

OTHER AGENCIES

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

Authority Assistance Programs

Historic Property Reinvestment Program

Proposed New Rules: N.J.A.C. 19:31-26

Authority: P.L. 2020, c. 156.

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

Proposal Number: PRN 2022-____.

Submit written comments by May 20, 2022, to:

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The agency proposal follows:

Summary

The New Jersey Economic Development Authority (“NJEDA” or “Authority”) is proposing rules to establish tax credits for part of the cost of rehabilitating historic properties in this State pursuant to the Historic Property Reinvestment Act (Act), sections 2 through 8 of the New Jersey Economic Recovery Act of 2020, P.L. 2020, c. 156 (N.J.S.A. 34:1B-270 through 34:1B-276).

The New Jersey Economic Recovery Act of 2020, P.L. 2020, c. 156, as amended by P.L. 2021, c. 160, creates a package of tax incentive, financing, and grant programs that will address the ongoing economic impacts of the COVID-19 pandemic and build a stronger, fairer New Jersey economy.

The Historic Property Reinvestment Program focuses on historic preservation as a component of community development. The program, which is capped at \$300 million over six years, focuses on historic preservation as a component of community development and encourages long-term private investment into the State, while preserving properties that are of historic significance. The program can be used to leverage the federal Historic Tax Credit

Program to incentivize rehabilitation of identified historic properties. To be eligible for such awards, a rehabilitation project must:

- Demonstrate at the time of application that without the tax credit, the rehabilitation project is not economically feasible.
- Prove that a project financing gap exists, and the tax credit award being considered for the project is equal to or less than the project financing gap.
- Not have commenced any construction or rehabilitation activity at the site of the rehabilitation project prior to submitting an application and will not commence any construction or rehabilitation activity until the execution of the rehabilitation agreement (with certain limited exceptions).
- Include business entity contributed equity of at least 20 percent of the total cost of rehabilitation, or if the project is located in a government-restricted municipality, the equity shall be at least 10 percent of the total cost of rehabilitation.
- Meet minimum cost requirements such that the cost of rehabilitation for the selected rehabilitation period shall not be less than \$5,000 or the adjusted basis of the structure, whichever is greater.
- For a residential project, the structure must serve a residential rental purpose and also contain at least four dwelling units.
- For a residential project or a redevelopment project consisting of newly constructed residential units, at least 20 percent of the residential units constructed shall be reserved for occupancy by low- and moderate-income households with affordability controls as required under the “Fair Housing Act.”
- Include the rehabilitation of a qualified property, or a transformative property.

The Historic Property Rehabilitation Program awards are calculated based on a percentage of the cost of rehabilitation (eligible costs), with the percentage dependent on both whether the project includes a qualified property or a transformative property and on location of the project. Most eligible projects can receive tax credits worth up to 40 percent of eligible costs with a maximum project cap of \$4 million for qualified properties. Eligible projects located within a qualified incentive tract or in government-restricted municipalities can receive tax credits worth up to 45 percent of eligible project costs with a maximum project cap of \$8 million for qualified properties. Transformative projects can receive tax credits worth up to 45 percent of eligible project costs with a maximum project cap of \$50 million. Awards are scored on a competitive basis.

Tax credits are only available for rehabilitation of “qualified” or “transformative” properties. “Qualified property” means a property located in the State of New Jersey that is an income producing property, and that is: 1. Individually listed, or located in a district listed on the National Register of Historic Places, the New Jersey Register of Historic Places, or designated by the Pinelands Commission; or 2. Individually identified or registered, or located in a district composed of properties or structures and such district is identified or registered, for protection as significant historic resources in accordance with criteria established by a municipality in which the property, structure or district is located if the criteria for identification or registration has been approved by the State Historic Preservation Officer as suitable for substantially achieving the purpose of preserving and rehabilitating buildings of historic significance within the

jurisdiction of the municipality. If located within a district, the property must be certified by the Officer as contributing to the historic significance of the district.

A “transformative property” means a property that:

- Is an income producing property, not including residential, whose rehabilitation the Authority determines will generate a substantial increase in State revenues through the creation of increased business activity within the surrounding areas.
- Is individually listed on the New Jersey Register of Historic Places.
- Received a Determination of Eligibility from the Keeper of the National Register of Historic Places.
- Is located within a one-half mile radius of the center point of a transit village, as designated by the NJDOT and within a city of the first class, OR located within a government-restricted municipality.

The following paragraphs summarize the contents of each section of the new rules implementing the Historic Property Reinvestment Program:

N.J.A.C. 19:31-26.1 Applicability and scope, addresses the statutory authority for the program and summarizes the scope and purpose of the program, which is to establish tax credits for part of the cost of rehabilitating historic properties in this State, pursuant to sections 2 through 8 of P.L. 2020, c. 156.

N.J.A.C. 19:31-26.2 Definitions, incorporates terms defined at P.L. 2020, c. 156 pertaining to the program, clarifies statutory terms, and defines additional terms included in the implementation of the program.

N.J.A.C. 19:31-26.3 Eligibility criteria, outlines the criteria for a business entity to receive a tax credit award for a rehabilitation project.

N.J.A.C. 19:31-26.4 Application submission requirements, establishes the information and procedures required for submitting an application to the Authority for tax credits under the program.

N.J.A.C. 19:31-26.5 Fees, establishes non-refundable application and other fees intended to assist the Authority in recouping the administrative costs in processing applications.

N.J.A.C. 19:31-26.6 Review and approval of completed application; tax credit amounts, delineates the process for the determination of allocation of tax credits.

N.J.A.C. 19:31-26.7 Modifications, provides that certain changes in the work as detailed in the rehabilitation agreement, shall require prior and written approval by the Authority.

N.J.A.C. 19:31-26.8 Approval letter; rehabilitation agreement, requires that all applicants execute an approval letter and rehabilitation agreement with the Authority to establish the terms and conditions and requirements to retain the tax credits.

N.J.A.C. 19:31-23.9 Reporting requirements and annual report, imposes annual reporting requirements on the business entity during the term of the eligibility period and outlines the provisions for issuance of the annual certificate of compliance by the Authority.

N.J.A.C. 19:31-26.10 Application for tax credit transfer certification, allows a business entity or co-applicant that is a holder of a credit, upon application to, and approval by, the Division of Taxation in the Department of the Treasury and the Chief Executive Officer of the Authority, to sell its credit, covering one or more years, under the tax credit transfer certificate program for consideration received by the business of not less than 85 percent of the transferred credit amount, provided that in instances where the project is constructing new residential units, this consideration may be no less than 75 percent.

N.J.A.C. 19:31-26.11 Assignment of rights of rehabilitation agreement, outlines the process for a business entity or co-applicant to pledge, assign, transfer, or sell any or all of its right, title, and interest in and to the rehabilitation agreement and in the incentive awards payable, along with the rights and remedies.

N.J.A.C. 19:31-26.12 Affirmative action and prevailing wage, provides that the Authority's affirmative action requirements at P.L. 1979, c. 203 (N.J.S.A. 34:1B-5.4) and N.J.A.C. 19:30-3 shall apply to the redevelopment project.

N.J.A.C. 19:31-26.13 Reduction and recapture of tax credits, establishes provisions for the reduction, forfeiture, and recapture of tax credits.

N.J.A.C. 19:31-26.14 Appeals, outlines the requirements for an applicant to appeal an action of the NJEDA Board and the process by which the Authority shall consider each appeal in a timely manner.

N.J.A.C. 19:31-26.15 Reports on implementation of program, details the provisions of P.L. 2020, c. 156 establishing requirements for a report on or before December 31, 2025 on the implementation of the program.

N.J.A.C. 19:31-26.16 Severability, states that if any portion of this subchapter is adjudged to be unconstitutional or invalid by a court of competent jurisdiction, the remaining portions of the subchapter are severable and shall not be affected by that determination.

As the Authority has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed new rules, which establish the Historic Property Reinvestment Program to encourage the investment into and rehabilitation of identified historic structures across New Jersey, with a focus on low-income and under resourced communities, are intended to have a positive social impact.

The Historic Property Reinvestment Program is a key component of the State’s broader economic development plan, which balances economic impact, for example, stimulating community development, with a focus on increasing equity and opportunity for all. This strategy is clearly demonstrated in the New Jersey Economic Recovery Act of 2020’s overall approach, which establishes or amends 15 different programs with varying development objectives. The Historic Property Reinvestment Program is primarily focused on community development, and the rehabilitation of identified historic properties and making a positive impact on neighborhoods and communities. Other programs are primarily focused on areas such as job creation and retention, small and micro business support, and other critical social issues like food security.

Rehabilitating identified historic properties and attracting long-term private investment into the State helps bolster long-term tax revenues and revitalizes cities and downtowns into more vibrant magnets for people and investment – rich with cultural amenities and safe, vibrant, walkable, mixed-use neighborhoods, while preserving properties and structures that are of historic importance to the state and returning them to productive use.

Economic Impact

The proposed new rules are intended to bolster the State's economy by stimulating new high-quality economic development. The Historic Property Reinvestment Program, one of several community development tools in the New Jersey Economic Recovery Act of 2020, encourages smart, targeted investments in communities in the form of private capital investment that is, by definition, a durable and sustainable investment in the state’s economic infrastructure. In this case, these will be smart growth investments focused into revitalizing existing identified historic structures, helping to bring these often underutilized properties back to productive use, thereby reducing the need for new development. The resulting investments will support long-term economic benefits after tax credits have been fully utilized, in the form of job creation opportunities, transit-oriented development, and affordable and workforce housing, even if a given project does not meet its full potential. Additionally, the fact that capital investment must be completed before tax credits are provided to approved projects, along with robust recapture and repayment provisions if the projects fail to meet their long-term obligations, ensures substantial economic protections within the program.

Federal Standards Statement

A Federal standards analysis is not required because the proposed new rules are not subject to any Federal requirements or standards.

