable for any claim, consequential damage, or loss of any kind incurred by an applicant, development team member, lender, equity investor, syndicator, or any other person arising out of, or in relation to, any project or the tax credit program resulting from a decision of the IRS or an action of the United States Congress that negatively impacts the continuation of this program or valuation of the tax credits.

Recodified to N.J.A.C. 5:80-33.36 by R.2003 d.300, effective July 21, 2003.
See: 35 N.J.R. 1616(a), 35 N.J.R. 3298(b).
New Rule, R.2013 d.086, effective June 17, 2013.
See: 45 N.J.R. 530(a), 45 N.J.R. 1511(a).
Section was "Reserved".

5:80-33.39 (Reserved)

Recodified to N.J.A.C. 5:80-33.37 by R.1999 d.120, effective April 5, 1999.
See: 31 N.J.R. 122(a), 31 N.J.R. 860(a).

5:80-33.40 (Reserved)

Recodified to N.J.A.C. 5:80-33.38 by R.1999 d.120, effective April 5, 1999.
See: 31 N.J.R. 122(a), 31 N.J.R. 860(a).

5:80-33 Appx. (Reserved)

New Rule, R.2008 d.133, effective May 19, 2008.
See: 40 N.J.R. 839(a), 40 N.J.R. 2429(b).
Repealed by R.2013 d.086, effective June 17, 2013.
See: 45 N.J.R. 530(a), 45 N.J.R. 1511(a).
Section was "Appendix".

APPENDIX A

New Jersey Housing and Mortgage Finance Agency

Guide to NJHMFA ENERGY STAR Equivalency Requirements

For instances when a funding program monitored by NJHMFA requires ENERGY STAR Certification

2012

This document was created as a handbook to explain the documents NJHMFA requires for successful completion of a NJ ENERGY STAR Homes Program. We acknowledge that not every residential construction project can participate in the NJ ENERGY STAR Homes program. Pay for Performance (P4P) or the Home Performance with Energy Star program address those projects that need a NJ ENERGY STAR Homes equivalent. The requirements within this guide are specific to NJHMFA financed projects – although we encourage other New Jersey state agencies and local government entities to reference this document when setting up similar green building and energy efficiency requirements, in order to have consistency across the state.

FOR MORE INFORMATION & TO SUBMIT DOCUMENTATION:

Kwesi Daniels
Green Homes Coordinator
kdaniels@njhmfa.state.nj.us
Phone: 609.278.7370

For U.S. Post Office:
P.O. Box 18550
Trenton, NJ 08650-2085

For Fed Ex, UPS, Visitors, etc:
637 S. Clinton Ave.
Trenton, NJ 08611

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NJHMFA *PROGRAMS REQUIRING ENERGY STAR OR ENERGY STAR EQUIVALENT CERTIFICATION:*

Low Income Housing Tax Credits 4% and 9%

The NJ LIHTC Qualified Allocation Plan's ENERGY STAR requirement can be found in the following location:

> *"5:80-33.12 Application to a cycle/eligibility requirements*
> *(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.*
>
> ***8. Successful participation in the NJ Clean Energy Program's (NJCEP) NJ ENERGY Efficient Homes Program or equivalent . . ."***

Balanced Housing & Home Express

Please reference the NJHMFA 'BH_HE Green Requirements' document (found on the Green Homes Office website, www.njgreen.gov, and within the UNIAP):

> *"On July 2, 2007, amendments to the NJ DCA Balanced Housing program rules were adopted and will affect Balanced Housing and Home Express requirements. One of the changes includes green building requirements, outlined in Appendix M (see Appendix M within this document). The NJ Green Homes Office is located within the NJ Housing & Mortgage Finance Agency and has been tasked with confirming implementation of green requirements within projects that are funded by Balanced Housing or Home Express and NJHMFA. Please carefully read through the following notes to see if this document applies to you . . .*
>
> *. . .'5:43 – 2.4 Eligibility requirements*
> *. . . (l) All projects shall conform with the Balanced Housing Green Building Requirements pursuant to chapter Appendix M . .*
>
> ***Balanced Housing Green Building Requirements***
> *[EE-1] All units must adhere to current New Jersey Energy Star Certification requirements.'"*

Note: NJHMFA, for the Home Express program only, now offers a waiver to Appendix M.

Green Future

The current Green Future Guidelines can be found on the Green Homes Office website, www.njgreen.gov

> *"EE-1: All units ENERGY STAR certified or ENERGY STAR Equivalent"*

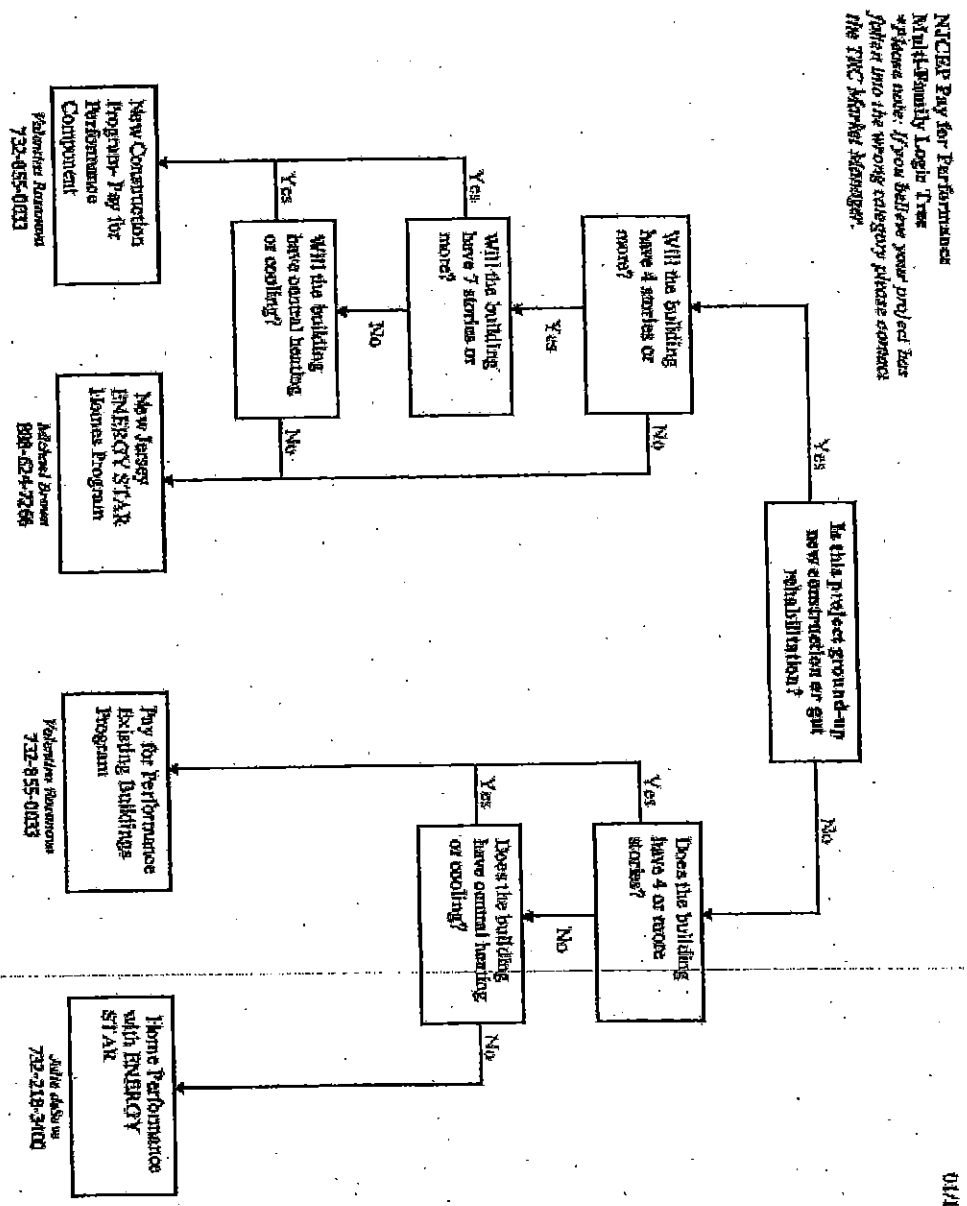
IMPORTANT NOTES:

