

STATE OF NEW JERSEY  
DEPARTMENT OF COMMUNITY AFFAIRS  
DIVISION OF HOUSING AND COMMUNITY RESOURCES

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**NEIGHBORHOOD PRESERVATION  
BALANCED HOUSING RULES  
N.J.A.C. 5:43-1.1 *et seq.***

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## **SUBCHAPTER 1. GENERAL PROVISIONS**

### **5:43-1.1 Purpose**

The purpose of the Neighborhood Preservation Balanced Housing Program is to provide municipalities, for-profit and non-profit developers with financial assistance needed to spur the development of affordable housing across the State, in conformance with the State Development and Redevelopment Plan and in fulfillment of Section 20 of the Fair Housing Act of 1985, as amended. The Balanced Housing subsidy provides a critical source of gap financing for affordable housing projects whose other sources of public subsidy and private financing are not sufficient to sustain economic viability. The Program's subsidy formula is responsive to increases in the cost of land and construction. The Program is established to support the construction and preservation of permanent, high quality, location efficient affordable housing that meets the demand for units affordable to low and moderate income families and individuals residing in New Jersey.

### **5:43-1.2 Severability**

If any part of this chapter shall be held invalid, the holding shall not affect the validity of the remaining part of these rules. If a part of these rules is held invalid in one or more of its applications, the rules shall remain in effect in all valid applications that are severable from the invalid application.

### **5:43-1.3 Eligible applicants**

(a) The Neighborhood Preservation Balanced Housing Program will accept program and project applications submitted by municipal governments, non-profit organizations and for-profit organizations, provided that the proposed program or project is located in municipality that meets at least one of the following criteria:

1. The municipality has petitioned the Council on Affordable Housing for substantive certification of its housing element;
2. The municipality has received substantive certification of its housing element from the Council on Affordable Housing;
3. The municipality is subject to a judicially-approved compliance agreement to settle its fair share housing obligation;
4. The municipality is subjected to a court-ordered builder's remedy; or
5. The municipality has been designated as a receiving municipality under a regional contribution agreement and a project plan has been approved by the Council on Affordable Housing;
6. The municipality is eligible for State aid pursuant to P.L. 1978, c. 14 (N.J.S.A. 52:27D-178 et seq.); or
7. Any other municipalities provided that:
  - i. The Council on Affordable Housing has invoked its authority pursuant to N.J.S.A. 52:27D-320(c); and
  - ii The municipality meets all conditions established by the Council in accordance with (a)7i above.

(b) Programs and projects in any municipality shall be funded only after receipt by the Commissioner of a written statement in support of the program or project from the municipal governing body.

(c) Applicants that are eligible in accordance with (a)1 above only shall not be eligible to receive program funding until the municipality's Fair Share Plan has received substantive certification from the Council on Affordable Housing.

(d) Applicants that are eligible in accordance with (a)4 above, shall not be eligible to receive a funding commitment or program funding until the municipality's Fair Share Plan has been judicially approved by the issuance of a judgment of repose.

#### **5:43-1.4 Eligible activities**

(a) Eligible activities shall include those activities listed below:

1. Rehabilitation of substandard housing units occupied or to be occupied by low and moderate income households;

2. Creation of accessory apartments to be occupied by low and moderate income households;

3. Conversion of nonresidential space to residential purposes provided that more than 20 percent of the resulting housing units are to be occupied by low and moderate income households;

4. Acquisition of real property; demolition and removal of buildings; or construction of new housing that will be occupied by low and moderate income households; or any combination thereof;

5. Grants of assistance to eligible municipalities for costs of necessary studies, surveys, plans and permits, engineering, architectural and other technical services, cost of land acquisition and any buildings thereon, and cost of site preparation, demolition and infrastructure development for projects undertaken pursuant to an approved Regional Contribution Agreement;

6. Assistance to a local housing authority, nonprofit or limited dividend housing corporation or association for rehabilitation or restoration of housing units which it administers which:

i. Are unusable or in a serious state of disrepair;

ii. Can be restored in an economically feasible and sound manner; and

iii. Can be retained in a safe, decent and sanitary manner, upon completion of rehabilitation or restoration; and

7. Other related activities that produce housing for low and moderate income housing including, without limitation:

i. Infrastructure projects directly facilitating the construction of low and moderate income housing not to exceed a reasonable percentage of the construction costs of the low and moderate income housing; and

ii. Alteration of dwelling units occupied or to be occupied by households of low or moderate income and the common areas on the premises in which they are located in order to make them habitable for low and moderate income households with handicapped persons.

(b) A proposed activity shall only be considered eligible if the units produced meet the criteria necessary at N.J.A.C. 5:94 to qualify for credit from the Council on Affordable Housing.

(c) The required affordable portion of any mixed income/use development that is part of a COAH approved Fair Share Housing plan or a court approved judgment of repose or judgment of compliance, shall be eligible for Balanced Housing funding provided that the applicant can conclusively demonstrate that the market rate residential and/or commercial units are unable to internally subsidize the affordable units and the affordable units are developed contemporaneous to the commercial and market rate residential units.

1. A project will be considered eligible for funding if 100 percent of the units are affordable and if the project is not identified, by sale or transfer or any other means, with an inclusionary development.

(d) Balanced Housing funds shall not be used for the sole purpose of converting public housing to homeownership.

(e) Balanced Housing funds shall not be used for the payment of court ordered judgments or governmentally imposed fines levied against subject properties.

### **5:43-1.5 Definitions**

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

"Administrative agent" means the entity responsible for enforcing the affordability controls or restricted units created pursuant to N.J.S.A. 52:27D-301 et seq.

"Affordable" means that the sales price conforms to the standards set forth in N.J.A.C. 5:80-26.6 and, that the rental price conforms to the standards set forth in N.J.A.C. 5:80-26.12. Where Federal funding is used in conjunction with Balanced Housing, the Federal program definition of "affordable" shall apply.

"Age-restricted unit" means a housing unit designed to meet the needs of, and exclusively for, the residents of an age-restricted segment of the population where the head of the household is a minimum age of either 62 years, or 55 years and meets the provisions of 42 U.S.C. §§3601 et seq., except that due to death, a remaining spouse of less than 55 years of age shall be permitted to continue to reside.

"Alteration" means the rearrangement of any space by the construction of walls or partitions, the addition or elimination of any door or window, the extension or rearrangement of any system, the installation of any additional equipment or fixtures and any work which affects a primary structural component.

"Balanced Housing Units" means those units within a project receiving Balanced Housing funds.

"Cash flow" means the remainder of project revenue minus expenses.

"Certified household" means a household that has been certified by an administrative agent as a low-income household or moderate-income household.

"Community housing development organization (CHDO)" means a private, non-profit organization that serves a specific neighborhood or geographic area, has as a primary purpose the creation of affordable housing, and is in compliance with the requirements set

forth in the Federal HOME Program regulations at 24 CFR §92.2.

"Department" means the Department of Community Affairs.

"Division" means the Division of Housing in the Department of Community Affairs.

