RULE PROPOSALS

INTERESTED PERSONS

Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until the date indicated in the proposal. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

The required minimum period for comment concerning a proposal is 30 days. A proposing agency may extend the 30-day comment period to accommodate public hearings or to elicit greater public response to a proposed new rule or amendment. Most notices of proposal include a 60-day comment period, in order to qualify the notice for an exception to the rulemaking calendar requirements of N.J.S.A. 52:14B-3. An extended comment deadline will be noted in the heading of a proposal or appear in subsequent notice in the Register.

At the close of the period for comments, the proposing agency may thereafter adopt a proposal, without change, or with changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-6.3. The adoption becomes effective upon publication in the Register of a notice of adoption, unless otherwise indicated in the adoption notice. Promulgation in the New Jersey Register establishes a new or amended rule as an official part of the New Jersey Administrative Code.

COMMUNITY AFFAIRS

(a)

NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

New Jersey Housing and Mortgage Finance Agency Low-Income Housing Tax Credit Qualified Allocation Plan

Proposed Amendments: N.J.A.C. 5:80-33.1 through 33.6, 33.8 through 33.17, 33.19 through 33.34, 33.36, and 33.37

Proposed Repeal and New Rule: N.J.A.C. 5:80-33.7

Proposed Repeal: N.J.A.C. 5:80-33.18

Authorized By: New Jersey Housing and Mortgage Finance Agency, Melanie R. Walter, Executive Director.

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

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2023-032.

A **public hearing** on the notice of proposal will be held on the following date and time at the following location:

Friday, May 19, 2023, at 10:00 A.M.
New Jersey Housing and Mortgage Finance Agency
637 South Clinton Avenue
Trenton, New Jersey 08611

Please call the Division of Multifamily/Supportive Housing and Lending at (609) 278-7629 to be included on the list of speakers.

Submit written comments by June 30, 2023, to:

Jim Peasco, Senior Legal Research Analyst
New Jersey Housing and Mortgage Finance Agency
637 South Clinton Avenue
PO Box 18550
Trenton, New Jersey 08650-2085
Email: jpeasco@njhmfa.gov

The agency proposal follows:

Summary

New Jersey Housing and Mortgage Finance Agency (Agency) is the administrator of the Low-Income Housing Tax Credit (LIHTC) program for the State of New Jersey (State). The LIHTC program, which is governed by Section 42 of the Internal Revenue Code of 1986 (Code), 26 U.S.C. § 42, establishes a low-income housing tax credit that may be applied against the Federal income tax of persons or entities that have invested in buildings that provide housing for low- and/or moderate-income individuals or families.

As mandated by Section 42(m)(1)(B) of the Code, each state housing credit agency must create a qualified allocation plan (QAP) that sets forth the selection criteria utilized to allocate tax credits to eligible applicants. This plan must be approved by the governmental unit of which such agency is a part. N.J.A.C. 5:80-33 constitutes the QAP for the State.

The Agency continually reviews the selection criteria and, from time to time, finds that amendments to the rules are necessary or beneficial to ensure consistency with Federal requirements and State housing policy. The Agency proposes to amend the QAP as follows:

General

Throughout the QAP, the Agency proposes technical amendments to correct capitalization, improve punctuation and sentence structure, include hyphenation, delete archaic text, correct codification numbering, and refer to the Agency consistently as "NJHMFA." Unless these proposed technical amendments will impact the content of the QAP, they are pointed out only generally in the summary of proposed amendments provided below and are referenced generically as amendments "to improve syntax."

N.J.A.C. 5:80-33.1 Introduction

The Agency proposes amendments at N.J.A.C. 5:80-33.1(b) to delete cross-references to N.J.A.C. 5:80-33.7, Final Cycle, and 33.18, Point system for the Final Cycle, to reflect that the Final Cycle is proposed to be repealed because of lack of use and section 18 of the QAP is proposed to be repealed.

The Agency proposes amendments at N.J.A.C. 5:80-33.1(a), (c), (d), (f), and (g) to improve syntax.

N.J.A.C. 5:80-33.2 Definitions

The Agency proposes to amend the definition of "at risk of losing its affordability controls" to clarify that the deed restriction five-year expiration date runs from the tax credit date of allocation, to reflect that N.J.A.C. 5:80-33.7(a)2, which is a provision of the existing Final Cycle, is proposed to be repealed, and to improve syntax.

The Agency proposes to amend the definitions of "at risk of losing its level of affordability," and "average income set-aside" to improve syntax.

The Agency proposes to add a definition of "certified Minority and/or Women Business Enterprise" or "certified M/WBE." The Agency believes it is preferable to define these terms in the definition section rather than in the text of the QAP, as is currently the case.

The Agency proposes to amend the definition of "common area" to reflect current Agency multifamily guidelines and building standards with respect to elements of a property.

The Agency proposes to add a definition of "community benefits agreement" to specify the requirements of such an agreement as may be entered into between a developer and a municipality to provide amenities to residents of a particular census tract(s).

The Agency proposes to delete the definition of "community service facility" because the term does not appear elsewhere in the QAP.

The Agency proposes to amend the definition of “complete application” to improve syntax and to clarify that such an application must meet all threshold eligibility requirements of the QAP.

The Agency proposes to add a definition of “Continuum of care” or “CoC” to define the term as used in the QAP as referring to one of the 16 specified local planning bodies.

The Agency proposes to amend the definitions of “core operating expenses,” “density bonus,” and “developer fee” or “development fee” to improve syntax and, with respect to the latter definition, to correct codification (numbering).

The Agency proposes to amend the definition of “Highlands Redevelopment Area” to more accurately reference a “brownfield” and a “grayfield.”

The Agency proposes to amend the definition of “historic building(s)” to improve syntax.

The Agency proposes to add a definition of “Homeless Management Information System” or “HMIS” to define that system used in the State to record and analyze client, service, and housing data for individuals and families who are homeless or at a risk of homelessness.

The Agency proposes to amend the definition of “individuals and families who are homeless” to improve syntax and to clarify that having no place to live upon release from any of the designated institutions is a requirement to be considered homeless.

The Agency proposes to amend the definition of “individuals with special needs” to clarify that veterans who are disabled or homeless, not just those who are disabled and homeless, meet the definition.

The Agency proposes to amend the definitions of “large family unit” and “LIHTC project” to improve syntax.

The Agency proposes to delete the definition of “Main Street Designated District” because the term does not appear elsewhere in the QAP.

The Agency proposes to amend the definition of “minimum rehab project” to increase the per-unit cap on construction costs that can be incurred in meeting the definition from $25,000 to $30,000 and to delete references to the Final Cycle, which is proposed to be repealed.

The Agency proposes to amend the definition of “Municipal Revitalization Index” or “MRI” to update the metrics of the MRI to account for recent changes.

The Agency proposes to add a definition of “Passive House” to define the term as used in the QAP with respect to energy-efficient projects.

The Agency proposes to amend the definition of “ready to grow area” to incorporate the defined term “redevelopment project” in place of the existing textual explanation of that term.

The Agency proposes to amend the definition of “redevelopment project” to eliminate the requirement that in non-smart-growth areas, the majority of the property be or have previously been covered by structures, and to improve syntax.

The Agency proposes to amend the definitions of “rehabilitation” or “rehab,” “related party,” “retention factor,” and “scattered site project” to improve syntax.

The Agency proposes to amend the definition of “senior project” to reflect that the Senior Cycle is proposed to be renamed the Age-Friendly Senior Cycle and to improve syntax.

The Agency proposes to amend the definition of “smart growth areas” to provide an updated address for the site evaluator website.

The Agency proposes to amend the definition of “social service coordinator” to improve syntax.

The Agency proposes to amend the definition of “social services plan” to include supportive housing units within family and senior projects as being subject to the requirement of a social services plan, and to improve syntax.

The Agency proposes to amend the definitions of “sponsor certification,” “start construction,” and “substantially incomplete” to improve syntax.

The Agency proposes to add a definition of “successfully developed and operated” to precisely define the term as used in the QAP in relation to certain tax credit projects.

The Agency proposes to delete the definition of “supplemental award” because all references to the term are proposed to be deleted in the rulemaking.

The Agency proposes to amend the definitions of “supportive housing marketing plan,” “supportive housing project,” and “supportive housing unit” to improve syntax.

The Agency proposes to amend the definition of “Targeted Urban Municipalities” or “TUMs” to update the factors and methodology by which such municipalities are designated to accord with current metrics.

The Agency proposes to amend the definition of “transit-oriented development” or “TOD” to improve syntax.

The Agency proposes to amend the definition of “transit village” to capitalize the term, to provide an updated website address, and to improve syntax.

The Agency proposes to amend the definition of “uncorrected noncompliance” to improve syntax and to clarify that certain terms are expressed in the disjunctive, rather than the conjunctive.

N.J.A.C. 5:80-33.3 Application Cycles

The Agency proposes amendments at N.J.A.C. 5:80-33.3, Application cycles, to improve syntax, to update the NJHMFA website address, and to substitute an approximate 120-day timespan within which NJHMFA will announce reservations for the existing 90-day timespan. The latter amendment will provide the Agency with needed additional time to analyze applications and determine awardees. The Agency also proposes to delete the parenthetical “(or the next business day if the 90th day is a weekend or holiday)” because it is deemed superfluous given that the proposed 120-day timeframe is expressly termed an approximation.

N.J.A.C. 5:80-33.4 Family Cycle

1. The Agency proposes amendments to the Family Cycle at N.J.A.C. 5:80-33.4(a) to improve syntax and to acknowledge that the heading of the Senior Cycle is proposed to be changed to the Age-Friendly Senior Cycle to accurately reflect industry terminology and updated references in later sections of the QAP. The Agency also proposes amendments at N.J.A.C. 5:80-33.4(a) to increase both the maximum annual allocation of credits per development and total development cost limits to reflect cost increases in the building industry. It is, thus, proposed to increase the maximum per-development annual allocation of credits from $1,750,000 to $2,000,000 and to increase total development cost limits by 15.5 percent, from $275,000 to $317,625 per unit for buildings of one to four residential stories; from $300,000 to $346,500 per unit for buildings with five or six residential stories; and from $325,000 to $375,375 per unit for buildings with over six residential stories. Additionally, it is proposed to decrease the maximum allowable cost for an integrated community center or social service space from $400,000 to $300,000, but to allow up to $10,000 per unit, with a maximum total cost of $800,000, for a stand-alone community or social service building. Also, the Agency proposes to provide exemptions to the maximum per-unit development costs in the amounts of $15,000 for adaptive reuse projects and $7,500 for projects that meet the Passive House standard. For adaptive reuse projects, it is proposed that the Agency will perform a site inspection to assess the amenability of converting to multifamily housing and that the development, design, and construction teams must demonstrate successful experience with the established methodologies necessary to produce an adaptive reuse project. As minimum rehabilitation projects are not eligible to compete in the Family Cycle, the Agency proposes to eliminate the exemption currently provided to such projects from the bedroom distribution requirements at N.J.A.C. 5:80-33.4(a), as being unnecessary.

2. The Agency proposes amendments to the mixed-income set-aside of the Family Cycle at N.J.A.C. 5:80-33.4(a)1 to increase the maximum per-development annual allocation of credits from $1,750,000 to $2,000,000; to require that eligible projects attain the maximum points available at N.J.A.C. 5:80-33.15(a)1i for extended affordability; and to clarify the cross-reference to the tiebreaker at N.J.A.C. 5:80-33.19(a)1 because the tiebreaker is proposed to be amended.

3. The Agency proposes amendments to the preservation set-aside of the Family Cycle at N.J.A.C. 5:80-33.4(a)2 to include a second preservation set-aside project to receive a reservation of credits from the Family Cycle and to increase the maximum per-development annual allocation of credits from $1,250,000 to $1,400,000.

4. The Agency proposes amendments at N.J.A.C. 5:80-33.4(b) to expand the provisions under which projects that receive negative points will be ineligible to compete in any set-aside of the Family Cycle to

include N.J.A.C. 5:80-33.15(a)19 (relating to prior discriminatory practices) and 20 (relating to practices intended to terminate extended low-income housing commitments).

5. The Agency proposes amendments at N.J.A.C. 5:80-33.4(c) to improve syntax; to provide the correct name of the U.S. Census Bureau; to acknowledge that the heading of the Senior Cycle is proposed to be changed to the Age-Friendly Senior Cycle; to delete a reference to the Final Cycle, which is proposed to be eliminated; and to delete the last sentence, which provides that projects that received an award of credits in a previous year not be included in the calculation of the municipal equitable distribution provision as set forth in the subsection.

6. The Agency proposes to delete and replace N.J.A.C. 5:80-33.4(d) to provide that during the time the Agency is accepting applications to award Affordable Housing Production Fund (AHPF) monies pursuant to P.L. 2022, c. 49 or until December 31, 2025, whichever comes sooner, approximately 60 percent of the credits available in the Family Cycle will be awarded to projects in TUMS, with the Agency seeking to maintain a lower constraint of 50 percent of the credits. The remaining credits in the Cycle will be awarded to projects in non-TUM areas, provided a sufficient number of eligible applications are received from those areas. As those approximate percentages cannot always be achieved, given the amounts of certain tax credit awards, the Agency proposes to retain discretion to allocate awards to projects in TUMs and non-TUM areas to best attain that stated objective.

7. The Agency proposes to add new N.J.A.C. 5:80-33.4(e) to express the Agency's general intent (as currently provided at N.J.A.C. 5:80-33.4(d)) that, following the time period during which the Agency accepts applications to award funds appropriated to the AHPF or December 31, 2025, whichever comes sooner, approximately 40 percent of the credits available in the Family Cycle will be awarded to projects in TUMS, seeking to maintain a lower constraint of 35 percent of the credits. The remaining credits in the Cycle will be awarded to projects in non-TUM areas, provided a sufficient number of eligible applications are received from those areas. Again, because those approximate percentages cannot always be achieved, given the amounts of certain tax credit awards, the Agency proposes to retain discretion to allocate awards to projects in TUMs and non-TUM areas to best attain that stated objective.

<u>N.J.A.C. 5:80-33.5 Age-Friendly Senior Cycle</u>

1. The Agency proposes to amend the heading at N.J.A.C. 5:80-33.5 from Senior Cycle to Age-Friendly Senior Cycle to more accurately reflect industry terminology and updated references to the Cycle in the QAP.

2. The Agency proposes amendments to the Senior Cycle at N.J.A.C. 5:80-33.5(a) to acknowledge the proposed change of the name of the Cycle to the Age-Friendly Senior Cycle. The Agency also proposes amendments at N.J.A.C. 5:80-33.5(a) to increase the maximum per-development annual allocation of credits from $1,400,000 to $1,600,000 and to increase total development cost limits by 15.5 percent to reflect cost increases in the building industry. It is, thus, proposed to increase total development cost limits from $275,000 to $317,625 per unit for buildings of one to four residential stories; from $300,000 to $346,500 per unit for buildings with five or six residential stories; and from $325,000 to $375,375 per unit for buildings with over six residential stories. Additionally, it is proposed to decrease the maximum allowable cost for an integrated community center or social service space from $400,000 to $300,000, but to allow up to $10,000 per unit, with a maximum total cost of $800,000, for a stand-alone community or social service building. Also, the Agency proposes to provide exemptions to the maximum per-unit development costs in the amounts of $15,000 for adaptive reuse projects and $7,500 for projects that meet the Passive House standard. For adaptive reuse projects, it is proposed that the Agency will perform a site inspection to assess the amenability of converting to multifamily housing and that the development, design, and construction teams must demonstrate successful experience with the established methodologies necessary to produce an adaptive reuse project. Further, the Agency proposes an amendment to increase the maximum per-development annual allocation of credits from $1,000,000 to $1,200,000 in the preservation set-aside. Additionally, the Agency proposes amendments to improve syntax.

3. The Agency proposes amendments at N.J.A.C. 5:80-33.5(b) to expand the provisions under which projects that receive negative points will be ineligible to compete in any set-aside of the Age-Friendly Senior Cycle to include N.J.A.C. 5:80-33.15(a)19 (relating to prior discriminatory practices) and 33.15(a)20 (relating to practices intended to terminate extended low-income housing commitments).

4. The Agency proposes amendments at N.J.A.C. 5:80-33.5(c) to improve syntax; to provide the correct name of the U.S. Census Bureau; to acknowledge that the heading of the Senior Cycle is proposed to be changed to the Age-Friendly Senior Cycle; to delete a reference to the Final Cycle, which is proposed to be eliminated; and to delete the last sentence, which provides that projects that received an award of credits in a previous year not be included in the calculation of the municipal equitable distribution provision as set forth in the subsection.

5. The Agency proposes to rewrite N.J.A.C. 5:80-33.5(d) to provide that during the time the Agency is accepting applications to award AHPF monies or until December 31, 2025, whichever comes sooner, approximately 60 percent of the credits available in the Age-Friendly Senior Cycle will be awarded to projects in TUMS, with the Agency seeking to maintain a lower constraint of 50 percent of the credits. The remaining credits in the Cycle will be awarded to projects in non-TUM areas, provided a sufficient number of eligible applications are received from those areas. As those approximate percentages cannot always be achieved given the amounts of certain tax credit awards, the Agency proposes to retain discretion to allocate awards to projects in TUMs and non-TUM areas to best attain that stated objective.

6. The Agency proposes to add new N.J.A.C. 5:80-33.5(e) to express the Agency's general intent (as currently provided at N.J.A.C. 5:80-33.5(d)) that, following the time period during which the Agency accepts applications to award funds appropriated to the AHPF or December 31, 2025, whichever comes sooner, approximately 40 percent of the credits available in the Age-Friendly Senior Cycle will be awarded to projects in TUMs, seeking to maintain a lower constraint of 35 percent of the credits. The remaining credits in the Cycle will be awarded to projects in non-TUM areas, provided a sufficient number of eligible applications are received from those areas. Again, however, because those approximate percentages cannot always be reached given the amounts of certain tax credit awards, the Agency proposes to retain discretion to allocate awards to projects in TUMs and non-TUM areas to best attain that stated objective.

<u>N.J.A.C. 5:80-33.6 Supportive Housing Cycle</u>

1. The Agency proposes amendments to the Supportive Housing Cycle at N.J.A.C. 5:80-33.6(a) to express that units that receive Money Follows the Person (MFP) funds or Section 811 funds cannot be included as part of the minimum 25.00 percent requirement for eligibility to the Cycle. Additionally, the Agency proposes to amend N.J.A.C. 5:80-33.6(a) to correct an omission and express that an agreement between the proposed owner entity and the social service provider must be included with the application, but to eliminate the requirement that the social services plan be approved by the Agency. Amendments are also proposed to improve syntax and to recognize that the heading of the Senior Cycle is proposed to be changed to the Age-Friendly Senior Cycle. The Agency proposes additional amendments at N.J.A.C. 5:80-33.6(a) to increase the maximum per-development annual allocation of credits from $1,400,000 to $1,600,000 and to increase total development cost limits by 15.5 percent to reflect cost increases in the building industry. It is, thus, proposed to increase total development cost limits from $275,000 to $317,625 per unit for buildings of one to four residential stories; from $300,000 to $346,500 per unit for buildings with five or six residential stories; and from $325,000 to $375,375 per unit for buildings with over six residential stories. It is further proposed to decrease the maximum allowable cost for an integrated community center or social service space from $400,000 to $300,000, but to allow up to $10,000 per unit, with a maximum total cost of $800,000, for a stand-alone community or social service building. Also, the Agency proposes to provide exemptions to the maximum per-unit development costs in the amounts of $15,000 for adaptive reuse projects and $7,500 for projects that meet the Passive House standard. For adaptive reuse projects, it is proposed that the Agency will perform a site inspection to assess the amenability of converting to multifamily housing and that

the development, design, and construction teams must demonstrate successful experience with the established methodologies necessary to produce an adaptive reuse project.

2. N.J.A.C. 5:80-33.6 has incorrect codification, in that there are two subsection (b)s. The Agency proposes to delete the second N.J.A.C. 5:80-33.6(b), which incorrectly appears in the Administrative Code. The first N.J.A.C. 5:80-33.6(b) that appears in the Administrative Code, which contains a third sentence that was added in 2019, see 51 N.J.R. 833(a), 844, is the correct version and no changes are proposed thereto.

3. The Agency proposes amendments at N.J.A.C. 5:80-33.6(c) to expand the provisions under which projects that receive negative points will be ineligible to compete in a set-aside of the Supportive Housing Cycle to include N.J.A.C. 5:80-33.15(a)19 (relating to prior discriminatory practices) and 20 (relating to practices intended to terminate extended low-income housing commitments).

4. The Agency proposes to delete and replace N.J.A.C. 5:80-33.6(d) to provide that, during the time period the Agency is accepting applications to award AHPF monies or until December 31, 2025, whichever comes sooner, approximately 60 percent of the credits available in the Supportive Housing Cycle will be awarded to projects in TUMs, with the Agency seeking to maintain a lower constraint of 50 percent of the credits. The remaining credits in the Cycle will be awarded to projects in non-TUM areas, provided a sufficient number of eligible applications are received from those areas. As those approximate percentages cannot always be achieved given the amounts of certain tax credit awards, the Agency proposes to retain discretion to allocate awards to projects in TUMs and non-TUM areas to best attain that stated objective.

5. The Agency proposes to add new N.J.A.C. 5:80-33.6(e) to express the Agency's general intent (as currently provided at N.J.A.C. 5:80-33.6(d)) that, following the time period during which the Agency accepts applications to award funds appropriated to the AHPF or December 31, 2025, whichever comes sooner, approximately 40 percent of the credits available in the Supportive Housing Cycle will be awarded to projects in TUMs, seeking to maintain a lower constraint of 35 percent of the credits. The remaining credits in the Cycle will be awarded to projects in non-TUM areas, provided a sufficient number of eligible applications are received from those areas. Again, however, because those approximate percentages cannot always be achieved given the amounts of certain tax credit awards, the Agency proposes to retain discretion to allocate awards to projects in TUMs and non-TUM areas to best attain that stated objective.

N.J.A.C. 5:80-33.7 Final Cycle

Due to of lack of use in prior years, the Agency proposes to repeal the Final Cycle at N.J.A.C. 5:80-33.7, and to replace it with a section headed "Federal nonprofit set aside," and to reword the one remaining provision to state that "[n]ot less than 10 percent of the credit ceiling shall be awarded to qualified nonprofit organizations in accordance with the Federal nonprofit requirement, as stated at 26 U.S.C. § 42(h)(5)(A)."

N.J.A.C. 5:80-33.8 Reserve

1. The Agency proposes to amend the heading at N.J.A.C. 5:80-33.8 from "Reserve" to "Awards from the Reserve."

2. The Agency proposes amendments at N.J.A.C. 5:80-33.8(a) to clarify that the Reserve may be used to fund unanticipated cost overruns beyond the developer's control where a project's financial feasibility is jeopardized, not as a source of "supplemental awards" as currently expressed; to acknowledge that the heading of the Senior Cycle is proposed to be changed to the Age-Friendly Senior Cycle; and to delete a cross-reference to the Final Cycle; which is proposed to be eliminated.

3. The Agency proposes to delete existing N.J.A.C. 5:80-33.8(a)1 to eliminate "supplemental awards," as expressed therein, as a basis of awards from the Reserve.

4. The Agency proposes to amend recodified N.J.A.C. 5:80-33.8(a)1 to increase the limit of awards from the Reserve from $100,000 to $150,000 per project and to increase total development cost limits by 15.5 percent to reflect cost increases in the building industry. It is, thus, proposed to increase total development cost limits from $275,000 to $317,625 per unit for buildings of one to four residential stories; from $300,000 to $346,500 per unit for buildings with five or six residential stories; and from $325,000 to $375,375 per unit for buildings with over six residential stories. Additionally, it is proposed to decrease the maximum allowable cost for an integrated community center or social service space from $400,000 to $300,000, but to allow up to $10,000 per unit, with a maximum total cost of $800,000, for a stand-alone community or social service building. Also, the Agency proposes to provide exemptions to the maximum per-unit development costs in the amounts of $15,000 for adaptive reuse projects and $7,500 for projects that meet the Passive House standard. Amendments are further proposed to improve syntax and to extend the deadline for accepting hardship applications to the Reserve from May 15 until September 30.

5. The Agency proposes to amend recodified N.J.A.C. 5:80-33.8(a)2 to replace the existing target of 40 percent of credits in the Reserve being set aside for family projects within TUMs with an allowance of up to two family projects within TUMs with a 55-percent affordability component ceiling; to eliminate the $30,000 per-unit cap on Mixed-Income Reserve projects; and to amend the cross-reference to the tiebreaker system, to which multiple eligible projects may be deemed subject.

6. The Agency proposes to add new N.J.A.C. 5:80-33.8(a)3 to provide that during the time period the Agency is accepting applications to award AHPF monies or until December 31, 2025, whichever comes sooner, 60 percent of the credits will be set aside for eligible family projects within a TUM with up to a 55-percent affordability component.

7. The Agency proposes to amend N.J.A.C. 5:80-33.8(a)4 to improve syntax and to reflect that it is proposed to rename the Senior Cycle as the Age-Friendly Senior Cycle.

N.J.A.C. 5:80-33.9 Volume Cap Credits

1. The Agency proposes to amend N.J.A.C. 5:80-33.9(a) to clarify the period of restriction and to require family projects requesting credits entirely from volume cap to comply with the stated distribution of units by bedroom count.

2. The Agency proposes to amend N.J.A.C. 5:80-33.9(a)4 to expand the provisions under which projects that receive negative points will be prohibited from receiving tax credits until corrections are made to include N.J.A.C. 5:80-33.15(a)19 (relating to prior discriminatory practices) and 20 (relating to practices intended to terminate extended low-income housing commitments).

3. The Agency proposes to amend N.J.A.C. 5:80-33.9(b) to clarify that affordable projects linked to a market-rate or commercial component are among the categories of projects that are subject to the density bonus provisions of the subsection, and to improve syntax.

4. The Agency proposes to amend N.J.A.C. 5:80-33.9(b)1 and 2 to improve syntax and to identify the Agency as NJHMFA.

5. The Agency proposes to amend N.J.A.C. 5:80-33.9(b)3 to improve syntax; to provide a presumption of mixed-income project feasibility for a failure to respond to Agency requests for additional information supporting the alleged circumstances set forth at N.J.A.C. 5:80-33.9(b)2i, ii, or iii relating to density bonus analysis; and to mandate that alternate sources of funding be considered by an applicant in its analysis as to the existence of any of those circumstances.

6. The Agency proposes to amend N.J.A.C. 5:80-33.9(b)4, 4x, and 4xi to identify the Agency as NJHMFA.

N.J.A.C. 5:80-33.10 Application Fee Schedule

1. The Agency proposes to amend N.J.A.C. 5:80-33.10(a)1 to increase the application fee for projects applying to the Family, Age-Friendly Senior, and Supportive Housing Cycles, to the Mixed-Income Reserve, and for volume cap tax credits from $4,000 to $5,000; to delete a reference to the Final Cycle, which is proposed to be eliminated; and to reflect that the heading of the Senior Cycle is proposed to be changed to the Age-Friendly Senior Cycle.

2. The Agency proposes to amend N.J.A.C. 5:80-33.10(a)2 to increase the reapplication fee for projects requesting credits from the Hardship Reserve from $100.00 to $1,000 and to delete the remaining text relating to projects wishing to reapply for credits in the Final Cycle, which is proposed to be eliminated, and projects that are essentially new projects.

