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).

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." As evidence, applicants shall submit 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. 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 consistent with the limited use.

"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 developers 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 4.00 percent shall be permitted for building acquisition costs. The cost of acquiring a building shall not be allowed in the calculation of the developer fee if the acquisition is between related parties. A related party, as used in this definition, 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.

"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.

"Hackensack Meadowlands District" means land subject to the jurisdiction of the New Jersey Sports and Exposition Authority (NJSEA) pursuant to the Hackensack Meadowlands Agency Consolidation Act, N.J.S.A. 5:10A-1 et seq.

"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, 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.

"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).

"Neighborhood Revitalization Plan" means a plan, as further defined at N.J.A.C. 5:47-3, for the preservation or revitalization of an eligible neighborhood.

"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.

"Public Transportation" means any mode of transit with fixed fares and daily scheduled service with no seasonal interruption.

"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 comprising 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.

When the project is placed in service, the owner shall be required to provide a written legal opinion attesting 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 documentation that adequate water supply and wastewater infrastructure are available 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 Hackensack Meadowlands District, as shown on the Hackensack Meadowlands District Official Zoning Map, as amended and supplemented by the NJSEA.

"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. In non-smart growth areas only, the majority (that is, more than 50 percent) of the property must be or have previously been covered by structures, as that term is defined in the Municipal Land Use Law at N.J.S.A. 40:55D-7. 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 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. A compact form of development combines an efficient use of land, natural resources, and public services. 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.

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). For projects that have set aside five percent of the units for supportive housing units, a minimum of five hours per week is required;

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 conducted by the applicant and/or social service provider 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 served by bus, train, light rail, or ferry that has been designated as such by the State's Transit Village Task Force pursuant to criteria available at http://www.state.nj.us/transportation/community/village/criteria.shtm . The transit village program is designed to spur economic development, urban revitalization, and private-sector investment using access to transit as an asset. The New Jersey Department of Transportation coordinates the Task Force composed of various State agencies, which review municipal applications and make recommendations. Transit villages must be designated by the tax credit application deadline.

"Uncorrected noncompliance" means any one of the following which was reported to the owner by NJHMFA. With respect to the point category only, this refers to noncompliance that 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.

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, South Jersey Times, and The Times of Trenton. NJHMFA shall set the eligibility cut-off dates in each year for receipt of completed applications. Applications shall be submitted to NJHMFA by 12 noon of the application deadline date in order to be considered for review. The application filing deadlines and the credits available in each cycle shall be announced as early in the year as possible. Reservations shall be announced approximately 90 days (or the next business day if the 90th day is a weekend or holiday) after the deadline for the cycle. NJHMFA may adjust the number of cycles or adjust the award dates if required by the timing of passage of Federal legislation or adoption of IRS rules and regulations or for other compelling circumstances. A project cannot compete in more than one cycle simultaneously.

5:80-33.4 Family Cycle

(a) Non-age restricted developments may apply to this cycle. Not less than 50 percent of the total credits awarded in the Family, Senior, and Supportive Housing Cycles 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, up to $10,000 per unit and $400,000 maximum for community center or social service space (subject to third-party cost certification), 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)15, 17 or 18 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 ensure 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 with a population of less than 100,000 and no more than three projects per year from the same municipality with a population of 100,000 or more based on the most recent American Community Survey Table DP05 (ACS Demographic and Housing Estimates), U.S. Department of the Census (however, projects funded through the Supportive Housing Cycle will not be included in this count). To ensure equitable distribution if there are both excess demand and multiple ranking eligible applications from a single developer, NJHMFA shall fund no more than three projects per year from the same developer/general partner/managing member. 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) Approximately 40, but not less than 35, 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.

5:80-33.5 Senior Cycle

(a) Senior projects may apply to this cycle. Not less than 20 percent of the total credits awarded in the Family, Senior, and Supportive Housing Cycles 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, up to $10,000 per unit and $400,000 maximum for community center or social service space (subject to third-party cost certification), 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 that receive negative points under N.J.A.C. 5:80-33.15(a) 15, 17 or 18 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 ensure 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 with a population of less than 100,000 and no more than three projects per year from the same municipality with a population of 100,000 or more based on the most recent American Community Survey Table DP05 (ACS Demographic and Housing Estimates), U.S. Department of the Census (however, projects funded through the Supportive Housing Cycle will not be included in this count). To ensure equitable distribution if there are both excess demand and multiple ranking eligible applications from a single developer, NJHMFA shall fund no more than three projects per year from the same developer/general partner/managing member. 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) Approximately 40, but not less than 35, 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.