Jobs Impact

With the core focus of encouraging investment in the rehabilitation of historic properties, the Historic Property Reinvestment Program will also result in job creation needed to support projects approved thereunder. This includes the creation of jobs subject to prevailing wage rates needed to perform construction services on the redevelopment project, some of which are specialized construction jobs needed to perform highly specific and technical services, as well as

permanent full-time jobs tied to the completed project, particularly for commercial and mixed-use projects. The Historic Property Reinvestment Program will also require that prevailing wage rates be paid to building services workers for ten years following the completion of the redevelopment project. Prior to implementation, it is not possible to accurately forecast the number of jobs that will be supported by the Historic Property Reinvestment Program; however, the Act and the proposed new rules provide a series of transparency measures, including annual reports, to ensure regular reporting of the number of jobs created.

Agriculture Industry Impact

The proposed new rules are not expected to have an impact on the agricultural industry.

Regulatory Flexibility Analysis

The proposed new rules may impose reporting, recordkeeping, or other compliance requirements on small businesses, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.; however, any costs will be minimal and fully offset by the amount of financial assistance received. The proposed fees for the program are intended to ensure a source of necessary administrative fee revenue for NJEDA to more fully cover the costs of the program. The proposed new rules provide new features that allow approved applicants to use third-party, independent certified public accounting firms to support the tax credit certification process. This change is meant to improve regulatory compliance processes for all businesses and the Authority.

Housing Affordability Impact Analysis

The proposed new rules may have an impact on the affordability of housing in the State by helping to catalyze the development of market-rate housing in distressed communities and, where appropriate, mixed-income and affordable housing. The Historic Property Reinvestment Program, which may include projects with four or more residential units, can also be combined with the federal Low-Income Housing Tax Credit Program. Twenty percent of the residential units would be constructed for occupancy by low- and moderate-income households. These residential projects supported through the Historic Property Reinvestment Program are expected to impact the amount or cost of housing units, primarily including multi-family rental housing in the State.

Smart Growth Development Impact Analysis

The proposed new rules, which authorize tax credit awards for certain residential projects, may result in an indeterminate increase in the number of housing units or result in an increase or decrease in the average cost of housing in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The proposed new rules will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning juveniles and adults in the State.

Full text of the proposed new rules follows:

SUBCHAPTER 26. HISTORIC PROPERTY REINVESTMENT PROGRAM

19:31-26.1 Applicability and scope

The rules in this subchapter are promulgated by the New Jersey Economic Development Authority (Authority) to implement the provisions of the New Jersey Economic Recovery Act 2020 establishing the Historic Property Reinvestment Act (Act), sections 2 through 8 of the P.L. 2020, c. 156 (N.J.S.A. 34:1B-270 through 34:1B-276).

19:31-26.2 Definitions

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

“Act” means sections 2 through 8 of P.L. 2020, c. 156, as amended (N.J.S.A. 34:1B-270 through 34:1B-276).

“Affiliate” means an entity that directly or indirectly controls, is under common control with, or is controlled by, the business entity. Control exists in all cases in which the entity is a member of a controlled group of corporations, as defined pursuant to section 1563 of the Internal Revenue Code of 1986 (26 U.S.C. § 1563), or the entity is an organization in a group of organizations under common control, as defined pursuant to subsection (c) of section 414 of the Internal Revenue Code of 1986 (26 U.S.C. § 414).

“Archeology and historic preservation standards” means the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation, 48 Fed. Reg. 44716, as updated and revised by the National Park Service.

“Authority” means the New Jersey Economic Development Authority established pursuant to section 4 of P.L.1974, c.80 (N.J.S.A. 34:1B-4).

“Board” means the Board of the New Jersey Economic Development Authority, established pursuant to section 4 of P.L. 1974, c. 80 (N.J.S.A. 34:1B-4).

“Building services” means any cleaning or routine building maintenance work, including, but not limited to, sweeping, vacuuming, floor cleaning, cleaning of rest rooms, collecting refuse or trash, window cleaning, securing, patrolling, or other work in connection with the care or securing of an existing building, including services typically provided by a door-attendant or concierge. “Building services” shall not include any skilled maintenance work, professional services, or other public work for which a contractor is required to pay the “prevailing wage” as defined in section 2 of P.L. 1963, c. 150 (N.J.S.A. 34:11-56.26).

“Business entity”, “developer” or “applicant” means a person who enters or proposes to enter into a rehabilitation agreement pursuant to the provisions of section 4 of P.L. 2020, c. 156 (N.J.S.A. 34:1B-272) and that has or will have site control over the qualified property or transformative property, including, but not limited to, a lender that completes a rehabilitation project, operates a rehabilitation project, or completes and operates a rehabilitation project.

“Co-applicant” means an entity that is non-profit for taxation purposes under the provisions of Section 501(c)3 of the Internal Revenue Code; contributes capital, real property, or services related to the project that directly affect and serve the anticipated residents, tenants or customers of the tenants of the redevelopment project; and enters into a participation agreement with the business entity that specifies the co-applicant’s participation in the redevelopment project.

“Compliance period” means a period of five years starting immediately after the conclusion of the selected rehabilitation period.

“Cost of rehabilitation” or “eligible costs” means the consideration given, valued in money, whether given in money or otherwise, for the materials and services which constitute the rehabilitation. Eligible costs shall be all costs associated with the structural components, as defined by 26 CFR 1.48-1(e)(2), within the qualified property or transformative property, and any soft costs associated with the rehabilitation project. Eligible costs shall not include any costs associated with an increase in total building volume.

“Director” means the Director of the Division of Taxation in the Department of the Treasury.

“Equity” means business entity contributed capital that may consist of cash, deferred development fees, costs for project feasibility incurred within the 12 months prior to application, property or site value less any mortgages when the business entity owns the project site, and any other investment by the business entity in the project deemed acceptable by the Authority. Property or site value shall be valued at the lesser of: the purchase price, provided the property or site was purchased pursuant to an arm's length transaction within 12 months of application; or the value as determined by a current appraisal acceptable to the Authority. Equity shall include Federal or local grants and proceeds from the sale of Federal or local tax credits, including, but not limited to, the Historic Rehabilitation Tax Credit, 26 U.S. Code § 47, Low-Income Housing Credit, 26 U.S. Code § 42, and New Market Tax Credit, 26 U.S. Code § 45D. Equity shall not include State grants or tax credits or proceeds from redevelopment area bonds. For a residential project utilizing Low-Income Housing Tax Credits awarded by the New Jersey Housing and Mortgage Financing Agency, equity includes the portion of the developer's fee that is deferred for a minimum of five years.

“Government-restricted municipality” means a municipality in this State with a municipal revitalization index distress score of at least 75, that met the criteria for designation as an urban aid municipality in the 2019 State fiscal year, and that, on the effective date of P.L.2020, c.156 (N.J.S.A. 34:1B-269 et al.), is subject to financial restrictions imposed pursuant to the “Municipal Stabilization and Recovery Act,” P.L. 2016, c. 4 (N.J.S.A. 52:27BBBB-1 et seq.), or is restricted in its ability to levy property taxes on property in that municipality as a result of the

State of New Jersey owning or controlling property representing at least 25 percent of the total land area of the municipality or as a result of the federal government of the United States owning or controlling at least 50 acres of the total land area of the municipality, which is dedicated as a national natural landmark.

“Income producing property” means a property that is used in a trade or business or to produce rental income. A property is used in a trade or business if the property generates income.

“New Jersey S corporation” means the same as the term is defined in section 12 of P.L. 1993, c. 173 (N.J.S.A. 54A:5-10).

“Officer” means the State Historic Preservation Officer or the official within the State designated by the Governor or by statute in accordance with the provisions of chapter 3023 of Title 54, United States Code (54 U.S.C. s.302301 et seq.), to act as liaison for the purpose of administering historic preservation programs in the State.

“Partnership” means an entity classified as a partnership for federal income tax purposes.

“Program” means the Historic Property Reinvestment Program established by sections 2 through 8 of P.L. 2020, c. 156 (N.J.S.A. 34:1B-270 through 276).

“Project financing gap” means the part of the total cost of rehabilitation, including reasonable and appropriate return on investment, that remains to be financed after all other sources of capital have been accounted for. Sources of capital include, but not limited to, equity, which shall not be less than 20 percent of the total cost of rehabilitation, and investor or financial entity capital or loans. The business entity, after making all good faith efforts to raise additional capital, certifies that additional capital cannot be raised from other sources. For a redevelopment project located in a government-restricted municipality, the equity shall not be less than 10 percent of the total cost of rehabilitation.

“Property” means a structure, including its site improvements and landscape features, assessed as real property, and used for a commercial purpose, or residential rental of at least four dwelling units, or a combination of both. Property shall not include multiple separate rowhouses included in a single application.

“Qualified incentive tract” means a population census tract having a poverty rate of 20 percent or more, or a census tract in which the median family income for the census tract does not exceed 80 percent of the greater of the Statewide median family income or the median family income of the metropolitan statistical area in which the census tract is situated.

“Qualified property” means a property located in the State of New Jersey that is an income producing property, and that is:

1. Individually listed, or located in a district listed on the National Register of Historic Places in accordance with the provisions of chapter 3021 of Title 54, United States Code (54 U.S.C.

s.302101 et seq.), and if located within a district, certified by the Officer as contributing to the historic significance of the district; or

2. Individually listed, or located in a district listed on the New Jersey Register of Historic Places pursuant to P.L. 1970, c. 268 (N.J.S.A. 13:1B-15.128 et seq.), and if located within a district, certified by the Officer as contributing to the historic significance of the district; or

3. Individually designated, or located in a district designated, by the Pinelands Commission as a historic resource of significance to the Pinelands in accordance with the Pinelands comprehensive management plan adopted pursuant to the “Pinelands Protection Act,” P.L. 1979, c. 111 (N.J.S.A. 13:18A-1 et seq.), and if located within a district, certified by the Pinelands Commission as contributing to the historic significance of the district; or

4. Individually identified or registered, or located in a district composed of properties or structures and such district is identified or registered, for protection as significant historic resources in accordance with criteria established by a municipality in which the property, structure or district is located if the criteria for identification or registration has been approved by the Officer as suitable for substantially achieving the purpose of preserving and rehabilitating buildings of historic significance within the jurisdiction of the municipality, and if located within a district, certified by the Officer as contributing to the historic significance of the district.