"Eligible neighborhood" means a neighborhood that is viable, as defined by *N.J.S.A. 52:27D-143 et seq.* (P.L. 1975, c.248), the Maintenance of Viable Neighborhoods Act, a target area or a currently non-viable neighborhood provided that there is in place a strategy that is realistic and financially feasible which will ensure that the neighborhood will be viable within a reasonable time of project completion. Included in any such strategy shall be a plan for ameliorating crime, blight, high vacancy rates and any other factors that might have a negative impact on the long term viability of the neighborhood and a proposed project.

"Expenses" means the sum of all cash expenditures incurred in the operation of a project including:

1. Debt service on superior mortgages;
2. Expenses unpaid but properly accrued; and
3. Payments to the projects reserve accounts.

"Green building strategies" means those strategies that minimize the impact of development on the environment, and enhance the health, safety and well-being of the residents by producing durable, low-maintenance, energy efficient housing and making optimum use of existing infrastructure. (See Chapter Appendix M, incorporated herein by reference, for further details.)

"Home Investment Partnerships Program (HOME)" means the Federal funds allocated by the U.S. Department of Housing and Urban Development (HUD) which are administered by the Department to support the production of affordable housing. Program activity funded by HOME must be consistent with the HUD approved Consolidated Plan for the State of New Jersey.

"Low income census tract" means the median household income is 60 percent or less of the median income for the housing region in which the census tract is located, as determined for a three-person household by the Council on Affordable Housing, in accordance with the latest Federal decennial census.

"Low-income household" means a household whose gross annual income is equal to 50 percent or less of the median income for the housing region as set forth by the Council on Affordable Housing, N.J.A.C. 5:94 Appendix A.

"Market rate units" means housing that may sell at any price determined by a willing seller and a willing buyer.

"Mixed income/use development" means a development which contains both affordable and either market housing units and/or commercial development and, wherein, the permits and approvals for the non-affordable portion of the development are bound by the requirement that the affordable portion also be built.

"Moderate-income household" means a household whose gross annual income is in excess of 50 percent but less than 80 percent of the median income for the housing region, as set forth by the Council on Affordable Housing, N.J.A.C. 5:94 Appendix A.

"Moderate rehabilitation" means the repair, renovation and/or alteration of a unit.

"Neighborhood" means an area which is recognized as a distinct entity by virtue of certain factors, such as: definite boundaries, natural or man-made; history; architecture; facilities which attract people within a certain radius; or a shared sense of identity or social cohesion. This definition is equally applicable to neighborhoods in urban, suburban, and rural communities.

"New unit" means any unit that has been constructed, reconstructed or created through the conversion of a non-residential building within the three years preceding submission of an application, meets all applicable code requirements and has not been occupied since the time of its construction or reconstruction.

"Preservation" means a subsidy granted to an existing affordable housing project with expiring controls, in order to extend the period of affordability.

"Range of affordability" means the household income, expressed as a percentage of the median income, at which a given unit is affordable.

"Reconstruction" means any project where the extent and nature of the work is such that the work area cannot be occupied while the work is in progress and where a new certificate of occupancy is required before the work area can be reoccupied. Reconstruction may include repair, renovation, alteration or any combination thereof. Reconstruction shall not include projects comprised only of floor finish replacement, painting or wallpapering, or the replacement of equipment or furnishings. Asbestos hazard abatement and lead hazard abatement projects shall not be classified as reconstruction solely because occupancy of the work area is not permitted.

"Rehabilitation" means the repair, renovation, alteration or reconstruction of any building or structure as defined herein and as defined in *N.J.A.C. 5:23-6.3*.

"Renovation" means the removal and replacement or covering of existing interior or exterior finish, trim, doors, windows or other materials with new materials that serve the same purpose and do not change the configuration of space. Renovation shall include the replacement of equipment or fixtures.

"Rent" means the gross monthly cost of a rental unit to the tenant, including the rent paid to the landlord, as well as an allowance for tenant-paid utilities computed in accordance with allowances published by the Department for its Section 8 Program. With respect to units in an assisted-living residence, rent does not include charges for food and services.

"Repair" means the restoration to a good or sound condition of materials, systems and/or components that are worn, deteriorated or broken using materials or components identical to or closely similar to the existing.

"Revenue" means the sum of all cash received from project operations, including, but not limited to:

1. Tenant paid rents;
2. Commercial income and/or lease payments;
3. The net proceeds of any insurance payments which are not reinvested in the property; and
4. Any other funds, including reserve accounts which are deemed available for distribution by the owner.

"Single room occupancy unit (SRO)" means a unit within a structure in which households maintain private rooms yet share kitchen and plumbing facilities, central heat and common areas.

"Standard" means a building which has been repaired in whole or in part with Balanced Housing funds and certified by the local construction official or other public official having jurisdiction to be free of code violation in accordance with the standards adopted under the Uniform Construction Code, *N.J.A.C. 5:23*, and the Section 8 Existing Housing Quality Standards.

"Substandard" means a building which has been certified as substandard by a municipality. The certification must state that health and safety code violations exist and that, in order to abate those code violations, one or more of the following major systems must be replaced or extensively repaired: roof, electrical, plumbing, sanitary plumbing, heating or load bearing structural systems.

"System" means the primary structural, mechanical, plumbing, electrical, fire protection, or occupant service components of a building including any equipment, fixtures, connections, conduits, wires, pipes, ducts, as well as any associated sensors, controls, distribution or safety elements.

"Urban Aid Municipality" means any municipality eligible for Balanced Housing funding in accordance with *N.J.A.C. 5:43-1.2(b)6*.

"Uniform Housing Affordability Controls" or "UHAC," found at *N.J.A.C. 5:80-26*, regulates the means, methods, and duration to preserve the affordability of low and moderate income units created under the New Jersey Fair Housing Act (*N.J.S.A. 52:27D-301 et seq.*).

### **5:43-1.6 Waiver**

Any applicant desiring a waiver or release from the express requirements of any provision of this chapter may make such request, in writing, to the Department. A waiver shall be granted, only by the Commissioner, under extraordinary circumstances, and provided that the applicant conclusively demonstrates that the waiver shall further the purposes of these rules and the Fair Housing Act and that the waiver shall provide a significant benefit to the residents of the State.

## **SUBCHAPTER 2 FUNDING**

### **5:43-2.1 *Funding cycles and application procedures***

The Department shall accept applications on a continuous basis.

### **5:43-2.2 *Allocation of funds***

(a) In each fiscal year, the Commissioner may set aside all or a portion of the fund for any given time period for specific activities including, but not limited to, pilot programs, projects in specific target areas or specific project types or projects directed to specific target populations.

(b) Balanced Housing funds shall be allocated to municipalities on behalf of specific projects. In the event that the project does not proceed within the time specified in the Grant Agreement, the funds shall be reallocated by the Department. The prior allocation shall have no effect on the reallocation of captured funds.

(c) In order to promote an equitable statewide distribution of funds, the Commissioner may limit the funding amount to any one municipality in a give fiscal year.

### **5:43-2.3 *Subsidy***

(a) The Department will provide funding to a maximum of \$ 6 million per project. The methodology for determining the maximum Balanced Housing subsidy is set forth in *N.J.A.C. 5:43-3.3* through *3.12* for each type of project.