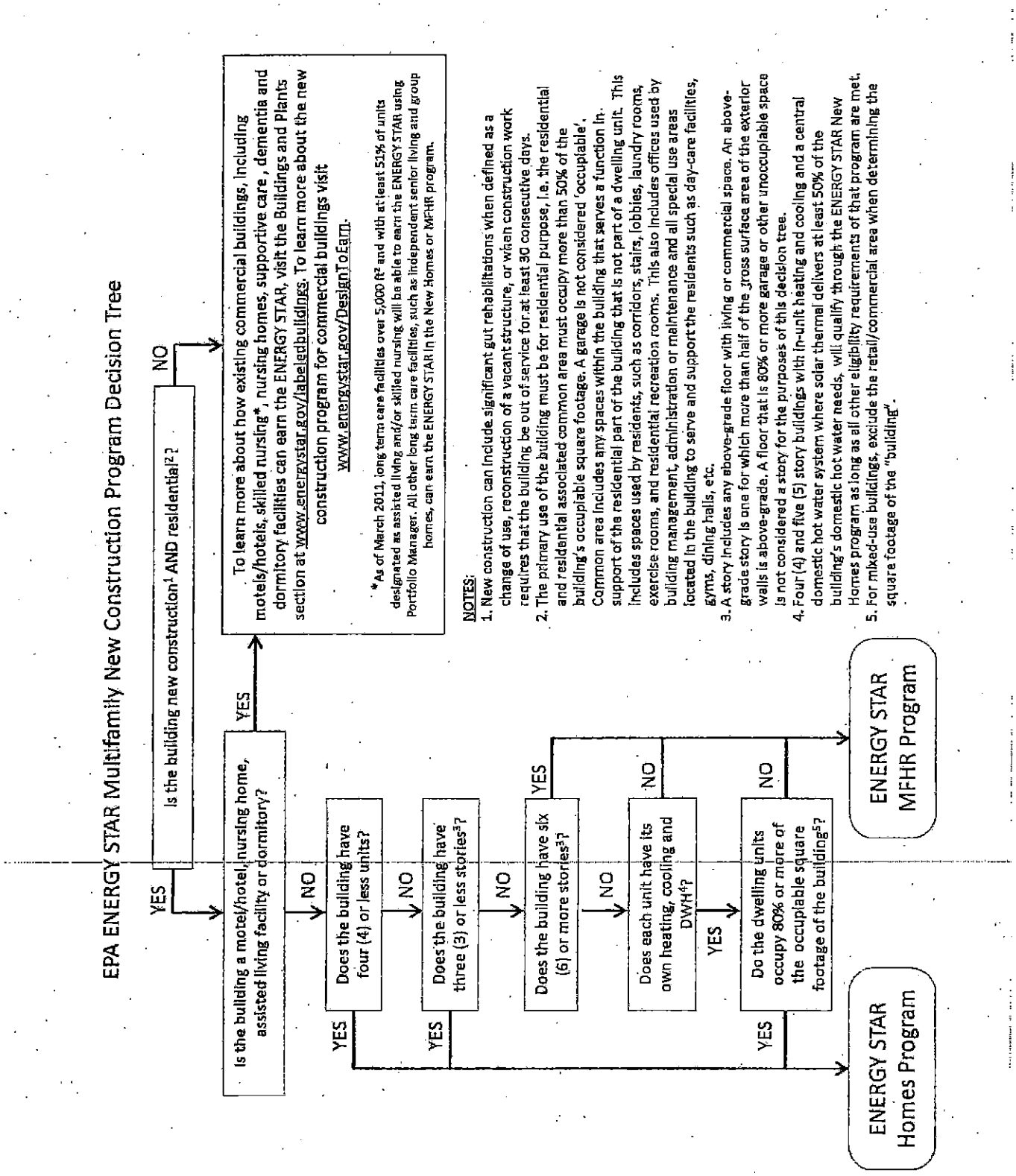
The program chosen for compliance with NJHMFA's LIHTC ENERGY STAR requirements must receive approval from the NJ Green Homes Office prior to submission of any NJHMFA funding application, unless able to participate in the EPA or NJ ENERGY STAR Homes program (most new construction or gut rehabilitation projects under 7 stories).

- The first course of action is to see if your project can participate in the NJ ENERGY STAR Homes program. If not, then NJHMFA will require a letter from the NJ ENERGY STAR Homes Program Manager - or designated representative - stating why your project cannot participate. There are currently protocols within the NJ ENERGY STAR Homes program to address a range of residential building types.
- ***To determine the ENERGY STAR-compliant program for your project follow the Multifamily Logic Tree on the following page (Page 4).***
- The NJ Office of Clean Energy, administrator of the New Jersey Clean Energy Program, has expanded its ENERGY STAR programs. These changes began in 2009, and are continued in the current programs. The program changes expand options for high-rise, historic, and moderate rehabilitation properties.
  - **NJ ENERGY STAR Homes** now offers three Tiers to provide greater incentives for higher performing (more energy efficient) buildings.
    - **Tier 1 NJ *ENERGY*EFFICIENT**- based on technical compliance elements of the previous ENERGY STAR Version 2.0 plus New Jersey specific requirements. This tier is not eligible to earn the ENERGY STAR label or be marketed as ENERGY STAR qualified.
    - **Tier 2 ENERGY STAR Homes v 3.0** - Meets all EPA ENERGY STAR Homes v 3.0 standards and all additional New Jersey requirements. This tier is eligible to earn the ENERGY STAR label or be marketed as ENERGY STAR qualified.
    - **Tier 3 Climate Choice Homes**- A set of requirements for meeting energy performance at least 50% better than IECC 2006 before the addition of on site renewable energy generation, based on EPA's original "Climate Choice" guidelines. The requirements are anticipated to transition to EPA's new "Concept Home" guidelines, when released, as the underlying technical standard.
  - **Multi-family High-Rise Program**- Requirements for applicable multi-family buildings over three stories will transition from the previous EPA ENERGY STAR Multi-family High Rise (MFHR) Pilot to the new EPA ENERGY STAR Multi-family High Rise (MFHR) Program standards released August 30, 2011.
  - **NJ Home Performance with ENERGY STAR** is working with multifamily buildings that are no more than three floors and have no elevator.
  - The **NJ Pay for Performance** program is a whole-building energy audit program that includes incentives for implementation and actual energy saving. This program accepts existing and new construction multifamily buildings that are too big to participate in NJ ENERGY STAR Homes or Home Performance with Energy Star.

- These NJ Clean Energy programs are state-authorized, created by industry professionals, sources of third-party verification, and good alternatives for compliance with NJHMFA's ENERGY STAR Equivalency requirements (if not able to participate in NJ ENERGY STAR Homes).
- NJHMFA is not responsible for advising or monitoring for program compliance; we only look for checkpoints and final certification / completion.
- If you cannot find an equivalency program within this document that fits your project, contact the NJ Green Homes Office to set up a meeting and work out an equivalency agreement (see sample letter at the end of this document). The NJHMFA will be responsible for confirming ENERGY STAR Equivalency if you are not participating in an NJ Clean Energy Program.
- Manufactured housing must meet specific additional NJ ENERGY STAR requirements – check with the NJ ENERGY STAR Homes Program prior to contracting.

DECISION TREE for All Projects with an ENERGY STAR Requirement:




EPA ENERGY STAR Multifamily New Construction Program Decision Tree
Is the building new construction[1] AND residential[2]?
YES
NO
To learn more about how existing commercial buildings, including motels/hotels, skilled nursing*, nursing homes, supportive care, dementia and dormitory facilities can earn the ENERGY STAR, visit the Buildings and Plants section at www.energystar.gov/labeledbuildings. To learn more about the new construction program for commercial buildings visit www.energystar.gov/DesignToEarn.
*As of March 2011, long term care facilities over 5,000 ft² and with at least 51% of units designated as assisted living and/or skilled nursing will be able to earn the ENERGY STAR using Portfolio Manager. All other long term care facilities, such as independent senior living and group homes, can earn the ENERGY STAR in the New Homes or MFHR program.
Is the building a motel/hotel, nursing home, assisted living facility or dormitory?
YES
NO
Does the building have four (4) or less units?
YES
NO
Does the building have three (3) or less stories[3]?
YES
NO
Does the building have six (6) or more stories[3]?
YES
NO
Does each unit have its own heating, cooling and DWH[4]?
YES
NO
Do the dwelling units occupy 80% or more of the occupiable square footage of the building[5]?
YES
NO
ENERGY STAR Homes Program
ENERGY STAR MFHR Program
NOTES:
1. New construction can include significant gut rehabilitations when defined as a change of use, reconstruction of a vacant structure, or when construction work requires that the building be out of service for at least 30 consecutive days.
2. The primary use of the building must be for residential purpose, i.e. the residential and residential associated common area must occupy more than 50% of the building's occupiable square footage. A garage is not considered 'occupiable'. Common area includes any spaces within the building that serves a function in support of the residential part of the building that is not part of a dwelling unit. This includes spaces used by residents, such as corridors, stairs, lobbies, laundry rooms, exercise rooms, and residential recreation rooms. This also includes offices used by building management, administration or maintenance and all special use areas located in the building to serve and support the residents such as day-care facilities, gyms, dining halls, etc.
3. A story includes any above-grade floor with living or commercial space. An above-grade story is one for which more than half of the gross surface area of the exterior walls is above-grade. A floor that is 80% or more garage or other unoccupiable space is not considered a story for the purposes of this decision tree.
4. Four (4) and five (5) story buildings with in-unit heating and cooling and a central domestic hot water system where solar thermal delivers at least 50% of the building's domestic hot water needs, will qualify through the ENERGY STAR New Homes program as long as all other eligibility requirements of that program are met.
5. For mixed-use buildings, exclude the retail/commercial area when determining the square footage of the "building".

EPA ENERGY STAR HOMES:
www.energystar.gov
http://www.energystar.gov/index.cfm?c=bldrs_lenders_raters.pt_bldr

Note: NJHMFA requires Tier 1 NJ *ENERGY*EFFICIENT as the LIHTC threshold, ENERGY STAR version 3 is a Green Point option.

" ENERGY STAR, the government-backed symbol for energy efficiency, provides a powerful platform for utilities, state agencies, and other organizations implementing energy efficiency programs. ENERGY STAR for New Homes are significantly more energy efficient than minimum code while improving affordability, comfort, indoor air quality, and durability of homes. Sponsoring an ENERGY STAR for New Homes program is an opportunity for long-term peak and energy demand savings that can stand-alone or complement other residential energy efficiency initiatives."

