provide the reason therefor. The tax collector's monthly report to the chief financial officer shall include all charitable fund contributions made.

(e) Credits applied to a donor's annual property tax obligation or spillover fund donations reported to and recorded by the tax collector as "pre-paid" shall not be rescinded.

(f) Tax bill vendors shall establish a designated identifier code for each local government charitable fund.

SUBCHAPTER 4. MORTGAGE ESCROW ACCOUNT TRANSACTIONS

5:33-4.5 Escrow account transactions

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

(d) If a donor is a mortgagor whose mortgagee servicing organization or property tax processing organization pays the property taxes on the mortgaged parcel, and the donor makes a donation to the charitable fund, the creditable portion thereof shall be reported by the tax collector to the mortgagee, servicing organization, or property tax processing organization. If a credit has been applied to the donor's property tax obligation, the tax collector shall report the credit to the mortgagee, servicing organization, or property tax processing organization and any tax payment made by the mortgagee, servicing organization, or property tax processing organization toward the credited amount shall be refunded to the mortgagee, servicing organization, or property tax processing organization by the municipality.

(e) If a mortgagor elects to have a portion of his or her mortgage escrow account paid to a local unit charitable fund in lieu of property taxes, the mortgagor shall provide the following information to the mortgagee, servicing organization, or property tax processing organization handling such payments:

1. The name of the local unit or units, and the charitable fund or funds being donated to;

2. Total contribution amount to each charitable fund; and

3. The amount of the contribution creditable toward the mortgagor's property taxes.

(f) If a mortgagor elects to have a portion of his or her mortgage escrow account paid to a local unit charitable fund in lieu of property taxes, the mortgagee, servicing organization, or property tax processing organization shall provide the charitable fund with the information required under N.J.A.C. 5:30-18.9, except for the copy of the tax bill required under N.J.A.C. 5:30-18.9(a)3v.

(g) If a mortgagor elects to have a portion of his or her mortgage escrow account donated to a local unit charitable fund in lieu of property taxes, the mortgagee, servicing organization, or property tax processing organization shall provide the following information to the tax collector:

1. Name of property owner;

2. Address of property;

3. Contact information of the mortgagee, servicing organization, or property tax processing organization;

4. Property block, lot, and qualifier;

5. The mortgagee's legal interest in the property;

6. Payment amount;

7. The identity of the charitable fund or, if payment is to be made to multiple charitable funds of the local unit, the identity of each such local unit charitable fund and the amount of payment to be made to each such charitable fund; and

8. The portion of the charitable fund donation creditable toward the property tax obligation.

(a)

NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

Low Income Housing Tax Credit Qualified Allocation Plan

Adopted Amendments: N.J.A.C. 5:80-33.2, 33.4 through 33.8, 33.10, 33.12, 33.15, 33.16, 33.17, 33.19, 33.25, 33.28, and 33.32

Adopted Repeals and New Rules: N.J.A.C. 5:80-33 Appendices A and B

Proposed: November 19, 2018, at 50 N.J.R. 2282(a).

Adopted: April 18, 2019, by New Jersey Housing and Mortgage Finance Agency, Charles A. Richman, Executive Director.

Filed: May 7, 2019, as R.2019 d.058, **with non-substantial changes** not requiring additional public notice or comment (see N.J.A.C. 1:30-6.3).

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

Effective Date: June 3, 2019.

Expiration Date: September 14, 2024.

Summary of Hearing Officer's Recommendation and Agency Response:

Anne Hamlin, New Jersey Housing and Mortgage Finance Agency's ("NJHMFA" or "Agency") Director of Tax Credit Services, conducted a public hearing in the boardroom of NJHMFA at 637 South Clinton Avenue, Trenton, New Jersey at 10:00 A.M. on Tuesday, December 11, 2018. No persons from the public testified at the hearing and no written comments were submitted during the hearing. Subsequent to the hearing, the hearing officer recommended that no changes be made to the rulemaking based on the hearing; the hearing officer's recommendations were accepted by the Agency. Copies of the transcript of the public hearing are available at the following address: New Jersey Housing and Mortgage Finance Agency, Division of Tax Credit Services, Attn: Johanna Peña, 637 South Clinton Avenue, PO Box 18550, Trenton, New Jersey 08650-2085.

Summary of Public Comments and Agency Responses:

The Agency received comments from the following persons:

1. William D. Jones, Executive Director, Housing Authority of the City of Elizabeth, Elizabeth, NJ;

2. Stuart Portney, President, The Metro Company, Jersey City, NJ;

3. Tracee Battis, Director of Project Development, Project Freedom, Inc., Lawrence, NJ;

4. Anthony R. Fanucci, Mayor, City of Vineland, Vineland, NJ;

5. Lara Schwager, Vice President of Development, PIRHL, Hamilton, NJ;

6. Barbara K. Schoor, Vice President, Community Investment Strategies, Inc., Lawrenceville, NJ;

7. Joseph Del Duca, Partner, Walters Group, Barnaget, NJ;

8. Adam M. Gordon, Esq., Associate Director, Fair Share Housing Center, Cherry Hill, NJ;

9. Staci A. Berger, President and CEO, Housing and Community Development Network of New Jersey, Trenton, NJ;

10. Lynn Bartlett, Executive Director, Housing Authority of Bergen County, Hackensack, NJ;

11. Peter J. O'Connor, Executive Director, Fair Share Housing Development, Mount Laurel, NJ;

12. Christopher Gigliotti, President and CEO, Parkside Redevelopment, LLC, Camden, NJ;

13. Kris Kolluri, Esq., CEO and President, Cooper's Ferry Partnership, Camden, NJ;

14. Christopher J. Laurent, President, Cinnaire Solutions, Lansing, MI;

15. Olivette Simpson, Interim Executive Director, Camden Redevelopment Agency, Camden, NJ; and

16. Michael Knab, Senior Vice President of Development, RPM Development, Montclair, NJ.

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

1. COMMENT: The commenter did not support the proposed elimination of the points for proximity to employment at N.J.A.C. 5:80-33.15(a)14iv, especially in light of the potential economic development and employment opportunities in Opportunity Zones (OZ), which may be unrealized, and in areas that are predominantly non-residential in nature. (1)

RESPONSE: The Agency has, in previous years, received multiple comments from stakeholders that the points for employment (in particular, calculating jobs within municipal boundaries) did not accurately measure access to higher opportunity and that the employment points, specifically, prohibited many desirable municipalities from being competitive for nine percent tax credits. Therefore, as an alternative to a single-metric point incentive, such as jobs or poverty, the Agency proposed two new tools for evaluation at N.J.A.C. 5:80-33.15(a)14. In suburban municipalities, the Agency proposed to utilize Department of Community Affairs' (DCA) Municipal Revitalization Index (MRI), which evaluates all 565 municipalities on eight separate social, economic, physical, and fiscal indicators, in various sections of the Qualified Allocation Plan (QAP). In Targeted Urban Municipalities (TUMs), the areas as to which the comment is primarily centered, the Agency is prioritizing development in Opportunity Zones (for which the MRI was also utilized as the basis of designation, along with geographic distribution, access to transit, and the value of existing investments). Opportunity Zones were designated at the census tract level rather than at the municipal level. This is expected to encourage investment in specific neighborhoods and recognizes that there are varying social and economic demographics within a municipality. The Agency intends to focus not only on potential employment opportunities, but also on the broader Federally led strategy underling the Opportunity Zones legislation - to encourage the most significantly impactful financial investments in historically underserved and distressed neighborhoods. This change will allow municipalities that were previously ineligible for the employment points to be competitive for nine-percent credits. In 2018, only one third of TUMs were eligible for employment points; however, under the proposed amendments, approximately 80 percent of TUMs will have at least one census tract that is eligible. Therefore, the Agency supports the new priority for Opportunity Zones in urban areas and will adopt the rule.

2. COMMENT: The Agency received multiple comments suggesting that the two points under N.J.A.C. 5:80-33.15(a)14i for siting projects within one of the 169 Opportunity Zone census tracts should be expanded. The commenters proposed expanding eligible locations to projects located within tracts adjacent to Opportunity Zones, to projects located within an adjacent census tract if it is low income, or to projects located within one-half mile of the boundary of an Opportunity Zone. Several commenters also referenced the recent Internal Revenue Service (IRS) regulations that allow an Opportunity Fund to make investments in businesses that hold up to 30 percent of their assets outside of designated Opportunity Zones. (1, 2, 4, 12, 13, 14, and 15)

RESPONSE: As noted in the Response to Comment 1, the Agency's intent is to capitalize on investments made within Opportunity Zones and garner potential economic benefits for residents in Low Income Housing Tax Credit (LIHTC)-funded housing. The Agency expects that channeling these potential investments will have a significant impact for distressed neighborhoods and will result in a more comprehensive revitalization of these areas. The 30-percent flexibility in the IRS regulation is intended to generate a larger pool of eligible businesses, not to divert investments to non-Opportunity Zone census tracts, many of which are affluent. Opportunity Funds must still invest at least 90 percent of their assets within the 169 designated Opportunity Zone census tracts. Expanding to adjacent tracts would permit over 90 percent of census tracts in the State to be eligible, which would effectively negate any benefit of the point category.

3. COMMENT: The commenter suggested that the HOPE VI/Choice Neighborhoods set-aside in the Family and Senior Cycles should not be eliminated, but rather it should be broadened to include public housing authority (PHA) projects with Rental Assistance Demonstration (RAD), Replacement Housing Factor (RHF) funds, and HUD Capital Funds. The commenter stated that PHA projects are at a competitive disadvantage. (2)

RESPONSE: The Agency does not agree that PHA projects are at a competitive disadvantage. The existence of additional funding, such as RHF or Capital Funds is a distinct advantage for these projects when calculating the tiebreaker. Rehabilitation projects, many of which are PHA projects, are already eligible to apply in the existing Preservation set-aside in the Family Cycle; and now they may apply for the newly proposed Preservation set-aside in the Senior Cycle as well. The intent of the set-aside was to prioritize projects with significant, time-sensitive Federal funding. Absent the set-aside, the loss of Federal funding would be likely. In recent years, however, direct Federal appropriations for new construction have significantly diminished; the State has been the recipient of only one Choice Neighborhoods Implementation grant since 2010, and the Agency is not aware of any remaining HOPE VI funding. PHA projects will be eligible for the Preservation set-aside. The Agency, therefore, does not believe another, likely duplicative set-aside is warranted.

4. COMMENT: The commenter suggested that a third tier for tax abatement points should be added, creating an option for four points for a tax abatement between 6.28 percent and 7.5 percent. (2)

RESPONSE: As proposed at N.J.A.C. 5:80-33.15(a)4i, five points would be awarded to projects with a tax abatement of 6.28 percent or below and three points for a tax abatement over 6.28 percent. The tax abatement rate of 6.28 percent has long been established as the Agency tax abatement rate and the Agency does not believe that an additional tax abatement rate should be incentivized.

5. COMMENT: The commenter expressed concern that the points for proficient schools in TUMs includes a bias against inner cities, and, therefore, the points for proficient schools should be eliminated within TUMs. (2)

RESPONSE: The Agency disagrees that the current scoring system has resulted in urban projects not being funded. While it is accurate that most TUMs are not eligible for the proficient schools points, it is a largely neutral point category for urban projects and has not impeded tax credit awards in urban communities. The QAP still mandates that at least 35 percent of the credits in each cycle be awarded in TUMs. Furthermore, the Agency disagrees that the points for proficient schools should be eliminated in urban areas. A child's attendance in a high-performing school district is perhaps the single most influential factor in determining future success. The rule will continue to promote locating development in high-performing school districts.

6. COMMENT: Two commenters requested clarification as to whether the three points for on-site transportation in the Senior Cycle are available to applicants that have municipal or county bus or van service available to the site at least once per week. Additionally, commenters requested confirmation regarding whether a fee may be charged for the service and whether there must be a minimum number of stops along the route. (2 and 5)

RESPONSE: The three points for on-site transportation in the Senior Cycle are available to applicants that have municipal or county bus or van service available to the site at least once per week, as long as a regularly-scheduled stop at the property has been contractually obligated by the municipality or county. The points are available for any on-site transportation service that is regularly scheduled, is available to all residents, picks up and drops off at the property, and runs at least once per week. The proposed amendments at N.J.A.C. 5:80-33.16(b)2i outline what is required in the application: "Evidence of existing service and/or an executed contract stipulating fees and frequency of service shall be submitted in the application." Evidence of funding must also be included in the application. A nominal fee may be charged to residents that utilize the service. While there is no minimum number of stops, since the layouts and accessibility of stops and desirable destinations will be unique to each project, owners should survey the preferences of their residents and establish a reasonable number of stops and destinations. The schedule should be provided to the residents in advance for planning purposes. Shuttle/bus services based solely on residency status do not qualify for points in this category, unless a regularly-scheduled stop at the property has been contractually obligated. Accordingly, in order to be eligible for this point category, the applicant must provide such detailed information set forth above, rather than submitting a letter simply indicating that a municipal or county bus or van service is available.

7. COMMENT: The commenter stated that the amended definition of "public transportation" should not apply to senior projects. (2)

RESPONSE: The Agency confirms that "on-site transportation at least once per week" set forth at N.J.A.C. 5:80-33.16(b)2i and 33.17(a)1 is required for three points and two points in the Senior and Supportive Housing Cycles, respectively. The new definition of "public transportation" does not apply to senior or supportive housing projects.

8. COMMENT: The commenter expressed concern that mixed-income projects are automatically eligible for the newly proposed bonus point, which is tantamount to double-dipping. (2)

RESPONSE: The Agency notes that there are three options to receive the bonus point at N.J.A.C. 5:80-33.15(a)24, one of which is to set aside at least 20 percent of the units for unrestricted market rate tenants. The Agency confirms that projects applying in the Mixed-Income Reserve or the Mixed-Income set-aside in the Family Cycle would be automatically eligible for the bonus point; however, they need to meet only a threshold number of points (61 out of 93). All projects applying to the Reserve or set-aside would be eligible for the bonus point, making it a neutral point category. Since these projects are ranked and awarded separately from all other projects, this bonus point provides no advantage over other projects applying in the general competition. The options for the bonus point were established primarily for applicants not applying in the Mixed-Income Reserve and set-aside, who compete based on the highest number of points and, if there is a tie, the tiebreaker.

9. COMMENT: Two comments suggested that the bonus point category at N.J.A.C. 5:80-33.15(a)24 unfairly penalizes projects that are unable to support permanent debt and will render them non-competitive. (2 and 4)

RESPONSE: The proposed bonus point category has three options, only one of which requires utilizing the Agency for permanent financing. Projects that are unable to support debt can choose to elect one of the other two options in order to be eligible for the bonus point.

10. COMMENT: The terms "Family Success Center," "One Stop Career Center," "Healthy Lifestyle Education and Programming," "Wellness Clinic," "Pharmacy," and "partnership with a hospital or managed care organization" need to be defined. (2)

RESPONSE: The list of Family Success Centers can be found at https://www.nj.gov/dcf/families/support/success/. A change has been made upon adoption to include the link to the website at N.J.A.C. 5:80-33.15(a)11i(6). The list of One Stop Career Centers can be found at https://careerconnections.nj.gov/careerconnections/plan/support/njccsites/one_stop_career_centers.shtml. A change has been made upon adoption to include the link to the website at N.J.A.C. 5:80-33.15(a)11i(7). Healthy Lifestyle Education and Programs consist of health promotion programs and educational workshops to provide education and direction to residents in areas of physical and emotional health. N.J.A.C. 5:80-3.17(b)2 has been updated to provide this clarity.

For the "wellness clinic," "pharmacy," or "partnership with hospital or managed care organization," the Agency expects that the owner will make available adequate space to an appropriate entity and, therefore, defers to the third-party providers to establish the requirements for the use of space. In all cases, an agreement with the entity must be submitted in the application. This category was written generally to allow owners the flexibility to develop innovative programs.