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 total credits awarded in the Family, Senior, and Supportive Housing Cycles available in the Supportive Housing Cycle and the maximum annual allocation of credits to projects 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, up to $10,000 per unit and $400,000 maximum for community center or social service space (subject to third-party cost certification), and required deferred developer fee, if any.

(b) Reservations shall be awarded to the highest-ranking eligible projects. To ensure equitable distribution if there are both excess demand and multiple ranking eligible applications from a single developer, NJHMFA shall fund no more than three projects per year from the same developer/general partner/managing member.

(c) Projects that receive negative points under N.J.A.C. 5:80-33.15(a) 15, 17 or 18 shall not be eligible to compete in a set-aside.

(d) Approximately 40, but not less than 35, 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.

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, up to $10,000 per unit and $400,000 maximum for community center or social service space (subject to third-party cost certification), 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 ensure 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 with a population of less than 100,000 and no more than three projects per year from the same municipality with a population of 100,000 or more based on the most recent American Community Survey Table DP05 (ACS Demographic and Housing Estimates), U.S. Department of the Census (however, projects funded through the Supportive Housing Cycle will not be included in this count). To ensure equitable distribution if there are both excess demand and multiple ranking eligible applications from a single developer, NJHMFA shall fund no more than three projects per year from the same developer/general partner/managing member. 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.

5:80-33.8 Reserve

(a) Projects that need credits because of technical errors or 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 may 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, up to $10,000 per unit and $400,000 maximum for community center or social service space (subject to third-party cost certification), 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, up to $10,000 per unit and $400,000 maximum for community center or social service space (subject to third-party cost certification),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)1ii; 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.

4. The Tax Credit Committee, which is comprised of those individuals designated at N.J.A.C. 5:80-33.22(a), may, at its sole discretion, award any one additional nine percent application from either the Family, Senior, or Supportive Housing cycle that would otherwise not rank high enough for funding. The Tax Credit Committee shall publish a written explanation of the basis upon which any award is made. Awards from this reserve are entirely discretionary and the Tax Credit Committee may choose not to utilize this reserve in any given funding round. To be eligible for such an award, an application must satisfy the following criteria:

i. Have been scored by NJHMFA as being within five points, including any applicable cure points, of the lowest-scoring awarded project in its respective cycle;
ii. Meet the criteria set forth at N.J.A.C. 5:80-33.12;
iii. Not be "substantially incomplete"; and
iv. Satisfy at least one of the following:

(1) Represent a regional or geographic location that has received limited affordable housing resources;
(2) Leverage substantial financial resources from the Federal government or from other non-NJHMFA funding sources;
(3) Affirmatively further the purposes and policies of the Fair Housing Act (Title VIII of the Civil Rights Act of 1968) or contribute to a municipal fair share housing development plan;
(4) Respond to an urgent housing need or an underserved population; or
(5) Meet other critical State housing policy directives, goals, or priorities.

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)15, 17 or 18 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) A mixed-income or mixed-use project that is part of a municipal fair share housing development plan or a court-approved judgment of repose or compliance, including, but not limited to, developments that have received a density bonus, 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 and the affordable units are developed contemporaneously with the commercial or market rate residential units. In evaluating these criteria, NJHMFA shall apply 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.

(c) Applicants that have a general partner, voting member, property manager, developer, principal, or a related party of any of the foregoing who owned or managed any interest in an LIHTC project when title was foreclosed thereon by entry of judgment or deed in lieu of foreclosure shall not be eligible for tax credits for a period of seven years from the date of entry of the judgment of foreclosure or the date of the deed in lieu of foreclosure, whichever shall have occurred first. Applicants that have a general partner, voting member, property manager, developer, principal or a related party of any of the foregoing who owned or managed any interest in an LIHTC project that the Tax Credit Committee (Committee) determined exhibits a pattern of uncorrected noncompliance shall not be eligible for a period of three years from the date all issues of noncompliance are deemed by the Committee to have been corrected.

