



NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

Competitive 9% Low Income Housing Tax Credits (LIHTC)

Frequently Asked Questions (FAQs)

The FAQs are an opportunity to provide all applicants and the public with the same information to preserve the competitive integrity of the 9% LIHTC program. Following is a list of questions that have been sent to the LIHTC mailbox with regard to the 2021 competitive 9% application round.

Applicants are encouraged to check the website prior to submitting a question to the LIHTC mailbox. As questions and responses are added, the revision dates will appear at the top of this page and will be included in a different color font. Applicants are encouraged to check back periodically.

Please be advised that it remains the sole responsibility of the Applicant to review carefully, and comply with, the requirements of QAP regulations and to ensure that any application presented to the NJHMFA Tax Credit division is clear, unambiguous, and complete in all respects at the time of submission. Responses to FAQs are only examples of a theoretical application of a limited set of facts to a rule or rules. They are for guidance purposes only and are not agency regulations. If there is an inconsistency between the adopted Qualified Allocation Plan (QAP) and the responses to FAQs, then the QAP prevails. Until confirmed through final action of the Tax Credit Committee, responses presented in the FAQs are merely an aid and may not be relied upon as a recommendation, counsel, or expectation of an approval.

As a reminder, project-specific questions, including document review and/or confirmation of eligibility for threshold requirements or points, are not permitted.

Pre-Application Meetings

Q: Will the Tax Credit division be scheduling 1 hour pre-application meetings prior to the 9% tax credit deadline, as has been previous practice?

A: The Agency will not be scheduling pre-application meetings but will be responding to written questions sent to the LIHTC mailbox at: NJHMFAtaxcredits@njhmfa.gov. All questions and responses will be posted in the FAQs on the HMFA website so all applicants have the benefit of the same information.

Tax Abatement

Q: If we have a property that is currently owned by a non-profit, which is not paying real estate taxes, will we still be able to qualify for 5 points for the 15-year tax abatement for a PILOT of 6.28%?

A: Pursuant to N.J.A.C. 5:80-33.15(a)4, proof of an applicant's tax-exempt nonprofit status is not sufficient to qualify for points for tax abatement.

Q: Am I correct in reading the tax abatement required by the application need not be one granted pursuant to the Long Term Tax Exemption Law (N.J.S.A. 40A:20-1 et seq.) or N.J.S.A. 55:14K-37(b)? Would a tax abatement/exemption issued pursuant to N.J.S.A. 54:4-3.6 be acceptable for the purposes of the tax credits application?

A: An exemption under N.J.S.A. 54:4-3.6 would not qualify a project for the points in the municipal support point category. N.J.S.A. 54:4-3.6 provides a tax exemption, not abatement, **but** the exemption must be based upon the **use of the property**, not the status of the property owner. While in one sense, an exemption under 54:4-3.6 does deprive the municipality of tax revenue (i.e., if the property were devoted to another use), the exemption is mandated by State law and is thus not really "municipal support" – the municipality has no say in the exemption. If the use being made of the property satisfies any provision of the statute, the exemption must be granted. Also, the QAP does not recognize an entity's non-profit status as qualifying for the points: "Proof of an applicant's tax-exempt nonprofit status is not sufficient to qualify for points for tax abatement."

Rental Assistance Point Category in the Supportive Housing Cycle

Q: My organization is planning to apply for 9% credits in the Supportive Housing Cycle this year. In order to receive the 2 points for project-based rental assistance, is there a particular term that the section 8 contract must have? For instance, would a renewable HAP contract with a five year term qualify for points in this section?

A: While the point category at N.J.A.C. 5:80-33.17(b)4 does not stipulate a particular term, it should be noted that as part of the feasibility analysis, N.J.A.C. 5:80-33.13(a)13 states "Upon the expiration of project based rental assistance, Supportive Housing projects shall be underwritten at rents no more than 20 percent of area median income adjusted for family size."

Developer Application Limits

Q: The Family Cycle limits one application per developer/general partner/managing member per municipality. Does this limit apply to Mixed Income Reserve projects (located within a TUM)?

A: The one application per developer/general partner/managing member per municipality limit applies only in the Family, Senior and Supportive Housing Cycles.

Successful Development Point Category

Q: If a NJ LIHTC project has met the performance criteria of a “successful development” (as per Part III, Section 14 of the application) but a Form 8609 has not yet been issued, can the project be used as evidence of Successful Development Experience?

A: N.J.A.C. 5:80-33.15(a)19iii defines “Successfully developed and operated” as a tax credit project with no outstanding issues of noncompliance that has achieved 93 percent occupancy and has maintained a permanent debt service coverage ratio of at least 1.15 percent for six consecutive months during the project’s most recent full fiscal year preceding the application deadline. There is no reference to issuance of Form 8609 as a pre-requisite.

Inclusionary Projects

Q: I have read the clarifying guidance regarding “Inclusionary Developments”. By my reading, it appears that a Court-approved mixed-income project would not be eligible for an allocation of tax credits, even under the Mixed-income Set-aside, if 100% of the affordable units are Court-accredited. Is my reading correct?

A: Developer Bulletin 2019-7 and Section 19 of P.L. 2008, c. 46, N.J.S.A. 52:27D-321.1 (A500 ACS), stipulates, in part, that the affordable portion of any mixed-income or mixed-use development that is part of a fair share housing plan approved by the council or a court-approved judgment of repose or compliance shall only be permitted to receive an allocation of Low Income Housing Tax Credits provided the applicant can conclusively demonstrate that the market-rate residential or commercial units are unable to internally subsidize the affordable units.

Qualified Nonprofit Points in the Supportive Housing Cycle

Q: 5:80-33.17(b)5 of the QAP states: “Applications submitted by a qualified nonprofit organization with 100.00 percent of the general partner interest in the final ownership entity shall be awarded two points. Applications submitted by a qualified nonprofit organization with at least 50.00, but less than 100.00, percent of the general partner interest in the final ownership entity shall be awarded one point.” Please consider a situation in which Qualified Nonprofit Entity A owns 51% of the general partner interest and Qualified Nonprofit Entity B owns 49% of the general partner interest. Would such a project be eligible for 2 points because qualified nonprofit entities collectively own 100% of the general partner interest?

A: Provided 100% of the general partner interest is owned by qualified nonprofit organization(s), the project would qualify for 2 points.

Ready to Grow point category

Q: The UNIAP indicates that in order to qualify for “ready to grow” points in a non-smart growth area, “evidence shall be submitted in the application that the majority (that is, more than 50 percent) of the property is or was covered by “structures”; however the “ready to grow” definition in the QAP includes no such requirement. Clarify or explain how the UNIAP could have changed the requirements to the QAP without having first gone through the procedures governing rule changes.

A: Since 2017, the “50 percent of property is or was covered by structures” language has appeared in the “redevelopment project” definition at N.J.A.C. 5:80-33.2. However, commenter is correct that the defined term “redevelopment project” (although used twice elsewhere in the QAP) inadvertently does not appear to be a factor in determining a “ready to grow area.” This being the case, the UNIAP will be revised to remove such requirement from the 2021 “ready to grow” criteria.

Development Cost Caps

Q: Given recent extreme price spikes in construction materials, particularly lumber, will there be any changes to the current total development cost per unit maximums

A: As of the printing of this FAQ (6/16/21), the total development cost limits remain the same as listed in the QAP.