(b) The Commissioner may, at his or her discretion, award less than the maximum subsidy, structure the assistance as a secured loan, with or without interest, or provide additional assistance for short-term financing, including construction and/or bridge loans, if needed, to ensure project feasibility.

1. The Department reserves the right, based on the size and design of the units, to restrict the size of a household that will occupy the unit and to provide funding in accordance with the reduced household size.

2. The Department may, at its discretion, reduce the maximum subsidy if an analysis of the construction design and specifications determines that essential function can be preserved at a lower cost.

(c) The Balanced Housing subsidy shall not exceed the gap between all other capital sources, including, but not limited to, permanent debt and any monetary incentive or rebate received for participation in the New Jersey Board of Utilities, Clean Energy Program, and the actual project cost, or, for new units, the maximum eligible project cost as determined in subsection N.J.A.C. 5:43-2.4(a).

1. Applicants shall demonstrate that other subsidies have been maximized, including, but not limited to, the Federal Home Loan Bank Board's Affordable Housing Program, local development fees and regional contribution agreements.

(d) Funding provided in accordance with this chapter may not be combined with other programs that also provide subsidies, either directly or indirectly, from the Neighborhood Preservation Non-Lapsing Revolving Fund or with any HOME CHDO or HOME Investment Partnerships Program subsidy (24 CFR §Part 92), provided by the Department.

(e) Balanced Housing funding shall not be used as a substitute for private financing where the latter is feasible and attainable.

(f) The developer must submit a detailed estimate of project funding and project costs and, upon project completion of construction and prior to project close out, a certification by a certified public accountant of actual project funding and project costs. The Department reserves the right to conduct an independent audit of final project costs.

#### **5:43-2.4 Eligibility requirements**

(a) The maximum eligible project costs for new units shall be the sum of the components listed in (a)1 through 5 below:

1. The maximum eligible construction cost, including contingency, shall be the lesser of the actual construction cost or the amount calculated as set forth below:

i. For single family detached: \$ 105.00 per square foot plus \$ 30.00 per square foot for a full basement;

ii. For townhouse, rowhouse or semi-detached: \$ 117.00 per square foot plus \$30.00 per square foot for a full basement;

iii. For one to three story multifamily, non-elevator buildings: \$ 138.00 per square foot;

iv. For two to six story multifamily, elevator buildings: \$ 143.00 per square foot;

v. For seven or more story multifamily buildings: \$ 182.00 per square foot;

vi. For projects required to provide a parking garage, the eligible construction cost may be increased by \$ 15,000 for each parking space, not to exceed one space per unit, provided exclusively for, and without charge to, the low and moderate income tenants; and

vii. The cost of approved green building strategies; and

viii. The Department will consider a request for subsidy in an amount greater than in (a)1i through vii above upon the showing that compliance with same will render the project infeasible.

2. The costs listed in (a)1 above may be increased, annually, based on the percentage increase in the Housing Consumer Price Index, as published by the United States Department of Labor, and will be published as a Notice of Administrative Change in the New Jersey Register.

3. The maximum allowable eligible soft costs shall be the lesser of the actual amount or 28 percent of eligible construction cost, as calculated in (a)1 above. A list of those costs considered soft costs is provided in Chapter Appendix L, incorporated herein by reference;

4. The maximum eligible acquisition cost shall be the lesser of the actual cost or the amount identified in an appraisal performed within 180 days of the date of the application to the Program. If title to the property has been transferred within the 24 months preceding the date of the application to the Department, the maximum subsidy will be the lesser of the appraised value or the previous transfer price plus additional documented expenditures to obtain zoning, environmental or other governmental approvals necessary or useful for the development of the project, and the costs of improvements erected for the benefit of the project. This appraisal must be conducted by an individual or firm approved by the Department.

i. Initially, the Department will utilize the New Jersey Housing and Mortgage Finance Agency for the selection and procurement of appraisers, until an equivalent system can be replicated at the Department. The cost for the appraisal will be born by the applicant.

ii. To be considered for approval, the appraiser must apply to the Agency, and the application shall include the information required, or demonstrate that the appraiser has the experience, as follows:

(1) The completion of appraisals similar to the types of projects funded by the Agency and the Department;

(2) The counties they have done work in and wish to be considered for;

(3) Names and addresses of references;

(4) A copy of the appraisers current New Jersey Appraiser License;

(5) A Signed acknowledgement of the Code of Ethics and Mandatory Affirmative Action;

(6) A current copy of the appraisers Errors and Omission policy; and

(7) Sample appraisals for every type of work they seek.

iii. An appraiser review committee of three examines all applications and sample appraisals, and if deemed to have sufficient experience, the appraiser's name will be added to a computerized rotating selection list;

5. The actual cost of LIHTC allocation and reservation fees, construction supervision, if pursuant to N.J.A.C. 5:43-3.1(a)3, capitalized reserve accounts and other costs provided that such other costs are approved by the Department; and

6. A developer fee, calculated as no more than eight percent of (a)1 and 2 through 5 above.

(b) The Department will review the certification of costs prepared by a licensed professional prior to the release of funds.

(c) The maximum non-deferred amount, which may be taken out of the project as a developer fee shall be calculated as follows:

1. For projects that create new units, eight percent of the eligible project cost as determined in (a) above; or

2. For projects that involve the acquisition, preservation, moderate rehabilitation of existing units, or any combination thereof, two percent of approved development cost. The Department will consider a request for a waiver of this paragraph pursuant to N.J.A.C. 5:43-1.6 for up to five percent of approved development cost if the cost of the repairs, renovations and/or alterations are greater than 15 percent of the appraised "as is" value of the project, taking into consideration:

- i. The extent and nature of the development costs incurred;
- ii. The amount of the development fee being reinvested into the project; and
- iii. The need for the development fee as an additional funding source.

(d) Projects providing new units pursuant to N.J.A.C. 5:43-3.4(a), 3.5 or 3.6 shall conform with Uniform Affordability Housing Controls as set forth at N.J.A.C. 5:80-26.

(e) All projects must be handicap adaptable, in compliance with the technical design standards of the barrier free subcode adopted by the Commissioner of Community Affairs pursuant to the "State Uniform Construction Code Act," P.L. 1975, c. 217 (N.J.S.A. 52:27D-119 et seq.) and in accordance with the provisions of P.L. 2005, c. 350 §5 (N.J.S.A. 52:27D-123.15).

(f) The minimum size excluding exterior hallways, garages, common space and unfinished space, for new Balanced Housing units shall be:

1. For studio units: 550 square feet;
2. For one bedroom units: 600 square feet;
3. For two bedroom units: 850 square feet;
4. For three bedroom units: 1150 square feet; and
5. For four bedroom units: 1250 square feet.

(g) Each new unit funded shall contain at least one bedroom with no less than 150 square feet.

1. Each additional bedroom shall be no less than 100 square feet.
2. Each single-room occupancy unit shall be no less than 100 square feet.

(h) Eligible neighborhoods. All projects proposed for funding must be in an eligible neighborhood. Applicants shall be required to demonstrate that the neighborhood is

appropriate for the population to be served.

(i) Applicants to the Balanced Housing Program will be required to demonstrate their ability, both administrative and financial, to develop and manage the proposed project.

