

# RULE ADOPTIONS

## COMMUNITY AFFAIRS

(a)

### 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, 33.4, 33.5, 33.6, 33.8, 33.9, 33.10, 33.12, 33.14, 33.15, 33.16, 33.17, 33.19, 33.24, 33.26, 33.31, 33.32, 33.35, and 33.36**

Proposed: July 21, 2025, at 57 N.J.R. 1526(a).

Adopted: January 2, 2026, by New Jersey Housing and Mortgage Finance Agency, Melanie R. Walter, Executive Director.

Filed: January 3, 2026, as R.2026 d.037, 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-5.g and 26 U.S.C. § 42(m).

Effective Date: February 2, 2026.

Expiration Date: May 30, 2031.

#### Summary of Hearing Officer's Recommendation and Agency's Response:

Laura Shields, New Jersey Housing and Mortgage Finance Agency ("NJHMFA" or "Agency") Assistant Director of Tax Credits, conducted a public hearing in the boardroom of NJHMFA at 637 South Clinton Avenue, Trenton, New Jersey at 10:00 A.M. on Thursday, August 21, 2025, at which time and place the following persons appeared and testified:

1. Winifred Smith Jenkins, Director of Early Childhood Policy and Advocacy, Advocates for Children in New Jersey;
2. Meagan Glaser, Vice President, LeadingAge New Jersey and Delaware;
3. Eman El-Badawi, Deputy Mayor, Cranbury Township, New Jersey; and
4. Wayne Whitman, Chair, Cranbury Township, New Jersey Planning Board.

Subsequent to the hearing, the hearing officer recommended that — based on the comments from Commenters 3 and 4, as well as numerous other written comments received during the public comment period — N.J.A.C. 5:80-33.12(c)8iii be revised to incorporate a 250-foot buffer zone beginning from the area of warehouse operations, rather than from the property line of a large warehouse facility as had been proposed. The hearing officer's recommendations were accepted by the Agency and incorporated into the adoption. Copies of the transcript of the public hearing are available at the following contact: New Jersey Housing and Mortgage Finance Agency, Division of Multifamily/Supportive Housing and Lending, Attn: Johanna Peña, 637 South Clinton Avenue, PO Box 18550, Trenton, New Jersey 08650-2085 or [jpena@njhmf.gov](mailto:jpena@njhmf.gov).

#### Summary of Public Comments and Agency Responses:

In addition to the comments received at the public hearing, the Agency received written comments from the following persons:

5. Lisa Knierim, Mayor, Cranbury Township, New Jersey;
6. Patricia Smith Rosen, Cranbury, New Jersey;
7. Claudette Guy, Cranbury, New Jersey;
8. Nancy Sheehan, LMT, Cranbury Therapeutic Massage, Cranbury, New Jersey;
9. John Reinfelder, Cranbury, New Jersey;
10. Laura Zurfluh, Cranbury, New Jersey;
11. Jeff and Donna Grundy, Cranbury, New Jersey;
12. Patricia May Thomsson, Cranbury, New Jersey;
13. James Till, Cranbury, New Jersey;
14. John Patrick McKenzie, Cranbury, New Jersey;

15. Lynne Schwarz, Cranbury, New Jersey;
16. Heather Keltz, Cranbury, New Jersey;
17. Jennifer Diamond, Cranbury, New Jersey;
18. Sharon Pulz, Cranbury, New Jersey;
19. Robert Zurfluh, Cranbury, New Jersey;
20. Robert Diamond, Cranbury, New Jersey;
21. David Thomsson, Cranbury, New Jersey;
22. Jeffrey K. Graydon, San Juan Capistrano, California;
23. Ilana Stroke, Cranbury, New Jersey;
24. Keith and Mary Lindberg, Cranbury, New Jersey;
25. William Gittings; AIA, Cranbury, New Jersey;
26. Michael J. Kervan, Cranbury, New Jersey;
27. Mark A. Berkowsky, AIA, President, Cranbury Housing Associates, Inc.;
28. Kathleen Lehr, Treasurer, Cranbury Housing Associates;
29. Stuart J. Lieberman, Esq., Lieberman Blecher & Sinkevich P.C., on behalf of John Repko;
30. Taisa Kelly, CEO, Monarch Housing Associates, Inc.;
31. Adam Gordon, Executive Director, Fair Share Housing Center;
32. Cassandra Warney, Senior Program Manager, Corporation for Supportive Housing (CSH);
33. The BIPOC Developers' Collaborative (BDC);
34. Heather Lawler and Stuart Portney, The Metro Company, LLC;
35. Lara J. Schwager, Founding Principal, LJS Consulting and Development;
36. Kate Kelly, Executive Director, Supportive Housing Association of New Jersey;
37. Joseph A. Del Duca, Walters-Cornerstone Development LLC;
38. Tracee Battis, Executive Director, Project Freedom;
39. Jeff Kolakowski, Chief Executive Officer, New Jersey Builders Association;
40. Thom Amdur, Senior Vice President, Policy & Impact, Lincoln Avenue Communities, Santa Monica, California;
41. Ben Adams, Vice President, MaGrann; and
42. Manuela Ekowo, Public Policy Associate, Insurance Institute for Business & Home Safety.

The Agency thanks each of the commenters for their comments and provides the following summaries of their comments and responses thereto. The numbers in parentheses following each comment identify the commenters, as listed above.

1. COMMENT: The commenter — the Deputy Mayor of Cranbury Township, New Jersey ("Cranbury" or "the Township") — presents the issues faced by the Township in locating available land upon which could be constructed affordable housing units. They reference a plot of farmland owned by Henry Realty, LLC (Henry Farm) as "the only viable option," especially given the proposed 250-foot warehouse buffer setback from affordable housing developments required at N.J.A.C. 5:80-33.12(c)8iii (250-foot buffer rule). The commenter states that the 250-foot buffer rule mandates a buffer of that distance "measured from property line to property line" and that this has "caused much anxiety" within the Township, as the requirement further shrinks the availability of already scarce buildable land. The commenter requests that the 250-foot requirement be reduced, expressing that a reduction to even 200 feet would make a difference to the Township, and that it be measured from the "line of activity" of the industry, rather than from the warehouse property line. They propose that the line of activity encompass the physical building, truck parking, loading areas, and driveways, but not berms, basins, and other areas that are somewhat buffered. (3)

RESPONSE: The Agency recognizes the commenter's concerns, which are echoed by many, but not all, Cranbury officials and residents. Upon adoption, the Agency is substituting the phrase "area of warehouse operations" at "property line of" at N.J.A.C. 5:80-33.12(c)8iii, also adding, "a site plan delineating measured distances" to the application requirements at N.J.A.C. 5:80-33.12(c)8iii, and is adding the following text at subparagraph (c)8iii: "Area of warehouse operations" encompasses any uses specifically associated with the warehouse use,

including, but not limited to, the warehouse building itself, truck parking areas, truck loading areas, driveways used for truck traffic, and other operational uses associated with creating noise, pollution, vibration, odor, or other negative externalities resulting from warehouse activity (for example, waste removal, construction zones, heavy machinery, etc.). The 'area of warehouse operations' does not include stormwater management installations, employee parking areas, and other uses that are not specifically associated with creating noise, pollution, vibration, odor, or other negative externalities resulting from warehouse activity." The Agency is also changing the Green Guide, available at <https://nj.gov/dca/hmfa/developers/lihtc/greenpoints/>, to the same effect.

2. COMMENT: The commenter — currently the chair of the Cranbury Planning Board, a former mayor and member of the Township committee, and a longstanding Township resident — reiterates that the Township has recently found it "challenging" to come up with suitable locations upon which to provide affordable housing. They ask for relief from the 250-foot buffer rule, specifically from the warehouse property line to the "active zone," which change, the commenter asserts, "would open[] up a lot of properties within [the Township] and . . . within the State." (4)

RESPONSE: Upon adoption, the Agency is substituting the phrase "'area of warehouse operations' at" for "property line of" at N.J.A.C. 5:80-33.12(c)8iii, also adding, "a site plan delineating measured distances" to the application requirements at N.J.A.C. 5:80-33.12(c)8iii, and is adding the following text at subparagraph (c)8iii: "'Area of warehouse operations' encompasses any uses specifically associated with the warehouse use, including, but not limited to, the warehouse building itself, truck parking areas, truck loading areas, driveways used for truck traffic, and other operational uses associated with creating noise, pollution, vibration, odor, or other negative externalities resulting from warehouse activity (for example, waste removal, construction zones, heavy machinery, etc.). The 'area of warehouse operations' does not include stormwater management installations, employee parking areas, and other uses that are not specifically associated with creating noise, pollution, vibration, odor, or other negative externalities resulting from warehouse activity." The Agency is also changing the Green Guide, available at <https://nj.gov/dca/hmfa/developers/lihtc/greenpoints/>, to the same effect.

3. COMMENT: The commenter states that "we" would not support access into an affordable housing site through a private road that was comingled with industrial traffic, but access would have to be only through a public street. (4)

RESPONSE: The commenter's comment does not relate to any identifiable provision of the rulemaking.

4. COMMENT: The commenter speaks favorably of the Township's "strict use of buffering," which, they assert, has been "honed . . . to a T[.]" involving "screening practices" to "dampen[] the effects of the commercial building, . . . tak[ing] into account the berming, light mitigation, noise mitigation, screening through natural means, trees, shrubs, artificial means, fencing, block walls, etc." This screening effort is applicable to not only the building, but also to industrial building accessories, such as the HVAC system, transformers, generators, and guard sheds. The commenter expresses belief that, if given the requested relief from the 250-foot buffer rule, the Township could properly screen and buffer to mitigate any issues from an industrial site. (4)

RESPONSE: The Agency repeats its Response to the Comment 2 above in response to this comment.

5. COMMENT: The commenters — the Mayor of Cranbury, other Cranbury officials, concerned residents, and a former resident — request reconsideration or modification of the "250 [Foot] Buffer Rule" at proposed new N.J.A.C. 5:80-33.12(c)8iii, which provision would require that for new construction projects, residential buildings be at least 250 feet away from any large warehouse facilities, measured from the façade of the residential building to the nearest property line of the large warehouse facility. The Mayor advises that flexibility in the rule would significantly impact "[Cranbury's] ability to meet [S]tate requirements responsibly, while also preserving the financial and social stability of [its] residents."

The Mayor includes a position paper with their submission, detailing the Township's objection to the rule as proposed. The Township's opposition is centered on the lack of developable land in the State, which scarcity is further diminished by blanket buffers and setbacks in the

proximity of large warehouses. The rule, as proposed, would eliminate virtually all land in the Township that could be developed for affordable housing, save only for the 100-year-old Henry Farm. The Township has made overtures to purchase a portion of the Henry Farm land, without disturbing the existing farmhouse, but the offer has been rejected by the owners, and the Township's alternative proposal to acquire the land by eminent domain has created a national "maelstrom" that has cast Cranbury in a negative light. The position paper cites this situation as one of the "unintended consequences" resulting from a blanket policy and asserts that the Township, as well as other local communities, are best positioned to determine the appropriate barriers to shield affordable housing developments from warehouses.

While it favors abandoning the rule altogether, the Township proposes the alternative of "more precisely" defining the buffer to be smaller ("no more than 200 feet") and encompassed by an "activity line," rather than the actual property parcel line. The Township proposes defining the warehouse "activity line" as "the boundary of any use associated with the warehouse use, including the building, any truck parking or loading areas, and driveways used for truck traffic." The activity line "catchment" would exclude features — both human-created and natural — that do not present the "negative externalities associated with warehousing," such features to include basins, employee parking areas, and public streets with accompanying rights-of-way and front-yard setbacks.

The Township concludes that any rule "should be imposed on the warehouse user and not on the very limited classification of housing funded through tax credits. The rule will do nothing to protect market rate or inclusionary housing." (5 through 25)

RESPONSE: The Agency agrees, in general, with the commenters that warehouse activity is a more appropriate standard for preventing negative impact to residential households than the proposed warehouse property line. Upon adoption, the Agency is substituting the phrase "'area of warehouse operations' at" for "property line of" at N.J.A.C. 5:80-33.12(c)8iii, also adding, "a site plan delineating measured distances" to the application requirements at N.J.A.C. 5:80-33.12(c)8iii, and is adding the following text at subparagraph (c)8iii: "'Area of warehouse operations' encompasses any uses specifically associated with the warehouse use, including, but not limited to, the warehouse building itself, truck parking areas, truck loading areas, driveways used for truck traffic, and other operational uses associated with creating noise, pollution, vibration, odor, or other negative externalities resulting from warehouse activity (for example, waste removal, construction zones, heavy machinery, etc.). The 'area of warehouse operations' does not include stormwater management installations, employee parking areas, and other uses that are not specifically associated with creating noise, pollution, vibration, odor, or other negative externalities resulting from warehouse activity." The Agency is additionally changing the Green Guide, available at <https://nj.gov/dca/hmfa/developers/lihtc/greenpoints/>, to the same effect.

The Agency disagrees with, and declines to adopt, the commenters' position that the warehouse "buffer rule" be eliminated entirely or reduced to a 200-foot buffer. The Internal Revenue Code (Code) requires that the qualified allocation plan (QAP) sets forth selection criteria to be used to determine housing priorities of the Agency that are appropriate to local conditions. 26 U.S.C. § 42(m)(1)(B)(i). Given the scarcity of developable land for affordable housing in the State and the need for and positive attributes of warehouses, the Agency acknowledges that there will inevitably be some tension in meeting the two goals and has determined that a 250-foot buffer area best satisfies both competing interests.