11. COMMENT: The Agency received multiple comments stating that the proposed requirement for a separate general contractor audit is burdensome, unnecessary, or should only be required in certain circumstances (such as only nine-percent projects or non-fixed fee contracts or if there is a suspicion of fraudulent activity). One commenter suggested a pre-construction review process of costs. (2 and 6)

RESPONSE: The Agency proposed this new audit requirement at N.J.A.C. 5:80-33.28(a) out of concern regarding recent findings of insufficient oversight of the Low Income Housing Tax Credit (LIHTC) program. Multiple convictions by the U.S. Department of Justice exposed large-scale fraud in the program where developers and general contractors were artificially inflating costs to generate additional four-percent tax credits unbeknownst to the U.S. Department of the Treasury, IRS, or the state housing finance agency. In September 2018, the Government Accountability Office (GAO) issued its third and final report on the effectiveness of the LIHTC program, which recommended that state housing finance agencies require a separate audit of construction costs. The report stated:

> "Allocating agencies use measures such as cost and fee limits to oversee LIHTC development costs, but few agencies have requirements to help guard against misrepresentation of contractor costs (a known fraud risk). LIHTC program policies, while requiring high-level cost certifications from developers, do not directly address this risk because the certifications aggregate costs from multiple contractors. Some allocating agencies require detailed cost certifications from contractors, but many do not."

While the Agency has not found evidence of fraudulent activity occurring in New Jersey's LIHTC portfolio, prudence dictates the need to expand Agency surveillance activity. A pre-construction review process of costs seems more arduous and time-consuming for all parties and still does not audit the actual cost to construct projects. Additionally, it may be deemed arbitrary to apply this requirement only in certain circumstances or for certain projects. Therefore, the Agency intends to adopt the proposed amendment and uniformly require a separate audit of general contractors' costs for all four-percent and nine-percent tax credit projects. The Agency believes this best complies with the GAO's recommendations.

12. COMMENT: Application and allocation fees are high; they should not be increased. Increasing Agency application fees while trying to contain soft costs is counterproductive. The increase in allocation fees, when coupled with Agency mortgage commitment fees, could exceed $1,000,000. (2 and 6)

RESPONSE: With regard to the proposed amendments to the application fee at N.J.A.C. 5:80-33.10(a)1, the Agency believes the increase from $2,500 to $4,000 is nominal, representing an average of .01 percent of total development costs in the 2018 Family Cycle. However, while it may be nominal within the context of a development budget, the additional revenue is needed in order to defray Agency expenses incurred in reviewing tax credit applications, including third-party review fees of $2,300 per review by the market analyst. The application fee has not been increased since 2003, and annual inflation since then suggests this increase is already overdue.

With regard to allocation fees, the Agency notes that they are not being increased for projects that elect to utilize the Agency for permanent multifamily pooled bond financing and, therefore, projects can avoid higher allocation fees by utilizing Agency financing.

13. COMMENT: The commenter requested clarification on the maximum points available under N.J.A.C. 5:80-33.15(a)14 in the Supportive Housing Cycle, since the maximum points available in the Family Cycle increased to eight. (3)

RESPONSE: While the point categories for the Family and Supportive Housing Cycles are similar and are both based on N.J.A.C. 5:80-33.15(a)14, there is one key difference. Three points are awarded for high-performing school districts in the Family Cycle; however, in the Supportive Housing Cycle, the amendments include two options for one point only (depending on the population). Therefore, the maximum achievable in this category is six points for the Supportive Housing Cycle. The Agency will clarify this at N.J.A.C. 5:80-33.15(a)14 upon adoption.

14. COMMENT: Multiple commenters suggested that changes should be made to the proposed cap on soft costs. Several commenters recommended the cap should be 40 percent, not 30 percent; and others suggested exceptions on the cap be made for feess defending against NIMBY ("Not In My Back Yard") litigation, for reserves required by other parties such as HUD, or when land is donated. (4, 6, 7, 8, 9, 10, 13, 15, and 16)

RESPONSE: The Agency agrees with the commenters that there are justifiable explanations for higher than average soft costs. However, rather than increase the permitted percentage or identify exclusions, the Agency has opted to not adopt the proposed limitations on soft costs found at N.J.A.C. 5:80-33.4(a), 33.4(a)1, 33.5(a), 33.6(a), 33.7(a), and 33.8(a)2. Based on the non-adoption of soft costs, the proposed definition at N.J.A.C. 5:80-33.2 of soft costs will also be deleted upon adoption.

15. COMMENT: Multiple commenters expressed concern about over-reliance on the LIHTC-per-bedroom or per-unit tiebreaker, which could result in geographic preferences, decreased quality, or over-leveraged projects. (4, 7, and 10)

RESPONSE: The LIHTC program is extremely competitive. Every application round in recent years has resulted in some reliance on the tiebreaker to award credits. While it is true that income limits in northern New Jersey are higher than in the south, the Agency has not seen any indication of a disparate distribution of credits. In recent years, the southern counties have received a larger percentage of LIHTC awards than their share of the State's population. Additionally, the Agency has also not seen any indication of lower quality construction or underperforming assets at risk of foreclosure due to over-leveraging. Prudent regulation requires a mechanism to control costs and to encourage applicants to seek other sources of financing. The tiebreaker encourages the most efficient use of the tax credit and in that regard, the Agency feels that it has been successful in its purpose and is not making any changes.

16. COMMENT: The commenter requested clarification on the proposed rules for site selection and positive land uses at N.J.A.C. 5:80-33.15(a)11i, noting a discrepancy in the notice of proposal between the Summary and the text of the proposed amendments. (5)

RESPONSE: The Agency thanks the commenter for identifying this discrepancy and notes the intent was always to increase the radius from one-half mile to one mile for Senior and Supportive Housing Cycle projects and to three miles for Family Cycle projects. The NJHMFA Board-approved proposed QAP and the Request for Action both specifically identify this proposed change. Additionally, the notice of proposal Summary clearly states that the radius for positive land uses for Family Cycle projects would be amended to three miles and one mile for Senior and Supportive Housing Cycles. From the Summary: "In paragraph (a)11, the Agency proposes to amend the points for site selection by delineating between certain positive land uses depending on the population (family, senior, or supportive housing) and also by expanding the proximity standard from one-half mile to one mile for the Senior and Supportive Housing Cycles and three miles for the Family Cycle." Unfortunately, this change was inadvertently omitted in the text of the proposed amendments, which erroneously set forth a one-mile radius for all projects. Upon adoption, the text at N.J.A.C. 5:80-33.15(a)11i will be corrected to accurately reflect the intended change.

17. COMMENT: Multiple commenters requested clarification on the proposed rules for public transportation. One commenter questioned whether public transportation is required to be available for the full duration of the newly-defined commuter hours (6:30 A.M. to 9:30 A.M. and 3:00 P.M. to 6:00 P.M. daily). Additionally, several commenters requested clarity as to how higher-opportunity (higher-income) counties, which have very limited public transportation opportunities, can be competitive for tax credits. One commenter also suggested that transportation by shuttle, which is acceptable in the Senior and Supportive Housing Cycles, should also be accepted for Family Cycle projects. (5, 6, 8, and 16)

RESPONSE: In order to meet the timing requirements of the new definition, public transportation must be provided at least once during the stipulated morning hours and at least once during the stipulated afternoon hours. The text of the definition at N.J.A.C. 5:80-33.2 is being changed to clarify this upon adoption.

In areas with limited public transportation options, the Tax Credit Committee has approved, for a previous project, a twice-daily, scheduled shuttle operated by the municipality to a "Park and Ride" facility with connections to various public transportation systems. On-site shuttle transportation, as permitted for the Senior and Supportive Housing Cycles, is required only to be once per week, which is not conducive for commuters and employed residents who primarily require daily public transportation.

18. COMMENT: The commenter suggests amending the definition of "smart growth areas" to permit any site with public water and sewer, as it relates to the ready to grow points. Currently in order to be eligible for ready to grow points, a non-smart growth project must meet one additional designation, one of which is being located within a redevelopment area. (5)

RESPONSE: The Agency disagrees with the suggestion to expand the areas eligible for the smart growth or ready to grow points. The presence of water and sewer utilities does not necessarily indicate that a site is suitable for development. Pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-4.1b, the Agency described in the Smart Growth Development Impact Analysis of the notice of proposal how the current rules further smart growth principles. The Agency does not intend to propose any amendments to the definition of smart growth areas at N.J.A.C. 5:80-33.2 at this time.

19. COMMENT: The commenter requested clarification on the difference between the words "achieve" and "be eligible" within the context of the minimum threshold score for Mixed-Income set-aside applications in the Family Cycle at N.J.A.C. 5:80-33.4(a)1. (5)

RESPONSE: There is no difference between the intent of the two terms. Projects must achieve a minimum of 65 percent of the points and, as part of the 65 percent threshold, projects must achieve the maximum points for site selection, public transportation, and high performing schools. The text at N.J.A.C. 5:80-33.4(a)1 is being changed upon adoption to eliminate any confusion.

20. COMMENT: Three commenters requested clarification as to whether the proposed amendments to N.J.A.C. 5:80-33.8(a)3 could result in 100 percent of the credits available to urban projects being allocated to mixed-income projects and, if that is correct, questioned whether some credits should be set aside for 100-percent affordable urban projects. One commenter expressed concern that this policy would create risky projects and cites hesitation on the part of lenders and investors to finance mixed-income projects. (5, 7, and 8)

RESPONSE: The Agency confirms that 100 percent of the credits available to urban projects (approximately 40 percent of the total in the Family Cycle) could potentially be allocated to mixed-income projects. However, given the complexity and challenge of financing mixed-income projects and the history of mixed-income awards (two in 2013, one in 2015, four in 2017, and two in 2018), this potentiality may not materialize. Nonetheless, the Agency accepts this potentiality because one of its policy goals is to promote mixed-income development. While there is always a need for affordable housing in urban areas, the Agency needs to be mindful of exacerbating economic and social segregation. Another of the Agency's goals is to site affordable housing in areas of higher opportunity. Encouraging a mix of incomes in traditionally higher-poverty urban areas furthers that goal and may permit development at prime real estate locations, such as next to mass transit, that would typically only be available for market-rate development. The Agency expects urban projects that are 100-percent affordable to continue to be awarded through the Preservation set-aside and in the general competition.

21. COMMENT: As it relates to the new "Average Income set-aside" definition, several commenters noted that many municipal settlement agreements require affordable housing projects to meet the affordability controls stipulated at N.J.A.C. 5:80-26.3(d), Uniform Housing Affordability Controls (UHAC), which requires that the average rent for low- and moderate-income units be affordable to households earning no more than 52 percent of Area Median Income (AMI). Allowing certain projects to underwrite utilizing the Average Income set-aside election, which permits an average affordability of up to 57.5 percent of AMI, would provide a competitive advantage over those projects that must meet the lower 52-percent affordability imposed by UHAC requirements. (5, 6, 8, and 9)

RESPONSE: The Agency agrees with the commenters and similar to the 2018 round, will not permit nine-percent applicants to elect the average income set-aside at the application stage. All applicants for nine-percent credits must select either the 20 percent at 50 percent or 40 percent at 60 percent minimum set-aside and adhere to current underwriting parameters with units underwritten above 60 percent of AMI treated as market rate or unrestricted. After award, owners are required to notify the Agency of any substantive changes to the project, including a request to underwrite utilizing the average income set-aside by no later than carryover/binding commitment.

Four-percent credits are non-competitive and, therefore, applicants may make the average income set-side election at application. Since the definition of "average income set-aside" explains the new minimum set-aside election and both four- and nine-percent projects will have the ability to make the official election on Form 8609, the Agency is adopting the definition as proposed.

22. COMMENT: Three commenters requested additional guidance on the new option for "Healthy Food Delivery Program (at least twice per month)" in the project amenities point category at N.J.A.C. 5:80-33.15(a)9vii. (5, 6, and 16)

RESPONSE: In order to be eligible for the two points, applicants must establish a partnership to provide healthy foods to their residents at least twice per month. For example, applicants could partner with local grocers for delivery of fresh fruits and vegetables, buy into local cooperative farms for delivery of products, coordinate with local colleges, restaurants, or Rutgers Cooperative Extension to provide residents with access to healthy foods, or offer healthy cooking classes. A letter of agreement with the partner is required, evidencing the frequency of service, and evidence of funding must be submitted in the application. Any costs associated with such service must be borne by the project or the owner.

23. COMMENT: With regard to the positive land use point category at N.J.A.C. 5:80-33.15(a)11, the commenter suggests that the minimum square footage requirement for a grocery store be reduced to 10,000 or 12,000 square feet. (5)

RESPONSE: The Agency does not deem a 10,000 or 12,000 square foot store to be large enough to qualify as a full-service grocery store or supermarket.

24. COMMENT: The commenters requested clarification for the following newly proposed negative land uses at N.J.A.C. 5:80-33.15(a)11ii: "Jail/Prison" and "wastewater treatment facility." (5 and 16)

RESPONSE: The Agency interprets "Jail/Prison" to mean any facility where persons are detained after being accused or convicted of a crime. The Agency interprets "wastewater treatment facility" as any facility that meets the definition of "public wastewater treatment facility" at N.J.S.A. 46:3C-3. The Agency suggests that applicants contact the municipality for assistance identifying any of the listed negative land uses within one mile of the project site.

25. COMMENT: A commenter questioned whether there are minimum requirements for the on-site healthcare provider with a private room and whether the healthcare provider may bill tenants' insurance for his or her services. (5)

RESPONSE: Under the proposed point category at N.J.A.C. 5:80-33.16(b)2iii, two points would be awarded to projects that regularly offer a licensed and insured on-site healthcare provider with a private room. Evidence of frequency of service and funding must be provided in the application. The third party should be a Medicare-certified home health agency or similar entity. The on-site health professional must have his or her own office separate from any on-site service coordinator(s) and should have regularly scheduled availability at least twice per month. There must be no charge to residents for services provided by the on-site healthcare provider, nor may insurance coverage be required. The Agency does not expect any healthcare services to be provided that could be billed to an insurance company. Please refer to the HUD Notice of Funding Availability for "Supportive Services Demonstration for Elderly Households in HUD-Assisted Multifamily Housing" for a better understanding of the type of on-site healthcare provider the Agency is encouraging, specifically the Qualifications and Job Responsibilities of the wellness nurse.

26. COMMENT: The commenter requested clarification as to whether there is a minimum size for the on-site pharmacy or wellness center found at N.J.A.C. 5:80-33.16(b)2iv. (5)

RESPONSE: In an effort to encourage innovative partnerships, the Agency is not requiring a minimum size for any pharmacy, wellness center, satellite hospital office, Program of All-inclusive Care for the Elderly (PACE) program, medical day-care program, a licensed assisted living facility, or similar partnership with a hospital or managed care organization. The Agency defers to the third-party providers to establish the requirements for the use of space. For all of these options, the Agency expects the owner to make space available to an appropriate entity and a firm agreement with the entity must be submitted in the application.

27. COMMENT: The commenter suggested that the maximum two-point consideration be given to joint ventures between a for-profit developer and a nonprofit service provider in the Supportive Housing Cycle, in contrast to the current policy at N.J.A.C. 5:80-33.17(b)5 that awards the maximum points only to 100-percent nonprofit general partners. (5)

RESPONSE: In order to ensure compliance with IRC § 42(h)(5), which requires that at least 10 percent of New Jersey's nine-percent tax credits be allocated to projects in which nonprofit organizations have an ownership interest and materially participate throughout the compliance period, the QAP awards two points to 100-percent nonprofit general partners in the Supportive Housing Cycle. The IRS "Guide for Completing Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition" stipulates that a nonprofit organization must have an ownership interest in the low-income housing project throughout the 15-year compliance period and materially participate in the development and operation of the project. In recent years, the IRS has informed housing finance agencies that more scrutiny will be placed on whether nonprofit partners meet the definition of "material participation." Correspondingly, the Agency has found that, especially in cases where the nonprofit partner is a related party to the for-profit developer, material participation by the nonprofit is difficult to ascertain. The "material participation" requirement is more assuredly met when the nonprofit is the sole general partner and also manages the property. Therefore, the Agency does not intend to amend this point category.

28. COMMENT: The commenter thought that reducing or further restricting the available "'developer fee' or 'development fee'" to two percent on acquisition projects in the definition at N.J.A.C. 5:80-33.2 creates a disincentive for preservation projects. (6)

RESPONSE: As a point of clarification, the Agency is not reducing the total amount of acquisition development fee (four percent of building acquisition costs) that can be paid to the developer, but rather the amount of cash fee that can be paid as part of the development budget (no more than two percent). Similar to the developer fee on construction and rehabilitation costs, the remainder can be paid out of project cash flow. In accordance with the National Council of State Housing Agencies (NCSHA)'s recommended best practices, the Agency proposed this change to utilize tax credits more efficiently, contain the costs of affordable housing, and ensure that, while developers are adequately compensated for their work and the risk they undertake, there is no unintentional incentive to inflate acquisition costs.

