

COMMUNITY AFFAIRS

NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

Low Income Housing Tax Credit Qualified Allocation Plan

Adopted Amendments: N.J.A.C. 5:80-33.2 through 33.9, 33.12, 33.15, 33.16, 33.17, 33.19, 33.21, and 33.32

Proposed: October 3, 2016, at 48 N.J.R. 1989(a).

Adopted: February 3, 2017, by New Jersey Housing and Mortgage Finance Agency, Anthony L. Marchetta, Executive Director.

Filed: February 3, 2017, as R.2017 d.038, **with non-substantial changes** not requiring additional public notice or comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 55:14K-5g and 26 U.S.C. § 42(m).

Effective Date: March 6, 2017.

Expiration Date: November 16, 2017.

Summary of Hearing Officer’s Recommendation and Agency’s Response:

Anne Hamlin, New Jersey Housing and Mortgage Finance Agency (“NJHMFA” or “Agency”) Director of Tax Credit Services, conducted a public hearing in the boardroom of NJHMFA at 637 South Clinton Avenue, Trenton, New Jersey at 10:00 A.M. on Wednesday, October 26, 2016, at which time and place the following persons appeared and testified:

1. Kevin Dowd, Candlebrook Properties, LLC; and
2. Vivian Cox Fraser, Urban League of Essex County.

Subsequent to the hearing, the hearing officer recommended that no changes be made to the rule proposal based on the hearing; the hearing officer’s recommendations were accepted by the Agency. Copies of the transcript of the public hearing are available at the following address:

New Jersey Housing and Mortgage Finance Agency, Division of Tax Credit Services, Attn: Johanna Peña, 637 South Clinton Avenue, P.O. Box 18550, Trenton, New Jersey 08650-2085.

Summary of Public Comments and Agency Responses:

The Agency received comments from the following persons:

1. Kevin Dowd, Candlebrook Properties, LLC;
2. Vivian Cox Fraser, Urban League of Essex County, Newark, NJ;
3. Tracee Battis, Director of Project Development, Project Freedom, Inc.;
4. Lianna Petroski, Director, Enterprise Community Investment, Inc., New York, NY;
5. Joel Silver, Senior Vice President, Michaels Development Company, Marlton, NJ;
6. Barbara K. Schoor, Vice President, Community Investment Strategies, Inc., Lawrenceville, NJ;
7. Arnold Cohen, Senior Policy Coordinator, Housing Community Development Network of NJ, Trenton, NJ;
8. Adam M. Gordon, Esq., Fair Share Housing Center (FSHC), Cherry Hill, NJ; and
9. Jacob Fisher, Pennrose Properties.

A summary of all comments received and the Agency responses follows (commenters are identified by the numbers before their names above):

COMMENT: The commenter requests that more consideration be given to preservation projects, particularly those with project-based vouchers and/or NJHMFA participation. The commenter expresses his belief that as the qualified allocation plan (QAP) is currently structured,

preservation projects, especially those in targeted urban municipalities (TUMs), are at a particular disadvantage. (1)

RESPONSE: The Agency continues to prioritize preservation projects through the preservation set-aside in the Family Cycle at N.J.A.C. 5:80-33.4(a)2, to which projects with project-based vouchers that can demonstrate they are “at risk of losing [their] level of affordability” are eligible to apply. Therefore, the Agency does not agree that preservation projects are at a disadvantage under the QAP as currently structured. However, as with all aspects of the QAP, the Agency will continue to monitor the status of preservation projects in promoting affordable housing goals, particularly in urban areas.