6. COMMENT: The commenter advocates measuring the 250-foot warehouse buffer distance at N.J.A.C. 5:80-33.12(c)8iii from the "actual warehouse use — which should include the building itself, any loading bays, and any driveways or other areas where truck traffic is present." (31)

RESPONSE: The Agency agrees with the commenter. Upon adoption, the Agency is substituting the phrase "'area of warehouse operations' at" for "property line of" at N.J.A.C. 5:80-33.12(c)8iii, also adding, "a site plan delineating measured distances" to the application requirements at N.J.A.C. 5:80-33.12(c)8iii, and is adding the following text at subparagraph (c)8iii: "'Area of warehouse operations' encompasses any uses specifically associated with the warehouse use, including, but not limited to, the warehouse building itself, truck parking areas, truck loading

as, driveways used for truck traffic, and other operational uses associated with creating noise, pollution, vibration, odor, or other negative externalities resulting from warehouse activity (for example, waste removal, construction zones, heavy machinery, etc.). The area of warehouse operations does not include stormwater management installations, employee parking areas, and other uses that are not specifically associated with creating noise, pollution, vibration, odor, or other negative externalities resulting from warehouse activity." The Agency is additionally changing the Green Guide, available at <https://nj.gov/dca/hmfa/developers/lihtc/greenpoints/>, to the same effect.

7. COMMENT: The commenter requests that the Agency clarify that "adequate buffering" be required within the 250-foot buffer zone at N.J.A.C. 5:80-33.12(c)8iii. (31)

RESPONSE: In deference to the valued services that warehouses do provide, the Agency declines to impose additional buffering requirements within the adopted 250-foot buffer zone. The Agency notes that any projects for which the 250-foot buffer is applicable will be within 1,000 feet of a large warehouse facility, and, thus, subject to the Green Guide's Environmental Stressor Performance Standards.

8. COMMENT: The commenter expresses appreciation for the inclusion at N.J.A.C. 5:80-33.12(c)8iii of the requirement that applications include a list and description of measures to be taken to comply with Environmental Stressor Performance Standards, as set forth in the Green Guide, for all projects with residential buildings to be within 1,000 feet of a large warehouse facility. (31)

RESPONSE: The Agency appreciates the expression of support.

9. COMMENT: The commenter writes that the 250-foot buffer rule is "overzealous" by unnecessarily and drastically reducing opportunities for affordable housing. They advocate for measuring the 250-foot warehouse buffer distance at N.J.A.C. 5:80-33.12(c)8iii from the "warehouse activity line," rather than the property line. The commenter also recommends an exemption from the buffer rule for projects separated from the large warehouse facility by a public street, as the public right-of-way and typical front-yard setbacks will constitute sufficient buffering in most cases. Finally, the commenter recommends that the buffer rule be applied when the large warehouse facility is under construction, rather than when it has received final site plan approval, as many approved warehouse developments do not get built. (37)

RESPONSE: The Agency agrees, in general, that the rule should be refined. Upon adoption, the Agency is substituting the phrase "area of warehouse operations" at for "property line of" in two places at N.J.A.C. 5:80-33.12(c)8iii, also adding, "a site plan delineating measured distances" to the application requirements at N.J.A.C. 5:80-33.12(c)8iii, and is adding the following text at subparagraph 8iii: "Area of warehouse operations" encompasses any uses specifically associated with the warehouse use, including, but not limited to, the warehouse building itself, truck parking areas, truck loading areas, driveways used for truck traffic, and other operational uses associated with creating noise, pollution, vibration, odor, or other negative externalities resulting from warehouse activity (for example, waste removal, construction zones, heavy machinery, etc.). The 'area of warehouse operations' does not include stormwater management installations, employee parking areas, and other uses that are not specifically associated with creating noise, pollution, vibration, odor, or other negative externalities resulting from warehouse activity." The Agency is additionally amending the Green Guide to the same effect.

The Agency believes that a blanket exemption for public streets is not warranted, as public rights-of-way and front-yard setbacks will typically not be part of any area of warehouse operations as defined in the adopted rules. The Agency also believes that final site plan approval is an appropriate milestone for purposes of the buffer rule. Construction status is more difficult to determine than site plan approval status. It is reasonable to presume that a warehouse project that has received final site plan approval will actually be built.

10. COMMENT: The commenter supports the 10 percent increase to the cost caps at N.J.A.C. 5:80-33.4(a), 33.5(a), 33.6(a), and 33.8(a)1, stating that their membership — composed of "more than 150 mission-driven senior living and aging services providers" — believes the increase will help support the financial feasibility of projects, given the increase in costs. (2)

RESPONSE: The Agency appreciates the expression of support and directs the commenter to the Response to Comment 40 in further response to this comment.

11. COMMENT: The commenters support the amendment to the definition of "individuals with special needs" at N.J.A.C. 5:80-33.2, to include persons with criminal records and individuals 18 years old and over transitioning from nursing homes, but recommend expanding the category to include individuals transitioning from other care settings, such as rehab facilities, assisted living communities, and similar settings. (2 and 36)

RESPONSE: The Agency appreciates the expression of support, but declines the commenters' proposed further expansion of the definition. The definition, as proposed and adopted, aligns with the definition used by the Money Follows the Person (also known as I Choose Home NJ) program.

12. COMMENT: The commenters support the amendment at N.J.A.C. 5:80-33.5(a), clarifying that if the preservation set-aside in the Age-Friendly Senior Cycle is not fully utilized, unawarded credits therein will be released into the Age-Friendly Senior Cycle. (2, 36, and 40)

RESPONSE: The Agency appreciates the expressions of support.

13. COMMENT: The commenter supports the new definition of "on-site transportation" at N.J.A.C. 5:80-33.2, observing that "[t]he availability of on-site transportation makes a remarkable difference in the quality of life and access to services for older adults served by tax credit communities[.]" (2)

RESPONSE: The Agency appreciates the expression of support.

14. COMMENT: The commenters recommend increasing the minimum percentage of credits to be made available in the Age-Friendly Senior Cycle from 20 percent to 30 percent of available credits or to a percentage "proportional to older adults with low incomes in the [S]tate." (2 and 36)

RESPONSE: The Agency did not propose any amendments to the provisions at N.J.A.C. 5:80-33.5 that provide the 20 percent minimum credits, so the comment does not relate to any identifiable provision of the rulemaking proposal.

15. COMMENT: The commenters recommend "reviewing options for additional basis boosts" relating to care for senior residents. (2 and 36)

RESPONSE: The commenters' comment does not relate to any identifiable provision of the rulemaking.

16. COMMENT: The commenters recommend review of the age requirement, which, one of the commenters states, "currently stipulates ... that all residents must be of a certain age." The commenters recommend that the standard instead be aligned with that of the Department of Housing and Urban Development (HUD), which generally requires that only the head of household be age-qualified. (2 and 36)

RESPONSE: The commenters' comment does not relate to any identifiable provision of the rulemaking, but the Agency notes that the QAP definition of "senior project" at N.J.A.C. 5:80-33.2 expressly aligns with the meaning of "housing for older persons," as defined by the Federal Fair Housing Act.

17. COMMENT: The commenter requests that the Agency "reevaluate the affordable housing obligations for the Township ... in light of recent changes affecting land availability within the municipality[.]" specifically, the lack of availability of the Henry Farm. Referencing "the scarcity of suitable, developable land within Cranbury," the commenter requests that the Agency: (1) re-assess the Township's low-income housing obligations; (2) work with Township officials to identify viable alternatives; and (3) update any projects or models used to determine Cranbury's low-income housing obligations. (26)

RESPONSE: The commenter's comment does not relate to any identifiable provision of the rulemaking nor does it request that the Agency take any action it is empowered to do. The Agency refers the commenter to the Response to Comment 1, which relaxes some provisions that may limit the siting ability of affordable units.

18. COMMENT: The commenters — the president and treasurer of a nonprofit volunteer corporation that has been the affordable housing developer in Cranbury for Rounds 1 and 2 and partially Round 3 — advocate that the Agency not change the 250-foot buffer rule, unless it be to increase the buffer. One of the commenters voices opposition to families living in close proximity to warehouses: "families should not be

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forced to live next to warehouses" (emphasis in original); "[i]solating families next to warehouses is just wrong." (27 and 28)

RESPONSE: The Agency has given thoughtful consideration to the positions espoused regarding the 250-foot buffer rule by both of these commenters and by the majority of commenters on the rule who favor either its elimination, relaxation, or other adjustment of the distance requirement. Recognizing the well-intentioned passion on both sides of the issue, the Agency is, for the reasons stated in the Response to Comment 1, making the changes set forth in that response at N.J.A.C. 5:80-33.12(c)8iii and at the Green Guide upon adoption.

19. COMMENT: On behalf of a Cranbury resident, the commenter advises that the 250-foot buffer rule should be reexamined as it is "extremely inflexible and results in severe inequities." The commenter objects to the rule primarily on the grounds that, owing to the size and proliferation of warehouses in the State, it removes available land that could otherwise be used to satisfy the State's important affordable housing mandate. The commenter asserts that if the rule is not eliminated entirely, it should be revised to provide flexibility. (29)

RESPONSE: The Agency is, for the reasons stated in the Response to Comment 1, making the changes set forth in that response at N.J.A.C. 5:80-33.12(c)8iii and at the Green Guide upon adoption. Those changes will replace the strict 250-foot buffer rule with a more flexible buffer based on the area of warehouse operations.

20. COMMENT: The commenter expresses opposition to a presumed plan by Cranbury Housing Associates, Inc. to acquire and build low-income housing on a property in the Township. (29)

RESPONSE: The commenter's comment does not relate to any identifiable provision of the rulemaking.

21. COMMENT: The commenter requests clarity regarding the number of units required to have been completed to meet the definition of an "emerging developer" at N.J.A.C. 5:80-33.2, questioning whether a developer must have completed three projects for a total count of 25 units or three projects of 25 units each for a total count of 75 units. The commenter advocates for the former interpretation, as it will maximize accessibility to the new emerging developer set-aside in the Family Cycle at N.J.A.C. 5:80-33.4(a)3. (30)

RESPONSE: Upon adoption, the Agency is changing the minimum number of multifamily projects in which a developer must have had equity participation from three to two and clarifying that at least one of those projects must comprise at least 25 total units, thus a minimum of 30 units. The Agency believes that the requirement of two projects adequately ensures substantial development experience, while the proposed requirement for the completion of three projects would be more time-consuming and reduce the number of eligible applicants.

22. COMMENT: Regarding the new emerging developer set-aside in the Family Cycle at N.J.A.C. 5:80-33.4(a)3, the commenter acknowledges that the Agency must ensure that applicants have some prior development experience before submitting applications, but cautions that there may be delays in participation as the set-aside becomes operational and inexperienced developers gain the experience needed to qualify. The commenter refers to the Department of Community Affairs' (DCA) Affordable Housing Trust Fund as a means by which developers can gain experience, but notes that DCA recently established a competitive process for awards that favors developers with previous experience, which will potentially hinder that opportunity. (30)

RESPONSE: The Agency thanks the commenter for their insight and notes that reducing the minimum required number of previous projects upon adoption should mitigate, to some extent, the commenter's concern about delayed participation in the set-aside.

23. COMMENT: The commenter recommends removing the example of an "emerging developer" at the definition thereof at N.J.A.C. 5:80-33.2, as it creates the impression that other arrangements do not qualify pursuant to the definition. (31)

RESPONSE: The Agency agrees with the commenter and is not adopting the example of an "emerging developer" in the definition thereof at N.J.A.C. 5:80-33.2.

24. COMMENT: The commenters advocate increasing the minimum percentage interest of a project required to be held by emerging developers in order to qualify for the new emerging developer set-aside at N.J.A.C. 5:80-33.4(a)3 from 70 percent to 100 percent of the general

partner/managing member interest or entity, thereby disqualifying projects involving established developers from eligibility for the set-aside. It is presented that this would give emerging developers more flexibility to arrange their proportionate interests to match the "previous experience" points criteria at N.J.A.C. 5:80-33.15(a)20, thereby allowing more emerging developers to gain experience per project and maximize the value of the set-aside. (31 and 33)

RESPONSE: The Agency declines the requested change, as it would reduce the flexibility inherent in the 70-percent standard by eliminating the prospect of applicants partnering with established developers. The Agency has considered alternate standards and determined that 70 percent is optimal.

25. COMMENT: The commenter supports exempting developers who have successfully developed other, non-LIHTC projects from the housing development training course requirement of the emerging developer set-aside at N.J.A.C. 5:80-33.4(a)3. Instead, the commenter suggests that such developers: (1) provide a "training certificate" if they have completed only projects with less than 40 units or have done only market-rate or commercial projects; or (2) provide a description of the projects, experience, and role therein for developers who have completed projects with 40 or more units. (31)

RESPONSE: The Agency declines the suggestion, as it believes that a housing development training course is an appropriate part of demonstrating the capacity to successfully develop a multimillion-dollar LIHTC project.

26. COMMENT: The commenter suggests removing a provision stating that "any developer or related party previously awarded Low-Income Housing Tax Credits from HMFA is not eligible for this set-aside." (31)

RESPONSE: The quoted provision was not included in the notice of proposal.