“Reasonable and appropriate return on investment” means the discount rate at which the present value of the future cash flows of an investment equal the cost of the investment. For purposes of the analysis of the reasonable and appropriate return on investment, an investment shall not include any federal, State, or local tax credits. For a residential project utilizing federal tax credits under the Low-Income Housing Tax Credit Program awarded by the New Jersey Housing and Mortgage Finance Agency, the reasonable and appropriate return on investment shall be based on the approval of deferred developer fees pursuant to N.J.A.C. 5:80-33. The Authority may establish a deferred developer fee analysis for rehabilitation projects utilizing other tax credits, including, but not limited to, the Federal Historic Rehabilitation Tax Credit, as equity if the reasonable and appropriate return on investment analysis is not applicable, including, but not limited to, when such tax credits are the sole or primary equity for the rehabilitation project.

“Rehabilitation” means the repair or reconstruction of the exterior or interior of a qualified property or transformative property necessary to make an efficient contemporary use possible while preserving the portions or features of the property that have significant historical, architectural, and cultural values.

“Rehabilitation agreement” means the contract executed between a business entity, any co-applicant if applicable, and the Authority pursuant to section 4 of P.L. 2020, c. 156 (N.J.S.A. 34:1B-272), which sets forth the terms and conditions under which the business entity and any co-applicant may receive the tax credit authorized pursuant to the provisions of sections 2 through 8 of P.L. 2020, c. 156 (N.J.S.A. 34:1B-270 through 34:1B-276).

“Rehabilitation project” means a specific construction project or improvement or phase of a project or improvement undertaken by a business entity that includes the rehabilitation of a qualified property, or transformative property.

“Rehabilitation of the exterior of the qualified property or transformative project” or “repair or reconstruction of the exterior of the qualified property or transformative property” means the repair or reconstruction of the building envelope, exterior historic finishes and exterior fixtures, structural or substrate components of the exterior of a qualified property or transformative property.

“Rehabilitation of the interior of the qualified property or transformative property” or “repair or reconstruction of the interior of the qualified property or transformative property” means the repair or reconstruction of the structural or substrate components and electrical, plumbing, and heating components within the interior of a qualified property or transformative property.

“Selected rehabilitation period” means the period starting on the date the rehabilitation agreement is executed during which, or parts of which, a rehabilitation is occurring. The selected rehabilitation period shall be 24 months, but a business entity may choose a selected rehabilitation period of 60 months if a rehabilitation is reasonably expected to be completed in distinct phases set forth in written architectural plans and specifications completed before or during the physical work on the rehabilitation. For purposes of this definition, a phase may be an early site package, demolition, or abatement, or a portion of a project that results in a separate certificate of occupancy or certificate of acceptance. The selected rehabilitation period shall end at the earlier of either 24 or 60 months, respectively, or the issuance of the final temporary certificate of occupancy or equivalent.

“Soft costs” means costs not directly related to construction, including capitalized interest paid to third parties, real estate taxes, utility connection fees, accounting, title/bond insurance, fixtures/equipment with a useful life of five years or less, affordable housing fees, and all costs associated with financing, design, engineering, legal, or real estate commissions, including, but not limited to, architect fees, permit fees, loan origination and closing costs, construction management, and freight and shipping delivery. The term does not include early lease termination costs, air fare, mileage, tolls, gas, meals, packing material, marketing and advertising, temporary signage, incentive consultant fees, Authority fees, loan interest payments on permanent financing, escrows, reserves, pre-opening costs, commissions and fees to the developer, project management, or other similar costs.

“Total cost of rehabilitation” means any and all costs incurred for and in connection with the rehabilitation project by the business entity and any affiliate of the business entity until the issuance of a permanent certificate of occupancy, or upon such other event evidencing project completion as set forth in the rehabilitation agreement, which shall include, but is not limited, to project costs, soft costs, and cost of acquisition of land and buildings.

“Transformative project” means a specific construction project or improvement or phase of a project or improvement undertaken by a business entity that includes the rehabilitation of a transformative property.

“Transformative property” means a property that is:

1. An income producing property, not including a residential property, whose rehabilitation the Authority determines will generate substantial increases in State revenues through the creation of increased business activity within the surrounding area;
2. Individually listed on the New Jersey Register of Historic Places pursuant to P.L. 1970, c. 268 (N.J.S.A. 13:1B-15.128 et seq.) and which, before the enactment of P.L. 2020, c. 156 (N.J.S.A. 34:1B-269 et al.), received a determination of eligibility from the Keeper of the National Register of Historic Places in accordance with the provisions of Part 60 of Title 36 of the Code of Federal Regulations; and
3. Located within a one-half mile radius of the center point of a transit village, as designated by the New Jersey Department of Transportation, and located within a city of the first class, as classified under N.J.S.A. 40A:6-4, or located within a government-restricted municipality.

19:31-26.3 Eligibility criteria

(a) A business entity shall be eligible to receive a tax credit award for a rehabilitation project only if the business entity demonstrates to the Authority at the time of application that:

1. Without the tax credit award, the rehabilitation project is not economically feasible;
2. A project financing gap exists, and the tax credit award being considered for the project is equal to or less than the project financing gap;
3. The proposed project is a rehabilitation project;
4. The business entity has not commenced any construction or rehabilitation activity at the site of the rehabilitation project prior to submitting an application, and will not commence any construction or rehabilitation activity until the execution of the rehabilitation agreement except as follows:
 - i. In the event the business entity has been ordered by a building code or other official with jurisdiction over the site or the rehabilitation project to correct a health, safety, or other hazard if:
 - (1) The business entity provides a copy of the order to the Authority;
 - (2) The business entity documents to the Authority’s satisfaction that the proposed construction or rehabilitation activity is limited to resolve the hazard; and
 - (3) The proposed construction or rehabilitation activity complies with the Secretary of the Interior’s Standards for Rehabilitation, 36 C.F.R. § 67.7; and

ii. Any construction or rehabilitation activity at the site of the rehabilitation project was conducted by an entity that is not the current owner or business entity, or an affiliate of the current owner or business entity, and was not done at the direction of or under contract with the owner, business entity, or an affiliate of the owner or business entity; and

6. The business entity has complied with all requirements for filing tax and information returns and for paying or remitting required State taxes and fees by submitting, as a part of the application, a tax clearance certificate, as described in section 1 of P.L. 2007, c. 101 (N.J.S.A. 54:50-39).

(b) The following are the only costs incurred prior to application that may be eligible project costs:

1. For applications submitted on or after January 1, 2023, soft costs incurred within 12 months prior to the date of application.

2. For applications submitted prior to January 1, 2023, soft costs incurred within 24 months prior to the date of application.

(c) The Authority shall review the proposed total cost of rehabilitation and evaluate and validate the project financing gap estimated by each business entity applying for a tax credit award as follows:

1. The business entity shall demonstrate that the rehabilitation project has equity of at least 20 percent of the total cost of rehabilitation, except that if a rehabilitation project is located in a government-restricted municipality, the equity shall be at least 10 percent of the total cost of rehabilitation;

2. The Authority shall evaluate the proposed total cost of rehabilitation against reasonable costs;

3. The Authority shall determine if the business entity's submitted financial information for the rehabilitation project and, if applicable, all phases, is satisfactory. If satisfactory, the Authority shall incorporate the financial information in the project financing gap, including the reasonable and appropriate return on investment; and

4. The project financing gap analysis shall include, but not be limited to, an evaluation of the total cost of rehabilitation, amount of capital sufficient to complete the rehabilitation project, proposed rental rates, vacancy rates, reasonable and appropriate return on investment, and, in the Authority's sole discretion, a comparison to alternative financing structures for a comparable project available to the developer or its tenants.

(d) The cost of rehabilitation during a business entity's selected rehabilitation period shall not be less than the greater of the adjusted basis of the structure of the qualified property or transformative property used for federal income tax purposes as of the beginning of the business entity's selected rehabilitation period, or \$5,000.

(e) In addition to the requirements set forth in (a) through (d) above, for a residential project or a redevelopment project consisting of newly-constructed residential units to qualify for a tax credit award, the developer shall reserve at least 20 percent of the residential units constructed for occupancy by low- and moderate-income households with affordability controls as required under the “Fair Housing Act,” P.L. 1985, c. 222 (N.J.S.A. 52:27D-301 et al.).

(f) The rehabilitation project shall be completed, and the business entity shall be issued a temporary certificate of occupancy for the rehabilitation project facilities by the applicable enforcing agency within the selected rehabilitation period.

(g) To the extent that a rehabilitation project is within more than one geographic area with different eligibility criteria and tax credit calculation, the more favorable shall apply to the rehabilitation project.