29. COMMENT: The Agency should more clearly define "mixed-income" and establish transparent criteria for eligibility for credits. The Inclusionary Policy should be both approved by the Agency Board and established as a regulation. The Mixed-Income set-aside in the Family Cycle takes critical affordable housing resources away from municipalities with settlement agreements that do not contemplate a mixed-income project. (6)

RESPONSE: The Agency is in the process of amending the QAP to codify the Inclusionary Policy, which proposal was approved by the NJHMFA Board on March 7, 2019, and will be published in the New Jersey Register for public comment in due course. The Agency disagrees with the comment that the Mixed-Income set-aside in the Family Cycle reduces available tax credits for municipalities with settlement agreements. The Mixed-Income Reserve has set aside credits for one non-TUM project since 2013. The language regarding the Mixed-Income Reserve has simply been moved from one section of the rules (N.J.A.C. 5:80-33.8(a)3) to another (N.J.A.C. 5:80-33.4(a)1) and renamed as the Mixed-Income set-aside in the Family Cycle. The new set-aside imposes additional requirements for eligibility (site selection, public transportation, proficient school district) and further limits the previous maximum allocation from $2,000,000 to $1,750,000 in annual credits.

30. COMMENT: The commenter requested clarification as to what documentation is required as evidence that a project is "at risk of losing its affordability controls" or "at risk of losing its level of affordability." The prohibition of developing new units should be removed since new units may be required for feasibility. (6)

RESPONSE: The documentation required for both "at risk of losing its affordability controls" or "at risk of losing its level of affordability" is set forth in the definitions at N.J.A.C. 5:80-33.2. The Agency does not agree that projects that include the development of new units should be eligible for the Preservation set-aside and notes that projects that include a mix of rehabilitation and new construction are not precluded from applying for tax credits in the general competition in all three cycles.

31. COMMENT: The definition of public transportation at N.J.A.C. 5:80-33.2 should be expanded to include proposed transportation that will be active at project completion, as long as there exists a firm commitment of service with resolutions by the necessary governing or quasi-governmental body by the application deadline. (5 and 6)

RESPONSE: The Agency agrees with the commenter that it may not be feasible to have public transportation in place at the time of application. Therefore, the Agency will accept, in the tax credit application, an ordinance that firmly commits public transportation, as defined in N.J.A.C. 5:80-33.2 (including all necessary funding) to the project. Resolutions or other forms of governmental approvals will not be accepted. As a result of this change, any project submitting an ordinance committing future public transportation will be required to present evidence of in-place public transportation before receiving its Form 8609(s) at the completion of the project.

32. COMMENT: With regard to the definition of "social services plan" at N.J.A.C. 5:80-33.2, the minimum of five hours per week should be identified and the recommendation for additional hours by the social service coordinator should be deleted. (6)

RESPONSE: The definition clearly states that projects with five set-aside units must have a social service coordinator for a minimum of five hours per week. The definition also clearly states that the coordinator should be dedicated to the project for a "reasonable" amount of hours based on the number of supportive housing units. Depending on the needs of the residents, the Agency believes that five hours per week may not afford the residents the time with the social service coordinator they need. The Agency recommends that, where practicable, a minimum of 10 hours be provided.

33. COMMENT: The revised MRI-based criteria for "Targeted Urban Municipalities" (TUMs) is good; however, the Agency should be more transparent about how the list of eligible municipalities is created. (6 and 8)

RESPONSE: As noted in the definition of "Targeted Urban Municipalities" at N.J.A.C. 5:80-2, the Agency will publish annually the list of municipalities that are designated as TUMs. The Agency agrees with the commenter's request for transparency; therefore, the methodology will also be published with the annual TUM list, so any interested party may replicate the process and verify the list independently.

34. COMMENT: The Agency should be aware that the expected $15.00 per hour minimum wage will cause a family of four in many counties to exceed 50 percent and 60 percent income limits. (6)

RESPONSE: Since the minimum wage will be gradually phased in through 2024, the Agency does not anticipate significant issues with income eligibility at the 50-percent and 60-percent area median income levels. Based on a sampling of counties, most dual minimum-wage-income households would still be eligible for LIHTC-funded housing set at 60 percent AMI limits. There is one county where the median incomes are low enough that a dual minimum-wage-income household is ineligible now and would continue to be after the wage increases. However, income limits are updated by HUD every year and it is expected that the rise in incomes attributed to the increase in minimum wage would also be reflected in higher income limits.

35. COMMENT: The eligible basis limits should be increased by $25,000 in line with the cap on total development costs. (6)

RESPONSE: As has been the practice since the introduction of the cost cap, the Agency will increase eligible basis limits to correspond with the increase in the cap on total development costs.

36. COMMENT: The Agency should increase the maximum credits per Family Cycle project at N.J.A.C. 5:80-33.4(a) to $2,000,000. (6)

RESPONSE: The Agency does not agree that the maximum credits should be increased. In the last two funding cycles, only three of 24 projects requested the $1,750,000 maximum. Additionally, concerns about the rising cost of affordable housing and a desire to maximize production run counter to increasing the amount of tax credits per project.

37. COMMENT: The cap on total development costs at N.J.A.C. 5:80-33.4(a), 33.5(a), 33.6(a), 33.7(a), and 33.8(a)2 should not include direct land acquisition costs or environmental clean-up. Highly desirable, high-income communities have high land values and construction quality would have to be compromised to keep total development costs under the cap. (6)

RESPONSE: The cost cap was instituted to contain the cost of affordable housing. While there are certain line items that can be justified as being higher than average, the unfortunate answer is that expensive "affordable" housing only invites criticism against the LIHTC program, the beneficiaries of the program, the U.S. Department of the Treasury, the Internal Revenue Service, and the Agency. Controlling costs, but allowing exemptions for land or environmental remediation, both of which are costs normally associated with building housing, diminishes the effect of the cap. Additionally, excepting these costs from the cap could inadvertently encourage projects to inflate their costs for land and remediation.

38. COMMENT: Credit allocations should be reviewed under the same criteria using the Inclusionary Policy for mixed-income projects. Nine-percent credits should be viewed as a scarce resource and not be permitted in mixed-income or inclusionary projects. However the four-percent credit should be allowed for these types of projects. (6)

RESPONSE: The Agency confirms that all mixed-income or mixed-use projects that are part of "a fair share housing plan approved by [COAH], or a court-approved judgment of repose or compliance" are required to adhere to the Inclusionary Policy (Policy). This Policy broadly applies to all four-percent and nine-percent applications. The Agency confirms that projects applying in the Mixed-Income set-aside and projects that are 100-percent affordable but associated with a market-rate or commercial development (the costs of which may or may not be included within the tax credit application) may also be required to submit a feasibility analysis to conclusively demonstrate the need for tax credits. With respect to whether nine-percent credits should be permitted in mixed-income or inclusionary projects, N.J.S.A. 52:27D-321.1 (Assembly bill A500) only references Low Income Housing Tax Credits and does not distinguish between the four-percent or nine-percent credit. The Agency considers all nine-percent and four-percent applicants that meet the test by conclusively demonstrating the need for credits to be eligible under the law.

39. COMMENT: The commenter applauds the limitation of one project per municipality being funded per round, and the limitation on submitting multiple phases of a project as separate projects at N.J.A.C. 5:80-33.4(c), 33.5(c), and 33.6(b). (6)

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

40. COMMENT: The Agency should clarify the statement at N.J.A.C. 5:80-33.4(c) and 33.5(c) that "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." The Agency should also clarify whether it is an accurate statement that municipalities can only receive an allocation of nine-percent credits every other year. (6)

RESPONSE: It is not accurate to state that a municipality can only receive an allocation of nine-percent credits every other year. As outlined in the same subsections referenced by the commenter, municipalities are eligible to receive two or three awards per year, depending on the population. The statements refer only to specific projects that were awarded credits in one year and then must re-apply for additional credits competitively in a subsequent year (if, for example, they were ineligible for hardship credits). This is an exception to the municipal limits, rather than a more stringent limitation. The limitation on municipal awards of two or three projects per year would not apply for that specific project; a municipality could receive its maximum two or three awards, plus the additional project, as long as it met the exception noted above.

41. COMMENT: The Agency should increase the maximum credits per Senior Cycle project to $2,000,000 at N.J.A.C. 5:80-33.5(a). (6)

RESPONSE: The Agency does not agree that the maximum credits should be increased, especially so dramatically from $1,400,000 per project. Increasing the maximum credits per project to $2,000,000 could limit the Agency to funding only three senior projects in a standard application cycle, rather than five or six, which would significantly decrease the number of locations where senior housing is developed each year.

42. COMMENT: The Agency should clarify whether every targeted income level must be underwritten 2.5 percent lower than the maximum and whether this is for underwriting purposes only. (6)

RESPONSE: The Agency confirms that the requirements at N.J.A.C. 5:80-33.12(c)7i are for underwriting purposes only and that all rents should be underwritten at 2.5 percent lower than the maximum income designation, excluding units targeted at 30 percent of AMI or below.

43. COMMENT: Applicants should be advised of the credit year that is being allocated in the round and there should not be an arbitrary allocation of current or future years' credits. (6)

RESPONSE: The Agency has always notified successful applicants of the credit year of their award in the Reservation Letters. There is no "arbitrary allocation" of LIHTC. Credits are awarded in a manner that mirrors N.J.A.C. 5:80-33.4(c), where available credits are awarded first to the Family Cycle, then to the Senior Cycle and so on. The current year's credits are fully exhausted first and then, if needed, a future year's credits are allocated. Additionally, the Agency has historically been flexible with requests to swap one project's credit allocation with that of another prior to carryover (at which point, the allocation is reported to the IRS), as long as another project is willing to accept a different year's credits.

44. COMMENT: The commenter requested that the notice time of the application deadline be increased from 45 days to 90 days. (6)

RESPONSE: N.J.A.C. 5:80-33.11(a) states that the Agency will provide notice "no later than 45 days prior to the deadline." (Emphasis added.) The Agency acknowledges the considerable length of time required to prepare an application and has always provided estimated timeframes for application deadlines well in advance. Additionally, the Agency routinely gives applicants more than 45 days' notice of the actual deadline date. For example, in 2018, the July 24 deadline for nine-percent applications was announced on March 9. While the Agency will continue to exert its best efforts to continue its past practices, it does not intend to make any changes to the rule.

45. COMMENT: Negative points should not be assessed when there are projects from the same municipality in a subsequent round that are in different cycles. (6)

RESPONSE: The Agency confirms that the proposed negative point category at N.J.A.C. 5:80-33.15(a)11ii(9) imposes a reduction of three points for a "[n]ine-percent tax credit award(s) in the same census tract in the same cycle in the previous round." (Emphasis added).

46. COMMENT: With regard to the units set aside for homeless individuals or families at N.J.A.C. 5:80-33.15(a)20, there should be a "next available unit rule" to fill the unit. (6)

RESPONSE: The "next available unit rule," which outlines the procedure if a homeless individual or family is unavailable for occupancy, is already in place as set forth at page 23 of the NJHMFA Compliance Monitoring Procedures Manual, which can be found on the Agency's website. https://njhousing.gov/dca/hmfa/developers/credits/compliance.

47. COMMENT: NJHMFA should revert back to setting an established equity range. (6)

RESPONSE: As required in the definition of "equity range" at N.J.A.C. 5:80-33.2, the Agency will notify applicants of the equity range in the LIHTC application. Only a minimum equity pricing was established in 2018, and applicants were directed to underwrite at pricing based upon a commitment from their equity investor. However, applicants were also advised that no hardship applications would be accepted for adjustments made in equity pricing between application and closing with the investor. This was in direct response to the 2017 application round for which the Agency established a set equity price for underwriting. Ten projects were awarded credits based on that pricing, but were then unable to achieve the set pricing, which resulted in 10 hardship applications for additional tax credits. In order to prevent this unnecessary time and paperwork, the Agency is permitting applicants to underwrite at a tax credit price that they feel they can achieve, but will set a minimum equity price for applicants without a commitment from an investor.

48. COMMENT: With regard to the bonus point, the Agency has not satisfactorily resolved the issues involved with utilizing the Agency for mortgage financing. (6)

RESPONSE: The rule offers several ways to qualify for the bonus point at N.J.A.C. 5:80-33.15(a)24 and the decision to pursue the bonus point is entirely at the discretion of the applicant. There is no inherent bar to using Agency financing.

49. COMMENT: There should be some priority, or a set-aside, for Opportunity Zones for mixed-income projects. (6)

RESPONSE: Mixed-income projects must meet a threshold number of points, two of which can be attained by being located within an Opportunity Zone. Therefore, there is a benefit for mixed-income projects located within OZs.

50. COMMENT: The commenter stated that while she appreciates the prioritization of good schools, she questions whether the Partnership for Assessment of Readiness for College and Careers (PARCC) test is the appropriate measure. The commenter noted that there is small participation in the test and the Governor has indicated an intent to cease the program. Other measures should be considered. (6)

RESPONSE: With respect to the points for proficient schools at N.J.A.C. 5:80-33.14(a)14iii and 33.17(a)2, the Agency still supports the utilization of PARCC scores for evaluation. While there have been modifications to the broad utilization of the PARCC standardized test, the Agency has been advised that no changes will be made to the Grade 4 testing procedures, which is the metric utilized in the QAP. As previously noted, the Agency has extensively reviewed educational performance metrics with the New Jersey Department of Education and found alternative measures to be lacking. Based on 2017 and 2018 data, 353 and 359 school districts, respectively, are eligible for this point incentive and there is at least one eligible district in every county; therefore, the Agency supports this metric as currently the best measure of academic performance.

51. COMMENT: High opportunity areas should include immediate vicinity incomes and property values. (6)

RESPONSE: The Municipal Revitalization Index (MRI), which is the basis for a proposed three-point category at N.J.A.C. 5:80-33.15(a)14iv, is based on eight social, fiscal, and economic indicators, including median household income and equalized valuation per capita. Thus, the factors specified by the commenter are given consideration.

52. COMMENT: The Agency should provide guidance on the newly proposed smoke-free community option at N.J.A.C. 5:80-33.15(a)9viii. (6)

RESPONSE: At application, the option can be selected without additional verification. Evidence of the policy and its enforcement must be included in the submission for Form 8609 at the completion of the project.

53. COMMENT: An additional point should be offered in the Senior Cycle if the landlord provides fitness training or coaching along with the exercise room at N.J.A.C. 5:80-33.16(b)2vi. (6)

RESPONSE: The Agency commends owners who are not only providing space and equipment for residents to exercise, but also coaching and fitness training. However, at this time, the Agency does not agree that an additional point is warranted.

54. COMMENT: The commenter questions whether the point category at N.J.A.C. 5:80-33.15(a)11i for the Senior Cycle should read, "Senior Cycle and Supportive Housing Cycle projects located within one mile of positive land uses (a)11i(9) through (19) shall be awarded one point." (7)

RESPONSE: The Agency confirms that Senior and Supportive Housing cycle projects located within a half mile of specified positive land uses at N.J.A.C. 5:80-33.15(a)11i(1) through (8) will receive two points, but that the full list of positive land uses at N.J.A.C. 5:80-33.15(a)11i(1) through (19) is also alternatively eligible for one point if within the larger radius of one mile.

55. COMMENT: The proposed text at N.J.A.C. 5:80-33.4(a)2 and 33.5(a) references a "preservation set-aside project" without defining what it is. (8)

RESPONSE: The intent of the text is to distinguish between preservation projects that apply in the set-aside and those that compete in the general competition because there are different maximum annual credits in each. A preservation set-aside project can apply for a maximum of $1.25 million in the Family Cycle and $1.0 million in the Senior Cycle. However, preservation projects are not prohibited from applying in the general competition, which have the higher $1.75 million for Family Cycle and $1.4 million for Senior Cycle maximum credit allocations per project.