27. COMMENT: The commenters recommend amending the "three 25-unit or larger development experience qualification" provision at unspecified location(s), but presumed to include, among others, the definition of "emerging developer" at N.J.A.C. 5:80-33.2, to be more accessible to emerging developers. The commenters suggest implementing a combination of the following revisions: (1) counting experience as a staff member at a development firm; (2) reducing the number of projects and/or the scale of projects required (for example, two projects instead of three, or three six- to 10-unit projects rather than three 25-unit projects); (3) using metrics other than units per project (for example, using total project budgets rather than unit counts; employing the total number of units in a developer's portfolio rather than individual project size; or aggregating project budgets or minimum balance sheet sizes); (4) weighting affordable units and affordable developments more heavily than market-rate units in calculations; and (5) more precisely defining the terms of joint venture partnerships involving emerging developers, including M/WBES, to ensure the partnerships are truly equitable, which might include requiring a greater ownership stake and more substantial portion of the developer fee for emerging developers. (31, 32, and 33)

RESPONSE: Upon adoption, the Agency is reducing the number of required multifamily project involvement from three to two and clarifying that the 25-unit minimum applies to one project only for "emerging developer" eligibility in the definition at N.J.A.C. 5:80-33.2. The Agency deems "staff member experience" as too nebulous a standard to be meaningful and finds the commenters' other suggested revisions to be incompatible with the 25-unit minimum standard believed to be necessary to compose relevant experience. Additionally, the Agency believes the terms included in the set-aside and point options with respect to partnerships are sufficient.

28. COMMENT: The commenter commends the establishment of the emerging developer set-aside in the Family Cycle at N.J.A.C. 5:80-33.4(a)3 as creating a pathway for new developers to enter the affordable housing field. The commenter also supports the 70-percent interest requirement for emerging developer eligibility to the set-aside at N.J.A.C. 5:80-33.4(a)3 as ensuring that the emerging developer has "significant responsibilities and equitable outcomes in the project and prevents the tokenization of emerging developers as a means to take advantage of the set aside." (30)

RESPONSE: The Agency appreciates the expressions of support.

29. COMMENT: The commenter expresses general support for the changes to the QAP, "including those focused on the emerging developer track." (32)

RESPONSE: The Agency appreciates the expression of support.

30. COMMENT: The commenters express hope and encouragement that the Agency will provide additional technical assistance and partnership to emerging developers. (33 and 35)

RESPONSE: The Agency intends to continue to provide technical assistance through guidance documentation as it continues to implement the QAP. However, the commenter's comments do not relate to any identifiable provision of the rulemaking.

31. COMMENT: The commenter advocates reducing the minimum percentage interest of a project required to be held by emerging developers in order to qualify for the new emerging developer set-aside at N.J.A.C. 5:80-33.4(a)3 from 70 percent to 50 percent of the general partner/managing member interest or entity, contending that emerging developers may not be able to post the necessary guarantees for an LIHTC project and may have trouble attracting partners if they can offer only a 30 percent interest. (34)

RESPONSE: The Agency declines the requested change, as it could lead to exploitative relationships between established and emerging developers and be counterproductive in producing applicants for the set-aside. Furthermore, as noted in Comment 24, there are requests to move in the opposite direction. The Agency believes that the proposed percentage is a fair balance between the competing needs.

32. COMMENT: The commenter maintains that project consultants should be included, not excluded, from the itemization of development team members who must have prior experience with the Agency in order to qualify for the emerging developer set-aside at N.J.A.C. 5:80-33.4(a)3. (34)

RESPONSE: The Agency declines the requested change, as not every applicant has a project consultant. Applicants are not precluded from having an experienced project consultant on their teams.

33. COMMENT: The commenter supports the concept of the emerging developer set-aside at N.J.A.C. 5:80-33.4(a)3, but recommends clarification as to the required certificate of completion for a housing development training course "to ensure accessibility and transparency." (35)

RESPONSE: The Agency believes that N.J.A.C. 5:80-33.4(a)3 adequately presents, without restricting options for, the required training course.

34. COMMENT: The commenter strongly opposes the provisions at N.J.A.C. 5:80-33.15(a)6i and ii that would award applications up to a maximum of six points for minority and/or women business enterprise (M/WBE) participation. As proposed, subparagraph (a)6i would award up to five points for M/WBE general partner/managing member participation and, at subparagraph (a)6ii, would award up to five points for the pledge of construction costs to be expended on contractors, subcontractors, and material suppliers that are M/WBEs. The commenter notes that the Low-Income Housing Tax Credit Program (LIHTC) applicants cannot afford to lose a point in their applications and the only way that that can be ensured pursuant to N.J.A.C. 5:80-33.15(a)6i and ii, as proposed, is to have some element of M/WBE participation in project management, since not doing so will result in an applicant's points being maximized as the five points available at subparagraph (a)6ii, rather than the six points available to applicants with M/WBE management participation. The commenter suggests retaining the five-point maximum availability at N.J.A.C. 5:80-33.15(a)6, which could be attained, among other ways, solely with resort to either subparagraph (a)6i or ii, or by including a set-aside similar to the nonprofit set-aside. (37)

RESPONSE: The Agency agrees with the commenter. Upon adoption, the Agency is reducing the maximum points available at N.J.A.C. 5:80-33.15(a)6 from six to five, while adopting all other provisions at paragraph (a)6. This change is consistent with the Agency's intent in proposing the amendment, which was to provide a flexible set of options, not requirements, for the maximum points. Increasing the maximum available points from five to six would have inadvertently defeated that intent by necessitating points at both subparagraphs (a)6i and ii; reverting back to

the existing five-point maximum satisfies the optionality the Agency is seeking in the point category.

35. COMMENT: The commenter supports the amendments proposed at N.J.A.C. 5:80-33.15(a)6 as creating a better system for encouraging M/WBE participation in the LIHTC program. (31)

RESPONSE: The Agency appreciates the expression of support. However, it was recognized that obtaining full points in the point category at N.J.A.C. 5:80-33.15(a)6 could not be obtained unless an applicant availed itself of both subparagraphs (a)6i and ii, which would conflict with the Agency's goal of making the point system more flexible by presenting a list of options, rather than a list of requirements. The Agency directs the commenter's attention to the correction being made upon adoption at N.J.A.C. 5:80-33.15(a)6.

36. COMMENT: The commenters support the amendments at N.J.A.C. 5:80-33.15(a)6 as providing strong incentive for M/WBE developers to participate or for non-M/WBE developers to partner with M/WBE developers and expend construction funds on M/WBE construction entities, rather than only one or the other. One commenter expresses support for the requirement that M/WBEs have significant responsibilities and equitable terms with non-M/WBE participants in a project and for awarding points in proportion to the percentage interest the M/WBE holds in the project. (30 and 33)

RESPONSE: The Agency appreciates the expressions of support. However, it was recognized that obtaining full points in the point category at N.J.A.C. 5:80-33.15(a)6 could not be obtained unless an applicant availed itself of both subparagraphs (a)6i and ii, which would conflict with the Agency's goal of making the point system more flexible by presenting a list of options, rather than a list of requirements. The Agency directs the commenters' attention to the correction being made upon adoption at N.J.A.C. 5:80-33.15(a)6.

37. COMMENT: The commenter recommends expanding "the definition of eligible [W/MBE] participation" to include architects, engineers, and other professional consultants, as has been done in other states, to "support[] a broader range of small and minority-owned businesses that play a critical role in the development of affordable housing." (35)

RESPONSE: The Agency declines to make the requested change at this time. Different roles within a development team can vary greatly in level of responsibility, level of participation, and number of M/WBE practitioners in the industry. Ownership percentage and construction cost percentage are clear, quantifiable standards already used in the QAP.

38. COMMENT: The commenter advocates that a developer with an M/WBE certification "from any state" should be eligible for the points available at N.J.A.C. 5:80-33.15(a)6. (34)

RESPONSE: The Agency disagrees with the commenter's comment. The Agency cannot be certain as to the standards used by other states to certify M/WBE candidates, which may not align with the standards in New Jersey. Further, any entity can apply for M/WBE certification in New Jersey.

39. COMMENT: The commenter strongly supports increased opportunities for developers of color and "NJBE firms" to broaden access to funding and business opportunities. (36)

RESPONSE: The commenter's comment does not relate to any identifiable provision of the rulemaking.

40. COMMENT: The commenter recommends increasing the development cost caps proposed for Family Cycle projects at N.J.A.C. 5:80-33.4(a) by an additional 10 percent, emphasizing that the caps were already increased to the proposed levels by a waiver approved by the Agency Board (Board) in March 2024 and effective in the 2025 version of the QAP. Thus, the proposed caps do not represent an increase from those currently in effect, although construction costs continue to increase. (30)

41. COMMENT: The commenter — the executive director of a corporation involved in providing supportive housing in the State — advocates for special consideration to be given to Supportive Housing Cycle projects with respect to the cost containment limits at N.J.A.C. 5:80-33.6(a). Referencing specifically the additional costs involved in providing suitable housing for disabled individuals, the commenter suggests, among other possible avenues of relief, increasing the cost caps



for such projects by at least 20 percent over the current \$350,000 limit for buildings of one to four residential stories. (38)

42. COMMENT: The commenter expresses support for the "proposed 10 [percent] cost increase limit," given rising costs, but also expresses that "the caps remain far below current market conditions" and are "unrealistic." They also recommend increasing, by at least 15 percent, establishing a waiver process for, or eliminating the \$350,000 per-unit cost containment limit for supportive housing projects at N.J.A.C. 5:80-33.6(a), stating that, "[g]iven inflation, tariff impacts, and construction costs that remain elevated post-COVID, the current cap is unworkable." (36)

43. COMMENT: The commenter recommends waiving the development cost caps at N.J.A.C. 5:80-33.4(a), 33.5(a), 33.6(a), and 33.8(a)1 in response to current macroeconomic conditions, noting that this action was taken during the period of the COVID-19 pandemic. They claim that the basis limits and the maximum tax credit awards per Cycle serve to self-limit development costs. In the alternative, the commenter recommends the cost limits be increased by at least 15 percent to reflect current market conditions. (39)

44. COMMENT: The commenter states that the proposed 10 percent increase to the development cost caps at N.J.A.C. 5:80-33.4(a), 33.5(a), and 33.6(a) "thoughtfully reflects rising regional construction costs while maintaining reasonableness safeguards." (40)

RESPONSE TO COMMENTS 40, 41, 42, 43, AND 44: The Agency agrees with this and other commenters that construction costs have increased since cost caps were last approved by the Board in June 2024. The Agency has determined that, for buildings of one to four residential stories, an additional 10 percent increase is appropriate and, for buildings of five or more residential stories, an additional 12.5 percent increase is appropriate in cost caps for all Cycles and the Reserve to account for construction cost increases since June 2024 and to provide a buffer against expected near-term future increases. Thus, upon adoption, the Agency is changing N.J.A.C. 5:80-33.4(a), 33.5(a), 33.6(a), and 33.8(a)1 to increase maximum total development costs. Additionally, the Agency appreciates the expression of support.

45. COMMENT: The commenter states that the inclusion of text at N.J.A.C. 5:80-33.4(a)1, 33.4(a)2, 33.4(a)3, and 33.5(a) directing that credits not utilized or unawarded be released to other selected set-asides "balances project scale with geographic and sponsor inclusivity." (40)

RESPONSE: The Agency appreciates the expression of support.

46. COMMENT: The commenter suggests that, to provide flexibility to meet "the constantly changing pricing environment," increases to the cost caps at N.J.A.C. 5:80-33.4(a), 33.5(a), 33.6(a), and 33.8(a)1 be tied to a fixed index, such as the Consumer Price Index, and be adjusted yearly. (37)

RESPONSE: The Agency declines the suggested adjustment as being subject to intermittent variation, potential volatility, and "sticky price" problems. The Agency will continue to evaluate the adequacy of its cost caps and will propose adjustments in future rulemakings, as it deems necessary.

47. COMMENT: The commenter observes that, as presently constituted, the mixed-income set-aside in the Family Cycle at N.J.A.C. 5:80-33.4(a)1 is unlikely to draw new applicants, as those municipalities located outside of a targeted urban municipality (TUM) that can meet the eligibility criteria with respect to transportation/jobs and high-performing schools will be otherwise incentivized to host 100 percent affordable, rather than mixed-income, developments. The commenter suggests modifying the "maximum points" requirements for those categories downward to a minimum of three points for transportation/jobs and two points for schools. (37)

RESPONSE: The Agency agrees with the commenter and thanks them for identifying an issue created by the 2024 amendments to the point categories at N.J.A.C. 5:80-33.15(a)14ii and iii. Recognizing that the 2024 QAP inadvertently made it significantly more difficult for non-TUM projects to qualify for the set-aside, the Agency is, upon adoption, changing N.J.A.C. 5:80-33.4(a), as suggested by the commenter.

48. COMMENT: The commenter, while "strongly support[ing]" the amendment at N.J.A.C. 5:80-33.12(c)8ii(3) to replace the necessity of providing individual unit meter data, or evidence of attempts to acquire such data, with the provision of whole building aggregate data,

nevertheless, encourages the retention of the allowance of individual unit meter data as an alternative option for data submission. The commenter notes the drawbacks inherent in the collection of individual unit meter data, but observes that some utility companies do not have the capacity to collect whole data and, therefore, recommends that individual unit meter data collection be retained as an option. (41)

RESPONSE: The Agency accepts the commenter's advice and, upon adoption, is making the appropriate change at N.J.A.C. 5:80-33.12(c)8ii(3). This will facilitate collection of the required data in those instances in which utility companies lack the capacity or willingness to provide whole building aggregate data.

49. COMMENT: The commenter, referencing increasing incidences of heat related illnesses, especially in vulnerable populations, such as senior citizens, supports the requirement at N.J.A.C. 5:80-33.12(c)19 that all affordable units have air conditioning. (41)

RESPONSE: The Agency appreciates the expression of support.

50. COMMENT: The commenters express support for the requirement at N.J.A.C. 5:80-33.12(c)19 that all units have air conditioning and bedroom windows. (34 and 40)

RESPONSE: The Agency appreciates the expressions of support.