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.

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 18; or ineligibility if with respect to an eligibility requirement.

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

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

(a) A mixed-income or mixed-use project that is part of a municipal fair share housing development plan or a court-approved judgment of repose or compliance, including, but not limited to, developments that have received a density bonus, 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 and the affordable units are developed contemporaneously with the commercial or market rate residential units. In evaluating these criteria, NJHMFA shall apply 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. Only one update to the market study is permitted. Applicants shall submit both the original market study and any applicable update in the application submission.

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] that has been approved by the municipality and submitted to DCA or the courts 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 above); however, in no event shall rents exceed 50 percent of area median income adjusted for family size.

(4) Year one of the pro forma should reflect core operating expenses between $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 Star Certified Homes Program Version 3.0 (Tier 2), Energy Star Multifamily High Rise Program, or equivalent per the Guide to NJHMFA ENERGY STAR Equivalency Requirements (Guide), incorporated herein by reference as the subchapter Appendix, 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 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 Certificates 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. The acquisition value shall be the lesser of the appraised value or the purchase price or lease fee of the realty and any buildings and improvements thereon in the most recent arm's length transaction. The appraised value of the real estate may be considered if the arm's length transaction exceeds 10 years. Applicants shall submit an appraisal not older than six months, which may be subject to third-party review. 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 supportive housing marketing plan. The plan must identify the organizations that will be used for referrals and provide evidence, such as a letter of support, 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, if applicable, 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.

18. Applicants that have a general partner, voting member, property manager, developer, principal, or a related party of any of the foregoing who owned or managed any interest in an LIHTC project when title was foreclosed thereon by entry of judgment or deed in lieu of foreclosure shall not be eligible for tax credits for a period of seven years from the date of entry of the judgment of foreclosure or deed in lieu of foreclosure, whichever shall have occurred first. Applicants that have a general partner, voting member, property manager, developer, principal, or a related party of any of the foregoing who owned or managed any interest in an LIHTC project that the Tax Credit Committee (Committee) determined exhibits a pattern of uncorrected noncompliance shall not be eligible for a period of three years from the date all issues of noncompliance are deemed by the Committee to have been corrected.

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.

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).

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 a Targeted Urban Municipality (TUM) which extend their compliance period for an additional 15 years shall receive 20 points. The minimum term of the low-income occupancy commitment is 30 years: a 15-year compliance period plus a 15-year extended use period. Extension of the compliance period bars the utilization of Section 42(h)(6)(I) of the Code until the beginning of the last year of the extended compliance period. An owner electing to extend the compliance period for 15 years will be restricting the property for 45 years—a 30-year compliance period and a 15-year extended use period. Therefore, the owner cannot request the housing credit agency to find a buyer for the tax credit project until the beginning of year 30. This restriction will be enforceable by NJHMFA and future tenants via a deed of easement and restrictive covenant, which shall be recorded by NJHMFA pursuant to State law at the 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 a TUM shall be awarded 15 points; 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 receive up to five points for municipal support.

i. Projects that receive a fixed rate tax abatement for a 15-year term with a rate of no more than five percent (inclusive of all fees) on the residential component shall receive five points. Projects that receive a fixed rate tax abatement for a 15-year term with a rate greater than five percent but equal to or less than 10 percent (inclusive of all fees) on the residential component shall receive four 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 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.

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 a ready to grow area shall be awarded two 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 panic/call button, necklace, or bracelet for all residents —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, 875 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 locations in (a)11i(1) through (15) below 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 in (a)11i(1) through (15) below or, with respect to (a)11i(16) and (17) below only, inclusion within the defined categories, shall receive two points. 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 sq ft);

(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;

(15) Fire/police station;

(16) Location within a brownfield site; and

(17) A redevelopment project.

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) Enterprise Green Communities, Mandatory + 35 optional points or higher;
(2) Leadership in Energy and Environmental Design (LEED), Silver or higher;
(3) National Green Building Standard (NGBS), Silver or higher;
(4) Climate Choice Homes Program/Energy Star Tier 3 Participation;
(5) Living Building Challenge; or
(6) Passive House

iii. Alternatively, applicants may select one of the following green building options for three points:

(1) Enterprise Green Communities, Mandatory;
(2) Leadership in Energy and Environmental Design (LEED), Bronze; or
(3) National Green Building Standard (NGBS).