N.J.A.C. 5:80-33.11 Cycle Deadlines

1. The Agency proposes to amend N.J.A.C. 5:80-33.11(a) and (d) to improve syntax.

2. The Agency proposes to amend N.J.A.C. 5:80-33.11(f) to expand the provisions under which a negative inference will be drawn for a failure to respond to an item in a cure letter to include N.J.A.C. 5:80-33.15(a)19 (relating to prior discriminatory practices) and 20 (relating to practices intended to terminate extended low-income housing commitments).

N.J.A.C. 5:80-33.12 Application to a Cycle/Eligibility Requirements

1. The Agency proposes to amend N.J.A.C. 5:80-33.12(a) to improve syntax, to clarify that affordable projects linked to a market-rate or commercial component are among the categories of projects that are subject to the density bonus provisions of the subsection, and to identify the Agency as NJHMFA.

2. The Agency proposes to amend N.J.A.C. 5:80-33.12(c)1i to improve syntax.

3. The Agency proposes to amend N.J.A.C. 5:80-33.12(c)1ii to improve syntax and to account for proposed amendments that would limit applications for additional credits to the Reserve, not to the competitive cycles.

4. The Agency proposes to amend N.J.A.C. 5:80-33.12(c)1ii(1) to improve syntax

5. The Agency proposes to amend N.J.A.C. 5:80-33.12(c)1ii(2) to require that the market study mandated at N.J.A.C. 5:80-33.12(c)1ii include a calculation of annual utility costs for each utility type and for each unit type within the project in order to preclude applicants from submitting estimates of utility costs as a combined amount. This proposed amendment is expected to result in increased accuracy in the estimate of utility costs.

6. The Agency proposes to amend N.J.A.C. 5:80-33.12(c)1ii(3) to improve syntax.

7. The Agency proposes to amend N.J.A.C. 5:80-33.12(c)1ii(4)(D) to delete the superfluous phrase “contractions in their workforces.”

8. The Agency proposes to amend N.J.A.C. 5:80-33.12(c)1ii(5) to strengthen the requirement that the demographic analysis portion of the market study include an analysis of both owner and renter households and to add language requiring that it include analyses by race and by ethnicity. Amendments are also proposed to improve syntax and to reflect that the Senior Cycle is proposed to be renamed the Age-Friendly Senior Cycle.

9. The Agency proposes to amend N.J.A.C. 5:80-33.12(c)1ii(6) and (7) to improve syntax.

10. The Agency proposes to amend N.J.A.C. 5:80-33.12(c)1ii(10)(A), (B), (C), and (D) to substitute gender-neutral pronouns and, at sub-sub-subparagraph (c)1ii(10)(D), to update the website address referenced therein and to correct an inaccurate reference to “Market Content Standards,” which should be “Model Content Standards.”

11. The Agency proposes to amend N.J.A.C. 5:80-33.12(c)1ii(11) to substitute “email” transmission for “facsimile” transmission as the written means by which an NJHMFA-contracted reviewer will notify the market study preparer of significant missing or unclear components of the market study.

12. The Agency proposes to amend N.J.A.C. 5:80-33.12(c)1iii(1) to improve syntax.

13. The Agency proposes to amend N.J.A.C. 5:80-33.12(c)2i to clarify that fee simple title of property must be shown in the application by a deed and that site control by way of lease must be shown by a long-term ground lease or option to enter into a ground lease for the minimum term of the compliance and extended use periods. Additional amendments are proposed to clarify the documents required to demonstrate site control and to more accurately reference N.J.S.A. 20:3-2, where the term “condemnor” is defined.

14. The Agency proposes to amend N.J.A.C. 5:80-33.12(c)2ii to improve syntax and to mandate that if multiple documents are necessary to demonstrate site control, all such documents, showing that there is no lapse in the chain of title, must be provided in the application.

15. The Agency proposes to amend N.J.A.C. 5:80-33.12(c)3 to improve syntax.

16. The Agency proposes to amend N.J.A.C. 5:80-33.12(c)4 to improve syntax, to provide the full name of the American Society for Testing and Materials (ASTM), and to update the standards for a Phase 1 environmental study to incorporate the most recent standards of ASTM.

17. The Agency proposes to amend N.J.A.C. 5:80-33.12(c)5 to improve syntax.

18. The Agency proposes to amend N.J.A.C. 5:80-33.12(c)6 to clarify that only Agency financing that is sought as part of an applicant’s financing scheme need not be committed at the time of submission of the application. Rather, in lieu of a commitment for Agency financing, the Agency may issue a preliminary approval letter if the application for Agency financing conforms with its guidelines. A website address to those guidelines is provided in the proposed amendments.

19. The Agency proposes to amend N.J.A.C. 5:80-33.12(c)6i to improve syntax.

20. The Agency proposes to amend N.J.A.C. 5:80-33.12(c)6ii to update the name of the Balanced Housing program administered by the Department of Community Affairs (DCA) to Affordable Housing Trust Fund (AHTF) and to reflect that Home Express funding is no longer available.

21. The Agency proposes to amend N.J.A.C. 5:80-33.12(c)6iii to replace the word “partnership” with the phrase “final ownership entity” to acknowledge that ownership entities may be other than partnerships.

22. The Agency proposes to amend N.J.A.C. 5:80-33.12(c)6iv, v, vi, and vii to improve syntax and to further amend N.J.A.C. 5:80-33.12(c)6v to provide that, other than for financing from the Federal Home Loan Bank Affordable Housing Program or New Jersey Economic Development Authority, all owner/equity loans greater than $1,000,000 will be considered a permanent funding source that cannot subsequently be replaced by another source. The Agency also proposes amendments at N.J.A.C. 5:80-33.12(c)6v to update references to Balanced Housing resources with AHTF resources.

23. The Agency proposes to delete N.J.A.C. 5:80-33.12(c)6ix, as regional contribution agreements are no longer allowed. The Agency correspondingly proposes to recodify N.J.A.C. 5:80-33.12(c)6x as (c)6ix.

24. The Agency proposes new N.J.A.C. 5:80-33.12(c)6x to describe the process for projects applying for funding from the New Jersey Economic Development Authority (NJEDA) and for four-percent or nine-percent low-income housing tax credits.

25. The Agency proposes to amend N.J.A.C. 5:80-33.12(c)7i to improve syntax and to add a sentence to express that in determining project feasibility, supportive housing units that do not receive project-based rental assistance will be underwritten with rents that are affordable to tenants with incomes at or below 20 percent of the area median income adjusted for family size.

26. The Agency proposes to amend N.J.A.C. 5:80-33.12(c)7ii(1), (3), and (4), iii, and v to improve syntax and, at subparagraph (c)7iii, to reflect a change in the name of an NJHMFA division.

27. The Agency proposes to amend N.J.A.C. 5:80-33.12(c)8 to update clean energy requirements that must be met by applicants in order to comply with the most recent New Jersey standards as set forth in the Guide to QAP Green Requirements (Green Guide) and in the Agency Energy Benchmarking Initiative, and to provide links to access the Green Guide and the Energy Benchmarking Initiative.

28. The Agency proposes to amend N.J.A.C. 5:80-33.12(c)8i to mandate that applicants comply with the requirements of the Green Guide and to improve syntax.

29. The Agency proposes to amend N.J.A.C. 5:80-33.12(c)8ii to improve syntax and to update the website address provided therein.

30. The Agency proposes to amend N.J.A.C. 5:80-33.12(c)8ii(3) to improve syntax and to reflect a reduction in the percentage of tenants from whom Tenant Utility Release Forms must be requested from 50 to 40 percent for new construction projects and from 30 to 25 percent for rehabilitation projects. Also, for new construction projects, an amendment is proposed to reflect a reduction from 50 to 40 percent of the tenants required to have active utility release forms or from whom efforts were made to obtain such forms. Additionally, for rehabilitation projects, an amendment is proposed to reduce from 30 to 25 percent of each unit type the utility data required to be provided. Further, amendments are proposed to provide the current website for the ENERGY STAR Portfolio Manager and to provide a site at which to access the NJHMFA Energy Benchmarking Technical Manual. Finally, amendments are proposed to mandate that applications include a Site and Risk Assessment Review Report in order to meet the resilience requirements of the Green Guide

and, prior to issuance of the IRS Form 8609, developers/owners submit an Emergency Management Plan that meets the requirements of the Green Guide.

31. The Agency proposes to amend N.J.A.C. 5:80-33.12(c)9 to update the Agency's applicable contact information.

32. The Agency proposes to amend N.J.A.C. 5:80-33.12(c)10 to clarify the means of calculating acquisition value with respect to acquisition credits; to improve syntax; and to eliminate the $7,500 per unit threshold relative to the Agency's right to require a capital needs assessment for projects seeking acquisition credits.

33. The Agency proposes to amend N.J.A.C. 5:80-33.12(c)14ii and iii to improve syntax.

34. The Agency proposes to amend N.J.A.C. 5:80-33.12(c)15 to require, rather than (as at the existing rule) encourage, the affirmative marketing of all LIHTC projects, to improve syntax, and to properly reference racial groups. Additionally, the Agency proposes amendments to mandate that affirmative marketing plans include registration and the posting of relevant information relating to project vacancies on the New Jersey Housing Resource Center (HRC) and notification to the local CoC of any units reserved pursuant to N.J.A.C. 5:80-33.15(a)22 for individuals and families that are homeless.

35. The Agency proposes to amend N.J.A.C. 5:80-33.12(c)16 and (c)16i, iii, and iv to include projects with Choice Neighborhoods Implementation Grant funding among the projects subject to the submittal requirements set forth at paragraph (c)16.

36. Existing N.J.A.C. 5:80-33.12(c)17 provides that non-preservation projects in census tracts where 30 percent or more of the existing housing units are LIHTC units are not eligible for tax credit funding unless certain criteria are met. The Agency proposes to amend N.J.A.C. 5:80-33.12(c)17 to improve syntax and, at subparagraph (c)17ii, to allow eligibility for funding even if more low-income units are sited in the census tract, provided the developer enters into a binding community benefits agreement with the subject municipality to invest resources into the impacted census tract.

37. The Agency proposes new N.J.A.C. 5:80-33.12(c)19 to require that high-speed internet service be provided in all project common areas at no charge to tenants and that high-speed internet hookup capability be installed in all units.

38. The Agency proposes new N.J.A.C. 5:80-33.12(c)20 to establish that, by submitting an application for LIHTCs, an applicant waives the right to request termination of the extended-use period through the qualified contract (QC) process that is provided for in the Code.

39. The Agency proposes new N.J.A.C. 5:80-33.12(c)21 to, among other things, codify the right of first refusal (ROFR) authorized by Section 42(i)(7) of the Code, which allows a qualified nonprofit organization the first opportunity to acquire an LIHTC project upon the termination of the affordability compliance period. The proposed new paragraph would otherwise preclude and/or disincentivize efforts to bring about the early termination of affordability controls on LIHTC units.

<u>N.J.A.C. 5:80-33.13 Application for Additional Credits</u>

1. The Agency proposes to amend N.J.A.C. 5:80-33.13(a) to express that applicants may apply for additional tax credits only through a hardship request from the Reserve and to eliminate the option to apply for such credits pursuant to one of the competitive cycles.

2. The Agency proposes to amend the first sentence at N.J.A.C. 5:80-33.13(a)1 to increase the amount for which requests can be applied from $100,000 to $150,000 and to improve syntax.

3. The Agency proposes to recodify the second sentence at N.J.A.C. 5:80-33.13(a)1 and subparagraphs (a)1i through vi as (a)2 and (a)2i through vi, respectively.

4. The Agency proposes to amend recodified N.J.A.C. 5:80-33.13(a)2ii and iii to improve syntax.

5. The Agency proposes to amend recodified N.J.A.C. 5:80-33.13(a)2iv to incorporate the current ASTM standards for a Phase 1 environmental study and to improve syntax.

6. The Agency proposes to amend recodified N.J.A.C. 5:80-33.13(a)2v to update the name of the source of funds from the former Balanced Housing program administered by DCA to the current Affordable Housing Trust Fund (AHTF).

7. The Agency proposes to amend N.J.A.C. 5:80-33.13(a)2vi to improve syntax and to substitute a gender-neutral pronoun.

8. The Agency proposes to delete existing N.J.A.C. 5:80-33.13(a)2, which currently authorizes and provides the methodology for applications for additional credits from the competitive cycles. Such applications are proposed to be eliminated through this rulemaking.

9. The Agency proposes to amend N.J.A.C. 5:80-33.13(b) to improve syntax.

10. The Agency proposes new N.J.A.C. 5:80-33.13(c) to preclude a project that receives its initial tax credit award in the 2022 funding cycle or later and that also receives hardship credits from the Reserve, and any affiliated entity, from applying for tax credits for a new project in all cycles in the round after the award has been approved by the Tax Credit Committee.

<u>N.J.A.C. 5:80-33.14 Scoring and Ranking</u>

The Agency proposes to amend N.J.A.C. 5:80-33.14(a) to improve syntax and to delete cross-references to N.J.A.C. 5:80-33.18, which is proposed for repeal. Additionally, the Agency proposes to amend N.J.A.C. 5:80-33.14(b) to improve syntax and to amend N.J.A.C. 5:80-33.14(c) to delete the cross-reference to N.J.A.C. 5:80-33.18.

<u>N.J.A.C. 5:80-33.15 Point System for the Family Cycle</u>

1. The Agency proposes to amend N.J.A.C. 5:80-33.15(a) to improve syntax.

2. The QAP currently incentivizes an extension of affordability controls to 45 years only for fully affordable projects in non-TUM areas. The Agency proposes to amend N.J.A.C. 5:80-33.15(a)1i to incentivize such an extension for all projects applying in the Family Cycle, regardless of location and mixed- or full-affordability status. The Agency proposes additional amendments at N.J.A.C. 5:80-33.15(a)1i to improve syntax and to delete existing sentences providing that extension of the compliance period bars resorting to Section 42(h)(6)(I) of the Code, relating to the one-year period beginning on the date a taxpayer submits a written request to the housing credit agency to find a buyer for the taxpayer's interest in the low-income portion of a building, until the beginning of the last year of the extended compliance period.

3. The Agency proposes to amend N.J.A.C. 5:80-33.15(a)1ii to add a 15-year compliance period extension requirement in order for projects located in a TUM to be awarded the 15 points.

4. The Agency proposes to amend N.J.A.C. 5:80-33.15(a)1iii to improve syntax.

5. The Agency proposes to amend N.J.A.C. 5:80-33.15(a)2 to clarify that an application will receive two points for utilizing public housing waiting lists.

6. The Agency proposes to amend N.J.A.C. 5:80-33.15(a)4i to update the Agency's contact information.

7. The Agency proposes to amend N.J.A.C. 5:80-33.15(a)4ii to improve syntax.

8. The Agency proposes to amend N.J.A.C. 5:80-33.15(a)5 to require that a description of each social service intended to be provided be included in the application and to provide a non-exhaustive list of eligible services.

9. The Agency proposes to amend N.J.A.C. 5:80-33.15(a)6 to improve syntax and to expand the availability of points in the category to projects that have a certified M/WBE with at least a 20-percent interest in the general partner/managing member or pledge to spend at least 20 percent of construction costs on contractors, subcontractors, and material suppliers that are certified M/WBEs; under the existing rule, points are available only to projects that pledge to spend 15 percent of construction costs on contractors, subcontractors, and material suppliers that are certified M/WBEs.

10. The Agency proposes to amend N.J.A.C. 5:80-33.15(a)8iii and ix to improve syntax.

11. The Agency proposes to amend N.J.A.C. 5:80-33.15(a)8xiv to offer a two-point option for the provision of free high-speed internet service in all units and to require that the costs of providing such service be shown in the operating budget.

12. The Agency proposes to amend N.J.A.C. 5:80-33.15(a)9 to improve syntax and to delete and replace N.J.A.C. 5:80-33.15(a)9iv to

replace "community gardens" as a project-amenities point option with a more expansive open space set-aside as the option.

13. The Agency proposes to amend N.J.A.C. 5:80-33.15(a)10 and (a)10i, v, vi, and vii to improve syntax.

14. With respect to the proximity to positive land uses point category, the Agency proposes to amend N.J.A.C. 5:80-33.15(a)11 to reflect that the proposed addition at N.J.A.C. 5:80-33(a)11i(20) would add a 20th positive land use to the existing itemization. The Agency also proposes to amend N.J.A.C. 5:80-33.15(a)11i for the same reason; to reflect that the Senior Cycle is proposed to be renamed the Age-Friendly Senior Cycle; and to state that up to six points can be received per application for positive land uses. Additionally, the Agency proposes to amend N.J.A.C. 5:80-33.15(a)11i(1) to restrict points for proximity to a full-service grocery store or supermarket to other than senior projects, unless dedicated transportation is provided at least once a week in accordance with N.J.A.C. 5:80-33.16(b)2i. Further, the Agency proposes to amend N.J.A.C. 5:80-33.15(a)11i(3) and (16) to improve syntax and to amend N.J.A.C. 5:80-33.15(a)11i(7) to update the website address. Finally, the Agency proposes new N.J.A.C. 5:80-33.15(a)11i(20) to include one point for proximity to an institution of higher education or continuing education. Correspondingly, the Agency proposes to amend N.J.A.C. 5:80-33.15(a)11i(18) and (19) to reflect the addition of sub-subparagraph (a)11i(20).

With respect to the proximity to negative land uses point category, the Agency proposes to amend N.J.A.C. 5:80-33.15(a)11ii to reflect that existing N.J.A.C. 5:80-33.15(a)11ii(9), which mandates a three-point deduction for projects sited in the same census tract as another/other nine-percent LIHTC project(s) awarded credits in the same cycle in the previous round, is proposed to be deleted, and to clarify that projects located within one mile of the land uses at N.J.A.C. 5:80-33.15(a)11ii(1) through (8) will have three points deducted for each item, up to a maximum of six points per application. The Agency also proposes to amend N.J.A.C. 5:80-33.15(a)11ii(1) and iii to improve syntax and N.J.A.C. 5:80-33.15(a)11ii(7) and (8) to reflect the proposed deletion of sub-subparagraph (a)11ii(9).

15. The Agency proposes to amend N.J.A.C. 5:80-33.15(a)12 to improve syntax.

16. With respect to the green building point category at N.J.A.C. 5:80-33.15(a)13, the Agency proposes to amend N.J.A.C. 5:80-33.15(a)13i(1), (2), (3), and (4) and (a)13ii(1), (2), and (3) to track current standards and to require climate adaptive selections in order to attain the maximum points available.

17. The Agency proposes to amend N.J.A.C. 5:80-33.15(a)14 to increase the maximum available points in the point category from eight to 12.

18. The Agency proposes to amend N.J.A.C. 5:80-33.15(a)14i to eliminate the availability of two points for projects located within TUMs and for projects within census tracts designated as Qualified Opportunity Zones, and to improve syntax. The Agency also proposes to rewrite N.J.A.C. 5:80-33.15(a)14ii to provide a sliding scale of one to five points for access to public transportation, with the availability of an additional one or two points based on the jobs-to-housing ratio of the municipality in which a project is fully located, with a maximum of five points per application for the access to public transportation/jobs availability category. The Agency additionally proposes to delete and replace N.J.A.C. 5:80-33.15(a)14iii to provide three points for projects located within high-performing school districts based upon the then-current metrics and to substitute a sliding scale of from one to three points based on school district performance as determined by current New Jersey Department of Education metrics, with an additional point available to projects sited in districts that participate in the New Jersey Interdistrict Public School Choice Program beginning no later than Grade 6. The Agency further proposes to amend N.J.A.C. 5:80-33.15(a)14iv to improve syntax and to provide that projects (other than senior projects) located outside of TUMs and in municipalities with a ranking of 282 or below in the most recent Municipal Revitalization Index published by DCA are eligible to receive one additional point if the project satisfies a municipal affordable housing obligation and is part of a court-approved municipal fair share housing development plan; the proposed amendments would require sponsors to submit the applicable fair share housing development plan and evidence of court approval in their applications. The Agency additionally proposes to delete and replace N.J.A.C. 5:80-33.15(a)14v to provide that projects located within TUMs and within census tracts designated by the Secretary of the U.S. Department of the Treasury as Qualified Opportunity Zones be awarded two points and to delete the existing provision that projects located outside of TUMs that satisfy a municipal affordable housing obligation and are part of a court-approved municipal fair share housing development plan will receive one point.

19. The Agency proposes to amend N.J.A.C. 5:80-33.15(a)15 to improve syntax and to delete the cross-reference to the Final Cycle at N.J.A.C. 5:80-33.7, which is proposed to be deleted.

20. The Agency proposes to amend N.J.A.C. 5:80-33.15(a)16 to improve syntax.

21. The Agency proposes to amend N.J.A.C. 5:80-33.15(a)17 to improve syntax and to delete the cross-reference to the Final Cycle at N.J.A.C. 5:80-33.7, which is proposed to be deleted.

22. The Agency proposes to amend N.J.A.C. 5:80-33.15(a)18 to improve syntax and to delete the cross-reference to the Final Cycle at N.J.A.C. 5:80-33.7, which is proposed to be deleted.

23. The Agency proposes new N.J.A.C. 5:80-33.15(a)19 to impose a 15-point deduction for applications that have a general partner or affiliate that owns a managing or controlling interest in a State LIHTC project that, within the preceding four years, has been found to have discriminated under the Federal Fair Housing Act, failed to comply with State fair housing policies or tenant selection standards, or been assessed a monetary penalty under the State Fair Chance in Housing Act. The proposed new paragraph would mandate that failure to respond to the point category will result in the 15-point deduction and that applications that are assessed the deduction do not qualify for the set-asides at N.J.A.C. 5:80-33.4, 33.5, and 33.6.

24. The Agency proposes new N.J.A.C. 5:80-33.15(a)20 to impose a 15-point deduction for applications that have a general partner or affiliate that, within the preceding 10 years, has, in the Agency's determination, participated in a foreclosure or an instrument in lieu of foreclosure that was part of an arrangement to terminate an extended low-income housing commitment. The proposed new paragraph would mandate that failure to respond to the point category will result in the 15-point deduction and that applications that are assessed the deduction do not qualify for the set-asides at N.J.A.C. 5:80-33.4, 33.5, and 33.6 and are ineligible to receive points for developer experience at existing N.J.A.C. 5:80-33.15(a)19 (which is proposed to be recodified as N.J.A.C. 5:80-33.15(a)21).

25. The Agency also proposes to amend recodified N.J.A.C. 5:80-33.15(a)21i to improve syntax and to add a provision requiring at least a 50-percent ownership interest in each of the qualifying projects in order to receive the points. Additionally, the Agency proposes new N.J.A.C. 5:80-33.15(a)21ii to award points to applications with a general partner or affiliate that has successfully developed and operated other LIHTC projects and has entered into a management agreement with a qualifying property management company. The Agency also proposes to amend recodified N.J.A.C. 5:80-33.15(a)21iii to improve syntax. The Agency further proposes to delete existing N.J.A.C. 5:80-33.15(a)19iii, which sets forth a definition of "successfully developed and operated," because that term is proposed to be defined at N.J.A.C. 5:80-33.2.

26. The Agency proposes to amend recodified N.J.A.C. 5:80-33.15(a)22 by adding a statement to preclude units that receive Money Follows the Person (MFP) or Section 811 funds from being included in the minimum requirements for the point category. The Agency also proposes to amend recodified N.J.A.C. 5:80-33.15(a)22i to improve syntax and to require that qualifying projects be registered and report tenant data on HMIS. The Agency also proposes to amend N.J.A.C. 5:80-33.15(a)22ii to improve syntax.

27. The Agency proposes to recodify existing N.J.A.C. 5:80-33.15(a)21 through 24 as 23 through 26, respectively, and to amend recodified N.J.A.C. 5:80-33.15(a)24, 25, and 26 subparagraphs 26i and ii to improve syntax and to clarify that the options set forth at recodified N.J.A.C. 5:80-33.15(a)26 are expressed in the disjunctive.

<u>N.J.A.C. 5:80-33.16 Point System for the Senior Cycle</u>

1. The Agency proposes to amend the heading at N.J.A.C. 5:80-33.16 from "Point system for the Senior Cycle" to "Point system for the Age-

Friendly Senior Cycle" and to correspondingly amend N.J.A.C. 5:80-33.16(a) and (b) to reflect that proposed change.

2. The Agency proposes to amend N.J.A.C. 5:80-33.16(a) to improve syntax and to eliminate from inclusion in the point system, the point category set forth at N.J.A.C. 5:80-33.15(a)14v, concerning municipal fair share development plans.

3. The Agency proposes to amend N.J.A.C. 5:80-33.16(b)1 to provide the correct name of the U.S. Census Bureau. The Agency also proposes to amend N.J.A.C. 5:80-33.16(b)2 to require that within six months of the completion of rent-up, the project developer/owner notify the Agency that the services indicated in the project's application are in place or are being put in place. Further, the Agency proposes to amend N.J.A.C. 5:80-33.16(b)2ii to require that upon receiving a tax credit reservation, the project developer/owner sign a Services for Independent Living (SIL) participation agreement outlining the responsibilities of the SIL program and of the developer/owner. Additionally, the Agency proposes to amend N.J.A.C. 5:80-33.16(b)2iii to require that the offer of a licensed and insured on-site healthcare provider be on a regular basis in order to qualify for the points in the category. The Agency also proposes to amend N.J.A.C. 5:80-33.16(b)2iv to include an Assisted Living Program (ALP) as being among the programs that qualify for the points, and to improve syntax. Finally, the Agency proposes to amend N.J.A.C. 5:80-33.16(b)2v to replace "gardens" with a more expansive open space set-aside.

N.J.A.C. 5:80-33.17 Point System for the Supportive Housing Cycle

1. The Agency proposes to amend N.J.A.C. 5:80-33.17(a) to improve syntax, to reflect that the point category of the Family Cycle concerning supportive housing units is proposed to be recodified from N.J.A.C. 5:80-33.15(a)20 to 22 and to reflect that a maximum of three, rather than (as under the existing rule), six points are available in the categories at N.J.A.C. 5:80-33.17(a)1, 2, and 3.

2. The Agency proposes to delete and replace N.J.A.C. 5:80-33.17(a)2, dividing it into new paragraphs, (a)2 and 3. As proposed, new N.J.A.C. 5:80-33.17(a)2 would provide one point for non-age-restricted supportive housing projects that are in high-performing school districts, as determined in accordance with updated metrics provided by the New Jersey Department of Education, and new N.J.A.C. 5:80-33.17(a)3 would provide one point for age-restricted projects in municipalities wherein 25 percent or more of the residents are 55 years of age or older, as determined by the American Community Survey Five-Year Estimates provided by the U.S. Census Bureau.

3. The Agency proposes to amend N.J.A.C. 5:80-33.17(b)1 to improve syntax and to amend N.J.A.C. 5:80-33.17(b)1v to clarify and better identify the universe of on-site personnel required to undergo training specific to the needs of the special needs population(s) for whom housing will be provided.

N.J.A.C. 5:80-33.18 Point System for the Final Cycle

The Agency proposes to repeal N.J.A.C. 5:80-33.18, Point system for the Final Cycle, as it proposes to eliminate the Final Cycle due to lack of use.