56. COMMENT: NJHMFA should make sure that its stated 60/40 split between TUM (urban) and non-TUM (suburban) municipalities is being achieved. The credits for mixed-income projects being included in the overall split is a good step forward; however, the credits allocated to non-TUM or suburban municipalities have fallen below 60 percent in recent years. In the most recent Family and Supportive Housing Cycles, only 53.0 percent and 45.8 percent of credits, respectively, were awarded to suburban municipalities. (8)

RESPONSE: The Agency ardently strives to achieve the 60/40 split, but it must also meet numerous other regulatory requirements, such as the distributions required under N.J.A.C. 5:80-33.4, 33.5, and 33.6 (not less than 50 percent of the total credits shall be awarded to the Family Cycle, not less than 20 percent to the Senior Cycle, and not less than 12.5 percent to the Supportive Housing Cycle). The Agency acknowledges that only 53 percent of the credits were awarded to suburban municipalities in 2018 and that the credits to TUMs have exceeded 40 percent when necessary to fully fund a project. However, a flexible approach is sometimes required to meet the intent of all policy goals. For example, in 2018, funding one fewer TUM project in the Family Cycle would have resulted in only 48.6 percent of the total credits being awarded to family projects, which would have violated the above-referenced 50-percent-minimum requirement. Alternatively, awarding a non-TUM project instead of the last TUM project would have resulted in only 34.25 percent being allocated to TUMs, violating the rule at N.J.A.C. 5:80-33.4(d) that "[a]pproximately 40, but not less than 35, percent of the credits" in the Family Cycle shall be made available to TUMs. Similarly, in the Supportive Housing Cycle, awarding an additional non-TUM project would have resulted in only 47.96 percent of credits being awarded in the Family Cycle.

57. COMMENT: The commenter supported the proposed rule change at N.J.A.C. 5:80-33.15(a)3 to no longer allow Transit Oriented Development (TOD) projects an exception from providing large family units. (8)

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

58. COMMENT: The commenter supported the proposed rule change increasing points for municipalities with proficient schools at N.J.A.C. 5:80-33.15(a)14iii and appreciates the Agency recognizing the importance of locating affordable housing is these districts. Additionally, the commenter supported the inclusion of education points in the Supportive Housing Cycle. (8)

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

59. COMMENT: The commenter supported the change at N.J.A.C. 5:80-33.15(a)20i to better serve homeless families by including two- and three-bedroom units. (8)

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

60. COMMENT: The large-family unit requirement currently required only for Family Cycle projects should also apply for Supportive Housing projects that have family units. A substantial number of family units are constructed through the Supportive Housing Cycle and those units should be available to larger families as well. (8)

RESPONSE: Historically, the projects awarded in the Supportive Housing Cycle for families are utilized by municipalities to generate Council on Affordable Housing (COAH) credits and, therefore, meet bedroom and affordability distribution requirements under UHAC. The Agency acknowledges that there is a growing number of projects geared toward a mix of seniors and supportive housing but confirms that the family projects generally include larger units and larger bedrooms for large families.

61. COMMENT: The commenter strongly supported the new age-friendly senior housing point category at N.J.A.C. 5:80-33.16(b)2, which will allow seniors to age in place. (9)

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

62. COMMENT: The commenter suggested that the two points for nonprofit sponsors at N.J.A.C. 5:80-33.17(b)5 should be extended to the Family and Senior Cycles and that a set-aside for nonprofit sponsors should be established for Mixed-Income projects located within TUMs. (9)

RESPONSE: The Agency encourages and supports nonprofit organizations as owners, managers, and service providers and, as required by Section 42 of the Internal Revenue Code, a minimum of 10 percent of the annual LIHTC is allocated to nonprofit owners every year. Over the past 10 years, the Agency has awarded an average of 25 percent of each year's nine-percent allocation to nonprofit organizations. As stated in the Response to Comment 27, the Agency continues to fully support the 100 percent nonprofit points in the Supportive Housing Cycle to ensure that nonprofits are materially participating in the projects for the entire compliance period. However, the Agency must also consider the capacity of the sponsor/applicant to perform. In particular, the Agency must consider whether the sponsor has the development experience, financial strength, and management experience necessary to operate tax credit housing for a minimum of 15 years. The Agency believes that increasing the number of nonprofit owners by establishing a set-aside or expanding the points to the other cycles could inadvertently override the mechanisms in place that encourage successful development experience and financial capacity.

63. COMMENT: The commenter believed that low-poverty urban centers with access to employment, such as Hackensack, should get some recognition. (10)

RESPONSE: As noted by the commenter, many stakeholders took issue with the points for employment and the Agency received multiple comments regarding the inability of the metric to truly define employment opportunities. Therefore, the Agency proposes to prioritize developments in Opportunity Zones with TUMs such as Hackensack. In fact, Hackensack has three eligible census tracts (231, 232, and 234.02) under the new proposed QAP. The Agency supports this new point criteria for Opportunity Zones because the census tracts were selected based on a variety of criteria, of which employment was one, and it represents a more comprehensive evaluation tool rather than a single metric.

64. COMMENT: The commenter supported the new mixed-income policy as a means to deconcentrate poverty and stretch limited resources. (10)

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

65. COMMENT: The commenter supported innovative partnerships and linkages to services for the elderly poor to "age-in-place," which can help address inequities caused by the social determinants of health and can significantly reduce healthcare costs. (11)

RESPONSE: The Agency agrees with the commenter and has proposed the new age-friendly senior housing point category at N.J.A.C. 5:80-33.16(b)2 in support of comprehensive health-based programs in senior tax credit housing. Due to limited resources, the Agency can only encourage developers to include these services and support them through point incentives. However, the Agency is actively seeking partnerships with other State, local, and private entities to coordinate resources to fund additional services for seniors.

66. COMMENT: The commenter suggested that the points for on-site transportation should be reduced from three to two in the Senior Cycle at N.J.A.C. 5:80-33.16(b)2i. (11)

RESPONSE: Lack of transportation options and feelings of isolation have been identified as the number one concern of seniors living in LIHTC properties. Reliable and accessible transportation is an integral part of healthy aging; therefore, the Agency supports the point category as proposed, awarding three points for applicants that commit to on-site transportation provided at least weekly.

67. COMMENT: The commenter suggested that the points for participating in the Services for Independent Living (SIL) program at N.J.A.C. 5:80-33.16(b)2ii should be decreased to two points since many projects are constrained by limited staffing and/or resources. (11)

RESPONSE: The Agency strongly supports participation in the SIL program and believes that participation, even if it is limited, is reflective of an owner's desire to improve the quality of life of residents. The SIL program provides social service coordinators the opportunity for training at least four times per year, resource materials, and a network of partnerships with other project staff and State and local organizations that serve the aging adult population. Therefore, the Agency supports the three-point incentive for participation.

68. COMMENT: The commenters disagreed with the change to the point category for historic or adaptive reuse projects as a lower-point alternative to the Opportunity Zone at N.J.A.C. 5:80-33.15(a)14i and request that they continue as separate point categories. (12, 13, 14, and 15)

RESPONSE: As in the current QAP, historic and adaptive reuse projects remain eligible for one point. To clarify, the points for Opportunity Zones are newly proposed in this QAP and did not exist in previous versions. However, the Agency confirms that the point for historic/adaptive reuse is now a one-point alternative to the two points available for being sited within an Opportunity Zone and that a project cannot receive points for both. In previous years, the QAP inadvertently resulted in an influx of historic and adaptive reuse projects, which can be costly to rehabilitate and more difficult to operate and maintain. While the Agency supports the prioritization of historic and adaptive reuse projects and the policy goals they represent for redevelopment and sustainable preservation, it does not believe those projects should be afforded a higher point score than a new construction project.

69. COMMENT: The commenter requested clarification as to whether several preservation projects could be combined into a single application to apply in the Preservation set-asides at N.J.A.C. 5:80-33.4(a)2 and 33.5(a). (16)

RESPONSE: As long as all of the projects meet the definition of a preservation project, there is no prohibition against an application including multiple projects. The Agency notes that N.J.A.C. 5:80-33.14(c) requires that, unless expressly stated otherwise, all units in all projects must qualify for the points in order to receive the points, and there are additional limitations imposed by Section 42 of the IRC and by the Agency to finance scattered-site projects.

70. COMMENT: The commenter suggested that Main Street Designated Districts should receive some consideration as in previous QAPs. (16)

RESPONSE: The Main Street New Jersey program lapsed in 2017. While some funding has been restored for the program, new rules are currently being proposed by New Jersey's Department of Community Affairs but have not yet been adopted. Upon adoption of the new rules, the Agency will reevaluate whether the priority for Main Street Designated Districts should be reinstated.

71. COMMENT: The commenter requested clarification as to whether the maximum points at N.J.A.C. 5:80-33.15(a)14iv and v regarding Municipal Revitalization Index (MRI) ranking and a Court-Approved Municipal Fair Share Development Plan can be achieved in all cycles. (16)

RESPONSE: The point categories outlined at N.J.A.C. 5:80-33.15(a)14iv and v apply specifically to Family and Supportive Housing projects located outside of TUMs. Three points are available for projects located within municipalities with an MRI ranking of 283 and above or alternatively, two points are available for projects located within municipalities with an MRI ranking of 282 and below. If a project is not eligible for the full three points, one point will be awarded if the project is located in a municipality with a Court-Approved Municipal Fair Share Development Plan. The Agency amended the maximum points available for Family Cycle applications outside of TUMs under the broader category at N.J.A.C. 5:80-33.15(a)14 to eight points (two for public transportation, three for a proficient school district, and three for MRI). The one point for a Court-Approved Municipal Fair Share Development Plan was not designed to be in addition to the other points, as that would increase the maximum available points to nine. The Agency also confirms that this one-point option is not available in the Senior Cycle.

72. COMMENT: The commenter suggested that the number of low-income seniors within a municipality should get some point consideration in the Senior Cycle. (16)

RESPONSE: The Agency concurs with the commenter that this would be a valuable metric for evaluation in the Senior Cycle and had previously researched whether data for all New Jersey municipalities (such as American Community Survey census data) was available to measure this statistic. Unfortunately, the Agency was unable to locate easily verifiable and standardized data that could be used for this purpose.

Summary of Agency Initiated Changes:

1. At N.J.A.C. 5:80-33.2, in the definition of "social services plan," the Agency is changing the phrase "once a week" to "once per week."

2. At N.J.A.C. 5:80-33.2, in the definition of "supportive housing project," the Agency is changing the phrase "hours a week" to "hours per week."

3. At N.J.A.C. 5:80-33.15(a)9vii, the Agency is changing the phrase "twice a month" to "twice per month."

4. At N.J.A.C. 5:80-33.16(b)2i, the Agency is changing the phrase "once a week" to "once per week."

5. At N.J.A.C. 5:80-33.16(b)2iii, the Agency is changing the phrase "health provider" to "healthcare provider."

6. At N.J.A.C. 5:80-33.17(a)1, the Agency is changing the phrase "once a week" to "once per week."

Federal Standards Analysis

The adopted amendments do not contain any standards or requirements that exceed the standards or requirements imposed by 26 U.S.C. § 42, the Federal regulations which govern the Low Income Housing Tax Credit program.

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

SUBCHAPTER 33. LOW INCOME HOUSING TAX CREDIT QUALIFIED ALLOCATION PLAN

5:80-33.2 Definitions

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

"Area median income" or "AMI" means the midpoint of a region's income distribution, that is, one-half of the families in a region earn more than the area median income and one-half of the families earn less than the area median income. The area median income is calculated by the U.S. Department of Housing and Urban Development (HUD) for every metropolitan region in the country.

...

"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 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 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.

...

"Developer fee" or "development fee" means the fee that covers the overhead and profit of the developer. Certain fees are subsumed within the developer fee—such as acquisition fees, compensation to the general partner, financial consultants, employees of the developer, construction managers/monitors, clerk of the works, and syndicator-required consultants. Professional fees not paid out of the developer fee are the fees for the architect, engineer, lawyer, accountant, surveyor, appraiser, soil investigator, professional planner, historical consultant, and environmental consultant. (If there are costs listed under the professional planner, the executed contract shall be submitted. Only those costs determined by NJHMFA to be for planning purposes shall be shown as a separate line item.) All other consultant and professional fees shall be included in the developer fee and are not allowed to be shown as separate line items on the tax credit application; otherwise, those fees shown separately will be added to the developer fee line item.

The developer fee contained in the application shall be the maximum fee (dollar amount) recognized by NJHMFA at the time of cost certification so long as the project scope remains the same.

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

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

i. Scattered site single-family detached or duplex housing;

ii. Projects of 25 units or less; or

iii. Supportive Housing Cycle projects.

The non-deferred portion of the developer fee shall not exceed 8.00 percent (13.00 percent for the three types of housing referenced at i, ii, and iii above) of total development cost excluding acquisition cost, working capital, marketing expenses, escrows, operating deficit reserves, step-in-the-shoes costs, and costs associated with syndication.

A developer fee of up to 4.00 percent shall be permitted for building acquisition costs, 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.

...

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

...

"NJHMFA" means the New Jersey Housing and Mortgage Finance Agency.

...

"Public transportation" means any mode of transit available to the general public with fixed fares and daily scheduled service with no seasonal interruption. At a minimum, public transportation shall operate Monday through Friday and provide regularly scheduled service during commuter hours (defined as ***daily service at least once between*** 6:30 A.M. to 9:30 A.M. and ***at least once between*** 3:00 P.M. to 6:00 P.M. *[daily]*).

...

"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 or contact NJHMFA.

...

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

1. Hiring a social service coordinator. If a social service coordinator is being provided through a third party, then a signed agreement between the two parties is required, and the coordinator must be dedicated to the tax credit project for a reasonable amount of hours based on the number of supportive housing units in the project (generally 20 hours *[a]* ***per*** week). For projects that have set aside five percent of the units for supportive housing units, a minimum of five hours per week is required (at least 10 hours per week is recommended);

2.-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.

...

["Soft costs" means total development costs, excluding acquisition costs, construction costs, rehabilitation costs, contractor overhead and profit, the fee for general conditions, and hard cost contingency (at application stage only).]

...

"Supportive housing project" means a project *[which]* ***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 *[a]* ***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.)

...

"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, population, and employment-to-housing ratio. NJHMFA shall publish annually a list of municipalities that are designated as TUMs.

...

5:80-33.4 Family Cycle

(a) Non-age restricted developments may apply to this cycle. Not less than 50 percent of the total credits awarded in the Family, Senior, and Supportive Housing Cycles will be available in the Family Cycle, and the maximum annual allocation of credits to any one development competing in this cycle is $1,750,000. Total development costs shall not exceed $275,000 per unit for buildings of one to four residential stories, $300,000 per unit for buildings with five or six residential stories, and $325,000 per unit for buildings with over six residential stories, excluding capitalized permanent reserves, non-basis-eligible off-site improvements, up to $10,000 per unit and $400,000 maximum for community center or social service space (subject to third-party cost certification), and required deferred developer fee, if any. *[Soft costs shall not exceed 30 percent of total development costs.]* 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. The limits on total development costs *[and soft 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, *[but must be eligible for]* ***including*** the maximum points stipulated at 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)1ii. 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 reservation of credits from the Family Cycle shall be given to the highest-ranking eligible application from a preservation set-aside project. The maximum annual allocation of credits to developments competing in this set-aside is $1,250,000. 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) (No change.)

(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 Demographic and Housing Estimates), U.S. Department of the Census (however, projects funded through the Supportive Housing Cycle will not be included in this count). To ensure equitable distribution if there are both excess demand and multiple ranking eligible applications from a single developer, NJHMFA shall fund no more than three projects per year from the same developer/general partner/managing member. Funding of projects shall be prioritized in the following manner: the highest ranking eligible project(s) in the Family Cycle, the Senior Cycle, and lastly, the Final Cycle. 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.

5:80-33.5 Senior Cycle

(a) Senior projects may apply to this cycle. Not less than 20 percent of the total credits awarded in the Family, Senior, and Supportive Housing Cycles will be available in the Senior Cycle, and the maximum annual allocation of credits to any one development competing in this cycle is $1,400,000. Total development costs shall not exceed $275,000 per unit for buildings of one to four residential stories, $300,000 per unit for buildings with five or six residential stories, and $325,000 per unit for buildings with over six residential stories, excluding capitalized permanent reserves, non-basis eligible off-site improvements, up to $10,000 per unit and $400,000 maximum for community center or social service space (subject to third-party cost certification), and required deferred developer fee, if any. *[Soft costs shall not exceed 30 percent of total development costs.]* If multiple tranches of this cycle are awarded, all set-asides for this cycle will be applicable to each tranche. Minimum rehab projects are not eligible to apply in this cycle. Unless market area demographics demonstrate otherwise, one-bedroom units should comprise at least 85 percent of the project. There is one set-aside in the Senior Cycle, the preservation set-aside. The first reservation of credits from the Senior Cycle shall be given to the highest-ranking eligible application from a preservation set-aside project. The maximum annual allocation of credits to developments competing in this set-aside is $1,000,000. If, because of lack of demand, the preservation set-aside is not utilized, the credits shall be released into the Senior Cycle.