COMMENT: The commenter states that the QAP appears to favor large concentrations of disadvantaged persons within large buildings, without any real interaction within the community; she opines that the QAP should include a priority for scattered site housing to aid municipalities with abandoned and vacant properties while providing affordable housing and deconcentrating poverty. (2)

RESPONSE: The Agency disagrees with the representation that the QAP favors large concentrations of poverty. To the contrary, the Agency notes that one of the main priorities of the QAP and of the State’s affordable housing policy is to deconcentrate poverty; to that end, significant efforts have been undertaken to site tax-credit projects in low-poverty neighborhoods with access to transit, employment opportunities, and high-performing schools. Additionally, provisions are in place to restrict new construction in census tracts where 30 percent or more of the units are funded through the tax-credit program. Further, it is noteworthy that several scattered site developments have been funded under prior iterations of the QAP. Therefore, the

Agency believes that the present allocation system is appropriate and sufficiently expansive to accommodate both multifamily and scattered site development.

COMMENT: The commenter supports the amendment in the Supportive Housing Cycle at N.J.A.C. 5:80-33.6(a), raising the tax credit authority from \$1,200,000 to \$1,400,000, noting that the increase will enable the development of additional barrier-free housing units of which there is a great shortage in New Jersey. (3)

RESPONSE: The Agency thanks the commenter for the expression of support for the proposed amendment.

COMMENT: The commenter supports the award in the point system for the Supportive Housing Cycle at N.J.A.C. 5:80-33.17(b)5 of two points for non-profit developers who have a 100-percent non-profit interest in the final ownership entity and one point for a 50-percent or greater non-profit ownership interest in the final ownership entity. (3)

RESPONSE: The Agency thanks the commenter for the expression of support for the proposed amendment.

COMMENT: The commenter supports the permitted exclusion to the cap on development costs for community center or social service space of up to a maximum of \$400,000 in the Family, Senior, Supportive Housing, and Final Cycles and the Reserve at N.J.A.C. 5:80-33.4(a), 33.5(a), 33.6(a), 33.7(a), and 33.8(a), respectively. (3)

RESPONSE: The Agency thanks the commenter for the expression of support for the proposed amendments.

COMMENT: The commenter expresses concern that the amendment in the application to cycle/eligibility requirements at N.J.A.C. 5:80-33.12(c)10, which establishes that the acquisition value for the purpose of calculating acquisition credits is limited to the lesser of the appraised

value or the purchase price or lease fee of the property in the most recent arm's length transaction if such transaction occurred within the past 10 years, will result or has resulted in the loss of existing affordable multifamily housing. The commenter acknowledges that there is similar language in the Agency's Multifamily Rental Financing Program Underwriting Guidelines (Multifamily Guidelines).

The entity of which the commenter serves as director has been developing financial products, both debt and equity, to allow affordable housing firms to be competitive by purchasing properties from third parties to be held in an interim ownership structure in preparation for refinancing and rehabilitation with low-income housing tax credit financing. The proposed QAP does not allow a property's appreciation to be acknowledged in the underwriting or computed in the acquisition credits; this discourages, or makes it nearly impossible, for properties that have been acquired for future development using private investor capital to be refinanced through tax credit syndication. (4)

RESPONSE: The amendment at N.J.A.C. 5:80-33.12(c)10 stems from Agency policy aimed at preventing the utilization of scarce affordable housing resources to reward short-term investment in affordable housing projects and to attain consistency with the Multifamily Guidelines. The Agency, therefore, remains supportive of and will adopt the amendment.

COMMENT: The commenter advocates restoration of the set-asides in the Family and Senior Cycles at N.J.A.C. 5:80-33.4(a)1 and 33.5(a)1, respectively, that would favor funded CHOICE Neighborhood Revitalization projects that have received an implementation grant. Since receipt of a CHOICE implementation grant may result in an award of up to \$30 million from the Federal government to a comprehensive neighborhood revitalization effort, such projects should have a

higher priority vis-à-vis other projects that contribute to a concerted community revitalization plan. (5)

RESPONSE: The Agency agrees with the commenter and will not adopt the proposed amendments to the set-asides at N.J.A.C. 5:80-33.4(a)1 and 33.5(a)1, respectively.