N.J.A.C. 5:80-33.19 Tiebreaker System

1. The Agency proposes to rewrite N.J.A.C. 5:80-33.19(a)1 to institute a new first tiebreaker system. The Agency proposes new N.J.A.C. 5:80-33.19(a)1i to provide that for projects located outside of a TUM, the first tiebreaker will be to award a tax credit reservation to the project in the municipality that has either never hosted a nine-percent LIHTC project or has gone the longest time since hosting a project that received an award of nine-percent LIHTCs. The proposed subparagraph also provides that the Agency will annually publish a list of municipalities with the years of their most recent nine-percent LIHTC awards and that awards to projects during the year preceding the application cycle deadline will not be considered for purposes of calculating the most recent year of award. The proposed subparagraph further provides that if the competing project is part of a court-approved municipal fair share housing development plan, prior awarded projects that are part of the same fair share housing development plan will not be considered for purposes of calculating the most recent year of award, provided certain conditions are met.

2. The Agency additionally proposes new N.J.A.C. 5:80-33.19(a)1ii to provide that for projects located within TUMs, the first tiebreaker will be to award a tax credit reservation to the project in the municipality with the highest MRI score (that is, the municipality with the greatest distress).

3. The Agency also proposes to recodify elements of existing N.J.A.C. 5:80-33.19(a)1 (the existing first tiebreaker) into a second tiebreaker at N.J.A.C. 5:80-33.19(a)2 and to insert an introductory sentence as new paragraph (a)2. Specifically, the Agency proposes to recodify existing N.J.A.C. 5:80-33.19(a)1i and ii as (a)2i and ii, respectively; to amend recodified N.J.A.C. 5:80-33.19(a)2i to reflect that the Senior Cycle is proposed to be renamed the Age-Friendly Senior Cycle and to improve syntax; to amend both recodified N.J.A.C. 5:80-33.19(a)2i and ii to provide that superintendent units will not be included for purposes of calculating the tiebreaker; and to delete existing N.J.A.C. 5:80-33.19(a)1iii, which excludes superintendent units from the tiebreaker calculation.

4. The Agency further proposes to amend recodified N.J.A.C. 5:80-33.19(a)3 to provide that it is applicable only if there is still a tie after the second tiebreaker has been applied.

N.J.A.C. 5:80-33.20 Municipal Comment

The Agency proposes to amend N.J.A.C. 5:80-33.20 to substitute the gender-neutral pronoun "them" for "him or her."

N.J.A.C. 5:80-33.21 Application Needs Analysis

The Agency proposes to amend N.J.A.C. 5:80-33.21(a) to reflect the proposed recodification of N.J.A.C. 5:80-33.15(a)22 as (a)24 in the point system for the Family Cycle and, at N.J.A.C. 5:80-33.21(a)2, to improve syntax.

N.J.A.C. 5:80-33.22 Committee Review and Reconsideration Process

The Agency proposes to amend the heading at N.J.A.C. 5:80-33.22 from "Committee review and reconsideration process" to "Tax Credit Committee review and reconsideration process" to include the full title of the Tax Credit Committee in the first reference to it. The Agency also proposes to amend N.J.A.C. 5:80-33.22(a) and (c) to name the Tax Credit Committee as "Committee" and to substitute that defined term, where applicable. The Agency additionally proposes to amend N.J.A.C. 5:80-33.22(b) to improve syntax.

N.J.A.C. 5:80-33.23 Allocation Needs Analysis

The Agency proposes to amend N.J.A.C. 5:80-33.23 to improve syntax.

N.J.A.C. 5:80-33.24 Reservations, Allocations, and Binding Commitments

The Agency proposes to amend N.J.A.C. 5:80-33.24(a), (a)1 and 2, and (a)2i and ii to improve syntax and to amend N.J.A.C. 5:80-33.24(b) by deleting the cross-reference to N.J.A.C. 5:80-33.7 to recognize that the Final Cycle is proposed to be eliminated by this rulemaking.

N.J.A.C. 5:80-33.25 Allocation/Issuance Fee Schedule

The Agency proposes to amend N.J.A.C. 5:80-33.25 to improve syntax.

N.J.A.C. 5:80-33.26 Obtaining IRS Form 8609: Deadlines and Extension Fees

The Agency proposes to amend N.J.A.C. 5:80-33.26(a), (b), and (c) to improve syntax.

N.J.A.C. 5:80-33.27 Placed in Service Needs Analysis

The Agency proposes to amend N.J.A.C. 5:80-33.27(a) and (b) to improve syntax.

N.J.A.C. 5:80-33.28 Project Cost Certification and Contractor Fee Limits

The Agency proposes to delete and replace N.J.A.C. 5:80-33.28(b), with respect to contractor fee limits, to delete the existing sliding scale and, at new N.J.A.C. 5:80-33.28(b)1, replace it with a universal cap of two percent for overhead and six percent for profit, with certain exclusions from the calculation of overhead and profit being provided. New N.J.A.C. 5:80-33.28(b)2 is proposed to explain the nature of costs for general requirements and general conditions and new N.J.A.C. 5:80-33.28(b)3 is proposed to provide a source for limitations for general contractor overhead expenses, general contractor profit fees, and general requirements/general conditions costs. The Agency also proposes to amend N.J.A.C. 5:80-33.28(d) to improve syntax.

N.J.A.C. 5:80-33.29 Extended Use Agreement

The Agency proposes to amend N.J.A.C. 5:80-33.29 to improve syntax.

N.J.A.C. 5:80-33.30 Returning Credits

The Agency proposes to amend N.J.A.C. 5:80-33.30 by deleting the reference to the Final Cycle, which is proposed to be eliminated through this rulemaking and to improve syntax.

N.J.A.C. 5:80-33.31 Applicant's Affirmative Obligation to Disclose Changes

1. The Agency proposes to amend N.J.A.C. 5:80-33.31(a) to require applicants to report changes in a proposed LIHTC development no less frequently than annually.

2. The Agency proposes to amend N.J.A.C. 5:80-33.31(c) to update the name of the applicable Agency division.

N.J.A.C. 5:80-33.32 Compliance Monitoring

1. The Agency proposes to amend N.J.A.C. 5:80-33.32(a), (b), and (d) and paragraphs (d)7, (e)2, and (f)4, 6, and 9 through 15 to improve syntax, and to amend N.J.A.C. 5:80-33.32(f)16 to account for proposed additional paragraphs.

2. The Agency proposes new N.J.A.C. 5:80-33.32(f)17 to require an owner's annual Certificate of Continuing Program Compliance to contain a statement attesting that the owner notified each applicant and tenant of their rights under the Violence Against Women Act (VAWA) and distributed Form HUD-5382, the VAWA self-certification form.

3. The Agency proposes new N.J.A.C. 5:80-33.32(f)18 to require an owner's annual Certificate of Continuing Program Compliance to contain a statement attesting that the owner registered and updated property information on the HRC.

4. The Agency proposes new N.J.A.C. 5:80-33.32(f)19 to require an owner's annual Certificate of Continuing Program Compliance to contain a statement attesting that the owner registered in HMIS and submitted data for all units reserved for homeless individuals and families.

5. The Agency proposes to amend N.J.A.C. 5:80-33.32(g) to more accurately cite the Housing and Economic Recovery Act of 2008 and to improve syntax.

N.J.A.C. 5:80-33.33 Owner's Annual Reports: Deadlines

The Agency proposes to amend the heading at N.J.A.C. 5:80-33.33 by replacing the colon with a semicolon to reflect that N.J.A.C. 5:80-33.33 addresses both the substance of reports required to be submitted to NJHMFA by project owners and the deadlines for submitting those reports. The Agency also proposes to amend the text at N.J.A.C. 5:80-33.33 to improve syntax.

N.J.A.C. 5:80-33.34 NJHMFA Review and Inspection

The Agency proposes to amend N.J.A.C. 5:80-33.34(a), (c), and (d) to improve syntax.

N.J.A.C. 5:80-33.36 Confidentiality of Tax Credit Applications and Information

The Agency proposes to amend N.J.A.C. 5:80-33.36(a) to delete references to the Final Cycle, which is proposed to be eliminated by this rulemaking, and to amend N.J.A.C. 5:80-33.36(c)3 to improve syntax.

N.J.A.C. 5:80-33.37 Exchange of Credits

The Agency proposes to amend N.J.A.C. 5:80-33.37(d) to clarify that sponsors and affiliated entities who receive an exchange of tax credits will be precluded from applying for tax credits for a new project from all cycles in the round following the date on which the exchange is approved. The Agency also proposes to amend N.J.A.C. 5:80-33.37(f)4 to improve syntax.

This notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5, as a 60-day comment period is being provided.

Social Impact

The proposed amendment of the definition of "redevelopment project" at N.J.A.C. 5:80-33.2 to eliminate the requirement that in non-smart-growth areas, the majority of the property be or have previously been covered by structures will make additional property available for LIHTC development in areas of the State that may be in need of land for such development.

The proposed amendment of the definition of "targeted urban municipalities" or "TUMs" at N.J.A.C. 5:80-33.2 is expected to align the definition with the criteria for urban areas used for the 2020 Census. This proposed amended definition will help improve the targeting of areas of the State that may be considered most in need of assistance in providing affordable housing and, thus, provide better focus for the use of limited tax credits where most needed.

The Agency has proposed amendments at N.J.A.C. 5:80-33.4(b) to expand the provisions under which projects that receive negative points will be ineligible to compete in any set-aside of the Family Cycle to include N.J.A.C. 5:80-33.15(a)19 (relating to prior discriminatory practices) and (a)20 (relating to practices intended to terminate extended low-income housing commitments). These proposed amendments would further support the provision of affordable housing in the State by discouraging and/or prohibiting those who have committed bad acts from applying for LIHTCs.

The proposed amendments seek to better incentivize green building development. In the Family, Age-Friendly Senior, and Supportive Housing Cycles at N.J.A.C. 5:80-33.4(a), 33.5(a), and 33.6(a), respectively, and in Awards from the Reserve at N.J.A.C. 5:80-33.8(a)1, amendments are proposed to allow exemptions from the maximum per-unit development cost caps in the amounts of either up to $15,000 per unit for adaptive reuse projects, or up to $7,500 per unit for projects that meet the Passive House standard to allow for additional costs that are expected to be incurred with these projects. Additionally, an amendment proposed at N.J.A.C. 5:80-33.4(a)2 would provide for a second preservation project to be funded in the Family Cycle (in addition to the one preservation project currently provided for); and the incentivization of an additional preservation project supports the provision of green-friendly housing in the State. Further, amendments are proposed to the application to a cycle/eligibility requirements at N.J.A.C. 5:80-33.12(c)8 to strengthen and update current standards to the clean energy eligibility requirements. These amendments include the requirements at N.J.A.C. 5:80-33.12(c)8iii of a Site and Risk Assessment Review Report in the application and, prior to issuance of the IRS Form 8609, the submittal of an Emergency Management Plan that addresses site-specific risk hazards; these proposed amendments are expected to promote resiliency planning and better provide for tenant and project safety in cases of natural disasters.

NJHMFA seeks and recognizes its obligation to affirmatively promote fair housing practices and promote the de-concentration of poverty. In furtherance of that goal, NJHMFA proposes to add subsections to the Family, Age-Friendly Senior, and Supportive Housing Cycles at N.J.A.C. 5:80-33.4(e), 33.5(e), and 33.6(e), respectively, to more accurately set forth NJHMFA's general intent (as currently provided at N.J.A.C. 5:80-33.4(d), 33.5(d), and 33.6(d), respectively) that, following the time period during which NJHMFA is accepting applications to award funds appropriated to the AHPF pursuant to P.L. 2022, c. 49, or until December 31, 2025, whichever comes sooner, approximately 40 percent of the credits available in each of those Cycles will be awarded to projects in TUMs, seeking to maintain a lower constraint of 35 percent. However, because those approximate percentages cannot always be reached given the amounts of certain tax credit awards, NJHMFA proposes to retain discretion to allocate awards in each of those Cycles to projects in TUMs and non-TUM areas to best attain the stated objective. NJHMFA further proposes to amend the Family, Age-Friendly Senior, and Supportive Housing Cycles at existing N.J.A.C. 5:80-33.4(d), 33.5(d), and 33.6(d), respectively, to provide that during the time period NJHMFA is accepting applications to award AHPF monies or until December 31, 2025, whichever comes sooner, approximately 60 percent of the credits available in each of those Cycles will be awarded to projects in TUMs, in this instance seeking to maintain a lower constraint of 50 percent. Again, because those approximate percentages cannot always be reached given the amounts of certain tax credit awards, NJHMFA proposes to retain discretion to allocate awards in each of those Cycles to projects in TUMs and non-TUM areas to best attain the stated objective. The rationale for the temporary inversion of the allocation percentages is that NJHMFA has determined a substantial majority of awards from AHPF monies will go to projects in non-TUM areas (that is, 43 of the 47 projects expected to receive funding are in non-TUM areas). Thus, during this interim time period, projects in non-TUM areas will receive significantly greater funding from the AHPF than projects in TUMs; the greater weight in tax-credit funding proposed for projects in TUMs is intended to strike an appropriate balance in total funding for projects in those respective areas.

It is proposed to amend the demographic analysis portion of the market study that is required in the application to a cycle/eligibility requirements section at N.J.A.C. 5:80-33.12(c)1ii(5) to include an analysis of eligible households, both owner and renter, in the market area by race and ethnicity to better gauge the market for potential tenants based on those characteristics.

Also, in the application to a cycle/eligibility requirements section, amendments are proposed at N.J.A.C. 5:80-33.12(c)15 to reflect recent statutory Fair Housing Act requirements to post the availability of affordable housing units on the Housing Resource Center and to notify the local Continuum of Care of any units reserved at N.J.A.C. 5:80-33.15(a)22 for individuals and families that are homeless. In furtherance of these amendments, a new paragraph is proposed pertaining to compliance monitoring at N.J.A.C. 5:80-33.32(f)18 to mandate that project owners certify they have complied with the requirements. These proposed amendments are expected to increase accessibility to affordable units, including those units set aside for homeless populations, by increasing awareness of their availability.

In the application to a cycle/eligibility requirements section, it is further proposed to amend N.J.A.C. 5:80-33.12(c)17ii to allow the eligibility of non-preservation projects in census tracts where 30 percent or more of the existing housing units are low-income housing tax credit (LIHTC) units, even if development of the project will result in the addition of more low-income units to the census tract, if a community benefits agreement is entered into with the applicable municipality requiring the developer to invest additional resources into the impacted census tract. This proposed amendment is expected to clarify that LIHTC projects are not a negative land use and to foster increased community investment in census tracts that host a relatively large percentage of LIHTC units.

As it is now widely acknowledged that internet access is a basic utility, NJHMFA proposes to add N.J.A.C. 5:80-33.12(c)19 to the application to a cycle/eligibility requirements section to require that high-speed internet service be provided in all project common areas at no cost to tenants of LIHTC units and that high-speed internet hookup capability be installed in all units. It is correspondingly proposed that the provision of free high-speed internet service in all units be included as a unit amenity option at N.J.A.C. 5:80-33.15(a)8xiv. These proposed amendments are expected to make indispensable internet service, with its attendant benefits, available to tenants of LIHTC projects.

NJHMFA seeks to preserve the affordability controls on LIHTC-assisted projects for as long as possible. In furtherance of that goal, it is proposed to add N.J.A.C. 5:80-33.12(c)20 to the application to a cycle/eligibility requirements section to establish that by submitting an application for LIHTCs, an applicant waives the right to request termination of the extended-use period through the qualified contract (QC) process that is provided in the Code. Additionally, it is proposed to add N.J.A.C. 5:80-33.12(c)21 to the application to a cycle/eligibility requirements section to, among other things, codify the right of first refusal (ROFR) authorized by Section 42(i)(7) of the Code, which allows a qualified nonprofit organization the first opportunity to acquire an LIHTC project upon the termination of the affordability compliance period. The proposed amendments would otherwise preclude and/or disincentivize efforts to bring about the early termination of affordability controls on LIHTC units.

In the Point System for the Family Cycle section, amendments are proposed at N.J.A.C. 5:80-33.15(a)1i to expand the incentives for extending affordability controls to 45 years for all projects applying in the Family Cycle; currently, such incentives are only available for projects sited in non-TUM areas. These proposed amendments will promote long-term affordability for LIHTC projects throughout the State.

Also, in the Point System for the Family Cycle section, amendments are proposed at N.J.A.C. 5:80-33.15(a)6 to create incentives for applicants to include M/WBEs in project ownership and to increase from 15 to 20, the minimum percentage of costs that must be directed to M/WBEs to qualify for the points in the category. These proposed amendments are expected to incentivize applicants to increase opportunities for M/WBEs to become involved in the development of affordable housing.

In the project amenities point category of the Point System for the Family Cycle section at N.J.A.C. 5:80-33.15(a)9iv, it is proposed to replace “community gardens” with a more expansive open space set-aside in order to provide greater clarity and flexibility for developers seeking to create outdoor recreation opportunities for residents. A similar amendment is proposed in the Point System for the Age-Friendly Senior Cycle at N.J.A.C. 5:80-33.16(b)2v.

In the positive and negative point categories of the Point System for the Family Cycle section, it is proposed to add, at N.J.A.C. 5:80-33.15(a)11i(20), three-mile proximity to institutions of higher education or continuing education as qualifying options in order to incentivize educational opportunities for tenants of LIHTC projects, and, at N.J.A.C. 5:80-33.15(a)11ii(9), to remove the three-point scoring deduction for previously-awarded LIHTC projects in the same census tract. In the green building point category of the Point System for the Family Cycle section at N.J.A.C. 5:80-33.15(a)13i and ii, amendments are proposed to track current standards and to require climate adaptive selections to attain the maximum points available; these amendments will enhance green-friendly construction of LIHTC projects.

Amendments are proposed to the school district performance point category of the Point System for the Family Cycle section at N.J.A.C. 5:80-33.15(a)14i, ii, and iii to incentivize projects sited in high-performing districts, as determined in accordance with updated metrics provided by the New Jersey Department of Education. It is proposed to institute a sliding scale of from one to three points, based on school district performance, with an additional point available to projects sited in districts that participate in the New Jersey Interdistrict Public School Choice Program beginning no later than Grade 6. Similar amendments are proposed in the Point System for the Supportive Housing Cycle at N.J.A.C. 5:80-33.17(a)2. It is expected that these proposed amendments will encourage the development of LIHTC projects in high-performing school districts and enhance educational opportunities for students of low- and moderate-income families.

New categories are proposed in the Point System for the Family Cycle section at N.J.A.C. 5:80-33.15(a)19 to penalize applicants with members who have participated in prior actions that have violated New Jersey fair housing laws or policies, and at N.J.A.C. 5:80-33.15(a)20 to penalize applicants with members who have participated in a foreclosure or other arrangement that was intended, in NJHMFA’s determination, to cause the termination of an extended low-income housing commitment. These proposed additions to the point system are expected to prevent similar actions in the future and help ensure the affordability of LIHTC projects for the entirety of the compliance period.

It is proposed to add new N.J.A.C. 5:80-33.15(a)21ii in the Point System for the Family Cycle section to award three points for applicants with members who have a record of having successfully developed LIHTC projects. This proposed addition is expected to provide a pathway for prior successful “junior” applicants to be rewarded for their previous successes and, in conjunction with the proposed amendments at N.J.A.C. 5:80-33.15(a)6, to create incentives for applicants to include M/WBEs in project ownership, and to broaden and diversify the pool of potential developers of LIHTC projects.

In the homeless and disabled point category in the Point System for the Family Cycle section, it is proposed to amend N.J.A.C. 5:80-33.15(a)22i to require projects that receive points for setting aside units for homeless populations to register those units with the HMIS and collect tenant data thereon. In furtherance of this proposed amendment, a new paragraph is proposed pertaining to compliance monitoring at N.J.A.C. 5:80-33.32(f)19 to mandate that project owners certify they have complied with the requirement. These proposed amendments are expected to ensure that units intended to benefit homeless persons and families are properly connected to appropriate service providers for those populations.

The Agency proposes to amend N.J.A.C. 5:80-33.16(b)2 to require that within six months of the completion of rent-up, the project developer/owner notify the Agency that the services indicated in the project’s application for senior citizens are in place or being put in place.

This amendment is proposed to ensure that services are made available for the benefit of tenants upon or shortly after move-in. Additionally, the amendment proposed at N.J.A.C. 5:80-33.16(b)2ii to require the developer/owner of a project that receives points under this provision of the Age-Friendly Senior Cycle to sign an SIL participation agreement that outlines the responsibilities of the SIL program and of the developer/owner with respect thereto is to ensure that developers undertake and are held accountable for their participation in the SIL program.

Amendments are proposed to the training provision of the Point System for the Supportive Housing Cycle at N.J.A.C. 5:80-33.17(b)1v to clarify and better identify the universe of on-site personnel required to undergo training that is specific to the needs of the special needs population(s) for whom housing is provided. These proposed amendments are expected to result in better and more appropriate care being provided for the targeted population(s).

It is proposed to amend the Tiebreaker system at N.J.A.C. 5:80-33.19(a) to provide that the first tiebreaker for projects located outside of a TUM will be the award of a tax credit reservation to the project in the municipality that has either never hosted a project or has gone the longest time since hosting a project that received an award of nine-percent LIHTCs, and for projects located within a TUM will be the award of a tax credit reservation to the project in the municipality with the highest MRI score, that is, the municipality with the greatest distress. The current tiebreaker system is proposed to remain in place as second and third level criteria if a tie(s) remains after application of the first tiebreaker. It is expected that these proposed amendments will promote a broader distribution of LIHTC projects throughout the State.

Economic Impact

In the Family, Age-Friendly Senior, and Supportive Housing Cycles at N.J.A.C. 5:80-33.4(a), 33.5(a), and 33.6(a), respectively, and in Awards from the Reserve at N.J.A.C. 5:80-33.8(a)1, it is proposed to increase the limits that can be spent on per-unit development costs by 15.5 percent for buildings of all levels in recognition of recent cost increases throughout the building industry. Additionally, it is proposed in each of those provisions to decrease the maximum allowable cost for an integrated community center or social service space from $400,000 to $300,000, but to allow up to $10,000 per unit with a maximum total cost of $800,000 for a stand-alone community or social service building. Also, it is proposed in each of those provisions to allow additional exemptions from the maximum per-unit development cost caps of either up to $15,000 per unit for adaptive reuse projects or up to $7,500 per unit for projects that meet the Passive House standard to reflect the additional costs that are expected to be incurred with these projects.

In the application fee schedule at N.J.A.C. 5:80-10(a), it is proposed to increase fees for applications to the Family, Age-Friendly Senior, and Supportive Housing Cycles and to the Mixed-Income Reserve from $4,000 to $5,000, and for a request of credits from the Hardship Reserve from $100 to $1,000 to bring both those fees in line with current costs for processing the applications.

In the application for additional credits section at N.J.A.C. 5:80-33.13(a), amendments are proposed that would preclude hardship requests through application to one of the Cycles, which would result in all such requests being made only to the Reserve. Additionally, an amendment is proposed at N.J.A.C. 5:80-33.13(a)1 that would increase the maximum award from $100,000 to $150,000 and proposed new N.J.A.C. 5:80-33.13(c) is added to disqualify a recipient of an award of additional credits or a related party from applying for LIHTCs in the round following the date of the award. NJHMFA's intent is to ensure that adequate funds are available when such requests are necessitated by circumstances in the development process.

NJHMFA proposes to amend the contractor fee limits provided for at N.J.A.C. 5:80-33.28(b) to bring those limits more in line with current industry standards and practice. The proposed amendment would eliminate the sliding scale currently provided and replace it with a universal cap of two percent for overhead and six percent for profit.

Federal Standards Statement

With respect to affordability requirements, the 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 proposed amendments deviate from those standards.

Other than as set forth above, the proposed amendments do not contain any standards or requirements that exceed the standards or requirements imposed by applicable Federal law (26 U.S.C. § 42 and the regulations promulgated thereunder at 36 CFR Part 1 Subpart 42).

Jobs Impact

The proposed amendments are expected to create or, at a minimum, maintain jobs in the construction and related industries, including, but not limited to, property management, landscaping, and material supply, by providing funds to facilitate the construction and rehabilitation of affordable housing units. No jobs are expected to be lost as a result of the proposed amendments.

Agriculture Industry Impact

The proposed amendments, new rule, and repeals are not expected to have any impact on the agriculture industry in the State.

Regulatory Flexibility Statement

The proposed amendments, new rule, and repeals will apply primarily to project developers, managing agents, and service providers of LIHTC projects, most, if not all of which, are small businesses as defined at section 2 of the Regulatory Flexibility Act, N.J.S.A. 52:14B-17.

NJHMFA does not anticipate that there will be any adverse economic impact on small businesses of different types and different sizes as a result of this rulemaking. The Code mandates certain minimum requirements for LIHTC projects, from which no deviations are permitted. Further, NJHMFA has a statutory obligation to "[s]timulate the construction, rehabilitation and improvement of adequate and affordable housing in the State." N.J.S.A. 55:14K-2e(2). Therefore, NJHMFA deems it prudent to require that all applicants, awardees, managing agents, and related parties and individuals be held to the same standards, including, without limitation, the same compliance and reporting requirements and timetables, without exemption or exception. Where extraordinary circumstances are present, NJHMFA's waiver provisions, which are codified at N.J.A.C. 5:80-19.1, may be resorted to.

At new N.J.A.C. 5:80-33.12(c)8iii, NJHMFA is proposing that applications include a Site and Risk Assessment Review Report (Site and Risk Assessment) and, prior to issuance of IRS Form 8609, that developers/owners submit an Emergency Management Plan. NJHMFA anticipates the requirement of a Site and Risk Assessment will necessitate that applicants retain a civil engineer with experience in flood plain management and that preparation of the report will cost between $5,000 and $10,000. NJHMFA anticipates that an Emergency Management Plan can be prepared by sponsors using their own staffs at no or nominal expense.

Any reporting, recordkeeping, and additional compliance requirements are discussed in the Summary above. NJHMFA finds that, other than as discussed in the preceding paragraph, the proposed amendments, new rule, and repeals will not impose other than nominal reporting, recordkeeping, or other compliance requirements on small businesses because those amendments, new rule, and repeals only continue in effect or, at most, alter the timing and/or frequency of existing requirements.

Housing Affordability Impact Analysis

The LIHTC program promotes the construction and rehabilitation, and, therefore, preserves and augments the supply of, affordable rental housing in the State. Each year, NJHMFA funds approximately 1,000 units of newly constructed or significantly rehabilitated rental housing pursuant to the QAP; NJHMFA expects to fund a similar number of affordable rental units under the QAP as it is proposed to be amended. Units financed under the low-income housing tax credit program serve residents earning no more than 80 percent of AMGI. Thus, the proposed amendments are expected to impact globally approximately 1,000 units of new or rehabilitated rental housing serving low- and moderate-income tenants.