In order to receive EPA ENERGY STAR Homes certification, you will need to hire a certified HERS Rater to review your plans, conduct the necessary inspections, and issue an ENERGY STAR Certificate. The ENERGY STAR Homes program is geared specifically towards single-family homes and low-rise (up to 3 stories) new construction or gut rehabilitation projects.

MAJOR CHANGES WITH THE ADOPTION OF VERSION 3:

"In 2010, EPA released new, Version 3 guidelines for the ENERGY STAR for Homes program that will allow ENERGY STAR to continue to define energy-efficient home construction. In particular, the additional cost-effective technologies and quality installation practices specified ensure that every qualified home includes a comprehensive package of best building science measures."

"With Version 3, homes must meet baseline ENERGY STAR requirements using either a prescriptive or performance path. Both options are based on a set of specifications called the ENERGY STAR Reference Design. When the prescriptive path is used, the home is simply built according to the Reference Design specifications (similar to the Builder Option Package approach used in ENERGY STAR Version 2). No trade-offs are allowed when the prescriptive path is used.

In contrast, the Version 3 performance path has been significantly changed from the Version 2 approach. Using the Version 3 performance path, the home is modeled using the ENERGY STAR Reference Design specifications to establish an Initial HERS Index Target Score. For larger homes, a Size Adjustment Factor (SAF) is applied to the Initial Target Score when the home exceeds a defined 'Benchmark Home Size,' based on the number of bedrooms. The builder then has the flexibility to select a custom set of energy-efficiency measures, so long as the resulting HERS Score for the home meets or performs better than the HERS Index Target Score (size-adjusted, when appropriate) and all other requirements are met (e.g., minimum efficiency for windows, insulation).

In addition to the baseline requirements, there are new checklists with detailed mandatory requirements for Thermal Enclosures, HVAC Quality Installation, and Water Management. Note that there will be other customized requirements in states where the energy code exceeds the 2009 IECC." (EPA)

NJ ENERGY STAR HOMES:
New Jersey's Clean Energy Program
www.njcleanenergy.com
c/o Honeywell
1-866-NJSMART

The New Jersey ENERGY STAR Homes program is an EPA-verified ENERGY STAR program. NJ ENERGY STAR Homes is the same as the EPA ENERGY STAR Homes Program except for the following:

- NJ *ENERGY*EFFICIENT is based on technical compliance elements of the previous ENERGY STAR Version 2.0 plus New Jersey specific requirements, but is not eligible to earn the ENERGY STAR label or be marketed as ENERGY STAR qualified.
- NJ ENERGY STAR Homes provides financial incentives, the federal program does not.
- This program requires that at least one utility be individually metered, with individual heating and/or cooling systems for each dwelling unit.
- The Program includes the EPA ENERGY STAR Multi-family High-Rise program.
- It also includes a Microload (New Jersey Climate Choice Homes) tier. A select few may participate – at the discretion of the NJ Office of Clean Energy.

PROGRAM REQUIREMENTS– HIGHLIGHTS

Tier 1. *NJ ENERGY*EFFICIENT Home Requirements:
Meet all ENERGY STAR v2.0 requirements, including:

- Comply with v2.0 Thermal Bypass check list
- Duct leakage to outside: ≤u6 CFM25 per 100ft2 CFA (no maximum total leakage)
- Up to 25% of Slab edge in CZ 4 & 5 may be un-insulated

Meet all additional New Jersey requirements:

- HERS index must not exceed 85 (2006 IECC base) or 75 (2009 IECC base)
- House size capped at ≤ 4000 sq. ft. Homes over 4000 sq. ft. requires ≤ HERS 65
- Comply with NJ program specific HVAC check list
- Fully duct all HVAC supplies and returns and fully seal all duct system joints and seams with mastic compound (no tapes) as applicable
- Install ENERGY STAR qualified HVAC equipment (or highest available alternative)
- Install ENERGY STAR qualified mechanical ventilation with automatic 24-hour control, as required by American Society of Heating, Refrigerating, and Air-Conditioning Engineers
- (ASHRAE) 62.2 as applicable
- Install only direct or power vented space heating, water heating, and/or fireplace combustion appliances, when present
- Install ENERGY STAR lighting in 60% of all light sockets including interior and exterior, or
- EPA Advanced Lighting Package (ALP) for fixtures

Tier 2. ENERGY STAR Homes v 3.0 Requirements (Green Point options for LIHTC):

Meet all EPA ENERGY STAR Homes v 3.0 standards including:

- Meet a site specific (variable) HERS index target
- Comply with all EPA mandated checklists

- Install ENERGY STAR qualified HVAC equipment (or highest available alternative)
- Install ENERGY STAR qualified mechanical ventilation with automatic 24-hour control, as required by ASHRAE 62.2 as applicable
- Install only direct or power vented space heating, water heating, and/or fireplace combustion appliances, when present
- Duct leakage to outside: ≤ 4 CFM25 per 100ft2 CFA
- Total Duct Leakage: ≤ 6 CFM25 per 100ft2 CFA
- Completed Water Management System Builder Checklist (or Indoor airPLUS Verification Checklist)

Meet all additional New Jersey requirements:

- Fully duct all HVAC supplies and returns and fully seal all duct system joints and seams with mastic compound (no tapes) as applicable

Tier 3 Climate Choice Homes Requirements (Green Point options for LIHTC):
A set of requirements for meeting energy performance at least 50% better than IECC 2006 before the addition of on-site renewable energy generation, based on EPA's original "Climate Choice" guidelines. The requirements are anticipated to transition to EPA's new "Concept Home" guidelines, when released, as the underlying technical standard.

Multi-family High-Rise Program Requirements:
Requirements for applicable multi-family buildings over three stories will transition from the previous EPA ENERGY STAR Multi-family High Rise (MFHR) Pilot to the new EPA ENERGY STAR Multi-family High Rise (MFHR) Program standards released August 30, 2012, including:

- 15% more energy efficient than MFHR buildings built to the ASHRAE Standard 90.1-2007
- Follow Performance Path which utilizes ASHRAE approved energy modeling software to determine energy savings of a customized set of measures

2012 Financial Incentives per Single Family Unit for NJ ENERGYEfficient Homes (Tier 1) and ENERGY STAR Homes (Tier 2)

Incentives by Tier, Code & Index				
	vs. IECC 2006		vs. IECC 2009	
HERS	Tier 1 NJ *ENERGY*Efficient Home	Tier 2 ENERGY STAR Home	Tier 1 NJ *ENERGY*Efficient Home	Tier 2 ENERGY STAR Home
85	$1,500	$2,500		
80	$1,750	$2,750		
75	$2,000	$3,000	$1,500	$2,500
70	$2,250	$3,250	$1,750	$2,750
65	$2,500	$3,500	$2,000	$3,000
60	$2,750	$3,750	$2,250	$3,250
55	$3,000	$4,000	$2,500	$3,500
50	$3,250	$4,250	$2,750	$3,750

Multi-single units receive 75% and low-rise multi-family units receive 50% of the incentive levels listed above.

2012 Financial Incentives for Climate Choice Homes (Tier 3)[1]

Building Type	2012 NJ Climate Choice Homes
Single Family	$10,000 to achieve 50 points, plus $800 per index point below 50 points (maximum incentive is $26,000/unit)
Multiple Single Family ("Townhouse")	$7,000 to achieve 50 points, plus $500 per index point below 50 points (maximum incentive is $17,000/unit)
Multiple-Family Building ("Multi-family")	$4,000 to achieve 50 points, plus $400 per index point below 50 points (maximum incentive is $12,000/unit)

[1] The per point incentives for HERS indices below 50 is for efficiency improvements only, not including renewable

2012 Climate Choice Homes Staged Incentive Payment Schedule

Building Type	At Completion of Enrollment (Sign-In)*	At Completion of Pre-Drywall Inspection(s)*	At Final Certification
Single Family	$3,000	$3,000	Balance
Multiple Single Family ("Townhouse")	$2,000	$2,000	Balance
Multiple-Family Building ("Multi-family")	$1,000	$1,000	Balance

* Failure to complete the project, or to meet Tier 3 (NJ Climate Choice Homes) minimum specifications and/or performance goals, will result in repayment to the program of incentives paid, less any applicable incentives for meeting all lower tier (Tier 1 or 2) qualifying level requirements. In this circumstance, the Market Manager will generate a letter to the appropriate party requesting any monies due.