(b) (No change.)

(c) Reservations shall first be awarded to the highest-ranking eligible project 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 Demographic and Housing Estimates), U.S. Department of the Census (however, projects funded through the Supportive Housing Cycle will not be included in this count). To ensure equitable distribution if there are both excess demand and multiple ranking eligible applications from a single developer, NJHMFA shall fund no more than three projects per year from the same developer/general partner/managing member. Funding of projects shall be prioritized in the following manner: the highest ranking eligible project(s) in the Family Cycle, the Senior Cycle, and lastly, the Final Cycle. NJHMFA will accept only one application per developer/general partner/managing member per municipality in the 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) (No change.)

5:80-33.6 Supportive Housing Cycle

(a) Supportive housing projects in which a minimum of 25.00 percent of the total project units are rented to individuals with special needs may apply to the Supportive Housing Cycle. An executed agreement between the proposed owner entity and a social services plan consistent with 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, 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. Total development costs shall not exceed $275,000 per unit for buildings of one to four residential stories, $300,000 per unit for buildings with five or six residential stories, and $325,000 per unit for buildings with over six residential stories, excluding capitalized permanent reserves, non-basis-eligible off-site improvements, up to $10,000 per unit and $400,000 maximum for community center or social service space (subject to third-party cost certification), and required deferred developer fee, if any. *[Soft costs shall not exceed 30 percent of total development costs.]*

(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.

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

5:80-33.7 Final Cycle

(a) All projects, including minimum rehab projects, may apply to this cycle. All credits not utilized under N.J.A.C. 5:80-33.4 through 33.6 and 33.8 (if any) shall be made available in the Final Cycle and the maximum annual allocation of credits to any one development competing in this cycle is $1,750,000. Total development costs shall not exceed $275,000 per unit for buildings of one to four residential stories, $300,000 per unit for buildings with five or six residential stories, and $325,000 per unit for buildings with over six residential stories, excluding capitalized permanent reserves, non-basis eligible off-site improvements, up to $10,000 per unit and $400,000 maximum for community center or social service space (subject to third-party cost certification), and required deferred developer fee, if any. *[Soft costs shall not exceed 30 percent of total development costs.]* Unless market area demographics and/or financial feasibility demonstrate otherwise, all non-age-restricted projects (except minimum rehabilitation, preservation, and historic rehabilitation projects) must adhere to the following minimum bedroom distributions: the combined number of efficiency and one-bedroom tax credit units shall be no greater than 20.00 percent of the tax credit units; at least 30.00 percent of the tax credit units shall be two-bedroom units; and at least 20.00 percent of the tax credit units shall be three-bedroom units.

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

5:80-33.8 Reserve

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

1. (No change.)

2. Hardship requests for additional credits from the Reserve are limited to $100,000 per project. Total development costs shall not exceed $275,000 per unit for buildings of one to four residential stories, $300,000 per unit for buildings with five or six residential stories, and $325,000 per unit for buildings with over six residential stories, excluding capitalized permanent reserves, non-basis eligible off-site improvements, up to $10,000 per unit and $400,000 maximum for community center or social service space (subject to third-party cost certification), and required deferred developer fee, if any. *[Soft costs shall not exceed 30 percent of total development costs.]* Hardship requests must be documented to the satisfaction of NJHMFA and must demonstrate the existence of an unforeseen emergency situation where the completion of the project is jeopardized without an award of additional low-income housing tax credits. No more than one hardship award shall be approved with respect to a given project. Hardship applications to the Reserve are accepted on an ongoing basis until May 15. To apply to the Reserve for a hardship reservation of additional credit, applicants must follow the procedures at N.J.A.C. 5:80-33.13(a)1.

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

4. (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 shall be paid by applicants for projects applying to the Family, 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 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.)

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

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

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

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

i. (No change.)

ii. A market study, certified to both the applicant and NJHMFA in the analyst's Certification, shall be submitted for all projects. Two copies of the report shall be submitted. The market study shall be no more than six months old. Projects applying for additional credits (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)-(6) (No change.)

(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 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)-(11) (No change.)

iii.-iv. (No change.)

2.-6. (No change.)

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 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.

ii.-v. (No change.)

8. Successful participation in the New Jersey Clean Energy Program's (NJCEP) NJ Energy Star Certified Homes Program Version 3.1, Energy Star Multifamily High Rise Program, or alternative per the Guide to QAP Green Requirements (Guide), incorporated herein by reference as subchapter Appendix A, and in the NJHMFA Energy Benchmarking Initiative shall be required for all applications.

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

ii. In order to satisfy the Energy Benchmarking Initiative requirements in (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 (c)8ii(1) through (3) below, which can be found at: https://www.njhousing.gov/dca/hmfa/developers/credits/green/:

(1) A completed NJHMFA New Jersey Green Homes Office Building Owner Utility Release Form for all common area meters (gas; oil; electric; cogeneration);

(2) A completed NJHMFA New Jersey Green Homes Office Energy Benchmarking Survey Form, which includes building data consisting of the name, age, address, number of floors, inclusion of elevators, square footage, number of buildings, whether the building(s) are master- or individually-metered, a description of any previously completed energy-efficiency work, and utility account information; and

(3) Completed NJHMFA New Jersey Green Homes Office Tenant Utility Release Forms and/or evidence that requests for such forms were made from at least 50 percent of tenants occupying the project at the time of the IRS Form 8609 issuance for new construction or at least 30 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 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 percent of each unit type. Common area and tenant utility data shall be uploaded into the EPA Portfolio Manager at www.energystar.gov/benchmark per the procedures outlined in the NJHMFA Energy Benchmarking Technical Manual, incorporated herein by reference as subchapter Appendix B. Utility data shall be submitted by January 31 for each year.

9.-18. (No change.)

5:80-33.15 Point system for the Family Cycle

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

1.-2. (No change.)

3. Low-density buildings where at least 25 percent of the tax-credit units are large-family units shall be eligible for five points. Points are based on the percentage of large-family units with respect to the total number of tax-credit units, not on square footage.

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 this category, the resolution/ordinance approving the abatement shall be submitted and must cite the proper statutory authority. For projects receiving tax abatement under the New Jersey Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq., the first stage of the exemption period shall be for no less than 15 years. Only projects utilizing financing from NJHMFA may be granted abatement under N.J.S.A. 55:14K-37(b). For information regarding NJHMFA financing, please contact the NJHMFA Division of Multifamily Programs and Credit at (609) 278-7400.

ii. (No change.)

5. Because the availability of social services greatly improves the quality of life for residents, NJHMFA awards up to six points for the provision of up to three social services for the compliance period. Two points will be awarded per service offered. 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.-8. (No change.)

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

i.-iv. (No change.)

v. Average interior unit sizes of 550 square feet for efficiencies, 650 square feet for one bedroom, 875 square feet for two bedrooms, 1,150 square feet for three bedrooms, and 1,250 square feet for four bedrooms;

vi. 1.0 parking spaces per unit (may be off-street: garage, parking lot, pad, or driveway, or on-street: designated/permit);

vii. Healthy food delivery program (at least twice *[a]* ***per*** month); and

viii. Smoke-free community.

10. (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 (a)11i(1) through (19) 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 (a)11i(1) through (8) below shall receive two points. *[Projects located within one mile of the positive land uses at (a)11i(1) through (19) below shall be awarded one point.]* ***Family Cycle projects located within three miles of positive land uses at (a)11i(1) through (19) below shall be awarded one point. Senior Cycle and Supportive Housing Cycle projects located within one mile of positive land uses at (a)11i(1) through (19) 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):

(1) Full-service grocery store or supermarket (minimum 15,000 square feet)—two points;

(2) Hospital/medical clinic—two points;

(3) Public schools (non-senior projects only)—two points;

(4) Senior center (senior projects only)—two points;

(5) Licensed day care services (non-senior projects only)—two points;

(6) Family success center (non-senior projects only) ***, a list of which can be found here: https://www.nj.gov/dcf/families/support/success/*** —two points;

(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***—two points;

(8) Community mental health center/counseling center (Supportive Housing Cycle only)—two points;

(9) Pharmacy—one point;

(10) Department or retail merchandise store—one point;

(11) Bank/credit union—one point;

(12) Restaurant (other than fast food restaurants)—one point;

(13) Indoor public recreation facilities, such as civic centers, community centers, and libraries—one point;

(14) Outdoor public recreation facilities, such as parks and swimming pools—one point;

(15) Medical day care (senior projects only)—one point;

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

(17) Religious institution—one point;

(18) Post office, city hall, county courthouse—one point; and

(19) Fire/police station—one point.

ii. Projects located within one mile of the following negative land uses (1) through (8) below or within the same census tract for (9) below shall have three points deducted from the project score:

(1)-(5) (No change.)

(6) Unremediated Superfund or toxic waste site as identified by the Environmental Protection Agency (EPA) or the New Jersey Department of Environmental Protection (DEP);

(7) Jail/prison;

(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. (No change.)

12. (No change.)

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

Recodify existing ii.-iii. as i.-ii. (No change in text.)

14. Applicants may select any of the following options. A maximum of eight 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 projects, rehabilitation of historic buildings, or projects that involve the adaptive re-use 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;

ii. (No change.)

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

iv. For projects located outside of a Targeted Urban Municipality, a project 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 with a ranking of 282 or below shall be eligible for two points.

v. (No change.)

15.-19. (No change.)

20. Applicants may select one of the following:

i. Projects that rent five units or five percent of the total project units, whichever is greater, to individuals or families who are homeless and meet the criteria of N.J.A.C. 5:80-33.12(c)14 shall receive three points. 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).

ii. (No change.)

21.-23. (No change.)

24. Applicants may select one of the 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 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.

iii. Traditional multifamily pooled permanent bond financing through NJHMFA.

5:80-33.16 Point system for the Senior Cycle

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

(b) The 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 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.

2. Applicants may select any of the following options for a maximum of nine points:

i. Three points shall be awarded to projects that offer on-site transportation at least once *[a]* ***per*** week. Evidence of existing service and/or an executed contract stipulating fees and frequency of service shall be submitted in the application.

ii. Three points shall be awarded to projects that participate in the Services for Independent Living (SIL) program.

iii. Two points shall be awarded to projects that offer a licensed and insured on-site *[health]* ***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, or similar partnership with a hospital or managed care organization.

v. One point shall be awarded to projects that offer accessible outdoor spaces (for example, walkways, benches, gardens).

vi. One point shall be awarded to projects that offer an exercise room.

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

(a) The point system for the Supportive Housing Cycle includes all point categories of the Family Cycle except for the point categories at N.J.A.C. 5:80-33.15(a)3, concerning large family units, N.J.A.C. 5:80-33.15(a)5, concerning social services, and N.J.A.C. 5:80-33.15(a)20, 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 points in this category.***

1. Two points shall be awarded to projects that offer on-site transportation at least once *[a]* ***per*** week. Evidence of existing service and/or an executed contract stipulating fees and frequency of service shall be submitted in the application.

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.

(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, 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. (No change in text.)

ii. A description of the proposed services that will benefit the targeted population, including location of services (that is, on-site or in the community), documentation to support how these services will be funded, and how measures to evaluate service outcomes will be addressed (such as quality of life and consumer satisfaction);

iii. A description of how the service provider will facilitate tenant/landlord relationships, including detailed eligibility and ineligibility criteria for tenant selection and screening (that is, what disqualifies a prospective tenant), as well as a plan for problem resolution to minimize evictions for supportive housing tenants;

iv. Provision of at least one of the following services:

Recodify existing (A) and (B) as (1) and (2) (No change in text.)

(3) Linkage and ongoing follow-up services to health care, including dental care, and physical health care and primary health care prevention services; and

v. Mandatory staff training for all on-site personnel at least annually on matters specific to the special needs population.

2. Up to two points will be awarded as follows: one point will be awarded to applicants that will provide on-site healthy lifestyles education and programming***, consisting of educational workshops and health promotion programs to encourage better physical and emotional health*** for tenants of the supportive housing units; and one point will be awarded to applicants that will provide job training and job search assistance and support to tenants of the supportive housing units. Applicants shall provide evidence of funding commitments and signed agreements with qualified service providers specifically identifying a detailed scope of services to be provided and term for the provision of these services. The identified education and/or employment service provider must have experience providing services to the target population.

3.-7. (No change.)

5:80-33.19 Tiebreaker system

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

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

i. (No change.)

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.

iii. (No change.)

2. (No change.)

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 projects and three percent of the issuance amount over the 10-year credit period for non-NJHMFA financed projects. One-half of the fee shall be paid at the time the credit determination described at N.J.A.C. 5:80-33.9(a)1 is made. For both types of project, the balance (adjusted higher if volume cap tax credit issuance increases) shall be paid prior to issuance of the IRS Form 8609. Allocation/issuance fees are non-refundable.

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

(a) An independent C.P.A. shall audit the development costs of the project in accordance with generally accepted auditing standards. A separate audit of the general contractor's costs, which includes a sampling of subcontractor invoices, shall also be submitted in order to verify consistency with the developer's cost certification. To make sure that the necessary paperwork is submitted to NJHMFA in a timely manner, owners shall ensure that the cost certification process begins immediately upon construction completion. NJHMFA reserves the right to require a compilation of the construction costs of the project as approved by an independent C.P.A.

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

5:80-33.32 Compliance monitoring

(a)-(e) (No change.)

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

1. That the project met the requirements of the 20-50 test under Code Section 42(g)(1)(A), the 40-60 test under Section 42(g)(l)(B), or the Average Income test established under the Consolidated Appropriations Act of 2018, whichever Federal minimum set-aside test was applicable to the project, and, if applicable to the project, the 40-50 HOME test under

Section 42(i)(2)(E)(i) and the 15-40 test under Sections 42(g)(4) and 142(d)(4)(B) for "deep rent skewed" projects;

2.-16. (No change.)

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

APPENDIX A

Guide to QAP Green Requirements

New Jersey Housing and Mortgage Finance Agency

2019 LIHTC Green Requirements and Documentation

These requirements can also be found at http://www.state.nj.us/dca/hmfa/developers/credits/green/

FOR MORE INFORMATION & TO APPLY:

Pam DeLosSantos, AIA, LEED AP

NJ Housing and Mortgage Finance Agency

Technical Services – Assistant Director of Technical Services

delossantos@njhmfa.gov

Phone: 609.278.7627

For U.S. Post Office:	For Fed Ex, UPS, Visitors, etc.:
P.O. Box 18550	637 S. Clinton Ave.
Trenton, NJ 08650-2085	Trenton, NJ 08611

Green Guide

REQUIRED: FOR BOTH 4% & 9% TAX CREDIT PROJECTS – ENERGY STAR CERTIFICATION

How to achieve FOR NEW CONSTRUCTION AND GUT REHAB:

Low Rise Construction:	High Rise Construction:
Energy Star Version 3.1	Energy Star's Multifamily High Rise program (MFHR) *or* P4P New Construction (for buildings 7 stories and higher.

****See Page 3 decision trees to determine whether or not your project is High Rise or Low Rise****

- Required Documents:
  - At Application:
    - Signed Letter of Intent provided by NJHMFA (See Page 6)
    - Signed copy of contract between the applicant and an Energy Consultant (Home Energy Rating System or HERs rater).
    - Signed Energy Star Partnership Agreement
  - Prior to Construction (at Commitment for Agency Construction-financed projects):
    - Signed *Builders Upgrade Package*, also known as, the *Preliminary Energy Analysis*, highlighting the specific energy efficiency criteria, projected HERs rating(s), and stating that the project is on track to meet Energy Star Certification.
  - Post Construction (for 8609 package):
    - Energy Star Homes Certificates, showing HERS rating of each unit, issued by NJ Clean Energy Program (NJ CEP) participating HERS rater or MFHR Certificate(s) issued by the EPA, for each MFHR building.