NJHMFA finds that the proposed rulemaking would impose an insignificant impact on housing affordability in the State because there is an extreme unlikelihood that the proposed amendments would evoke a change in the average costs associated with housing. The proposed amendments to the Family, Age-Friendly Senior, and Supportive Housing Cycles at N.J.A.C. 5:80-33.4(a), 33.5(a), and 33.6(a), respectively, and to Awards from the Reserve at N.J.A.C. 5:80-33.8(a)1, to increase the limits that can be spent on per-unit development costs by 15.5 percent do not themselves affect housing costs or affordability, but rather reflect recent cost increases that have already occurred, and are expected to continue to occur, throughout the building industry. The same rationale applies to the proposed amendments at the aforementioned provisions to decrease the maximum allowable cost for an integrated community center or social service space from $400,000 to $300,000, but to allow up to $10,000 per unit with a maximum total cost of $800,000 for a stand-alone community or social service building and to allow additional exemptions from the maximum per-unit development cost caps of either up to $15,000 per unit for adaptive reuse projects or up to $7,500 per unit for projects that meet the Passive House standard. In this regard, NJHMFA notes that, in part due to the COVID-19 Pandemic, the QAP has not been substantially amended since 2019 and that building costs, as well as the costs of most other goods and services, have increased during the intervening period. Thus, NJHMFA finds that the increased development costs that would be allowed under the proposed amendments are reflective of, but will not impose, significant cost increases in the building industry or impact housing affordability.

Smart Growth Development Impact Analysis

N.J.S.A. 52:14B-4.1b.b requires that prior to the adoption, amendment, or repeal of any rule pursuant to N.J.S.A. 52:14B-4(a), State agencies include a smart growth development impact analysis.

As indicated in the Housing Affordability Impact Analysis above, the proposed amendments are expected to augment the development of approximately 1,000 prospective new or rehabilitated rental housing units for low- and moderate-income households, the vast majority, if not all, of which will be in multifamily housing structures. Additionally, certain of the proposed amendments will apply to the approximately 43,000 existing LIHTC units in the State, most of which are in multifamily structures and provide housing for low- and moderate-income households.

NJHMFA does not anticipate that the proposed amendments will affect new construction within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. No amendments are proposed to the existing definition of "smart growth area" at N.J.A.C. 5:80-33.2; thus, the construction of projects in Planning Areas 1 or 2 and within designated centers will not be impacted by the proposed amendments.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

NJHMFA has evaluated the proposed rulemaking and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning juveniles and adults in the State. Accordingly, no further analysis is required.

Full text of the rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 5:80-33.7 and 33.18.

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

SUBCHAPTER 33. [LOW INCOME] **LOW-INCOME** HOUSING TAX CREDIT QUALIFIED ALLOCATION PLAN

5:80-33.1 Introduction

(a) Section 42 of the Internal Revenue Code of 1986 (Code), 26 U.S.C. § 42, establishes a [low income] **low-income** housing tax credit that may be applied against the Federal income tax of persons or associations who or which have invested in certain buildings providing housing for families of low-income. As the housing credit agency for the State of New Jersey, the New Jersey Housing and Mortgage Finance Agency (NJHMFA) allocates these credits to qualified taxpayers and thereafter monitors their compliance with Section 42 of the Code. The rules in this subchapter set forth the standards and procedures used by NJHMFA to perform its allocation and monitoring responsibilities and this subchapter represents the qualified allocation plan for New Jersey required by Section 42 of the Code.

(b) In each calendar year, the total dollar value of the credits that can be allocated [under these rules] **pursuant to this subchapter**, except for the credits issued in connection with buildings financed with the proceeds of certain tax-exempt bonds, is limited by the State housing credit ceiling provided [in] **at** Section 42 of the Code. NJHMFA, therefore, has determined to award these limited credits on a competitive basis. Applicants seeking an allocation of these credits must apply [under] **pursuant to** one of the cycles set forth [in] **at** N.J.A.C. 5:80-33.4, 33.5, **or** 33.6 [or 33.7]. NJHMFA ranks the applications received in each cycle according to the respective point scales provided [in] **at** N.J.A.C. 5:80-33.15, 33.16, **and** 33.17 [and 33.18]. The credits assigned to each cycle are then reserved for the [highest ranking] **highest-ranking** applications that meet the eligibility requirements set forth [in] **at** N.J.A.C. 5:80-33.12.

(c) Credits issued in connection with buildings financed with the proceeds of [tax exempt] **tax-exempt** bonds subject to the volume cap restrictions provided [in] **at** Section 42(h)(4) of the Code are not limited by the State housing credit ceiling and, therefore, are not allocated on a competitive basis. Applicants seeking such "volume cap tax credits" are directed to the provisions [of] **at** N.J.A.C. 5:80-33.9.

(d) [It is the burden of every] **Every** applicant [to] **shall** comply with the requirements of [these rules] **this subchapter** and [to] ensure that any application presented to NJHMFA is clear, unambiguous, and complete in all respects at the time of submission.

(e) (No change.)

(f) Compliance with the requirements of the Code is the sole responsibility of the owner of the building for which the credit is allowable. NJHMFA makes no representations to the owner or anyone else as to compliance with the Code, Federal regulations issued [under] **pursuant to** the Code, or any other laws or regulations governing [Low Income] **Low-Income** Housing Tax Credits, or as to the financial viability of any project. All applicants should consult their accountant, tax attorney**,** or advisor as to the specific requirements of Section 42 of the Code governing the [Low Income] **Low-Income** Housing Tax Credit Program.

(g) [These rules have] **This subchapter has** been promulgated in a manner consistent with the smart growth initiatives required [under] **pursuant to** Executive Order No. 4 (2002).

5:80-33.2 Definitions

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

. . .

"At risk of losing its affordability controls" means a project with a deed restriction that expires within five years **after the tax credit date of allocation** that is "likely" to convert to market rate (as supported by the market analysis at N.J.A.C. 5:80-33.12(c)1ii), **a** project [based] **with project-based** assistance that expires within five years **after the tax credit date of allocation**, a project that may be condemned**,** or a project that is subject to foreclosure, unless NJHMFA determines such acquisition is part of an arrangement a purpose of which is to terminate such affordability controls. For multi-phase projects, forestalling of a foreclosure by funding of the initial phase shall not preclude latter phases of the same project from qualifying for the set-asides at N.J.A.C. 5:80-

33.4(a)1[,] **and** 33.5(a)1 [and 33.7(a)2], provided the latter phases satisfy the remaining elements of the definition of "preservation project" below.

"At risk of losing its level of affordability" means that operating expenses or capital repair needs are so high that**,** without an award of tax credits, only very high rent increases will keep the project in an acceptable condition and financially feasible. If the current owner or a related party of the current owner [shall] retain**s** an ownership interest in the project post-rehabilitation, the owner must demonstrate it did not materially contribute to the decline of the property that created the high operating expenses or capital repair needs.

"Average income set-aside" means an election made by a taxpayer on IRS Form 8609 that requires the income designations of at least 40 percent of the units in a housing project **to** average 60 percent or less of area median income (AMI). For underwriting purposes, the average of all income designations of tax-credit-eligible tenants shall not exceed 57.5 percent of AMI. Designated income/rent levels for [tax-credit] **tax-credit-eligible** units may only be set at 10-percent increments**,** ranging from 20 percent of AMI[,] up to 80 percent of AMI, and may not be amended without NJHMFA approval. All Federal minimum set-aside elections are irrevocable.

. . .

"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, Small Business Registration, and M/WBE Certification Services Unit 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.state.nj.us/treasury/revenue/ucs.shtml.

. . .

["Common area" means, for purposes of the point category at N.J.A.C. 5:80-33.15(a)13ii, the area in a sub/individually-metered project where electric usage is not paid for by a tenant or the area in a master-metered project where utility usage cannot be attributed to individual dwelling units, whether bedrooms, apartments, townhomes or condominiums.

"Community service facility" means, as established at Section 42(d)(4)(C)(iii) of the Code, "any facility designed to serve primarily individuals whose income is 60 percent or less of area median income within the meaning of 26 U.S.C. §42(g)(1)(B)." For example, a community room, clubhouse or recreation center may be a community service facility. Lobbies and laundry facilities are not within the scope of this definition.]

"Common area" means elements of a property available for use by all tenants.

"Community benefits agreement" means a contract between the developer and the municipality, separate from any redevelopment agreement(s), to provide specific amenities to residents of a particular census tract or tracts. A community benefits agreement must be approved by the municipality's governing body and include elements such as, but not limited to, investments in food desert remediation, green spaces, education, and healthcare for residents.

"Complete application" means an application submitted to NJHMFA[, including] **that includes** the application fee, completed application forms and certifications, and **that meets** all eligibility requirements **as set forth at N.J.A.C. 5:80-33.12**.

"Continuum of care" or "CoC" means one of the 16 local planning bodies in New Jersey that coordinate service providers and other interested parties to prevent and end homelessness, as authorized by subtitle C of title IV of the McKinney-Vento Homeless Assistance Act of 1987, 42 U.S.C. §§ 11431-11435.

. . .

"Core operating expenses" means expenses for administration, salaries, maintenance and repairs, maintenance contracts**,** and insurance.

. . .

"Density bonus" means an economic benefit for low- and moderate-income housing developers resulting from a zoning change that increases permitted density. [Determination] **The determination** of whether a project is the recipient of a density bonus shall be made by the municipality or, in the case of a court-ordered project, the Superior Court judge or special master with jurisdiction over the suit.

. . .

"Developer fee" or "development fee" means the fee that [covers] **encompasses** the **developer's** overhead and profit [of the developer]. Certain fees are subsumed within the developer fee—such as acquisition fees, compensation to the general partner, financial consultants, employees of the developer, construction managers/monitors, clerk of the works, and syndicator-required consultants. Professional fees not paid out of the developer fee are the fees for the architect, engineer, lawyer, accountant, surveyor, appraiser, soil investigator, professional planner, historical consultant, and environmental consultant. (If there are costs listed under the professional planner, the executed contract shall be submitted. Only those costs [determined by] NJHMFA [to be] **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 contained in the application shall be the maximum fee (dollar amount) recognized by NJHMFA at the time of cost certification so long as the project scope remains the same.

Any fee paid to the developer in excess of the developer fee, such as an acquisition fee, incentive developer fee, or other pseudonym, shall be treated as a funding source and may not be recognized as a use of funds.

To the extent there is a reasonable expectation of repayment (as evidenced by available cash flow and/or confirmation by the applicant's syndicator/investor or tax attorney), the amount of developer fee allowed for eligible rehabilitation or new construction costs is limited to 15.00 percent of total development cost excluding acquisition (that is, land and building) cost, working capital, marketing expenses, escrows, operating deficit reserves, step-in-the-shoes costs, and costs associated with syndication. However, a developer fee of up to 20.00 percent of total development cost excluding acquisition (that is, land and building) cost, 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:

Recodify existing i.-iii. as **1.-3.** (No change in text.)

The non-deferred portion of the developer fee shall not exceed 8.00 percent (13.00 percent for the three types of housing referenced at [i, ii, and iii] **1, 2, and 3** 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.

. . .

"Highlands Redevelopment Area" means a land area designated as such by the Highlands Council that is a brownfield[s], grayfield[s], and/or other previously developed area within the Highlands Region that is suitable for development.

"Historic building(s)" means any building or buildings that meet one or more of the following criteria:

1.-2. (No change.)

3. Building(s) identified as a contributing building to Local Historic Districts [which] **that** have been certified by the Keeper of the National Register as substantially meeting the National Register Criteria; or

4. (No change.)

"Homeless Management Information System" or "HMIS" means the system used in New Jersey to record and analyze client, service, and housing data for individuals and families who are experiencing homelessness or at risk of experiencing homelessness, as required pursuant to the McKinney-Vento Homeless Assistance Act of 1987.

. . .

"Individuals and families who are homeless" means any individual or family who does not have stable housing. In addition, depending on the funding sources, individuals coming out of a State psychiatric hospital, transitional living program, [half-way] **halfway** house, jail, or a correctional facility[,] with no place to live upon release may be considered homeless.

. . .

"Individuals with special needs" means:

1.-8. (No change.)

9. Disabled [and] **and/or** homeless veterans;

10.-12. (No change.)

"Large family unit" means a unit within a non-age-restricted project with three or more bedrooms. For every three bedrooms, there must be at least 1.5 bathrooms. A three-bedroom unit must measure no less than 950 square feet. A four-bedroom unit should measure no less than 1,150 square feet. (Excluded from the calculation are common halls, stairways, unfinished basements and attics, garages, balconies**,** and porches.) Developments must be structured in conjunction with realistic market demands (that is, if a developer's market analysis does not show a need or demand for all three-bedroom units, the developer should not be developing all three-bedroom units).

"LIHTC project" means a project participating in NJHMFA's [Low Income] **Low-Income** Housing Tax Credit Program.

. . .

["Main Street Designated District" means a district designated as such by DCA pursuant to the "Main Street New Jersey" program created under N.J.S.A. 52:27D-452.a to support economic and community development in historic commercial districts with a long-term goal of revitalizing downtown areas. The District must be designated by the tax credit application deadline. Only traditional or partner designations qualify, not associate selections.]

"Minimum rehab project" means any project undertaking only a minimum amount of rehabilitation. Minimum rehab is defined as construction cost totaling less than [$25,000] **$30,000** per unit. Minimum rehab projects are eligible to apply only in the Supportive Housing Cycle [and Final Cycle]. [In the Final Cycle, unless it is a preservation project, a minimum rehab project shall be funded only if there are no other projects left to fund.] NJHMFA shall utilize an amount not less than 33.33 percent of developer fee based on building acquisition costs as a funding source in its evaluation required [under] **at** 26 U.S.C. [§42(m)2] **§ 42(m)**.

"Municipal Revitalization Index" or "MRI" means the [index] **Municipal Revitalization Index Distress Score** by which New Jersey's municipalities are ranked according to [eight] **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 [565] **564**). The MRI is available at https://www.nj.gov/dca/home/MuniRevitIndex.html.

. . .

"Passive House" is a design standard that achieves thermal comfort with minimal heating and cooling by using insulation, air-tightness, appropriate window and door design, ventilation systems with heat recovery, and the elimination of thermal bridges, resulting in significantly lower-than-average energy usage and utility costs. In order to meet the Passive House standard, a project must be certified as such by either the Passive House Institute U.S. (PHIUS) or the Passive House Institute (PHI).

. . .

"Ready to grow area" means an area that has the capacity for growth and has received recognition from the State of this capacity, either through a planning process or through documentation that adequate water supply and wastewater infrastructure are available to serve the project. A project shall be considered to be in a ready to grow area if it is located within at least one of the areas designated [in] **at** 1 and 2 below by the tax credit application deadline:

1. (No change.)

2. An area that has the water and wastewater capacity and infrastructure to serve the project and that also has at least one of the features [in] **at** 2i through vi below:

[i. Is located within an area in need of redevelopment or an area in need of rehabilitation, as defined at N.J.S.A. 40A:12A-3;]

i. Is a redevelopment project;

ii.-vi. (No change.)

"Redevelopment project" means a project fully located within a "redevelopment area" or "area in need of redevelopment" or a "rehabilitation area" or "area in need of rehabilitation," as those four terms are defined in the Local Redevelopment and Housing Law at N.J.S.A. 40A:12A-3, or within the boundary of an approved "neighborhood revitalization plan," as defined in the Neighborhood Revitalization State Tax Credit Act at N.J.S.A. 52:27D-491. No later than the application deadline, the redevelopment plan must be adopted by the municipal governing body or the neighborhood revitalization plan must be approved by the Commissioner of DCA. [In non-smart-growth areas only, the majority (that is, more than 50 percent) of the property must be or have previously been covered by structures, as that term is defined in the Municipal Land Use Law at N.J.S.A. 40:55D-7.] The project must further the **approved plan's** goals and objectives [of the approved plan].

"Rehabilitation" or "rehab" means the repair, renovation, alteration**,** or reconstruction of any building or structure.

"Related party" means a relationship between parties when there is a spousal or family relationship, parent-subsidiary relationship**,** or where owners, officers, directors, partners, stockholders, or members of one business entity hold [a] **an interest of** 10 percent or more [interest] in the other business entity.

"Retention factor" means an increase to the base of the equity range used to calculate the value of the tax credits. NJHMFA will add a retention factor to non-syndicated tax credit projects, or projects where the general partner (and/or related entity) will retain at least **a** 2.00 percent ownership interest. For projects where the general partner's ownership interest is between 2.01 and 5.00 percent, $.05 shall be added to the base of the equity range. If the general partner's ownership interest is 5.01 to 49.99 percent, $0.10 shall be added to the base of the equity range. If the general partner's ownership interest is at least 50.00 percent, $0.20 shall be added to the base of the equity range.

"Scattered site project" means a project that consists of buildings [which] **that** are not all proximate to one another, **that** is financed pursuant to a common financing plan**,** and **in which** 100 percent of the residential rental units [of which] are rent-restricted within the meaning of section 42(g)(2) of the Code.

"Senior project" means "housing for older persons" as defined [in] **at** Section 807(b)(2) of the Fair Housing Act, 42 U.S.C. § 3607, as it may be amended. In order to be eligible for the **Age-Friendly** Senior Cycle, the project must meet one of the three categories of exempt "housing for older persons" as defined by the Fair Housing Act:

1. At least 80 percent of the occupied units in the building are [each] occupied by at least one person 55 years or older and the property [must be] **is** clearly intended for older persons as evidenced by policies and procedures that demonstrate the intent that the property be housing for older persons (55[+] **years and older**);

2.-3. (No change.)

The familial status provisions of the Fair Housing Act prohibit discrimination against households with children under 18. This protection extends to pregnant women, foster families, legal guardians, and those in the process of obtaining guardianship of or of adopting minor children. The only exception to this prohibition against discrimination based on familial status is for property that qualifies under a Fair Housing Act exemption as "housing for older persons."

Refusing to rent to households with children is allowed under the exemption for housing for older persons as long as the age restrictions are met. Accordingly, in these properties, managers must verify the age of residents. Age verification documentation must be available on site; failure may lead to a loss of the exemption. For questions about whether a property qualifies for the exemption as housing for older persons, a fair housing attorney or other fair housing professional should be consulted.

. . .

"Smart growth areas" means areas that promote growth in compact forms and protect the character of existing stable communities. A compact form of development combines an efficient use of land, natural resources, and public services. An area shall be considered to be a smart growth area if it is within Planning Area 1, Planning Area 2, or within a Designated Center on the State Plan Policy Map. In the Pinelands Area, an area shall be considered [to be] a smart growth area if it is within a Regional Growth Area, a Pinelands Village, or a Pinelands Town.

For more information on whether a project is located within a smart growth area, visit the site evaluator website at [https://njgin.state.nj.us/OIT_BusinessMap2/index.html] **https://njogis-newjersey.opendata.arcgis.com/datasets/dosopa::new-jersey-smartgrowth-areas/explore** or contact NJHMFA.

"Social service coordinator" means a person who is responsible for linking the residents of a tax credit property to appropriate supportive services. The major functions of the social service coordinator include, but are not limited to:

1. (No change.)

2. Providing information and referrals to residents on programs and resources [on] **at** local, State**,** and Federal levels;

3. (No change.)

4. Assessing the needs of residents, including physical, mental, social**,** and financial needs, and developing a plan for service delivery;

5.-7. (No change.)

8. Planning and implementing monthly programs and activities to meet the needs of residents, including establishment of social, educational**,** and recreational programs.

"Social services plan" means a description of the scope of social and support services to be provided for supportive housing projects **and supportive housing units set aside within family and senior projects**, including a staffing plan and how the services will be delivered and funded. The services must be affordable and appropriate to the target population to the satisfaction of NJHMFA, available and accessible to the project's tenants, and the social service provider must have the capacity to perform such services. The social services plan must address the [target population's(s')] support service needs **of the target population(s)** and may include a range of services across a wide continuum of care and intensity appropriate to the target population(s). Appropriate and needed services must be supported by evidence-based practice, research, and/or direct practice experience. Each special needs tenant does not have to utilize all of the services provided by the project; however, the services must be available. The social services plan shall address, but is not limited to, the following items:

1. (No change.)

2. A description of the targeted population(s), including criteria [which] **that** will qualify proposed tenants for the supportive housing units and expected support services that are likely to be required;

3. A description of the proposed services, including how services respond to [need areas of] tenant[s] **needs**, how services will be funded, and service location ([on site] **on-site** or in the community);

4. A description of how services will be coordinated or made available to all special need**s** tenants, including a listing of referral sources; and

5. (No change.)

Social service coordinator, case manager**,** and linkages coordinator/provider are not counted as separate and distinct services. NJHMFA shall view these services as all being part of the same service.

. . .

"Sponsor certification" means the certification signed by the developer(s), applicant(s)**,** and general partner(s) submitted at application, reapplication, carryover request**,** or IRS Form 8609 request [which] **that** identifies the anticipated or actual date [that] the project is placed in service. The certification shall also include a signed breakdown of costs and basis and a statement whereby the owner agrees to abide by the [low income] **low-income** housing tax credit requirements of the Code and a statement, under penalty of perjury, that the information contained in the certification is true and complete.

"Start construction" means to issue a notice to proceed to a project's contractor, mobilize equipment on the site, and physically commence construction/site work. It is the responsibility of the developer and contractor to ensure that all applicable local and State permits, Federal approvals, inspections, surveys**,** and/or reports have been received before work has commenced. NJHMFA reserves the right to conduct a site inspection to ensure the timely start of construction.

. . .

"Substantially incomplete" means an application with a total of three or more defects as described at N.J.A.C. 5:80-33.11(c)1 and 3 or an application with a total of six or more defects as described at N.J.A.C. 5:80-33.11(c)1, 2**,** and 3. An application deemed to be substantially incomplete is not eligible for the 48-hour period to cure such defects [under] **at** N.J.A.C. 5:80-33.11(c).

"Successfully developed and operated" means a tax credit project with no uncorrected HUD 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.

["Supplemental award" means an award of credits from the Reserve in order to fund the final eligible project awarded credits in a cycle if there are insufficient credits in the cycle to provide a full reservation for the project. Applicants do not apply for supplemental awards.]

"Supportive housing marketing plan" means a marketing plan that contains a list of [State] **State-** and community-based organizations that serve the target population [that] the sponsor is planning to house, as well as a detailed list of referral sources for tenant applications.

"Supportive housing population needs analysis" means a needs analysis conducted by the applicant and/or social services provider that demonstrates the current and projected need and demand for housing for the targeted population(s). A supportive housing population needs analysis shall address the following:

1.-2. (No change.)

3. Current and estimated population needs assessment for the defined market area. Applicants can obtain this information from Federal, State**,** and local agencies and sources;

4.-6. (No change.)

"Supportive housing project" means a project that shall rent a minimum of 25.00 percent of the total project units to individuals with special needs. At a minimum, a supportive housing project must have a social service coordinator and a social services plan that addresses the needs of the identified special needs population. If a social service coordinator is being provided through a third party, then a signed agreement between the two parties is required and the coordinator must be dedicated to the tax credit project for at least 20 hours per week. Special needs populations include individuals and families who are in need of certain types of homes and/or community-based supportive services, usually on an ongoing basis, in order to remain capable of independent living in communities. Supportive services range across a wide continuum of care (such as meal preparation, assistance with housecleaning, etc.) to high level (such as substance abuse and mental health supports) to medically intense (such as skilled nursing) and will vary from person to person depending on their particular physical, psycho-social, and/or mental limitations, and may vary for one person over time. Each special needs tenant does not have to utilize all of the services provided by the project; however, the services must be available. If tenants are not utilizing the services that are available, NJHMFA may call into question whether [or not] the project is serving a special needs population.

Examples of supportive services include, but are not limited to, the following:

1.-12. (No change.)

"Supportive housing unit" means a unit within a project that is rented to an individual with special needs, with a social service coordinator, a supportive services plan that addresses the needs of the identified special needs population**,** and the provision of supportive services, just as with supportive housing projects[, as defined above in this section].

"Targeted Urban Municipalities" or "TUMs" means those urban municipalities [ranked and] designated by the following factors: [Department of Community Affairs (DCA) Municipal Revitalization Index, housing density] **MRI**, population, and [employment to] housing [ratio] **density**. **Municipalities are eligible to be designated as a TUM if they have at least 5,000 residents, 2,000 housing units, and meet a municipal housing density of at least 425 units per square mile or have at least one census tract with a housing density of at least 1,275 units per square mile, as of the most recent data from the U.S. Census Bureau's Population Estimates Program (PEP) and American Community Survey (ACS) 5-Year Estimates. Eligible municipalities shall be ranked according to their MRI Distress Scores in descending**

order. NJHMFA shall publish annually a list of **the New Jersey** municipalities that are designated as TUMs.

. . .

"[Transit oriented] **Transit-oriented** development" or "TOD" means a [mixed use] **mixed-use** development within walking distance (1/2 mile) of a rail, light rail, subway, ferry**,** or major bus corridor station.

"Transit [village] **Village**" means a community served by bus, train, light rail, or ferry that has been designated as such by the State's Transit Village Task Force pursuant to criteria available at [http://www.state.nj.us/transportation/community/village/criteria.shtm] **https://www.state.nj.us/transportation/community/village/criteria.shtm**. The [transit village program] **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[, which] **that** review municipal applications and make recommendations. Transit [villages] **Villages** must be designated by the tax credit application deadline.

"Uncorrected noncompliance" means any one of the following [which] **that** was reported to the owner by NJHMFA. With respect to the point category only, this refers to noncompliance that remains uncorrected as of the date of the tax credit application deadline or the correction date set forth in the formal notice of non-compliance, whichever occurs later:

1. A violation of State [and] **or** local building codes or health ordinances;

2. Failure of one or more major systems (for example, roof, HVAC, elevators, plumbing**,** [and] **or** electric);

3.-4. (No change.)

Owners shall be notified of the noncompliance by either a formal notice of noncompliance or by the non-issuance of the IRS Form 8609.

. . .

5:80-33.3 Application cycles

[Each year,] NJHMFA shall establish funding cycles and the amount of credits available in each cycle. They will be advertised on the NJHMFA website [www.nj-hmfa.com] **at https://nj.gov/dca/hmfa/** and in at least five of the following newspapers: Atlantic City Press, The Record, Newark Star Ledger, The Courier News, The Asbury Park Press, The Camden Courier Post, South Jersey Times, and The Times of Trenton. NJHMFA shall set the eligibility cut-off dates in each year for receipt of completed applications. Applications shall be submitted to NJHMFA by [12] **12:00** noon of the application deadline date in order to be considered for review. The application filing deadlines and the credits available in each cycle shall be announced as early in the year as possible. Reservations shall be announced approximately [90] **120** days [(or the next business day if the 90th day is a weekend or holiday)] after the deadline for the cycle. NJHMFA may adjust the number of cycles or adjust the award dates if required by the timing of passage of Federal legislation or adoption of IRS rules and regulations or for other compelling circumstances. A project cannot compete in more than one cycle simultaneously.

5:80-33.4 Family Cycle

(a) [Non-age restricted] **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 [$1,750,000] **$2,000,000**. Total development costs shall not exceed [$275,000] **$317,625** per unit for buildings of one to four residential stories, [$300,000] **$346,500** per unit for buildings with five or six residential stories, and [$325,000] **$375,375** 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] **$300,000** 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), [and] 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. Minimum rehab projects are not eligible to apply in this cycle. Unless market area demographics and/or financial feasibility demonstrate otherwise, all non-age-restricted projects (except [minimum rehabilitation,] preservation[,] and historic rehabilitation projects) must adhere to the following minimum bedroom distributions: the combined number of efficiency and one-bedroom tax credit units shall be no greater than 20.00 percent of the tax credit units; at least 30.00 percent of the tax credit units shall be two-bedroom units; and at least 20.00 percent of the tax credit units shall be three-bedroom units. There are two set-asides in the Family Cycle:

1. Mixed-Income set-aside: The first reservation of credits from the Family Cycle shall be awarded to one project that contains up to 55 percent affordable units and is located outside of a Targeted Urban Municipality. Up to $30,000 in credits per tax-credit-eligible unit are available and the maximum annual allocation of credits is [$1,750,000] **$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, including the maximum points stipulated at **N.J.A.C. 5:80-33.15(a)1i, regarding extended affordability;** [N.J.A.C.] 5:80-33.15(a)11i**,** regarding site selection; [N.J.A.C.] 5:80-33.15(a)14ii, regarding proximity to public transportation; and [N.J.A.C.] 5:80-33.15(a)14iii, regarding high-performing schools. 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[ii]. If, because of lack of demand, the mixed-income set-aside is not utilized, the credits therein shall be released into the Family Cycle.