1. The qualifications and experience with respect to the development, marketing and, where relevant, the long-term management of affordable housing of key participants, including, but not limited to, the sponsor/developer, management entity, consultant, administering agent and the municipality, will be examined.

i. Failure by any of the participants to comply with the program requirements in projects previously funded by the Department, including, but not limited to, failure to pay the Housing Affordability Service, or failure to make required loan payments to the Department, shall be grounds for disqualifying an application and/or a participant.

ii. The association of any of the key participants with other projects which are experiencing either operating difficulties or delays in development shall be grounds to deny the application or to carry it forward until such time that the problems are corrected.

2. Participants lacking the qualifications necessary to carry out the project will be encouraged to joint venture with individuals/groups that can provide these qualifications.

(j) Rehabilitation of occupied units: If a sponsor/developer is undertaking reconstruction and one or more of the units is currently occupied, the occupied unit(s) shall be eligible only if the household occupying the unit is certified to be income eligible. If any current occupants will be relocated, this action must be completed in accordance with an approved Workable Relocation Assistance Plan (WRAP), pursuant to N.J.S.A. 20:4-1 et seq. and 52:31B-1 et seq.

(k) All applicants shall demonstrate control of the project site by holding title, by a sales contract, by an option to purchase, or by designation from the municipality as designated developer.

(l) All projects shall conform with the Balanced Housing Green Building Requirements pursuant to chapter Appendix M.

(m) Every building containing new Balanced Housing units shall be provided with an automatic fire suppression system. Such systems shall include the entire building and shall be installed in accordance with the Uniform Construction Code.

(n) All projects shall be appropriate to the site or the immediate neighborhood within which it is to be built or rehabilitated.

### **5:43-2.6 Review criteria**

(a) The Department shall evaluate eligible projects based on the criteria listed below. The Department shall favor the following:

1. Projects that are located in those geographic areas or neighborhoods that have been designated by the Governor, Commissioner and/or the State Planning Commission as locations appropriate for intensive redevelopment;

2. In urban aid municipalities, projects that provide mixed income housing opportunities including low, moderate and market units;

3. Projects that seek to encourage minorities and neighborhood residents that are employed by the sponsor/developer to undertake construction, rehabilitation or other related development activities for a specific purpose;

4. Projects that have committed funds for the provision of support services and programs that are appropriate for and accessible to residents;
5. Projects in which the affordability controls shall be in place for a longer period than required in accordance with N.J.A.C 5:43-4.1;
6. Projects that provide amenities, such as additional bathrooms, storage space, porches, balconies, a private yard and where appropriate, shared facilities, such as senior citizen activity rooms or lounges;
7. Projects that serve a population generally not served by the private market, for example, projects that provide housing opportunities for households with incomes below 40 percent range of affordability, persons with special needs or homeless persons;
8. Projects that provide family housing in developing communities;
9. Projects that may be expected to have a positive impact on the neighborhood and/or would further the objectives of a strategic neighborhood plan;
10. Projects with rents and prices that are staggered so that the units are affordable to a wide range of eligible households;
11. Projects in which the municipality provides tangible quantifiable support, for example, case, land, fee reduction, and/or loan guarantee, particularly in suburban communities; and
12. Projects that are designed to harmonize architecturally with the scale and character of the surrounding buildings and, in general, reinforce or enhance the character of the neighborhood in which they are located.

## **SUBCHAPTER 3 FUNDING CRITERIA**

### ***5:43-3.1 Grant and loan agreements***

(a) Successful applicants to the Neighborhood Preservation Balanced Housing Program shall be invited to enter into a grant and/or loan agreement with the Department or its designee. The Department may delegate the authority to enter into an agreement for Balanced Housing loans to the New Jersey Housing and Mortgage Financing Agency for Home Express loans, in accordance with N.J.A.C. 5:43-3.4(e).

1. The terms and conditions of any grant agreement shall be at the sole discretion of the Department or its designee for Home Express loans, in accordance with N.J.A.C. 5:43-3.4(e).
2. Balanced Housing grant and/or loan agreements with municipalities shall include provision(s) prohibiting the municipality from selling tax liens on the subject property prior to the closeout of the agreement.
3. The Department reserves the right, at its sole discretion, to require on site construction supervision to ensure successful project conception and compliance with all applicable agencies and funders that have jurisdiction over and/or material interest in the project.

(b) Where Balanced Housing funds are awarded to a municipality, those funds will be awarded to the municipality as a grant, except for municipal land acquisition projects where funds will be awarded to the municipality as a loan in accordance with N.J.A.C. 5:43-3.6.

(c) Where the municipality has been given a grant of Balanced Housing funds for the benefit of a developer of a rental project, the municipality shall provide the Balanced Housing funds to the developer as a loan. All loans to a rental project, whether by the Department or the municipality, shall be secured by a mortgage and a note, which shall be repayable to the Department. All terms and conditions of the loan documents shall be subject to the approval of the Department or its designee. The following terms shall apply:

1. The length of the loan shall not exceed the affordability period;
2. The interest rate shall be one percent compounded annually;
3. Payment shall equal 50 percent of cash flow, paid annually, with any balance due upon expiration of affordability controls; and
4. The Department or its designee, at its discretion, may independently audit the project records to verify income and expense.

(d) Balanced Housing funds may be provided to a project during the development phase as a construction loan where project feasibility requires supplementing private sources of construction financing. The terms and conditions of the construction loan provided by the Balanced Housing Program shall be at the discretion of the Department. The Department shall subordinate its construction loan to the lien of another construction lender provided that the sponsor/developer provides evidence that the subordination is necessary to achieve project feasibility.

(e) In cases where Balanced Housing funds are made available during construction, the Department shall subordinate the Balanced Housing construction loan to the lien of a permanent lender(s) upon completion of the construction of the project and on terms and conditions determined at the discretion of the Department. After a project's permanent financing is in place and after the project has been placed in service, the Department shall consider honoring a request to subordinate its mortgage to the lien of another lender, provided that the sponsor/developer provides evidence to the satisfaction of the Department that the project income can serve an increased level of private debt and that some public benefit will result from honoring the request to subordinate the Department's mortgage. An initial funding commitment to the project by the Department shall not constitute a commitment to subordinate the Balanced Housing loan after the initial permanent financing has been accomplished and after the project has been placed in service.

1. The sponsor/developer shall submit a request for subordination to the Division Director. The decision of the Division Director shall be presented in writing and shall be final. The request for subordination shall include:
  - i. An up-to-date income and expense statement;
  - ii. A mortgage commitment regarding the proposed refinancing;
  - iii. Verification that reserves are at required levels;
  - iv. A statement regarding project vacancies, turnover and anticipated major expenditures; and
  - v. An explanation of the public benefit that will occur. It shall be considered to be of public benefit if refinancing the project results in cash that will be utilized to:

(1) Perform necessary repairs in the project that cannot be funded by the accumulated reserves;

(2) Provide a source of development funding to create additional units that will be affordable to low and moderate income occupants; or

(3) Allow the sponsor/developer to increase the time period during which units will be affordable to low and moderate income households; and

vi. Any additional information that the Department may deem necessary in order to make a determination.