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 or projects that involve the adaptive re-use of a non-residential building shall qualify for one point. A significant component of the development (40 percent or more of the units) shall be located within a historic building or a building being adaptively re-used;

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 40 percent or more of the students are either meeting expectations (Level 4) or exceeding expectations (Level 5) on the Grade 4 Partnership for Assessment of Readiness for College and Careers (PARCC) assessment 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.

v. For projects located outside of a Targeted Urban Municipality (TUM), a project that satisfies a municipal affordable housing obligation and is part of a court-approved municipal fair share housing development plan shall receive one point. Sponsors shall submit the fair share housing development plan listing the project and evidence of court approval in the application.

15. 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.

16. 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.

17. Applications which have a general partner, voting member, developer, or related party that owns a managing or controlling interest in a New Jersey LIHTC project 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.

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 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.

19. 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.

20. 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 individuals with disabilities who are leaving institutions under the decision in *Olmstead v. L.C.*, 527 *U.S.* 581 (1999), or individuals with disabilities who are at risk of institutionalization, and who meet the criteria of N.J.A.C. 5:80-33.12(c)14 shall receive two points.

21. 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.

22. 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.

23. 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.

24. Three points shall be awarded to projects located within municipalities not defined as a TUM with 6.00 percent poverty or less. Two points shall be awarded to projects located within municipalities not defined as a TUM with 6.01 percent to 10.7 percent poverty. One point shall be awarded to projects located within municipalities not defined as a TUM with greater than 10.7 percent poverty. Two points shall be awarded to projects located within municipalities defined as a TUM with 17.00 percent poverty or less. One point shall be awarded to projects located within municipalities defined as a TUM with greater than 17.00 percent poverty.

NJHMFA shall rely upon the American Community Survey Five-Year Estimates, Table S1701 (Poverty Status in the Past 12 Months), U.S. Department of the Census. NJHMFA shall rely upon the data effective in the calendar year of the application deadline as well as in the preceding year.

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 the point category at N.J.A.C. 5:80-33.15(a)14v concerning municipal fair share development plans. Additionally, the point category at N.J.A.C. 5:80-33.15(a)14iii concerning proficient schools is replaced with the following:

> "iii. A project that is fully located within a municipality wherein 25.00 percent or less of the occupied housing units are renter-occupied housing units and 25.00 percent or more of the municipality is 55 years of age or older shall receive two points. NJHMFA shall rely upon the American Community Survey Five-Year Estimates, Table S2502 (Demographic Characteristics for Occupied Housing Units) and Table DP05 (ACS Demographic and Housing Estimates), U.S. Department of the Census. NJHMFA shall rely upon the data effective in the calendar year of the application deadline as well as in the preceding year."

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, N.J.A.C. 5:80-33.15(a)14v, concerning municipal fair share development plans, and N.J.A.C. 5:80-33.15(a)20, 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 (that is, what disqualifies a prospective tenant), 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, such as GED preparation or local community college 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 experience providing services to the target population.

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 with 100.00 percent of the general partner interest in the final ownership entity shall be awarded two points. Applications submitted by a qualified nonprofit organization with at least 50.00, but less than 100.00, percent of the general partner interest in the final ownership entity shall be awarded one point.

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.

5:80-33.18 Point system for the Final Cycle

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

5:80-33.19 Tiebreaker system

(a) The following tiebreaker system shall be used 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 Senior Cycle, a tax credit reservation shall be awarded to the project with the least amount of tax credits per tax credit unit.
   ii. 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.
   iii. 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.

5:80-33.20 Municipal comment

The Code requires that the chief executive officer of the municipality in which the project is to be located be given the opportunity to comment on the project. The application may include a letter from the chief executive officer of the municipality or NJHMFA staff shall notify the chief executive officer of the municipality and allow him or her a reasonable opportunity to comment on the project.