2. Preservation set-aside: The second **and third** reservation**s** of credits from the Family Cycle shall be given to the **two** highest-ranking eligible application**s** from [a] preservation set-aside project**s**. The maximum annual allocation of credits to developments competing in this set-aside is [$1,250,000] **$1,400,000**. If, because of lack of demand, the preservation set-aside is not utilized, the credits in the preservation set-aside shall be released into the Family Cycle.

(b) Projects that receive negative points [under] **pursuant to** N.J.A.C. 5:80-33.15(a)15, 17, [or] 18**, 19, or 20** shall not be eligible to compete in any set-aside.

(c) Reservations shall first be awarded to the highest-ranking eligible projects qualifying for the mixed-income and preservation set-asides. Thereafter, reservations shall be awarded to the highest-ranking eligible projects under the scoring and ranking criteria at N.J.A.C. 5:80-33.15. To ensure equitable distribution if there are both excess demand and multiple ranking eligible applications from a single municipality, NJHMFA shall fund no more than two projects per year from the same municipality with a population of less than 100,000 and no more than three projects per year from the same municipality with a population of 100,000 or more based on the most recent American Community Survey Table DP05 (ACS **5-Year** Demographic and Housing Estimates), U.S. [Department of the] Census **Bureau** (however, projects funded through the Supportive Housing Cycle will not be included in this count). To ensure equitable distribution if there are both excess demand and multiple ranking eligible applications from a single developer, NJHMFA shall fund no more than three projects per year from the same developer/general partner/managing member. Funding of projects shall be prioritized in the following manner: the [highest ranking] **highest-ranking** eligible project(s) in the Family Cycle, **followed by** the **Age-Friendly** Senior Cycle[, and lastly, the Final Cycle]. NJHMFA will accept only one application per developer/general partner/managing member per municipality in the Family Cycle. [Projects that received an award of credits in a previous year that are now re-competing shall not be included in the totals for purposes of the municipal equitable distribution provision described herein.]

[(d) Approximately 40, but not less than 35, percent of the credits in this cycle (inclusive of all set-asides and all credits awarded under the Mixed-Income Reserve established at N.J.A.C. 5:80-33.8(a)3) shall be made available to Targeted Urban Municipalities and the remaining credits shall be allocated to the remainder of the State, provided NJHMFA receives a sufficient number of eligible applications from areas outside of Targeted Urban Municipalities to result in these allocation percentages. The credits allocated toward Targeted Urban Municipalities could exceed 40 percent if necessary to fully fund a project.]

(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 and all credits awarded under the Mixed-Income Reserve established at N.J.A.C. 5:80-33.8(a)3) shall be made available to projects in Targeted Urban Municipalities (TUMs), seeking to maintain a lower constraint of not less than 50 percent.

2. The remaining credits shall be allocated to projects in the remainder of the State (non-TUM areas), provided NJHMFA receives a sufficient number of eligible applications from non-TUM areas to result in these approximate allocation percentages.

3. As the dollar amounts of certain awards may skew percentages, thus making it difficult or impossible to maintain strict allocation percentages, NJHMFA reserves the right in its sole discretion to allocate awards among projects in TUMs and non-TUM areas to best attain the objective set forth in this subsection.

(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 and all credits awarded under the Mixed-Income Reserve established at N.J.A.C. 5:80-33.8(a)3) shall be made available to projects in TUMs, seeking to maintain a lower constraint of not less than 35 percent.

2. The remaining credits shall be allocated to projects in the remainder of the State (non-TUM areas), provided NJHMFA receives a sufficient number of eligible applications from non-TUM areas to result in these approximate allocation percentages.

3. As the dollar amounts of certain awards may skew percentages, thus making it difficult or impossible to maintain strict allocation percentages, NJHMFA reserves the right in its sole discretion to allocate awards among projects in TUMs and non-TUM areas to best attain the objective set forth in this subsection.

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 [$1,400,000] **$1,600,000**. Total development costs shall not exceed [$275,000] **$317,625** per unit for buildings of one to four residential stories, [$300,000] **$346,500** per unit for buildings with five or six residential stories, and [$325,000] **$375,375** per unit for buildings with over six residential stories, excluding capitalized permanent reserves, [non-basis eligible] **non-basis-eligible** off-site improvements, up to $10,000 per unit and [$400,000] **$300,000** 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), [and] 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. Minimum rehab projects are not eligible to apply in this cycle. Unless market area demographics demonstrate otherwise, one-bedroom units should [comprise] **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** reservation**s** of credits from the **Age-Friendly** Senior Cycle shall be given to the highest-ranking eligible application**s** from [a] preservation set-aside project**s**. The maximum annual allocation of credits to developments competing in this set-aside is [$1,000,000] **$1,200,000**. If, because of lack of demand, the preservation set-aside is not utilized, the credits shall be released into the **Age-Friendly** Senior Cycle.

(b) Projects that receive negative points [under] **pursuant to** N.J.A.C. 5:80-33.15(a)15, 17, [or] 18**, 19, or 20** shall not be eligible to compete in any set-aside.

(c) Reservations shall first be awarded to the highest-ranking eligible project**s** qualifying for the preservation set-aside. Thereafter, reservations shall be awarded to the highest-ranking eligible projects under the scoring and ranking criteria at N.J.A.C. 5:80-33.16. To ensure equitable distribution if there are both excess demand and multiple ranking eligible applications from a single municipality, NJHMFA shall fund no more than two projects per year from the same municipality with a population of less than 100,000 and no more than three projects per year from the same municipality with a population of 100,000 or more based on the most recent American Community Survey Table DP05 (ACS **5-Year** Demographic and Housing Estimates), U.S. [Department of the] Census **Bureau** (however, projects funded through the Supportive Housing Cycle will not be included in this count). To ensure equitable distribution if there are both excess demand and multiple ranking eligible applications from a single developer, NJHMFA shall fund no more than three projects per year from the same developer/general partner/managing member. Funding of projects shall be prioritized in the following manner: the [highest ranking] **highest-ranking** eligible project(s) in the Family Cycle, **followed by** the **Age-Friendly** Senior Cycle[, and lastly, the Final Cycle]. NJHMFA will accept only one application per developer/general partner/managing member per municipality in the **Age-Friendly** Senior Cycle. [Projects that received an award of credits in a previous year that are now re-competing shall not be included in the totals for purposes of the municipal equitable distribution provision described herein.]

[(d) Approximately 40, but not less than 35, percent of the credits in this cycle (inclusive of all set-asides) shall be made available to Targeted Urban Municipalities and the remaining credits shall be allocated to the remainder of the State, provided NJHMFA receives a sufficient number of eligible applications from areas outside of Targeted Urban Municipalities to result in these allocation percentages. The credits allocated toward Targeted Urban Municipalities could exceed 40 percent if necessary to fully fund a project.]

(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 and all credits awarded under the Mixed-Income Reserve established pursuant to N.J.A.C. 5:80-33.8(a)3) shall be made available to projects in TUMs, seeking to maintain a lower constraint of not less than 50 percent.

2. The remaining credits shall be allocated to projects in the remainder of the State (non-TUM areas), provided NJHMFA receives a sufficient number of eligible applications from non-TUM areas to result in these approximate allocation percentages.

3. As the dollar amounts of certain awards may skew percentages, thus making it difficult or impossible to maintain strict allocation percentages, NJHMFA reserves the right in its sole discretion to allocate awards among projects in TUMs and non-TUM areas to best attain the objective set forth in this subsection.

(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 and all credits awarded under the Mixed-Income Reserve established at N.J.A.C. 5:80-33.8(a)3) shall be made available to projects in TUMs, seeking to maintain a lower constraint of not less than 35 percent;

2. The remaining credits shall be allocated to projects in the remainder of the State (non-TUM areas), provided NJHMFA receives a sufficient number of eligible applications from non-TUM areas to result in these approximate allocation percentages; and

3. As the dollar amounts of certain awards may skew percentages, thus making it difficult or impossible to maintain strict allocation percentages, NJHMFA reserves the right in its sole discretion to allocate awards among projects in TUMs and non-TUM areas to best attain the objective set forth in this subsection.

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. **Units receiving Money Follows the Person (MFP) funds, first authorized by Congress as a demonstration program by section 6071 of the Deficit Reduction Act of 2005, Pub. Law 109-171 (2006), and subsequently extended and amended by Congress, or Section 811 funds cannot be included as part of the minimum 25.00-percent requirement.** An executed agreement between the proposed owner entity and **the social service provider, and** a social services plan consistent with **the** requirements of this subsection for the Supportive Housing Cycle [and approved by NJHMFA] 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 [$1,400,000] **$1,600,000**. Total development costs shall not exceed [$275,000] **$317,625** per unit for buildings of one to four residential stories, [$300,000] **$346,500** per unit for buildings with five or six residential stories, and [$325,000] **$375,375** 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] **$300,000** 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), [and] 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) Reservations shall be awarded to the highest-ranking eligible projects. To ensure equitable distribution if there are both excess demand and multiple ranking eligible applications from a single developer, NJHMFA shall fund no more than three projects per year from the same developer/general partner/managing member. NJHMFA will accept only one application per developer/general partner/managing member per municipality in the Supportive Housing Cycle.

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

(c) Projects that receive negative points [under] **pursuant to** N.J.A.C. 5:80-33.15(a)15, 17, [or] 18**, 19, or 20** shall not be eligible to compete in any set-aside.

[(d) Approximately 40, but not less than 35, percent of the credits in this cycle (inclusive of all set-asides) shall be made available to Targeted Urban Municipalities and the remaining credits shall be allocated to the remainder of the State, provided NJHMFA receives a sufficient number of eligible applications from areas outside of Targeted Urban Municipalities to result in these allocation percentages. The credits allocated toward Targeted Urban Municipalities could exceed 40 percent if necessary to fully fund a project.]

(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 and all credits awarded under the Mixed-Income Reserve established at N.J.A.C. 5:80-33.8(a)3) shall be made available to projects in TUMs, seeking to maintain a lower constraint of not less than 50 percent.

2. The remaining credits shall be allocated to projects in the remainder of the State (non-TUM areas), provided NJHMFA receives a sufficient number of eligible applications from non-TUM areas to result in these approximate allocation percentages.

3. As the dollar amounts of certain awards may skew percentages, thus making it difficult or impossible to maintain strict allocation percentages, NJHMFA reserves the right in its sole discretion to allocate awards among projects in TUMs and non-TUM areas to best attain the objective set forth in this subsection.

(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 and all credits awarded under the Mixed-Income Reserve established at N.J.A.C. 5:80-33.8(a)3) shall be made available to projects in TUMs, seeking to maintain a lower constraint of not less than 35 percent.

2. The remaining credits shall be allocated to projects in the remainder of the State (non-TUM areas), provided NJHMFA receives a sufficient number of eligible applications from non-TUM areas to result in these approximate allocation percentages.

3. As the dollar amounts of certain awards may skew percentages, thus making it difficult or impossible to maintain strict allocation percentages, NJHMFA reserves the right in its sole discretion to allocate awards among projects in TUMs and non-TUM areas to best attain the objective set forth in this subsection.

5:80-33.7 Federal nonprofit set-aside

Not less than 10 percent of the credit ceiling shall be awarded to qualified nonprofit organizations in accordance with the Federal nonprofit requirement, as stated at 26 U.S.C. § 42(h)(5)(A).

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 [supplemental awards or] **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[, and Final] Cycles shall be deposited into the Reserve. Awards of credits from the Reserve are subject to availability and [to] NJHMFA's evaluation of the request.

[1. Since NJHMFA does not award partial allocations, one of the purposes of the Reserve is to provide supplemental awards to eligible projects that can only be partially funded with the credits remaining in their respective cycles. Supplemental awards are given first to the highest-ranking, partially funded eligible project from the Family Cycle. NJHMFA then evaluates the highest-ranking, partially funded eligible projects from the Senior and Supportive Housing Cycles. The next supplemental awards shall be given to the project which requires the least amount of credits from the Reserve to achieve the maximum eligible credit amount. Should sufficient credits exist in the Reserve, NJHMFA may give a supplemental award to the highest-ranking, partially funded eligible projects from both the Senior and Supportive Housing Cycles. Simultaneously, credits remaining from cycles that did not receive a supplemental award shall be deposited into the Reserve.]

[2.] **1.** Hardship requests for additional credits from the Reserve are limited to [$100,000] **$150,000** per project. Total development costs shall not exceed [$275,000] **$317,625** per unit for buildings of one to four residential stories, [$300,000] **$346,500** per unit for buildings with five or six residential stories, and [$325,000] **$375,375** per unit for buildings with over six residential stories, excluding capitalized permanent reserves, [non-basis eligible] **non-basis-eligible** off-site improvements, up to $10,000 per unit and [$400,000] **$300,000** 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), [and] 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 [situation] where the completion of the project is jeopardized without an award of additional low-income housing tax credits. No more than one hardship award shall be approved with respect to a given project. Hardship applications to the Reserve are accepted on an ongoing basis until [May 15] **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.

[3.] **2.** [Approximately 40 percent of the credits] **Credits** in the Family Cycle shall be set aside for **up to two** eligible family projects located within a Targeted Urban Municipality with up to a [55 percent] **55-percent** affordability component. Mixed-Income Reserve projects are eligible for [up to $30,000 in credits per tax-credit-eligible unit and the] **a** maximum annual allocation of credits for all projects [is] **of** $2,000,000. The project's market study at N.J.A.C. 5:80-33.12(c)1ii shall clearly demonstrate that the tax credit units provide a minimum 20 percent market advantage compared to comparable [market rate] **market-rate** units. Projects shall achieve a minimum of 65 percent of the maximum score under the ranking criteria established [under] **pursuant to** N.J.A.C. 5:80-33.15. Should multiple projects be deemed eligible at the same Tax Credit Committee meeting, credits shall be awarded in accordance with the tiebreaker at N.J.A.C. 5:80-33.19(a)1[ii]. Credits not awarded [under] **pursuant to** this paragraph shall be deposited for use in the Family Cycle at N.J.A.C. 5:80-33.4.

3. Notwithstanding the provisions at (a)2 above, 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 pursuant to P.L. 2022, c. 49, or until December 31, 2025, whichever comes sooner, the percentage of credits set aside for eligible family projects located within a TUM with up to a 55-percent affordability component shall be 60 percent.

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

i.-iv. (No change.)

5:80-33.9 Volume cap credits

(a) Projects financed by tax-exempt bonds that request tax credits pursuant to Section 42(h)(4) of the Code are required by Section 42(m)(1)(D) of the Code to satisfy the requirements for allocation of a housing credit dollar amount under the qualified allocation plan. Projects requesting tax credits entirely from volume cap do not have to compete and there are no cycle deadlines. However, complete applications shall be submitted at least one month before the tax-exempt bonds are sold. The following information shall be included in order for the application to be deemed complete: all applicable sections of the application corresponding to eligibility requirements at N.J.A.C. 5:80-33.12; those sections of the application corresponding to the point categories for [period of restriction,] conversion to tenant ownership (if applicable), tax abatement (if applicable)**,** and the negative point categories; **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, 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 [under] **pursuant to** N.J.A.C. 5:80-33.15(a)15, 17, [or] 18**, 19, or 20** shall not be issued tax credits until such items are corrected.

5. (No change.)

(b) A mixed-income [or] **project,** mixed-use project**, or affordable project linked to a market-rate or commercial component** that is part of a municipal fair share housing development plan or a court-approved judgment of repose or compliance, including, but not limited to, developments that have received a density bonus, may not receive volume cap credits unless the applicant can conclusively demonstrate that the market rate residential or commercial units are unable to internally subsidize the affordable units and the affordable units are developed contemporaneously with the commercial or [market rate] **market-rate** residential units. This subsection shall not be evaded by failing to apply all or any portion of the subsidy to the low- or moderate-income units, by diverting all or any portion of the subsidy to other uses, or by using any other device in which all or any portion of the subsidy is not used to benefit low- or moderate-income housing.

1. In determining whether an applicant has conclusively demonstrated that the [market rate] **market-rate** residential or commercial units are unable to internally subsidize the affordable units, [the Agency] **NJHMFA** shall make an initial presumption that the municipally approved inclusionary zoning, in and of itself, creates a realistic opportunity for the affordable units to be built and that such zoning is sufficient to support the internal subsidization of the affordable units required to be built under the fair share plan or the judgment of repose or compliance applicable to the municipality in which the project is situated.

2. The presumption set forth [in] **at** (b)1 above may be overcome if the applicant demonstrates, to the satisfaction of [the Agency] **NJHMFA**, the existence of any one or more of the circumstances [in] **at** (b)2i, ii, or iii below:

i.-iii. (No change.)

3. It is the **applicant's** responsibility [of the applicant] to provide sufficient documentation to support the existence of any of the circumstances [in] **at** (b)2i, ii, or iii above. **Failure to respond to NJHMFA requests for additional information supporting the circumstances at (b)2i, ii, or iii above will result in the presumption of the requirement at (b)1 above being *de facto* affirmed.** Any analysis submitted by the applicant shall expressly [take into consideration] **consider** the possibility of a [partial] **reduced** award of low-income housing tax credits (LIHTC) **and alternate sources of funding (such as additional deferred developer fees), if necessary to ensure project feasibility**, taking into account the internal subsidy provided by the market-rate units.

4. The sponsors of all inclusionary developments seeking tax-credit financing shall submit the information in this paragraph to enable [the Agency] **NJHMFA** to determine the need, if any, for tax credits. [The Agency] **NJHMFA** shall determine the amount of tax credits, if any, to be awarded to a project as part of the needs analysis required pursuant to 26 U.S.C. § 42(m)(2).

i.-ix. (No change.)

x. A feasibility analysis conducted by an independent third-party skilled in market and financial analysis, certified to [the Agency] **NJHMFA**, and including, but not limited to, the information [in] **at** (b)4x(1) through (3) below. All calculations are to be provided electronically, with live Excel sheets:

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

xi. [The Agency] **NJHMFA** reserves the right to request any additional information from the applicant as deemed necessary to conduct the needs analysis.

(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 [$4,000] **$5,000** shall be paid by applicants for projects applying to the Family, **Age-Friendly** Senior, or Supportive Housing Cycle and to the Mixed-Income Reserve, [by first-time applicants to the Final Cycle,] and by applicants for projects applying for volume cap tax credits.

2. A reapplication fee of [$100.00] **$1,000** shall be paid for projects requesting credits from the Hardship Reserve [and for projects that applied to the Family, Senior, or Supportive Housing Cycle, which did not receive a reservation of credits and wish to reapply in the Final Cycle of the same allocation year. Projects that are in essence new projects (for example, changes in the project composition, sites, or owner or developer entities) shall submit a new application fee].

(b) (No change.)

5:80-33.11 Cycle deadlines

(a) Application cycles shall be announced by NJHMFA [via] **through** notices sent to the mailing list maintained by the Tax Credit Division no later than 45 days prior to the deadline. Applications shall be accepted beginning one month prior to the deadline date. Applications shall be submitted to NJHMFA by [12] **12:00** noon of the application deadline date in order to be considered for review. Late and substantially incomplete applications shall not be admitted into a cycle. Late applications shall be returned to the applicant.

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

(d) Except for applications that NJHMFA deems to be substantially incomplete, NJHMFA shall notify the applicant of any curable defects it discovers by telephone and, simultaneously, in writing**,** by [electronic mail (e-mail)] **email**. The applicant's corrective submission shall not be considered unless it is received by NJHMFA no later than 48 hours (excluding weekends and legal holidays) from the applicant's receipt of the [e-mail] **email**. No application will receive more than one notice for a curable defect. A project that has previously applied for competitive credits (a reapplication) may receive notification of a curable defect regardless of whether such project has received notification in the past.

(e) (No change.)

(f) If an applicant fails to respond to NJHMFA's notification of curable defects within the 48-hour cure period, or if an applicant's response is non-responsive to the question asked, a negative inference shall be drawn. Failure to respond to an item in a cure letter will result in the denial of points if the question is with respect to a point category; negative points if with respect to the point categories at N.J.A.C. 5:80-33.15(a)15 [to 18] **through 20**; or ineligibility if with respect to an eligibility requirement.

(g) (No change.)

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

(a) A mixed-income [or] **project,** mixed-use project**, or affordable project linked to a market-rate or commercial component** that is part of a municipal fair share housing development plan or a court-approved judgment of repose or compliance, including, but not limited to, developments that have received a density bonus, may not compete for tax credits (ceiling tax credits), unless the applicant can conclusively demonstrate that the [market rate] **market-rate** residential or commercial units are unable to internally subsidize the affordable units and the affordable units are developed contemporaneously with the commercial or [market rate] **market-rate** residential units. This subsection shall not be evaded by failing to apply all or any portion of the subsidy to the low- or moderate-income units, by diverting all or any portion of the subsidy to other uses, or by using any other device by which all or any portion of the subsidy is not used to benefit low- or moderate-income housing. For example, if a site was originally zoned at four units per acre and a rezoning resulted in six units per acre with a [20 percent] **20-percent** set-aside for low- and/or moderate-income units, then the site would be the recipient of a density bonus. If the developer built at six market units per acre, subdivided a portion of the acreage**,** and donated [that land] **the subdivided portion** to a for-profit or nonprofit developer, then the new owner may not compete for ceiling tax credits if the [market rate] **market-rate** residential units were able to subsidize the affordable units. Alternatively, if on the same site the number of low- and moderate-income units is increased without a corresponding increase in density, then the additional affordable units would be eligible to compete for ceiling tax credits. In determining whether an applicant has conclusively demonstrated that the [market rate] **market-rate** residential or commercial units are unable to internally subsidize the affordable units, [the Agency] **NJHMFA** shall apply the standards set forth at N.J.A.C. 5:80-33.9(b)1 through 4.

(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 [in] **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. The proposed development, including all amenities and services, shall be described in a narrative format by the applicant. The narrative shall include an explanation of how the services shall be paid for, as well as the need and demand for the project and its impact upon the neighborhood. Commercial space, if any, shall be disclosed. Photographs of the site and existing structures shall be provided from all significant perspectives and show all significant nearby land uses, including, but not limited to, those land uses listed at N.J.A.C. 5:80-33.15(a)11. Preliminary drawings of the finished project, including the site plan, floor plan**,** and elevations drawn to scale, shall be submitted with the narrative.

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

(1) A brief executive summary [which] **that** includes the appropriate vacancy rate, capture rate, absorption period, and the market advantage compared to comparable [market rate] **market-rate** properties given the rents projected by the applicant, as well as a detailed table of contents [which] **that** clearly identifies the location of the items listed below;

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

utility costs shall be calculated separately for each utility type (for example, electric, gas, etc.) and for each unit type within the project;

(3) Geographic definition and analysis of the market area, including a comprehensive and reasonable rationale for the suggested market area with supporting evidence. For example, the market area may be defined as the area in which similar properties compete with the subject property for tenants, or the area immediately surrounding the project from which 60 to 70 percent of the residents are expected to be drawn, taking into account political and natural boundaries, socioeconomic characteristics, and the areas from which nearby rental developments draw new tenants. The market area shall be evaluated on the basis of employment and income levels and trends, the presence of local revitalization projects, the number of substandard units in the market, and the number of [cost burdened] **cost-burdened** households in the market. Interviews shall be conducted with area apartment managers to establish mobility patterns in the area. Particular attention should be given to tax credit properties. As available, the results of the interviews shall be reported, showing the percentage of residents by neighborhood/community. For cases in which the subject property is an existing rental development or later phase of an existing development, detailed tenure by prior residence must be shown. Additional explanation shall be provided for any market area with boundaries in excess of three miles (urban site) or five miles (rural site) of the site;

(4) An economic analysis that provides the reader context to better understand the household and rent trends in the market. Topics to be addressed shall include:

(A)-(C) (No change.)

(D) A list of major employers in the PMA or other appropriate small geographic area and announced changes in workforce (that is, expansions, contractions, and relocations), [contractions in their workforces,] as well as newly announced employers and their anticipated effect on the local economy; and

(E) (No change.)

(5) A demographic analysis of the **owner and renter** households in the market area [in] **at** (c)1ii(3) above [which] **that** are income eligible and can afford to pay the rent (assuming potential households may spend up to 40 percent of their income on housing expenses). When appropriate, the eligible households shall also be analyzed by [tenure (owner/renter),] **household** size [of renter households], **race, ethnicity,** and age. Market studies submitted for projects applying to the **Age-Friendly** Senior Cycle shall include an evaluation of the market for the eligible population over 70 years old. Demographics from the last decennial census shall be updated to reflect current market conditions and shall be the basis for projected demographics. This research data shall be provided in the appendix and shall be from an organization such as Nielsen or a governmental source such as the American Community Survey, metropolitan planning organizations, or local planning agencies. Supportive Housing projects shall also provide demographics on the special needs population in the project in order to substantiate need and demand at projected rent levels;

(6) Rent, vacancy, and amenity surveys by unit size of market rate, affordable, and subsidized properties. The affordable property survey shall include all LIHTC properties in the market area and those projects that are currently under construction or have received preliminary site plan approval. A rent adjustment analysis of the most comparable properties to the subject shall be presented to derive a market rent for each unit type. Data shall include, at a minimum, a grid analysis by unit size for rents, amenities, unit features, unit square footage, age, number of bathrooms, tenant-paid utilities, rent per square foot, location, physical condition, and curb appeal. Rents shall be adjusted, especially for utility and amenity charges, so that appropriate comparisons can be made. The proposed rent shall have at least a [10 percent] **10-percent** rent advantage in relation to the estimate of market rent. Additional information concerning unit mix, vacancy and turnover rates, operating expenses, rent trends, rent concessions, rent control, waiting lists, absorption per month, design, contact, and contact phone number shall be provided in a grid or narrative format**,** when available. The market study shall contain a minimum of three rent comparables for each unit size. All comparable properties should be within the delineated market area when possible. In cases where a comparable project has to be chosen from outside the market area (for example, where there is not enough similar rental product in the market area), appropriate adjustments should be made for location differences. At least one picture of each comparable and a detailed street map [which] **that** shows the location of each comparable shall be provided. In addition, if the building that is the subject of the tax credit application is currently occupied, rent rolls and current tenant incomes shall be provided and analyzed;

(7) The capture rate, absorption period, and the impact the proposed rental housing may have on existing inventory. The capture rate is the number of units in the project divided by the net demand for the project, where the net demand is the number of households that are income eligible and can afford to pay the rent minus the number of comparable affordable units in the market area. For purposes of the market study, the maximum annual household income for the tax credit units shall be equal to 50, 60, or 80 percent of the area median income (depending on whether the applicant chooses the 20 percent at 50 percent, 40 percent at 60 percent, or average income Federal set-aside) of a household. The maximum income limit shall be based on an average household size of 1.5 persons per bedroom for the largest tax credit unit. For single room occupancy projects, [assume] **the maximum income limit shall be based on the assumption of** one person per unit. Maximum income limits for all proposed senior projects shall be limited to a two-person household. The minimum annual household income for the tax credit units shall be equal to the lowest tax credit gross rent multiplied by 30 (which assumes that potential households may spend up to 40 percent of their income on housing expenses on a monthly basis). The absorption period is a forecast of the number of months that will elapse from the completion of construction to stabilization (93 percent occupancy) of the project as a whole, taking into consideration a reasonable vacancy rate. Sample calculations of capture rate and absorption period shall be shown in the report, and NJHMFA shall be able to reconstruct the estimates using the data and methods in the market study. When additional analysis is appropriate, methods shall consider demographic trends, age of householders, the size of renter households, the unit mix of the project, the amount of home ownership in the target population, the cost of home ownership in the market area, approved projects not yet placed in service, and any other significant factors. The impact of the subject project on existing housing in the market area shall also be addressed;

(8)-(9) (No change.)