19:31-26.4 Application submission requirements

(a) Each application to the Authority made by a business entity shall include the following information in an application format prescribed by the Authority:

1. The name of the business entity;
2. Historic name(s) of property as used in all applicable historic designations, and the address of the property;
3. The contact information of the person identified as the primary contact for the business entity;
4. The address of the business entity and prospective future address of the business entity (if different);
5. Organizational structure of the business entity;
6. The New Jersey tax identification number;
7. The Federal tax identification number;
8. Name of historic architect or architectural historian consultant for the rehabilitation project. The historic architect or architectural historian shall meet professional qualifications for historic architecture or architectural history in the archeology and historic preservation standards;
9. The total projected number of construction employees and permanent employees at the rehabilitation project;
10. A narrative description of the rehabilitation project, including a breakdown of uses and related square footage;

11. A narrative explaining the level of experience and qualifications of the business entity and/or project team demonstrating sufficient expertise to complete the rehabilitation project, including, but not limited to, examples of successful completion of projects of similar size and scope;

12. A narrative description of rehabilitation project approach, including, but not limited to, information regarding proposed methods for protecting historic features and fabric and for addressing unforeseen issues that may be discovered during construction. For rehabilitation projects that will include ground disturbance, project approach shall also include information explaining the project approach to archeology within the site of the rehabilitation project, which must address known archaeological resources and any potential archeology discovered during the course of the rehabilitation project. A proposed approach to archeology shall be prepared by, or in consultation with, a professional meeting the professional qualifications for archeology in the archeology and historic preservation standards;

13. Construction cost estimate for the rehabilitation project, including, but not limited to, all construction costs associated with the rehabilitation project. The estimate shall include the final estimate of the total cost of rehabilitation and the cost of rehabilitation;

14. Information regarding the historic significance and current condition of the qualified property or transformative property, including but not limited to:

i. Information of any historic designations (with designation dates);

ii. A narrative description highlighting the specific historic significance of the qualified property or transformative property (including eligibility criteria for any historic designations received); and

iii. Photographs showing all exterior building facades, significant and representative interior spaces, and examples of significant historic fabric being proposed for repair and/or removal as part of the rehabilitation project;

15. A narrative description of the historic connection/significance of the property within the local community and information on how the proposed rehabilitation project will have a positive impact on the surrounding neighborhood;

16. A narrative description of any existing or potential threat to the property due to physical condition, encroachment, or other factors, including, but not limited to, supporting documentation;

17. Full set of construction documents, including drawings and specifications. Documents shall include details showing treatment of exterior and interior historic fabric throughout the building. All plans and specifications shall be prepared by, or in consultation with, a professional meeting the professional qualifications for architectural history or historic architecture in the archeology and historic preservation standards;

18. A narrative explaining how the rehabilitation project will address requirements and compliance with the Secretary of the Interior's Standards for Rehabilitation, 36 C.F.R. § 67.7. Information shall include, but not be limited to, detailed specific proposed treatment for interior and exterior historic fabric, materials, and spaces throughout the property;

19. A copy of a market and/or feasibility study for the proposed use of the property by an independent third party, which shall include their position regarding the marketability and underwriting of the revenue and expense components of the property for the duration of the commitment period;

20. Selected rehabilitation period and anticipated construction schedule showing rehabilitation project milestones and proposed phases;

21. Financial information of the rehabilitation project, which shall include all phases, including, but not limited to, any State or local financial assistance for the project, proposed terms of financing, projected reasonable and appropriate return on investment based on the business entity's equity, net margin, and cash on cash yield, and a certification from the chief executive officer or equivalent officer of the business entity that additional capital cannot be raised from other sources on a non-recourse basis after making all good faith efforts to raise additional capital, and any other documentation demonstrating economic and commercial viability pursuant to N.J.A.C. 19:31-26.3(a);

22. A list of all of the New Jersey Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury permits and approvals or obligations and responsibilities, with which the business entity is associated or in which the business entity has an interest. The list shall identify the entity that applied for or received such permits and approvals or have such obligations and responsibilities, such as by program interest numbers or licensing numbers. The business entity shall also submit a written certification by the chief executive officer or equivalent officer of the business entity stating that the business entity applying for the program satisfies the criteria at N.J.A.C. 19:31-26.6(d) to be in substantial good standing with the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury;

23. A certification by the chief executive officer or equivalent officer of the business entity that the officer has reviewed the application information submitted and that the representations contained therein are accurate;

24. A completed legal questionnaire disclosing all relevant legal matters in accordance with the Authority debarment and disqualification rules at N.J.A.C. 19:30-2;

25. Submission of a tax clearance certificate, pursuant to P.L. 2007, c. 101 (N.J.S.A. 54:50-39);

26. A list of all the development subsidies, as defined at P.L. 2007, c. 200 (N.J.S.A. 52:39-1), that the business entity is requesting or receiving, the name of the granting body, the value of

each development subsidy, and the aggregate value of all development subsidies requested or received;

27. The status of control of the site of the qualified property or transformative property, shown for each block and lot of the site as indicated upon the local tax map. If the business entity has not secured control of the site at time of application, the business entity must demonstrate an agreement with the current owner of the site, including, but not limited to, a right of entry or a letter of intent to purchase the site;

28. A list and status of all required local, State, and Federal government permits and local planning and zoning board approvals that have been issued for the redevelopment project or will be required to be issued pending resolution of financing;

29. The adjusted basis of the structure of the qualified property or transformative property used for federal income tax purposes as of the date of application and as of the anticipated beginning of the business entity's selected rehabilitation period;

30. In addition to information in (a)1 through 29, the business entity must demonstrate the following for a transformative project:

i. That the transformative project will generate substantial increases in State revenues through the creation of increased business activity within the surrounding area;

ii. Historic name of the property and date of historic designations required in the definition of "transformative property";

iii. That the transformative property is located within a city of the first class and within ½ miles of the center of a transit village, or government-restricted municipality by providing a map showing project site location; and

31. Any other necessary and relevant information as determined by the Authority for a specific application, including, but not limited to, information needed to complete project financial review and business entity capacity.

(b) If the business entity is applying with a co-applicant, the application shall also include the following co-applicant information:

1. The name of the co-applicant;

2. The contact information of the person identified as the primary contact for the co-applicant;

3. The address of the co-applicant and prospective future address of the co-applicant (if different);

4. The organizational structure of the co-applicant;

5. The New Jersey tax identification number;
6. The Federal tax identification number;
7. A list of all of the New Jersey Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury permits and approvals or obligations and responsibilities, with which the co-applicant is associated or in which the co-applicant has an interest. The list shall identify the entity that applied for or received such permits and approvals or have such obligations and responsibilities, such as by program interest numbers or licensing numbers. The co-applicant shall also submit a written certification by the chief executive officer or equivalent officer of the eligible co-applicant stating that the co-applicant applying for the program satisfies the criteria at N.J.A.C. 19:31-26.6(d) to be in substantial good standing with the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury;
8. A certification by the chief executive officer or equivalent officer of the co-applicant that the officer has reviewed the application information submitted and that the representations contained therein are accurate;
9. A completed legal questionnaire disclosing all relevant legal matters in accordance with the Authority debarment and disqualification rules at N.J.A.C. 19:30-2;
10. Submission of a tax clearance certificate, pursuant to P.L. 2007, c. 101 (N.J.S.A. 54:50-39);
11. A list of all the development subsidies, as defined at P.L. 2007, c. 200 (N.J.S.A. 52:39-1), that the co-applicant is requesting or receiving, the name of the granting body, the value of each development subsidy, and the aggregate value of all development subsidies requested or received;
12. The organizing documents of the co-applicant and a narrative regarding the activity of the co-applicant generally, and in the State and municipality;
13. A description of the long-term participation agreement between the co-applicant and the business entity illustrating how the co-applicant will take an active role in the rehabilitation project, including a description of the capital, real property or services related to the rehabilitation project that the co-applicant will provide that directly affect and serve the anticipated residents, tenants, or customers of the tenants of the rehabilitation project;
14. An explanation for the need of a co-applicant to receive the tax credits; and
15. Any other necessary and relevant information as determined by the Authority for a specific application, including, but not limited to, information needed to complete project financial review and co-applicant eligibility.

(c) The Authority may, in its sole discretion, consider two or more applications as one application for one rehabilitation project based on factors including, but not limited to, the location of the redevelopment project(s), the types of uses proposed, and the business entity's financing and operational plans.

(d) If circumstances require a business entity to amend its application to the Authority, then the business entity, or chief executive officer or equivalent officer of the business entity, shall certify to the Authority that the information provided in its amended application is true under the penalty of perjury.

19:31-26.5 Fees

(a) A business entity applying for tax credits under this program shall submit a one-time non-refundable application fee. The application fee shall be as follows:

1. For rehabilitation projects with cost of rehabilitation of \$10 million or less, the fee shall be \$2,000.
2. For rehabilitation projects with cost of rehabilitation greater than \$10 million, the fee shall be \$7,000.
3. For transformative projects, the fee shall be \$18,000.

(b) A business entity shall pay to the Authority the full amount of direct costs of due diligence, including, but not limited to, debarment/disqualification reviews or other analyses by a third party retained by the Authority, if the Authority deems such retention to be necessary.

(c) The business entity shall pay to the Authority a non-refundable fee prior to the approval of the tax credit by the Authority as follows, except that the fee shall be refunded if the Authority does not approve the tax credit:

1. For rehabilitation projects with cost of rehabilitation of \$10 million or less, the fee shall be \$5,000.
2. For rehabilitation projects with cost of rehabilitation greater than \$10 million, the fee shall be \$14,000.
3. For transformative projects, the fee shall be \$125,000.

(d) The business entity shall pay to the Authority a non-refundable fee prior to the execution of the rehabilitation agreement as follows:

1. If the business entity is applying for a Federal Historic Preservation Tax Credit and has received prior approval of applications from the Officer under Parts 1 and 2 of the Historic Preservation Certification Application pursuant to 36 CFR 67.3, and if the rehabilitation project's cost of rehabilitation is \$10 million or less, the fee shall be \$5,000.

2. For all other rehabilitation projects with cost of rehabilitation of \$10 million or less that have not received prior approval of applications from the Officer as specified in subsection (d)1 above, the fee shall be \$10,000.

3. If the business entity is applying for a Federal Historic Preservation Tax Credit and has received prior approval of applications from the Officer under Parts 1 and 2 of the Historic Preservation Certification Application pursuant to 36 CFR 67.3, and if the rehabilitation project's cost of rehabilitation is greater than \$10 million, the fee shall be \$14,000.

4. For all other rehabilitation projects with cost of rehabilitation greater than \$10 million that have not received prior approval of applications from the Officer as specified in subsection (d) 3 above, the fee shall be \$28,000.