### **5:43-3.2 Types of projects**

(a) The Department shall only fund projects falling into at least one of the following categories:

1. Special Needs Trust Fund projects, described in N.J.A.C. 5:43-3.3;
2. Rental projects, described in N.J.A.C. 5:43-3.4;
3. Homeownership projects, described in N.J.A.C. 5:43-3.5;
4. Municipal land acquisition projects, described in N.J.A.C. 5:43-3.6;
5. Preservation, acquisition, and moderate rehabilitation projects, described in N.J.A.C. 5:43-3.7;
6. Section 202 and non-HOPE VI public housing new construction projects, described in N.J.A.C. 5:43-3.8;
7. Neighborhood rehabilitation projects, described in N.J.A.C. 5:43-3.9;
8. HOPE VI projects, described in N.J.A.C. 5:43-3.10;
9. Distressed projects, described in N.J.A.C. 5:43-3.11;
10. Neighborhood stabilization/revitalization projects, described in N.J.A.C. 5:43-3.12; and
11. Other projects, described in N.J.A.C. 5:43-3.13.

### **5:43-3.3 Special Needs Housing Trust Fund projects**

(a) The Balanced Housing Program may provide funding for eligible applicants to assist projects receiving funding from the Special Needs Housing Trust Fund established by P.L. 2005 c. 163. Funding provided pursuant to this section shall be made in accordance with the Special Needs Housing Trust Fund Act (P.L. 2005 c.163) and any rules established pursuant to that Act.

(b) The maximum assistance to such projects shall not exceed 20 percent of the total project cost or the capitalized cost of a rental subsidy for up to 10 years.

(c) Where feasible, as determined by the New Jersey Housing and Mortgage Finance Agency in accordance with the Special Needs Housing Trust Fund Act (P.L. 2005 c.163) and any

rules established pursuant to that Act, any project funded pursuant to this section shall comply with the eligibility requirements set forth in N.J.A.C. 5:43-2.4.

#### **5:43-3.4 Rental projects**

(a) The Balanced Housing Program may provide assistance to eligible applicants to provide new rental housing units for occupancy by low and moderate income households. Eligible activities shall include new construction, reconstruction and the conversion of non-residential structures.

1. The buy-down of new units, which are not deed restricted in order to make them affordable, is also eligible.

(b) The maximum allowable subsidy for a rental project shall be the amount needed to ensure project feasibility in accordance with N.J.A.C. 5:43-2.3.

(c) Applicants may combine a rental project with a homeownership project.

(d) Applicants for rental housing projects must apply to the New Jersey Housing and Mortgage Finance Agency for permanent financing.

(e) Applicants may apply directly to the New Jersey Housing and Mortgage Finance Agency (Agency) for a combination of LIHTCs, permanent and/or construction financing and Balanced Housing assistance. For such applications, the Agency will act as the Department's designee with respect to the Balanced Housing assistance provided, hereinafter referred to as "Home Express" loans.

1. Any loan agreement entered into for Home Express funds shall incorporate contractual guarantees and procedures to ensure that any unit of housing provided for low and moderate income households shall continue to be occupied by, and affordable to, low and moderate-income households for at least 20 years.

2. Projects receiving Home Express loans are exempt from the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26, including affordability averages and bedroom distribution requirements.

3. Projects receiving Home Express loans shall be exempt from N.J.A.C. 5:43-2.4(a), provided however that the Agency will require applicants to substantiate and justify project costs.

4. Except as noted in (e)5 and 6 below, the maximum Home Express loan for a project shall be \$ 40,000 per unit for projects receiving competitive cycle tax credits or \$ 50,000 for projects receiving non-competitive cycle tax credits.

5. Additional Home Express loan amounts may be approved for projects providing new rental units affordable at or below a 30 percent range of affordability.

6. Home Express loans may be increased by up to \$ 2.00 per square foot to cover the costs of automatic fire suppression systems that are not required by the local municipal building code but are required by N.J.A.C. 5:43-2.4(m).

#### **5:43-3.5 Home ownership projects**

(a) The Balanced Housing Program may provide assistance to eligible applicants to provide homeownership opportunities to low and moderate income households through new construction, reconstruction or the conversion of non-residential structures.



1. The buy-down of new units off the open market in order to make them affordable is also eligible.

(b) The maximum subsidy for homeownership projects shall be the amount needed to ensure project feasibility in accordance with N.J.A.C. 5:43-2.3.

(c) Condominium and cooperative as well as fee simple ownership forms are eligible.

### **5:43-3.6 *Municipal Land Acquisition (MLA) projects***

(a) The Balanced Housing Program may provide assistance to eligible municipalities, as defined in N.J.A.C. 5:43-1.3 and (b) below, to acquire land and/or any other eligible activity, for the purpose of providing future affordable housing.

(b) Eligible municipalities must meet the requirements listed in 1 through 3 below:

1. The municipality must have adopted a development fee ordinance approved either by the Superior Court or by the New Jersey Council on Affordable Housing (COAH) in accordance with N.J.A.C. 5:94-6;

2. The proposed project is contained within;

i. a. COAH approved Fair Share Plan or court-approved compliance agreement; or

ii. Will meet all or part of the municipal low and moderate income housing obligation if COAH has invoked its authority pursuant to NJSA 52:27D-320(c); and

3. The municipality is in compliance with all reporting requirements of COAH or the Superior Court.

(c) Land acquired through this program must be restricted, at the time of purchase to affordable housing only, in accordance with, and by instruments approved by the Department. Mixed income and mixed use projects are not eligible.

(d) MLA assistance will be provided to the municipality in the form of a loan. The loan shall not be considered a general obligation of the municipality.

1. Repayment of the loan will be secured by an interest in the municipality's Housing Trust Fund established pursuant to N.J.A.C. 5:94-6.11.

2. The municipality will repay the loan from;

i. The proceeds generated from the sale of the property to an affordable housing developer; and

ii. Any funds within the municipality's Housing Trust Fund that were allocated in its approved spending plan, but not actually disbursed, shall be remitted to the Department as payment, unless the municipality can justify the deviation from the approved spending plan.

3. The interest rate on the loan shall be zero percent for the first five years. If, after five years, the proposed affordable housing project has not been placed in service, the interest rate shall increase to seven percent, compounded annually. When the proposed housing is placed in service, the interest rate will revert to zero percent.

4. The municipality may retain ownership of the property and sell or lease it below market value, provided that evidence is presented that the retention or sale will benefit the residents of the proposed housing.

(e) The percentage of the municipality's Housing Trust Fund that must be dedicated to repayment of the loan pursuant to paragraph (d)2 ii above shall be determined on a periodic basis to coincide with approval and/or review of the municipality's spending plan.

(f) MLA projects may be combined with any other eligible project type.

### **5:43-3.7 Preservation, acquisition, moderate rehabilitation projects**

(a) Except as noted in (a)1 through 3 below, the Balanced Housing program will provide funding to eligible applicants for the preservation of existing affordable housing, the acquisition of vacant housing for the purpose of making it affordable, and for the moderate rehabilitation of existing units, or any combination thereof.