51. COMMENT: The commenter recommends rewording the unit amenity point category at N.J.A.C. 5:80-33.15(a)8vi to clarify that Minimum Efficiency Reporting Value (MERV) air filtration is required for outside air delivered by through-the-wall systems. (41)

RESPONSE: The proposed provision does not mention through-the-wall systems. However, the Agency agrees that clarification would be helpful. Upon adoption, N.J.A.C. 5:80-33.15(a)8vi is changed to require air filtration of MERV 13 or higher on all ventilation systems, including through-the-wall units, with an exception for systems that do not accommodate MERV 13 filters, which must instead use the highest possible MERV rating for the system.

52. COMMENT: The commenter suggests that the provision at the new definition of "on-site transportation" at N.J.A.C. 5:80-33.2, which requires transportation for project residents to be offered "at least once per week," be expanded to include "or as requested." (32)

RESPONSE: The Agency declines to adopt the suggested change, but notes that "once per week" is the minimum standard, and that more frequent transportation and/or transportation provided on request may be necessary to adequately serve some project residents.

53. COMMENT: The commenter states that the new definition of "on-site transportation" at N.J.A.C. 5:80-33.2, which requires transportation for project residents to be offered "at least once per week," is "difficult to arrange and adds significantly to operating costs." (34)

RESPONSE: The Agency notes that the provision affects only the point systems for the Age-Friendly Senior and Supportive Housing Cycles, not eligibility.

54. COMMENT: The commenter recommends that, provided residents are not required to pay for them, ride-sharing services, such as Uber and Lyft, upon which many "Special Needs" projects currently rely, be recognized as on-site transportation meeting the definition thereof at N.J.A.C. 5:80-33.2 and qualifying for points in the Supportive Housing Cycle at N.J.A.C. 5:80-33.17(a)1. (35)

RESPONSE: The Agency declines to make the commenter's recommended action, believing that, while they may work in certain circumstances, ride-sharing services on their own do not reach the standard to qualify for points, especially with regard to meeting the specific needs of supportive housing residents.

55. COMMENT: The commenters support the proposed new definition of "on-site transportation" at N.J.A.C. 5:80-33.2, stressing the difference in quality of life that the availability of such transportation makes for older adult residents of LIHTC communities. (2 and 36)

RESPONSE: The Agency thanks the commenters for the expressions of support.

56. COMMENT: The commenter requests clarification as to the level of heat mitigation elements for projects located in Targeted Urban Municipalities (TUMs), as provided in the Family Cycle point system at N.J.A.C. 5:80-33.15(a)9x. (41)

RESPONSE: The Agency believes the text at N.J.A.C. 5:80-33.15(a)9x adequately sets forth examples of elements that would qualify for the TUM-projects heat mitigation points. The list is not intended to,

and cannot, be exhaustive. Pursuant to N.J.A.C. 5:80-33.15(a)9, an applicant can substitute an unlisted amenity by demonstrating that it provides a benefit comparable to a green roof, cool pavement, or tree canopy comprising at least 25 percent of project green space.

57. COMMENT: The commenter expresses concern that the change at N.J.A.C. 5:80-33.26(b) in the deadline for submittal of a project owner's IRS Form 8609 request package from 90 days after permanent loan closing to no later than 90 days prior to the owner's tax-filing deadline may be difficult for LIHTC project owners to comply with due to ENERGY STAR Multifamily New Construction (MFNC) certification requirements. (41)

RESPONSE: The Agency's intent in adopting the proposed change is to align the IRS Form 8609 request process with milestones that are relevant to claiming LIHTCs from the IRS, rather than milestones relevant to obtaining permanent financing. The Agency may consider revising its other procedures to address the commenter's concern.

58. COMMENT: The commenter expresses concern that the requirements for air conditioning and bedroom windows at N.J.A.C. 5:80-33.12(c)19, bicycle storage lockers at N.J.A.C. 5:80-33.15(a)9vi, and extreme heat mitigation for projects located in TUMs at N.J.A.C. 5:80-33.15(a)9x may be expensive and add to overall development costs. (34)

RESPONSE: The Agency acknowledges that requirements for additional provisions to LIHTC projects may have some upfront costs, but are likely to result in long-term savings and sustainability of the property. Furthermore, the Agency points out that bicycle storage lockers and extreme heat mitigation measures are optional point categories, not eligibility requirements.

59. COMMENT: The commenter, "[i]n consideration of the need for consistency and equity in affordable housing standards, and the high share of affordable units in New Jersey that have [four-percent] or [nine-percent] LIHTC credits as part of the financing," advocates amending N.J.A.C. 5:80-33.4(a), 33.5(a), 33.6(a), and 33.9(a) to require that all projects include 50 percent low-income units, including a minimum of 13 percent very-low-income units, and comply with the affordability average and bedroom distribution requirements of the Uniform Housing Affordability Controls (UHAC) rules at N.J.A.C. 5:80-26.4. (31)

RESPONSE: While the Agency agrees with the concept of consistency in affordable housing standards, it declines to make a sweeping incorporation of UHAC standards into the State's LIHTC program at this time, without providing all potential stakeholders the opportunity for notice and comment on such a substantial change, given the impact this would have on financing structures that do not come with their own inherent bonuses and its theoretical application to properties that are otherwise not subject to UHAC, such as those in Qualified Urban Aid Municipalities. Further, such a change would necessitate corresponding amendments to eligibility criteria, underwriting guidelines, and/or point systems, which involve considerations that exceed the intended scope of this rulemaking.

60. COMMENT: The commenter states that "[t]here has been some inconsistency in the way" costs have been considered for some projects, especially as to whether specific costs should be allocated to developer fees or be considered as tax credit eligible expenses. The commenter requests dialogue among the Agency and developers to better define the allocation of costs, noting that this issue may be especially meaningful for new or emerging developers. (35)

RESPONSE: The commenter's comment does not relate to any identifiable provision of the rulemaking. The commenter is welcome to continue participating in such dialogues between the Agency and the development community as they occur.

61. COMMENT: The commenter recommends that the maximum developer fee for four percent LIHTC projects be raised from 15 percent to 20 percent of total development costs at the definition of "developer fee" or "development fee" at N.J.A.C. 5:80-33.2, with any amount above 15 percent being deferred. The commenter expresses their belief that the current developer fee for bond deals in the State is too low and that, as a result, an opportunity to finance additional affordable housing is being missed. (40)

RESPONSE: The Agency did not propose amendments to portions of the definition of "developer fee" referenced by the commenter. Therefore,

the commenter's comment does not relate to any identifiable provision of the rulemaking and no further Agency response is required.

62. COMMENT: The commenter states that "[c]onsultants, clerks of the work, construction managers, and owner representatives" fees should not be subsumed within the developer fee at the definition thereof at N.J.A.C. 5:80-33.2, apparently suggesting that such costs be separately accounted for as a separate line item in the development budget. (34)

RESPONSE: The Agency did not propose amendments to portions of the definition of "developer fee" referenced by the commenter. Therefore, the commenter's comment does not relate to any identifiable provision of the rulemaking and no further Agency response is required.

63. COMMENT: The commenter states that, in the notice of proposal, at the definition of "minimum rehab project" at N.J.A.C. 5:80-33.2, "maintains the \$30,000 per-unit minimum for preservation projects without providing a [capital needs assessment (CNA)] waiver option." They recommend allowing CNA-based waivers to align rehabilitation work with actual building needs, thereby reducing unnecessary costs while maintaining project quality. They also advocate including general contractor overhead costs and general requirements in eligible costs to facilitate meeting the cost threshold. (40)

RESPONSE: The Agency proposed only a technical amendment to the definition of "minimum rehab project." The commenter's comment does not relate to any identifiable provision of the rulemaking and no further Agency response is required.

64. COMMENT: The commenter recommends allowing a 20 to 25 percent developer fee for supportive housing projects, capping the fee at the current 15 percent rate and applying the additional percentage to fund a supportive service reserve. (32)

RESPONSE: The Agency did not propose amendments to portions of the definition of "developer fee" referenced by the commenter. Therefore, the commenter's comment does not relate to any identifiable provision of the rulemaking and no further Agency response is required.

65. COMMENT: The commenter recommends changes to the definition of "social services plan" at N.J.A.C. 5:80-33.2 to more closely align with N.J.A.C. 5:80-33.17(b) and more precisely describe the minimum hours required for social service coordinators. (32)

RESPONSE: The Agency did not propose amendments to the definition of "social services plan" at N.J.A.C. 5:80-33.2. The commenter's comment does not relate to any identifiable provision of the rulemaking and no further Agency response is required.

66. COMMENT: The commenter recommends adding definitions for "resident services" and "supportive housing services." (32)

RESPONSE: The commenter's comment does not relate to any identifiable provision of the rulemaking. The Agency believes the terms as they presently exist are clear and understandable.

67. COMMENT: The commenter recommends changes to the definition of "supportive housing project" at N.J.A.C. 5:80-33.2 to specify the maximum income limit and maximum rent as percentage of income for supportive housing units. (32)

RESPONSE: The Agency did not propose amendments to the definition of "supportive housing project" at N.J.A.C. 5:80-33.2. The commenter's comment does not relate to any identifiable provision of the rulemaking and no further Agency response is required.

68. COMMENT: The commenter asks how the Agency evaluates project operations to determine how closely they approximate the core operating expense amounts set forth at N.J.A.C. 5:80-33.12(c)7ii(4), which funding, the commenter observes, "is extremely low compared to other states, such as Georgia." (32)

RESPONSE: The Agency did not propose any changes at N.J.A.C. 5:80-33.12(c)7ii(4). The commenter's comment does not relate to any identifiable provision of the rulemaking and no further Agency response is required.

69. COMMENT: The commenter recommends changes to the eligibility requirements for supportive housing projects at N.J.A.C. 5:80-33.12(c)14 to remove the language suggesting that social services plans are optional for supportive housing projects and to require, rather than recommend, coordination with the local Continuum of Care if a project includes units set aside for homeless individuals or homeless families. (32)

RESPONSE: The Agency did not propose any changes at N.J.A.C. 5:80-33.12(c)14. The commenter's comment does not relate to any identifiable provision of the rulemaking and no further Agency response is required.

70. COMMENT: The commenter recommends that "the wording regarding cost of services [at N.J.A.C. 5:80-33.15(a)5] should mirror the same language found in ... Supportive Housing Cycle Points section b "The social services plan must address the specific appropriate and needed services to assist tenants to maintain their housing and stable community living at no cost to the tenant.["] The commenter also recommends requiring applicants, in order to receive points for social services, to submit evidence that the minimum required hours will be met and that social services will be provided for the entire length of the project's affordability period. (32)

RESPONSE: The Agency did not propose any changes at N.J.A.C. 5:80-33.15(a)5. The commenter's comment does not relate to any identifiable provision of the rulemaking and no further Agency response is required.

71. COMMENT: The commenter recommends that the point system provision for the Supportive Housing Cycle at N.J.A.C. 5:80-33.17(b)7 not be a point category because it sets forth "minimum living standards." (32)

RESPONSE: The Agency did not propose any changes at N.J.A.C. 5:80-33.17(b)7. The commenter's comment does not relate to any identifiable provision of the rulemaking and no further Agency response is required.

72. COMMENT: The commenter recommends that office space be added to the itemization of project amenities eligible for points at N.J.A.C. 5:80-33.15(a)9. (32)

RESPONSE: The Agency declines to incentivize office space, as it could unnecessarily exclude projects that provide adequate supportive services despite lacking dedicated office space. Office space does not match the other types of amenities being incentivized at paragraph (a)9.

73. COMMENT: The commenter advocates relocating the description of services required to be provided to supportive housing tenants from N.J.A.C. 5:80-33.17(b)1 to the "general description," apparently at N.J.A.C. 5:80-33.17. (32)

RESPONSE: The Agency did not propose any changes at N.J.A.C. 5:80-33.17(b)1 and only added Federal citations to other provisions at N.J.A.C. 5:80-33.17. The commenter's comment does not relate to any identifiable provision of the rulemaking and no further Agency response is required.

74. COMMENT: The commenter asks if "the points to build a 100 [percent] PSH or is this giving points for special needs units that have leases?" The commenter adds that all units, including supportive housing units, should have leases and suggests clarifying language for "mixed-special needs projects." (32)

RESPONSE: The Agency requests clarification of the commenter's comment and invites the commenter to submit the question for incorporation into the LIHTC FAQs.

75. COMMENT: The commenter recommends adding language at N.J.A.C. 5:80-33.29, confirming that supportive services and all elections made regarding supportive services remain in effect for the entire compliance period. (32)

RESPONSE: The Agency did not propose any changes at N.J.A.C. 5:80-33.29. The commenter's comment does not relate to any identifiable provision of the rulemaking and no further Agency response is required.

76. COMMENT: The commenter observes that the Compliance Monitoring section of the QAP at N.J.A.C. 5:80-33.32 refers only to Internal Revenue Code (Code) Section 42 tax credit compliance, with no mention of compliance for "other point items — such as supportive housing." The commenter recommends the inclusion of unspecified "mention" of compliance monitoring for other items, including supportive housing. (32)

RESPONSE: The Agency disagrees with the commenter's claim that N.J.A.C. 5:80-33.32 refers only to compliance with the Code, as the section also includes, for example, requirements of compliance with State statutes (no finding of discrimination pursuant to the Fair Housing Act; registration and posting to the Housing Resource Center), Federal statutes (the Violence Against Women Act of 1994 and its progeny; the Housing

and Economic Recovery Act of 2008), and provisions of the QAP itself (registration in the Homeless Management Information System and the submittal of data pursuant to N.J.A.C. 5:80-33.15(a)22). The Agency, therefore, declines to implement the commenter's recommendation.