COMMENT: With respect to points awarded for projects within a proficient school district and public and private sector jobs at N.J.A.C. 5:80-33.15(a)14iii and (a)14iv, respectively, the commenter suggests that the Agency consider awarding points where there has been significant improvement in test scores or job growth. (5)

RESPONSE: The Agency is committed to siting new affordable housing near employment opportunities and high-performing schools. While an improvement in test scores and job growth are indicators of progress, they do not necessarily predict areas of high opportunity. The Agency is, therefore, adopting the amendments at N.J.A.C. 5:80-33.15(a)14iii as proposed and making no change at N.J.A.C. 5:80-33.15(a)14iv.

COMMENT: The per-project maximum annual tax credit allocation should be increased, especially in light of the current market situation. (6)

RESPONSE: The Agency has proposed to increase the Supportive Housing Cycle maximum allocation at N.J.A.C. 5:80-33.6(a), but does not agree that the maximum allocation should be increased for the Family and Senior Cycles. The Agency notes that very few projects apply for the maximum tax credit allocation and are able to demonstrate feasibility without additional tax credits. However, if there are dramatic changes to market conditions prior to the next application cycle as a result of which the Agency deems it necessary to modify any provisions in the adopted

QAP, the Agency, per IRC § 42(m)(1)(A)(iv), is authorized to do so, as long as a written explanation of the exceptions is published.

COMMENT: With low participation in PARCC testing, an alternate measure should be considered for the schools category points in the Family Cycle at N.J.A.C. 5:80-33.15(a)14iii, such as the free/subsidized lunch program, which is a very common measure that could achieve the same goal. (6)

RESPONSE: The Agency has extensively reviewed educational performance metrics and found alternative measures to be limited. The PARCC test is administered in eight states, including New Jersey, and has comparable results to national testing programs. Based on 2015 data, 263 school districts are eligible for this two-point incentive and there is at least one eligible district in every county; therefore, the Agency supports this metric as the best measure of academic performance. While free/subsidized lunch participation may have some correlation, it does not measure achievement or focus on the academic performance of students.

COMMENT: At N.J.A.C. 5:80-33.15(a)14v, municipalities with court-approved projects should receive the same weight as court-approved plans; also, there should be more weight given to this point category. (6)

RESPONSE: The Agency interprets this point category to include both court-approved municipal plans, as well as project-specific settlement agreements. The Agency is reluctant to more heavily incentivize a point category that could be delayed by court schedules and other matters outside of the applicant's control, which could unfairly penalize a project.

COMMENT: The commenter agrees with the changes at N.J.A.C. 5:80-33.4(c), 33.5(c), 33.6(b), and 33.7(b), by which NJHMFA will fund no more than three projects per year from the same

developer/general partner/managing member in the Family, Senior, Supportive Housing, and Final Cycles. (7)

RESPONSE: The Agency thanks the commenter for the expression of support for the proposed amendments.

COMMENT: The commenter agrees with the changes at N.J.A.C. 5:80-33.4(d), 33.5(d), and 33.6(d) that maintain the goal of awarding approximately 40, but not less than 35, percent of the credits in the Family, Senior, and Supportive Housing Cycles (inclusive of all set-asides) to TUMs. (7)

RESPONSE: The Agency thanks the commenter for the expression of support for the proposed amendments.

COMMENT: The commenter supports the changes at N.J.A.C. 5:80-33.4(a)1 and 33.5(a)1 by which the first reservations of credits from the Family and Senior Cycles will be given to the highest-ranking projects that contribute to a concerted community revitalization plan and are fully located within both a Qualified Census Tract (QCT) and a TUM, noting that the changes will ensure that urban areas that have a community plan will be better positioned to receive tax-credit projects. (7)

RESPONSE: The Agency thanks the commenter for the expression of support for the proposed amendments.

COMMENT: The commenter supports the addition of the definition of a “neighborhood revitalization plan” at N.J.A.C. 5:80-33.2. (7)

RESPONSE: The Agency thanks the commenter for the expression of support for the proposed amendment.