1. Preservation, without moderate rehabilitation, in a low income census tract, shall not be eligible;

2. Acquisition, without moderate rehabilitation, in a low income census tract, shall not be eligible; and

3. The acquisition or acquisition and rehabilitation of units that are in standard condition and affordable to low and moderate income households, but are not deed restricted, shall be permitted, in so far as the proposed activity will lower the range of affordability or extend the duration of the affordability in accordance with the housing affordability controls applicable at the time of the transaction.

(b) Sponsors of moderate rehabilitation projects shall be required to demonstrate on-going management capacity and financial feasibility of the project for the length of the control period including, but not limited to, the provision of reserves to ensure timely repair and replacement of any systems not addressed during the initial rehabilitation.

(c) For the purpose of acquisition, at least 70 percent of units in a project must be vacant or currently occupied by a low and moderate income household.

(d) Any structure repaired in whole or in part with Balanced Housing funds must, upon completion, be certified as standard.

(e) The amount of subsidy for preservation shall not exceed the difference between the market value of the property without restrictions and the market value of the property with restrictions as determined by an appraiser, whose method and credentials have been accepted by the Department.

1. Initially, the Department will utilize the New Jersey Housing and Mortgage Finance Agency for the selection and procurement of appraisers, until an equivalent system can be replicated at the Department. Cost for the appraisal will be born by the applicant.

2. To be considered for approval, the appraiser must apply to the Agency, and the application shall include the information required, or demonstrate that the appraiser has the experience, as follows:

i. The completion of appraisals similar to the types of projects funded by the Agency and the Department;

ii. The counties they have done work in and wish to be considered for;

iii. Names and addresses of references;

iv. A copy of the appraisers current New Jersey Appraiser License;

v. A Signed acknowledgement of the Code of Ethics and Mandatory Affirmative Action;

vi. A current copy of the appraisers Errors and Omission policy; and

vii. Sample appraisals for every type of work they seek.

3. An appraiser review committee of three reviews all applications and sample appraisals, and if deemed to have sufficient experience and accepted, the appraiser goes on a computerized rotating selection list;

(f) The Balanced Housing subsidy for a preservation, acquisition, moderate rehabilitation project shall not exceed \$ 50,000 per unit.

**5:43-3.8 Section 202 and non-HOPE VI public housing new construction projects**

(a) The Balanced Housing Program may provide assistance to eligible applicants applying on behalf of public housing authorities and not-for profit sponsors to construct projects in accordance with Section 202 of the Housing Act of 1959 (12 U.S.C. §1709) or, with the exception of HOPE VI Projects (Section 24), the U.S. Housing Act of 1937 (92 U.S.C. §§1437 et seq.).

(b) The total Balanced Housing subsidy shall not exceed the lesser of \$15,000 per unit or 15 percent of total project costs.

(c) Applications for a Section 202 or public housing new construction project must include a conditional or final commitment from HUD.

**5:43-3.9 Neighborhood rehabilitation projects**

(a) The Balanced Housing Program may provide assistance to distressed urban municipalities to identify and moderately rehabilitate substandard units in one-to-four family owner occupied structures within a target neighborhood.

(b) The maximum Balanced Housing grant to a municipality under a Neighborhood Rehabilitation Agreement shall be \$500,000.

(c) Rehabilitation activity shall average at least \$10,000 per unit over the contract period. The municipality may use the lesser of 16 percent of the grant or \$ 2,000 per unit to administer the program.

(d) Applicants shall demonstrate to the satisfaction of the Division the existence of an active, systematic code enforcement program or a commitment to establish one within 90 days of the start date of a Balanced Housing contract.

(e) The following shall apply to municipalities administering a Neighborhood Rehabilitation Project;

1. Neighborhood Rehabilitation assistance is limited to one-to-four unit, owner-occupied structures; and

2. No Balanced Housing assistance shall be provided to occupied housing units unless the occupants have been certified as low or moderate income.

(f) In cases where a two-to-four unit structure is rehabilitated with Balanced Housing funds and one or more of the units are not assisted with Balanced Housing, a percentage of the

cost of common area and system wide improvements equal to the percentage of unassisted units shall be paid by the owner. If the owner can demonstrate extreme financial hardship, the Division may modify or waive this requirement.

(g) The maximum Balanced Housing Program assistance to any one unit may not exceed the following:

1. For owner-occupied units, \$25,000; or
2. For renter-occupied units, the lesser of \$10,000 or 75 percent of the rehabilitation cost, except that if an owner can demonstrate extreme financial hardship, the Division may modify or waive this requirement.

(h) Eligible units shall be certified as substandard prior to the expenditure of funds.

(i) Any structure repaired in whole or in part with Balanced Housing funds must, upon completion to be certified as standard.

(j) Balanced Housing funds may be used only for work and repairs required to make a unit standard and any other work or repairs (including finishing and painting) that is directly related to the required activities. Improvements, which are exclusively cosmetic and the purchase of free-standing appliances (not including refrigerators or stoves) are prohibited.

#### **5:43-3.10 HOPE VI projects**

(a) The Balanced Housing Program may provide assistance to eligible applicants applying on behalf of sponsors developing HOPE VI projects in accordance with Section 24 of the U.S. Housing Act of 1937 (42 U.S.C. §1437v).

(b) The maximum Balanced Housing subsidy for a HOPE VI project shall be \$40,000 per unit, for projects awarded by HUD prior to January 1, 2006 or \$25,000 for those projects awarded by HUD on or after January 1, 2006.

(c) Applicants shall be required to provide a full certified accounting from the relevant housing authority of all HOPE VI funding, commitments, obligations and expenditures.

#### **5:43-3.11 Distressed projects**

(a) The Balanced Housing Program may provide assistance to eligible applicants applying on behalf of existing Balanced Housing projects in need of additional financial assistance to establish and/or ensure the ongoing viability of the housing.

(b) Applicants, their subsidiary or parent corporations receiving funding pursuant to this section, shall not be eligible for any other form of Balanced Housing assistance for a period of two years from the time that such funding is received.

(c) Eligible projects shall be limited to those proving severe financial distress and an inability to meet normal operating and debt service obligations. Inability to meet debt service ratios, fund reserve accounts, pay deferred developer fee and/or any other partnership distributions, shall not be considered indicators of severe financial distress.

(d) Eligible projects must be in service for at least two years and shall be in compliance with all affordability control, audit and reporting requirements of the Grant Agreement and loan documents from the Division.

(e) The amount of assistance and the terms and conditions of assistance shall be at the discretion of the Commissioner.

(f) Applicants will provide documentation of need including, but not limited to:

1. A narrative report setting forth the reason(s) that assistance is necessary, steps that have been taken to establish stability, and a specific dollar request for financial support from the Balanced Housing program;
2. Annual audits for the project for all years since the project was completed or placed in service;
3. A Copy of the Equity Investor agreement, if the project has received LIHTCs, including current contact information for the equity investor;
4. A listing of all project debt (hard and soft), the names and current contact information of lenders, the terms and conditions, the current balance and status of all loans;
5. A Certification from the developer/general partner as to the total amount of developer fee allowed, initially taken and still pledged to the project;
6. A Certification from the developer/general partner/equity investor as to any cash infusion into the project after the project was placed in service;
7. A Capital Needs Assessment for the project done by an independent party (architect/engineer), or by the owner using a form approved by the Department and reviewed and certified by the Technical Services Division of the NJHMFA;
8. A 20-year cash flow projection; and
9. A Copy of the Municipal Payment in Lieu of Taxes (PILOT) Agreement.