77. COMMENT: The commenter recommends reinstating the pre-COVID-19-Pandemic era 60 percent urban/40 percent suburban LIHTC allocation split. (36)

RESPONSE: Initially, the commenter's comment misconstrues the pre-COVID split, which was 40 percent urban and 60 percent suburban. The Agency does not believe it is necessary to adopt the commenter's recommendation, as the desired policy change is self-effectuating timewise. Effective no later than January 1, 2026, the Agency will seek to award approximately 40 percent of credits in the Family, Age-Friendly Senior, and Supportive Housing Cycles to projects in TUMs (urban areas) and approximately 60 percent of such credits to projects in non-TUMs. See N.J.A.C. 5:80-33.4(e), 33.5(e), and 33.6(e).

78. COMMENT: The commenter suggests updating or eliminating the provisions at N.J.A.C. 5:80-33.4(d) and (e), 33.5(d) and (e), and 33.6(d) and (e), relating to the allocation of LIHTC awards to projects in TUMs and non-TUMs, as the duration of the applicability of these provisions is or will be over by no later than January 1, 2026. The commenter also suggests clarifying whether the imminent State Tax Credit Subsidy program will affect the allocation. (37)

RESPONSE: The Agency does not believe it is necessary to update or eliminate the referenced provisions of the QAP as they are self-effectuating timewise. The Tax Credit Subsidy program does not relate to any identifiable provision of the rulemaking.

79. COMMENT: The commenter recommends that the New Jersey Department of the Treasury and the Agency prioritize bond allocations to affordable housing developments over other housing and economic development uses. (40)

RESPONSE: The commenter's comment does not relate to any identifiable provision of the rulemaking.

80. COMMENT: The commenter recommends that a cap of 30 percent of aggregate basis be established on private activity bonds per affordable multifamily housing project, including, if desired, a waiver potential allowing developers to exceed the cap, if deemed necessary, to achieve permanent financing. (40)

RESPONSE: The commenter's comment does not relate to any identifiable provision of the rulemaking and no further Agency response is required.

81. COMMENT: The commenter notes that the notice of proposal does not address the current 50 percent cap on deferred developer fees at N.J.A.C. 5:80-33.12(c)6v and recommends that an allowance be made for deferral of a greater percentage on a waiver basis where there is a significant financing gap. The commenter posits that increased flexibility in developer fee deferrals can help improve liquidity during construction and aid developers in dealing with cash flow challenges, while allowing the Agency to maintain the cap in the absence of financial stress. (40)

RESPONSE: The Agency did not propose any changes at N.J.A.C. 5:80-33.12(c)6v. The commenter's comment does not relate to any identifiable provision of the rulemaking and no further Agency response is required.

82. COMMENT: The commenter asks for clarification as to the backup necessary to meet the eligibility requirement at N.J.A.C. 5:80-33.12(c)1ii(2) that market studies include "[a] description of the proposed improvements including ... any applicable tenant charges, tenant-paid utilities, and project-paid utilities ... Detailed monthly utility allowance figures shall be presented separately for each utility type (for example, electric, gas, etc.) and for each unit type within the project." The commenter questions whether a report prepared by a qualified professional is necessary or if estimates based on data from similar projects are acceptable. (41)

RESPONSE: The Agency advises that estimates based on data from similar projects are acceptable as backup data.

83. COMMENT: The commenter objects to the existing provision in the Application for additional credits (Hardship) section of the QAP at N.J.A.C. 5:80-33.13(c) that precludes the sponsor and any affiliated or related entities of a project that received hardship credits from the Reserve "from applying for tax credits for a new project for all tax credit cycles in



the round following the day on which [the hardship credits are approved].” The commenter advocates that the quoted language should be stricken, as there are already “built-in penalties” that are inherent in requesting additional credits. (37)

RESPONSE: The Agency did not propose any changes at N.J.A.C. 5:80-33.13. The commenter’s comment does not relate to any identifiable provision of the rulemaking proposal and no further Agency response is required.

84. COMMENT: The commenter expresses disagreement with the existing “site selection” points category at N.J.A.C. 5:80-33.15(a)11 and suggests reinstating a construct whereby proximity to negative land uses can be offset by proximity to positive land uses, unless the negative use is within 0.25 miles of the project site. (37)

RESPONSE: The Agency did not propose any changes at N.J.A.C. 5:80-33.15(a)11. The commenter’s comment does not relate to any identifiable provision of the rulemaking and no further Agency response is required.

85. COMMENT: The commenter advocates a restoration of “net scoring” in the “site selection” points category at N.J.A.C. 5:80-33.15(a)11, claiming that only by virtue of a 2024 FAQ response was the development community informed that an application could receive no more than six points for proximity to positive land uses, thereby foreclosing the resort to such positive land uses to offset negative points imposed for proximity to negative land uses. The commenter also requests a reassessment of negative uses “to ensure they reflect genuine barriers to healthy and successful development,” and a recalculation of the distance between negative land uses and a project from the existing one mile to one-quarter mile. (35)

RESPONSE: The Agency did not propose any changes at N.J.A.C. 5:80-33.15(a)11. The commenter’s comment does not relate to any identifiable provision of the rulemaking and no further Agency response is required.

86. COMMENT: The commenter proposes two “targeted changes” to provide in-project childcare services: (1) award three points to Family Cycle developments that provide finished, ground floor space plus dedicated outdoor space for childcare, with capacity for at least two children per 10 housing units; and (2) require all new two- and three-bedroom units to comply with New Jersey Department of Children and Families requirements for registered childcare, which would allow residents to become licensed childcare providers. (1)

RESPONSE: The commenter appears to be proposing an addition to N.J.A.C. 5:80-33.15, presumably 5:80-33.15(a)5, where no changes were proposed. The Agency declines to make the requested changes at this time without providing other stakeholders notice and the opportunity to comment on a change that would mandate that all new two- and three-bedroom units comply with registered childcare requirements, as research is needed to determine if a substantial financial impact would result and, if it would, whether it would be warranted.

87. COMMENT: The commenter suggests that an eligibility requirement be added to the Application to a cycle/eligibility requirements section of the QAP at N.J.A.C. 5:80-33.12(c)19iv requiring all projects to obtain a *FORTIFIED*<sup>TM</sup> designation from the Insurance Institute for Business & Home Safety (IIBHS), and to add to the Point system for the Family Cycle, apparently as a one to three point option at N.J.A.C. 5:80-33.15(a)14, points for developments built to resilient construction standards and that receive a *FORTIFIED*<sup>TM</sup> designation from IIBHS. (42)

RESPONSE: The commenter proposes changes unrelated to the rulemaking. The proposed expansion of the minimum design standards at N.J.A.C. 5:80-33.12(c)19 encompasses features that provide direct, ongoing benefit to individual units and their residents, rather than aspects of building construction. The proposed changes to the point system at N.J.A.C. 5:80-33.15(a)14 are merely technical in nature. The Agency, therefore, declines to make the requested changes.

88. COMMENT: The commenter asserts that, despite the amendment at N.J.A.C. 5:80-33.15(a)20iii, “[t]here is still a gap in how [t]ax [c]redit [e]xperience points are awarded, leaving out a group of developers who fall between the categories of ‘emerging developer’ and fully experienced developer with an equity stake.” They note that amended N.J.A.C. 5:80-33.15(a)20iii — while “a fair and thoughtful step toward ensuring more projects receive full experience points” — requires that a developer must

have had a direct ownership interest in a previously developed LIHTC project, which leaves out “many highly qualified professionals who have spent years developing affordable housing projects for established organizations[,] but are now starting their own development companies.” The commenter encourages adjustment of the scoring criteria to account for those years of “actual development experience” or, alternatively, to expand the new definition of “emerging developer” at N.J.A.C. 5:80-33.2 to encompass such persons. (35)

RESPONSE: The Agency acknowledges the commenter’s point; however, given the complexities of planning, financing, developing, and managing an LIHTC project, it deems “development experience” to be too nebulous of a concept to include in a scoring construct or in the definition of “emerging developer” as it relates to LIHTC applications, especially since the rulemaking seeks to create pathways to build direct experience with LIHTC projects. The Agency believes that “actual development experience” is too subjective a standard to incorporate into what is essentially an objective point system, as determining what constitutes “actual development experience” would necessitate a case-by-case inquiry for every applicant claiming such experience.

89. COMMENT: The commenter advocates eliminating the following sentence at N.J.A.C. 5:80-33.15(a)14iv: “Senior projects are not eligible to earn this additional point[.]” They contend that suburban Age-Friendly Senior Cycle projects, as well as Family Cycle projects, should be eligible for the Municipal Revitalization Index (MRI) point if they are included in a fair share housing development plan. (37)

RESPONSE: The commenter’s comment does not relate to any identifiable provision of the rulemaking.

90. COMMENT: The commenter requests that the tiebreaker system be amended at N.J.A.C. 5:80-33.19(a)1 to align the methodology for calculating tiebreakers for projects in TUMs with those outside of a TUM (that is, to eliminate the distinct methodologies at subparagraph (a)1i and ii). They point out that the tiebreaker for projects in TUMs favors projects in municipalities with lower MRI scores, which results in projects in very distressed urban municipalities consistently receiving multiple awards while projects in less-distressed TUMs (with correspondingly higher MRI scores) have very little chance to successfully compete in the tiebreaker. The commenter also suggests that the MRI score be utilized as the second tiebreaker at N.J.A.C. 5:80-33.19(a)2. (35)

RESPONSE: The Agency did not propose any changes at N.J.A.C. 5:80-33.19(a)1 and proposed only a change unrelated to the commenter’s concern at N.J.A.C. 5:80-33.19(a)2. The commenter’s comment does not relate to any identifiable provision of the rulemaking and no further Agency response is required.

91. COMMENT: The commenter objects to the existing provision in the Exchange of credits section of the QAP at N.J.A.C. 5:80-33.37(d) that precludes the sponsor and any affiliated or related entities of a project that received an exchange of credits pursuant to section 37 “from applying for tax credits for a new project for all tax credit cycles in the round following the day on which [the exchange is approved].” The commenter advocates that the quoted language should be stricken or, at least, a blanket exemption should be provided for exchanges necessitated by litigation against the project. As an alternative, the commenter suggests requiring a developer who has received an exchange of credits to pay a one percent allocation fee. (37)

RESPONSE: The Agency did not propose any changes at N.J.A.C. 5:80-33.37. The commenter’s comment does not relate to any identifiable provision of the rulemaking and no further Agency response is required.

92. COMMENT: The commenter expresses support for the extended use requirement that maintains affordability for an extended period of time. (2)

RESPONSE: The Agency appreciates the expression of support.

93. COMMENT: The commenter claims that the application of UHAC standards to LIHTC-funded projects “creates challenges for senior and supportive housing[,]” especially with respect to UHAC two- and three-bedroom requirements for projects of 20 or more units, which, the commenter observes, are inappropriate for populations better served by smaller units, and with respect to efficiency units, which, although often optimal for senior and supportive populations, are penalized pursuant to UHAC rules, as they do not count as bedrooms. (36)

RESPONSE: The commenter's comment does not relate to any identifiable provision of the rulemaking. Further, the UHAC rules expressly exempt LIHTC projects from most of the UHAC requirements, including bedroom distributions. See N.J.A.C. 5:80-26.1.

94. COMMENT: The commenter notes that there is no definition of Environmental Stressors [sic] Performance Standards in the QAP nor are there "any details" in the Green Guide. (34)

RESPONSE: The Green Guide is available at <https://nj.gov/dca/hmfa/developers/lihtc/greenpoints/>, and is being updated to reflect the changes being made upon adoption.

95. COMMENT: The commenter appeals for the LIHTC application to be updated to better align with the QAP itself, noting that although "minor updates have been made over the years" there has not been a major revision "in many years." They assert that information in the application is particularly lacking with respect to the Supportive Housing Cycle. (35)

RESPONSE: The commenter's comment does not relate to any identifiable provision of the rulemaking. The Agency continually reviews all guidance and supportive documentation associated with the LIHTC program to ensure consistency with the rules and may make further updates to the guidance documents after the adoption of this rulemaking.

96. COMMENT: The commenter encourages the Agency to return to in-person QAP trainings and meetings with developers. (35)

RESPONSE: The commenter's comment does not relate to any identifiable provision of the rulemaking.

97. COMMENT: The commenter encourages the Agency to establish a multifamily private activity bond (PAB) recycling program, involving the "recycling" of repaid PAB volume cap, which could reduce borrowing costs and increase affordable housing production. (40)

RESPONSE: The commenter's comment does not relate to any identifiable provision of the rulemaking.

98. COMMENT: The commenter recommends that 15 percent of the credits from the State Tax Credit Subsidy program be allocated to supportive housing, noting that supportive housing projects are typically smaller than other projects and require features that increase per-unit cost. (32)

RESPONSE: The Tax Credit Subsidy program does not relate to any identifiable provision of the rulemaking.

#### Federal Standards Statement

With respect to affordability requirements, the Internal Revenue Code ("IRC" or "Code") sets forth minimum standards for low-income housing tax credits. Tax credit affordability requirements are set forth at Sections 42(g)(1)(A), (B), and (C) of the Code, pursuant to which housing sponsors elect 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 (AMGI); (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 AMGI; or (iii) 40 percent or more of the residential units being both rent-restricted and occupied by individuals whose income does not exceed the imputed income limitation designated by the taxpayer (not to exceed 80 percent of AMGI) with respect to the respective unit. 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 adopted amendments deviate from those standards.

Other than as set forth above, the adopted amendments do not include 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 Part 1 Subpart 42).