COMMENT: The commenter supports the changes at N.J.A.C. 5:80-33.4(a)1 and 33.5(a)1 as eliminating the QCT “ranking disadvantage” faced by projects in many distressed cities by requiring that the first reservations of credits from the Family and Senior Cycles be given to the highest-ranking projects that contribute to a concerted community revitalization plan and are fully located within both a QCT and a TUM. (7)

RESPONSE: The Agency thanks the commenter for the expression of support for the proposed amendment.

COMMENT: The commenter agrees with the amendments to the definition of “brownfield site” at N.J.A.C. 5:80-33.2 that require applicants to submit documentation approved or issued by the New Jersey Department of Environmental Protection (DEP) or its designee (a Licensed Site Remediation Professional or LSRP) to certify that a site is eligible for brownfield designation. (7)

RESPONSE: The Agency thanks the commenter for the expression of support for the proposed amendment.

COMMENT : As noted in FSHC's 2013 comments, only 28 percent of New Jersey residents live in TUMs according to the 2010 Census, yet NJHMFA continues to allocate at least 40 percent, and potentially more, of tax credits to these areas. These areas include a disproportionate share of existing lower-income housing and African-American and Latino residents, as FSHC's prior comments have discussed. This policy would disproportionately further existing patterns of racial and economic segregation. (8)

RESPONSE: The Agency has proposed language that softens the 40-percent requirement, which in the past was interpreted as a minimum allocation. The proposed amendments in the Family, Senior, and Supportive Housing Cycles at N.J.A.C. 5:80-33.4(d), 33.5(d), and 33.6(d)

now establish a 35-percent minimum, intended to give the Agency flexibility to meet the urgent affordable housing needs of both urban and suburban locations in the State.

COMMENT: The discretion to award any one additional nine-percent application that would have otherwise not ranked high enough for funding at N.J.A.C. 5:80-33.8(a)4 should be employed carefully and consistently with previous standards. NJHMFA should clarify that this award will not upset the 60/40 urban/suburban split that the Agency has previously stated is necessary to affirmatively further fair housing; only 40 percent of tax credits in each of the Family, Senior, and Supportive Housing Cycles can be awarded to projects located in TUMs, with the remaining, larger share of credits awarded to projects in non-TUM municipalities. (8)

RESPONSE: As with all reserves established under N.J.A.C. 5:80-33.8, the Agency does not consider any credits awarded as part of this discretionary reserve to be included within the 60/40 urban/suburban split mandated in the Family, Senior, and Supportive Housing Cycles.

COMMENT: In the municipal support point category at N.J.A.C. 5:80-33.15(a)4i, awarding points to projects receiving a fixed-rate tax abatement for a 15-year term with a rate of no more than five percent is likely unrealistic as this abatement is lower than NJHMFA's historic practice of a 6.28 percent rate. This will likely provide a way for municipalities to disadvantage projects should they want to do so. The Agency should explain its basis for choosing the five percent threshold given the few projects that have received abatements in this range historically. (8)

RESPONSE: The Agency has attempted to eliminate as many municipal impediments to affordable housing as possible; however, affordable housing projects are typically reliant on tax abatements in order to continue feasible long-term operations. The tax abatement remains one of the only means for municipalities to contribute to the long-term success of an affordable housing project and the Agency believes that municipalities should be encouraged and incentivized to do

so. Applicants in the past have been successful in obtaining tax abatements under five percent even without this additional incentive.

COMMENT: FSHC supports the elimination of the municipal, county, CRDA, and PHA support points at current N.J.A.C. 5:80-33.15(a)4ii, as they amount to a local veto power for projects. A high-opportunity municipality can block development by withholding financial support from the development. The elimination of this provision also maintains consistency with the 2015 New Jersey Analysis of Impediments (2015 AI). (8)

RESPONSE: The Agency thanks the commenter for the expression of support for this proposed amendment and also references recent IRS Revenue Procedure 2016–29, which prohibits an allocating agency from bestowing “veto power over LIHTC projects either on local communities or on local public officials” as being contrary to fair housing law.