2012 Financial Incentives for ENERGY STAR Multi-family High-Rise

Multi-family High-Rise	Incentive
Incentive per Qualifying Unit	$1,000

PROCESS & SUBMITTALS for NJ *ENERGY*EFFICIENT Homes:

1. When applying for a commitment of funds include the following in your application:
   - ☐ A Signed Letter of Intent, found within individual program documents (such as CHOICE & LIHTC)

2. Prior to closing on construction financing and/or starting construction, submit the following documentation:
   - ☐ Copy of HERS Rater Contract
   - ☐ Market manager site submittal acceptance notification

3. At construction completion, prior to NJHMFA's release of retention funds and/or closing for permanent financing, submit the following:
   - ☐ Copy of your NJ ENERGY Efficient Homes Certificate(s)

PROCESS & SUBMITTALS for Tier 2 ENERGY STAR

1. When applying for a commitment of funds include the following in your application:
   - ☐ A Signed Letter of Intent, found within individual program documents (such as CHOICE & LIHTC)
   - ☐ A copy of your ENERGY STAR Partnership Agreement, available online through www.energystar.gov

2. Prior to closing on construction financing and/or starting construction, submit the following documentation:
   - ☐ Copy of HERS Rater Contract
   - ☐ Market manager site submittal acceptance notification

3. During the course of construction, make sure that your NJ ENERGY STAR Homes representative is at your first construction meeting and submit the following:
   - ☐ Copy of your Pre-Drywall ENERGY STAR Inspection (including EPA Thermal Bypass Checklist)

4. At construction completion, prior to NJHMFA's release of retention funds and/or closing for permanent financing, submit the following:
   - ☐ Copies of your NJ ENERGY STAR Homes Certificate(s)

PROCESS & SUBMITTALS for Tier 3 Climate Choice

1. When applying for a commitment of funds include the following in your application:
   - ☐ A Signed Letter of Intent, found within individual program documents (such as CHOICE & LIHTC)
   - ☐ A copy of your NJ ENERGY STAR® Homes "Tier 3" PARTICIPATION AGREEMENT, available online through www.energystar.gov

2. Prior to closing on construction financing and/or starting construction, submit the following documentation:
   - ☐ Copy of HERS Rater Contract
   - ☐ Market manager site submittal acceptance notification

3. During the course of construction, make sure that your NJ ENERGY STAR Homes representative is at your first construction meeting and submit the following:
   - ☐ Copy of your Pre-Drywall ENERGY STAR Inspection (including EPA Thermal Bypass Checklist)

4. At construction completion, prior to NJHMFA's release of retention funds and/or closing for permanent financing, submit the following:
   - ☐ Copies of your NJ ENERGY STAR Homes Certificate(s)

NJ HOME PERFORMANCE WITH ENERGY STAR (for existing home and multifamily walk-ups 3 stories or less):

New Jersey's Clean Energy Program
www.njcleanenergy.com
c/o Conservation Services Group, Residential Market Manager
1-866-NJ-SMART

Home Performance with ENERGY STAR is designed to transform the way energy efficiency services are delivered to existing 1-4 family homes and low-rise multifamily buildings. A combination of eligible measures may be financed.

The EPA has determined that small multi-family (MF) building developments may participate in HPwES. The NJ HPwES program defines eligibility as buildings that:

- are no more than three stories high; have single ownership,
- have total building energy usage which is accessible through individual metering of the units within the multi-family structure, or a master meter at the building (as opposed to sites with multiple buildings heated by a central heating plant),
- are made up of five or more units in a single building, or multiple buildings (each with five or more units), within a single geographic boundary and with a single property management structure.

Multi-family facilities that do not meet this criteria fall into the Commercial & Industrial (C&I) program, Pay for Performance, for energy efficient measures.

The program will offer the following incentive structure for multi-family projects:

- Improvement packages showing a minimum of 10% but less than 20% estimated total building energy savings will receive a per unit incentive of $500 not to exceed 50% of the costs of the approved measures used to calculate TES.
- Improvement packages showing a minimum of 20% but less than 25% estimated total building energy savings will receive a per unit incentive of $1,000 not to exceed 50% of the costs of the approved measures used to calculate TES.
- Improvement packages showing 25% or greater estimated total building energy savings will receive a per unit incentive of $1,500 not to exceed 50% of the costs of the approved measures used to calculate TES.

The total incentive amount for a multi-family project must not exceed 50% of the total costs of approved measures; approved measures are the same as for the single family houses and townhouses. If the total multi-family project incentive based on the above structure yields an amount greater than 50% of the costs of approved measures, the incentive amount offered will be lowered to the 50% maximum.

HPwES program improvements **must** consider a whole building approach to be approved. Individual units within a multi-family structure or development are not eligible for the program independently of the entire building or development; however, they may take advantage of other NJCEP offerings, such as *WARM* and *COOL*Advantage programs.

The program will work with the contractor of a multi-family project to ensure proper project assessment and approval process. Multi-family buildings are to be addressed in accordance with the BPI Multi-family Building Standards. The program will only approve such projects for contractors that have at least one staff member holding BPI Multi-family certification.

Through this program, contractors certified by the Building Performance Institute (BPI)[1] **OR** the Home Performance with ENERGY STAR program manager (Conservation Services Group) will conduct an energy audit on single-family homes and small multifamily (MF) building developments (up to 3 stories with no elevator) for $125. This audit fee will be reimbursed if the building owner completes Tier 3 items totaling at least $2,000 (see below). During the audit the inspector will (a) test for air contaminants and do a visual inspection (Tier 1), (b) if there are no carbon monoxide or other noxious gasses that need to be addressed, offer a free half-day air-sealing service (Tier 2) and (c) generate a list of measures that can be implemented to make the home more energy efficient (Tier 3). The audit will **not** include estimates of the cost to complete these measures.

Participating contractors in the New Jersey Home Performance with ENERGY STAR program are independent home improvement contractors who have been accredited and certified by the Building Performance Institute. The contractors who participate in the program warrant their own work and may charge different fees for services they provide, including the home assessment if additional testing is included. Any contractor in the state of New Jersey may apply to become BPI-certified.

The contractor will work with the owner to identify sources of wasted energy and help make money-saving improvements, such as insulation and air-sealing, windows and doors, lighting and appliances, and upgraded heating and cooling systems. Equipment incentives offered through this program cannot be combined with other Office of Clean Energy equipment incentives.

Select the Tier 1 package for compliance with HMFA ENERGY STAR requirements.

In addition to minimum requirements outlined within this program, the following replacements are required for all moderate and substantial rehabilitation projects receiving NJHMFA financing that requires ENERGY STAR Homes (or equivalent) certification:

> *Owner shall complete Tiers 1 and all items as recommended by BPI-certified contractor or Conservation Services Group auditor – extent of items to be approved by the NJ Green Homes Office. – NJ GHO*

[1] The Building Performance Institute (BPI) is a national resource for building science technology that, among other things, sets standards for assessing and improving the energy performance of homes.

Customer Incentive Tiers and Requirements

Incentive Tier	Requirements	Customer Incentive
Tier 1	**Home Assessment/Energy Audit:** To be eligible for HPwES incentives, a homeowner must have a home assessment (audit) performed by a certified contractor.	None
Tier 2	**Estimated total energy savings (TES) of at least 10% and less than 20%.** -Must install air sealing. -May install insulation and may also install duct sealing and duct insulation measures. -Participants may also include water heater measures from the eligible measures list.	**$2,000 rebate**, not to exceed 50% of the costs of the eligible measures used by your contractor to calculate TES **and** Up to a **$5,000 loan** at 0% where a utility loan is unavailable
Tier 3	**Level 1 - Estimated TES of at least 20% and less than 25%.** Must install at least two measures including air sealing from the eligible measures list.	**$4,000 rebate**, not to exceed 50% of the costs of the measures used to calculate TES and **and** Up to a **$10,000 loan** at 0% where a utility loan is unavailable. For projects achieving a total energy savings from 10% to over 25%.
Tier 3	**Level 2 - Estimated TES of at least 25% or greater.** Must install at least two measures including air sealing from the eligible measures list.	**$5,000 rebate**, not to exceed 50% of cost of the measures used to calculate TES and Up to a **$10,000 loan** at 0% where a utility loan is unavailable* For projects achieving a total energy savings from 10% to over 25%.

PROCESS & SUBMITTALS for Home Performance with ENERGY STAR:

1. When applying for a commitment of funds include the following in your application:
   - ☐ A signed agreement/contract with the BPI contractor you will use (not provided by program)
   - ☐ A Signed 'ENERGY STAR Equivalency Letter of Intent', found within individual program documents (such as CHOICE & LIHTC)

2. Prior to closing on construction financing and/or starting construction, submit the following documentation (double-check that this is accurate):
   - ☐ Comprehensive Package List
   - ☐ Signed Contract with BPI certified contractor
   - ☐ NJ Home Performance with ENERGY STAR financing confirmation letter

3. During the course of construction, ensure that your BPI-certified contractor is at your first construction meeting.

4. At construction completion, prior to NJHMFA's release of retention funds and/or closing for permanent financing and/or release of construction loan, submit the following:
   - ☐ Certification of completion of work from contractor
   - ☐ Confirmation of completion of work from NJ Home Performance with ENERGY STAR Program manager

NJ PAY FOR PERFORMANCE BUILDINGS (EXISTING):
New Jersey's Clean Energy Program
www.njcleanenergy.com
c/o TRC Energy Services, C&I Market Manager
1-866-NJ-SMART

This program is available to EXISTING Multifamily Projects that do not qualify to participate in ENERGY STAR Homes or Home Performance with ENERGY STAR because they are too large for those programs.

Pre-approval is required for almost all energy efficiency incentives. This means you must submit the online Registration Form, program Application Form (and applicable worksheets) and receive approval before any equipment is installed or start of construction.