FOR MODERATE AND SUBSTANTIAL REHAB PROJECTS THAT DO NOT QUALIFY FOR ENERGY STAR OR MFHR:

Low Rise Construction:	**Energy Star Alternative Paths**	High Rise Construction:
Home Performance with Energy Star, if applicable. Please note: HPwES requires attic air sealing and a major insulation upgrade. ***OR*** ASHRAE Level 2 Energy Audit w/targeted 15% Savings	*Follow the decision trees for guidance. Your Energy Consultant will help guide you.*	Pay for Performance (if applicable) ***OR*** ASHRAE Level 2 Energy Audit w/targeted 15% Savings

Required Documents: See individual charts on **Page 4**

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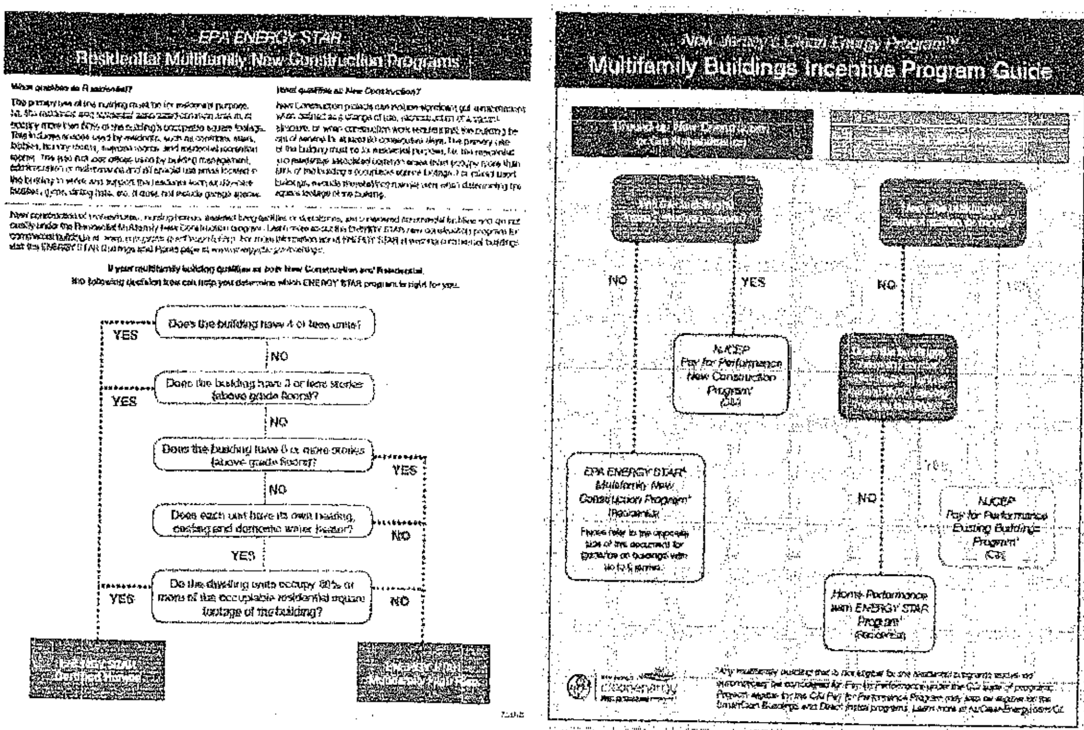

NJ CLEAN ENERGY MULTIFAMILY DECISION TREES (above)

To view the above decision trees in their actual location, please visit the New Jersey Office of Clean Energy website: http://www.njcleanenergy.com/files/file/Residential%20Programs/NJ%20ENERGY%20STAR%20Homes/FY2015/MultifamilyBuildingsDecisionTree040715.pdf

Link to Approved Energy Consultants:
http://www.njcleanenergy.com/residential/programs/nj-energy-star-homes/rating-companies

For more information on Energy Star, MFHR and all other programs, please visit the New Jersey Office of Clean Energy at: http://www.njcleanenergy.com/

P4P Approved Partners:

http://www.njcleanenergy.com/commercial-industrial/programs/pay-performance/existing-buildings/approved-partners

Home Performance with Energy Star (HPwES) eligible measures:
http://www.njcleanenergy.com/files/file/Residential%20Programs/HP/FY2018/2018%20FY%20NJ%20HPwES%20Eligible%20Measures%20and%20Cust%20Eligibility%20final.pdf

HPwES approved contractors:
http://www.njcleanenergy.com/residential/programs/home-performance-energy-star/home-performance-energy-star-r

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Energy Star Alternative Compliance Paths for Rehab Projects

choose the one that fits your project

Path 1: ASHRAE Level 2 Energy Audit w/targeted 15% energy savings *(see page 5 for measures to evaluate)*	
Application	1.)NJHMFA signed Letter of Intent 2.)Signed agreement with Energy Consultant
Prior to Construction	1.)Property Needs Assessment detailing recommended upgrade items, modeled energy savings and cost/payback.
Post Construction	1.)Measurement ,Verification documentation with photographic images
Path 2: Home Performance with Energy Star (NJHPwES) Tier 2	
Application	1.)NJHMFA signed Letter of Intent 2.)Signed agreement/contract with BPI (Building Performance Institute) Goldstar NJ Clean Energy Program participating contractor
Prior to Construction	1.)Copy of email from NJCEP Program Manager approving energy modeling, indicating projected Total Energy Savings (TES) and incentive level. This email is issued by the NJCEP Program Manager after reviewing the proposed measures and sample energy modeling) 2.)NJ HPwES Work Scope Approval Letter (this letter is issued by the NJCEP Program Manager for each building within the project as submitted. This letter commits the incentive funding for the project and expires in 120 days.
Post Construction	1.)Certificate of Completion signed by owner and contractor 2.)NJ HPwES Work Scope Completion Letter issued by NJCEP Program Manager for each building within the project as completed and submitted.
http://www.njcleanenergy.com/residential/programs/home-performance-energy-star/home-performance-energy-star-r	
Path 3: Pay for Performance (P4P) Existing Buildings	
Application	1.)NJHMFA signed Letter of Intent 2.)Signed agreement with P4P Program Partner 3.) Copy of P4P Initial Application Approval Letter (received from NJCEP Program Manager)
Prior to Construction	1.)Copy of Notice to Proceed from P4P Program Manager 2.)Copy of approved Energy Reduction Plan 3.)Copy of approval for First Incentive
Post Construction	1.)Copy of Substantial Completion Report 2.)Copy of approval of Second Incentive 3.)Copy of Benchmarking Report – when available, usually around 15 months from installation approval date. This report is not necessary for the 8609 and is for informational purposes only.
http://www.njcleanenergy.com/commercial-industrial/programs/pay-performance/existing-buildings	

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ASHRAE Level 2: Measures that Must Be Evaluated:

All items relevant to the project must be evaluated and noted. This list will assure a basic level of analysis to every project. All items must be approved by HMFA and the Energy Consultant.

Measures That Must Be Evaluated	
Envelope	Air Sealing (including weather stripping)
	Insulation - Roof Deck or Attic
	Windows - High Efficiency Windows and/or Storm Windows (when single-pane windows are present)
HVAC	Electric to Gas Conversion - Heating System
	Electric to Gas Conversion - DHW System
	Boiler - Replace Steam with Hydronic
	Boiler - Install High Efficiency Boilers (ENERGY STAR where available)
	Boiler - Separate DHW Direct-fired Boiler (condensing if gas)
	Furnace - Install High Efficiency (ENERGY STAR where available)
	Controls - Outdoor Reset Controls for Boilers
	Controls - Roof Fan Timers (new timers only; per code requirements)
	Controls - Thermostatic Radiator Valves
	Distribution - Insulate All Hot Surfaces (condensate tank, steam & HW piping)
Lighting	Common Area - LED Exit Signs
	Common Area - ENERGY STAR CFL Hardwired or Linear Fluorescent Fixtures (including fixtures operating for 24 hours/day)
	Common Area - Bi-level Lighting
	Common Area - Occupancy Sensors for Select Areas (i.e., laundry room)
	Common Area Lighting - Exterior Lighting, incl. controls
Appliances	Electric to Gas Conversion - Dryers
	ENERGY STAR Clothes Washers (commercial)
	ENERGY STAR Refrigerators (common area)
In-Unit	ENERGY STAR Refrigerators
	ENERGY STAR Dishwashers
	ENERGY STAR CFL Hardwired or Linear Fluorescent Fixtures
	ENERGY STAR Room and Thru-the-Wall Air Conditioners
Other	Motors - Install High Efficiency Motors (if over 1 HP and run for more than 4 hours/day)
	Motors - Variable Speed Drives (on variable flow motors over 1 HP and run more than 4 hours/day)
	DHW - Low-flow Showerheads and Sink Aerators

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New Jersey
Housing and Mortgage Finance Agency

2019 NJHMFA Energy Star LETTER OF INTENT

By signing this document, I certify the following ("we" refers to the applicant organization):

1. We understand that ENERGY STAR certification or an NJHMFA approved alternative, is a prerequisite to participation in the Low-Income Housing Tax Credit program. We agree to complete the applicable NJ Clean Energy Program path, and will comply with the submission requirements listed in the NJHMFA QAP Green requirements document.
2. We understand that no projects are exempt from this requirement and have reviewed the alternative programs paths (if needed) for compliance - as indicated in the NJHMFA QAP Green requirements document.
3. If requested we will allow NJHMFA Technical Services staff, or designee, access to the project site pre, during and post construction for the purpose, of but not limited to, confirming Clean Energy Program compliance.
4. WHEN LIHTC IS AWARDED, CONTACT Pam DeLosSantos or John Ternes FOR THE NEXT COMPLIANCE STEPS.
5. I am an authorized representative of the organization.

Signature:______________________________Date: __________

Name of signer: ______________________________

Title:______________________________

Project Name:______________________________

Parent Organization (not LLC): ______________________________

CHECK the intended NJHMFA ENERGY STAR Program or Alternative:

New Construction:

☐ NJ Energy Star Homes V.3.1

☐ Energy Star Multifamily High Rise

☐ PAY FOR PERFORMANCE New Construction

Rehab:

☐ Home Performance with Energy Star

☐ PAY FOR PERFORMANCE Existing Construction

☐ ASHRAE Level 2 Energy Audit

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New Jersey Housing and Mortgage Finance Agency

Energy Benchmarking Initiative

Requirements and Documentation

IMPORTANT NOTES:

- The application shall include a copy of the completed, signed and submitted letter of intent from the developer to NJHMFA.
- Prior to issuance of the 8609, developer/owner will submit a signed energy benchmarking utility release form for all common area meters (gas, oil, and electric, etc.), provision of certain project data (square footage per building, mechanical systems installed, etc.) and signed energy benchmarking utility release forms for a minimum of 50% of tenants rented up at time of 8609 issuance for new construction, and a minimum of 30% of tenants, representing each unit type, for renovation projects.
- Applicant will also be required to include the tenant utility release form as a part of the lease agreement. For the next three years for new construction projects, the applicant will ensure that at least 50% of tenants have viable utility release forms and will collect the utility data from the applicable utility company on a semi-annual basis. For renovation projects, tenant utility data will be collected 1 year prior to commencement of work, and 2 years post-construction for a minimum of 30% of each unit type.
- NJHMFA does not provide additional, set-aside funding for Green Items covered by this program.

SUBMIT ALL REQUIRED DOCUMENTATION AFTER A TAX CREDIT ALLOCATION TO:

Please send all required documents to:

John Ternes, NJ Housing and Mortgage Finance Agency jternes@njhmfa.gov
Phone: 609.278.7696

For U.S. Post Office:	For Fed Ex, UPS, Visitors, etc.:
P.O. Box 18550	637 S. Clinton Ave.
Trenton, NJ 08650-2085	Trenton, NJ 08611

WHAT TO SUBMIT WITH TAX CREDIT APPLICATION

Attach hard copies of the following with application.

- ☐ Letter of Intent
- ☐ Energy Benchmarking building utility release form
- ☐ Energy Benchmarking tenant utility release form

Page **7** of **17**

LETTER OF INTENT – ENERGY BENCHMARKING INITIATIVE

Please email a signed copy of this page to NJHFMA Technical Services, and include in Tax Credit Application.

By signing this document, I certify the following ("we" refers to the applicant organization):

1. We have received and reviewed the Program's materials, consisting of the 'LIHTC Green Point Requirements 2019' and 'Energy Benchmarking Technical Manual', which includes the letter of intent, building utility release form and survey, and tenant utility release form.
2. We understand that a meeting with NJHMFA's Technical Services Division is required within three (3) months of the Tax Credit Award Date.
3. We understand that prior to issuance of the 8609 we will submit a signed energy benchmarking utility release form for all common area meters (gas, oil, and electric, etc.), provision of certain project data (square footage per building, mechanical systems installed, etc.) and signed energy benchmarking utility release forms for a minimum of 50% of tenants rented up for new construction, or a minimum of 30% of each unit type for renovation projects, at time of 8609 issuance.
4. We understand for the next three years after new construction, we will ensure that at least 50% of tenants have viable utility release forms; or for renovation projects, for 1 year prior and 2 years after the work is completed, we will ensure that for at least 30% of each unit type, we will collect the utility data from the applicable utility company on a semi-annual basis.
5. We understand that Clean Energy Program compliance is a prerequisite to participation in the LIHTC Green Point program. I will comply with ENERGY STAR, or other applicable requirements, as indicated in the LIHTC QAP section (c) 8 and 2019 ENERGY STAR letter of intent.
6. If requested we will allow NJHMFA staff access to the project site pre, during and post construction for the purpose of but not limited to: project monitoring, performance testing, interviews, surveys and photographs.
7. I am an authorized representative of the organization.

Signature:______________________________Date: ____________

Name of signer: ______________________________

Title: ______________________________

Project Name: ______________________________

Parent Organization *(not LLC)*: ______________________________

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BUILDING OWNER UTILITY RELEASE FORM

Authorization for NJHMFA to Receive Customer Utility Data

Date: ______________________________

To Whom It May Concern:

By signing this release form, the property owner (Owner) grants the New Jersey Housing and Mortgage Finance Agency (NJHMFA) and its designee, a consultant for this initiative, permission to access utility data information for the past one (1) year of (if applicable) and for the following three (3) years from this date for the development/building referenced below. The utility data includes energy consumption, energy demand, energy cost, as well as associated fees and taxes for each billing period. This information will be used to track energy efficiency and consumption of the building indicated below for the express purpose of measuring the success of past energy upgrades, comparing building performance to similar building types and determining need for future energy efficiency improvements.

I am an authorized representative for the development and building listed below and account(s) listed on the following page(s), totaling pages, and represent and warrant that I have full authority to execute this release form on behalf of the Owner. Owner understands that the information obtained as part of this initiative may be released by the NJHMFA to other participating developments upon request for comparison purposes. Comparison reports compiled by the NJHMFA for this program and provided to other developments will not include this development's name or address. Owner understands and acknowledges that such information may be subject to release under the Open Public Records Act, N.J.S.A. 47:1A-1 et seq., or other applicable law. Owner understands that each applicable utility provider (Utility) reserves the right to verify this authorization request.

Owner authorizes the Utility to release the requested information on Owner's account or facilities to the NJHMFA or its designee. Owner hereby releases, holds harmless, and indemnifies the NJHMFA and the Utility from any liability, claims, demands, causes of action, damages, or expenses as a result of, but not limited to: 1) any release of information to NJHMFA or its designee pursuant to this Utility Release; or 2) the unauthorized use of this information by NJHMFA or its designee.

Sincerely,

Authorized Representative (signature) ______________________________

Please print clearly.

Authorized Representative Name: ______________________________

Development Name: ______________________________

Building Service Address: ______________________________

Development Contact: ______________________________

Mailing Address: ______________________________

____

Phone:______________________ Email: ______________________

Page **9** of **17**

ENERGY BENCHMARKING SURVEY FORM

Please complete one Building Data Form for each building in a development.