5. If a business entity with a transformative project is applying for a Federal Historic Preservation Tax Credit and has received prior approval of applications from the Officer under Parts 1 and 2 of the Historic Preservation Certification Application pursuant to 36 CFR 67.3, the fee shall be \$125,000.

6. For all other transformative projects that have not received prior approval of applications from the Officer as specified in subsection (d)5 above, the fee shall be \$250,000.

(e) For all rehabilitation projects, including transformative projects, a business entity shall pay to the Authority a non-refundable fee prior to the receipt of the tax credit certificate. For a rehabilitation project with a selected rehabilitation period of 60 months, the business entity shall pay an additional non-refundable fee prior to the approval of the project cost certification for the second phase and each subsequent phase. The fee shall be as follows:

1. For rehabilitation projects with cost of rehabilitation of \$10 million or less, the fee shall be \$5,000.

2. For rehabilitation projects with cost of rehabilitation greater than \$10 million, the fee shall be \$14,000.

3. For transformative projects, the fee shall be \$125,000.

(f) A business entity applying for a tax credit transfer certificate pursuant to N.J.A.C. 19:31-26.11 or permission to pledge a tax credit transfer certificate purchase contract as collateral shall pay to the Authority a fee, as follows:

1. For rehabilitation projects with cost of rehabilitation of \$10 million or less, the fee shall be \$5,000.

2. For rehabilitation projects with cost of rehabilitation greater than \$10 million, the fee shall be \$7,500.

3. For transformative projects, the fee shall be \$25,000.

(g) Upon application to pledge, assign, transfer, or sell any or all of its right, title, and interest in and to a rehabilitation agreement and in the tax credits payable thereunder, a developer shall pay to the Authority a fee, as follows:

1. For rehabilitation projects with cost of rehabilitation of \$10 million or less, the fee shall be \$2,500.

2. For rehabilitation projects with cost of rehabilitation greater than \$10 million, the fee shall be \$5,000.

3. For transformative projects, the fee shall be \$50,000.

(h) A business entity shall pay to the Authority a non-refundable fee for each request for any administrative changes, additions, or modifications to the tax credit; and a non-refundable fee shall be paid for any major changes, additions, or modifications to the tax credit, such as those requiring extensive staff time and Board approval, as follows:

1. For rehabilitation projects with cost of rehabilitation of \$10 million or less, a non-refundable fee of \$2,500 shall be paid for each request for any administrative change, addition, or modification to the tax credit; and a non-refundable fee of \$5,000 shall be paid for any major change, addition, or modification to the tax credit, such as those requiring extensive staff time and Board approval;

2. For rehabilitation projects with cost of rehabilitation greater than \$10 million, a non-refundable fee of \$5,000 shall be paid for each request for any administrative changes, additions, or modifications to the tax credit; and a non-refundable fee of \$10,000 shall be paid for any major changes, additions, or modifications to the tax credit, such as those requiring extensive staff time and Board approval.

3. For transformative projects, a non-refundable fee of \$50,000 shall be paid for each request for any administrative changes, additions, or modifications to the tax credit; and a non-refundable fee of \$125,000 shall be paid for any major changes, additions, or modifications to the tax credit, such as those requiring extensive staff time and Board approval.

(i) A non-refundable fee shall be paid for the first six-month extension to the date by which the business entity shall provide project financing and planning documentation required in the approval letter pursuant to N.J.A.C. 19:31-26.8(a); and a non-refundable fee shall be paid for each subsequent extension, as follows:

1. For rehabilitation projects with cost of rehabilitation of \$10 million or less, the fee shall be \$2,500.

2. For rehabilitation projects with cost of rehabilitation greater than \$10 million, the fee shall be \$5,000.

3. For transformative projects, the fee shall be \$10,000.

(j) A non-refundable fee shall be paid for the first six-month extension to the date by which the business entity shall submit the satisfactory evidence with respect to the eligibility requirements of the program pursuant to N.J.A.C. 19:31-26.8(d) for the respective redevelopment project, or the respective phase of a rehabilitation project with a selected rehabilitation period of 60 months; and a non-refundable fee shall be paid for each subsequent extension, as follows:

1. For rehabilitation projects with cost of rehabilitation of \$10 million or less, the fee shall be \$2,500.

2. For rehabilitation projects with cost of rehabilitation greater than \$10 million, the fee shall be \$5,000.

3. For transformative projects, the fee shall be \$10,000.

19:31-26.6 Review and approval of completed application; tax credit amounts

(a) In each State fiscal year for which there are tax credits available for this program, the Authority shall establish the date for the availability of the application and the date by when applications must be submitted. The Authority may establish separate dates for transformative projects and for all other rehabilitation projects, provided that the dates for transformative projects shall be before or the same as the dates for all other rehabilitation projects. The Authority shall provide prior public notice of these dates through its website.

(b) For rehabilitation projects eligible pursuant to section 4 of P.L. 2020, c. 156 (N.J.S.A. 34:1B-272), the Authority shall review applications submitted by the corresponding application deadline for eligibility. The review shall determine if the applicant:

1. Complies with the eligibility criteria;
2. Satisfies the submission requirements; and
3. Provides adequate information for the subject application.

(c) The Authority shall allocate tax credits to eligible rehabilitation projects first to transformative projects and then to other rehabilitation projects in the order determined based on the factors below. To receive a tax credit award, a business entity's application shall meet a minimum score. The Authority shall establish weights for the factors and the minimum score before applications are submitted for the State fiscal year and shall provide public notice of the weights through its website.

1. Historic significance of the qualified property or transformative property.

2. Existing or potential threat to the qualified property or transformative property due to physical condition, encroachment or other factors.

3. Project concept and team, including prior and future stewardship of the building during the business entity's control of the qualifying property or transformative property.

4. Existence of site control by the business entity or certainty of obtaining site control as demonstrated by an agreement that will provide site control.

5. Positive impact of the rehabilitation project on surrounding neighborhood.

(d) Before the Board may consider for approval a business entity's application for tax credits:

1. The Authority will confirm with the New Jersey Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury that the business entity and any co-applicant is in compliance by being in substantial good standing with the statutes, rules, and other enforceable standards of the respective department, or, if a compliance issue exists, the business entity and any co-applicant, as applicable, has entered into an agreement with the respective department that includes a practical corrective action plan, as applicable.

i. Substantial good standing shall be determined by each department and mean, at a minimum, that the business entity and any co-applicant:

(1) As to the Department of Labor and Workforce Development and the Department of Environmental Protection:

(A) Is in substantial compliance with all material statutes, rules, and other enforceable standards of the respective department that apply to the business entity and any co-applicant; and

(B) Has no material violations of those statutes, rules, or other enforceable standards that remain substantially unresolved through entry into a corrective action plan, or other agreement with the department, with respect thereto; and

(2) As to all other departments, has no unpaid liability in excess of any threshold dollar amount(s) that may be established by each respective department.

ii. If the Department of Labor and Workforce Development, the Department of Environmental Protection, or the Department of the Treasury promulgates, or issues, its own more stringent rule or standard defining the term "substantial good standing," the respective department shall use such rule or standard to determine whether an entity is in substantial good standing.

2. The Authority may contract with an independent third party to perform a background check on the business entity and any co-applicant.

(e) The business entity shall certify that any contractors or subcontractors that will perform work at the qualified property or transformative property are registered as required by “The Public Works Contractor Registration Act,” P.L. 1999, c. 238 (N.J.S.A. 34:11-56.48 et seq.), have not been debarred by Department of Labor and Workforce Development from engaging in or bidding on Public Works Contracts in the State, and possess a tax clearance certificate issued by the Division of Taxation in the Department of the Treasury.

(f) A business entity shall be allowed a tax credit for an approved rehabilitation project that shall not exceed the following limits:

1. For the rehabilitation of a qualified property not located in a qualified incentive tract or government-restricted municipality, 40 percent of the cost of rehabilitation paid by the business entity or an affiliate for the rehabilitation of the qualified property or \$4 million, whichever is less;

2. For the rehabilitation of a qualified property located in a qualified incentive tract or government-restricted municipality, 45 percent of the cost of rehabilitation paid by the business entity or an affiliate for the rehabilitation of the qualified property or \$8 million, whichever is less; and

3. For the rehabilitation of a transformative property 45 percent of the cost of rehabilitation paid by the business entity or an affiliate for the rehabilitation of the transformative property or \$50 million, whichever is less.

19:31-26.7 Modifications

(a) Once a rehabilitation project has been approved by the Board, changes in the work as detailed within the rehabilitation agreement, including, but not limited to, demolition or removal of historic fabric, any change in the treatment of historic finishes, any change in the layout or proposed uses of the property, a reduction in the amount of the total cost of rehabilitation or cost of the rehabilitation, or any change in the financing shall require prior review and written approval by the Authority. In considering whether to approve the modification request, the Authority shall:

1. Determine that the revised rehabilitation project continues to meet the requirements for the rehabilitation of a qualified property or transformative property as defined under the program.

2. Confirm that the any proposed change to the rehabilitation project will not undermine the basis for the tax credit award approved.

3. Determine that the revised rehabilitation project continues to meet the minimum score and would have been eligible based on the order of applications pursuant to N.J.A.C. 19:31-26.6(c) above unless the business entity demonstrates to the Authority that:

i. The modification is due to unforeseeable conditions related to the rehabilitation project beyond the business entity's control and without its fault or negligence;

ii. The business entity is using best efforts, with all due diligence, to proceed with the completion of the rehabilitation project; and

iii. The business entity has made all reasonable efforts to prevent, avoid, mitigate, and overcome the modification.

(b) If the business entity discovers an unforeseeable condition for which additional work will be required, and such work would constitute a phase as defined under “selected rehabilitation period” under N.J.A.C 19:31-26.2, the business entity may request a modification in the selected rehabilitation period from 24 months to 60 months. Notwithstanding the change in selected rehabilitation period, the amount of the tax credit award shall not be increased from the amount approved by the Board.