(10) A statement of the competency of the analyst conducting the study. The market analyst shall certify that:

(A) [He or she is] **They are** an independent, [third party] **third-party** professional with no financial interest in the project other than in the practice of [his or her] **their** profession (for example, [his or her] **their** fee for preparing the report is not contingent upon project completion and/or an award of tax credits);

(B) [He or she has] **They have** the requisite knowledge to [proceed with] **conduct** the study;

(C) [He or she has] **They have** personally inspected the subject property and the comparable properties analyzed in the report; and

(D) [He or she has] **They have** conducted the study in accordance with the Model Content Standards for Market Studies for Rental Housing of the National Council of Housing Market Analysts (NCHMA), 1400 16th Street NW, Suite 420, Washington, DC 20036, [which Market] **whose Model** Content Standards are available at [http://www.housingonline.com/resources.aspx] **https://www.housingonline.com/councils/national-council-housing-market-analysts/model-content-standards/**, incorporated herein by reference, as amended and supplemented.

(11) The provisions [of] **at** N.J.A.C. 5:80-33.11(d) and (e) shall not apply to market studies submitted [under] **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, in writing**,** by [facsimile transmission] **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 less and projects receiving Project Based Section 8 rental assistance for 100 percent of the units, the form of market analysis described below may be submitted in lieu of the market study requirements listed [in] **at** (c)1ii(1) through (7) above:

(1) The [third party] **third-party** analyst shall provide a description of the proposed site and proposed improvements, a geographic definition and analysis of the market area, age and income demographics within the defined market area**,** and rent, vacancy**,** and amenity surveys by unit size of [market rate] **market-rate**, affordable, and subsidized properties. In addition, a rent adjustment analysis shall be provided of the properties most comparable to the subject property. For suggestions, see [related subsections of] (c)1ii above; and

(2) (No change.)

iv. (No change.)

2. Applications shall include the information set forth [in] **at** (c)2i and ii below in order to demonstrate site control:

i. The applicant shall be either the owner or developer of the project and shall demonstrate that it has control of the property [via] **through** any one or a combination of the following: fee simple title **by way of deed**; long-term [leasehold interest] **ground lease or option to enter into a ground lease** (for a minimum term of the compliance and extended use periods); option **agreement** to purchase or lease, including evidence that options are renewable until at least the start of construction; executed [land sales] contract **of sale** or other enforceable agreement for acquisition of the property; and/or an executed disposition and development agreement with a public agency that specifies the site(s) to be acquired and, if the property is to be or may be acquired by eminent domain, identifies the condemnor, as such term is defined at N.J.S.A. [20:3-1 et seq.] **20:3-2,** or its successor. The acquisition price and basis shall be limited to the lesser of the purchase price or the "as is" appraised value of the building and/or land.

ii. The applicant assumes the full burden of disclosing with certainty in its application how it [shall] **will** obtain and maintain site control. The application shall set forth with specificity by what means each parcel of the project's real property is to be acquired if such acquisition has not yet been perfected; applications shall not indicate alternate means of acquisition for any particular parcel. **If multiple documents are necessary to evidence site control, there shall be no lapse in the chain of site control documentation.** For all forms of site control, a copy of the current owner's recorded deed (or equivalent) shall be submitted as supporting documentation. In the case of a municipality or other entity acquiring property through eminent domain, at a minimum, the applicant shall submit as part of its application a copy of all written offers, as described at N.J.S.A. 20:3-6**,** or its successor, executed by the condemnor to the condemnee(s) with regard to all real property comprising the project [which] **that** is to be acquired by this means, which offers must be in effect and valid at the time of submission to NJHMFA. If additional documents have been executed and/or filed with regard to eminent domain at the time of application deadline, the applicant shall append a copy of those documents with its application and shall continue to supplement the application with such documents as required [by] **at** N.J.A.C. 5:80-33.31; additionally, the declaration of taking shall be recorded within three months from the date of the Tax Credit Committee meeting at which awards/decisions are announced.

3. Applicants shall submit a copy of the preliminary or final site plan resolution**,** as well as all other approvals. For rehabilitation projects with sites that are not required by the municipality to obtain site plan approval, a letter from the planning board (or appropriate municipal official) stating that the site(s) are not subject to site plan approval shall be provided. It is the applicant's responsibility to [insure] **ensure** that the project complies with all applicable local land use and zoning ordinances and that nothing at the local or county level will interfere with the project obtaining all necessary permits.

4. Applicants shall disclose the existence of any known environmental conditions/constraints**,** including, but not limited to, wetlands, stream encroachment, and steep slope grading, [which] **that** may impact development on the project site. In addition, applicants shall certify that all necessary environmental approvals have been obtained **or, at a minimum, applied for** from the Department of Environmental Protection [or, at a minimum, applied for]. If remediation is necessary, the remediation plan shall be accounted for in total development costs. If a Phase I environmental study conducted in accordance with [A.S.T.M. E1527-97] **the American Society for Testing and Materials (ASTM) E1527-21 (or most recent standards adopted by the State)**, Standard and [Poors] **Poor's** Enhanced Protocol (which includes testing for lead, asbestos**,** and radon) has been completed for the project, the findings shall be submitted. A Phase I is not required; however, if a project is awarded credits and a Phase I was not submitted with the application, the applicant shall not be allowed to apply for hardship credits for unforeseen environmental issues.

5. As required [by] **pursuant to** Section 42(m)(2)(B)(i) of the Code, all financing information shall be disclosed in the application, including information about letters of interest and other undertakings that the applicant does not identify as funding sources in the application. The applicant shall provide all syndication documents in existence at the time of application**,** including, but not limited to, the prospectus (offering memorandum), limited partnership agreement, joint venture agreement, partnership administration services agreement, development agreement**,** [and] any amendments to the aforementioned documents**,** and any relevant agreement between and among the relevant parties setting forth the terms of the financial arrangements, commitment letters, if any (firm or otherwise)**,** and mortgage documents. All documents must include all exhibits and schedules. In addition, Section 42(m)(2)(C)(ii) of the Code requires the taxpayer to "certify to the housing credit agency the full extent of all Federal, State, and local subsidies which apply (or which the taxpayer expects to apply) with respect to the building."

6. All funding sources planned for the project shall be committed to the project **at the time of application, excluding NJHMFA financing sought as part of the application. For NJHMFA financing only, a preliminary approval letter will be acceptable at the time of application, which letter shall verify that the project development budget included as part of the application for financing has been reviewed and the underwriting parameters conform with current NJHMFA Multifamily Underwriting Guidelines and Financing Policy, available at <u>https://nj.gov/dca/hmfa/developers/multifamily</u>**. Commitments shall be firm and contain only conditions that are under the control of the applicant (that is, commitments cannot be conditioned on the availability of funds). The amount and all terms of the funding commitment shall be listed in the documentation provided [under] **at** (c)6i through viii below. The amount and terms shall be used by NJHMFA in its underwriting analysis. Commitment letters shall be countersigned/accepted**,** in writing**,** by the applicant. Expired commitments, letters of interest/intent, and term sheets do not qualify as commitments. To evidence commitments for funding sources, the following is required:

i. Banks and other lending institutions: Commitment letters for construction and permanent financing must indicate the interest rate (or the basis on which the interest rate will be set), term of the loan (at least 15 years for permanent financing, or**,** if less than 15 years, **the** loan must be fully amortizing)**,** and all conditions. If the interest rate is floating after permanent loan closing, a maximum interest rate shall be stated in the commitment letter, and shall be the rate at which NJHMFA conducts its underwriting analysis. The commitment shall have been approved by the lender's final approval authority (for example, from a bank's loan review committee or if a lending consortium, from the consortium itself). The maximum mortgage supportable shall have been obtained.

ii. State [Balanced] **Affordable** Housing **Trust Fund (AHTF)**, [Home Express,] State Community Development Block Grant (CDBG), or HOME funds: Projects applying for [Balanced Housing or Home Express] **AHTF** funds and tax credits shall comply with the applicable rules of these programs. DCA shall inform NJHMFA of those projects that have submitted a complete application for State [Balanced Housing] **AHTF**, State CDBG, or State HOME funds by the tax credit application deadline. DCA will inform NJHMFA of the projects it intends to fund and the subsidy amounts if those projects are sufficiently competitive to receive tax credits. DCA will announce the [Balanced Housing, Home Express] **AHTF**, State CDBG, and HOME commitments at the same time NJHMFA awards the reservations of tax credits.

iii. Grants: All private, State**,** or local grants shall be deducted from basis unless the grantee is taking the grant into income and paying income tax on it or the grantee is making a loan to the [partnership] **final ownership entity**. All Federal grants must be subtracted from basis.

iv. Municipal, county**,** or PHA grants or loans: Funding approvals for municipal or county grants or loans (for example, CDBG, HOME) vary from county to county and from municipality to municipality. NJHMFA is sensitive to the regulatory constraints and administrative processes of local governmental funding sources and recognizes that evidence of firm commitments may vary from one government entity to the next. Generally, it is the municipal council and county board of freeholders that have final approval authority; therefore, a copy of the county or municipal resolution/ordinance approving the funds for the project is required to be submitted with the application. However, for governmental entities where that is not the standard approval process, NJHMFA shall accept comparable commitments. For example, for projects receiving HOME funds from participating jurisdictions (PJs), NJHMFA shall accept one of four forms of commitments in light of the many ways that local governmental entities combine their local approval process with Federal HOME regulations. First, applicants may simply submit an approved municipal or county resolution described in the beginning of this subsection. Second, an applicant may submit a copy of the HUD form 7015.15 "Request for Release of Funds [&] **and** Certification" along with a copy of the PJ's cover letter transmitting it to HUD. Third, the applicant may submit a copy of their PJ's Comprehensive Housing Affordability Strategy (CHAS) with the project and the funding amount specifically cited in the CHAS along with a copy of the PJ's resolution approving the CHAS. Fourth, for those PJs that have authorized their staff to make final funding decisions, a commitment letter signed by the authorized signatory (that is, the person having final approval authority) shall be sufficient**,** so long as documentation delegating final approval authority to the signatory is also submitted.

v. Owner equity/loans and deferred developer fee: All applicants representing that they shall be contributing equity beyond that generated by the tax credit shall disclose the amount, the source, and all terms. Applicants "coming out-of-pocket" to fill a funding gap shall provide supporting documentation (that is, bank statements) and a letter from an independent C.P.A. [who certifies] **certifying** that the applicant has the amount of cash that is needed to fill the funding gap. **Except for owner equity/loans listed in conjunction with (c)6viii and x below, any owner equity/loans in excess of $1,000,000 shall be considered a permanent source that cannot subsequently be replaced by another funding source.** Cash already expended on the project by the applicant can be utilized as a source of funds if [said] **the** expenditures are verified by an independent C.P.A. and [said] **the** cash is not an advance of other project funding sources. If the developer fee is deferred, applicants shall specify the amount, and when and how it will be paid. (NJHMFA establishes maximum developer fees.) Projects [which] **that** utilize more than 50.00 percent of the total developer fee as a funding source at the application stage shall be declared infeasible, unless such use of the developer fee is on an interim basis (that is, if an anticipated funding source to replace the deferred developer fee is identified in the application, and the commitment of [said] **those** funds is received no later than the issuance of the carryover allocation/binding agreement). Failure to secure [said] **the** funding source and subsequently reduce the deferred portion of the developer fee to 50.00 percent of the total amount by carryover shall result in a cancellation of the tax credit reservation. Contractor fees cannot be pledged. Applicant equity or deferred developer fee may be subsequently replaced by State HOME or [Balanced Housing] **AHTF** resources only if the application for State HOME or [Balanced Housing] **AHTF** resources has been submitted by the tax credit application deadline.

vi. Investor commitments: Applicants who do not have an agreement with a syndicator/investor at the time of application or who have only received an investor's term sheet may still apply for tax credits; however, NJHMFA shall underwrite the project at the lowest level of the NJHMFA equity range. Applicants that have an investment agreement with their investor shall have their project underwritten at a higher price, upon request, provided the equity pricing falls within the NJHMFA equity range. The applicant shall include in the application a commitment letter (not a term sheet) from an investor evidencing the net pricing (cents per credit dollar) and total anticipated net proceeds. Applicants of projects where the general partner(s) (or equivalent) will be retaining [two or more percent] **a two-or-more-percent** ownership interest will have a retention factor added to the NJHMFA base of the equity range or the project's net pricing.

vii. All-equity projects: Such projects include those where the applicant is financing the project and is taking the credits itself and those where the project is permanently financed solely on tax credit proceeds (that is, no mortgage, grants, etc.). Applicants of projects in the former category shall comply with (c)6v above and shall have a retention factor added to the base of the NJHMFA equity range. Applicants of [the] projects in the latter category shall submit a fully executed investor commitment evidencing the pricing per credit dollar and total anticipated net proceeds shown in the application. If there is sufficient cash flow to amortize debt, the applicant shall obtain a mortgage commitment for such debt.

viii. (No change.)

[ix. Regional contribution agreements (RCAs): A copy of the municipal resolution/ordinance approving the funds for the project or the project plan amendment that includes the project and is approved by the receiving municipality is required to be submitted with the application.]

[x.] **ix.** (No change in text.)

x. New Jersey Economic Development Authority (NJEDA) funding: For projects applying for funds from NJEDA and for four-percent LIHTCs, the applicant shall ensure that NJEDA has informed NJHMFA of any of the applicant's projects that have submitted a complete application for funding, the projects NJEDA intends to fund, and the subsidy amounts. If a project does not receive NJEDA funding, the project may be declared infeasible unless there is an alternate source of financing identified in the tax credit application and commitment of the alternate funding source is received by issuance of the 42(m) letter. For projects applying for funds from NJEDA and for nine-percent LIHTCs, a commitment letter from NJEDA shall be submitted in the tax credit application.

7. In accordance with the Code, NJHMFA shall examine the reasonableness of the operational costs of the project. Applicants shall demonstrate that their project is financially feasible and viable as a qualified low-income housing project throughout the tax credit compliance period.

i. Projects shall be underwritten to demonstrate project feasibility at a household median income percentage that is 2.5 percent below the income designation selected. For example, if the [50 percent] **50-percent** AMI income designation is selected, those units shall be underwritten with rents affordable to tenants at or below 47.5 percent of the area median income adjusted for family size. **Supportive housing units not receiving project-based rental assistance shall be underwritten with rents affordable to tenants whose incomes are at or below 20 percent of the area median income adjusted for family size.**

ii. Applicants shall submit a 15-year cash flow pro forma signed by the first mortgagee (or syndicator/investor if the project has no hard debt) which exclusively reflects the following language verbatim: "We acknowledge that this pro forma substantially matches the assumptions used in our underwriting of the mortgage (equity investment)."

(1) The [proforma] **pro forma** must precisely reflect the rent structure in the tax credit application, including all lenders' assumptions such as principal and interest payments, non-rental income, operating expenses, required reserves, annual fees, etc**.**, as well as other characteristics of the application that impact financial feasibility (for example, cost of social services). That is, a project's applications for any and all other financing must mirror the development cost, operating assumptions, rent structure, etc., shown in the tax credit application.

(2) (No change.)

(3) The pro forma may reflect rental assistance only if such assistance is [project based] **project-based** and is evidenced by the submission requirements described [in] **at** (c)13 below. The subsidy may be illustrated only for the initial contractual term; that is, future renewals of [project based] **project-based** subsidy contracts cannot be assumed. Upon the expiration of [project based] **project-based** rental assistance, supportive housing projects shall be underwritten at rents no more than 20 percent of area median income adjusted for family size. For non-supportive housing projects, the project shall be underwritten at rents that are appropriate for market conditions (and are thus supported by the market study required at

(c)1ii above); however, in no event shall rents exceed 50 percent of area median income adjusted for family size.

(4)-(5) (No change.)

iii. Applicants shall submit at least two forms of data supporting the operating expenses stated in the [proforma] **pro forma** (for example, database information, comparable project information, Institute of Real Estate Management (IREM) statistics)**,** or an NJHMFA Form 10 signed by the NJHMFA [Property] **Asset** Management Division. NJHMFA reserves the right to require submission of the audited financial statements for comparable projects owned by the applicant.

iv. (No change.)

v. Projects with market-rate units shall distribute the [low and moderate income] **low- and moderate-income** units among the [different sized] **different-sized** units to reflect the same percentage distribution as the number of [different sized] **different-sized** units bear**s** to the total number of units. A greater percentage of the [low and moderate income] **low- and moderate-income** units may, however, be allocated to the larger units. Additionally, [low and moderate income] **low- and moderate-income** units shall be distributed throughout the project such that the tenants of such units [will] have equal access to, and enjoyment of, all common facilities of the project. (See N.J.A.C. 5:80-8.3.)

8. Successful participation in the New Jersey Clean Energy Program's (NJCEP) NJ [Energy Star] **ENERGY STAR** Certified Homes Program Version 3.1, [Energy Star] **NJ Zero Energy Ready Homes, NJ Pay for Performance-New Construction, ENERGY STAR** Multifamily [High Rise Program] **New Construction Version 1.1**, or alternative per the Guide to QAP Green Requirements [(Guide), incorporated herein by reference as subchapter Appendix A] **(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 <u>https://nj.gov/dca/hmfa/developers/lihtc/greenpoints/</u>.**

i. All applicants shall comply with the requirements of the **Green** Guide. Applications shall include a copy of a signed contract between the applicant and a Home Energy Rating System (HERS) rater and a signed letter of intent provided by NJHMFA, which states that the applicant has read the **Green** Guide and will comply with all requirements thereof. At the time a project [places] **is placed** in service, owners shall submit to NJHMFA the Certificates issued by the NJCEP (or equivalent) for each dwelling unit/building, as applicable, in the project.

ii. In order to satisfy the Energy Benchmarking Initiative requirements [in] **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 [in] **at** (c)8ii(1) [through]**, (2), and** (3) below, which can be found at [<u>https://www.njhousing.gov/dca/hmfa/developers/credits/green/</u>] **<u>https://nj.gov/dca/hmfa/developers/lihtc/greenpoints/</u>**:

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

(3) Completed NJHMFA New Jersey Green Homes Office Tenant Utility Release Forms and/or evidence that requests for such forms were made from at least [50] **40** percent of tenants occupying the project at the time of the IRS Form 8609 issuance for new construction or at least [30] **25** percent of each unit type for rehabilitation projects. The applicant shall also be required to include the tenant utility release form as a part of the lease agreement. For new construction projects, the applicant shall ensure that at least [50] **40** percent of the tenants have active utility release forms (or shall provide documentation of the efforts to obtain such forms) and common area utility data shall be reported for the first three years of occupancy. For rehabilitation projects, the applicant shall 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 [30] **25** percent of each unit type. Common area and tenant utility data shall be uploaded into the [EPA] **ENERGY STAR** Portfolio Manager at <u>www.energystar.gov/benchmark</u> [per] **pursuant to** the procedures outlined in the NJHMFA Energy Benchmarking Technical Manual, [incorporated herein by reference as subchapter Appendix B] **available at <u>https://nj.gov/dca/hmfa/developers/lihtc/greenpoints/</u>. 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.** [Utility data shall be submitted by January 31 for each year.]

9. Successful completion of an NJHMFA-approved tax credit certification program prior to the project being placed in service. The staff person responsible for verification of tenant income must be the person to successfully pass the certification examination and meet a continuing education requirement of at least six hours annually by an approved provider for the term of the compliance and extended use periods. For the list of approved tax credit certification programs, please contact NJHMFA's Division of [Tax Credit Services at (609) 278-7400] **Multifamily/Supportive Housing and Lending at <u>NJHMFA taxcredits@njhmfa.gov</u>**.

10. Applicants requesting acquisition credits shall include an attorney's opinion regarding each building's eligibility for acquisition credits. The acquisition value shall be the lesser of the appraised value or the purchase price or lease fee of the realty and any buildings and improvements thereon in the most recent arm's length transaction**, if such a transaction occurred within the past 10 years, as determined by a title history. The title report shall identify each party associated with the transaction**. The appraised value of the real estate [may be considered if the arm's length transaction exceeds 10 years] **shall be determinative if it is less than the amount of the most recent arm's-length transaction or if there was no arm's-length transaction within the past 10 years**. Applicants shall submit an appraisal not older than six months, which may be subject to third-party review. If acquisition credits are denied, the application shall still be considered for rehabilitation credits so long as the project remains feasible without the acquisition [credit] **credits**. NJHMFA reserves the right to require a capital needs assessment for any project seeking acquisition credits and/or an independent appraisal [which] **that** conforms to the Uniform Standards of Professional Appraisal Practice (USPAP) [for those projects that have land acquisition costs totaling over $7,500 per unit].

11.-13. (No change.)

14. Supportive housing projects or projects applying to any cycle that contain supportive housing units shall submit the following items in addition to those items at N.J.A.C. 5:80-33.15(a)5:

i. (No change.)

ii. A supportive housing marketing plan. The plan must identify the organizations that will be used for referrals and provide evidence, such as a letter of support, attesting that such organizations have experience serving the target population and can be a source for referrals. For example, if the target population is homeless individuals or homeless families, a resolution indicating that referrals will be provided or a letter of support from the local/county Continuum of Care [(CoC)] is recommended[.]**;**

iii. Evidence of the supportive housing development, management**,** and/or supportive services experience of the owner entity, property management entity**,** and/or social service provider who will be providing the property management and supportive services to the residents;

iv.-vi. (No change.)

15. [NJHMFA encourages all owners/developers to] **All owners and developers shall** affirmatively market their projects. For projects [over] **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 [Caucasians] **White persons**, outreach should be directed to [non-Caucasians] **non-White persons**. Conversely, if the population is predominantly [African-American] **Black persons**, outreach should be directed to [non-African-American groups] **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)22 for individuals and families that 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. Projects with HOPE VI/Replacement Housing/**Choice Neighborhoods Implementation Grant** funding shall submit the following:

i. A copy of the commitment letter from HUD awarding funds to the public housing authority. The applicant shall disclose the terms and conditions of the HOPE VI/Replacement Housing/**Choice Neighborhoods Implementation** grant to the public housing authority that funds the project, as well as the terms and conditions of the funding arrangements between the public housing authority and the applicant;

ii. (No change.)

iii. An analysis conducted by an independent auditor of anticipated project cash flow and residual value demonstrating a reasonable prospect of repayment of all loans funded by the proceeds of the HOPE VI/Replacement Housing/**Choice Neighborhoods Implementation Grant** funds and all debt. This analysis shall incorporate the same assumptions utilized in the 15-year cash flow pro forma submitted pursuant to (c)7ii above; and

iv. The applicant shall demonstrate that any HOPE VI/Replacement Housing/**Choice Neighborhoods Implementation Grant** funds used in the application to establish eligible basis at any time during the credit period are received [under] **pursuant to** contractual financing provisions that, when viewed in the context of reasonably anticipated project cash flow and residual value, constitute lawful basis [under] **pursuant to** the Code and applicable law.

17. Non-preservation projects located in census tracts wherein 30 percent or more of the existing housing units are [low income] **low-income** housing tax credit units shall not be eligible for funding unless the following criteria are met:

i. (No change)

ii. The project does not add more low-income units to the census tract**, unless the developer enters into a legally binding community benefits agreement with the municipality to invest resources into the impacted census tract**;

iii.-iv. (No change.)

18. (No change.)

19. 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.

20. By submitting an application, the applicant waives the right to request to terminate the extended use period through the qualified contract (QC) process pursuant to Sections 42(h)(6)(E), (F), and (I) of the Code. This waiver will be included in the extended use agreement described at N.J.A.C. 5:80-33.29.

21. NJHMFA is committed to the long-term affordability of developments for the benefit of tenants and full compliance by applicants and principals with the provisions of the Code, the extended use agreement, and other program requirements. NJHMFA similarly has an interest in preserving the right of first refusal (ROFR) by a qualified nonprofit organization at the close of the compliance period, as authorized at Section 42(i)(7) of the Code. NJHMFA reserves the right to require any or all of the following from applicants, as applicable:

i. Provisions to be included in the applicant's organizational documents limiting transfers of partnership or member interests or other actions detrimental to the continued provision of affordable housing;

ii. Terms in the extended use agreement requiring notice and approval by NJHMFA of transfers of partnership or member interests;

iii. A designated form of ROFR document as produced by NJHMFA;

iv. An ROFR agreement, including specific language that acknowledges the right of the qualified nonprofit organization to exercise the ROFR, provides that consent to execution of the ROFR may not be unreasonably withheld by the investor, and provides that the ROFR is not conditioned upon receipt by the owner of a bona fide offer from any party, to be reviewed by NJHMFA prior to issuance of IRS Form 8609;

v. A letter of intent from a tax credit investor that clearly grants to a qualified nonprofit organization a right of first refusal to purchase the project for not less than the minimum purchase price as set forth at Section 42(i)(7)(B) of the Code following the expiration of the tax credit compliance period;

vi. Written acknowledgement from any or all potential investors or syndicators that they have never sought to undermine the exercise of a right of first refusal or option to purchase in prior transactions, that they understand that return on investment is primarily in the form of tax benefits and not dependent on the project's appreciation in value, and that the ROFR as authorized at Section 42 of the Code is distinct from a right of first refusal pursuant to State statutory, court-interpreted, or common law;

vii. Negative points for applications involving sponsors, investors, syndicators, or lenders that, in NJHMFA's determination, have demonstrated a history of conduct detrimental to long-term compliance with extended use agreements, whether in New Jersey or another jurisdiction, and the provision of affordable tax credit units;

viii. Provisions to implement any amendments to the Code or any future Federal or State legislation, rules, or administrative guidance; and

ix. The decision whether to institute, and the terms of any such requirements shall be made by NJHMFA as reasonably determined to be necessary or appropriate to achieve the goals stated at this subsection and in the best interests of the QAP.

5:80-33.13 Application for additional credits

(a) Applicants may apply for additional credits [in one of two ways] **only** through a hardship request from the Reserve [or by applying under one of the cycles set forth at N.J.A.C. 5:80-33.4 through 33.7].

1. [Hardship] **Applicants submitting hardship** requests **of** up to [$100,000] **$150,000** shall apply [to] **for an award from** the Reserve. See N.J.A.C. 5:80-33.8 for a description of the Reserve.