COMMENT: FSHC supports the elimination of redevelopment points at N.J.A.C. 5:80-33.15(a)7 because they amounted to local vetoes for projects, rather than furthering redevelopment. This is consistent with the 2015 AI, which states that these redevelopment points provide municipalities with the ability to use redevelopment designations when they do not objectively merit that designation. (8)

RESPONSE: The Agency thanks the commenter for the expression of support for this proposed amendment.

COMMENT: FSHC supports the amendments to the Point System for the Family Cycle at N.J.A.C. 5:80-33.15(a)14, expressing its belief that the school and job standards are important tools to further fair housing and promote good siting policy for tax-credit developments. FSHC also supports the elimination of Brownfield points at N.J.A.C. 5:80-33.15(a)14i as this point category has historically not been well used and has resulted in points being awarded to

properties that are not truly brownfields, and further supports the award of one point at N.J.A.C. 5:80-33.15(a)14v to projects participating in a court-approved municipal fair share housing development plan, with sponsors submitting the plan and evidence of court approval in the application. (8)

RESPONSE: The Agency thanks the commenter for the expression of support for these proposed amendments.

COMMENT: FSHC supports the new poverty criterion at N.J.A.C. 5:80-33.15(a)24. Considering the median racial and ethnic composition of towns in different poverty tiers based on U.S. Census Bureau data, the commenter opines that this criteria would assist in working against racial and ethnic housing concentration and segregation. As to TUMs, FSHC suggests that after the initial cycle of applications using this point criteria, NJHMFA look carefully at the impact thereof, as there is a concern that application of the criteria on a city-wide basis in large cities with areas experiencing gentrification (for example, downtown Jersey City and its surrounding neighborhoods) may unfairly result in the denial of points to developments in areas where affordable housing is much needed based on the poverty characteristics of other parts of the city. It may be preferable in large cities to have a more fine-grained poverty measure than a citywide analysis. (8)

RESPONSE: The Agency thanks the commenter for the expression of support for this proposed amendment and, as with all criteria, the Agency will review its efficacy in promoting affordable housing goals, particularly in urban areas.

COMMENT: The new 25 percent of seniors/25 percent rental housing criterion in the Point System for the Senior Cycle at N.J.A.C. 5:80-33.16 may not be helpful for TUMs because out of the 279 municipalities meeting the requirements (according to U.S. Census Bureau data), only

two are TUM municipalities; it does not, therefore, seem that this criterion is a good basis for awarding tax credits only to those TUMs. (8)

RESPONSE: The Agency does not believe that this point category will be the deciding factor as to whether a project is awarded tax credits. Due to the overwhelming number of perfect-scoring projects in the Senior Cycle in previous years, the intention is to differentiate between such projects and the Agency is proposing to introduce a number of new point categories to do so. However, as with all criteria, the Agency will continue to review its efficacy in promoting its affordable housing goals, particularly in urban areas.

COMMENT: In line with the criteria in the Family Cycle at N.J.A.C. 5:80-33.15(a)14, FSHC suggests the addition of extra points for senior and supportive housing that is part of a fair share plan. Given that these projects – especially supportive housing projects – often face exclusionary zoning, there should be an extra point for projects participating in a court-approved municipal fair share housing development plan. (8)

RESPONSE: The Agency carefully considered whether to include an additional point for senior and supportive housing projects and concluded that municipalities should be specifically incentivized to provide family housing, which, comparatively, faces more impediments to development than senior or supportive housing.

COMMENT: The commenter requests that all per-developer award limits be removed in the QAP, stating that the amended QAP provides several new ways to differentiate among projects based on scoring. With the pent-up demand from the last round and new entrants into the market based on acceleration of the Council on Affordable Housing process in many municipalities, there will be enough competition at the highest levels of each category that there is no need to alter the playing field by limiting awards to a particular sponsor. (9)

RESPONSE: The Agency disagrees with the commenter that the scoring criteria alone will satisfactorily broaden the base of successful affordable housing developers in New Jersey and continues to support the proposed amendments at N.J.A.C. 5:80-33.4(c), 33.5(c), 33.6(b), and 33.7(b) limiting the awards per developer to three per year.