IMPORTANT INFORMATION:

Applicants should apply first through the **Pay for Performance program**. If not allowed to participate in this program (provide email or letter from program indicating such), then the Green Homes Office will work with the Pay for Performance market managers and the applicant team to put together an energy efficiency equivalency letter based on the following possible incentives also offered through the Pay for Performance Incentives program:

- Design Support for Larger Projects,
- Technical Assistance for Smaller Projects,
- Support for Custom Energy Efficiency Measures and
- Incentives for Qualifying Equipment and Projects.

Pay for Performance Program Eligibility
Existing large Multifamily affordable housing projects are eligible to participate in this program. The requirement that projects have a minimum 100kW baseload has been eliminated for multifamily affordable properties. To determine the appropriate energy efficiency program for a project, follow the Program Logic Tree on Page 5 of this Guide. An Energy Reduction Plan must define a comprehensive package of measures capable of reducing the existing energy consumption of your building by 15% or more. An approved Program Partner may be able to make a preliminary assessment of a project's ability to achieve a 15% reduction.

INCENTIVES:

Pay for Performance incentives are awarded upon the satisfactory completion of three program milestones:

Incentive #1

- Submittal of complete Energy Reduction Plan prepared by an approved Program Partner. Contingent on moving forward, incentives will be between $5,000 and $50,000 based on approximately $0.10 per square foot, not to exceed 50% of the facility's annual energy expense.

Incentive #2

- Installation of all recommended measures. Incentives are based on the projected level of electricity and gas savings, resulting from the installation of comprehensive energy efficiency measures.

Incentive #3

- Completion of Post-construction Benchmarking report. A completed report verifying energy reductions based on one year of post-implementation results. Incentives for electricity savings and natural gas savings will be paid based on actual savings, provided that the minimum performance threshold of 15% savings has been achieved.

PROCESS & SUBMITTALS for Pay for Performance:

1. When applying for a commitment of funds include the following in your application:
   - ☐ A signed agreement/contract with the Program Partner you will use (pre-selected companies; a list can be found on www.njclenenergy.com/ssb website)
   - ☐ A copy of your Pay for Performance Application Package
   - ☐ A copy of your Notice to Proceed, with Pay for Performance Case Manager noted
2. Prior to closing on construction financing and/or starting construction, submit the following documentation:
   - ☐ Copy of Energy Reduction Plan
   - ☐ Copy of your Benchmarking Report
3. During the course of construction, your Pay for Performance Case Manager and Program Partner will monitor construction.
4. At construction completion, prior to NJHMFA's release of retention funds and/or closing for permanent financing, submit the following:
   - ☐ Copy of Substantial Completion Construction Report
   - ☐ Copy of rebate/incentive receipt from Pay for Performance program

NJ PAY FOR PERFORMANCE BUILDINGS (NEW CONSTRUCTION):
New Jersey's Clean Energy Program
www.njcleanenergy.com
c/o TRC Energy Services, C&I Market Manager
1-866-NJ-SMART

This program is available to NEW CONSTRUCTION Multifamily Projects that do not qualify to participate in ENERGY STAR Homes or Home Performance with ENERGY STAR because they are too large for those programs.

Pre-approval is required for almost all energy efficiency incentives. This means you must submit the online Registration Form, program Application Form (and applicable worksheets) and receive approval before any equipment is installed or construction starts.

IMPORTANT INFORMATION:

Applicants should apply first through the **Pay for Performance program**. If not allowed to participate in this program (provide email or letter from program indicating such), then the Green Homes Office will work with the Pay for Performance market managers and the applicant team to put together an energy efficiency equivalency letter based on the following possible incentives also offered through the Pay for Performance Incentives program:

- Design Support for Larger Projects,
- Technical Assistance for Smaller Projects,
- Support for Custom Energy Efficiency Measures and
- Incentives for Qualifying Equipment and Projects.

Pay for Performance Program Eligibility
New Multifamily affordable housing projects are eligible to participate in this program and . The requirement that projects have a minimum 50,000 sq.ft. has been eliminated for multifamily affordable properties. Generally, a project must be located in a Smart Growth area to participate. To determine the appropriate energy efficiency program for a project, follow the Program Logic Tree on Page 5 of this Guide. An Energy Reduction Plan must define a comprehensive package of measures capable of reducing the existing energy consumption of your building by 15% or more. An approved Program Partner may be able to make a preliminary assessment of a project's ability to achieve a 15% reduction.

INCENTIVES:

Pay for Performance incentives are awarded upon the satisfactory completion of three program milestones:

Incentive #1

- Submittal of complete Energy Reduction Plan prepared by an approved Program Partner. Based on design development documents. Contingent on moving forward, incentives are based on $0.10 per square foot up to $50,000.

Incentive #2

- Installation of all recommended measures. Submittal of a complete as-built energy reduction plan - based on actual installed energy efficiency measures. Incentives are based on $1.00 per square foot.

Incentive #3

- Completion of Post-construction Benchmarking report. Submittal of a completed report with commissioning results verifying performance of energy efficient equipment. Provided that the minimum performance threshold of 15% has been achieved, incentives are based on $0.35 to $0.65 per square foot.

PROCESS & SUBMITTALS for Pay for Performance:

1. When applying for a commitment of funds include the following in your application:
   - ☐ A signed agreement/contract with the Program Partner you will use (pre-selected companies; a list can be found on www.njclenenergy.com/ssb website)
   - ☐ A copy of your Pay for Performance Application Package
   - ☐ A copy of your Notice to Proceed, with Pay for Performance Case Manager noted
2. Prior to closing on construction financing and/or starting construction, submit the following documentation:
   - ☐ Copy of Energy Reduction Plan
   - ☐ Copy of your Benchmarking Report
3. During the course of construction, your Pay for Performance Case Manager and Program Partner will monitor construction.
4. At construction completion, prior to NJHMFA's release of retention funds and/or closing for permanent financing, submit the following:
   - ☐ Copy of Substantial Completion Construction Report
   - ☐ Copy of rebate/incentive receipt from Pay for Performance program

FOR THOSE WHO CANNOT PARTICIPATE IN A FORMAL PROGRAM

- Submit letters or emails from Clean Energy Program managers (or applicable program(s)) stating that you cannot participate in their program(s).
- Submit the Letter of Intent included within the appendices of this document.
- Meet with the NJHMFA Green Homes Office PRIOR TO when funds are awarded. We will review the project and draft an "ENERGY STAR Equivalent Letter of Understanding" (sample included within this document). This letter shall be signed prior to start of construction and/or close of construction financing.
- Submit photographs of all items in "Letter of Understanding" in the quantity to be determined by your NJHMFA Field Inspector to the Technical Services Advisor.
- The NJHMFA Field Inspector will confirm that items have been implemented satisfactorily prior to permanent financing.
- Green Homes Office will issue a letter confirming successful completion of the Equivalency requirements.

COMMENTS ON MASTER-METERED PROJECTS:

Several policies to consider:

- NJHMFA strongly prefers that at least one utility (electric or gas) be individually metered. This will encourage demand-side efficiencies.
- NJ ENERGY Efficiency Homes requires that at least one utility (electric or gas) be individually metered or submetered. EPA ENERGY STAR Homes does not.
- For example, it is acceptable to have radiator heating on a common boiler and gas line while individually metering electric use, for cooling.

Examples of scenarios where a project might be master-metered:

- Special Needs project where the owner/manager will be paying all utility bills. Please keep in mind that for permanent placement housing and transitional housing projects, NJHMFA encourages tenants to pay for their own utilities. If a project wishes to master-meter a substantial argument must be made to NJHMFA financial officers and technical services division.
- A moderate/minimum-rehabilitation multifamily project that has an existing master-metered system and/or an historic project.

COMMENTS ON ELECTRIC HEATING:

- NJHMFA would strongly prefer that heating not be solely electric, especially if tenants are expected to pay their own electric bills. If the developer wishes to provide electric-only, individually-metered heating, submit documentation covering the expected costs to tenants, various alternative heating design scenarios/sketches, and construction costs for various systems, etc. A substantial argument must be made to NJHMFA financial officers and technical services divisions to gain approval.
- Electric resistance heating (except within some heat pumps) should be avoided and will almost always eliminate a project from compliance with ENERGY STAR due to the impact on projected energy consumption.

New Jersey Housing and Mortgage Finance Agency
2012 ENERGY STAR EQUIVALENCY LETTER OF INTENT:

By signing this document, I certify the following ("we" refers to the applicant organization):

1. We understand that ENERGY STAR certification (or equivalent) is a prerequisite to participation in the Low-Income Housing Tax Credit program, we agree to complete the applicable ENERGY STAR equivalency program, and will comply with the submission requirements listed in the NJHMFA ENERGY STAR requirements document.

2. We understand that no projects are exempt from this requirement and have reviewed the alternative programs (if needed) for compliance - as indicated in the NJHMFA ENERGY STAR requirements document.

3. If requested we will allow the NJHMFA Green Homes Office, or designee, access to the project site pre, during and post construction for the purpose of but not limited to confirming ENERGY STAR compliance.