2. Applicants shall submit all of the following before NJHMFA will consider any hardship request:

i. (No change.)

ii. A Sponsor Certification for Re-Application (including all updates to **the** original application);

iii. A rent qualification chart, income and expense statements**,** and 15-year cash flow [proforma] **pro forma,** all reflecting current projections. The [proforma] **pro forma** shall be signed by the first mortgagee (or syndicator/investor if the project has no hard debt) exclusively reflecting the following language verbatim: "We acknowledge that this [proforma] **pro forma** substantially matches the assumptions used in our underwriting of the mortgage (equity investment)";

iv. An explanation why additional credits are being sought plus supporting documentation. Projects that did not submit a Phase I environmental assessment (conducted in accordance with [A.S.T.M. E1527-97] **ASTM E1527-21**, Standard and [Poors] **Poor's** Enhanced Protocol) with their original application**s** for tax credits are not eligible for additional credits for environmental overruns;

v. Evidence that at least 50 percent of the developer fee is deferred**,** and that the applicant has attempted to increase funding from every other source (except State [Balanced Housing] **AHTF** from DCA) before applying to the Reserve for additional credits. The developer fee cannot exceed that stated in the original application; and

vi. A letter agreement with the syndicator/investor [which] **that** addresses the pricing to be paid for the original and additional credits. (If the applicant is still incurring costs and is using a projection of costs and basis in [his or her] **their** application for additional credits, the investor shall verify the projection.) The agreement shall also identify the intended end user/purchaser of the tax credits.

[2. Requests for additional credit that do not qualify for application under N.J.A.C. 5:80-33.8(a)2 or 3 shall be made through application to a competitive cycle. Such submission shall consist of the complete application as well as items (a)1iv through vi above. The original allocation plus the additional credit shall be used to calculate the tiebreaker at N.J.A.C. 5:80-33.19(a)1.]

(b) Should additional credits be awarded to a project, an allocation/issuance fee shall be paid as provided [in] **at** N.J.A.C. 5:80-33.25.

(c) The sponsor of a project that receives its initial tax credit award in the 2022 funding cycle or later and also receives hardship credits from the Reserve as provided in this section, as well as any affiliate entity effectively under the sponsor's control and any entity that is a related party with respect to the sponsor, shall be precluded from applying for tax credits for a new project for all tax credit cycles in the round following the day on which the Tax Credit Committee approves the request.

5:80-33.14 Scoring and ranking

(a) [Because of] **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 [under] **pursuant to** the ranking criteria established [under] **at** N.J.A.C. 5:80-33.15 [through 33.18]**, 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 shall assume the maximum score for each of the criteria [under] **at** N.J.A.C. 5:80-33.13 [through 33.18]**, 33.15, 33.16, 33.17, and this section** provided the requisite documentation has been submitted. Based on this ranking, NJHMFA will then examine the applications of only those projects that rank sufficiently high to receive credits. Once it is determined that an application meets all eligibility requirements, it is admitted into the cycle and underwritten.

(b) Applications shall receive points based on the point system for the particular cycle in which they compete. In the event of a tie score, projects shall be ranked according to the [tie-breaker] **tiebreaker** system. Then, reservations shall be awarded to the applications with the highest scores and**, in the case of equally high scores,** to the applications that [win the tie-breakers] **successfully meet the tiebreaker criteria**, with reservations first going to projects in the set-asides.

(c) All units in the project must qualify for a point category in order for the application to receive the points, unless expressly stated otherwise in the point categories described at N.J.A.C. 5:80-33.15 [through 33.18]**, 33.16, and 33.17**.

(d) (No change.)

5:80-33.15 Point system for the Family Cycle

(a) The point system for the Family Cycle [shall be] **is** as follows:

1. Applicants may select one of the following options (10 to 20 points):

i. Projects not located within a Targeted Urban Municipality (TUM) [which] **that** extend their compliance period for an additional 15 years shall [receive] **be awarded** 20 points. The minimum term of the low-income occupancy commitment is 30 years: a 15-year compliance period plus a 15-year extended use period. [Extension of the compliance period bars the utilization of Section 42(h)(6)(I) of the Code until the beginning of the last year of the extended compliance period.] An owner electing to extend the compliance period for 15 years will be restricting the property for 45 years—a 30-year compliance period and a 15-year extended use period. [Therefore, the owner cannot request the housing credit agency to find a buyer for the tax credit project until the beginning of year 30.] This restriction will be enforceable by NJHMFA and future tenants [via] **through** a deed of easement and restrictive covenant, which shall be recorded by NJHMFA pursuant to State law at the latter of the carryover allocation described at N.J.A.C. 5:80-33.24(a)1 or acquisition of the property; **or**

ii. Projects located in a TUM **that extend their compliance period for an additional 15 years** shall be awarded 15 points; or

iii. For [single family] **single-family** and duplex housing [which] **that** will convert to tenant ownership, 10 points shall be awarded. Such projects must convert to home ownership at the end of the compliance period. Syndication documents must reflect the conversion. The deed of easement and restrictive covenant shall reflect a right of first refusal to be granted by the owner to the tenants.

2. [A project] **An application** shall receive two points if the project utilizes public housing waiting lists.

3. (No change.)

4. Applicants may receive up to five points for municipal support.

i. Projects that receive a fixed-rate tax abatement for a 15-year term with a rate of 6.28 percent or less (inclusive of all fees) on the residential component shall receive five points. Projects that receive a fixed-rate tax abatement for a 15-year term with a rate on the residential component of more than 6.28 percent shall receive three points. If the specifics of the tax abatement (for example, percentage of rent roll, term) are not recited in the resolution/ordinance, the financial agreement to the tax abatement shall be included with the application. Proof of an applicant's tax-exempt nonprofit status is not sufficient to qualify for points for tax abatement. In order to receive points [under] **pursuant to** this category, the resolution/ordinance approving the abatement shall be submitted and must cite the proper statutory authority. For projects receiving tax abatement [under] **pursuant to** the New Jersey Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq., the first stage of the exemption period shall be for no less than 15 years. Only projects utilizing financing from NJHMFA may be granted abatement [under] **pursuant to** N.J.S.A. 55:14K-37(b). For information regarding NJHMFA financing, please contact the NJHMFA Division of [Multifamily Programs and Credit at (609) 278-7400] **Multifamily/Supportive Housing and Lending at NJHMFA taxcredits@njhmfa.gov**.

ii. Projects that do not receive **a** tax abatement [under] **at** (a)4i above shall capitalize an escrow in an amount equal to two [years] **years'** worth of taxes and have a 1.20 debt coverage ratio with a minimum of $3,000 per unit core operating expenses.

5. [Because] **As** the availability of social services greatly improves the quality of life for residents, NJHMFA awards up to six points for the provision of up to three social services for the compliance period. Two points will be awarded per service offered. **A description of each service is required. Examples of services include, but are not limited to: social service coordinator; financial literary services; food insecurity/nutrition services; health promotion programs and screenings; job training and job search assistance; and computer literacy/lab programs.** The services shall be affordable, appropriate, available, and accessible to the project's tenants. Services provided free of charge to all residents/seniors of a county/municipality based solely on residency status shall not qualify for points in this category. Applicants shall support their claim to provide social services by providing the following:

i.-iii. (No change.)

6. Five points are awarded to projects [which] **that have a certified M/WBE with at least a 20-percent interest in the general partner/managing member or** pledge to expend a sum equaling at least [15] **20** percent of construction cost on contractors, subcontractors, and material suppliers [which] **that** are certified [as minority business enterprises (MBE) and women business enterprises (WBE) by the Division of Minority and Women Business Development in the New Jersey Department of the Treasury ("Certified MBE's and WBE's")] **M/WBEs**.

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.-ii. (No change.)

iii. An ENERGY STAR-labeled [frost free] **frost-free** refrigerator of 14 cubic feet for efficiencies and one bedroom, 16 cubic feet for two bedrooms, 18 cubic feet for three bedrooms**,** and 20 cubic feet for four bedrooms;

iv.-viii. (No change.)

ix. Minimum closet space of 14 linear feet for efficiencies and one bedroom, 24 linear feet for two bedrooms, 30 linear feet for three bedrooms**,** and 35 linear feet for four bedrooms;

x.-xiii. (No change.)

xiv. [High speed] **Free high-speed** internet [access.] **subscription service in all units. All costs for providing high-speed internet must be shown in the operating budget.**

9. NJHMFA awards **up to four** points for the provision of project amenities[, up to a maximum of four points]. Two points will be awarded per amenity provided. The costs of the amenities must be shown in the capital and/or operating budgets, as appropriate. Amenities must be appropriate to the proposed tenant population. Applicants may select any combination of the following amenities in order to receive the maximum four points. The list provided below is not all-inclusive. Substitution of amenities is only permitted with prior approval from NJHMFA. It is incumbent upon the applicant to demonstrate how each substitute amenity provides a comparable benefit to the tenants as those amenities listed below.

i.-iii. (No change.)

iv. [Community gardens] **Open space set aside for use by all residents, comprising at least 25 percent of the project's permanent open space, of which at least 80 percent is unpaved (rooftop gardens can be included in open space calculations if the roof area is accessible to and can be used by all residents)**;

v.-viii. (No change.)

10. Projects [which] **that** demonstrate community policing or public safety enhancements shall be awarded two points. Applicants may select any of the following strategies in order to receive the points. The list provided below is not all-inclusive. Substitutions are only permitted with prior approval from NJHMFA. It is incumbent upon the applicant to demonstrate how the proposed substitution provides a comparable benefit to the tenants as those items listed below.

i. An evening [hour] security guard;

ii.-iv. (No change.)

v. Incorporation of Community Policing Through Environmental Design (CPTED) characteristics in the design, layout**,** and construction of buildings and on-site facilities;

vi. Partnerships or agreements [which] **that** increase on-site police and security patrols on the development site (that is, leveraging partnerships with other funding sources for police salaries such as State Urban Enterprise Zones, Special Improvement Districts, Community Oriented Policing grants, etc.);

vii. Innovative approaches [which] **that** increase the number of community policing volunteers as residents of the development (including rent reductions or subsidies where allowable); and

viii. (No change.)

11. Applications may receive up to a maximum of six points for the following (to be eligible for points in this category, proximity to the locations [in] **at** (a)11i(1) through [(19)] **(20)** below shall be addressed in the market analysis as required at N.J.A.C. 5:80-33.12(c)1). At a minimum, structures must have building permits issued and be under construction to qualify:

i. As indicated, projects located within one-half mile of the positive land uses [in] **at** (a)11i(1) through (8) below shall receive two points. Family Cycle projects located within three miles of positive land uses at (a)11i(1) through [(19)] **(20)** below shall be awarded one point. **Age-Friendly** Senior Cycle and Supportive Housing Cycle projects located within one mile of positive land uses at (a)11i(1) through [(19)] **(20)** below shall be awarded one point. Multiple points shall not be awarded for proximity to multiple positive land uses of the same category (that is, a project located within one-half mile of two supermarkets will receive two points, not four points)[:]**. Up to six points for positive land uses can be received for each application:**

(1) Full-service grocery store or supermarket (minimum 15,000 square feet**, non-senior projects only, unless dedicated transportation to the full-service grocery store or supermarket is provided as set forth at N.J.A.C. 5:80-33.16(b)2i**)—two points;

(2) (No change.)

(3) Public school[s] (non-senior projects only)—two points;

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

(7) One-stop career center (non-senior projects only), a list of which can be found [here: https://careerconnections.nj.gov/careerconnections/plan/support/njccsites/one_stop_career_centers.shtml] **at https://nj.gov/labor/career-services/job-search/get-support/onestoplocations.shtml**—two points;

(8)-(15) (No change.)

(16) Medical offices (physician, dentistry, **or** optometry)—one point;

(17) (No change.)

(18) Post office, city hall, **or** county courthouse—one point; [and]

(19) Fire/police station—one point[.]**; and**

(20) Institution of higher education or continuing education—one point.

ii. Projects located within one mile of the following negative land uses **at (a)11ii** (1) through (8) below [or within the same census tract for (9) below] shall have three points deducted from the project score **for each qualifying item, up to a maximum of six points for each application**:

(1) [Land fill] **Landfill**;

(2)-(6) (No change.)

(7) Jail/prison; **and**

(8) Wastewater treatment facility[; and]**.**

[(9) Nine-percent tax credit award(s) in the same census tract in the same cycle in the previous round.]

iii. Example: A project is located within one-half mile of an elementary school, a grocery store**,** and an oil refinery. The project shall be awarded one point.

12. Applications [which] **that** include a commitment letter signed by the syndicator or investor or executed partnership agreement/operating agreement specifying net pricing and net capital contributions within the NJHMFA equity range shall receive three points. Applicants utilizing the credits themselves do not have to submit a syndicator letter to receive the points. Term sheets do not qualify for these points.

13. Applications may receive up to a maximum of 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 + [35] **40** optional points or higher **with climate-adaptive selections**;

(2) Leadership in Energy and Environmental Design (LEED), Silver or higher **with climate-adaptive selections**;

(3) National Green Building Standard (NGBS), Silver or higher **with climate-adaptive selections**;

[(4) Climate Choice Homes Program/Energy Star Tier 3 participation;]

(4) NJ Zero Energy Ready Homes + renewables;

(5)-(6) (No change.)

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

(1) Enterprise Green Communities, Mandatory **+ 40 optional points**;

(2) Leadership in Energy and Environmental Design (LEED), [Bronze] **Silver or higher**; or

(3) National Green Building Standard (NGBS)**, Silver or higher**.

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

i. [For projects located within a Targeted Urban Municipality, a maximum of two points shall be awarded to eligible projects in this category. Two points shall be awarded to projects located within a census tract that has been designated by the Secretary of the U.S. Department of the Treasury as a Qualified Opportunity Zone under Code § 1400Z-2 and further identified in Notice 2018-48. Alternatively, redevelopment] **Redevelopment** projects, rehabilitation of historic buildings, or projects that involve the adaptive [re-use] **reuse** of a non-residential building shall qualify for [only] one point. A significant component of the development (40 percent or more of the units) shall be located within a historic building or a building being adaptively [re-used] **reused**;

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. A project 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) The project is fully located within a Transit Village district—five points;

(2) The project is fully located within one-quarter mile of public transportation that is operated by a publicly owned entity or authority—three points;

[ii.] **(3)** [A] **The** project [that] is fully located within one-half mile of public transportation [shall receive] **that is operated by a publicly owned entity or authority—**two points[.]**; and**

(4) The project is fully located within one-half mile of public transportation that is paid for by the development—one point;

[iii. A project that is fully located within a school district wherein 40 percent or more of the students are either meeting expectations (Level 4) or exceeding expectations (Level 5) on the Grade 4 Partnership for Assessment of Readiness for College and Careers (PARCC) assessment in both math and language arts based on data available from the New Jersey Department of Education as of the application deadline shall receive three points. NJHMFA shall rely upon the data effective in the calendar year of the application deadline as well as the preceding year. For example, the data released in calendar years 2017 and 2018 by the New Jersey Department of Education will be accepted for applications submitted in 2019; and]

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. A project 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) At least 66 percent of Grade 4 students are either Level 4 or Level 5 on the NJSLA in both Math and ELA — three points;

(2) At least 50 percent of Grade 4 students are either Level 4 or Level 5 on the NJSLA in both Math and ELA, but the percentage of such students is below 66 for one or both subjects — two points; and

(3) At least 40 percent of Grade 4 students are either Level 4 or Level 5 on the NJSLA in both Math and ELA, but the percentage of such students is below 50 for one or both subjects — one point;

iv. For projects located outside of a [Targeted Urban Municipality] **TUM**, a project **in a municipality** that has a ranking of 283 or greater in the most recent Municipal Revitalization Index (MRI) published by [the Department of Community Affairs (]DCA[)] shall be eligible for three points. A project **in a municipality** with a ranking of 282 or below shall be eligible for two points **and may receive one additional point if it satisfies a municipal affordable housing obligation and is part of a court-approved municipal fair share housing development plan**. **To receive the additional point, sponsors must submit the fair share housing development plan listing the project and evidence of court approval in the application. Senior projects are not eligible to earn this additional point; and**

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

v. For projects located within a TUM, two points shall be awarded to projects located within a census tract that has been designated by the Secretary of the U.S. Department of the Treasury as a Qualified Opportunity Zone pursuant to Section 1400Z-2 of the Code and as further identified in Notice 2018-48.

15. Applications [which] **that** have a general partner, voting member, developer, or related party that owns a managing or controlling interest in a New Jersey LIHTC project with an uncorrected noncompliance shall have the following points deducted from the application's score: 15 points shall be deducted for violations of State and municipal maintenance ordinances or health ordinances or failure of one or more major systems (for example, roof, HVAC, elevators, plumbing, and electric); and 10 points shall be deducted for a failure to fulfill any Qualified Allocation Plan provisions as represented by an owner in a project's New Jersey LIHTC application. For noncompliance that cannot be corrected, points under this category shall only be deducted for the first year each application is submitted. Failure to respond to this point category shall result in the deduction of points as provided [under] **pursuant to** this paragraph. Applications that receive negative points in this category do not qualify for the set-asides described at N.J.A.C. 5:80-33.4, 33.5, **and** 33.6[, and 33.7].

16. [Five points shall be deducted from applications which] **Applications that** have a general partner, voting member, developer, or related party that was involved in a full return of tax credits to NJHMFA within the past two years [and] **with** such return [occurred] **occurring** after October 15 of the year in which the project would have been required to be placed in service **shall have five points deducted from the application's score**. Failure to respond to this point category shall result in the deduction of points as provided [under] **pursuant to** this paragraph. This point category shall only apply to the first application from the involved general partner, voting member, developer, or related party following the full return of tax credits.

17. Applications [which] **that** have a general partner, voting member, developer, or related party that owns a managing or controlling interest in a New Jersey LIHTC project that has failed to pay NJHMFA monitoring fees (unless NJHMFA has formally issued a deferral) shall have 15 points deducted from the application's score. Failure to respond to this point category shall result in the deduction of points as provided [under] **pursuant to** this paragraph. Applications that receive negative points in this category do not qualify for the set-asides described at N.J.A.C. 5:80-33.4, 33.5, **and** 33.6[, and 33.7].

18. Applications [which] **that** have a general partner, voting member, developer, or related party that owns a managing or controlling interest in a New Jersey LIHTC project that has failed to submit its annual project certifications and/or annual tenant information shall have 15 points deducted from the application's score. Failure to respond to this point category shall result in the deduction of points as provided [under] **pursuant to** this paragraph. Applications that receive negative points in this category do not qualify for the set-asides described at N.J.A.C. 5:80-33.4, 33.5, **and** 33.6[, and 33.7].

19. Applications that have a general partner, voting member, developer, or related party that owns a managing or controlling interest in a New Jersey LIHTC project that, within the last four years, has received a finding of discrimination pursuant to the Fair Housing Act, 42 U.S.C. §§ 3601 through 3619, a finding of discrimination pursuant to the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq., failed to comply with New Jersey fair housing policies or tenant selection standards, or been issued a monetary penalty pursuant to the Fair Chance in Housing Act, N.J.S.A. 46:8-52 et seq., shall have 15 points deducted from the application's score. A finding of discrimination includes an adverse final decision by the Secretary of HUD, 24 CFR 180.680, an adverse final decision by a substantially equivalent State or local fair housing agency, 42 U.S.C. § 3616a(a)(1), or an adverse judgment from a Federal or State court. Failure to respond to this point category shall result in the deduction of points as provided pursuant to this paragraph. Applications that receive negative points in this category do not qualify for the set-asides at N.J.A.C. 5:80-33.4, 33.5, and 33.6.

20. Applications that have a general partner, voting member, developer, sponsor, investor, syndicator, lender, or related party that

has within the preceding 10 years, in NJHMFA's determination, participated in a foreclosure (or instrument in lieu of foreclosure) in New Jersey or another jurisdiction that was part of an arrangement with a purpose of terminating an extended low-income housing commitment (regardless of whether the extended low-income housing commitment was terminated through such foreclosure or instrument) shall have 15 points deducted from the application's score. Failure to respond to this point category shall result in the deduction of points as provided pursuant to this paragraph. Applications that receive negative points in this category do not qualify for the set-asides at N.J.A.C. 5:80-33.4, 33.5, and 33.6, and may not receive any points for developer experience at (a)21 below.

[19.] **21.** 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] **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 ownership stake in each project** shall receive three points;[or]

ii. Applications with a general partner, voting member, developer, or related party (with at least a 50-percent interest in the general partner/managing member) that has successfully developed and operated at least three other LIHTC projects with at least a 20-percent ownership stake in 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 less than 300 units shall receive three points; or

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

[iii. "Successfully developed and operated" is defined as a tax credit project with no outstanding issues of noncompliance that has achieved 93 percent occupancy and has maintained a permanent debt service coverage ratio of at least 1.15 percent for six consecutive months during the project's most recent full fiscal year preceding the application deadline.]

[20.] **22.** Applicants may select one of the following[:]**. Units receiving Money Follows the Person (MFP) funds or Section 811 funds cannot be included as part of the minimum requirements for this point category:**

i. Projects that [rent] **set aside** five units or five percent of the total project units, whichever is greater, [to] **for** individuals or families who are homeless**,** and **which projects** meet the criteria [of] **at** N.J.A.C. 5:80-33.12(c)14 shall receive three points. **After the project is placed in service, the project shall register these units and collect tenant data in HMIS.** In the Family Cycle, [a proportionate unit mix is required (at a minimum, two two-bedroom units and two three-bedroom units shall be provided).] **the mix of these units must be proportionate to one one-bedroom, two two-bedroom, and two three-bedroom units; or**

ii. Projects that rent five units or five percent of the total project units, whichever is greater, to individuals with disabilities who are leaving institutions [under] **pursuant to** the decision in *Olmstead v. L.C.*, 527 *U.S.* 581 (1999), or individuals with disabilities who are at risk of institutionalization, and [who] **which projects** meet the criteria [of] **at** N.J.A.C. 5:80-33.12(c)14 shall receive two points.

[21.]**23.** (No change in text.)

[22.]**24.** Applicants that utilize the cure period [in] **at** N.J.A.C. 5:80-33.11(c)1 or 3 shall have one point per each defect cured deducted from the application's score.

[23.]**25.** Applications [which] **that** have a general partner, voting member, developer, or related party that owns a managing or controlling interest in an NJHMFA-financed property with three or more months of arrearages, with no workout plan (as approved by the Executive Director), shall have 15 points deducted from their scores.

[24.]**26.** Applicants may select one of the **following** options [in (a)24i, ii, or iii below] for one bonus point:

i. At least 20 percent of the units are set aside for unrestricted, market-rate tenants. Applicants that select this option are not eligible for the [discretionary] 130-percent basis boost, which is authorized [under] **pursuant to** the Housing and Economic Recovery Act of 2008 (HERA)[.]**;**

ii. At least 20 percent of the units are underwritten at or below 30 percent of area median income (AMI). Units with rental assistance do not qualify for this point[.]**; or**

iii. (No change.)

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

(a) The point system for the **Age-Friendly** Senior Cycle includes all point categories of the Family Cycle except the point categories at N.J.A.C. 5:80-33.15(a)3 concerning [large family] **large-family** units, N.J.A.C. 5:80-33.15(a)5 concerning social services, and the point categories at N.J.A.C. 5:80-33.15(a)14ii[,] **and** iii[, and v] concerning public transportation[,] **and** high-performing school districts, [and municipal fair share development plans,] respectively.

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

1. A project that is fully located within a municipality wherein 25.00 percent or more of the residents in the municipality are 55 years of age or older shall receive one point. NJHMFA shall rely upon the American Community Survey [Five-Year] **5-Year** Estimates, Table DP05 (ACS Demographic and Housing Estimates), U.S. [Department of the] Census **Bureau**. NJHMFA shall rely upon the data effective in the calendar year of the application deadline**,** as well as in the preceding year.

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. (No change.)

ii. Three points shall be awarded to projects that participate in the Services for Independent Living (SIL) program. **Upon receiving a tax credit reservation, the developer/owner of the project shall sign an SIL participation agreement that outlines the responsibilities of the SIL program and of the developer/owner.**

iii. Two points shall be awarded to projects that **regularly** offer a licensed and insured on-site healthcare provider with a private room.

iv. Two points shall be awarded to projects that offer an on-site pharmacy or wellness clinic, satellite hospital office, Program of All-Inclusive Care for the Elderly (PACE), medical day-care program, licensed assisted living facility, **an Assisted Living Program (ALP),** or similar partnership with a hospital or [managed care] **managed-care** organization.

v. One point shall be awarded to projects that offer accessible outdoor **community** spaces (for example, **gardens with** walkways[,] **and/or** benches[, gardens])[.] **set aside for use by all residents, comprising at least 25 percent of the project's permanent open space, of which at least 80 percent is unpaved. Rooftop gardens can be included in open space calculations if the roof area is accessible to and can be used by all residents.**

vi. (No change.)

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

(a) The point system for the Supportive Housing Cycle includes all point categories of the Family Cycle except for the point categories at N.J.A.C. 5:80-33.15(a)3, concerning [large family] **large-family** units, N.J.A.C. 5:80-33.15(a)5, concerning social services, and N.J.A.C. 5:80-33.15(a)[20]**22**, concerning supportive housing units. Additionally, the point categories at N.J.A.C. 5:80-33.15(a)14ii and iii are replaced, respectively, with the following, for a maximum of [six] **three** points in this category.

1. (No change.)

[2. For non-age-restricted projects, a project that is fully located within a school district wherein 40 percent or more of the students are either meeting expectations (Level 4) or exceeding expectations (Level 5) on the Grade 4 Partnership for Assessment of Readiness for College and Careers (PARCC) assessment in both math and language arts based on data available from the New Jersey Department of Education as of the application deadline shall receive one point. NJHMFA shall rely upon the data effective in the calendar year of the application deadline, as well as in the preceding year. For example, the data released in calendar years 2017 and 2018 by the New Jersey Department of Education will be accepted for applications submitted in 2019. For age-restricted projects, a project that is fully located within a municipality wherein 25.00 percent or more of the residents in the municipality are 55 years of age or older shall receive one point. NJHMFA shall rely upon the American Community Survey Five-Year Estimates, Table DP05 (ACS Demographic and Housing Estimates), U.S. Department of the Census. NJHMFA shall rely upon the data effective in the calendar year of the application deadline, as well as in the preceding year. For example, the data released in calendar years 2017 and 2018 by the U.S. Department of the Census will be accepted for applications submitted in 2019.]

2. For non-age-restricted projects, a project that is fully located within a school district wherein 40 percent or more of the students are either meeting expectations (Level 4) or exceeding expectations (Level 5) on the Grade 4 New Jersey Student Learning Assessments (NJSLA) in both Math and English Language Arts (ELA) shall receive one point. 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.

3. For age-restricted projects, a project that is fully located within a municipality wherein 25 percent or more of the residents in the municipality are 55 years of age or older shall receive one point. NJHMFA shall rely upon the American Community Survey 5-Year Estimates, Table DP05 (ACS Demographic and Housing Estimates), U.S. Census Bureau. NJHMFA shall rely upon the data effective in the calendar year of the application deadline, as well as in the preceding year. For example, the data released in calendar years 2021 and 2022 by the U.S. Census Bureau will be accepted for applications submitted in 2023.