BUILDING DATA

Development Name:____**NJHMFA #:** ______

Address:____**Year Built:** ________

Building type (Senior, Family, Mixed): ____________________

Electricity Metering (check one): ☐ Individually-Metered / ☐ Master-Metered Gas

Metering (check one): ☐ Individually-Metered / ☐ Master-Metered

Primary hot water fuel type: ___________________________

Percent of floor area that is cooled in 10% increments (10%, 20%, 30%, etc.): ________________

Percent of floor area that is heated in 10% increments (10%, 20%, 30%, etc.): ________________

Total Sq. Ft.: __________ **Common Area Sq. Ft.:** __________ **# of Buildings:** ________

# of Elevators: __________ **# of Floors in each building:**__________**# of units:** ________

# of Bedrooms: **1:** ______ **2:** ______ **3:** ______ **4:** ______

Past Energy-Efficiency Work Completed (select all that apply and implementation year- write N/A if not applicable):

Energy-Efficiency Improvement	*Year implemented*
☐ ENERGY STAR Homes Certification	
☐ Multifamily High Rise	
☐ Pay for Performance	
☐ Home Performance with Energy Star	
☐ LEED	
☐ Enterprise Green Communities	
☐ Windows	
☐ Lighting	
☐ Other (please describe)	

Please include all types of energy used. Complete additional forms as needed when utility information differs by building.

METER INFORMATION

Electric Utility Name: ____

Account Number(s): ____

Natural Gas Utility Name: ____

Account Number(s): ____

Fuel Oil Utility Name: ____

Account Number(s): ____

Other Meters-not including water or sewer (e.g. Renewable Energy, Propane, and Cogeneration):____________

Utility Name & Account Number(s):____

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BUILDING SYSTEM CHARACTERISTICS:

Please check all that apply:

Heating System Type:

- □ Furnace
- □ High Efficiency Condensing Furnace
- □ High Efficiency Condensing Burner
- □ Hot Water Boiler
- □ Steam Boiler
- □ Heat Pump
- □ High Efficiency Variable Heat Pump
- □ Ground Source Heat Pump
- □ Packaged Terminal Air Conditioner (PTAC) Unit
- □ Cogeneration (CHP)
- □ Special Description:

Cooling System Type:

- □ Chiller
- □ Wall Unit (in each Apt.)
- □ Cooling Tower
- □ Window Unit (in each Apt.)
- □ Compressor (mini-split)
- □ Compressor (ducted)
- □ Ground Source Heat Pump
- □ Packaged Terminal Air Conditioner (PTAC) Unit
- □ Special Description:

Building type:

- □ Wood or steel frame
- □ Solid Concrete
- □ Masonry
- □ Modular
- □ Structurally insulated panels (SIPS)
- □ Other type:

Optional:

- □ Wood or steel frame
- □ Solid Concrete
- □ Masonry
- □ Modular
- □ Structurally insulated panels (SIPS)
- □ Other type:

TENANT UTILITY RELEASE FORM

Authorization for NJHMFA to Receive Customer Utility Data

Date: ____________________________

To Whom It May Concern:

By signing this release form, the tenant (Tenant) grants the New Jersey Housing and Mortgage Finance Agency (NJHMFA) and its designee (a consultant for this initiative) permission to access utility data information for the past two (2) years of (if applicable) and for the following three (3) years from this date for the unit referenced below. Utility data includes energy consumption, energy demand, energy cost as well as associated fees and taxes for each billing period. This information will be used to track energy efficiency and consumption of the building indicated below for the express purpose of measuring the success of past energy upgrades, comparing building performance to similar building types and determining need for future energy efficiency improvements.

I am an authorized representative for the unit and account(s) listed below and represent and warrant that I have authority to execute this release. Tenant understands that the information obtained as part of this initiative may be released by the NJHMFA to other participating developments upon request for comparison purposes. Comparison reports compiled by the NJHMFA for this program and provided to other developments will not include tenant's information or this development's name or address. Tenant understands and acknowledges that such information may be subject to release under the Open Public Records Act, N.J.S.A. 47:1A-1 et seq., or other applicable law. Tenant understands that each applicable utility provider reserves the right to verify this authorization request.

Tenant authorizes the Utility to release the requested information on Tenant's account to the NJHMFA or its designee. Tenant hereby releases, holds harmless, and indemnifies the NJHMFA and Utility from any liability, claims, demands, causes of action, damages, or expenses as a result of, but not limited to: 1) any release of information to NJHMFA or its designee pursuant to this Utility Release; or 2) the unauthorized use of this information by NJHMFA or its designee. Tenant understands that he/she may cancel this authorization at any time by submitting a written request to both the Utility and NJHMFA.

Sincerely,

Authorized Representative (Tenant signature) ________________________________

Please print clearly.

Representative name: ____

Development Name: ____

Building Address: ____

Unit Number: __________ Number of Bedrooms in Unit: ________

Please list utility provider(s) and account number(s):

ELECTRIC UTILITY:______________ ACCOUNT #:____________________________

GAS UTILITY:____________________ ACCOUNT #:____________________________

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9% Tax Credit Point Options

4 Point options

Participation in one of the following programs*:

1.) Enterprise Green Communities Mandatory plus 35 points
   a. 2015 EGC Criteria
   b. 35 optional points for New Construction, 30 optional points for Substantial Rehab.
   c. If pursuing actual certification, see EGC's definition of affordable housing projects. Projects must serve residents at or below 60% AMI.

2.) LEED Version 4.0 Silver or higher (Homes, Multifamily Midrise or New Construction)

3.) ICC/ASHRAE 700 - NGBS 2015 (National Green Building Standard) 2015 Version Silver or higher
   a. Silver = 334 points minimum

4.) New Jersey Zero Energy Ready Home (Tier 3)
   a. Aligns with DOE Zero Energy Ready Home specs
   b. HERS Score 50 and below.
   c. Tier 3 Plus includes Solar Electric or Thermal

5.) Living Building Challenge
   a. At least 3 of the 7 petals

6.) Passive House
   a. PHIUS or PHI. If doing PHI, consult with the Technical Services Green Technical Advisor.

**Certification is not required but all mandatory requirements of each program must be followed and documented to NJHMFA.*

3 Point options

Participation in one of the following programs*:

1.) Enterprise Green Communities Mandatory criteria

2.) LEED v4 Certified

3.) ICC/ASHRAE 700 - NGBS 2015 (National Green Building Standard) Bronze or higher
   a. Bronze = 231 points minimum

**Certification is not required but all mandatory requirements of each program must be followed and documented to NJHMFA.*

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Required Documents for Each Program

Enterprise Green Communities (EGC)

At Application

- NJHMFA Letter of Intent
- Signed contract with an EGC-approved consultant/HERs Rater.

Prior to Construction (or at Commitment for Agency Construction-financed projects)

- Completed EGC pre-build checklist along with all Supplemental Documents.
- Evidence in drawings and specifications that all mandatory and optional criteria have been incorporated.

Post Construction, 8609 package

- Post-build checklist and binder documenting each completed criteria, verified by EGC consultant.

For more information, visit http://www.enterprisecommunity.org/solutions-and-innovation/green-communities/criteria

LEED Rating System

At Application

- NJHMFA Letter of Intent
- Signed contract with a credentialed LEED consultant/HERS rater.

Prior to Construction (or at Commitment for Agency Construction-financed projects)

- Finalized LEED checklist showing projects' rating level.
- Verification by LEED Consultant and developer that all LEED checklist items have been incorporated into the plans and specifications.

Post Construction, 8609 package

- Completed LEED checklist with final rating level
- LEED Workbook documenting the fulfillment of all LEED credits and prerequisites.
- Letter and documentation from LEED consultant (New Construction) or Green Rater (Homes or Midrise) stating project met all the parameters of the program.

For more information, visit http://www.usgbc.org/LEED/

NGBS Rating System

At Application

- NJHMFA Letter of Intent
- Signed contract with an accredited NGBS Green verifier/HERS rater.

Prior to Construction (or at Commitment for Agency Construction-financed projects)

- Finalized NGBS scoring spreadsheet showing projects' rating level and all claimed points.
- Verification by NGBS Green verifier and developer that all NGBS criteria have been incorporated into the plans and specifications.

Post Construction, 8609 package

- Final Verification Report/Construction Scoring Spreadsheet, with no red/warning cells.

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- Verification Workbook documenting the fulfillment of all NGBS points and mandatory items, signed by NGBS Green Verifier and Builder.

For more info, visit
http://www.homeinnovation.com/services/certification/green_homes/multifamily_certification

Zero Energy Ready Homes

At Application

- NJHMFA Letter of Intent
- Signed contract with a ZERH-approved consultant/HERs Rater.

Prior to Construction (or at Commitment for Agency Construction-financed projects)

- Completed copy of RNC Site Registration form and email confirmation.
- Energy Star Summary Report
- Evidence in drawings and specifications that all NJCEP-ZERH, EPA, and RESNET requirements have been incorporated.

Post Construction, 8609 package

- All applicable Energy Star or NJCEP completed checklists.
- Energy Star Summary Report

For more information, visit https://energy.gov/eere/buildings/zero-energy-ready-home

And http://njcleanenergy.com/residential/programs/nj-energy-star-homes/builder-information/participation-documents/participation-

Living Building Challenge 3.1

At Application

- NJHMFA Letter of Intent
- Signed contract with a LBC-approved consultant/HERs Rater.

Prior to Construction (or at Commitment for Agency Construction-financed projects)

- Copy of Preliminary Audit showing all selected Petals and imperatives.
- Evidence in drawings and specifications that all selected Petals/imperatives have been incorporated.

Post Construction, 8609 package

- Copy of Post-Construction Preliminary Audit with all documentation for Mandatory Petals and project Typology Imperatives.

For more information, visit https://living-future.org/lbc/

Passive House (PHIUS+ 2015 Passive Building Standard) Version 2.0

At Application

- NJHMFA Letter of Intent
- Signed contract with a PHIUS or PHI-certified Rater/Verifier.

Prior to Construction (or at Commitment for Agency Construction-financed projects)

- Copy of design and primary project energy modeling by the PHIUS Certified Passive House Consultant (CPHC).

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- Evidence in drawings and specifications that all design and equipment will meet PHIUS standards, as approved by the CPHC.

Post Construction, 8609 package

- Copy of Post-Construction final testing, verification and energy performance metrics from the PHIUS+ Certified Rater/Multifamily Verifier.
- PHIUS+ Onsite Quality Control Workbook for Multifamily Projects and supporting documentation/checklists.

For more information, visit http://www.phius.org/home-page

New Jersey
Housing and Mortgage Finance Agency

2019 NJHMFA 9% Green Point Options LETTER OF INTENT

By signing this document, I certify the following ("we" refers to the applicant organization):

1.) We understand that ENERGY STAR certification or NJHMFA approved alternative, is a prerequisite to participation in the Low-Income Housing Tax Credit program. We agree to complete the applicable NJ Clean Energy Program path, and will comply with the submission requirements listed in the NJHMFA QAP Green requirements document.
2.) We have received and reviewed the 2019 LIHTC Green Requirements and Documentation, which includes a list of requirements for each 9% option, forms and related informational material.
3.) We will submit the requested documentation for our selected option, as outlined in the 2019 LIHTC Green Requirements document.

WHEN LIHTC IS AWARDED, CONTACT Pam DeLosSantos or John Ternes at NJHMFA, FOR THE NEXT COMPLIANCE STEPS.

I am an authorized representative of the organization.

Signature:_______________________________________Date: ____________

Name of signer: ____

Title:____

Project Name:____

Parent Organization (not LLC): _______________________________________

CHECK intended NJHMFA 9% Green Point Option (check only one):

4 Point Options:

______EGC + 35 pts

______LEED v4 Silver or Higher

______ICC/ASHRAE 700 - NGBS 2015 (Silver or higher)

______NJ ZERH Tier 3

______Passive House V2.0

______LBC 3.1

3 Point Options:

______EGC Mandatory Criteria

______LEED v4 Certified

______ICC/ASHRAE 700 - NGBS 2015

Minimum Bronze or Higher

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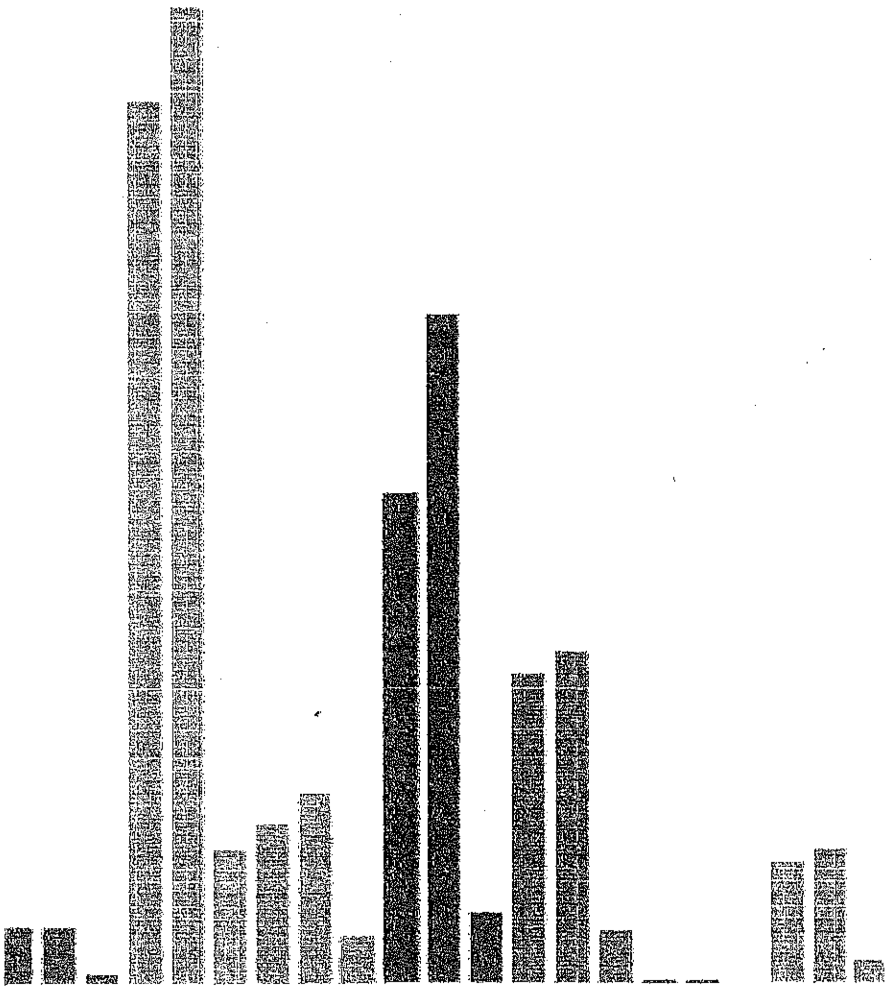
APPENDIX B



NJHMFA ENERGY BENCHMARKING TECHNICAL MANUAL

EXECUTIVE SUMMARY

This technical manual provides guidelines for building managers to successfully benchmark and report their energy usage to the New Jersey Housing and Mortgage Finance Agency (HMFA). Benchmarking is necessary for HMFA to assess sustained performance and compare each building to similar building types on their sustained performance, track the overall progress of efficiency upgrades, and effectively allocate our resources to proven models. Collected benchmarking data will be used to facilitate efficient analysis of energy performance for better management of energy usage, decreased energy expenditures, identify interesting energy use trends over time, decreased carbon emissions, and comparison of energy usage among similar locations and building types. It will allow HMFA to quantitatively compare energy usage in the newer buildings vs. the older buildings and the energy usage in the HMFA buildings that have incorporated energy efficiency measures vs. the buildings that have not received energy efficiency improvements.

DEFINITION OF ENERGY BENCHMARKING

Energy benchmarking is the process of analyzing energy usage over time and comparing the total use to the total cost. Because energy usage is affected by changes in temperature, benchmarking incorporates hot and cold weather data in order to determine the peak usage periods over time. The final results are generally expressed based upon square foot use. This allows for multiple buildings to be aggregated and compared. It is a good measurement for evaluating building energy performance based on the type of building, occupancy, fuel source(s), location, weather, etc.

PURPOSE OF ENERGY BENCHMARKING

The purpose for benchmarking the energy performance of the buildings within the HMFA portfolio is to gain a better understanding of how the buildings use their energy and whether the energy efficiency measures that have been implemented within our buildings have realized their expected energy savings. It will also help us understand how our buildings are performing compared to similar buildings in other states. This analysis also has implications that can guide how HMFA provides financing in the future by:

1. Identifying properties that could benefit from energy efficiency upgrades;
2. Providing guidance for future energy efficiency program development;
3. Providing an underwriting basis for expected utility cost reduction achieved through energy efficiency and renewable energy programs

GETTING STARTED

The following instructions will guide you through the process of collecting the utility data, granting HMFA access to the information, and uploading the information online through the EPA Portfolio Manager system.