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.

... "Certified minority and/or women business enterprise" or "certified M/WBE" means a minority- and/or women-owned business or enterprise that is registered with, and certified by, the Division of Revenue and Enterprise Services, Uniform Certification Service, in the State of New Jersey Department of the Treasury. Information on how to register as a certified M/WBE is available at <https://www.nj.gov/treasury/revenue/ucs.shtml>.

... "Developer fee" or "development fee" means the fee that encompasses the developer's overhead and profit. 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 NJHMFA determines are 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 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, 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:

1. Projects of 25 units or fewer; or
2. (No change in text.)

The non-deferred portion of the developer fee shall not exceed 8.00 percent (13.00 percent for the two types of housing referenced at 1 and 2 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, but the non-deferred portion shall not exceed 2.00 percent. The cost of acquiring a building shall not be allowed in the calculation of the developer fee if the acquisition is between related parties. A related party, as used in this definition, means a relationship between parties when there is a spousal or family relationship, parent-subsidiary relationship, or where owners, officers, directors, partners, stockholders, or members of one business entity hold a 10.00 percent or more interest in the other business entity.

... "Emerging Developer" means a developer that: (1) has had equity participation in no fewer than \*[three]\* \*two\* multifamily residential and/or mixed-use projects\*, with at least one of the projects\* comprising \*[at least]\* \*a minimum of\* 25 \*[total]\* units; (2) qualifies for fewer than three points pursuant to N.J.A.C. 5:80-33.15(a)20; and (3) does not

have any active LIHTC awards, allocations, or reservations for projects in development that, once all completed, would qualify the developer for three points pursuant to N.J.A.C. 5:80-33.15(a)20. \*[For example, a developer with 20-percent ownership stakes in one LIHTC project that has been successfully developed and operated and another LIHTC project currently in development is considered an Emerging Developer, but a developer with a 50-percent ownership stake in an LIHTC project currently in development is not.]\*

... "Individuals with physical disabilities" means any individual who, because of a physical condition, needs affordable housing with supportive services, including assistance with three or more activities of daily living (for example, bathing, dressing, using the toilet, eating, and getting in or out of a bed or chair), to live independently in community settings.

"Individuals with special needs" means:

- 1.-4. (No change.)
5. Adults and youth with criminal records;
- 6.-10. (No change.)
11. Individuals in treatment for substance abuse;
12. Individuals 18 years and over transitioning from nursing homes;
- and
13. (No change in text.)

... "Large warehouse facility" means a warehouse distribution facility or warehouse fulfillment center with at least 150,000 square feet of gross floor area and/or at least 40 feet of height that currently exists or has received final site plan approval.

... "Minimum rehab project" means any project undertaking only a minimum amount of rehabilitation. Minimum rehab is defined as a construction cost totaling less than \$30,000 per unit. Minimum rehab projects are eligible to apply only in the Supportive Housing Cycle. NJHMFA shall utilize an amount not less than 33.33 percent of developer fee based on building acquisition costs as a funding source in its evaluation required at 26 U.S.C. § 42(m)(2).

"Municipal Revitalization Index" or "MRI" means the Municipal Revitalization Index Distress Score by which New Jersey's municipalities are ranked according to 10 separate indicators that measure diverse aspects of social, economic, physical, and fiscal conditions. Each municipality in the State receives a composite score and ranking, ranging from the most distressed (ranking number 1) to the least distressed (ranking number 564). The MRI is available at <https://www.nj.gov/dca/home/MuniRevitIndex.shtml>.

... "On-site transportation" means transportation that is provided specifically for the residents of a project and is offered at least once per week either directly by the project or through a contract between the owner and transportation company, stipulating fees and frequency of service. The transportation must be provided at no cost to the residents. Transportation services may include trips to places such as grocery stores, shopping centers, banks, places of worship, and recreation facilities.

... "Sponsor" means any person, partnership, corporation, association, or other entity that receives an allocation or issuance of Low-Income Housing Tax Credits from NJHMFA or applies for an allocation or issuance of Low-Income Housing Tax Credits from NJHMFA.

... "Successfully developed and operated" means a tax credit project with no uncorrected IRS Form 8823s that has achieved 93 percent occupancy and has maintained a permanent debt service coverage ratio of at least 1.15 percent for six consecutive months during the project's most recent full fiscal year preceding the application deadline.

... "Transit Village" means a community served by bus, train, light rail, or ferry that has been designated as such by the State's Transit Village Task Force pursuant to criteria available at <https://www.nj.gov/transportation/community/village/application.shtml>. The Transit Village Initiative is designed to spur economic development, urban revitalization, and private-sector investment using access to transit as an asset. The New Jersey Department of Transportation coordinates the Task Force

composed of various State agencies that review municipal applications and make recommendations. Transit Villages must be designated by the tax credit application deadline.

...

#### 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, Age-Friendly Senior, and Supportive Housing Cycles will be available in the Family Cycle, and the maximum annual allocation of credits to any one development competing in this cycle is \$2,000,000. Total development costs shall not exceed \*[\$350,000]\* \*\$385,000\* per unit for buildings of one to four residential stories, \*[\$380,000]\* \*\$427,500\* per unit for buildings with five or six residential stories, and \*[\$410,000]\* \*\$461,250\* 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 an integrated community center or social service space, or up to \$10,000 per unit and \$800,000 maximum\* \*for a stand-alone community or social service building (subject to third-party cost certification), required deferred developer fee, if any, and either up to \$15,000 per unit for adaptive reuse projects or up to \$7,500 per unit for projects achieving the Passive House standard. For adaptive reuse projects, NJHMFA will perform a site inspection to assess the amenability of conversion to multifamily housing. Additionally, the development, design, and construction teams must demonstrate successful experience with the established methodologies required to produce an adaptive reuse project. If multiple tranches of this cycle are awarded, all set-asides for this cycle will be applicable to each tranche. Applying for a set-aside does not preclude an application from also competing in the Family Cycle. 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 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 three set-asides in the Family Cycle:

1. Mixed-Income set-aside: The first reservation of credits from the Family Cycle shall be awarded to one project that \*[contains]\* \*includes\* up to 55 percent affordable units and is located outside of a Targeted Urban Municipality. The second reservation of credits from the Family Cycle shall be awarded to one project that \*[contains]\* \*includes\* up to 55 percent affordable units and is located within a Targeted Urban Municipality. Up to \$34,300 in credits per tax-credit-eligible unit are available and the maximum annual allocation of credits is \$2,000,000. The limits on total development costs do not apply to this set-aside. The project's market study as provided for at N.J.A.C. 5:80-33.12(c)1ii shall clearly demonstrate that the tax credit units in the project provide a minimum 20 percent market advantage compared to comparable market-rate units. The project shall achieve a minimum of 65 percent of the maximum score under the ranking criteria established at N.J.A.C. 5:80-33.15. If the project is located outside of a Targeted Urban Municipality, the project must achieve the maximum points stipulated at N.J.A.C. 5:80-33.15(a)1i, regarding extended affordability; \*[(a)11i]\* \*the maximum points stipulated at N.J.A.C. 5:80-33.15(a)11i\*, regarding site selection; \*[(a)14ii]\* \*at least three points pursuant to N.J.A.C. 5:80-33.15(a)14ii\*, regarding proximity to public transportation/jobs; and \*[(a)14iii]\* \*at least two points pursuant to N.J.A.C. 5:80-33.15(a)14iii\*, regarding high-performing schools. If the project is located within a Targeted Urban Municipality, the project must achieve the maximum points stipulated at N.J.A.C. 5:80-33.15(a)1i, regarding extended affordability, and (a)11i, regarding site selection. Should multiple projects be deemed eligible at the same Tax Credit Committee meeting, credits shall be awarded in accordance with the tiebreaker at N.J.A.C. 5:80-33.19(a)1. If, because of lack of demand, the mixed-income set aside is not fully utilized, the unawarded credits therein shall be released into the Family Cycle.

2. Preservation set-aside: The third and fourth reservations of credits from the Family Cycle shall be given to the two highest-ranking eligible applications from preservation set-aside projects. The maximum annual allocation of credits to developments competing in this set-aside is \$1,400,000. The limits on total development costs apply to this set-aside. If, because of lack of demand, the preservation set-aside is not fully utilized, the unawarded credits therein shall be released into the Family Cycle.

3. Emerging Developer set-aside: The fifth reservation of credits from the Family Cycle shall be awarded to one project that is developed by an Emerging Developer with at least a 70 percent interest in the project's general partner/managing member. The maximum annual allocation of credits to developments competing in this set-aside is \$2,000,000. The limits on total development costs apply to this set-aside. The project shall achieve a minimum of 65 percent of the maximum score pursuant to the ranking criteria established at N.J.A.C. 5:80-33.15, including the maximum points stipulated at N.J.A.C. 5:80-33.15(a)1i, regarding extended affordability, and (a)1i, regarding site selection. The application must include at least two letters of support/reference from investors, lenders, and/or housing finance agencies that describe previous and/or current experiences with the developer. At least one of the letters of support/reference must be from an investor or lender participating in the project. At least three members of the development team must have previous experience with NJHMFA, including the architect, the general contractor, and another development team member that is not a project consultant. The developer must enter into a management agreement with a property management company that has at least five years of experience monitoring LIHTC projects and a tax credit portfolio of no fewer than 300 units. The developer must provide, as part of the application, a certificate of completion for a housing development training course, as well as a description of the course. Any developer that is related to, or controlled by, a non-emerging developer, or is otherwise determined by NJHMFA to not meet the criteria established for an Emerging Developer, is not eligible for this set-aside. Should multiple projects be deemed eligible at the same Tax Credit Committee meeting, credits shall be awarded to the highest-scoring application, then, if necessary, in accordance with the tiebreaker system starting at N.J.A.C. 5:80-33.19(a)2. If no set-aside applicant achieves the minimum score, such that the Emerging Developer set-aside is not utilized, the credits therein shall be released into the Family Cycle.

(b) Projects that receive negative points pursuant to N.J.A.C. 5:80-33.15(a)15, 17, 18, or 19 shall not be eligible to compete in any set-aside.

(c) (No change.)

(d) For the duration of the time period in which NJHMFA is accepting project applications to award the \$305,000,000 in Federal Coronavirus State Fiscal Recovery Fund dollars appropriated to the Affordable Housing Production Fund (AHPF) pursuant to P.L. 2022, c. 49, or until December 31, 2025, whichever comes sooner, the following shall apply:

1. Approximately 60 percent of the credits (inclusive of all set-asides) shall be made available to projects in Targeted Urban Municipalities (TUMs), seeking to maintain a lower constraint of not less than 50 percent.

2.-3. (No change.)

(e) Following the termination of the time period in which NJHMFA accepts project applications to award the \$305,000,000 in Federal Coronavirus State Fiscal Recovery Fund dollars appropriated to the AHPF, or after December 31, 2025, whichever comes sooner, the following shall apply:

1. Approximately 40 percent of the credits (inclusive of all set-asides) shall be made available to projects in TUMs, seeking to maintain a lower constraint of not less than 35 percent.

2.-3. (No change.)

#### 5:80-33.5 Age-Friendly Senior Cycle

(a) Senior projects may apply to this cycle. Not less than 20 percent of the total credits awarded in the Family, Age-Friendly Senior, and Supportive Housing Cycles will be available in the Age-Friendly Senior Cycle, and the maximum annual allocation of credits to any one development competing in this cycle is \$1,600,000. Total development costs shall not exceed \*\$350,000\* \*\$385,000\* per unit for buildings of one to four residential stories, \*\$380,000\* \*\$427,500\* per unit for

buildings with five or six residential stories, and \*\$410,000\* \*\$461,250\* 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 an integrated community center or social service space, or up to \$10,000 per unit and \$800,000 maximum, for a stand-alone community or social service building (subject to third-party cost certification), required deferred developer fee, if any, and either up to \$15,000 per unit for adaptive reuse projects or up to \$7,500 per unit for projects achieving the Passive House standard. For adaptive reuse projects, NJHMFA will perform a site inspection to assess the amenability of conversion to multifamily housing. Additionally, the development, design, and construction teams must demonstrate successful experience with the established methodologies required to produce an adaptive reuse project. If multiple tranches of this cycle are awarded, all set-asides for this cycle will be applicable to each tranche. Applying for a set-aside does not preclude an application from also competing in the Age-Friendly Senior Cycle. Minimum rehab projects are not eligible to apply in this cycle. Unless market area demographics demonstrate otherwise, one-bedroom units should compose at least 85 percent of the project. There is one set-aside in the Age-Friendly Senior Cycle, the preservation set-aside. The first and second reservations of credits from the Age-Friendly Senior Cycle shall be given to the highest-ranking eligible applications from preservation set-aside projects. The maximum annual allocation of credits to developments competing in this set-aside is \$1,200,000. If, because of lack of demand, the preservation set-aside is not fully utilized, the unawarded credits therein shall be released into the Age-Friendly Senior Cycle.

(b) Projects that receive negative points pursuant to N.J.A.C. 5:80-33.15(a)15, 17, 18, or 19 shall not be eligible to compete in any set-aside.

(c) (No change.)

(d) For the duration of the time period in which NJHMFA is accepting project applications to award the \$305,000,000 in Federal Coronavirus State Fiscal Recovery Fund dollars appropriated to the Affordable Housing Production Fund (AHPF) pursuant to P.L. 2022, c. 49, or until December 31, 2025, whichever comes sooner, the following shall apply:

1. Approximately 60 percent of the credits (inclusive of all set-asides) shall be made available to projects in TUMs, seeking to maintain a lower constraint of not less than 50 percent.

2.-3. (No change.)