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

1. Applicants shall be awarded up to five points to the extent the social services plan required at N.J.A.C. 5:80-33.12(c)14iv incorporates a description of the [target population's(s')] supportive service needs **of the target population(s)**, which may include a range of services across a wide continuum of care and intensity appropriate to the target population(s). The description must acknowledge that each special needs tenant does not have to utilize the services appropriate to the target population(s). The social services plan must address the specific appropriate and needed services to assist tenants to maintain their housing and stable community living at no cost to the tenant. Appropriate and needed services must be supported by supportive service agreements and evidence-based practice, research, and/or direct practice experience. Supportive housing projects must have, at a minimum, a social service coordinator. The supportive services plan must address the following:

i.-iv. (No change.)

v. Mandatory staff training [for all on-site personnel]**, to be conducted** at least annually, on matters specific to the special needs population**(s) served for all on-site personnel, not just those employed by the social service provider(s)**. **This training requirement includes staff, such as property managers, maintenance workers, and custodians, and is independent of any training or certifications required for service-provider staff by their employers.**

2.-7. (No change.)

5:80-33.18 (Reserved)

5:80-33.19 Tiebreaker system

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

1. If competing projects have a tie score, a tax credit reservation shall be awarded based on the following:

i. For projects located outside of a TUM, a tax credit reservation shall be awarded to the project located in the municipality that has either never hosted a project that received a nine-percent LIHTC award or has gone the longest time since most recently hosting a project that received a nine-percent LIHTC award. NJHMFA shall publish annually a list of New Jersey municipalities with the years of their most recent nine-percent LIHTC awards. To facilitate planning, projects awarded nine-percent LIHTCs during the year prior to the application cycle deadline shall not be included for purposes of calculating the most recent year of award. If the project is part of a court-approved municipal fair share housing development plan, prior awarded projects that are part of the same fair share housing development plan shall not be included for purposes of calculating the most recent year of award, provided that the current project was identified in the fair share housing development plan submitted with the previously awarded application(s) and provided further that the fair share housing development plan listing the project and evidence of court approval are submitted in the current application; and

ii. For projects located within a TUM, a tax credit reservation shall be awarded to the project located in the municipality with the highest MRI (that is, with the greatest distress).

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. In the **Age-Friendly** Senior Cycle, a tax credit reservation shall be awarded to the project with the least amount of tax credits per [tax credit] **tax-credit** unit. **Superintendent units shall not be included for purposes of calculating this tiebreaker.**

ii. In all other cycles and the Mixed-Income Reserve, 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.**

[iii. In all cycles, superintendent unit(s) shall not be included for purposes of calculating the tiebreaker.]

[2.] **3.** If there is still a tie after the [first] **second** tiebreaker, the tax credit reservation shall be awarded to the project with a lower total development cost per bedroom. Superintendent unit(s) shall not be included for purposes of calculating [the] **this** tiebreaker.

5:80-33.20 Municipal comment

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

5:80-33.21 Application needs analysis

(a) Section 42(m)(2)(a) of the Code provides: "The housing credit dollar amount allocated to a project shall not exceed the amount the housing credit agency determines is necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the credit period." This determination, known as the "needs analysis," shall be performed by NJHMFA with respect to those applications fulfilling the eligibility requirements at N.J.A.C. 5:80-33.12. In the needs analysis, NJHMFA shall compare the project's total development costs to the funding sources the applicant has identified to meet those costs. As part of its obligation [under] **pursuant to** Section 42(m)(2) of the Code, NJHMFA shall determine the reasonableness of the developmental and operational costs of the project and may make adjustments to costs as necessary to ensure the viability of the project throughout the credit period and compliance with the QAP. Such adjustments shall not trigger a point deduction [under] **pursuant to** N.J.A.C. 5:80-33.15(a)[22]**24**. If the total funding sources not including tax credit equity are less than the total development costs, then a funding gap exists and the applicant has demonstrated a need for credits, provided, however, that the following conditions are satisfied:

1. (No change.)

2. Funding sources identified by the applicant meet the requirements [listed under] **at** N.J.A.C. 5:80-33.12(c)6;

3.-4. (No change.)

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

5:80-33.22 **Tax Credit** Committee review and reconsideration process

(a) Based on the rankings, eligibility review, and needs analysis, NJHMFA shall make reservation award recommendations to a quorum of the Tax Credit Committee **(Committee)**. The [Tax Credit] Committee shall consist of the Commissioner of DCA**,** or designee, the Executive Director**,** and three members of the NJHMFA staff designated by the Executive Director.

(b) The Committee shall review the rankings, eligibility, and tiebreaker decisions as well as requests for reservations from the Reserve, and shall award tax credit reservations accordingly. All applicants shall be notified**,** in writing**,** whether their projects received a reservation [or not] and the basis for the decision. A reservation commitment letter shall be mailed to all reservation recipients.

(c) An applicant may appeal any decision of the [Tax Credit] Committee by submitting a written request for reconsideration to the Executive Director [of NJHMFA] no later than 10 business days from the date of the [Tax Credit] Committee meeting at which awards/decisions are announced. The request shall include a comprehensive discussion of the basis for reconsideration. Such requests will be considered promptly by the [Tax Credit] Committee and the Committee's disposition of the request shall constitute final agency action. In the absence of a request for reconsideration, the date of the [Tax Credit] Committee meeting at which awards/decisions are announced shall constitute the date of final agency action.

5:80-33.23 Allocation needs analysis

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

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

(a) Once the reservation is final as described [in] **at** N.J.A.C. 5:80-33.22(b), projects must meet allocation criteria established by the Code and these rules in order to qualify for an allocation of tax credits. (The IRS does not recognize the reservation processes of housing credit agencies.) The deadline for meeting the allocation criteria described [in] **at** (a)1 and 2 below is November 30 or the next business day if the 30th is a weekend or holiday. The deadline for meeting the 10-percent test required [under] **pursuant to** 26 U.S.C. § 42(h)(1)(E)(ii) is six months from the date the carryover allocation agreement is executed by NJHMFA. The NJHMFA form evidencing satisfaction of this test must be completed and certified by an independent certified public accountant. Accrued developer fees in carryover basis shall not exceed the lesser of the fee earned to date or 20 percent of the total developer fee. On a case-by-case basis, NJHMFA may extend its filing deadline if the owner can show good cause; however, in order to defray the added expense and regulatory burden of processing allocation requests that arrive after the deadline, an extension fee of $1,000 shall be payable to NJHMFA for each week or part thereof that the owner is late in submitting a complete package. NJHMFA reserves the right to rescind a reservation if a deadline is [unmet] **not met**.

1. Owners requesting a carryover allocation shall submit their certification for carryover**,** which **must** demonstrate[s] that all sources shown on the owner's carryover schedule are accurate[;] and that the costs shown in eligible basis are allowable under the Code. Title ownership is not required for carryover allocations, but site control must be maintained. Projects receiving carryover allocations have until the end of the second year after the execution of the carryover allocation agreement to place the project in service.

2. Owners requesting an allocation for a building in the same year the building [places] **is placed** in service may receive a carryover allocation or a [placed in service] **placed-in-service** allocation depending upon the building's [placed in service] **placed-in-service** date. A building must be issued an allocation no later than December 31 of the year it is placed in service.

i. If the building is placed in service on or prior to August 1, the allocating document shall be the IRS Form 8609 and the owner shall submit all requirements listed [in] **at** N.J.A.C. 5:80-33.26 by the filing deadline established [in] **at** (a) above.

ii. If the building is placed in service after August 1, and if the timing of the final project cost certification, permanent closing**,** and the like do not allow for the timely issuance of an IRS Form 8609 by December 31, a carryover allocation shall be issued to the project provided that the owner submits to NJHMFA an updated [10 percent] **10-percent** letter from the partnership's accountant reflecting the new reasonably expected basis in the building.

(b) NJHMFA may, in its discretion, enter into a binding commitment to allocate credits from future years' tax credit authority to fund projects that successfully compete in additional tranches of the Cycles at N.J.A.C. 5:80-33.4 [through 33.7]**, 33.5, and 33.6**, subject to any set-asides thereunder, as the Tax Credit Committee may decide to conduct in its discretion, or projects in a competitive cycle affected by an error as determined by the Tax Credit Committee. In no event shall the project receive credits and/or a binding commitment exceeding the maximum eligible tax credit amount.

5:80-33.25 Allocation/issuance fee schedule

Projects requesting an allocation of tax credits shall pay a fee equaling two percent of the allocation amount over the 10-year credit period for NJHMFA-financed projects and three percent of the issuance amount over the 10-year credit period for non-NJHMFA-financed projects. One-half of the fee shall be paid at the time the allocation criteria described [above] at N.J.A.C 5:80-33.24(a) is submitted to NJHMFA. For projects requesting an issuance of tax credits from volume cap, the issuance fee shall equal two percent of the issuance amount over the 10-year credit period for [NJHMFA financed] **NJHMFA-financed** projects and three percent of the issuance amount over the 10-year credit period for [non-NJHMFA financed] **non-NJHMFA-financed** projects. One-half of the fee shall be paid at the time the credit determination described at N.J.A.C. 5:80-33.9(a)1 is made. For both types of project**s**, the balance (adjusted higher if volume cap tax credit issuance increases) shall be paid prior to issuance of the IRS Form 8609. Allocation/issuance fees are non-refundable.

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

(a) The IRS Form 8609 is the form used by owners to claim the low-income housing tax credit. A form is issued for each building in the project that contains tax credit units. Prior to issuance of the IRS Form 8609, NJHMFA must receive all required information from the owner, including the allocation/issuance fee described at N.J.A.C. 5:80-33.25. For projects receiving credits from the nonprofit set-aside, this shall include an attorney's opinion letter [which states] **stating** that no for-profit developer or member of the investor limited partner held a seat on the nonprofit's board of directors. NJHMFA (or its authorized designee) may also conduct an on-site inspection of the project to confirm that all representations made in the project's tax credit application have been met. Upon completion of the NJHMFA evaluation (which includes the placed in service needs analysis) and attendance by the project owner or representative at an NJHMFA-sponsored compliance monitoring seminar, NJHMFA shall complete Part I of the IRS Form 8609 and [shall] forward a copy, as filed with the IRS, to the project owner. Owners should be sure to make copies of the signed IRS Form 8609**,** as a copy must be filed each year with Federal tax returns.

(b) (No change.)

(c) Failure of a project to fulfill all representations made in its application may result in a delay and/or non-issuance of the IRS Form 8609. At its sole discretion, NJHMFA may impose penalties for failure to comply with eligibility or point requirements, such penalties to include, but not be limited to, the imposition of financial penalties, a reduction in the allocated credit amount, or the unilateral cancellation of an allocation. Generally, a financial penalty or reduction in the amount of credits will be imposed in an amount commensurate with the violation. For example, if a project fails to meet the minimum expenditures [under] **pursuant to** N.J.A.C. 5:80-33.15(a)6, credits may be reduced by or a financial penalty imposed in the delinquent amount, which amount may be affected by remedial measures, if any, taken in order to comply with the representation(s). However, NJHMFA reserves the right to unilaterally cancel an allocation for severe and/or persistent violations.

(d) (No change.)

5:80-33.27 Placed in service needs analysis

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

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

(c) (No change.)

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

(a) (No change.)

[(b) "Contractor fee limits" with regard to contractor profit and overhead shall be set in accordance with the schedule below. Maximum fees include the base profit and overhead and any incentive cost savings fee realized. Costs included on the general conditions line must be broken out on a separate schedule. Unreasonable costs shall be disallowed. For purposes of calculating the contractor fee limits below, the construction contract amount shall not include contractor overhead and profit.

CONTRACTOR FEE SCHEDULE

Construction Contract Amount			Fee (Overhead and Profit)
$ 0	–	$ 500,000+	11.75 percent
$ 500,001	–	$ 1,000,000+	10.75 percent
$ 1,000,001	–	$ 5,000,000+	9.50 percent
$ 5,000,001	–	$10,000,000+	8.50 percent
$10,000,001	–	$15,000,000+	7.00 percent
$15,000,001	–	$20,000,000+	6.70 percent
		$20,000,000+	6.20 percent]

(b) Contractor fee limits are as set forth at (b)1, 2, and 3 below.

1. NJHMFA shall approve only up to a maximum of two percent of the total hard costs for general contractor overhead expenses and up to a maximum of six percent of the total hard costs for general contractor profit fees. Bonding and permitting fees are not permitted in calculations of overhead and profit.

2. Costs for general requirements and/or general conditions are indirect costs incurred during the construction of a project, exclusive of material and labor costs. These costs are administrative and facilitatory project costs, generally spread out over the course of construction. NJHMFA shall approve only up to a maximum of six percent of the total hard costs for general requirements and/or general conditions.

3. Limitations for general contractor overhead expenses, general contractor profit fees, and general requirements/general conditions costs are set forth in the Technical Services Design and Document Guidance Standards, available at https://nj.gov/dca/hmfa/developers/techservices. These limitations apply to applications submitted for both NJHMFA and LIHTC funding.

(c) (No change.)

(d) In addition to the audit report, the owner shall submit a Sponsor Certification for Placed in Service showing all sources, uses, and eligible basis items, as well as the pricing from the limited partner investor.

5:80-33.29 Extended use agreement

Section 42(h)(6) of the Code requires the project owner to enter into an "extended low-income housing commitment agreement" that adds an additional 15-year low-income occupancy requirement to the initial 15-year compliance period. The agreement shall be recorded in order to claim the tax credits when filing Federal tax returns. Owners must complete NJHMFA's deed of easement and restrictive covenant at the latter of the carryover allocation described at N.J.A.C. 5:80-33.24(a)1 or acquisition of the property. Upon receipt and review of a complete and fully executed agreement, NJHMFA shall file the restrictive covenant pursuant to State law. [Note:] For projects [which] **that** received points for agreeing to extend the project compliance period beyond the minimum 15-year period, the deed of easement and restrictive covenant shall reflect the increased compliance term stated in the application.

5:80-33.30 Returning credits

Applicants unable to utilize their allocation should return [their] **the** allocation to NJHMFA as soon as possible. NJHMFA shall deposit returned or recaptured credits into the Reserve [or in the Final Cycle]. In addition, for credits returned within the same calendar year of award, NJHMFA reserves the right to fund the next [highest ranking] **highest-ranking** eligible project from the cycle in which the initial award was made.

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

(a) Applicants are under a continuing affirmative obligation to advise NJHMFA [of] **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 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) (No change.)

(c) Any transfer of a general partner/managing member interest shall require pre-approval by the NJHMFA Division of [Tax Credit Services] **Multifamily/Supportive Housing and Lending**.

(d) (No change.)

5:80-33.32 Compliance monitoring

(a) The owners of all projects with an allocation of low-income housing tax credits must contact NJHMFA's compliance monitoring section before the project [places] **is placed** in service and prior to rent up. In addition, the owner must submit to NJHMFA a copy of the completed IRS Form 8609 (Part I completed by NJHMFA and Part II completed by the owner) within 30 days of completion of Part II of the IRS Form 8609 and the filing [of same] **thereof** with the Internal Revenue Service. This form contains information necessary for NJHMFA to monitor the project for compliance. Failure to submit a copy of the completed IRS Form 8609 within the specified time frame may constitute noncompliance and may be reported by NJHMFA to the IRS.

(b) The owner of a tax credit project shall agree to submit to NJHMFA copies of any correspondence, notice**,** or other document the owner receives from the Internal Revenue Service regarding compliance or noncompliance issues, audits, or other forms of communication regarding their [low income] **low-income** tax credit project(s).

(c) (No change.)

(d) Owners/agents are required to keep records for each qualified low-income building in the project [which will] **that** show for each year of the compliance period the following information:

1.-6. (No change.)

7. Documentation to support each low-income tenant's income (that is, income verification from third parties such as employers or agencies paying unemployment compensation). Tenant income is calculated in a manner consistent with the determination of annual income [under] **pursuant to** Section 8 of the United States Housing Act of 1937, not in accordance with the determination of gross income for Federal income tax liability. In the case of a tenant receiving housing assistance payments [under] **pursuant to** Section 8, the documentation requirement is satisfied if the public housing authority provides a statement to the building owner declaring that the tenant's income does not exceed the applicable income limit [under] **pursuant to** Section 42(g) of the Code. For [100 percent] **100-percent** [tax credit] **tax-credit** properties, an initial certification shall be required at move-in, followed by a re-certification on the one-year anniversary of move-in. Re-certification shall no longer be required in subsequent years, provided the property continues to operate as [100 percent] **100-percent** affordable. While a resident shall still be required to complete the Tenant Income Certification and other forms on an annual basis, third-party verification of income shall no longer be required;

8.-9. (No change.)

(e) Owners/agents are required to retain records for each qualified low-income housing project as follows:

1. (No change.)

2. The records for the first year of the credit period, however, shall be retained for the entire compliance period plus six years beyond the due date (with extensions) for filing the Federal income tax return for the last year of the compliance period of the building. Therefore, records for the first year of the compliance period shall be retained for a minimum of 21 years. If credits were allocated based on a compliance period that was greater than 15 years, all [first year] **first-year** records shall be retained for six years beyond the compliance period. (For example: If credits were allocated in 1996 based on a compliance period of 25 years, all [first year] **first-year** records must be retained for 31 years or 25 years plus six years.) Records for each year thereafter shall be retained for six years after filing the Federal income tax return for that particular year.

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

1.-3. (No change.)

4. That each low-income unit in the project was [rent restricted] **rent-restricted** [under] **pursuant to** Section 42(g)(2) of the Code;

5. (No change.)

6. That each building in the project was suitable for occupancy, taking into account local health, safety**,** and building codes (or other habitability standards), and the State and local government unit responsible for making building code inspections did not issue a report of a violation for any building or low-income unit in the project;

7.-8. (No change.)

9. That if a low-income unit in the project became vacant during the year, [that] reasonable attempts were or are being made to rent that unit or the next available unit of comparable or smaller size to tenants having a qualifying income before any units in the project were or will be rented to tenants not having a qualifying income;

10. That if the income of tenants of a low-income unit, which was previously verified, [increases] **increased** above 140 percent of the applicable limit allowed [in] **at** Section 42(g)(2)(D)(ii) of the Code, the next available unit of comparable or smaller size in the project was or will be rented to tenants having a qualifying income;

11. That an extended low-income housing commitment as described [in] **at** Section 42(h)(6) of the Code was in effect for buildings subject to Section 7108-(c)(1) of the Revenue Reconciliation Act of 1989, including the requirement [under] **pursuant to** Section 42(h)(6)(B)(iv) that the owner cannot refuse to lease a unit in the project to an applicant because the applicant holds a voucher or certificate of eligibility [under] **pursuant to** Section 8 of the United States Housing Act of 1937, 42 U.S.C. §1437f. In addition, that the owner [has not refused] **did not refuse** to lease a unit to an applicant based solely on [his or her] **their** status as a holder of a Section 8 voucher and the project otherwise meets the provisions, including any special provisions, as outlined in the extended low-income housing commitment;

12. That no finding of discrimination [under] **pursuant to** the Fair Housing Act, 42 U.S.C. §§ 3601 through 3619, [has] occurred for the project. A finding of discrimination includes an adverse final decision by the Secretary of Housing and Urban Development, 24 [C.F.R. §] **CFR** 180.680, an adverse final decision by a substantially equivalent State or local fair housing agency, 42 U.S.C. § 3616a(a)(1), or an adverse judgment from a Federal court;

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

14. That there [has been] **was** no change in the ownership or management of the project or [that]**, if** there was a change**,** [and] a description of the change;

15. That the rent charged to each existing tenant (excluding any rental assistance) [has] **did** not increase[d] by more than 5.00 percent annually, including **any increase** due to changes in utility allowance calculations; [and]

16. That the property management office had office hours of at least 20 hours a week[.]**;**

17. That the owner notified each applicant and tenant using Form HUD-5380 (Notice of Occupancy Rights under the Violence Against Women Act) and Form HUD-5382 attached thereto of their rights and protections pursuant to the Violence Against Women Act of 1994, 34 U.S.C. § 12291, as amended by, among other acts, the Violence Against Women Act Reauthorization Act of 2022, Pub. L. No. 117-103, 136 Stat. 840, and pursuant to HUD Final Rule Violence Against Women Reauthorization Act of 2013: Implementation in HUD Housing Programs, 81 Fed. Reg. 80724 (Nov. 16, 2016);

18. That the owner registered and posted the property on the New Jersey Housing Resource Center (HRC) and has actively updated property information pursuant to N.J.S.A. 52:27D-321.3. The HRC is located at https://nj.gov.njhrc; and

19. That the owner registered in HMIS and submitted data for all units reserved pursuant to N.J.A.C. 5:80-33.15(a)22 for individuals and families that are experiencing homelessness. For training in HMIS data entry or to learn more about HMIS, visit the Division of HMIS website at https://nj.gov/dca/hmfa/about/hmis/index.shtml.

(g) As required by the Housing and Economic Recovery Act of 2008, [110 P.L. 289 (HR 3221)] **P.L. No. 110-289**, owners are required to submit, on an annual basis, data pertaining to the residents of [low-income housing tax credit (LIHTC) funded] **LIHTC-funded** units. Such data must contain, but is not limited to, income, rental assistance, disability status, monthly rental payment, race, ethnicity, family composition, and age.

5:80-33.33 Owner's annual reports[:]**;** deadlines

Pursuant to Section 1.42-5 of the IRS Regulations, NJHMFA requires the owners of all low-income housing projects to submit annually to NJHMFA for review the Owner's Certificate of Continuing Program Compliance [via] **through** electronic copy and the annual tenant information. The annual tenant information must indicate the income of**,** and rent charged to**,** tenants for each unit. This package shall be submitted on an annual basis [via] **through** the MITAS/NJHMFA [Low Income] **Low-Income** Housing Tax Credit Internet System and is due on January

31. Requests for extensions beyond the January 31 deadline must be submitted by December 31 of the prior year.

5:80-33.34 NJHMFA review and inspection

(a) Prior to the issuance of the IRS Form 8609, NJHMFA (or its authorized designee) may conduct an on-site inspection of the project to confirm that all representations made in the project's tax credit application have been met. (See N.J.A.C. 5:80-33.26.) NJHMFA (or its authorized designee) shall perform its first inspection of the project no later than the end of the second calendar year following the year the last building in the project is placed in service. NJHMFA also reserves the right to perform an on-site inspection of any low-income housing project through the end of the extended use period and **to** have access to all books and records [which] **that** would document compliance.

(b) (No change.)

(c) NJHMFA (or its authorized designee) shall also, on an annual basis, select 33.33 percent of all tax credit developments and [shall] perform physical inspections of the low-income units corresponding to (b) above to determine suitability for occupancy, taking into account State and local health, safety, and building codes. NJHMFA (or its authorized designee) shall also perform physical inspections of every building and every vacant unit in the development. If NJHMFA (or its authorized designee) determines a violation(s) exist(s) [which] **that** could render a building unsuitable for occupancy, such violation may be considered an issue of non-compliance**,** which must be reported to the Internal Revenue Service. The owner shall be given a reasonable period of time **within which** to correct the violation(s). At the end of the correction period, NJHMFA shall notify the IRS whether the owner has or has not corrected the violation(s). Such violation(s) may also be reported for appropriate action to the Division of Codes and Standards, Bureau of Housing Inspection in DCA.

(d) NJHMFA shall select [which] projects [shall] **that will** undergo NJHMFA review and give owners reasonable notice that their project has been chosen**,** as well as identify [which] documents [shall] **that will** need to be made available. Reviews may occur more frequently than on a 12-month basis, provided that all months within each 12-month period are subject to certification. The method of choosing the sample files or units to be inspected will not give the owner advance notice of which units and tenant records are to be inspected and reviewed.

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

(a) Applications and all supporting documents submitted to NJHMFA for tax credit reservations shall be confidential, non-public records until [Final Cycle] awards are announced [or until cancellation of the Final Cycle is announced] by NJHMFA. Thereafter, applications and all supporting documents submitted to NJHMFA for tax credit reservations shall be deemed to be public records, except the documents set forth [in item] **at** (c) below shall remain confidential, non-public records.

(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.-2. (No change.)

3. Documents and other information, including 15-year cash flow [proforma] **pro forma**, submitted in compliance with N.J.A.C. 5:80-33.12(c)7;

4.-6. (No change.)

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

5:80-33.37 Exchange of credits

(a)-(c) (No change.)

(d) A sponsor who receives an exchange of credits as provided in this section, as well as any affiliate entity effectively under the sponsor's control and any entity that is a related party with respect to the sponsor, shall be precluded from applying for tax credits for a new project for [the next] **all** tax credit cycle**s in the round** following the day on which the Tax Credit Committee approves the exchange. When the sponsor, affiliate entity**,** and any related party may again apply for tax credits for a new project, negative points related to the full return of tax credits to NJHMFA under the QAP in effect at the time the exchange is requested shall not be imposed based on an exchange pursuant to this section.

(e) (No change.)

(f) To request an exchange of credits, a sponsor must submit to the Tax Credit Committee, by no later than November 1 of the year in which the project is required to place in service based on the original allocation, a letter setting forth the reasons justifying the exchange and including the following:

1.-3. (No change.)

4. Evidence of the project's continued financial feasibility as required [by] **at** 26 U.S.C. [§42] **§ 42**.

(g) (No change.)

HEALTH

(a)

INTEGRATED HEALTH BRANCH

Patient Supervision at State Psychiatric Hospitals

Proposed Readoption with Amendments and Recodification: N.J.A.C. 10:36 as 8:135

Proposed New Rule: N.J.A.C. 8:135-2.5

Authorized By: Judith M. Persichilli, R.N., B.S.N., M.A., Commissioner, Department of Health.

Authority: N.J.S.A. 30:1-12, 30:4-24.2, and 30:9A-10; and Reorganization Plan Nos. 001-2017 and 001-2018.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2023-034.

Submit written comments by June 30, 2023, electronically to http://www.nj.gov/health/legal/ecomments.shtml, or by regular mail postmarked by June 30, 2023, to:

Joy L. Lindo, Director
Office of Legal and Regulatory Compliance
Office of the Commissioner
New Jersey Department of Health
PO Box 360
Trenton, NJ 08625-0360

The agency proposal follows:

Summary

Reorganization Plan No. 001-2017, A Plan for the Transfer of Mental Health and Addiction Functions From the Department of Human Services to the Department of Health (Governor Christie, filed June 29, 2017, and effective August 28, 2017), at § 1, and Reorganization Plan No. 001-2018, A Plan for the Transfer of Certain Mental Health and Addiction Functions From the Department of Health to the Department of Human Services (Governor Murphy, issued June 21, 2018, effective August 20, 2018), at § 3, transferred the functions, powers, and duties exercised by the Division of Mental Health and Addiction Services (DMHAS) within the Department of Human Services (DHS), with regard to the operation and administration of the State psychiatric hospitals, to the Department of Health (Department). 50 N.J.R. 1517(a).

Pursuant to this authority, the Department of Health (Department) proposes to readopt N.J.A.C. 10:36, Patient Supervision at State Psychiatric Hospitals, and recodify N.J.A.C. 10:36 as new N.J.A.C. 8:135 to reflect the transfer of authority from DHS to the Department. The Department proposes substantive amendments, more fully described below, and non-substantive amendments throughout the chapter to delete references to the DHS and its divisions and add in place thereof, references to the Department, use gender-neutral language, reorganize sections, improve readability, improve grammar, eliminate the passive voice, remove unnecessary capitalization, and update terminology that tends to stigmatize or objectify patients who have psychiatric illnesses. Pursuant to N.J.S.A. 52:14B-5.1.c, N.J.A.C. 10:36 was scheduled to expire on March 29, 2023. Pursuant to N.J.S.A. 52:14B-5.1.c(2), that date