(g) Sponsors of moderate rehabilitation projects shall be required to demonstrate on-going management capacity and financial feasibility of the project for the length of the control period including, but not limited to, the provision of reserves to ensure timely repair and replacement of any systems not addressed during the initial rehabilitation.

(h) An applicant may request an exception to the allowable annual rental increase subject to the following:

1. A sponsor may request an exception to the allowable annual rental increase no more than once during a 10 year period;
2. If the rents are not subject to review and approval by HUD or subject to automatic annual adjustments pursuant to a valid Housing Assistance Payments contract, or regulated by a local rent control board, then the Commissioner may make or approve a rent increase without a hearing, as long as the resulting rents do not exceed the rents in effect for the same units in the housing project at any time in the previous 12 months by more than the combined percentage of (h) 2 i and ii below:
  - i. The allowable increase identified in the existing program affordability control documents for the project; and
  - ii. The percentage, up to a maximum of 12 percent annually, needed to fund operation deficits, debt service arrears or reserves for repair and replacement incurred at the housing project. No part of the rent increase shall be used for return on equity to the sponsor;
3. If a rent increase is requested the applicant must provide proof that all tenants have been notified, in writing, of their request. The letter must specify the percentage increase

being requested and how it will affect rents; and

4. The allowable rent increase shall be at the sole discretion of the Commissioner and shall be final.

### **5:43-3.12 Neighborhood stabilization/revitalization projects**

(a) The Balanced Housing Program may provide assistance to distressed urban municipalities applying on behalf of a sponsor who will promote neighborhood stabilization and revitalization through the acquisition and reconstruction and resale of existing units within a target neighborhood.

(b) The amount of Balanced Housing assistance and the requirements of such assistance shall be in accordance with N.J.A.C. 5:43-3.5 for two-family structures and/or N.J.A.C. 5:43-3.6 for single family homeowner units.

The maximum Balanced Housing subsidy for a neighborhood stabilization/revitalization project shall be \$750,000.

### **5:43-3.13 Other projects**

(a) In addition to the previously listed types of Balanced Housing projects, the Department reserves the right to fund projects that do not fit into any of these formats. Such projects may include, but shall not be limited to pilot programs, those that are unique in terms of development, ownership, occupancy characteristics, and transitional facilities for the homeless or matching funds required in order to secure other financing, that without the match, would be lost to the State of New Jersey.

(b) The Balanced Housing Program may provide assistance to eligible applicants applying on behalf of projects which require matching funds in order to secure other financing which, without the match, would be lost to the State of New Jersey.

## **SUBCHAPTER 4. AFFORDABILITY CONTROLS**

### **5:43-4.1 Uniform housing affordability controls**

(a) Except as noted in (a)1 and 2 below, all units receiving funding from Balanced Housing shall be subject to the pertinent housing affordability controls N.J.A.C. 5:80-26, with the following exceptions:

1. Units excluded from the controls pursuant to N.J.A.C. 5:80-26.1; and
2. Units precluded from controls in accordance with N.J.S.A. 52:27D-320(f).

### **5:43-4.2 New Jersey Housing Resource Center**

All units funded by Balanced Housing shall use the New Jersey Housing Resource Center regardless of the administrative agent selected by the applicant.

### **5:43-4.3 Section 8 assistance**

(a) A household receiving assistance under Section 8 of the Federal Housing Act of 1937, as amended by the Housing and Community Development Act of 1974, shall be eligible for housing under the Balanced Housing program, provided, however, that the following are

met:

1. The household meets all requirements for the Balanced Housing program; and
2. The combined household rental payment and housing assistance payment shall not exceed that provided for in the Balanced Housing grant agreement.

## **SUBCHAPTER 5. MULTIFAMILY HOUSING PRESERVATION AND RECEIVERSHIP**

### **5:43-5.1. Scope**

This subchapter shall apply to applicants for funding under the Multifamily Housing Preservation and Receivership Act, P.L. 2003, c. 295 (*N.J.S.A. 2A:42-114* et al.).

### **5:43-5.2. Insurance**

(a) Evidence of builder's risk or all risk insurance must be provided prior to the closing of the Department loan or grant and the appropriate level of coverage is required for the duration of the construction. The minimum amount of the insurance shall be the insurable (replacement cost) value established by the appraisal submitted to the court.

(b) Evidence of Commercial General Liability Insurance shall be required for all completed projects and must be carried at acceptable levels for the duration of the Department loan or grant.

(c) Professional liability insurance for the general contractor and architect shall be required as follows:

1. General contractor:

i. General liability;

ii. Workmen's compensation;

iii. Contractor's public liability in the sum of \$1,000,000/\$3,000,000 and property insurance of \$250,000/\$500,000;

2. Architect:

i. Errors and Omission Insurance of 10 percent of the construction costs or \$250,000, whichever is greater.

(d) All insurance must be issued by a firm with an A.M. Best rating of B+ or better and shall conform to the requirements set forth in Appendix K of this chapter, incorporated herein by reference.

(e) A requirement set forth in this section may be waived or adjusted upon a finding that such requirement would prevent an entity that is otherwise fully qualified to act as a receiver from being appointed receiver, so long as that entity can demonstrate a sufficient level of financial responsibility.

### **5:43-5.3. Surety bonds**

(a) For projects in excess of a \$50,000 hard project cost, a receiver shall be required to post a 100 percent Payment & Performance Bond for a term from the date of the closing of the Department construction loan through two years from the date of issuance of the Certificate of Occupancy or an Architect's Certification of Substantial Completion, whichever is later. The bond will be in an amount sufficient to guarantee compliance with the terms and conditions of the receivership.

(b) Payment and performance bonds shall be in a form acceptable to the Department.

(c) A requirement set forth in this section may be waived or adjusted upon a finding that such requirement would prevent an entity that is otherwise fully qualified to act as a receiver from being appointed receiver, so long as that entity can demonstrate a sufficient level of financial responsibility.

### **5:43-5.4. Qualification for registration of qualified entities**

(a) In order to be eligible to register as a qualified receiver with the Department of Community Affairs, the applicant must demonstrate that at least one person holding a position of responsibility in the organization possesses the minimum qualifications set forth under either (a)1 or 2 below.

1. Property Management: The responsible person must demonstrate any one of the following qualifications; provided, however, that such persons may substitute office or retail property management experience for up to one half of the minimum number of units set forth below on the basis of 1,000 square feet of office or retail space equals one residential unit:

i. Three years as owner/operator of a property management company with responsibility for management of 100 or more rental units;

ii. Three years as property manager of a building or buildings with 50 or more rental units;

iii. Three years as the senior individual responsible for property management at a community development corporation (CDC) or public housing authority (PHA) with 50 or more rental units; or

iv. Six years as manager or senior staff with substantial responsibility for property management of 50 units or more within a property management company, CDC or public housing authority.