(e) Following the termination of the time period in which NJHMFA accepts project applications to award the \$305,000,000 in Federal Coronavirus State Fiscal Recovery Fund dollars appropriated to the AHPF, or after December 31, 2025, whichever comes sooner, the following shall apply:

1. Approximately 40 percent of the credits (inclusive of all set-asides) shall be made available to projects in TUMs, seeking to maintain a lower constraint of not less than 35 percent;

2.-3. (No change.)

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

(a) Supportive housing projects in which a minimum of 25.00 percent of the total project units are rented to individuals with special needs may apply to the Supportive Housing Cycle. An executed agreement between the proposed owner entity and the social services provider, and a social services plan consistent with the requirements of this subsection for the Supportive Housing Cycle shall be submitted in the application. There will be not less than 12.5 percent of the total credits awarded in the Family, Age-Friendly Senior, and Supportive Housing Cycles available in the Supportive Housing Cycle and the maximum annual allocation of credits to any one development competing in this cycle is \$1,600,000. Total development costs shall not exceed \*\$350,000\* \*\$385,000\* per unit for buildings of one to four residential stories, \*\$380,000\* \*\$427,500\* per unit for buildings with five or six residential stories, and \*\$410,000\* \*\$461,250\* 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 an integrated community center or social service space, or up to \$10,000 per unit and \$800,000 maximum, for a stand-alone community or social service building (subject to third-party cost certification), required

deferred developer fee, if any, and either up to \$15,000 per unit for adaptive reuse projects or up to \$7,500 per unit for projects achieving the Passive House standard. For adaptive reuse projects, NJHMFA will perform a site inspection to assess the amenability of conversion to multifamily housing. Additionally, the development, design, and construction teams must demonstrate successful experience with the established methodologies required to produce an adaptive reuse project.

(b) (No change.)

(c) Projects that receive negative points pursuant to N.J.A.C. 5:80-33.15(a)15, 17, 18, or 19 shall not be eligible to compete in any set-aside.

(d) For the duration of the time period in which NJHMFA is accepting project applications to award the \$305,000,000 in Federal Coronavirus State Fiscal Recovery Fund dollars appropriated to the Affordable Housing Production Fund (AHPF) pursuant to P.L. 2022, c. 49, or until December 31, 2025, whichever comes sooner, the following shall apply:

1. Approximately 60 percent of the credits (inclusive of all set-asides) shall be made available to projects in TUMs, seeking to maintain a lower constraint of not less than 50 percent.

2.-3. (No change.)

(e) Following the termination of the time period in which NJHMFA accepts project applications to award the \$305,000,000 in Federal Coronavirus State Fiscal Recovery Fund dollars appropriated to the AHPF, or after December 31, 2025, whichever comes sooner, the following shall apply:

1. Approximately 40 percent of the credits (inclusive of all set-asides) shall be made available to projects in TUMs, seeking to maintain a lower constraint of not less than 35 percent.

2.-3. (No change.)

#### 5:80-33.8 Awards from the Reserve

(a) Projects that need credits because of technical errors or severe hardship can submit a reapplication for credits from the Reserve. The Reserve may also be used to fund cost overruns for unforeseen circumstances beyond the developer's control where NJHMFA determines that a project's financial feasibility is jeopardized. Any credits not dedicated to the Family, Age-Friendly Senior, and Supportive Housing Cycles shall be deposited into the Reserve. Awards of credits from the Reserve are subject to availability and NJHMFA's evaluation of the request.

1. Hardship requests for additional credits from the Reserve are limited to \$150,000 per project. Total development costs shall not exceed \*[\$350,000]\* \*\$385,000\* per unit for buildings of one to four residential stories, \*[\$380,000]\* \*\$427,500\* per unit for buildings with five or six residential stories, and \*[\$410,000]\* \*\$461,250\* 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 an integrated community center or social service space, or up to \$10,000 per unit and \$800,000 maximum\*,\* for a stand-alone community or social service building (subject to third-party cost certification), required deferred developer fee, if any, and either up to \$15,000 per unit for adaptive reuse projects or up to \$7,500 per unit for projects achieving the Passive House standard. Hardship requests must be documented to the satisfaction of NJHMFA and must demonstrate the existence of an unforeseen emergency where the completion of the project is jeopardized without an award of additional low-income housing tax credits. No more than one hardship award shall be approved with respect to a given project. Hardship applications to the Reserve are accepted on an ongoing basis until September 30. To apply to the Reserve for a hardship reservation of additional credit, applicants must follow the procedures at N.J.A.C. 5:80-33.13(a)1.

2. (No change in text.)

#### 5:80-33.9 Volume cap credits

(a) Projects financed by tax-exempt bonds that request tax credits pursuant to Section 42(h)(4) of the Code are required by Section 42(m)(1)(D) of the Code to satisfy the requirements for allocation of a housing credit dollar amount under the qualified allocation plan. Projects requesting tax credits entirely from volume cap do not have to compete and there are no cycle deadlines. However, complete applications shall be submitted at least one month before the tax-exempt bonds are sold. The following information shall be included in order for the application to be

deemed complete: all applicable sections of the application corresponding to eligibility requirements at N.J.A.C. 5:80-33.12; those sections of the application corresponding to the point categories for conversion to tenant ownership (if applicable), tax abatement (if applicable), and the negative point categories; a period of restriction meeting the criteria corresponding with the maximum points stipulated at N.J.A.C. 5:80-33.15(a)1i; and a sponsor certification and breakdown of costs and basis. For family projects, except for preservation and historic rehabilitation projects, which shall retain, at a minimum, their existing percentages of two-bedroom and three-bedroom units, 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. A copy of the appraisal/market study required by the applicant's lender and/or syndicator may be submitted in lieu of the market study required at N.J.A.C. 5:80-33.12(c)1ii.

1.-3. (No change.)

4. Projects that would have received negative points pursuant to N.J.A.C. 5:80-33.15(a)15, 17, 18, or 19 shall not be issued tax credits until such items are corrected.

5. (No change.)

(b)-(c) (No change.)

#### 5:80-33.10 Application fee schedule

(a) The following fees shall be submitted at the time the application or reapplication is submitted:

1. An application fee of \$5,000 shall be paid by applicants for projects applying to the Family, Age-Friendly Senior, or Supportive Housing Cycle, and by applicants for projects applying for volume cap tax credits.

2. (No change.)

(b) (No change.)

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

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

(c) Applications shall meet all of the eligibility requirements listed in this section by the application deadline in order to be admitted into a cycle. NJHMFA reserves the right to contact the applicant if the need arises.

1. Applications shall include the information set forth at (c)1i, either (c)1ii or (c)1iii, and (c)1iv below in order to demonstrate the need and demand for the proposed project in a market area. If NJHMFA determines an insufficient market need or demand exists, the project shall be deemed ineligible.

i. (No change.)

ii. A market study, certified to both the applicant and NJHMFA in the analyst's certification, shall be submitted for all projects. Two copies of the report shall be submitted. The market study shall be no more than six months old. Projects applying for additional credits from the Reserve that have already received a previous allocation of tax credits shall not be required to submit a new market study. The analyst shall state in the certification that all market study requirements have been fully addressed. If any relevant information cannot be obtained, the analyst shall explain why the information cannot be obtained. The study shall also identify any assumptions, estimates, projections, and models used in the analysis. The assumptions used in the market study (for example, project rents, unit mix, amenities, etc.) must precisely reflect the information provided in the tax credit application. The data and analysis shall clearly indicate enough demand in the market to support the proposed development. Any additional information appropriate to the market area and the project shall be submitted to demonstrate the demand for the proposed housing project. The report shall include, at a minimum:

(1) (No change.)

(2) A description of the proposed site, including pictures of the site and existing structures, pictures of the immediate neighborhood, visibility/access/exposure, proximity to retail and employment, detailed neighborhood and market area maps showing all significant nearby land uses, block and lot numbers of each parcel, site acreage, available public services and public transportation, and existing infrastructure. A description of the proposed improvements including unit mix, a commentary on the preliminary drawings including unit size and design, proposed project and unit amenities, number of parking spaces, and any applicable tenant charges, tenant-paid utilities, and project-paid utilities



shall be provided. Detailed monthly utility allowance figures shall be presented separately for each utility type (for example, electric, gas, etc.) and for each unit type within the project;

(3)-(10) (No change.)

(11) The provisions at N.J.A.C. 5:80-33.11(d) and (e) shall not apply to market studies submitted pursuant to this subsection. Instead, during the market study review process, a reviewer contracted by NJHMFA shall notify the independent, third-party professional who completed the market study by telephone and, simultaneously, by email about significant missing or unclear components of the market study. A copy of such correspondence shall also be simultaneously sent to NJHMFA and the tax credit applicant. Failure of the independent, third-party professional who completed the market study to provide a sufficient response within five business days about significant missing or unclear components of a market study shall result in an application being declared ineligible.

iii. For projects of 25 units or fewer and projects receiving Project Based Section 8 rental assistance for 100 percent of the units, the form of market analysis described below may be submitted in lieu of the market study requirements listed at (c)1ii(1) through (7) above:

(1)-(2) (No change.)

iv. (No change.)

2.-7. (No change.)

8. Successful participation in the New Jersey Clean Energy Program's (NJCEP) NJ ENERGY STAR Certified Homes Program Version 3.1, NJ Zero Energy Ready Homes, NJ Pay for Performance-New Construction, ENERGY STAR Multifamily New Construction Version 1.1, or alternative per the Guide to QAP Green Requirements (Green Guide), and in the NJHMFA Energy Benchmarking Initiative shall be required for all applications. Both the Green Guide and the NJHMFA Energy Benchmarking Initiative are available at <https://nj.gov/dca/hmfad/developers/lihtc/greenpoints/>.

i. (No change.)

ii. In order to satisfy the Energy Benchmarking Initiative requirements at (c)8 above, the application shall include a copy of the completed and signed letter of intent from the developer to NJHMFA. Prior to issuance of the IRS Form 8609, the developer/owner shall submit the forms at (c)8ii(1), (2), and (3) below, which can be found at <https://nj.gov/dca/hmfad/developers/lihtc/greenpoints/>:

(1)-(2) (No change.)

(3) For new construction projects, whole building aggregate utility data shall be reported for the first three years of occupancy. For rehabilitation projects, the applicant shall provide whole building aggregate utility data for one year prior to commencement of renovation work and for two years post-construction for all common areas and units. \*If whole building aggregate utility data is not available, the applicant must: provide completed NJHMFA New Jersey Green Homes Office Tenant Utility Release Forms and/or evidence that requests for such forms were made from at least 40 percent of tenants occupying the project at the time of the IRS Form 8609 issuance for new construction or at least 25 percent of each unit type for rehabilitation projects; include the tenant utility release form as a part of the lease agreement; for new construction projects, ensure that at least 40 percent of the tenants have active utility release forms (or provide documentation of the efforts to obtain such forms) and report common area utility data for the first three years of occupancy; and for rehabilitation projects, provide utility data for one year prior to commencement of renovation work and for two years post-construction for all common areas and at least 25 percent of each unit type.\* Common area and whole building aggregate utility data shall be uploaded into the ENERGY STAR Portfolio Manager at [www.energystar.gov/benchmark](http://www.energystar.gov/benchmark) pursuant to the procedures outlined in the NJHMFA Energy Benchmarking Technical Manual, available at <https://nj.gov/dca/hmfad/developers/lihtc/greenpoints/>. In order to satisfy the resilience requirements of the Green Guide, the application shall include a Site and Risk Assessment Review Report. Prior to issuance of the IRS Form 8609, the developer/owner shall submit an Emergency Management Plan addressing all site-specific risk hazards per the requirements in the Green Guide.

iii. For new construction projects, residential buildings must be at least 250 feet away from any large warehouse facilities, measured from the façade of the residential building to the nearest \*[property line of]\*

\*"area of warehouse operations" at\* the large warehouse facility. For all projects, if any residential buildings will be within 1,000 feet of a large warehouse facility, measured from the façade of the residential building to the nearest \*[property line of]\* \*"area of warehouse operations" at\* the large warehouse facility, the application must include \*a site plan delineating measured distances and\* a list and descriptions of all measures to be taken to ensure compliance with the Green Guide's Environmental Stressor Performance Standards, available at <https://nj.gov/dca/hmfad/developers/lihtc/greenpoints/>. \*"Area of warehouse operations" encompasses any uses specifically associated with the warehouse use, including, but not limited to, the warehouse building itself, truck parking areas, truck loading areas, driveways used for truck traffic, and other operational uses associated with creating noise, pollution, vibration, odor, or other negative externalities resulting from warehouse activity (for example, waste removal, construction zones, heavy machinery, etc.). The area of warehouse operations does not include stormwater management installations, employee parking areas, and other uses that are not specifically associated with creating noise, pollution, vibration, odor, or other negative externalities resulting from warehouse activity.\*

9.-14. (No change.)

15. All owners and developers shall affirmatively market their projects. For projects of 25 units or more, applicants shall submit an Affirmative Fair Housing Marketing Plan, which, in short, documents how the project will be marketed to those people who are least likely to apply. For instance, if the proposed development is located in an area predominantly populated by white persons, outreach should be directed to non-white persons. Conversely, if the population is predominantly Black persons, outreach should be directed to non-Black persons. Pursuant to N.J.S.A. 52:27D-321.3 et seq., affirmative fair housing marketing plans shall include registering projects on the New Jersey Housing Resource Center (HRC) and posting vacancies, waitlist opportunities, and lottery drawings when accepting applications for such openings. The listings on the HRC shall comply with N.J.S.A. 52:27D-321.6.a for initial marketings and with N.J.S.A. 52:27D-321.6.b and 6.c for all subsequent applications. Additionally, as part of the affirmative marketing requirement, the owner/developer shall notify the local CoC of any units reserved pursuant to N.J.A.C. 5:80-33.15(a)21 for individuals and families who are homeless. At the time the units are placed in service, the owner/developer and rental agent shall certify that the project was affirmatively marketed.