4. **NEW CONSTRUCTION PROJECTS MUST SELECT EITHER 'NJ ENERGYEfficient Homes' or 'NJ ENERGY STAR Homes (version 3)'**

5. **WHEN LIHTC IS AWARDED, CONTACT THE GREEN HOMES OFFICE FOR THE NEXT COMPLIANCE STEPS.**

6. I am an authorized representative of the organization.

Signature: _____ Date: _____

Name of signer: _____

Title: _____

Project Name: _____

Organization: _____

CHECK THE NJHMFA ENERGY STAR EQUIVLENCY Requirement Program most likely to participate in:

- ☐ NJ *ENERGY*Efficient Homes
- ☐ NJ ENERGY STAR Homes V.3
- ☐ HOME PERFORMANCE WITH ENERGY STAR
- ☐ PAY FOR PERFORMANCE NEW CONSTRUCTION
- ☐ PAY FOR PERFORMANCE EXISTING CONSTRUCTION
- ☐ HMFA EQUIVALENCY LETTER (to be co-signed with HMFA staff prior to construction)

ENERGY STAR EQUIVALENT LETTER OF UNDERSTANDING:

New Jersey Housing and Mortgage Finance Agency
For Compliance with ENERGY STAR EQUIVALENCY requirements

Sample Letter of Intent for AnyProject, Anytown, NJ

By signing this document, I certify the following ("we" refers to the applicant organization):

We understand that our project is not exempt from ENERGY STAR requirements and that we have attempted and are unable to participate in one of the formal programs presented within the current 'Guide to NJHMFA ENERGY STAR Requirements' document. This project shall fulfill the threshold ENERGY STAR requirement for the purposes of the **Green Future / Low-Income Housing Tax Credit (circle applicable) program(s)** by complying with the minimum standards set forth in (1) through (4) below. The minimum rehab project named _____, located at _____, _____, NJ, will comply with the following minimum requirements, which will be confirmed by the NJHMFA Green Homes Office.

1. Structural Work:
   a. Specified new Tyvek is to be installed per manufacturer's instructions that include taping at all seams – if siding is replaced.
   b. If penetrations in exterior or inter-unit walls are exposed during renovation (from either interior or exterior sides), they are to be air-sealed with either foam or caulk sealant (Fiber Glass batts, Thermo-fiber or Rock wool is not acceptable).
   c. If the moderate rehab requires/includes demolition ot the walls/ceilings in contact with the exterior envelope, the following insulation levels will be installed:
   d. Walls.....R-13
   e. Roof/ceilings.....R-19 to R-30 (depending on joist/rafter sizes)
   f. Unfinished basement.....R-10 walls; R-19 floor above
2. General Apartment Renovation:
   a. All windows (other than Historic facades) will be replaced with energy efficient windows having a low-e coating. Windows to have maximum U-factor of 0.35 and a maximum solar heat gain coefficient (SHGC) of 0.39.
   b. All appliances (refrigerators, ranges (electric) and range hoods) will be ENERGY STAR rated.
   c. All light fixtures (interior and exterior building mounted) will be replaced with energy efficient fixtures having the ENERGY STAR label (excludes closets and unfinished basement areas). The closets and unfinished basement fixtures will have a screw-in compact fluorescent.
   d. A much as possible floors, walls, and ceilings are to be air sealed with caulk or foam at any and all penetrations through sheetrock and/or floor (i.e., mechanical, electrical and or plumbing penetrations) or where one construction material meets another, (i.e., replaced window sills)
   e. Flooring: if framing to sub-floor/flooring of perimeter of apartment is exposed during installation, seal at this joint with caulk to prevent exterior, inter-unit or unit-to-hallway infiltration.
3. Boilers, Heating & Plumbing Work:
   a. If the existing hot air furnace is replaced, it will be replaced with 90% AFUE (efficiency) units.
   b. If air conditioning is to be provided, it will be provided with SEER 13 and 11.0 EEF (efficiency) units.
   c. If the existing hot water heater is replaced, it will be replaced with
      gas efficiency: 40 gal = 0.61, 60 gal = 0.57;
      electric efficiency: 40 gal = 0.93, 50 gal = 0.92.
   d. New thermostats will be specified/installed with ENERGY STAR qualified type.
4. All bathroom ventilation fans will be replaced with fan having a maximum 0.5 watts/CFM and 2.0 sones on automatic controls.

ENERGY STAR EQUIVALENT LETTER OF UNDERSTANDING
Page 2

We understand that the requirements for minimum rehab projects include the following submissions to the NJHMFA Green Homes Office: Photographs will be submitted on each of the items above for a number of sites as determined reasonable by the project's designated HMFA Field Representative.

If requested we will allow the NJHMFA Green Homes Office, or designee, access to the project site pre, during and post construction for the purpose of but not limited to confirming compliance with the above requirements.

I am an authorized representative of the organization.

Signature: _____ Date: _____

Name of Signer: _____

Title: _____

Project Name: _____

Organization: _____

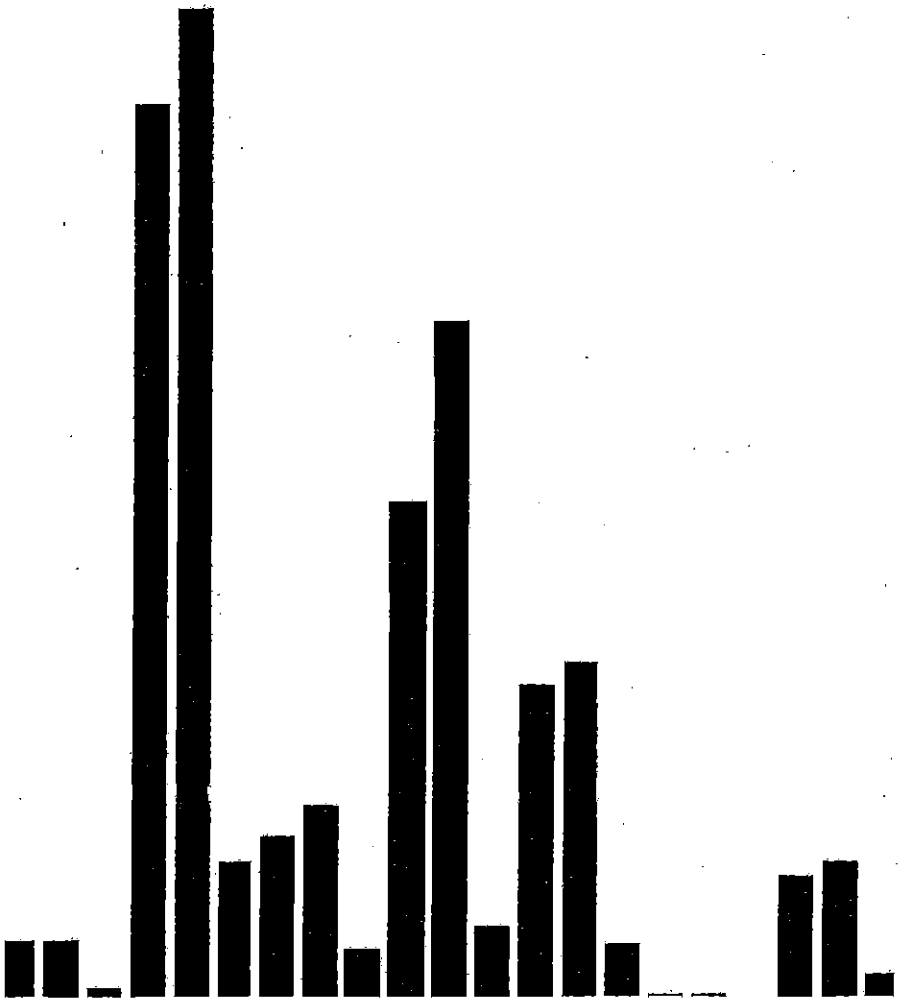
Approval of NJ Green Homes Office
FOR AGENCY USE ONLY

Signed: _____ Date: _____

DRAFT

New Rule, R.2013 d.086, effective June 17, 2013.
See: 45 N.J.R. 530(a), 45 N.J.R. 1511(a).

APPENDIX B



NJHMFA ENERGY BENCHMARKING TECHNICAL MANUAL

EXECUTIVE SUMMARY

This technical manual provides guidelines for building managers to successfully benchmark and report their energy usage to the New Jersey Housing and Mortgage Finance Agency (HMFA). Benchmarking is necessary for HMFA to assess sustained performance and compare each building to similar building types on their sustained performance, track the overall progress of efficiency upgrades, and effectively allocate our resources to proven models. Collected benchmarking data will be used to facilitate efficient analysis of energy performance for better management of energy usage, decreased energy expenditures, identify interesting energy use trends over time, decreased carbon emissions, and comparison of energy usage among similar locations and building types. It will allow HMFA to quantitatively compare energy usage in the newer buildings vs. the older buildings and the energy usage in the HMFA buildings that have incorporated energy efficiency measures vs. the buildings that have not received energy efficiency improvements.

DEFINITION OF ENERGY BENCHMARKING

Energy benchmarking is the process of analyzing energy usage over time and comparing the total use to the total cost. Because energy usage is affected by changes in temperature, benchmarking incorporates hot and cold weather data in order to determine the peak usage periods over time. The final results are generally expressed based upon square foot use. This allows for multiple buildings to be aggregated and compared. It is good measurement for evaluating building energy performance based on the type of building, occupancy, fuel source(s), location, weather, etc.