2. Rehabilitation: Individuals whose principal qualifications are in rehabilitation of multifamily housing may serve as receivers on behalf of qualified entities if their activities are on behalf of a firm or entity that they either own, or hold a responsible position in, which maintains and operates the housing (as distinct from acting as a general contractor or construction manager for other parties). In order to qualify under this section, the individual must demonstrate that he or she had responsibility for successful completion of rehabilitation on 50 or more multifamily



rental units within the past 10 or fewer years, acting as owner/developer or as responsible staff of a CDC. In order to meet the standard of an entity that maintains and operates the rehabilitated housing, the firm or entity must continue (or plan to continue) as owner and manager of the rehabilitated units for at least five years after completion of rehabilitation. For purposes of this paragraph:

i. Eligible projects are limited to those in which rehabilitation expenditures were at least \$15,000 per unit; and

ii. The individual seeking to qualify as a receiver need not be the individual in the firm or entity with direct (hands-on) property management responsibilities, but must hold a position of senior responsibility with the firm or entity.

(b) Applicants on behalf of a qualified entity can substitute course work for experience as follows:

1. Completion of property management courses sponsored by the Institute of Real Estate Management (IREM) or other entity acceptable to the Department can be substituted for up to one year of property management experience on the basis of one course equals three months of experience;

2. The Department may designate certain courses or curricula as substituting for more than three months of experience, but in no event will allow applicants to substitute courses for more than one year of experience;

3. The Department may reduce the minimum number of units required under (a)li or ii above on the basis of completion of property management courses. The number of units may be reduced by no more than one half for courses equivalent to one year of experience, as provided above, or no more than one quarter for a smaller number of courses.

(c) In connection with the application for registration, each applicant on behalf of a qualified entity must disclose, with regard to himself or herself or any other person holding a position of responsibility in entity, or with regard to the entity itself or any related entity:

1. Any criminal convictions within the previous 10 years other than motor vehicle offenses;

2. Any complaints with any official board or agency filed against the applicant in connection with his or her activities as a property manager, property owner or contractor, and their disposition; and

3. Copies of code violation notices and records of correction of violations with respect to properties under applicant's direct control for previous three years.

(d) Registration may be denied to any applicant where the Department finds any of the following on the basis of the applicant's disclosure:

1. The nature of the applicant's past criminal convictions materially affects the ability of the applicant to act successfully as a receiver;

2. The nature of the complaints filed against the applicant materially affects the ability of the applicant to act successfully as a receiver; or

3. The magnitude of the code violations on properties under the applicants control, and/or the failure of applicant to correct violations in a timely manner, materially affect the ability of the applicant to act successfully as a receiver.

(e) In order to remain registered, each applicant must submit a registration renewal request annually, which shall include disclosure of any matters taking place in the previous year requiring disclosure under (c) above.

(f) The organization shall demonstrate that it has experience in obtaining funding from State, Federal, municipal or private sources.

(g) Monitoring: Every two years, qualified entities shall be required to provide the Department with a report and a certification on their standing with the court on any project for which they have been designated a receiver. The report shall include the following information:

1. The location of the project, city and county;
2. The total number of units;
3. The total number of low income units and of moderate income units; and
4. Funding sources.

## ***APPENDIX L***

For purposes of N.J.A.C. 5:43-2.4(a)2, soft cost shall consist of exclusively of the following:

Accounting

Affordability controls administrative fees

Appraisal

Architect fees

Closing costs

Construction fees

Construction interest

Construction management

Cost certification

Cost of issuance

Equipment and furnishing

Engineer

Environmental report

Financing fees

HMFA bond commitment fee

Housing consultant

Insurance during construction

Legal fees

Market study

Marketing and lease-up

Negative arbitrage

Soil borings

Survey

Taxes during construction

Title costs

## **APPENDIX M**

### Balanced Housing Green Building Requirements

#### 1. Siting and Land use

- Follow smart growth principles as set forth in the State Development and Redevelopment Plan.
- Where feasible, site new construction to optimize passive solar strategies, including orienting the building with respect to the sun's relationship to the site.
- Distribute proper energy efficient windows in appropriate placement.
- Include passive shading such as suitable overhangs, awnings and/or deciduous trees.

#### 2. Indoor Air Quality

- During construction, completely seal forced air duct and HVAC equipment openings with plastic film and tape until after final cleaning of unit. If ducted system is used for construction heating, install MERV 8 filters on all return grills for duration of construction to contain dust.
- Utilize products that produce low volatile organic compound low paints, sealants, and adhesives in all interior applications.
- Install encapsulated batts when utilizing fiberglass insulation between joists of accessible basement ceiling to reduce dust and increase thermal performance.
- Install pleated furnace filters for forced air systems to trap allergens.
- Install durable, healthy flooring in units such as bamboo, cork, linoleum, etc.

#### 3. Energy Efficiency

- All units must adhere to current New Jersey Energy Star Certification requirements.
- All Appliances must be Energy Star certified.
- Install one Energy Star lighting fixture in each occupied room in unit.

#### 4. Resource Efficiency

- Develop and submit plan and protocol to properly sort and dispose of construction waste material separate from recycled material. Establish a system for daily collection and separation of materials designated to be recycled including at a minimum, concrete, metals, wood, recyclable plastics, bottles and cardboard. Plan must also include the percentage of construction and the percentage of demolition that will be recycled waste.
- Contractor must include in each subcontract the requirement to sort the above materials and dispose of each in the designated container or debris pile. Recycling areas shall be clearly marked to avoid co-mingling of materials.
- Recycling--For rental properties, provide a plan for the recycling of household (single family/townhouse) or individual unit (multifamily all types) recyclables (glass, plastic, metals, paper)

## 5. Water Efficiency

- Fixtures must include the following standards:

Bathroom faucets	0.5 gpm bath aerators
Showerheads	2.0 gpm (flow rate is typically reduced by flow restriction or aeration)
High Efficiency Toilets	</= 1.3 gallons per flush toilets

Washing machines located in common areas of multi-family units must be front-loading horizontal axis.

Water efficient landscaping

Turf: Select a type of grass that can withstand low rainfall periods and become dormant during hot, dry summer conditions. Turf no more than 50 percent of the landscaped area. If installing plants as an alternative, or in addition to turf areas, utilize native and/or drought resistant plants with either drip irrigation or no irrigation.

Irrigation: Install irrigation system controllers such as rain or soil moisture sensors or use a weather driven programming system. Use high efficiency nozzles and pressure regulating devices to maintain optimal pressure and prevent misting. Consider collected rainwater as an alternative source of irrigation water.

## 6. Building Durability and Moisture Protection

- Install window flashing to avoid moisture penetration.
- Provide exterior wall drainage plane using building paper, housewrap or layered water resistant sheathings (rigid insulation or a foil covered structural sheathing) with seams taped or sealed.
- Where lot lines permit, design roof to include 18 inch minimum roof overhangs which are measured on horizontal from vertical wall to fascia.
- Roof gutter system downspouts shall discharge water at least three feet from the foundation.
- For pitched roofs, install 30-year or more roof shingles, for flat roofs, install 20-year shingles.

### ***Resource Guides***

New Jersey DCA Green Homes Guidelines

New Jersey Clean Energy Program at [www.njenergystarhomes.com](http://www.njenergystarhomes.com)

Energy and Environmental Building Association at [www.eeba.org](http://www.eeba.org)