COMMENT: The commenter requests that NJHMFA eliminate the non-profit-sponsor points at N.J.A.C. 5:80-33.17(b)5 in the Supportive Housing Cycle. (9)

RESPONSE: The Agency supports the award of points for non-profit sponsors to ensure compliance with IRC § 42(h)(5), which requires that at least 10 percent of the State's ceiling credits be allocated to nonprofit organizations with ownership interests and that materially participate throughout the compliance period.

COMMENT: The commenter observes that the QAP includes point categories, such as senior renters, jobs, and poverty, that are tailored to meet specific policy aims. These aims include ensuring that affordable housing be sited in higher opportunity areas and in places with limited existing rental options, which are crucial goals. To determine eligibility for points in these categories, NJHMFA will rely on specific U.S. Census data sets. U.S. Census data is collected across the country according to a consistent methodology. While that makes sense for U.S. population-level data, the commenter notes that some of the methodology may miss State-specific nuances. Therefore, there may be a misalignment of the U.S. Census data used to evaluate LIHTC applications and the actual State-based policy goals that NJHMFA is attempting to achieve. The commenter, therefore, requests that NJHMFA consider alternative data sources that can be used to clarify any anomalies in the U.S. Census data. (9)

RESPONSE: The Agency is unaware of anomalies in the U.S. Census data, but if presented with alternative data sources, may consider them for future proposed amendments.

Summary of Agency Initiated Changes:

1. The Agency is changing the text of the second sentence in the fourth paragraph of the definition of “developer fee” or “development fee” at N.J.A.C. 5:80-33.2 to be consistent with the prior sentence and to correct previously existing typographical errors and a typographical error that appeared in the notice of proposal. As changed, the sentence will read as follows: “However, a developer fee of up to 20.00 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 is allowed for the following types of housing:”

2. In the last sentence of N.J.A.C. 5:80-33.9(c), the Agency is inserting the phrase “for tax credits” between the phrases “shall not be eligible” and “for a period of three years” to correct an oversight in the notice of proposal and to conform the language of the sentence to that of the prior sentence.

3. In the second sentence of N.J.A.C. 5:80-33.12(c)16ii, the Agency is changing the reference to “(c)15iii below” to “(c)16iii below” to correct a typographical error resulting from a prior recodification of N.J.A.C. 5:80-33.12(c)16.

4. In the first sentence of N.J.A.C. 5:80-33.17(b)2, the Agency is inserting a comma following the phrase “such as GED preparation or local community college” to set off the phrase as providing examples of qualifying on-site or off-site education.

5. In the fourth sentence of N.J.A.C. 5:80-33.21(a), the Agency is correcting the cross-reference to “Section 42(m)2” to properly refer to that section of the IRC, and, in the fifth sentence of N.J.A.C. 5:80-33.21(a), the Agency is changing the cross-reference to “N.J.A.C.

5:80-33.15(a)23” to “N.J.A.C. 5:80-33.15(a)22” to reflect the recodification of N.J.A.C. 5:80-33.15(a)23.

6. At N.J.A.C. 5:80-33.32(f), the Agency is relocating the conjunctive due to the adoption of new paragraphs (f)15 and 16, without any substantive change.

Federal Standards Analysis

With regard to affordability requirements, the IRC sets forth minimum standards for low-income housing tax credits. Tax credit affordability requirements are set forth in Sections 42(g)(1)(A) and 42(g)(1)(B) of the IRC, pursuant to which a housing sponsor elects a minimum set-aside of either: (i) 20 percent or more of the residential units being both rent-restricted and occupied by individuals whose income is 50 percent or less of area median gross income; or (ii) 40 percent or more of the residential units being both rent-restricted and occupied by individuals whose income is 60 percent or less of area median gross income. Affordability must be maintained for an initial compliance period of a minimum of 15 years, 26 U.S.C. § 42(i)(1), and is also subject to an extended use period of an additional 15 years beyond the compliance period, 26 U.S.C. § 42(h)(6)(D). Housing sponsors, in order to maximize tax credit allocations, often elect to place affordability controls on all units within a project. None of the proposed amendments deviate from those standards.