16.-18. (No change.)

19. All projects must adhere to the following minimum design standards:

i. High-speed internet must be provided in all common areas at no charge to tenants and high-speed internet hookup capability must be installed in all units;

ii. All units must have air conditioning. Individual window units may not be used to satisfy this requirement for new construction. For preservation projects, individual window units may be installed only if they are ENERGY STAR-labeled. Packaged terminal heat pumps must be inverter-driven and designed to meet an ambient winter design temperature of 10 degrees Fahrenheit without electric resistance backup; and

iii. All bedrooms must have at least one window with access to natural light. Bedroom window sizes must meet all code requirements. Adaptive reuse projects may be exempted from this requirement only with prior approval from NJHMFA.

20.-21. (No change.)

5:80-33.14 Scoring and ranking

(a) Due to the limited amount of credits and the high volume of applications to NJHMFA, only a fraction of the projects that apply typically receive credits. In addition to meeting the eligibility criteria described at N.J.A.C. 5:80-33.12, applications that fail to satisfy a minimum of 65 percent of the maximum score pursuant to the ranking criteria established at N.J.A.C. 5:80-33.15, 33.16, and 33.17 shall be declared ineligible to obtain a reservation of tax credits. NJHMFA will rank projects according to the score sheet submitted in the project's application. Should an applicant fail to include a completed self-score sheet, the application shall be ranked utilizing a preliminary score as

determined by NJHMFA. NJHMFA shall perform a cursory review of the application and, if the requisite documentation has been submitted, shall assume the maximum score for each of the criteria at N.J.A.C. 5:80-33.13, 33.15, 33.16, 33.17, and this section. Based on this ranking, NJHMFA will then examine the applications of only those projects that rank sufficiently high to receive credits. Once it is determined that an application meets all eligibility requirements, it is admitted into the cycle and underwritten.

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

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

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

1.-5. (No change.)

6. Applications may receive up to a maximum of \*[six]\* \*five\* points for the following:

i. An applicant may select one of the three options below for a maximum of five points based on the percentage interest in the general partner/managing member that is held by a certified M/WBE. The certified M/WBE must earn a percentage of the paid and deferred developer fee at least equal to their percentage of the ownership, must not have a disproportionately larger share of deferred developer fees than their ownership interest, must not be related to or controlled by any other entity with an interest in the general partner/managing member, and must remain part of the ownership entity at least through the 15-year compliance period, with significant roles and responsibilities during development and compliance. The applicant must submit a fully executed agreement between each of the entities, which agreement specifies each of those terms, as well as language granting NJHMFA the right to approve any changes to the ownership entity of the project:

(1) Certified M/WBE has a 100 percent interest in the general partner/managing member — five points;

(2) Certified M/WBE has a 50 percent or greater, but less than 100 percent interest in the general partner/managing member — three points; or

(3) Certified M/WBE has a 20 percent or greater, but less than 50 percent interest in the general partner/managing member — one point.

ii. An applicant may select one of the two options below for a maximum of five points based on the percentage of construction costs pledged to be expended on contractors, subcontractors, and material suppliers that are certified M/WBEs and are not related to or controlled by any entity with an interest in the general partner/managing member:

(1) At least 20 percent of construction costs — five points; or

(2) At least 15 percent, but less than 20 percent, of construction costs — three points.

7. (No change.)

8. NJHMFA awards up to six points for the provision of unit amenities. Two points will be awarded per amenity offered. The costs of the amenities must be shown in the capital and/or operating budgets, as appropriate. Amenities must be appropriate to the proposed tenant population. The list provided below is not all-inclusive. Substitution of amenities is only permitted with prior approval from NJHMFA. It is incumbent upon the applicant to demonstrate how each substitute amenity provides a comparable benefit to the tenants as those amenities listed below.

i. (No change.)

ii. All-electric cooking appliances;

iii.-v. (No change.)

vi. Air filtration of Minimum Efficiency Reporting Value (MERV) 13 or higher on all ventilation systems\*, including through-the-wall units (or, if a system cannot accommodate a MERV 13 filter, the highest possible MERV rating achievable by the system)\*;

vii.-xi. (No change.)

xii. Patios; and

xiii. (No change in text.)

9. NJHMFA awards up to four points for the provision of project amenities. Two points will be awarded per amenity provided. The costs of the amenities must be shown in the capital and/or operating budgets, as appropriate. Amenities must be appropriate to the proposed tenant population. Applicants may select any combination of the following amenities in order to receive the maximum four points. The list provided

below is not all-inclusive. Substitution of amenities is only permitted with prior approval from NJHMFA. It is incumbent upon the applicant to demonstrate how each substitute amenity provides a comparable benefit to the tenants as those amenities listed below.

i.-v. (No change.)

vi. Free parking (at least one parking space per tax-credit unit) and free covered, secured bicycle storage (at least 0.5 bicycle spaces per tax-credit unit for family projects; at least 0.2 bicycle spaces per tax-credit unit for senior projects) for LIHTC tenants. If bicycle storage is provided through storage lockers assigned to individual units, each storage locker shall be not less than 144 cubic feet;

vii. Healthy food delivery program (at least twice per month);

viii. Smoke-free community;

ix. Gym/fitness center; and

x. For TUM projects only, at least one item of extreme heat mitigation infrastructure, such as a green roof, cool pavement, or tree canopy comprising at least 25 percent of project green space.

10.-12. (No change.)

13. Applications may receive up to a maximum of four points for the following:

i. Applicants may select one of the following green building options and receive four points:

(1) Enterprise Green Communities, Mandatory + 40 optional points or higher with future-ready selections;

(2) Leadership in Energy and Environmental Design (LEED), Silver or higher with future-ready selections;

(3) National Green Building Standard (NGBS), Silver or higher with future-ready selections;

(4)-(6) (No change.)

ii. (No change.)

14. Applicants may select any of the following options. A maximum of 12 points shall be available in this category:

i. (No change.)

ii. A project may select one of the options set forth at (a)14ii(1), (2), (3), or (4) below based on the availability of public transportation. If a project earns at least one point for public transportation, it will qualify for up to two additional points if the municipality in which it is fully located has a jobs-to-housing ratio of 1.5 or greater, or will qualify for one additional point if the municipality in which it is fully located has a jobs-to-housing ratio between 0.95 and 1.5. NJHMFA shall rely on the most recent data available from the New Jersey Department of Labor and Workforce Development and the American Community Survey 5-Year Estimates, Table B25001, as of the application deadline, as well as the data for the preceding calendar year. Up to five points for public transportation and/or jobs availability can be received for each application.

(1)-(4) (No change.)

iii. A project shall receive points as set forth at (a)14iii(1), (2), or (3) below based on the school district in which it is fully located, according to the percentage of students that are either meeting expectations (Level 4) or exceeding expectations (Level 5) on the Grade 4 New Jersey Student Learning Assessments (NJSLA) in both Math and English Language Arts (ELA). NJHMFA shall rely on the most recent data available from the New Jersey Department of Education (DOE) as of the application deadline, as well as the data for the preceding calendar year. For example, the data released for 2021 and 2022 by the DOE will be accepted for applications submitted in 2023. If the NJSLA is no longer in use, NJHMFA will substitute whatever assessment is designated as a replacement by the DOE. If a project earns at least one point for NJSLA performance, it will qualify for one additional point if the school district in which it is fully located participates in New Jersey's Interdistrict Public School Choice Program starting no later than Grade 6. Up to three points for school district characteristics can be received for each application.

(1)-(3) (No change.)

iv.-v. (No change.)

15.-19. (No change.)

20. Applicants may select one of the following:

i. Applications with a general partner, voting member, developer, or related party (with at least a 50-percent interest in the general partner/managing member) that has successfully developed and operated

at least two other LIHTC projects (with at least a 50-percent interest in the general partner/managing member of each project) shall receive three points;

ii. Applications with a general partner, voting member, developer, or related party (with at least a 50-percent interest in the general partner/managing member) that has successfully developed and operated at least three other LIHTC projects (with at least a 20-percent interest in the general partner/managing member of each project) and has entered into a management agreement with a property management company that has at least five years of experience monitoring LIHTC projects and a tax credit portfolio of no fewer than 300 units shall receive three points; or

iii. Applications with a general partner, voting member, developer, or related party (with at least a 50-percent interest in the general partner/managing member) that has successfully developed and operated at least one other LIHTC project (with at least a 50-percent interest in the general partner/managing member) and has entered into a management agreement with a property management company that has at least five years of experience monitoring LIHTC projects and a tax credit portfolio of no fewer than 300 units shall receive three points.

21.-25. (No change.)

#### 5:80-33.16 Point system for the Age-Friendly Senior Cycle

(a) (No change.)

(b) The Age-Friendly Senior Cycle also includes the following point categories:

1. (No change.)

2. Applicants may select any of the following options for a maximum of nine points. Within six months of completion of rent-up for the project, the developer/owner shall notify the NJHMFA Division of Multifamily/Supportive Housing and Lending that the services indicated in the application are in place or are being put in place:

i.-ii. (No change.)

iii. Two points shall be awarded to projects that regularly offer a licensed and insured on-site healthcare provider with a private room. NJHMFA policy considers "regularly" to mean that the on-site health professional's services are available at least twice per month, for at least 20 hours total (that is, four five-hour-long sessions held every week or two 10-hour-long sessions held every two weeks), according to a set schedule circulated to residents in advance.

iv.-vi. (No change.)

#### 5:80-33.17 Point system for the Supportive Housing Cycle

(a) (No change.)

(b) The Supportive Housing Cycle also includes the following point categories:

1.-3. (No change.)

4. Applications that evidence rental assistance funding commitments from the HUD McKinney-Vento Programs, the Section 811 Project Rental Assistance program authorized by the Cranston-Gonzalez National Affordable Housing Act, 42 U.S.C. § 8013, as amended by the Frank Melville Supportive Housing Investment Act of 2010, Pub. L. No. 111-374, 124 Stat. 4089, or other government source(s) of project-based or sponsor-based rental assistance for all the special needs units shall be awarded two points.

5.-7. (No change.)

#### 5:80-33.19 Tiebreaker system

(a) The following tiebreaker system shall be used to break ties between projects with the same score:

1. (No change.)

2. If there is still a tie after the first tiebreaker set forth at (a)1 above, a tax credit reservation shall be awarded based on the following:

i. (No change.)

ii. In all other cycles, a tax credit reservation shall be awarded to the project with the least amount of tax credits per tax-credit bedroom. Superintendent units shall not be included for purposes of calculating this tiebreaker.

3. (No change.)

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

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

(c) Should current credit year authority remain and nine percent tax credit awards take place after June 30, NJHMFA shall issue the tax credits from the subsequent tax credit authority year by way of an immediate carryover allocation and executed "Exchange of Credits" document in order to help ensure project completion in a timely manner, maximize the potential for receipt by the State of additional tax credit authority unused by other states, and minimize the risk of the State's loss of tax credit authority to other states. The penalty for an exchange of credits set forth at N.J.A.C. 5:80-33.37(d) will not be imposed for such an exchange.

#### 5:80-33.26 Obtaining IRS Form 8609: deadlines and extension fees

(a) (No change.)

(b) The entire IRS Form 8609 request package, including the allocation/issuance fee described at N.J.A.C. 5:80-33.25 and the audit report, in a form acceptable to NJHMFA, must be submitted to NJHMFA no later than 90 days prior to the owner's tax-filing deadline. A fee of \$1,000 shall be payable to NJHMFA for any project requiring an expedited IRS Form 8609 package review.

(c)-(d) (No change.)

#### 5:80-33.31 Applicant's affirmative obligation to disclose changes

(a) Applicants are under a continuing affirmative obligation to advise NJHMFA no less frequently than annually if any changes to any aspect of the proposed development occur and provide relevant information as it becomes available, including pending/anticipated litigation which may affect the proposed development. NJHMFA shall require the owner to certify and may require further documentation to verify that all representations made in the application concerning the proposed development, including representations relied upon to determine the applicant's eligibility, scoring, and ranking, are, and continue to be, true at the time of carryover allocation and issuance of the IRS Form 8609. Substantive changes, including, but not limited to, a reduction in the project unit count or a change in point category elections, are not permitted once a nine-percent tax credit reservation has been issued and may cause the project's allocation to be reconsidered by NJHMFA. NJHMFA reserves the right to ask for any documentation necessary throughout the application, reservation, carryover, and placed in service processes.

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

#### 5:80-33.32 Compliance monitoring

(a)-(f) (No change.)

(g) As required pursuant to the Housing and Economic Recovery Act of 2008, Pub. L. No. 110-289, owners are required to submit, on an annual basis, data pertaining to the residents of LIHTC-funded units. Such data must contain, but is not limited to, income, rental assistance, disability status, monthly rental payment, race, ethnicity, family composition, and age.

#### 5:80-33.35 Notification of noncompliance

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

(b) (No change.)

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

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

(c) To the extent they constitute "trade secrets" or "proprietary commercial or financial information" within the meaning of the New Jersey Open Public Records Act, N.J.S.A. 47:1A-1 et seq., the following documents are confidential, non-public records:

1. Financing information and syndication documents submitted in compliance with N.J.A.C. 5:80-33.12(c)5. However, an applicant's certification of the extent of Federal, State, and local subsidies shall be a public record;

2.-6. (No change.)

(d)-(e) (No change.)