PURPOSE OF ENERGY BENCHMARKING

The purpose for benchmarking the energy performance of the buildings within the HMFA portfolio is to gain a better understanding of how the buildings use their energy and whether the energy efficiency measures that have been implemented within our buildings have realized their expected energy savings. It will also help us understand how our buildings are performing compared to similar buildings in other states. This analysis also has implications that can guide how HMFA provides financing in the future by:

1. Identifying properties that could benefit from energy efficiency upgrades;
2. Providing guidance for future energy efficiency program development;
3. Providing an underwriting basis for expected utility cost reduction achieved through energy efficiency and renewable energy programs

GETTING STARTED

The following instructions will guide you through the process of collecting the utility data, granting HMFA access to the information, and uploading the information online through the EPA Portfolio Manager system.

IMPORTANT NOTES:

- In order to qualify for this point, the application shall include a copy of the completed, signed and submitted letter of intent from the developer to NJHMFA.
- Prior to issuance of the 8609, developer/owner will submit a signed energy benchmarking utility release form for all common area meters (gas, oil, and electric, etc.), provision of certain project data (square footage per building, mechanical systems installed, etc.) and signed energy benchmarking utility release forms for a minimum of 75% of tenants rented up at time of 8609 issuance. Applicant is required to include the tenant utility release form as a part of the lease agreement.
- For the next three years following issuance of the 8609, the applicant will ensure that at least 75% of all tenants have viable utility release forms (or provide documentation of the efforts to obtain such forms) and common area utility data shall be uploaded into the EPA Portfolio Manager (www.energystar.gov/benchmark).
- NJHMFA does not provide additional, set-aside funding for Green Items covered by this program.

SUBMIT ALL REQUIRED DOCUMENTATION AFTER A TAX CREDIT ALLOCATION TO:
Please send all required documents to:

Kwesi Daniels
NJ Housing and Mortgage Finance Agency
kdaniels@njhmfa.state.nj.us
Phone: 609.278.7370
Fax: 609.278.8859

For U.S. Post Office:
P.O. Box 18550
Trenton, NJ 08611

For Fed Ex, UPS, Visitors, etc:
637 S. Clinton Ave.
Trenton, NJ 08650-2085

RESOURCES:

EnergyStar Portfolio Manager:
https://www.energystar.gov/istar/pmpam/

Service providers that offer automated benchmarking through EnergyStar-
http://www.energystar.gov/index.cfm?c=spp_res.pt_spps_automated_benchmarking

Energy Auditors that offer benchmarking services through NJ Clean Energy:
http://www.njcleanenergy.com/commercial-industrial/programs/nj-smartstart-buildings/tools-and-resources/tradeally/approved_vendorsearch/&start=

Online Portfolio Manager and Energy Benchmarking Training-
http://www.energystar.gov/ia/business/benchmarking_training/benchmarking.html
http://www.energystar.gov/index.cfm?c=business.bus_internet_presentations

Pre-Recorded Energy BenchmarkingTraining-
https://energystar.webex.com/mw0307l/mywebex/default.do?siteurl=energystar

PROCEDURES

Use the following checklist as a guide as you benchmark the building and tenant utility usage.

- ☐ **STEP 1:** Sign and submit Letter of Intent to HMFA
- ☐ **STEP 2:** Set-up meeting with the HMFA Green Technical Advisor
- ☐ **STEP 3:** Gather building and space attribute information using the **HMFA ENERGY BENCHMARKING SURVEY FORM**
- ☐ **STEP 4:** **COMPLETE AND SIGN** the **BUILDING OWNER UTILITY RELEASE FORM**
- ☐ **STEP 5:** Have the tenants **COMPLETE AND SIGN** the **TENANT UTILITY RELEASE FORM**
- ☐ **STEP 6:** Input the **TENANT AND BUIILDING** account details into the **HMFA UTILITY SPREADSHEET (SEE APPENDIX A)**
- ☐ **STEP 7:** Collect **12 CONSECUTIVE MONTHS** of **BUILDING UTILITY BILLS**
- ☐ **STEP 8:** Create a building profile in **PORTFOLIO MANAGER (SEE APPENDIX B)**
  - o Portfolio Manager Username (do not submit to HMFA):_____
  - o Portfolio Manager password (do not submit to HMFA):_____
- ☐ **STEP 9:** Upload **BUILDING** utility data into **PORTFOLIO Manager (www.energystar.gov/benchmark**
- ☐ **STEP 10:** Authorize annual reporting to **HMFA THROUGH PORTFOLIO MANAGER**
- ☐ **STEP 11:** Submit the following items to HMFA
  - o HMFA Benchmarking survey form
  - o Tenant and Building utility release forms (75% of tenants)
  - o 12 consecutive months of utility bills for each building utility account **(due by January 31st, for the next three years)**
  - o Filled out HMFA Utility Spreadsheet (SEE APPENDIX A)

*****OPTIONAL (consult with HMFA Green Technical Advisor in advance)*****

- ☐ **STEP 12:** Collect **12 CONSECUTIVE MONTHS** of **TENANT UTILITY BILLS from each tenant account**
- ☐ **STEP 13:** Upload **ALL** tenant utility data into **PORTFOLIO Manager (www.energystar.gov/benchmark**
- ☐ **STEP 14:** Authorize annual reporting to **HMFA THROUGH PORTFOLIO MANAGER**
- ☐ **STEP 15:** Submit **12 consecutive months of utility bills for each tenant utility account (due by January 31st, for the next three years)**

LETTER OF INTENT – ENERGY BENCHMARKING INITIATIVE

Please e-mail a signed copy of this page to NJHFMA Green Homes Office and include in Tax Credit Application.

By signing this document, I certify the following ("we" refers to the applicant organization):

1. **We have received and reviewed the Program's materials, consisting of the 'LIHTC Green Point Requirements 2012' and 'Energy Benchmarking' documents, which includes the Letter of Intent, Building Utility Release Form and Survey, and Tenant Utility Release Form.**

2. **We understand that a meeting with the Green Technical Advisor is required within three (3) months of the Tax Credit Award Date.**

3. **We understand that prior to issuance of the 8609 we will submit a signed energy benchmarking utility release form for all common area meters (gas, oil, and electric, etc.), provision of certain project data (square footage per building, mechanical systems installed, etc.) and signed energy benchmarking utility release forms for a minimum of 75% of tenants rented up at time of 8609 issuance.**

4. **We understand for the next three years following issuance of the 8609, we will ensure that at least 75% of all tenants have viable utility release forms (or provide documentation of the efforts to obtain such forms) and common area utility data shall be reported. Common area utility data shall be uploaded into the EPA Portfolio Manager (www.energystar.gov/benchmark).**

5. **We understand that NJ *ENERGY*EFFICIENT Homes certification is a prerequisite to participation in the LIHTC Green Point program. I will comply with the ENERGY STAR requirements as indicated in the LIHTC QAP section (c)8 and 2012 ENERGY STAR Equivalency letter of intent.**

6. **If requested we will allow NJHMFA staff access to the project site pre, during and post construction for the purpose of but not limited to: project monitoring, performance testing, interviews, surveys and photographs.**

7. **I am an authorized representative of the organization.**

Signature:
_____ **Date:** _____

Name of signer: _____

Title: _____

Project Name: _____

Organization: _____

ENERGY BENCHMARKING SURVEY FORM

Please complete one Building Data Form for each building in a development.

BUILDING DATA

Development Name: _____ **NJHMFA #:** _____

Address: _____ **Year Built:** _____

Building type (Senior, Family, Mixed): _____

Electricity Metering (check one): ☐ Individually-Metered / ☐ Master-Metered

Gas Metering (check one): ☐ Individually-Metered / ☐ Master-Metered

Primary hot water fuel type: _____

Percent of floor area that is cooled in 10% increments (10%, 20%, 30%, etc.): _____

Percent of floor area that is heated in 10% increments (10%, 20%, 30%, etc.): _____

Total Sq. Ft.: _____ **Common Area Sq. Ft.:** _____ **# of Buildings:** _____

# of Elevators: _____ **# of Floors in each building:** _____ **# of units:** _____

# of Bedrooms: **1:** _____ **2:** _____ **3:** _____ **4:** _____

Past Energy-Efficiency Work Completed (select all that apply and implementation year- write N/A if not applicable):

Energy-Efficiency Improvement	*Year implemented*
☐ ENERGY STAR Homes Certification (not equivalency)	
☐ ENERGY STAR Equivalency	
☐ Solar Photovoltaic (PV)	
☐ Green Future or Affordable Green	
☐ Cogeneration (CHP)	
☐ Solar Hot Water	
☐ Windows	
☐ Lighting	
☐ Other (please describe)	

Please include all types of energy used. Complete additional forms as needed when utility information differs by building.