19:31-26.8 Approval letter; rehabilitation agreement

(a) Upon receipt of a recommendation from the Authority staff on the rehabilitation project, the Board shall determine whether or not to approve the application, the maximum amount of the tax credit award and the maximum percentage amount of allowed tax credits for its cost of rehabilitation in a rehabilitation project, and promptly notify the applicant and the Director of the Division of Taxation of the determination.

1. The Board's award of the credits will be subject to conditions subsequent that must be met in order to retain the tax credit award. An approval letter setting forth the conditions subsequent will be sent to the applicant and any co-applicant. Such conditions shall include, but not be limited to, the requirement that the project complies with the Authority's prevailing wage requirements, P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1) and affirmative action requirements, P.L. 1979, c. 303 (N.J.S.A. 34:1B-5.4), and that the rehabilitation project does not violate any environmental law requirements, including, but not limited to, the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13. The approval letter shall also provide the requirements necessary for the Authority to execute the rehabilitation agreement, which shall include satisfaction of all conditions of approval.

2. The approval letter shall require documentation evidencing project financing and planning approvals, including the submittal of executed financing commitments, documents that evidence site control by the business entity or an affiliate of the business entity, a copy of the site plan approval, and a copy of all required permits and planning and zoning approvals and permits. If the Authority approval included a co-applicant, the required documents shall also include the executed participation agreement between the co-applicant and the business entity with a term that extends for the duration of the compliance period. Absent extenuating circumstances or the Authority's determination in its sole discretion, the Authority's approval of the tax credit award shall expire if the business entity or co-applicant as applicable does not submit the documentation required in this paragraph within a year after approval of the application.

3. The Authority shall review, and may require clarifying information regarding, the construction documents to determine if the proposed rehabilitation project is in substantial

compliance with the Secretary of the Interior's Standards for Rehabilitation, 36 C.F.R. § 67.7. The Authority's review of substantial compliance shall be a condition of approval.

4. If the terms of the financial commitment contained in the evidence required by the approval letter are materially different from the projected terms in the application, the Authority may re-evaluate the project financing gap and reduce the size of the tax credit award accordingly.

5. The approval letter shall provide an estimated date of completion of the rehabilitation project and include a requirement for periodic progress reports.

6. For a rehabilitation project with a selected rehabilitation period of 60 months, as defined under "selected rehabilitation period" under N.J.A.C 19:31-26.2, the approval letter shall identify the phases for which the business entity shall be allowed tax credits and shall state maximum cost of rehabilitation for each such phase.

(b) Following satisfaction of the requirements for the execution of a rehabilitation agreement, the Authority shall enter into a rehabilitation agreement with the business entity and any co-applicant. The Chief Executive Officer of the Authority shall negotiate the terms and conditions of the rehabilitation agreement on behalf of the State. The awarding of tax credits shall be conditioned on the business entity's and any co-applicant's compliance with the requirements of the agreement.

(c) The rehabilitation agreement shall specify and include:

1. A detailed description of the proposed rehabilitation project. For a rehabilitation project with a selected rehabilitation period of 60 months, the rehabilitation agreement may include a rehabilitation phase agreement for each phase, which shall contain a description of the phase, the expected total rehabilitation cost and cost of rehabilitation, and the commencement and completion for the respective phase;

2. The maximum amount of the cost of rehabilitation and the maximum percentage of the cost of rehabilitation that will be used to calculate the amount of the tax credit award. If the actual cost of rehabilitation is less than the cost of rehabilitation set forth in the application, the tax credit shall be calculated based on the actual cost of rehabilitation;

3. A description of the occupancy permit or other event evidencing project completion;

4. An ongoing requirement to provide the Authority with current personnel information that will enable the Authority to administer the program;

5. A requirement that the business entity shall not cease to operate the rehabilitation project during the compliance period without prior written consent of the Authority;

6. A method for the business entity to certify that it has met the minimum cost of rehabilitation and other eligibility requirements of the program;

7. Representations that the business entity and any co-applicants are in substantial good standing and that the rehabilitation project will comply with all applicable laws, including, but not limited to, prevailing wage requirements pursuant to N.J.A.C. 19:31-26.12(b) and (c), affirmative action requirements pursuant to N.J.A.C. 19:31-26.12(a), and environmental laws, including, but not limited to, the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13;

8. A provision permitting an audit of evidence and documentation, of the business entity and any co-applicant, supporting the certifications pursuant to (f) below, and the annual reports pursuant to N.J.A.C. 19:31-26.9, as the Authority deems necessary;

9. Reporting requirements pursuant to N.J.A.C. 19:31-26.9;

10. A provision permitting the Authority to amend the agreement;

11. A provision establishing the conditions under which the Authority, the business entity and any co-applicant, or all parties, may terminate the agreement;

12. A provision acknowledging the Authority's right to confirm with the Department of Environmental Protection, the Department of Labor and Workforce Development, and the Department of the Treasury, as set forth in N.J.A.C. 19:31-26.6(d)1, that the business entity and any co-applicant are in substantial good standing or has entered into an agreement with the respective department that includes a practical corrective action plan, as applicable;

13. A provision providing that if the business entity or any co-applicant is not in substantial good standing with the Department of Environmental Protection, the Department of Labor and Workforce Development, and the Department of the Treasury and has not entered into an agreement with the respective department, as set forth at N.J.A.C. 19:31-26.6(d)1, and has been given written notice thereof and an opportunity to be heard or to contest the determination, by the respective department, then the business entity and any co-applicant shall forfeit the tax credits in any year in which the business entity or any co-applicant is neither in substantial good standing with each department nor has entered into a practical corrective action;

14. A requirement that the business entity shall confirm that each contractor or subcontractor performing work at the rehabilitation project: is registered as required by "The Public Works Contractor Registration Act," P.L. 1999, c. 238 (N.J.S.A. 34:11-56.48 et seq.); has not been debarred by Department of Labor and Workforce Development from engaging in or bidding on Public Works Contracts in the State; and possesses a tax clearance certificate issued by the Division of Taxation in the Department of the Treasury;

15. The right of the Authority to conduct site inspections of the site of the rehabilitation project at any time during the course of the rehabilitation project, during the compliance period, and while the business entity and any co-applicant retains an obligation under this program;

16. Indemnification and insurance requirements from the business entity and any co-applicant;

17. Events that would trigger forfeiture, reduction or recapture of the tax credits, including, but not limited to, provisions in this subchapter; and

18. Default and remedies, including, but not limited, to a default if a business entity or any co-applicant made a material misrepresentation on its application.

(d) For a rehabilitation project with a selected rehabilitation period of 24 months, a business entity shall submit no later than 12 months following project completion, satisfactory evidence of the completion of the rehabilitation project and satisfaction of the program eligibility requirements, which shall include, but not be limited to, the documents below. For a rehabilitation project with a selected rehabilitation period of 60 months, a business entity shall submit no later than 12 months following completion of each phase identified in the rehabilitation agreement, satisfactory evidence of the completion of that phase and satisfaction of the program eligibility requirements relevant to that phase, which shall include, but not be limited to, the documents below.

1. Evidence of a temporary certificate of occupancy or other event evidencing project or phase completion indicated in the rehabilitation agreement.

2. A certification by a qualified independent certified public accountant of the cost of rehabilitation. The certification shall be made pursuant to an “agreed upon procedures” letter acceptable to the Authority. If the cost of rehabilitation is reduced below the minimum total cost of rehabilitation for eligibility, the rehabilitation project shall no longer be eligible. The Authority shall qualify certified public accountants and provide to the business entity the list of qualified certified public accountants; provided, however, the business entity may select a certified public accountant that is independent to the business entity and any co-applicant and not on the Authority's list of qualified certified public accountants for purposes of the project cost certification if the business entity demonstrates an extenuating circumstance prohibiting the business entity from retaining a qualified certified public accountant. Such circumstances include, but are not limited to, the unavailability of any of the qualified certified public accountants to timely complete the certification or a lack of independence of the qualified certified public accountants from the business entity.

3. A certification indicating whether or not the business entity is aware of any condition, event, or act that would cause the business entity or any co-applicant not to be in compliance with the approval, the rehabilitation agreement, the Act, or this subchapter.

4. For rehabilitation projects with a selected rehabilitation period of 24 months or for any phase of a rehabilitation project with a selected rehabilitation period of 60 months, documentary evidence that a deed restriction reserving units pursuant to N.J.A.C. 19:31-26.3(e) has been recorded against each residential component, if any, of the rehabilitation project or the corresponding phase.

5. For rehabilitation projects with a selected rehabilitation period of 24 months or for any phase of a rehabilitation project with a selected rehabilitation period of 60 months, documentary evidence that a deed restriction has been recorded prohibiting modifications to the qualified

property or transformative property, or the corresponding phase, during the compliance period so that it ceases to meet the requirements for the rehabilitation of a qualified property or transformative property, or corresponding phase, as defined under the program or ceases to meet the requirements of the rehabilitation agreement.

6. Documentary evidence that a deed restriction has been recorded requiring construction and building services prevailing wage at the qualified property or transformative property pursuant to N.J.A.C. 19:31-26.12(b) and (c).

7. A certification by the chief executive officer or equivalent officer of the business entity that the information provided pursuant to this subsection is true under the penalty of perjury. Claims, records, or statements submitted by a developer to the Authority in order to receive tax credits shall not be considered claims, records, or statements made in connection with State tax laws.

8. If the Authority approval included a co-applicant, a certification that the participation agreement between the business entity and the co-applicant remains in effect and is not in default.

9. Certification by the architect or design consultant of record for the rehabilitation project confirming that all work was completed in accordance with the construction documents in the rehabilitation agreement.

10. Photographs showing all exterior building facades, significant and representative interior spaces, and examples of significant historic fabric repaired and restored as part of the rehabilitation project.