5:80-33.21 Application needs analysis

(a) Section 42(m)(2)(a) of the Code provides: "The housing credit dollar amount allocated to a project shall not exceed the amount the housing credit agency determines is necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the credit period." This determination, known as the "needs analysis," shall be performed by NJHMFA with respect to those applications fulfilling the eligibility requirements at N.J.A.C. 5:80-33.12. In the needs analysis, NJHMFA shall compare the project's total development costs to the funding sources the applicant has identified to meet 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]22. 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 section 31 of the Protecting Americans from Tax Hikes Act of 2015, the applicable credit percentage shall be nine percent for the 70 percent present value credit. 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 present 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.

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.

5:80-33.23 Allocation needs analysis

In accordance with Section 42(m)(2) of the Code, NJHMFA evaluates the need for the tax credit at the time of application, the time of allocation, and after the building is placed in service. The credit amount allocated is limited to the lesser of the credit amount based on the needs analysis or the credit amount generated from the project's qualified basis (as potentially capped by the eligible basis limits). The determination of whether the credit amount reserved is needed for the financial feasibility and continued viability of the project shall include an examination as to whether there have been increases or decreases in project costs, other funding sources or rental subsidies which would result in a higher allocation than needed. If NJHMFA has a reasonable basis for concluding the equity factor submitted by the applicant is inconsistent with market conditions, NJHMFA reserves the right to adjust the equity factor in its underwriting. Any substantive changes to the project's financing plan or costs shall be explained in detail and may cause the project to be reconsidered by NJHMFA.

5:80-33.24 Reservations, allocations and binding commitments

(a) Once the reservation is final as described in N.J.A.C. 5:80-33.22(b), projects must meet allocation criteria established by the Code and these rules in order to qualify for an allocation of tax credits. (The IRS does not recognize the reservation processes of housing credit agencies.) The deadline for meeting the allocation criteria described in (a)1 and 2 below is 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

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.

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 impose 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.

5:80-33.27 Placed in service needs analysis

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

(b) The determination of whether the amount requested is needed for financial feasibility and continued viability of the project shall include an examination as to whether there have been increases or decreases in project costs, other funding sources or rental subsidies which would result in a higher allocation than needed. If NJHMFA has a reasonable basis for concluding the equity factor submitted by the applicant is inconsistent with market conditions, NJHMFA reserves the right to adjust the equity factor in its underwriting. The Code requires that NJHMFA reduce the credit amount based upon need; however, this does not mean that NJHMFA will jeopardize the long-term financial feasibility and viability of the project by arbitrarily taking back credits. For example, if the equity market improved so that projects were able to get better pricing from investors, NJHMFA would not necessarily reduce the credit on those projects that use the "excess" credits to cover cost overruns or provide betterments in the projects such as upgrading the security system, landscaping, provision of appliances such as washers, and the like. NJHMFA shall not allow these additional funds to be used to increase the developer fee over that shown on the application.

(c) For each needs analysis, a Sponsor Certification shall be submitted. Any substantive changes to the project's financing plan or costs shall be explained in detail and may cause the project to be reconsidered by NJHMFA.

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

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

(b) "Contractor fee limits" with regard to contractor profit and overhead shall be set in accordance with the schedule below. Maximum fees include the base profit and overhead and any incentive cost

savings fee realized. Costs included on the general conditions line must be broken out on a separate schedule. Unreasonable costs shall be disallowed. 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.

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.

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.

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.

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 Section 42(g)(1)(A) or the 40-60 test under Section 42(g)(l)(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 CFR § 180.680, an adverse final decision by a substantially equivalent State or local fair housing agency, 42 U.S.C. § 3616a(a)(1), or an adverse judgment from a Federal court;

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

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

15. That the rent charged to each existing tenant (excluding any rental assistance) has not increased by more than 5.00 percent annually, including due to changes in utility allowance calculations.

16. That the property management office had office hours of at least 20 hours a week.

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

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

Pursuant to Section 1.42-5 of the IRS Regulations, NJHMFA requires the owners of all low-income housing projects to submit annually to NJHMFA for review the Owner's Certificate of Continuing Program Compliance via electronic copy and the 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.

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.

5:80-33.35 Notification of noncompliance

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

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

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

(a) Applications 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.

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.

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.

5:80-33.39 (Reserved)

5:80-33.40 (Reserved)