

Summary of Public Comments and Agency Responses

Proposed Amendments to the 2019/ 2020 Qualified Allocation Plan (QAP)

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;

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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 responses follows (commenters are identified by the numbers before their names above):

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 9 percent

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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.

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. Commenters proposed expanding eligible locations to projects located within tracts adjacent to Opportunity Zones, to projects located within an adjacent census tract if it

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is low income, or to projects located within one-half mile of the boundary of an Opportunity Zone. Multiple comments also referenced the recent 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, 15)

RESPONSE: As noted in the previous response, 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.

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

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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.

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 in 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.

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

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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.

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, 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

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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 in the preceding sentences rather than submitting a letter simply indicating that a municipal or county bus or van service is available.

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” outlined at N.J.A.C. 5:80-33.16(b)2i and 5:80-33.17(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.

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

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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.

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, 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.

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 here: <https://www.nj.gov/dcf/families/support/success/>. A change has been made upon adoption to include the link to the website.

The list of One Stop Career Centers can be found here: 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.

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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. The regulations have 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.

COMMENT: The Agency received multiple comments to the effect 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, 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. 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

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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.

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, 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

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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.

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.

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 fees defending against NIMBY

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(“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, 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 simply not adopt the proposed limitations on soft costs found at N.J.A.C. 5:80-33.4(a), 5:80-33.4(a)1, 5:80-33.5(a), 5:80-33.6(a), 5:80-33.7(a) and 5:80-33.8(a)2.

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, 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.

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COMMENT: The commenter requested clarification on the proposed rules for site selection and positive land uses at N.J.A.C. 5:80-33(a)11i, noting a discrepancy within the Proposal Notice 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 Summary section of the Proposal Notice 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 amended regulations in the Proposal Notice, which erroneously set forth a one-mile radius for all projects. Upon adoption, the text at N.J.A.C. 5:80-33(a)11i will be corrected to accurately reflect the intended change.

COMMENT: Multiple commenters requested clarification on the proposed rules for public transportation. One commenter questioned whether the 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

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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, 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 amended 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.

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 Proposal Notice how the current rules further smart growth principles. The

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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.

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 amended upon adoption to eliminate any confusion.

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, 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

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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.

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, 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

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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.

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, 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.

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)

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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.

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, 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.

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/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/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

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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.

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.

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

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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.

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.

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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. 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.

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.

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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.

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, 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 which 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.

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

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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.

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, 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.

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.

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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.

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.

COMMENT: The cap on total development costs at N.J.A.C. 5:80-33.4(a), 5:80-33.5(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. 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.

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Additionally, excepting these costs from the cap could inadvertently encourage projects to inflate their costs for land and remediation.

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. 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 (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.

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.

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COMMENT: The Agency should clarify the statement at N.J.A.C. 5:80-33.4(c) and 5:80-33.5(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 subparagraphs referenced above, 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.

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.

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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.

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.

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

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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.

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).

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>.

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

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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 which they feel they can achieve, but will set a minimum equity price for applicants without a commitment from an investor.

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.

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.

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)

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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.

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.

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.

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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.

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.” (Emphasis in original comment.) (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.

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

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million for Family Cycle and \$1.4 million for Senior Cycle maximum credit allocations per project.

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-

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TUM project would have resulted in only 47.96 percent of credits being awarded in the Family Cycle.

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.

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 in 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.

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.

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

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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.

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.

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 noted in a previous response, 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.

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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, 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.

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.

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.

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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.

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.

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, 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

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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.

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.

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 re-evaluate whether the priority for Main Street Designated Districts should be reinstated.

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COMMENT: The commenter requested clarification as to whether the maximum points at N.J.A.C. 5:80-33.15(a)14iv and 14v 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 14v 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's Proposal 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.

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.