11. Updated and actual capital financing information.

(e) If the Authority determines upon receipt of documentation required by (d) above that the actual capital financing approach utilized by the rehabilitation project has resulted in a project financing gap that is smaller than the project financing gap determined at Board approval, the Authority shall reduce the amount of the tax credit award. If there is no project financing gap due to the actual capital financing approach utilized by the project, then the developer shall forfeit the tax credit award.

(f) Once the Authority accepts the documentation required by (d) above and the Authority determines that other required conditions have been met, within 90 days of the Authority's acceptance of the documentation and evidence satisfactory to the Authority, the Authority shall notify the business entity and the Director, and the business entity or co-applicant shall receive its tax credit certificate and shall be allowed the use of the tax credit certificate against the tax otherwise due pursuant to section 5 of P.L.1945, c.162 (N.J.S.A. 54:10A-26 5), sections 2 and 3 of 29 P.L.1945, c.132 (N.J.S.A. 54:18A-2 and 54:18A-3), and section 1 of 30 P.L.1950, c.231 (N.J.S.A. 17:32-15), or N.J.S.A. 17B:23-5, as follows:

1. For a rehabilitation project with a selected rehabilitation period of 24 months, the business entity or co-applicant shall be issued a tax credit certification and certificate of compliance for the accounting or privilege period in which the business entity or affiliate makes the final payment for the cost of the rehabilitation and receives a temporary certificate of occupancy for the rehabilitation project, or upon any other event evidencing project completion as set forth in the rehabilitation agreement. The tax credit allowed shall be based on the information submitted in the certification pursuant to (d) above, provided it shall not exceed the maximum amount determined by the Board pursuant to N.J.A.C. 19:31-26.8(a).

2. For the first phase of a rehabilitation project with a selected rehabilitation period of 60 months, the business entity or co-applicant shall be issued a tax credit certification based on the information for the first phase submitted in the certification pursuant to (d) above and the amount approved by the Board for the subsequent phases, provided the total tax credit amount shall not exceed the maximum amount determined by the Board for the rehabilitation project pursuant to N.J.A.C. 19:31-26.8(a). No tax credit certificate will be valid without the certificate of compliance issued for the corresponding phase pursuant to paragraph 3 below.

3. For all phases of a rehabilitation project with a selected rehabilitation period of 60 months, the Authority shall issue a certificate of compliance allowing the business entity or co-applicant the use of a portion of the tax credit during the accounting or privilege period in which the phase approved by the Board for tax credit is completed and for which the business entity receives a temporary certificate of occupancy for the phase, or upon any other event evidencing phase completion as set forth in the rehabilitation agreement, provided the amount allowed in the certificate of compliance shall not exceed the maximum amount determined by the Board for the phase pursuant to N.J.A.C. 19:31-26.8(a).

(g) Credits granted to a partnership or a New Jersey S corporation shall be passed through to the corporate partners, corporate members, or corporate owners, respectively, pro-rata, or pursuant to an executed agreement among the partners, members, or owners documenting an alternate distribution method provided to the Director accompanied by any additional information as the Director may prescribe consistent with any rule, guidance, or other publication issued by the Division of Taxation.

19:31-26.9 Reporting requirements and annual report

(a) A business entity approved for a tax credit award and that enters into a rehabilitation agreement shall submit annually, commencing in the year in which the tax credit award is issued and for the remainder of the compliance period, a report indicating whether the business entity is aware of any condition, event, or act that would cause the business entity or any co-applicant not to be in compliance with the rehabilitation agreement or the provisions of this subchapter and the Act and any additional reporting requirements contained in the rehabilitation agreement or tax credit certificate. The business entity, or an authorized agent of the business entity, shall certify that the information provided pursuant to this subsection is true under the penalty of perjury. The Authority may provide any information contained in the annual report to the Officer for any rehabilitation project.

(b) The annual report shall consist of:

1. A certification indicating whether or not the business entity is aware of any condition, event, or act, which would cause the business entity or any co-applicant not to be in compliance with the approval, the Act, the rehabilitation agreement, or this subchapter;

2. A certification indicating that the rehabilitation project does not violate any environmental law requirements, including, but not limited to, the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13;

3. For the two years after the first certificate of compliance is issued, evidence that the rehabilitation project remains in compliance with the Authority's affirmative action requirements pursuant to N.J.A.C. 19:31-26.12(a);

4. Evidence that the rehabilitation project remains in compliance with the Authority's prevailing wage requirements pursuant to N.J.A.C. 19:31-26.12(b) and (c);

5. A tax clearance certificate as described in section 1 of P.L. 2007, c. 101 (N.J.S.A. 54:50-39) for the business entity and any co-applicant;

6. A certification from the business entity that it has not modified the qualified property or transformative property so that it ceases to meet the requirements for the rehabilitation of a qualified property or transformative property as set forth in N.J.A.C. 19:31-26.3 or ceases to meet the requirements of the rehabilitation agreement;

7. A certification from the business entity that adequate climate control and building envelope have been maintained and that the building is secure. The business entity shall also provide a description of the climate control, and the measures to preserve and secure the building;

8. For a rehabilitation project with residential units, documentary evidence that the deed restriction required pursuant to N.J.A.C. 19:31-26.8(d)4 remains recorded, and documentation from the administrative agent that the rehabilitation project remains in compliance with the affordability controls pursuant to the "Fair Housing Act," P.L. 1985, c. 222 (N.J.S.A. 52:27D-301 et al.);

9. For the first annual report, the permanent certificate of occupancy covering the entire rehabilitation project;

10. If the Authority approval included a co-applicant, a certification that the participation agreement between the business entity and the co-applicant remains in effect and is not in default and that the co-applicant is making the contribution(s) required under the participation agreement; and

11. In conducting its annual review, the Authority may require a business entity to submit any information determined by the Authority to be necessary and relevant to its review.

(c) The annual report required by (a) above is due 120 days after the end of the business entity's tax privilege period. Failure to timely submit the report, absent extenuating circumstances and the written approval of the Authority, may result in recapture of some or all of the tax credit award. The Authority reserves the right to audit any of the representations made and documents submitted in the annual report.

(d) Upon receipt, review, and acceptance of each annual report submitted, the Authority shall provide to the business entity and any co-applicant a letter indicating acceptance.

19:31-26.10 Application for tax credit transfer certification

(a) A business entity or co-applicant holding an unused, otherwise allowable tax credit issued pursuant to sections 2 through 8 of P.L. 2020, c. 156 (N.J.S.A. 34:1B-270 through 34:1B-276) may apply to the Director and the Authority for a tax credit transfer certificate pursuant to this section. Upon receipt thereof, the business entity or co-applicant may sell or assign, in full or in part, the tax credit transfer certificate to another taxpayer in exchange for private financial assistance to be provided by the purchaser or assignee of the tax credit transfer certificate to the seller thereof. The business entity or co-applicant shall not sell a tax credit transfer certificate allowed under this section for consideration received by the business entity or co-applicant of less than 85 percent of the transferred credit amount before considering any further discounting to present value which shall be permitted, except a developer of a residential project consisting of newly-constructed residential units that has received federal low income housing tax credits under 26 U.S.C. s.42(b)(1)(B)(i) may assign a tax credit transfer certificate for consideration of no less than 75 percent subject to the submission of a plan to the Authority and the New Jersey Housing and Mortgage Finance Agency to use the proceeds derived from the assignment of tax credits to complete the residential project. The purchaser or assignee of the tax credit transfer certificate may apply the face value of the tax credit transfer certificate acquired against the purchaser's or assignee's applicable tax liability by claiming the tax credit on the purchaser's or assignee's corporation business tax or insurance premiums tax return with the corresponding tax credit transfer certificate accompanying the tax return.

(b) A purchaser or assignee of a tax credit transfer certificate pursuant to this section shall not make any subsequent transfers, assignments, or sales of the tax credit transfer certificate. If a lender that holds a tax credit certificate as collateral on a rehabilitation project forecloses on the project, the foreclosure and resulting transfer of the certificate shall not be considered a sale of the transfer certificate.

(c) A tax credit transfer certificate issued by the Director and the Authority shall include a statement waiving the rights of the business entity or co-applicant to which the tax credit has been granted to claim any amount of remaining credit against any tax liability.

(d) The tax credit transfer certificate issued to a business entity or co-applicant by the Director shall be subject to any limitations and conditions imposed on the application of State tax credits pursuant to sections 2 through 8 of P.L. 2020, c. 156 (N.J.S.A. 34:1B-270 through 34:1B-

276) and any other terms and conditions that the director may prescribe including, but not limited to, any applicable statutes of limitations for claiming a refund or credit.

(e) The Authority shall publish on its Internet website the following information concerning each tax credit transfer certificate approved by the Authority and the Director pursuant to this section:

1. Name of the transferor;
2. Name of the transferee;
3. Value of the tax credit transfer certificate;
4. State tax against which the transferee may apply the tax credit; and
5. Consideration received by the transferor.

19:31-26.11 Assignment of rights of rehabilitation agreement

(a) A business entity who has entered into a rehabilitation agreement pursuant to section N.J.A.C 19:31-26.8(b) may, upon notice to and written consent of the Authority, pledge, assign, transfer, or sell any or all of its right, title, and interest in and to the rehabilitation agreement and in the tax credit awards payable under the rehabilitation agreement, and the right to receive the tax credit awards, along with the rights and remedies provided to the business entity under the rehabilitation agreement. To decide whether to consent, the Authority will consider the purchaser's proposed use and treatment of the qualified property or transformative property. Any assignment shall be an absolute assignment for all purposes, including the federal bankruptcy code. If the Authority approval included a co-applicant, prior to requesting the consent of the Authority, the business entity shall obtain in writing the co-applicant's consent, and the business entity shall provide the co-applicant's written consent to the Authority with the business entity's notice.