IMPORTANT NOTES:

- In order to qualify for this point, the application shall include a copy of the completed, signed and submitted letter of intent from the developer to NJHMFA.
- Prior to issuance of the 8609, developer/owner will submit a signed energy benchmarking utility release form for all common area meters (gas, oil, and electric, etc.), provision of certain project data (square footage per building, mechanical systems installed, etc.) and signed energy benchmarking utility release forms for a minimum of 50% of tenants rented up at time of 8609 issuance for new construction, or a minimum of 30% of each unit type for renovation projects, at time of 8609 issuance. Applicant is required to include the tenant utility release form as a part of the lease agreement.
- For the next three years following issuance of the 8609 for new construction, the applicant will ensure that the required percentage of tenants have viable utility release forms (or provide documentation of the efforts to obtain such forms); or for renovation projects, for 1 year prior and 2 years after the work is completed. For both new construction and renovation projects, common area utility data shall also be uploaded into the EPA Portfolio Manager (www.energystar.gov/benchmark).
- NJHMFA does not provide additional, set-aside funding for Green Items covered by this program.

SUBMIT ALL REQUIRED DOCUMENTATION AFTER A TAX CREDIT ALLOCATION TO:

Please send all required documents to:

John Ternes,
NJ Housing and Mortgage Finance Agency
jternes@njhmfa.gov
Phone: 609.278.7696

For U.S. Post Office:
P.O. Box 18550
Trenton, NJ 08611

For Fed Ex, UPS, Visitors, etc:
637 S. Clinton Ave.
Trenton, NJ 08650-2085

RESOURCES:

EnergyStar Portfolio Manager:
https://www.energystar.gov/istar/pmpam/

Service providers that offer automated benchmarking through EnergyStar-
http://www.energystar.gov/index.cfm?c=spp_res.pt_spps_automated_benchmarking

Energy Auditors that offer benchmarking services through NJ Clean Energy:
http://www.njcleanenergy.com/commercial-industrial/programs/nj-smartstart-buildings/tools-and-resources/tradeally/approved_vendorsearch/&start=

Online Portfolio Manager and Energy Benchmarking Training-
http://www.energystar.gov/ia/business/benchmarking_training/benchmarking.html
http://www.energystar.gov/index.cfm?c=business.bus_internet_presentations

Pre-Recorded Energy Benchmarking Training-
https://esbuildings.webex.com/mw3300/mywebex/default.do?siteurl=esbuildings

PROCEDURES

Use the following checklist as a guide as you benchmark the building and tenant utility usage.

- ☐ **STEP 1:** Sign and submit Letter of Intent to HMFA
- ☐ **STEP 2:** Set-up meeting and/or conference call with HMFA's Technical Services Division.
- ☐ **STEP 3:** Gather building and space attribute information using the **HMFA ENERGY BENCHMARKING SURVEY FORM**.
- ☐ **STEP 4:** **COMPLETE AND SIGN the BUILDING OWNER UTILITY RELEASE FORM**
- ☐ **STEP 5:** Have the tenants **COMPLETE AND SIGN** the **TENANT UTILITY RELEASE Form**
- ☐ **STEP 6:** Collect **12 CONSECUTIVE MONTHS** of **BUILDING UTILITY BILLS**
- ☐ **STEP 7:** Create a building profile in **PORTFOLIO MANAGER (SEE APPENDIX B)**
  - o Portfolio Manager Username (do not submit to HMFA):______________________________
  - o Portfolio Manager password (do not submit to HMFA):______________________________
- ☐ **STEP 8:** Upload **BUILDING** utility data into **PORTFOLIO Manager (www.energystar.gov/benchmark)**
- ☐ **STEP 9**: Input Property Information & Send Invite to Share Property with NJHMFA
- ☐ **STEP 10:** Submit the following items to HMFA
  - o HMFA Benchmarking survey form
  - o Tenant and Building utility release forms (50% of Total # of Tenants for new construction and at least 30% of each unit type for renovation projects)

LETTER OF INTENT – ENERGY BENCHMARKING INITIATIVE

*Please **e-mail** a signed copy of this page to NJHFMA Technical Services and include in Tax Credit Application.*

By signing this document, I certify the following ("we" refers to the applicant organization):

1. **We have received and reviewed the Program's materials, consisting of the 'LIHTC Green Point Requirements 2019' and 'Energy Benchmarking' documents, which includes the Letter of Intent, Building Utility Release Form and Survey, and Tenant Utility Release Form.**

2. **We understand that a meeting with Technical Services is required within three (3) months of the Tax Credit Award Date.**

3. **We understand that prior to issuance of the 8609 we will submit a signed energy benchmarking utility release form for all common area meters (gas, oil, and electric, etc.), provision of certain project data (square footage per building, mechanical systems installed, etc.) and signed energy benchmarking utility release forms for a minimum of 50% of tenants rented up for new construction, or a minimum of 30% of each unit type for renovation projects, at time of 8609 issuance.**

4. **We understand for the next three years after new construction, we will ensure that at least 50% of all tenants have viable utility release forms; or for renovation projects, for 1 year prior and 2 years after the work is completed, we will ensure that for at least 30% of each unit type, we will collect the utility data from the applicable utility company on a semi-annual basis.**

5. **We understand that Clean Energy Program compliance is a prerequisite to participation in the LIHTC Green Point program. I will comply with ENERGY STAR, or other applicable requirements, as indicated in the LIHTC QAP section (c)8 and 2019 ENERGY STAR letter of intent.**

6. **If requested we will allow NJHMFA staff access to the project site pre, during and post construction for the purpose of but not limited to: project monitoring, performance testing, interviews, surveys and photographs.**

7. **I am an authorized representative of the organization.**

Signature:______________________________ **Date:** ____________

Name of signer: ____

Title: ____

Project Name: ____

Organization: ____

ENERGY BENCHMARKING SURVEY FORM

Please complete one Building Data Form for each building in a development.

BUILDING DATA

Development Name: ______________________________ **NJHMFA #:** ________

Address: ______________________________ **Year Built:** ________

Building type (Senior, Family, Mixed): ____________________

Electricity Metering (check one): ☐ Individually-Metered / ☐ Master-Metered

Gas Metering (check one): ☐ Individually-Metered / ☐ Master-Metered

Primary hot water fuel type: ____________________

Percent of floor area that is cooled in 10% increments (10%, 20%, 30%, etc.): ______________

Percent of floor area that is heated in 10% increments (10%, 20%, 30%, etc.): ______________

Total Sq. Ft.: ________ **Common Area Sq. Ft.:** ________ **# of Buildings:** ________

# of Elevators: ________ **# of Floors in each building:** ________ **# of units:** ________

# of Bedrooms: **1:** ______ **2:** ______ **3:** ______ **4:** ______

Past Energy-Efficiency Work Completed (select all that apply and implementation year- write N/A if not applicable):

Energy-Efficiency Improvement	*Year implemented*
☐ ENERGY STAR Homes Certification	
☐ Multifamily High Rise	
☐ Pay for Performance	
☐ Home Performance with Energy Star	
☐ LEED	
☐ Enterprise Green Communities	
☐ Windows	
☐ Lighting	
☐ Other (please describe)	

Please include all types of energy used. Complete additional forms as needed when utility information differs by building.

METER INFORMATION

Electric Utility Name: ______________________________

Account Number(s): ______________________________

____

Natural Gas Utility Name: ______________________________

Account Number(s): ______________________________

____

Fuel Oil Utility Name: ______________________________

Account Number(s): ______________________________

____

Other Meters-not including water or sewer (e.g. Renewable Energy, Propane, Cogeneration):

Utility Name & Account Number(s):

____

Utility Name & Account Number(s):

____

Utility Name & Account Number(s):

____

BUILDING SYSTEM CHARACTERISTICS:

Please check all that apply:

Heating System Type:

- ☐ Furnace
- ☐ High Efficiency Condensing Furnace
- ☐ High Efficiency Condensing Burner
- ☐ Hot Water Boiler
- ☐ Steam Boiler
- ☐ Heat Pump
- ☐ High Efficiency Variable Heat Pump
- ☐ Ground Source Heat Pump
- ☐ Packaged Terminal Air Conditioner (PTAC) Unit
- ☐ Cogeneration (CHP)
- ☐ Special Description:

Cooling System Type:

- ☐ Chiller
- ☐ Wall Unit (in each Apt.)
- ☐ Cooling Tower
- ☐ Window Unit (in each Apt.)
- ☐ Compressor (mini-split)
- ☐ Compressor (ducted)
- ☐ Ground Source Heat Pump
- ☐ Packaged Terminal Air Conditioner (PTAC) Unit
- ☐ Special Description:

Building type:

- ☐ Wood or steel frame
- ☐ Solid Concrete
- ☐ Masonry
- ☐ Modular
- ☐ Structurally insulated panels (SIPS)
- ☐ Other type:

Optional:

- ☐ Wood or steel frame
- ☐ Solid Concrete
- ☐ Masonry
- ☐ Modular
- ☐ Structurally insulated panels (SIPS)
- ☐ Other type:

Building Owner Utility Release Form

Authorization for NJHMFA to Receive Customer Utility Data

Date: ______________________

To Whom It May Concern:

By signing this release form, the property owner (Owner) grants the New Jersey Housing and Mortgage Finance Agency (NJHMFA) and its designee, a consultant for this initiative, permission to access utility data information for the past one (1) year of (if applicable) and for the following three (3) years from this date for the development/building referenced below. The utility data includes energy consumption, energy demand, energy cost, as well as associated fees and taxes for each billing period. This information will be used to track energy efficiency and consumption of the building indicated below for the express purpose of measuring the success of past energy upgrades, comparing building performance to similar building types and determining need for future energy efficiency improvements.

I am an authorized representative for the development and building listed below and account(s) listed on the following page(s), totaling ____ pages, and represent and warrant that I have full authority to execute this release form on behalf of the Owner. Owner understands that the information obtained as part of this initiative may be released by the NJHMFA to other participating developments upon request for comparison purposes. Comparison reports compiled by the NJHMFA for this program and provided to other developments will not include this development's name or address. Owner understands and acknowledges that such information may be subject to release under the Open Public Records Act, N.J.S.A. 47:1A-1 et seq., or other applicable law. Owner understands that each applicable utility provider (Utility) reserves the right to verify this authorization request.

Owner authorizes the Utility to release the requested information on Owner's account or facilities to the NJHMFA or its designee. Owner hereby releases, holds harmless, and indemnifies the NJHMFA and the Utility from any liability, claims, demands, causes of action, damages, or expenses as a result of, but not limited to: 1) any release of information to NJHMFA or its designee pursuant to this Utility Release; or 2) the unauthorized use of this information by NJHMFA or its designee.

Sincerely,

Authorized Representative (signature):____

Please print clearly.

Authorized Representative Name:____

Development Name: ____

Building Service Address: ____

Development Contact: ____

Mailing Address: ____

____

Phone: ______________________ Email: ____

Tenant Utility Release Form

Authorization for NJHMFA to Receive Customer Utility Data

Date: ______________________

To Whom It May Concern:

By signing this release form, the tenant (Tenant) grants the New Jersey Housing and Mortgage Finance Agency (NJHMFA) and its designee (a consultant for this initiative) permission to access utility data information for the past one (1) year of (if applicable) and for the following three (3) years from this date for the unit referenced below. Utility data includes energy consumption, energy demand, energy cost as well as associated fees and taxes for each billing period. This information will be used to track energy efficiency and consumption of the building indicated below for the express purpose of measuring the success of past energy upgrades, comparing building performance to similar building types and determining need for future energy efficiency improvements.

I am an authorized representative for the unit and account(s) listed below and represent and warrant that I have authority to execute this release. Tenant understands that the information obtained as part of this initiative may be released by the NJHMFA to other participating developments upon request for comparison purposes. Comparison reports compiled by the NJHMFA for this program and provided to other developments will not include tenant's information or this development's name or address. Tenant understands and acknowledges that such information may be subject to release under the Open Public Records Act, N.J.S.A. 47:1A-1 et seq., or other applicable law. Tenant understands that each applicable utility provider reserves the right to verify this authorization request.

Tenant authorizes the Utility to release the requested information on Tenant's account to the NJHMFA or its designee. Tenant hereby releases, holds harmless, and indemnifies the NJHMFA and Utility from any liability, claims, demands, causes of action, damages, or expenses as a result of, but not limited to: 1) any release of information to NJHMFA or its designee pursuant to this Utility Release; or 2) the unauthorized use of this information by NJHMFA or its designee. Tenant understands that he/she may cancel this authorization at any time by submitting a written request to both the Utility and NJHMFA.

Sincerely,

Authorized Representative (Tenant signature) ______________________________

Please print clearly.

Representative name: ______________________________

Development Name: ______________________________

Building Address: ______________________________

Unit Number: __________ Number of Bedrooms in Unit: ________

Please list utility provider(s) and account number(s):

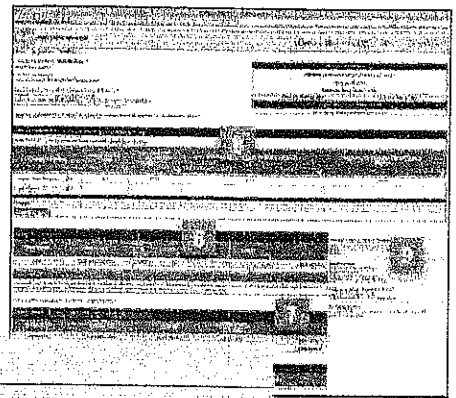
ELECTRIC UTILITY: ______________ ACCOUNT #: ______________________

GAS UTILITY: __________________ ACCOUNT #: ______________________

ENERGY STAR

PORTFOLIO MANAGER - QUICK REFERENCE GUIDE

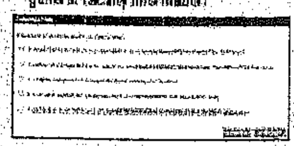
MULTIFAMILY HOUSING



Tracking Your Energy Performance

Portfolio Manager is an online, interactive energy management tool that allows you to measure and track your building's energy and water consumption, identify investment priorities, and verify improvements over time. Multifamily housing communities can use Portfolio Manager to track weather-normalized energy use intensity (EUI), energy costs, greenhouse gas emissions, and water consumption.

USE PORTFOLIO MANAGER STEP-BY-STEP

STEP	ACTIVITY	ACTION
1	Access Portfolio Manager	www.energystar.gov/benchmark.
2	Access your account ■ Create a new account ■ Login to an existing account	■ Click REGISTER. ■ Enter user name and password and click LOGIN.
3	Review system updates and enter your account	Click ACCESS MY PORTFOLIO.
4	Add a new facility	Click ADD a Property.
5	Select property type and enter general facility information 	From the "Add a Property" screen, most users will select "A single facility for which my organization owns or manages 90% or more of the floor area." This is the case even for garden or townhouse properties with multiple buildings. Only select the last option ("A campus or other collection of multiple facilities at the same geographic location") if you have multiple multifamily buildings, all on the same master meter. Click CONTINUE, enter General Facility Information, and then click SAVE.
6	Enter space use data 	Go to "Space Use" section and click ADD SPACE. ■ Enter a facility name. In the "Select a Space Type" menu, select "Multifamily Housing." Enter an effective date. Click CONTINUE. ■ Enter space data. Enter total gross square footage (including both common area and apartment space) even if you are only entering common area energy data. The other space use questions are voluntary, but it is highly encouraged to enter optional space use information. Click SAVE.
7	Enter energy use data 	Go to "Energy Meters" section and click ADD METER. ■ Enter meter name, type, and units. Click SAVE. ■ Enter number of months and start date. Click CONTINUE. ■ Enter energy use and cost. Click SAVE. Repeat for all energy meters and fuel types.
8	Set metering configuration	Underneath the "Energy Meters" section, click SET METERING CONFIGURATION. ■ Select appropriate option from radio button list. Click SAVE. ■ See Features section for additional guidance.
9	Review and interpret results	Go to "Facility Performance" section and review your results. More information is provided on pages two and three of this guide.
10	Manage account	Share data and perform other administrative tasks.

www.energystar.gov/benchmark