METER INFORMATION

Electric Utility Name: _____

Account Number(s): _____

_____

Natural Gas Utility Name: _____

Account Number(s): _____

_____

Fuel Oil Utility Name: _____

Account Number(s): _____

_____

Other Meters-not including water or sewer (e.g. Renewable Energy, Propane, Cogeneration):

Utility Name & Account Number(s):

_____

Utility Name & Account Number(s):

_____

Utility Name & Account Number(s):

_____

BUILDING SYSTEM CHARACTERISTICS:

Please check all that apply:

Heating System Type:

- ☐ Furnace
- ☐ High Efficiency Condensing Furnace
- ☐ High Efficiency Condensing Burner
- ☐ Hot Water Boiler
- ☐ Steam Boiler
- ☐ Heat Pump
- ☐ High Efficiency Variable Heat Pump
- ☐ Ground Source Heat Pump
- ☐ Packaged Terminal Air Conditioner (PTAC) Unit
- ☐ Cogeneration (CHP)
- ☐ Special Description:

Cooling System Type:

- ☐ Chiller
- ☐ Wall Unit (in each Apt.)
- ☐ Cooling Tower
- ☐ Window Unit (in each Apt.)
- ☐ Compressor (mini-split)
- ☐ Compressor (ducted)
- ☐ Ground Source Heat Pump
- ☐ Packaged Terminal Air Conditioner (PTAC) Unit
- ☐ Special Description:

Building type:

- ☐ Wood or steel frame
- ☐ Solid Concrete
- ☐ Masonry
- ☐ Modular
- ☐ Structurally insulated panels (SIPS)
- ☐ Other type:

Optional:

- ☐ Wood or steel frame
- ☐ Solid Concrete
- ☐ Masonry
- ☐ Modular
- ☐ Structurally insulated panels (SIPS)
- ☐ Other type:

Building Owner Utility Release Form

Authorization for NJHMFA to Receive Customer Utility Data

[redacted]

Date: _____

To Whom It May Concern:

By signing this release form, the property owner (Owner) grants the New Jersey Housing and Mortgage Finance Agency (NJHMFA) and its designee, a consultant for this initiative, permission to access utility data information for the past two (2) years of and for the following four (4) years from this date for the development/building referenced below. The utility data includes energy consumption, energy demand, energy cost, as well as associated fees and taxes for each billing period. This information will be used to track energy efficiency and consumption of the building indicated below for the express purpose of measuring the success of past energy upgrades, comparing building performance to similar building types and determining need for future energy efficiency improvements.

I am an authorized representative for the development and building listed below and account(s) listed on the following page(s), totaling ____ pages, and represent and warrant that I have full authority to execute this release form on behalf of the Owner. Owner understands that the information obtained as part of this initiative may be released by the NJHMFA to other participating developments upon request for comparison purposes. Comparison reports compiled by the NJHMFA for this program and provided to other developments will not include this development's name or address. Owner understands and acknowledges that such information may be subject to release under the Open Public Records Act, N.J.S.A. 47:1A-1 et seq., or other applicable law. Owner understands that each applicable utility provider (Utility) reserves the right to verify this authorization request.

Owner authorizes the Utility to release the requested information on Owner's account or facilities to the NJHMFA or its designee. Owner hereby releases, holds harmless, and indemnifies the NJHMFA and the Utility from any liability, claims, demands, causes of action, damages, or expenses as a result of, but not limited to: 1) any release of information to NJHMFA or its designee pursuant to this Utility Release; or 2) the unauthorized use of this information by NJHMFA or its designee.

Sincerely,

Authorized Representative (signature)

Please print clearly.

Authorized Representative Name: _____

Development Name: _____

Building Service Address: _____

Development Contact: _____

Mailing Address: _____

_____

Phone: _____ Email: _____

Tenant Utility Release Form

Authorization for NJHMFA to Receive Customer Utility Data

Date: _____

To Whom It May Concern:

By signing this release form, the tenant (Tenant) grants the New Jersey Housing and Mortgage Finance Agency (NJHMFA) and its designee (a consultant for this initiative) permission to access utility data information for the past two (2) years of and for the following four (4) years from this date for the unit referenced below. Utility data includes energy consumption, energy demand, energy cost as well as associated fees and taxes for each billing period. This information will be used to track energy efficiency and consumption of the building indicated below for the express purpose of measuring the success of past energy upgrades, comparing building performance to similar building types and determining need for future energy efficiency improvements.

I am an authorized representative for the unit and account(s) listed below and represent and warrant that I have authority to execute this release. Tenant understands that the information obtained as part of this initiative may be released by the NJHMFA to other participating developments upon request for comparison purposes. Comparison reports compiled by the NJHMFA for this program and provided to other developments will not include tenant's information or this development's name or address. Tenant understands and acknowledges that such information may be subject to release under the Open Public Records Act, N.J.S.A. 47:1A-1 et seq., or other applicable law. Tenant understands that each applicable utility provider reserves the right to verify this authorization request.

Tenant authorizes the Utility to release the requested information on Tenant's account to the NJHMFA or its designee. Tenant hereby releases, holds harmless, and indemnifies the NJHMFA and Utility from any liability, claims, demands, causes of action, damages, or expenses as a result of, but not limited to: 1) any release of information to NJHMFA or its designee pursuant to this Utility Release; or 2) the unauthorized use of this information by NJHMFA or its designee. Tenant understands that he/she may cancel this authorization at any time by submitting a written request to both the Utility and NJHMFA.

Sincerely,

Authorized Representative (Tenant signature) _____

Please print clearly.

Representative name: _____

Development Name: _____

Building Address: _____

Unit Number: _____ Number of Bedrooms in Unit: _____

Please list utility provider(s) and account number(s):

ELECTRIC UTILITY: _____ ACCOUNT #: _____

GAS UTILITY: _____ ACCOUNT #: _____

APPENDIX A

Contact Kwesi Daniels at Kdaniels@njhmfa.state.nj.us for the electronic version of the spreadsheet.

Definitions:

1. **Fuel Type:** Gas or Electric
2. **Utility Company:** PSE&G, Atlantic City Electric, JCP&L, etc.
3. **Common Area:** All bills paid only by the building management
4. **Tenant:** All bills paid only by the tenants
5. **Usage Type:** Baseload (BL) - fuel used for basic energy items like lighting and cooking
   Cooling (C)
   Heating (H)
   Domestic Hot Water (DHW)

HMFA #	Property Name	Unit	Fuel Type	Usage Type	Utility Company
		Common Area			
		Common Area			
		Tenant			
		Tenant			

Project Gross (sqft)	Contitioned Area (sqft)	Common Area (sqft)	__ bedroom (sq ft) - __ units	__ bedroom (sq ft) - __ units	__ bedroom (sq ft) - __ units

Number of buildings	Number of floors per building	Number of units	__ bedroom building locations (amount)	__ bedroom building locations (amount)	__ bedroom building locations (amount)

Oil Company	Account #

Electric			Gas		
Unit #	Account #	signed release form for this account (Y/N)	Unit #	Account #	signed release form for this account (Y/N)

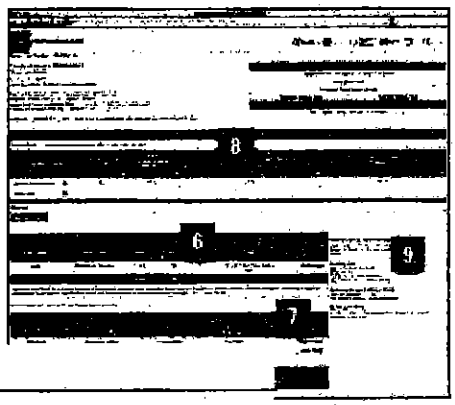
APPENDIX B-

PORTFOLIO MANAGER • QUICK REFERENCE GUIDE

MULTIFAMILY HOUSING

Tracking Your Energy Performance

Portfolio Manager is an online, interactive energy management tool that allows you to measure and track your building's energy and water consumption, identify investment priorities, and verify improvements over time. Multifamily housing communities can use Portfolio Manager to track weather-normalized energy use intensity (EUI), energy costs, greenhouse gas emissions, and water consumption.



USE PORTFOLIO MANAGER STEP-BY-STEP

STEP	ACTIVITY	ACTION
1	Access Portfolio Manager	www.energystar.gov/benchmark
2	Access your account ■ Create a new account ■ Login to an existing account	■ Click REGISTER. ■ Enter user name and password and click LOGIN.
3	Review system updates and enter your account	Click ACCESS MY PORTFOLIO.
4	Add a new facility	Click Add a Property.
5	Select property type and enter general facility information	From the "Add a Property" screen, most users will select "A single facility for which my organization owns or manages 50% or more of the floor area." This is the case even for garden or townhouse properties with multiple buildings. Only select the last option ("A campus or other collection of multiple facilities at the same geographic location") if you have multiple multifamily buildings, all on the same master meter. Click CONTINUE, enter General Facility Information, and then click SAVE.
6	Enter space use data	Go to "Space Use" section and click ADD SPACE. ■ Enter a facility name. In the "Select a Space Type" menu, select "Multifamily Housing." Enter an effective date. Click CONTINUE. ■ Enter space data. Enter total gross square footage (including both common area and apartment space) even if you are only entering common area energy data. The other space use questions are voluntary, but it is highly encouraged to enter optional space use information. Click SAVE.
7	Enter energy use data	Go to "Energy Meters" section and click ADD METER. ■ Enter meter name, type, and units. Click SAVE. ■ Enter number of months and start date. Click CONTINUE. ■ Enter energy use and cost. Click SAVE. Repeat for all energy meters and fuel types.
8	Set metering configuration	Underneath the "Energy Meters" section, click SET METERING CONFIGURATION. ■ Select appropriate option from radio button list. Click SAVE. ■ Use Features section for additional guidance.
9	Review and interpret results	Go to "Facility Performance" section and review your results. More information is provided on pages two and three of this guide.
10	Manage account	Share data and perform other administrative tasks.

www.energystar.gov/benchmark

New Rule, R.2013 d.086, effective June 17, 2013.
See: 45 N.J.R. 530(a), 45 N.J.R. 1511(a).