(b) A co-applicant who has entered into a rehabilitation agreement pursuant to N.J.A.C. 19:31-26.8(b) may, upon notice to and written consent of the Authority, assign, transfer, or sell any or all of its right, title, and interest in and to the rehabilitation agreement and in the tax credit awards payable under the rehabilitation agreement, and the right to receive the tax credit awards, along with the rights and remedies provided to the co-applicant under the rehabilitation agreement, provided that the purchaser shall be a non-profit under Section 501(c)3 of the Internal Revenue Code. To decide whether to consent, the Authority will consider the contributions of the co-applicant and the proposed contributions by the purchaser. The new purchaser shall be the co-applicant and shall be required to receive an assignment of the co-applicant's participation agreement or to execute a new participation agreement with the business entity. Any assignment shall be an absolute assignment for all purposes, including the federal bankruptcy code. Prior to requesting the consent of the Authority, the co-applicant shall obtain in writing the business entity's consent, and the co-applicant shall provide the business entity's written consent to the Authority with the co-applicant's notice.

(c) Any pledge of a tax credit award made by the business entity shall be valid and binding from the time the pledge is made and filed in the records of the Authority. The tax credit award pledged and thereafter received by the business entity shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act, and the lien of any pledge shall be valid and binding against all parties having claims of any kind in tort, contract, or otherwise against the business entity irrespective of whether the parties have notice thereof. As a condition of any tax credit award, the grantee, assignee, pledgee or subsequent holder of the tax credit award shall immediately file notice of the same with the clerk of the county in which the project is located.

(d) The Authority shall publish on its Internet website the following information concerning each pledge, assignment, transfer, or sale approved by the Authority pursuant to this section:

1. The name of the person or entity offering the pledge, assignment, transfer, or sale of a right, title, or interest in a rehabilitation agreement;
2. The name of the person or entity receiving the pledge, assignment, transfer, or sale of a right, title, or interest in the rehabilitation agreement;
3. The value of the right, title, or interest in the rehabilitation agreement; and
4. The consideration received by the person or entity offering the pledge, assignment, transfer, or sale of the right, title, or interest in the rehabilitation agreement.

19:31-26.12 Affirmative action and prevailing wage

(a) The Authority's affirmative action requirements at P.L. 1979, c. 303 (N.J.S.A. 34:1B-5.4) and N.J.A.C. 19:30-3 shall apply to the rehabilitation project. The affirmative action requirements shall apply until the later of the completion of the rehabilitation project or two years after the first tax credit is issued.

(b) The Authority's prevailing wage requirements at P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1), and N.J.A.C. 19:30-44 shall apply to construction contracts for work performed for the rehabilitation project during the selected rehabilitation period. This prevailing wage requirements shall apply until the later of the end of the selected rehabilitation period or two years after the first tax credit is issued. Prevailing wage shall apply to all work done by tenants at the redevelopment project.

(c) Prevailing wage shall apply to building services at the qualified property or transformative property starting with the completion of the first phase of a rehabilitation project with a selected rehabilitation period of 60 months or the end of the selected rehabilitation period for a rehabilitation project with a selected rehabilitation project of 24 months. For all rehabilitation projects, this prevailing wage requirements shall continue for 10 years following the end of the selected rehabilitation period. In the event a portion of a rehabilitation project is undertaken by a tenant and the tenant has a leasehold of more than 35 percent of space in the

building owned or controlled by the business entity, the requirement that each worker employed to perform building service work at the building be paid not less than the prevailing wage shall apply to the entire rehabilitation project and all tenants therein.

19:31-26.13 Reduction and recapture of tax credits

(a) If during the compliance period, a business entity that has received a tax credit modifies the qualified property or transformative property so that it ceases to meet the requirements for the rehabilitation of a qualified property or transformative property as defined under the program or ceases to meet the requirements of the rehabilitation agreement, then the Authority may recapture some or all of the tax credit allowed under the program. The requirements include, but are not limited to: substantial compliance with the Secretary of the Interior's Standards for Rehabilitation, 36 C.F.R. § 67.7; remaining an income producing property; minimum number of residential units, if applicable; maintaining the rehabilitation project so that it meets the minimum score pursuant to N.J.A.C. 19:31-26.6(c); and for a transformative project, continuing to meet the definition of transformative property.

(b) If during the compliance period, the business entity ceases to maintain adequate climate control or fails to preserve the building envelope, then the Authority may recapture some or all of the tax credit allowed under the program.

(c) If any worker employed to perform building services work at the rehabilitation project is paid less than the prevailing wage rate for the worker's craft or trade pursuant to N.J.A.C. 19:31-26.12(b) and (c) during the relevant tax period, then the Authority shall recapture a proportional amount of the tax credit.

(d) In the case of a business entity that has chosen a selected rehabilitation period of 60 months, if the architectural plans change in the course of the phased rehabilitation project so that the rehabilitation of the qualified property or transformative property would, upon the rehabilitation's completion, no longer qualify for a tax credit pursuant to the requirements of this program, then the business entity's tax liability for the accounting or privilege period in which the business entity was issued the certificate of compliance shall be increased by the full amount of the tax credit that the Authority had previously allowed by that certificate of compliance upon the completion of a distinct prior project phase that the business entity has applied against its tax liability in the prior accounting or privilege period. The Authority shall notify the business entity and the Director. The Director may take adverse action against the business entity consistent with the State Uniform Tax Procedure Law, N.J.S.A. 54:48-1 et seq., including, but not limited to, determining a deficiency with respect to payment due to the increased liability and assessing penalties and interest from the date of the accounting or privilege period. Any portion of the tax credit that the business entity has not yet used or transferred at the time of the disallowance by the Officer shall be deemed void.

(e) If, based on new information, the Authority determines that recapture should have been applicable pursuant to any of the provisions in this section, the Authority shall recapture the tax credits as if the Authority had been timely informed.

(f) If at any time, the Authority determines that the business entity or co-applicant made a material misrepresentation on the business entity's application, project completion certification, annual report, or any related submissions, the Authority shall recapture some or all of the tax credits of the business entity and any co-applicant, which shall be in addition to any other remedies in the rehabilitation agreement and any criminal or civil penalties to which the business entity, co-applicant, and the respective officer of the business entity or co-applicant may be subject.

(g) Any recapture amount pursuant to this section may include interest on the recapture amount, at a rate equal to the statutory rate for tax deficiencies, plus any statutory penalties, and all costs incurred by the Authority and the Division of Taxation in the Department of the Treasury in connection with the pursuit of the recapture, including, but not limited to, counsel fees, court costs, and other costs of collection. The Authority shall confer with the Division of Taxation to determine the recapture amount.

(h) The Authority shall notify the Officer of any reduction or recapture of tax credit awarded under this program.

(i) If all or part of a tax credit sold or assigned pursuant to section 5 of P.L. 2020, c. 156, and N.J.A.C. 19:31-26.11 is subject to recapture, then the Authority shall pursue recapture from the business entity and to the extent the co-applicant is involved with the basis for the recapture, any co-applicant, and not from the purchaser or assignee of the tax credit transfer certificate.

(j) The Authority shall notify the Director of any funds recaptured pursuant to this section. Any recaptured funds, including penalties and interest, shall be deposited into the General Fund of the State.

19:31-26.14 Appeals

(a) The Board's action shall be effective 10 business days after the Governor's receipt of the minutes, provided neither an early approval nor veto has been issued.

(b) An applicant may appeal the Board's action by submitting in writing to the Authority, within 21 calendar days from the effective date of the Board's action, an explanation as to how the applicant has met the program criteria. Such appeals are not contested cases subject to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(c) Appeals that are timely submitted shall be handled by the Authority as follows:

1. The Chief Executive Officer shall designate an employee of the Authority to serve as a hearing officer for the appeal and to make a recommendation on the merits of the appeal to the Board. The hearing officer shall perform a review of the written record and may require an in-person hearing. The hearing officer has sole discretion to determine if an in-person hearing is necessary to reach an informed decision on the appeal. The Authority cannot consider any new

evidence or information about the project other than evidence or information that would demonstrate that the applicant met all of the application criteria by the application deadline.

2. Following completion of the record review and/or in-person hearing, as applicable, the hearing officer shall issue a written report to the Board containing his or her finding(s) and recommendation(s) on the merits of the appeal. The hearing officer's report shall be advisory in nature. After reviewing the report, the Chief Executive Officer of the Authority may also include a recommendation to the written report of the hearing officer. The applicant shall receive a copy of the written report of the hearing officer, which shall include the recommendation of the Chief Executive Officer, if any, and shall have the opportunity to file written comments and exceptions to the hearing officer's report within five business days from receipt of such report.

3. The Board shall consider the hearing officer's report, the recommendation of the Chief Executive Officer, if any, and any written comments and exceptions timely submitted by the applicant. Based on that review, the Board shall issue a final decision on the appeal.

4. Final decisions rendered by the Board shall be appealable to the Superior Court, Appellate Division, in accordance with the Rules Governing the Courts of the State of New Jersey.

19:31-26.15 Reports on implementation of program

On or before December 31, 2025, the Authority, in consultation with the Officer and the Director, shall prepare and submit a written report regarding the number and total monetary amount of tax credits granted for the rehabilitation of qualified properties or transformative properties pursuant to section 4 of P.L. 2020, c. 156 (N.J.S.A. 34:1B-272), the geographical distribution of the credits granted, a summary of the tax credit transfer program established pursuant to section 5 of P.L. 2020, c. 156 (N.J.S.A. 34:1B-273), an evaluation of the effectiveness of the tax credits provided pursuant to sections 2 through 8 of P.L. 2020, c. 156 (N.J.S.A. 34:1B-270 through 34:1B-276) in promoting the rehabilitation of historic properties, recommendations for administrative or legislative changes to increase the effectiveness of the program, and any other information that the Authority, the Officer, or the Director may deem useful or appropriate. This report shall be submitted to the Governor and, pursuant to section 2 of P.L. 1991, c. 164 (N.J.S.A. 52:14-19.1), to the Legislature.

19:31-26.16 Severability

If any section, subsection, provision, clause, or portion of this subchapter is adjudged to be unconstitutional or invalid by a court of competent jurisdiction, the remaining portions of this subchapter shall not be affected thereby.