The IRC, at Section 42(g)(2), sets forth rent-restriction requirements for tax-credit units. In general, gross rent (as defined at Section 42(g)(2)(B) of the IRC) may not exceed 30 percent of tenant income. The IRC, however, does not impose any restrictions on the amount or percentage of annual or other periodic rent increases. Thus, adopted new N.J.A.C. 5:80-33.32(f)15, requiring

project owners to certify that during the preceding 12-month period the rent charged to each existing tenant did not increase by more than five percent annually, may be considered to exceed Federal standards. However, the Agency believes the adopted rule is warranted in order to protect tenants in State tax-credit-financed projects from excessive, sporadic rent increases. The IRC sets forth only minimum standards; individual states are permitted to impose more restrictive requirements in their policies.

Other than as set forth above, the adopted amendments do not contain any standards or requirements that exceed the standards or requirements imposed by applicable Federal law (26 U.S.C. § 42 and the regulations promulgated thereunder at 36 CFR 1.42 et seq.).

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

SUBCHAPTER 33. LOW INCOME HOUSING TAX CREDIT QUALIFIED ALLOCATION PLAN

5:80-33.2 Definitions

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

“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 ***(that is, land and building)*** cost *[land]*, working

capital, marketing expenses, escrows, operating deficit reserves, step-in-the-shoes costs, and costs associated with syndication*[])* is allowed for the following types of housing:

i. – iii. (No change.)

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-subsiary 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.

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. *[Qualified Census Tract (QCT)]* ***HOPE VI/Choice Neighborhood*** set-aside: The first reservation of credits from the Family Cycle shall be given to the highest-ranking *[project that contributes to a concerted community revitalization plan and is fully located within both a Qualified Census Tract and a Targeted Urban Municipality (TUM). To satisfy the concerted community revitalization plan component, evidence shall be submitted that the project is located within a Neighborhood Revitalization Plan, HOPE VI Revitalization Plan, Choice Neighborhood, Transit Village, Urban Transit Hub, Main Street Designated District, or is a redevelopment project]* ***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. (No change.)

(b)-(d) (No change from proposal.)

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. *[Qualified Census Tract (QCT)]* ***HOPE VI/Choice Neighborhood*** set-aside: The first reservation of credits from the Senior Cycle shall be given to the highest-ranking *[project that contributes to a concerted community revitalization plan and is fully located within both a Qualified Census Tract and a Targeted Urban Municipality (TUM). To satisfy the concerted community revitalization plan component, evidence shall be submitted that the project is located within a Neighborhood Revitalization Plan, HOPE VI Revitalization Plan, Choice Neighborhood, Transit Village, Urban Transit Hub, Main Street Designated District, or is a redevelopment project]* ***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)-(d) (No change from proposal.)

5:80-33.9 Volume cap credits

(a)-(b) (No change from proposal.)

(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 tax credits*** for a period of three years from the date all issues of noncompliance are deemed by the Committee to have been corrected.

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

(a)-(b) (No change from proposal.)

(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.-15. (No change from proposal.)

16. Projects with HOPE VI/Replacement Housing funding shall submit the following:

i. (No change.)

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]*~~ ***(c)16iii*** below;

iii.-iv. (No change.)

17.-18. (No change.)

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]*~~ ***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]* ***(a)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.-4. (No change.)

(b)-(d) (No change from proposal.)

5:80-33.32 Compliance monitoring

(a) – (e) (No change.)

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

1. – 12. (No change.)

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*[]**; **and***

16. (No change from proposal.)

(g) (No change.)